

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CU 0072

ROY AVANTS

VERSUS

KENDELL OUTLAW

Judgment Rendered: MAY 31 2013

On Appeal from the
21st Judicial District Court,
In and for the Parish of Livingston,
State of Louisiana
Trial Court No. 136810

Honorable Wayne Ray Chutz, Judge Presiding

Angelia F. Huszar
Hammond, LA

Attorney for Plaintiff-Appellee,
Roy Avants

C. Glenn Westmoreland
Livingston, LA

Attorney for Defendant-Appellant,
Kendell Outlaw

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

McCleendon, J. Agrees and Assigns Additional Reasons

HIGGINBOTHAM, J.

In this child custody case, the mother appeals a judgment in which the trial court granted sole custody of the parties' minor child to the father, subject to the mother's supervised visitation. For the following reasons, we vacate the judgment of the trial court and remand this matter for further proceedings.

FACTS AND PROCEDURAL HISTORY

Ms. Kendell Outlaw and Mr. Roy Avants had one child, Mylie Avants, who was born January 9, 2008. The parties were never married, but briefly resided together after the child's birth. According to the record, the parties shared custody of Mylie without a custody agreement established by the court. Instead, the parties agreed that Mylie would be with Mr. Avants every Tuesday and Thursday and three weekends a month and with Ms. Outlaw the remaining time.

On April 13, 2012, Mr. Avants commenced the instant child custody proceeding by filing a motion for joint custody of Mylie, with Mr. Avants designated as domiciliary parent, subject to visitation on the part of Ms. Outlaw. On August 16, 2012, Ms. Outlaw filed an answer and reconventional demand requesting joint custody and child support. On August 20, 2012, Ms. Outlaw requested a continuance because there was outstanding discovery, and she wanted her answer and reconventional demand to be heard on the same day. Her request for continuance was denied in open court and the matter was heard on that day.

After the hearing, on September 13, 2012, judgment was signed granting sole custody to Mr. Avants. Ms. Outlaw was granted supervised visitation every other weekend, but was not allowed any overnight visitation. It is from this judgment that Ms. Outlaw appeals.

Ms. Outlaw contends that the trial court erred when it ended the trial and ruled on the merits before Mr. Avants rested and without allowing Ms. Outlaw to present her evidence.

After hearing from only three witnesses, **before** Mr. Avants rested and **before** Ms. Outlaw presented her case, the trial court stated:

Normally I am inclined to allow the parties to call within reason any and all witnesses they want to call. But having heard from the father and mother in this case, based upon what I have heard I can't imagine anything else I could hear that could possibly cause me to change what my opinion is at this point in this case. So, even if it is over the objection of either side, I am inclined to go ahead and issue a ruling.

The trial court then issued its ruling awarding sole custody to Mr. Avants, even though sole custody was not prayed for by either party.

Louisiana Constitution Article I, Sec. 22 guarantees due process to all litigants, providing:

All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.

A court has the power to control its proceedings pursuant to La. Code Civ. P. art. 1631 (A), which provides in pertinent part:

The court has the power to require that the proceedings shall be conducted with dignity and in an orderly and expeditious manner, and to control the proceedings at the trial, so that justice is done.

However, the court's power under La. Code Civ. P. art. 1631, to control trial proceedings is limited by the phrase "so that justice is done." Further, the due process clauses of the Louisiana Constitution and the Fourteenth Amendment to the United States Constitution guarantee litigants a right to a fair hearing.

A review of the trial transcript herein clearly reveals that the trial court unnecessarily hurried this matter along, not allowing either party to complete their case. Further, the trial court indicated it would do no good for the attorneys to object because the trial court's opinion was already formed.

Although the trial court has the authority pursuant to La. Code Civ. P. art. 1631 to conduct proceedings in an orderly and expeditious manner, this authority cannot outweigh the need to have a full trial on the merits with adequate time to present witnesses and allow for cross-examination. **Kinney v. Bourgeois**, 2006-2384 (La. App. 1st Cir. 9/14/2007) (unpublished), 962 So.2d 1234 (table), writ denied, 2007-2026 (La. 1/7/08), 973 So.2d 730.

The trial court's decision to render judgment prior to giving Ms. Outlaw the opportunity to present her evidence prevented Ms. Outlaw from having a fair hearing and prejudiced her right to due process. See La. Const. art. I §22. Therefore, we remand this matter to the trial court in order to allow Ms. Outlaw the opportunity to present her evidence.¹

For these reasons, we vacate the September 13, 2012 judgment and remand this matter to the trial court for further proceedings consistent with this opinion.

JUDGMENT VACATED; REMANDED.

¹ Mr. Avants did not rest prior to the trial court's ruling. Therefore, he also should be given the opportunity to complete the presentation of his evidence.

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McCLENDON, J., agrees and assigns additional reasons.

While the evidence presented raises serious concerns regarding the best interest of the child should Ms. Outlaw be awarded joint custody, I agree with the majority that due process requires a full hearing to allow both parties to present their evidence prior to final adjudication by the court.