

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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-000175-ME

JAMES C. FLOYD

APPELLANT

v. APPEAL FROM BOONE FAMILY COURT
HONORABLE LINDA R. BRAMLAGE, JUDGE
ACTION NO. 02-CI-01404

CORA JANE MOBLEY AND
COMMONWEALTH OF
KENTUCKY, EX-REL

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, CLAYTON AND KELLER, JUDGES.

ACREE, JUDGE: James Floyd, *pro se*, appeals from an order of the Boone Family Court, terminating visitation with his son. We affirm.

Cora Mobley, the child's mother, first filed for sole custody in October 2002. The family court issued an order granting Mobley temporary sole custody and Floyd reasonable visitation to be agreed upon by the parties.

In April 2004, citing concern for her son's safety while in Floyd's care, Mobley moved the family court to require Floyd's visitations be supervised. An agreed order was entered into by the parties affording Floyd supervised visitation. Floyd was also required to obtain psychological testing. After missing several appointments and arriving late to others, Floyd completed his testing and a report was filed with the family court on November 8, 2004.

The report indicated Floyd suffered from several personality and learning disorders and recommended that he obtain psychological and psychiatric treatment to address his diagnosis. The report also indicated that Floyd's substance abuse be addressed since the evaluator considered Floyd inconsistent in his reporting.

Floyd was arrested in January 2005 for three counts of assault. He was released on bond awaiting trial.

On March 22, 2005, the parties entered into an agreed order that required Floyd to seek psychological and psychiatric treatment as recommended in his psychological testing report. Floyd did not obtain the required treatment. In August 2005, Floyd was arrested on drug charges in Hamilton County, Ohio. His bond was revoked and Floyd was incarcerated awaiting trial. Floyd pled guilty to assault in the second degree and was sentenced to ten years.

Floyd has been incarcerated within the Kentucky Penal System since November 2005. In April 2007, Floyd, *pro se*, petitioned the family court for visitation with his son. Based upon Floyd's failure to follow the recommendations of the prior court order to obtain psychological and psychiatric treatment and finding visitation would be harmful to the child, his motion was denied. This appeal followed.

“[T]his Court will only reverse a trial court's determinations as to visitation if they constitute a manifest abuse of discretion, or were clearly erroneous in light of the facts and circumstances of the case.” *Drury v. Drury*, 32 S.W.3d 521, 525 (Ky.App. 2000); *see also Bales v. Bales*, 418 S.W.2d 763, 764 (Ky. 1967). The family court's findings of fact are not erroneous if supported by “evidence of substance and relevant consequence sufficient to induce conviction in the minds of reasonable people.” *Sherfey v. Sherfey*, 74 S.W.3d 777, 782 (Ky.App. 2002). In reviewing the family court's decision, we must give due regard to that court's judgment as to the credibility of the witnesses. *Id.* at 782.

A noncustodial parent is entitled to reasonable visitation and a court shall not restrict visitation rights unless it finds that visitation would seriously endanger the child's physical, mental, moral, or emotional health. *See* Kentucky Revised Statute (KRS) 403.320(1),(3). Although the trial court did not use those exact words in its order, we believe it clearly made such a finding.

A hearing was conducted on January 7, 2008, in which Floyd had the opportunity to testify by telephone from prison. Mobley testified to Floyd's

violent behavior including his arrests for assault and an occurrence where Floyd threatened her with a gun in the presence of their son. Mobley also suspected Floyd made inappropriate statements about her during his visits with his son and did not consider the emotional impact these statements had on the boy's health.

Floyd testified to and presented the family court with certificates detailing his completion of several prison offered classes including anger management. Floyd admitted that he had not pursued or obtained the psychological or psychiatric counseling as previously ordered by the family court.

We believe sufficient evidence was presented to support the family court's conclusion and to comply with the requirements of KRS 403.230(3). Floyd has not complied with the March 2005 order and the family court heard ample testimony to support its conclusion that allowing visitation with Floyd at this time would seriously endanger his child's mental and emotional health.

In stating that visitation was not appropriate "at this time", the family court did not close the door completely on visitation. It is clear that Floyd wishes to maintain a close and involved relationship with his son and it appears that once he seeks the counseling he needs, he can again petition the family court for reasonable visitation.

For the foregoing reasons, the judgment of the Boone Family Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:
James C. Floyd, *Pro se*
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BRIEF FOR APPELLEE, CORA
JANE MOBLEY:

Irene L. Rachlinski
Burlington, Kentucky

NO BRIEF FOR
COMMONWEALTH OF
KENTUCKY, EX-REL.