

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001873-ME

GABRIEL L. MARTIN

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE STEPHEN M. GEORGE, JUDGE
ACTION NO. 04-CI-501019

LADONNA L. MARTIN
(NOW LADONNA GRAY)

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; CLAYTON AND THOMPSON, JUDGES.

TAYLOR, CHIEF JUDGE: Gabriel L. Martin brings this appeal from an August 18, 2009, order of the Jefferson Circuit Court, Family Court Division, finding LaDonna Martin (now Gray) in contempt for failure to pay child support and

medical expenses for the parties' children and awarding specific visitation to LaDonna. We affirm.

Gabriel and LaDonna L. Martin (now Gray) were married August 3, 1996. Two children were born of the marriage. The parties divorced by Decree of Dissolution of Marriage entered in the Jefferson Circuit Court, Family Court Division, on September 14, 2004. Pursuant to the terms of a Property Settlement Agreement, the parties were awarded joint custody of the children.¹ Gray was awarded "physical and residential care" of the children, and Martin was awarded "liberal parenting time." As a result of Martin's military service, he subsequently moved to Texas, and the children remained in Kentucky with Gray.

On January 7, 2006, Gray telephoned Martin in Texas. Gray was crying and slurring her words. A neighbor was sent to check on Gray and reported that she was incoherent and delusional. Gray asked Martin to come to Kentucky and take the children to Texas with him. Martin immediately left Texas and drove to Kentucky to retrieve the children. Martin arrived at Gray's home to find the children living in deplorable conditions. The children, ages three and six, were sleeping in Gray's bed surrounded by beer and liquor bottles. The six-year-old child was still in his school uniform from Friday. Gray signed a written consent for the children to go with Martin.

¹ Gabriel L. Martin and LaDonna L. Martin (now Gray) entered into a Property Settlement Agreement on April 8, 2004. Such agreement was incorporated into the September 14, 2004, Decree of Dissolution of Marriage.

Martin took the children to his home in Texas and subsequently filed a motion for custody. The parties ultimately agreed that it was in the best interest of the children for Martin to have sole custody of the children. An order granting Martin sole custody was entered July 30, 2007. Following an extensive and detailed discussion of Gray's alcohol and substance abuse issues, the court further awarded Gray one week of supervised visitation. Gray's visitation was to occur in Texas and was to be supervised by Martin. Martin was ordered to pay the cost of Gray's airfare and lodging. The July 30, 2007, order also provided that Gray's mother, "Ms. [June] Shane may accompany Ms. Gray [to Texas] at her own expense." The court further ordered that Gray and her family are permitted "to have reasonable phone contact" with the children. The calls were to be supervised by Martin. Neither party appealed or otherwise challenged the family court's July 30, 2007, order.

Some two years later, Martin filed a motion for contempt for Gray's failure to pay child support and extraordinary medical expenses. Gray filed a *pro se* motion regarding "child related issues." Following a hearing, an order was entered on August 18, 2009. Therein, the family court found Gray in contempt for failure to pay child support and extraordinary medical expenses. The family court also reiterated that Gray is entitled to one week of supervised summer visitation with the children in Texas. The family court further stated "[a]s previously ordered by the Court, Ms. Gray's mother, Ms. Shane, may accompany Ms. Gray during visitation with the children at her own expense." The family court

alternatively ordered that in the event Gray wished to exercise her supervised visitation in Louisville she could pay the cost associated therewith. In the event visitation occurred in Louisville, Shane could accompany Gray during the visit. The order further provided that “as established by previous Order, Ms. Gray’s family is entitled to reasonable telephone contact with the children” to be supervised by Martin. Martin subsequently filed a Kentucky Rules of Civil Procedure (CR) 59 motion to alter, amend, or vacate the August 18, 2009, order. By order entered September 17, 2009, the family court denied Martin’s motion. This appeal follows.

Martin contends that the family court erred by awarding grandparent visitation. Specifically, Martin argues the court “did not have jurisdiction to award visitation to the maternal grandmother [Shane]. . .” because the children now reside in Texas. Martin further argued that grandparent visitation could not be awarded over his objection without a hearing on best interests of the children.

A review of the record reveals that the family court did not award visitation to the maternal grandmother, Ms. Shane. Rather, the court merely stated that Shane was allowed to accompany Gray when Gray exercised visitation but would be required to do so at her own expense. We do not believe such constitutes an award of visitation. The family court’s order of July 30, 2007, previously established that the maternal grandmother would be permitted to accompany Gray when she exercised her visitation with the children in Texas, and neither party appealed from the July 30, 2007, order. Nonetheless, we do not conclude that the

family court erred by permitting the maternal grandmother to accompany her daughter, Gray, when visiting the children.

Martin next contends that the family court erred by ordering that Gray's family shall be entitled to telephonic contact with the children. Martin asserts that Gray's family was not entitled to such telephone "visitation." Martin equates telephone contact to visitation with the children. We reject such parity. Simply put, we do not believe telephone contact is tantamount to visitation with the children. And, we think the family court was well within its discretion in allowing the children reasonable telephone contact with Gray's family.

We view Martin's remaining contentions as moot.

For the foregoing reasons, the order of the Jefferson Circuit Court, Family Court Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

William L. Hoge, III
Louisville, Kentucky