

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-000674-ME

AMANDA WAUGH FELTY

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT  
HONORABLE BETH LEWIS MAZE, SPECIAL JUDGE  
ACTION NO. 03-CI-00796

KEVIN SCOTT FELTY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI, McANULTY, AND SCHRODER, JUDGES.

McANULTY, JUDGE: Appellant Amanda Waugh Felty (Amanda) brings this appeal from an Order granting temporary sole custody of the parties' infant child to Appellee Kevin Scott Felty (Kevin). We affirm the trial court's order and remand for further proceedings.

Amanda and Kevin were married in December, 2001. They separated in July, 2003, and Amanda filed for dissolution of the marriage shortly thereafter in August, 2003. Amanda was then

pregnant. She gave birth to a daughter on October 3, 2003. On October 21, 2003, Kevin filed a motion for temporary custody or visitation of the child, and filed an affidavit stating that he had not been permitted to visit the child in the hospital, and had thereafter not been permitted to see the child for more than a few hours at a time. He complained that Amanda had not given the child his surname.<sup>1</sup> Amanda responded that Kevin could not be serious about wanting custody as she was still breastfeeding.

A domestic relations commissioner held a hearing at which the parties testified. In December, 2003, the commissioner entered a report and recommendations. The commissioner found that Kevin had not been allowed to see the child since its birth more than a few times and then only supervised by Amanda, her parents and sometimes her grandmother. At times, Amanda's family videotaped his visits. The commissioner noted that Amanda wanted sole custody, while Kevin was agreeable to shared custody, and that Amanda wanted Kevin only to have supervised visitation.

The commissioner found that it was in the best interests of the parents to have joint custody of their daughter with each parent to have substantial parenting time. The

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<sup>1</sup> Appellant gave the child her maiden name and included as one of the child's middle names Christian, her former husband's last name; however, she denied that this name had any connection to her former husband and stated that she had just always liked the name. The parties agree that there is no question as to the child's paternity.

commissioner recommended that Amanda be the primary residential custodian. The court held that the child should be given her father's name. The parties were urged to work out a schedule in which Kevin's visitation was under no circumstances to be less than the Boyd County Visitation Guidelines. Finally, the commissioner urged the parents to get along and to keep their disagreements from affecting the child.

Amanda filed exceptions to the domestic relations commissioner's recommendations of joint custody and visitation for Kevin outside her home. Kevin responded that the commissioner properly followed the guidelines in determining visitation. He stated that he was employed, of good character, never arrested and a member of the National Guard. He asserted that he should be allowed the visitation any other parent would receive - without supervision or videotaping. He urged that the commissioner's recommendation be adopted.

Amanda next filed a motion for the trial judge to recuse. The court denied Amanda's motion, stating that he had no knowledge of any past dealings with her and that the motion had no basis. In the same order, the court granted Kevin visitation at Amanda's residence and stated that he should be allowed to take any of his family members along. Thereafter, Kevin was to be allowed further visitation on the ensuing Saturdays in his own home.

Kevin soon filed a motion for contempt due to Amanda's failure to allow visitation, and asked the court to order an officer to accompany Kevin when picking up the child for visitation. Amanda responded that she had no objection to visits in her home, but that Kevin became agitated and she feared for her safety and that of the child. She also alleged that Kevin's family threatened to take the child and not return her. She alleged that the only way she could be certain of the child's safety was supervised visits in her home. Amanda renewed her motion to recuse to avoid the hint of impropriety.

A month later, Amanda noticed the court that she had changed counsel, and complained that the domestic relations commissioner refused her attempts to bring before the court additional witnesses to testify as to Kevin's character. Amanda argued that it would do no harm to hear additional witnesses as nothing had been finalized regarding custody.

In March of 2004, the court entered an order denying Amanda's motion. The court entered a second order establishing a temporary visitation schedule in which Kevin would be allowed visitation at Amanda's residence without Amanda present, supervised by the child's regular babysitter. Thereafter, Kevin would be allowed visitation at his home supervised by the babysitter or by his uncle. On April 15, 2004, Amanda filed a motion requesting that the Cabinet for Families and Children be

allowed to supervise as the babysitter no longer felt comfortable acting in that capacity. In an order on April 30, 2004, following a phone conference, the court determined that Kevin should be permitted unsupervised visitation. The court ordered that he be allowed visitation for the next four Saturdays, with his family allowed to be present, and for Amanda to transport the child at her request.

