

December 9, 2008

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***Re: Denise Gale Webb Ragan v. Mark Richmond Ragan  
Roanoke County Circuit Court - CJ08-100***

Dear Counsel:

This matter is before the Court on an appeal from the Juvenile and Domestic Relations District Court (J&D) wherein the mother asked for injunctive relief to enforce a prior order of that court. The argument between the parties dealt with whether the child should be enrolled in the public school chosen by the father or the one chosen by the mother. In making its final decision, the J&D court permanently changed custody. Father objects to that change of custody as no notice was given. Mother claims that the J&D court had the authority to transfer custody without notice under §16.1-278.15, Code of Virginia (1950), as amended.

### **DUE PROCESS**

The J&D court has extraordinary powers in dealing with children. Under §16.1-241, Code of Virginia (1950), as amended, it has the authority to step into any emergency situation and immediately change custody of a child and remove him or her to a safe environment. This can be done on a temporary basis in order to protect the child and to alleviate a dangerous or harmful environment. Those emergency changes of custody are frequently and necessarily accomplished without due process procedures. Once the emergency situation is abated, if the court thereafter contemplates a permanent change of custody, then at that time the due process requirements of notice, hearing and opportunity

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to be heard must be followed. The issue of child custody “involve[s] a fundamental liberty interest of the parent. Accordingly, the parent must be accorded the benefits of due process.” *Haase v. Haase*, 20 Va. App. 671, 681 (1995). The failure to provide those necessary due process safeguards is fatal to the J&D court’s decision to make a permanent change of custody. Accordingly, the J&D final order is void *ab initio*.

Counsel for Husband should prepare and present an appropriate order incorporating this letter opinion by reference and remanding this case to the J&D court, after first obtaining endorsement of counsel.

Very truly yours,

Robert P. Doherty, Jr.

RPDjr/bh