

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000514-ME

KENNETH STARRETT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JOAN A. STRINGER, JUDGE
ACTION NO. 08-CI-503321

CRYSTAL DUNN

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: LAMBERT AND MOORE, JUDGES; ISAAC,¹ SENIOR JUDGE.

ISAAC, SENIOR JUDGE: Kenneth Starrett, pro se, appeals from an order denying his motion for visitation with his minor child. He argues that the trial court failed to make a finding that visitation would seriously endanger the child. We affirm.

Starrett and Crystal Dunn are the parents of a minor child, K.S., who is two years old. Starrett is currently serving a ten-year sentence after pleading

¹ Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

guilty to four counts of third-degree rape and two counts of third-degree sodomy. Starrett filed a motion for visitation with the child while he is incarcerated. Following a hearing at which Starrett participated via telephone, the trial court denied the motion. This appeal followed.

As a preliminary matter, we note that no appellee brief was filed. Kentucky Rule(s) of Civil Procedure (CR) 76.12(8)(c) provides this Court with discretionary penalties for the failure to file a brief. However, in view of the circumstances of this case, we decline to penalize Dunn and instead address the issue presented on the merits.

Starrett argues that the trial court failed to make a finding that visitation would seriously endanger the child. We disagree.

In this jurisdiction, noncustodial parents have a strong right to visitation with their child, unless, after a hearing, a court determines that visitation would seriously endanger the child. *Smith v. Smith*, 869 S.W.2d 55 (Ky. App. 1994). The trial court held a hearing and based the denial of visitation upon the age of the child, the distance between the prison and the child's home, the history of domestic violence in the family, the inability of the mother to transport the child to the prison, and the nature of Starrett's crimes. Starrett has not challenged these findings. We conclude that the findings properly supported the trial court's conclusion that visitation would seriously endanger the child. The trial court did not abuse its discretion.

Accordingly, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kenneth Starrett, pro se
LaGrange, Kentucky

BRIEF FOR APPELLEE:

No appellee brief filed.