

## PATTERSON v. PATTERSON.

Opinion delivered April 20, 1908.

PARENT AND CHILD—CUSTODY.—In a controversy between a husband and wife, living separately, over the custody of an infant a year and a half old, it is improper to remove the child temporarily from its mother's custody when she is shown to be capable, both morally and financially, of properly caring for and nurturing it.

Appeal from Sebastian Chancery Court; *J. V. Bourland*, Chancellor; reversed.

*Read & McDonough*, for appellant.

1. The appellant is financially able to properly care for the child, and it is conceded that she is a woman of good character, kind to the child, and because of its age she should have custody of it. 38 Ark. 406; 50 Ark. 351; 75 Ark. 193; 78 Ark. 193.

2. Under the circumstances of this case, the bringing of an original petition for habeas corpus in this court is proper practice. 48 Ark. 286.

*Edwin Hiner* and *Youmans & Youmans*, for appellee.

McCULLOCH, J. This proceeding involves a controversy between husband and wife concerning the custody of their in-

fant child. The chancellor awarded the custody of the child to its father, allowing him to remove the child out of the jurisdiction of the court. The relation of husband and wife still subsists between the parties—no divorce proceedings being pending, though it appears that they have separated themselves from each other and are living apart.

It does not appear from the evidence that either of the parents are incapable, either morally or financially, of properly taking care of the child, but on account of its tender age we feel sure that the interest of the child would, for the present at least, be best subserved by permitting it to remain in the custody of the mother, who is more capable of giving it the care that it needs most now. The child was about a year and a half old when the chancellor decreed its custody to the father. This is too tender an age at which to remove a child from its mother, when she is shown to be capable of properly caring for and nurturing it. *Wann v. Wann*, 85 Ark. 471.

The decree awarding custody is only of a temporary nature, and subject to change when different circumstances demand it.

Reversed and remanded, with directions to enter a decree in accordance with this opinion awarding the custody of the child to appellant, its mother. The chancellor is authorized, of course, to make such orders as he may deem just and proper giving appellee reasonable opportunity to visit his child.

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