On May 3, 2004, the court entered an order stating that although the court had found no basis for recusal, following visits from Amanda and her mother to the court questioning its orders, the court found it now necessary to recuse on the basis "that any decision this Court makes in this matter could be taken by one side or the other as being biased based upon the visit of the Petitioner and her mother." A special judge was appointed from outside the county.

In July 2004, Amanda's counsel asked the court to hold the case in abeyance since, while considerable issues were left to be resolved, Kevin was known to be serving in Iraq. No order was entered in the record placing the case in abeyance, however. Nothing occurred in the case until the events of this year, which are those being appealed.

On February 22, 2005, Kevin filed a motion with the court asking that the court affirm the recommendations of the domestic relations commissioner, issue a decree of dissolution,

enter a permanent child support order and allow him time sharing with his daughter while he was on two-week leave from his service in Iraq. Counsel for Amanda filed a response stating that he could not be present at the hearing due to a scheduled trial, but that he had previously forwarded an offer of settlement regarding visitation. In addition, counsel argued for benefits for Kevin's wife and child from the military.

The trial court's order of February 28, 2005, noted that Amanda's counsel had requested a continuance, but the court found no reason to deny Kevin visitation after reviewing the recommendations of the commissioner. Therefore, the trial court granted Kevin visitation for the duration of his time home from February 25, through March 6, 2005, with the exception of one twenty-four hour period during that time for the child to be returned to Amanda. The order called for exchange at Amanda's home with a deputy sheriff to accompany Kevin, and thereafter exchanges at a government office. The court warned that failure to comply would result in the use of the court's contempt powers.

Not surprisingly, Amanda failed to obey the orders of the court with regard to the visitation during Kevin's brief leave. Kevin moved for Amanda to show cause why she should not be held in contempt, and stated in an affidavit that he observed Amanda in her trailer, but that he and the deputy sheriff were

told that she was not there. They were told this each day they attempted to conduct the exchange thereafter, until ultimately the sheriff was told by Amanda's father that she had left the country. On March 8, 2005, the court entered an order awarding temporary sole custody to Kevin pursuant to KRS 403.340(3)(c), due to Amanda's failure to abide by the court's order to provide visitation. A show cause hearing was scheduled for March 25, 2005. When Amanda did not appear for the hearing, the court found her to be in contempt of court and ordered her jailed with no bond. Amanda immediately appealed the court's orders of visitation, temporary custody, and contempt to this court.

This Court is troubled, to say the least, with the fact that it is two years now since the birth of the child and no custody order has been able to be entered, as it should have been possible to accomplish before Kevin ever left for Iraq. We observe that Amanda has engaged in obstruction of the court's orders and delaying tactics, including the present appeal, in order to thwart her husband's legal attempts to have a relationship with his child. Moreover, her arguments on appeal against visitation on the basis that Kevin has had very few visits and is "virtually . . . a stranger" to the child are not well taken, given the fact that Amanda made any sort of visits unworkable. We address Amanda's arguments on appeal simply as follows.

She first argues that she was not given reasonable notice of Kevin's motion of February 22, 2005, requesting time with his daughter while on leave from Iraq, citing CR 6.04(1). The notice in this case was reasonable. Amanda had sufficient time to file a response to the motion. Given the fact that the court had previously determined in its order on April 30, 2004, that Kevin was entitled to unsupervised visitation, there was no change in circumstance and thus no reason for an evidentiary hearing. Amanda has not shown prejudice from the fact that her counsel was unable to attend the hearing on the motion.

Next, Amanda questions the court's authority to enter its temporary custody orders placing sole custody of the child with Kevin, and thereafter in Kevin's mother while he is serving out of the country. We conclude that exigent circumstances required the court to properly act as it did. We believe, however, that the trial court mischaracterized this order as proceeding as a modification under KRS 403.340, since at the time of the court's order placing temporary custody in the father there was no custody decree in place to modify. With no custody order and with the necessity of entering contempt sanctions against the appellant, the trial court had no other opportunity than to act as it did, and the effect of the temporary custody order is appropriate.



We affirm the orders awarding temporary custody. We remand for clarification of the court's order of contempt based upon the circumstances as they currently exist. We further remand for proceedings on Appellant's motion for entry of decree of dissolution, and custody and visitation orders as there appears to be no legal obstacle to entry of a decree, subject to the requirements of KRS 403.025.

The Court further finds that this appeal was frivolous under CR 73.02(4). We find that the sole purpose of this appeal was to thwart Appellee's legal right to avail himself of the Court's orders. Had Appellee filed a response to this appeal and incurred costs in defending same, this Court would have ordered Appellant to pay any and all costs incurred as sanctions against Appellant.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEE:

Richard A. Hughes  
Ashland, Kentucky