

RENDERED: AUGUST 27, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-000430-ME

DANA JUDD

APPELLANT

v. APPEAL FROM GREEN CIRCUIT COURT  
HONORABLE ALLAN RAY BERTRAM, JUDGE  
ACTION NO. 99-CI-00099

TROY D. YOUNG

APPELLEE

OPINION  
REVERSING AND VACATING

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BEFORE: THOMPSON, VANMETER, AND WINE, JUDGES.

VANMETER, JUDGE: Dana Judd appeals from the March 9, 2010, order of the Green Circuit Court denying her motion to vacate part of its February 12, 2010, order which suspended Troy D. Young's obligation to pay child support. For the following reasons, we reverse and vacate the March 9, 2010, order with directions

for the trial court to enter an order reinstating Young's child support obligations and requiring Young to pay all past due and owing child support.

Throughout late winter and spring of 2009, this matter came before the trial court upon motion by Young requesting that the court hold Judd in contempt of court for failure to abide by previous orders of the court regarding his right to visitation with their teenage daughter. In May 2009, after hearing the matter, the court entered an order which reaffirmed Young's visitation rights with the daughter pursuant to a previous order of the court. The court did not find Judd to be in contempt of court.

This matter was reviewed further by the court in June and August 2009, at which time the court noted that Young continued to desire visitation with his daughter, but did not wish to pursue enforcement of his visitation rights by placing his daughter in juvenile detention. Rather, Young requested financial consequences should his visitation rights not be honored. At this time, the court appointed a guardian *ad litem* to represent the interests of the daughter.

In September 2009, the guardian *ad litem* filed a report suggesting that good cause existed for the daughter's refusal to visit with Young and further recommended a modification of the visitation agreement to allow the daughter the choice of whether or not to visit with Young. In October 2009, this matter again was heard by the court and the court noted that Young still did not wish to pursue contempt punishment against his daughter, but rather requested payment of attorney fees.

By order entered February 12, 2010, the trial court ruled as follows:

(Young) having sought his visitation rights with the parties' child, multiple hearings having been conducted before this Court regarding this issue, (Judd) being adamant that she is unable to make the parties' teenage daughter visit with (Young) and the Court being sufficiently advised,

It is hereby ordered that (Young's) visitation rights are not to be enforced but if the parties' teenage daughter chooses to visit with (Young), the parties themselves can make said arrangements. During the interim, however, (Young's) requirement to pay (Judd) child support be and is hereby suspended and will not be reinstated except upon motion to the Court.

Judd moved the court to vacate its order to the extent it suspended Young's child support obligation and requested that child support be reinstated. The court denied her motion to vacate. This appeal followed.

Judd argues the trial court abused its discretion by suspending Young's child support obligation for failure to comply with the court's orders regarding visitation. We agree.

Under CR<sup>1</sup> 52.01, “[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” A factual finding is not clearly erroneous if supported by substantial evidence. *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998) (citations omitted). Substantial evidence is evidence “of substance and relevant consequence having the fitness to

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<sup>1</sup> Kentucky Rules of Civil Procedure.

induce conviction in the minds of reasonable men.” *Id.* (citations omitted). An appellate court reviews legal issues *de novo*. *Carroll v. Meredith*, 59 S.W.3d 484, 489 (Ky.App. 2001).

KRS<sup>2</sup> 403.240(1) provides as follows:

If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

This court has long held that visitation and child support constitute separate rights and obligations and that an obligation to pay child support cannot be suspended as a result of a failure of either the custodial parent or the child itself to comply with the trial court’s visitation orders. *Stevens v. Stevens*, 729 S.W.2d 461, 462 (Ky.App. 1987). The public policy behind KRS 403.240 is to ensure that the child is sufficiently supported. *Id.* at 463. In other words, “the best interest of the child is not to be sacrificed as a result of contemptuous action on the part of the custodial parent.” *Id.* Thus, the trial court may remedy the problem under its contempt powers, but may not suspend Young’s obligation to pay child support as a sanction for any contemptuous action on the part of Judd or the daughter.<sup>3</sup>

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<sup>2</sup> Kentucky Revised Statutes.

<sup>3</sup> In *Stevens*, this court noted that the trial court may modify the future support obligation of the noncustodial parent by considering the factors set forth in KRS 403.210, which does not list the right of visitation of the noncustodial parent as a factor to be considered, as well as the factors set forth in KRS 403.250. The latter statute provides that modification of the support provision may occur only upon a showing of “changed circumstances so substantial and continuing as to make the terms unconscionable.” As in *Stevens*, we question whether the child’s refusal to visit with her father could be construed as a “changed circumstance so substantial and continuing” as to make the terms of the child support order unconscionable. The obligation of the trial court is to look to the needs of the child, notwithstanding the child’s refusal to visit with her father.

The March 9, 2010, order of the Green Circuit Court is reversed and vacated with directions for the trial court to enter an order reinstating Young's child support obligations and requiring Young to pay all past due and owing child support.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeffrey Eastham  
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BRIEF FOR APPELLEE:

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