

Bill O'Reilly Loses Custody of Children In New York Court Ruling



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Photo credit: Associated Press

A New York appeals court held last week that Fox News host Bill O'Reilly's school-age children don't want to live with him anymore, and should live exclusively with their mother, O'Reilly's ex-wife Maureen McPhilmy.

The lengthy decision affirms the holding of a Nassau County Supreme Court justice last year that the children, now aged 13 and 17, should live full-time with their mother (the former couple had been splitting residential custody). **As we reported at the time**, O'Reilly appealed that ruling, thereby delaying its enforcement (and, of course, extending his **multi-front battle** against McPhilmy and her new family).

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The Appellate Division **issued its 1,400-word opinion** on February 24, a little over a month after attorneys for O'Reilly and McPhilmy—known in court documents as *Anonymous 2011-1* and *Anonymous 2011-2*—presented oral arguments at the division's courthouse in Brooklyn Heights. According to the opinion, the court's four justices unanimously ruled in McPhilmy's favor based upon "the clearly stated preferences of the children":

Viewing the totality of the circumstances, there is a sound and substantial basis for the Supreme Court's determination that it is in the best interests of the children for the mother to be awarded primary residential custody. Particularly relevant in this case are the clearly stated preferences of the children, especially considering their age and maturity, and the quality of the home environment provided by the mother[.]

The preference of McPhilmy and O'Reilly's 17-year-old daughter is not particularly difficult to guess: As we noted last year, she told a court-appointed forensic examiner that **she witnessed O'Reilly drag her mother down a staircase by the neck**. (According to **court transcripts** obtained by Gawker, she also viewed O'Reilly as a temperamental, absentee parent who was uninterested in developing a relationship with her.) At a January 22 hearing, the children's court-appointed lawyer, Barbara Kopman, told the appellate court that both the daughter and son strongly preferred living with their mother over their father. (Gawker was able to attend but not record the court session, which was open to the public.)

While the court awarded sole residential custody to McPhilmy, it decided that O'Reilly and McPhilmy should continue to share legal custody—meaning that, even though they live with their mother, their father will continue to share joint authority over questions like which schools they attend, any medical care they receive, and what religion they practice; O'Reilly had demanded sole legal custody, an arrangement under which he alone would decide such matters.

Being able to influence his children's religious observation would likely be a priority for O'Reilly, who is well-connected within the Catholic Church. Those connections may explain why, after their divorce was finalized, **the Church reprimanded McPhilmy** in writing for telling her children her second marriage was valid in the eyes of God. (O'Reilly has also sought to formally annul his and McPhilmy's 15-year matrimony, which produced the two children whose lives he now seeks to control.) But both the Nassau County justice overseeing the original case and the Appellate Division rejected his request for sole authority.

The same appeals court ruled in McPhilmy's favor over two years ago, in January 2013, after she discovered that the purportedly neutral therapist she and O'Reilly had chosen to arbitrate custodial disagreements had been hired by O'Reilly to **"perform virtually all of his parental duties."** In that opinion, the court remitted, or sent back, McPhilmy's request for sole custody to the Supreme Court of Nassau County, where she later won it. In the most recent opinion, however, the court simply upheld the lower court's ruling, thereby preventing this portion of the case from being further drawn out.

O'Reilly's legal dispute with McPhilmy is not entirely over, though. According to the court docket of the original divorce case in Nassau County, O'Reilly is currently pursuing contempt of court charges against his ex-wife:

Court: **Nassau Civil Supreme**
Index Number: **201725/2011**
Case Name: **ANONYMOUS 2011-1 vs. ANONYMOUS 2011-2**
Case Type: **Contested Matrimonial B**
Track: **Standard**

Motion Information:

Motion Number	Date Filed	Filed By	Relief Sought	Submit Date	Answer Demanded
013	12/09/2015	DEF	O.S.C-Punish For Contempt		No

This motion indicates that O'Reilly or his lawyers believe McPhilmy has violated or otherwise ignored the court's instructions. The docket does not say exactly why O'Reilly believes this, since in New York the details of divorce case motions are not public. But a person familiar with the case tells Gawker that the motion most likely arose from O'Reilly's belief that his ex-wife was interfering with the custody arrangement for their 17-year-old daughter. The same person tells us their daughter has repeatedly refused to visit her father on the days designated for them to be together—a pattern of behavior for which O'Reilly is apparently blaming McPhilmy, **rather than his own erratic behavior**.

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Gawker has obtained partial transcripts from the custody trial at the center of Fox News anchor...

The justice in Nassau County in charge of the original divorce case has not yet ruled on O'Reilly's latest motion. It's not clear, either, whether the Fox News host will appeal the Second Department's ruling to the next highest court, the Court of Appeals in Albany. It's unlikely he would succeed in doing so, though. To be granted the opportunity to appeal, his lawyers would have to successfully argue that his divorce case raises questions about settled state law.

Furthermore, the Second Department's opinion seems to discourage O'Reilly from pursuing any further appeals. Its third sentence—"ORDERED that the [lower court's] order is affirmed, with costs"—indicates that O'Reilly must pay his ex-wife's attorney fees.

Attorneys for McPhilmy and O'Reilly did not respond to requests for comment.

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O'Reilly v. McPhilmy