

RENDERED: NOVEMBER 6, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000838-MR

JOHNATHAN BROWN

APPELLANT

v. APPEAL FROM HOPKINS FAMILY CIRCUIT COURT
HONORABLE SUSAN W. MCCLURE, JUDGE
ACTION NO. 11-CI-00261

KIMBERLY BROWN

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, J. LAMBERT, AND VANMETER, JUDGES.

COMBS, JUDGE: Johnathan Brown appeals an order of the Hopkins Family Court that denied his motion to hold Kimberly Brown, his former spouse, in contempt of court. In his motion, he alleged that she had failed to provide him with photographs of the parties' children as ordered by the court on January 9,

2014. He also appeals an order of the court that denied him visitation with the parties' minor children. After our review, we affirm.

The parties were married on October 8, 1994. They separated on February 22, 2011. On March 25, 2011, Kimberly filed a petition for dissolution of the marriage. At that time, the parties' four children were minors. Johnathan had been indicted and was incarcerated in the Hopkins County Detention Center.

On January 19, 2012, Johnathan entered a plea of guilty to five counts of incest and five counts of use of a minor in a sexual performance. One of his daughters was his victim. He was sentenced to serve two terms of imprisonment of twenty years each. These terms were set to run concurrently.

The parties eventually reached an agreement with respect to the care and control of their children, the value of Johnathan's monthly child support obligation, and the division of their property. The parties agreed that Johnathan would have no visitation with the children while he was in prison. Kimberly agreed to provide photographs of the children to Johnathan during his incarceration. The family court found the terms of the parties' agreement to be fair, and it entered a decree of dissolution incorporating the terms of the agreement on March 30, 2012.

On April 8, 2013, Johnathan filed a motion to set visitation with two of the parties' children who were still minors. At that time, Johnathan was housed at the Kentucky State Reformatory in LaGrange. In May 2013, the family court ordered that Johnathan be permitted to testify by telephone at an evidentiary hearing scheduled for September 6, 2013.

On July 29, 2013, Johnathan filed a motion requesting the family court to hold Kimberly in contempt for her failure to provide him with photographs of the parties' children.

Following the hearing conducted in September 2013, the family court denied Johnathan's motion to set visitation because any contact with the minor children was forbidden by the terms of an unexpired domestic violence order. By order entered January 9, 2014, the family court denied Johnathan's motion to hold Kimberly in contempt for her prior failure to provide the requested photographs. However, she was ordered by the court to provide to Johnathan photographs of each of the minor children by February 1.

On February 24, 2014, Johnathan filed another motion requesting the family court to hold Kimberly in contempt for her failure to provide the photographs as ordered. A hearing was conducted on April 7, 2014. During the hearing, Johnathan's mother indicated to the court that he no longer wished to compel production of a photograph of the parties' youngest daughter. Kimberly agreed to provide Johnathan with a snapshot of the parties' son. By order entered April 23, 2014, the court denied Johnathan's contempt motion. We cannot discern any abuse of discretion, and thus we may not disturb the ruling of the trial court with respect to its ruling on the contempt issue. *Commonwealth v. Pace*, 15 S.W.3d 310 (Ky. App. 2000).

On May 22, 2014, Johnathan filed his notice of appeal in which he identified both the family court's order denying visitation and the order denying his contempt motion as the subject of his appeal.

On appeal, Johnathan contends that the family court erred by ordering the execution of a quitclaim deed conveying his interest in the marital residence to Kimberly by way of the power of attorney held by his mother. He also argues that the family court erred by denying him visitation with the minor children without appointing an attorney to represent his interests at the hearing and by failing to make relevant findings of fact pertaining to the children's well-being. Because the post-decree motion practice has been litigated *pro se*, we will, for the sake of argument, assume that the arguments have been properly preserved for our review.

The trial court did not err. Johnathan was clearly required by the terms of the parties' property settlement agreement and by the court's order to execute a quitclaim deed conveying to Kimberly his interest in the marital residence. His mother was empowered to make the conveyance pursuant to the power of attorney. Nor did the family court err by denying visitation with the minor children. *Drury v. Drury*, 32 S.W.3d 521 (Ky. App. 2000). Visitation was denied on the basis of a domestic violence order entered by the court on November 21, 2011. Thus, appellant cannot rely on *Alexander v. Alexander*, 900 S.W.2d 615 (Ky. App. 1995), which he cites for the proposition that he should have received a live hearing on the visitation issue. We reiterate: his visitation rights were denied because of the domestic violence order still in effect. Finally, Johnathan had no right to court-

ordered representation in these civil proceedings. *Smith v. Bear, Inc.*, 419 S.W.3d 49 (Ky. App. 2013).

We affirm, the orders of the Hopkins Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Johnathan Brown, *pro se*
Kentucky State Reformatory
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Marc Wells
Princeton, Kentucky