

294 Court denies new trial for Graf

Agreement resolves child visitation rights

By **TOMMY WITHERSPOON**
Tribune-Herald staff writer

Convicted murderer Edward E. Graf Jr. lost his attempt to win a new trial Thursday, six hours after his parents were awarded visitation rights to Graf's 2-year-old son.

Judge George Allen of Waco's 54th State District Court rejected a motion from Graf's attorneys, Charles M. McDonald and Lynn Malone, for a new trial for Graf.

Graf, 36, was sentenced in April to life in prison in the August 1986 fire deaths of his adopted stepsons, Jason, 8, and Joby, 9.

Allen denied the motion for a new trial without conducting a hearing on the attorneys' claims that there was insufficient evidence to convict Graf. Allen said Graf, who has been in McLennan County Jail since his conviction, probably will be transferred to prison next week.

McDonald said he was not surprised by Al-

len's ruling, adding that he and Malone will continue to work on Graf's appeal.

"It certainly does not shock me that the judge did this without a hearing. It is very difficult for a judge to go against a jury verdict," McDonald said.

McLennan County District Attorney Vic Feazell, who prosecuted the case with his first assistant, Karen Amos, said he also anticipated Allen to reject the motion.

"I am confident that there will be absolutely no problem with this case on appeal," Feazell said. "The only ground they alleged in the motion was insufficiency of the evidence, and the law books are full of cases with less circumstantial evidence than we had against Ed Graf where the courts upheld the jury finding. I believe we have a very strong and error-free case on Ed Graf Jr."

Please see **GRAF**, Page 3C



Staff photo — Steve Earley

Clare Gerdes (left) and her attorney, Deanna Fitzgerald, say the agreement was made for sake of Gerdes' son, Edward E. Graf III.

The Waco Herald
Waco, Texas
JUN 10 1988

Graf loses court bid for retrial

□ From Page 1C

Before a contempt hearing began Thursday morning in Waco's 170th State District Court, Graf's former wife, Clare Gerdes, and Graf's parents, Mr. and Mrs. Edward E. Graf Sr., reached an agreement to allow the Grafts visitation rights to their grandson, Edward E. Graf III.

Graf filed a contempt motion in May asking Judge Joe N. Johnson to jail Gerdes for refusing child visitation privileges to Graf the weekend before he was convicted.

Gerdes' attorney, Deanna Fitzgerald, said the contempt motion was not pursued as part of the agreement with Graf's parents.

Johnson approved the agreement, which will allow the Grafts custody of their grandson every other weekend, with provisions for summer and holiday visits.

Johnson ordered the Grafts to maintain the child-support payments of \$240 a month that their son had been paying and upheld part of the agreement that prohibited the Grafts from taking their grandson to the McLennan County Jail to visit his father.

Johnson admonished both sides not to "improperly brainwash" the child against one another and to make the arrangement as amicable as possible for the benefit of the boy.

"But the non-pursuance of the contempt action should not be an

invitation for further abuses of the court's orders," Johnson told Gerdes.

After the hearing, Gerdes' sister and sister-in-law said they were unhappy with the arrangement, but Fitzgerald said the agreement was made for the child.

"Clare made the decision that the child needed to have as much care, love and affection from her family and from the grandparents, and that this hearing was solely concerning the emotional well-being of the child," Fitzgerald said. "Clare has taken steps to start the child in counseling because of the possible repercussions on this child because of the circumstances that

have occurred. It is also my understanding that the grandparents have indicated a willingness to participate in the counseling."

The Grafts declined comment after the hearing. Their attorney, Merrilee L. Harmon, said, "I think the right thing was done."

During Graf's trial, Gerdes testified that she now calls the boy Jacob because she cannot "choke out the word Edward." Graf's mother, Sue Graf, testified that her family calls him Edward.

When asked if that could create a problem for the boy, Fitzgerald said "there is an attempt by all parties to work out this problem for the best interest of the child."



Staff photo — Steve Earley

Sue Graf and Edward E. Graf Sr. leave the courthouse after a hearing gave them visitation rights to their grandson.