

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002448-MR

DARIUS BURDELL

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE REBECCA M. OVERSTREET, JUDGE
ACTION NO. 02-CI-02581

LATRICE CAMPBELL

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, JOHNSON, and MINTON, Judges.

COMBS, JUDGE. The appellant, Darius Burdell, appeals from an order of the Fayette Circuit Court of November 6, 2002. Burdell alleges that the trial court acted *ultra vires* by amending the terms of its previous order concerning visitation with his minor child. We affirm.

In April 1998, Burdell was adjudged to be the father of S.D.B., born October 28, 1994. He was ordered to pay support for the minor child, to provide health insurance benefits for

her, and to contribute toward any extraordinary medical expenses incurred on her behalf.

In April 2002, Burdell, now an inmate at Kentucky State Reformatory at Lagrange, petitioned the Fayette Circuit Court for a visitation order. The child's mother, Latrice Campbell, filed a response in which she stated that she had no objection to Burdell's request for visitation. In August 2002, Burdell tendered a motion requesting the court to devise a specific visitation schedule. On September, 17, 2002, the circuit court entered an order providing as follows:

[Burdell] may have visits with the parties' child [S.D.B.] every other weekend and on national holidays if [Burdell's] sister, Janea Maxberry, accompanies the child. [Burdell] shall provide transportation to the visits by a responsible adult. [Campbell] shall be given notice of a planned visit at least three days in advance.

On October 3, 2002, Burdell filed a motion requesting that the circuit court order Campbell to appear before the court to show cause why she had refused to make the minor child available to Janea Maxberry, Burdell's "designated person to transport [S.D.B.] to LaGrange, Kentucky, for the purpose of visitation times with Burdell." On October 14, 2002, the trial court ordered Campbell to appear before the court on November 1,

2002, to explain why she should not be held in contempt of court for failing to make the child available for visitation.

On November 6, 2002, following a hearing attended by both Campbell and Maxberry, the trial court entered the order now under review. The circuit court found that Maxberry was not a suitable person to transport the minor child to LaGrange and that Campbell had not, therefore, willfully disobeyed the visitation order. The court further ordered as follows:

[Burdell's] visits with the parties' child shall be no more than one per month and it is the duty of [Burdell] to find a suitable adult, as determined by [Campbell], to provide transportation for the child to the visits. Once a suitable adult is approved by [Campbell], that adult shall give at least three days prior notice to [Campbell] of a proposed visitation date.

On appeal, Burdell contends that the circuit court was without jurisdiction to amend its order of September 17, 2002, since the order altering the visitation schedule was entered on November 6, 2002 -- more than ten days later. He contends that the court erred to his substantial prejudice by acting outside its jurisdiction to vary the terms of its initial order in reducing his opportunities for visitation with the minor child. We disagree.

The Fayette Circuit Court acquired jurisdiction over the issue of visitation with the parties' minor child when

Burdell filed his first motion in April 2002. With proper jurisdiction established, the court's authority over the matter continued; it was empowered to make all necessary decisions respecting visitation and the welfare of the minor child. When Burdell again requested the court in October 2002 to address the terms of the visitation order, the court was acting wholly within its jurisdiction to re-visit and to alter the visitation schedule.

The Fayette Circuit Court did not err; its order of November 6, 2002. is entirely proper. Consequently, the order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT *PRO SE*: NO BRIEF FOR APPELLEE

Darius Burdell
LaGrange, Kentucky