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Medical marijuana key in custody case

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Billy Fisher and his girlfriend, Serra Frank, discuss his fight with Child Protective Services over his daughter.

As medical marijuana supporters gird for a fight against further state controls, they are rallying around the case of Billy Fisher, a Spokane patient who has so far been denied custody of his infant daughter in part because he refused to attend an inpatient chemical dependency program for his use of the drug.

The Department of Social and Health Services, which took the child from Fisher's estranged wife, ordered an assessment of Fisher before placing the baby with him. Although he has an authorization to use the drug for pain from a back injury he suffered in 2007, a chemical dependency assessment trainee in Spokane recommended 30 days of inpatient drug treatment for his use of marijuana. Fisher, who said he turned to marijuana when opiate-based painkillers left him unable to work, or even function normally, balked. He mainly uses oils to kill the pain, and only smokes occasionally when the oils aren't effective.

He got another assessment from a chemical dependency expert in Kirkland who argued that Fisher was not addicted to marijuana, although he may be dependent on it. The expert, John O'Malley, told Family Law Commissioner Valerie Jolicoeur he believed there was a distinction. Chemical dependency means a person needs a drug to perform daily functions but it doesn't have a negative effect on his life; an addict can't stop taking a drug, even though it causes problems for his job, his family or his health.

When Jolicoeur, who has presided over drug court, pressed O'Malley on that distinction, he conceded it's not recognized within the drug treatment profession. But he said he didn't think Fisher's marijuana use warranted inpatient treatment, which should be reserved for more serious drug users.

Jolicoeur agreed with DSHS and made inpatient drug treatment a condition for Fisher receiving custody. Fisher refused, saying that meant he'd be without work for a month and couldn't help take care of his girlfriend and her son.

Activists say DSHS is violating state law, which doesn't allow custody to be denied solely for using medical marijuana, and have mounted a Facebook campaign to support Fisher. Jolicoeur warned him that activism was "taking time away from the care of his child." State officials, who won't talk specifically about this case, say the key word in the law is "solely" and it can be considered along with other factors.

Fisher had some other factors, including a lack of parenting experience and other drug use in his past. He also fired his attorney in the middle of the hearing and had to proceed as his own lawyer when Jolicoeur denied his request for a delay.

He's filed for a motion for a Superior Court judge to revise the commissioner's order, or order a new fact-finding hearing, and he's seeking a new lawyer.

While adamant about not going to inpatient treatment, Fisher said he would love to stop smoking marijuana, and strictly use the oils and a new cannabis-based patch being developed for pain relief.

"I don't want to be high. I want pain relief," he said.

—*Jim Camden*

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