

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-003198-MR

HERBERT L. SHERROW

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE LEWIS G. PAISLEY, JUDGE  
ACTION NO. 92-CI-003770

ELIZABETH SHERROW

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: BUCKINGHAM, DYCHE, AND GARDNER, JUDGES.

GARDNER, JUDGE. This is an appeal by Herbert L. Sherrow (Sherrow) from an order of the Fayette Circuit Court restricting visitation with the parties' son, Taylor Lemuel Sherrow (Taylor). The order restricted Herbert's visitation with Taylor to supervised visitation with a court approved supervisor. We affirm.

The parties were married on October 2, 1987. The marriage produced one child, Taylor, born May 13, 1990. A second child, D.L.S., born July 4, 1980, is the biological daughter of Elizabeth Sherrow (Elizabeth), and was adopted by Herbert following the marriage. On November 4, 1992, Elizabeth filed a

petition for dissolution of the marriage. The final decree was entered on July 5, 1995. Pursuant to the decree, the parties were granted joint custody of Taylor, and the visitation arrangements provided for Taylor to spend substantially equal amounts of time with each parent.

On March 18, 1997, Elizabeth filed a motion to alter visitation or to change custody as regards Taylor. A hearing on the motion was held on March 18, 1997, following which an order was entered limiting Herbert's visitation with Taylor to supervised visitation. On May 19, 1997, Herbert filed a motion requesting the reinstatement of the original time-sharing schedule between him and his son. Hearings on that motion were held on August 14 and 21, 1997. At the conclusion of the hearings, the trial court made findings and conclusions from the bench and denied Herbert's motion for unrestricted visitation under the former schedule. Following a motion to reconsider, on November 20, 1997, the trial court issued an order supplementing its findings and rulings from the bench. This order included a specific finding that "unsupervised visitation between [Herbert] and Taylor would seriously endanger the child's mental or emotional health." This appeal followed.

Herbert argues that the trial court committed reversible error and abused its discretion in restricting his visitation with Taylor. A non-custodial parent "is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health." Kentucky Revised

Statute (KRS) 403.320(1). "[T]he court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral or emotional health." KRS 403.320(3). As used in the statute, the term "restrict" means to provide the non-custodial parent with something less than "reasonable visitation." Kulas v. Kulas, Ky. App., 898 S.W.2d 529, 530 (1995). Clearly, the statute has created the presumption that visitation is in the child's best interest for the obvious reason that a child needs and deserves the affection and companionship of both parents. Smith v. Smith, Ky. App., 869 S.W.2d 55, 56 (1994). The burden of proving that visitation would harm the child is on the one who would deny visitation. Id.

Here, in support of its finding that unsupervised visitation between Herbert and Taylor would seriously endanger the child's mental or emotional health, the trial court specifically found that Herbert had previously emotionally and physically abused Taylor. Moreover, the trial court specifically found that Herbert had previously emotionally and sexually abused D.L.S. We must accept the findings of the trial court unless they are clearly erroneous, and due regard must be given to the opportunity of the trial court to judge the credibility of the witnesses. CR 52.01. This standard is especially true in domestic relations cases. Aton v. Aton, Ky. App., 911 S.W.2d 612, 615 (1995). Though there was evidence to the contrary, there was sufficient evidence, which need not be recapitulated, to support the findings of the trial court.

In consideration of the severe nature of the trial court's findings, it was not an abuse of discretion for the trial court to restrict the visitation between Herbert and Taylor to supervised visitation.

For the foregoing reasons, this Court affirms the judgment of the Fayette Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Patricia H. Rabits  
Lexington, Kentucky

BRIEF FOR APPELLEE:

R. Bruce Stith, III  
Lexington, Kentucky