



The Leader-Herald

Local mother who served in Iraq says she will fight for custody of her son

By CHRISTOPHER BECHARD, The Leader-Herald

CANAJOHARIE — An Iraq war veteran said Monday she will continue to fight for her son after losing an appeal for his custody last week.

The Appellate Division of the state Supreme Court ruled against Canajoharie resident Tanya Towne in her appeal for her 12-year-old son, Derrell. Towne said she is over the initial shock of the decision and will most likely turn to the state Court of Appeals.

"It has set in," Towne said. "I'm not done with by any means. I'm trying to see what other options I have."

Towne's ex-husband, Richard Diffin, gained temporary custody of the boy after Towne was deployed to Iraq as a member of the Army National Guard in 2004. He later petitioned for primary custody of Derrell after Towne returned from duty in November 2005.

The court ruled Derrell had adjusted well to living with his father and continuing that arrangement would be in the boy's best interest. It also took into consideration the fact that Towne is legally separated from her current husband.

Towne acknowledged the chances of getting her case heard by the state's highest court were slim. Gregory T. Rinckey, a former JAG attorney whose practice focuses on military and family law, agreed that it would be difficult to win a further appeal.

"She's facing an uphill battle," he said.

Rinckey said he was "very concerned" with the decision, and it will raise questions in the minds of other parents in the service.

"It has a chilling effect," Rinckey said. "This isn't a case of someone volunteering to go away. She was ordered to active duty."

"I find it very disturbing that someone can lose custody based on serving their county," he said.

Towne said she has been treated unfairly.

"I don't regret joining the military, but I feel like I've been punished by the New York state law system," she said. "I would definitely not have gone to Iraq if I had a choice and it meant keeping my son."

Diffin's attorney, Robert M. Cohen, said the court was responsible for making a decision based on the boy's best interest, not on fairness to Towne.

"When the court is looking at something like this, they're supposed to look at what's best for the children," he said.

The court acknowledged that both Diffin and Towne are "excellent parents."

The ruling goes on to say, "the fact remains that the mother was deployed and, while we do not hold her deployment in and of itself constitutes a significant change in circumstances, we must consider the

consequences of her extended absence in determining where such a change exists.”

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