

IN THE COURT OF APPEALS
AT KNOXVILLE

FILED

October 18, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

PATRICK JAMES THOMSON)
)
Respondent-Appellee)
)
v.) UNION COUNTY)
) 03A01-9809-CH-00308
)
HEATHER ALICIA ROACH THOMSON)
)
Petitioner-Appellant)

DISSENTING OPINION

Goddard, P.J.

I respectfully dissent from the holding of the majority opinion in affirming the Chancellor's change of custody. The incident justifying the change is the negligence of the father in allowing the child to fall into or otherwise enter a tub being filled with hot water. While the majority opinion does raise some question as to whether the father deliberately placed the child in the tub and held him there,

as insisted by the mother, it does agree with the findings of the Chancellor that the child's burns were not caused by any intentional act on the part of the father. The majority opinion goes on to justify affirming the Trial Judge's change of custody by finding this one single

act of negligence was sufficient to warrant the Trial Court's determination. In my view, to do so would, for example, also warrant a change of custody back to the father should the mother, while driving a car, negligently crash, resulting in injuries to the child.

In short, I find that the record in this case did not support change of custody as decreed by the Trial Judge, and would deny Ms. Thomson's complaint seeking to overturn the original award of custody.

Houston M. Goddard, P.J.