

RENDERED: SEPTEMBER 26, 2008; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-002037-ME

JEFFERY DARNELL MONTGOMERY

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
FAMILY DIVISION  
HONORABLE DONNA DELAHANTY, JUDGE  
ACTION NO. 05-CI-503470

JESSE ALLEN; JANET ALLEN; NANCY  
DAVIS; AND KATIE M. BROPHY

APPELLEES

### OPINION REMANDING

\*\* \*\* \* \* \* \* \*

BEFORE: CLAYTON, KELLER, AND MOORE, JUDGES.

MOORE, JUDGE: This is an appeal from an order of child support entered by the Jefferson Family Court while an appeal from its determination as to custody was pending in this Court. On April 11, 2008, this Court rendered an opinion in the custody appeal which remanded the case to the Family Court for reconsideration of

its decision to award sole custody of the child to her maternal grandparents.

Because the trial court's pending decision as to custody necessarily implicates the award of child support, we remand this appeal to the Family Court for reconsideration of the support award at the same time as it resolves the issue of custody in accord with our opinion in Appeal No. 2007-CA-000748-ME.

These appeals aptly demonstrate the procedural problems that result when, absent exigent circumstances, family courts continue to exercise jurisdiction while the case is on appeal. The better practice, should an issue requiring immediate action arise while the case is pending on appeal, is to move this Court to abate the appeal to allow the family court to resolve emergency issues. The appellate court is thus notified that it might be prudent to stay consideration of the appeal because the decision of circuit court may very well affect the outcome of the appeal. This procedure best serves the interests of judicial economy and avoids piecemeal litigation.

Accordingly, we remand the child support issues advanced in this appeal for reconsideration by the Jefferson Family Court at the same time that it reconsiders the custody award required by this Court's opinion in Appeal No. 2007-CA-000748-ME.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Olu A. Stevens  
Louisville, Kentucky