

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-000316-ME

J.C.P.

APPELLANT

v. APPEAL FROM MARSHALL FAMILY COURT
HONORABLE ROBERT D. MATTINGLY, JR., JUDGE
ACTION NO. 07-CI-00143

N.A.P.T.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; DIXON AND TAYLOR, JUDGES.

COMBS, CHIEF JUDGE: Appellant (Father)¹ appeals from a post-decree order of the Marshall Family Court that suspended his visitation privileges with his son, J.R.P., until the child could be evaluated and counseled by a mental health professional. We affirm.

¹ For the preserving of confidentiality in cases involving juveniles, we have utilized generic designations and initials rather than the actual names of the parties.

In January 2000, a decree of the Henderson Circuit Court dissolved the marriage of Appellant and Appellee (Mother). The parties' property and child custody settlement agreement was incorporated into the decree. Their agreement provided that the parties would share joint legal custody of J.R.P. (three years of age at that time). Under the terms of the agreement, J.R.P. would continue to reside with Mother. He was to have overnight visitation with Father every other weekend, a mid-week visit, and scheduled holiday visits.

In March 2007, Father filed a motion in the Henderson Family Court alleging that for several years, Mother had failed to comply with the visitation arrangement. The matter was eventually transferred to the Marshall Family Court, which held an evidentiary hearing in August 2007. Father presented testimony at the hearing indicating that he had not visited with his son since 2002. Mother produced evidence to the court indicating that she had good cause not to comply with the visitation order. The court also interviewed J.R.P. in chambers. The child told the court that he was afraid of his father and provided specific and disturbing explanations for his reluctance to visit with him.

Following the hearing, the family court ordered Father and J.R.P. to undergo counseling with a mental health professional. Based upon the evidence presented at the hearing, the family court concluded that Father's visitation could not be safely and immediately restored. The counseling sessions were intended to re-introduce father and son so that a regular visitation schedule eventually might be

resumed. The court scheduled a hearing to reconsider the visitation dispute two months later on October 16, 2007.

Two weeks later, the court indicated to the parties that it had received an *ex parte* communication regarding J.R.P. The unsigned correspondence, which was printed on the letterhead of J.R.P.'s elementary school, indicated that it had been prepared by the school's principal. The correspondence described in some detail seriously disturbing comments made by J.R.P. to others concerning his relationship with his father and his dread at the prospect of resuming contact with him.

On October 17, 2007, the court gave notice to the parties that a cover letter and the summary of a single counseling session had been duly filed by Carolyn Busby of The Counseling Center. The counselor's summary indicated that J.R.P. had refused to participate in a counseling session scheduled for October 10, 2007. According to Busby's summary, J.R.P. believed that the counselor had tricked him during a prior session by having his father in the room without J.R.P.'s advance knowledge or warning. J.R.P. was adamant that he would not return to the center. Busby prepared a comprehensive progress report describing the course of several counseling sessions, which was subsequently filed in the record.

In an order entered on January 15, 2008, the Marshall Family Court concluded that Father's continued visitation with J.R.P. "would be emotionally harmful to the parties' son and would seriously endanger the child's physical, mental and/or emotional health." According to the order, evidence before the court

indicated that J.R.P. had been profoundly emotionally disturbed by Father's attempt to re-establish visitation. A social worker, Deloris Beyreis, was identified by the court as J.R.P.'s new counselor. The order required J.R.P. to begin therapy immediately, and Beyreis was ordered to provide the court with periodic reports with regard to his progress. Finally, the court set the matter for further review at a hearing scheduled for July 8, 2008. This appeal followed.

On appeal, Father contends that the family court abused its discretion by suspending visitation. He asks this court to vacate the court's order and remand the matter for entry of an order restoring his visitation privileges immediately. We find no basis upon which to grant the relief sought.

Custody and visitation issues arising out of dissolution actions are governed in Kentucky by the provisions of Kentucky Revised Statutes (KRS) 403.320. The cornerstone of our statutory scheme is an abiding and overriding concern for the well-being of children. The factors enumerated in the statute reflect that fundamental policy:

- (1) A parent not granted custody of the child 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. Upon request of either party, the court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.
- (2) If domestic violence and abuse, as defined in KRS 403.720, has been alleged, the court shall, after a hearing, determine the visitation arrangement, if any, which

would not endanger seriously the child's or the custodial parent's physical, mental, or emotional health.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the 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.

We have reviewed the entirety of the record in this matter. It contains credible indications that J.R.P.'s well-being is seriously jeopardized when the child is forced to visit with his father. The court expressed grave concern that the child might resort to suicide if pressured to continue visitation at the present time. Father was not unduly prejudiced by the court's receipt of any of this information; on the contrary, he received a credible explanation for the order. The evidence provides more than an adequate basis for the family court's suspension of Father's right to visit with his son.

The family court is statutorily authorized in clear terms to modify an order granting visitation rights whenever modification would serve the best interests of the child and to restrict visitation where the visitation would endanger the child's physical, mental, moral, or emotional health. We cannot conclude that the court abused its discretion by suspending Father's visitation under the circumstances as they existed at the time the order was entered.

We affirm the order of the Marshall Family Court.

DIXON, JUDGE, CONCURS.

TAYLOR, JUDGE, DISSENTS.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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