

## Her toughest battle

By [DENNIS YUSKO](#), Staff writer

First published: Thursday, January 17, 2008

Tanya Towne says she lost everything in Iraq, starting with physical custody of her first child.

Before Towne's 2004 deployment, a Montgomery County Family Court judge gave her son, Derrell Diffin, to her first husband because she was being sent to war. This month, Towne lost an appeal to get Derrell back.

The decision has devastated Towne, a specialist and radio repairer with the New York Army National Guard's Rainbow Division in Troy. It's also put her at the center of a legal battle that at least one lawyer who assists service personnel says will force future troops to choose between their families and service to the country.

"This decision marks a serious attack on our national security and the civil rights of military members," said Gregory Rinkey, who defended military personnel as a captain in the Army Judge Advocate General's Corps and now practices military and family law in Colonie. "Soldiers fighting in Iraq should not be burdened with worry that their children will be taken away because of their service."

Yet that's exactly what happened to Towne, who even the Appellate Division acknowledged in its ruling would likely have retained control of Derrell had it not been for her 18-month activation.

There's a growing national trend in which U.S. soldiers say they are losing custody of their children in family courts just because of their absences while on active military duty, according to the Poynter Institute, a Florida-based journalism think tank. On many occasions, courts -- looking to establish a stable environment for the child -- have said it's in the best interest of children not to be moved again, especially if there's a chance the parent in the military could be deployed again.

Towne's deployment to Tikrit, Iraq, strained her marriage to her second husband, Jason Towne, so much that they separated about two years ago, she said. Broke from legal bills, Tanya Towne works full time as a materials handler at Watervliet Arsenal. She lives with her brother and her second son, 4-year-old Darren Towne, in an apartment in Canajoharie.

"Honestly, I don't even look back at my time in Iraq," Tanya Towne said Tuesday in an emotional interview. "I look back and realize how much I lost because of Iraq. My time over there was easy compared to what I went through when I got home."

But her first husband, Richard Diffin Jr., said New York courts correctly served Derrell's needs. He met Towne at a base in Georgia while serving in the Army.

"They based it on our stability now, and where she is at this point in time," Diffin said in an interview from Virginia, where he and Derrell live. "It's not about the deployment, but because of the situation she's in in her personal life."

Towne, who lived most of her life in Johnstown, married Diffin in 1993 and moved with him to an Army base in Germany, where Derrell was born. She and Derrell returned to New York together after the couple broke up after about five years of marriage.

Towne and Diffin shared joint legal custody of the boy, but she had physical custody and raised Derrell until he was 8.

In April 2004, Diffin petitioned for custody of Derrell after learning that Towne was being activated for training for Iraq that May, court papers say. Towne had sought to have Derrell stay with her second husband while she was gone. But a Montgomery County Family Court issued a temporary order placing Derrell with his biological father.

Towne trained seven months at Fort Drum before deploying to a base in Tikrit, where she served on convoy missions and supply runs and did guard detail. She tried to regain physical custody of Derrell when she returned from overseas duty in November 2005. But following a trial with testimony from both sides, Family Court Judge Philip Cortese granted custody to Diffin with visitation rights for Towne, court papers show.

She appealed the decision.

In its ruling on Jan. 3, the Appellate Division of state Supreme Court ruled that uprooting the 12-year-old would not serve his best interests.

The appellate court says that Derrell had no preference as to where to live and the court called both Towne and Diffin "excellent parents."

The court ruled that Towne's deployment, subsequent separation and move from the Towne family home represented "a significant change" in circumstances, and that remaining with Diffin would best provide stability.

"This is not an anti-military decision, not an anti-woman's decision," Diffin's attorney, Robert Cohen of Ballston Lake, said. "Through no fault of her own, she left her son."

But Rinckey, the military attorney, says the decision greatly decreases support for military families and undermines the rights of parents in the reserves.

Towne expects to be honorably discharged in the next year due to a back injury. She doesn't know what the future holds.

She said she will appeal the decision because she wants to live with Derrell again. "I miss his energy, his smile, and he's a snuggle boy," Towne said as a tear rolled down her cheek. "He's a very lovable child."

Yusko can be reached at 581-8438 or by e-mail at [dyusko@timesunion.com](mailto:dyusko@timesunion.com).