

NOT DESIGNATED FOR PUBLICATION

JEANNE JAMES * **NO. 2001-CA-1387**
VERSUS * **COURT OF APPEAL**
EUGENE C. DAYMUDE * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-431, DIVISION "B"
HONORABLE ROSEMARY LEDET, JUDGE
* * * * *
JUDGE MICHAEL E. KIRBY
* * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Michael E. Kirby,
Judge Max N. Tobias, Jr.)

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IN PROPER PERSON, DEFENDANT/APPELLANT

In this child custody dispute, Mr. Eugene C. Daymude appeals the trial court's judgment of May 1, 2001, awarding sole custody of the minor child to the mother and ordering the father, Mr. Daymude, to undergo psychological counseling before supervised visitation can be considered.

On January 11, 2000, Dr. Jeanne James filed a petition for divorce and for injunctive and ancillary relief against Mr. Daymude. Dr. James and Mr. Daymude were married on November 27, 1993. One child was born of the marriage, Catherine Daymude, born on February 9, 1998. In her petition, Dr. James asked to be awarded sole custody of the minor child. At the request of Dr. James, a restraining order was issued against Mr. Daymude prohibiting him from alienating or disposing of community property, and from abusing or harassing Dr. James.

On February 18, 2000, Mr. Daymude filed an answer to Dr. James' petition, and also filed a reconventional demand against her. In this pleading, Mr. Daymude asked to be granted a divorce from Dr. James and to be awarded joint custody and named co-domiciliary parent of the minor child. He asked that a restraining order be issued against Dr. James

prohibiting her from alienating or disposing of community property and from changing the ownership and/or beneficiary designations of life insurance policies on the parties pending a partition of the community property. He also asked that the court order psychological evaluations of both parties and the minor child to facilitate the court regarding custody and visitation issues. Mr. Daymude asked the court to establish an interim order of visitation pending the resolution of the custody and visitation issues. He also asked that Dr. James be enjoined from permanently removing the minor child from Orleans Parish, alleging that Dr. James has told him that she intends to relocate to another state with the minor child. A restraining order was issued against Dr. James ordering her to refrain from alienating or disposing of community property, and from permanently removing the minor child from Orleans Parish.

On March 11, 2000, Mr. Daymude filed a supplemental rule in which he asked to be designated as the primary domiciliary parent of the minor child. The court ordered a psychological/custody evaluation concerning the custody/access issues, and stated that the court would appoint an evaluator if the parties could not agree on one. Mr. Daymude was also enjoined from

abusing or harassing Dr. James, and was ordered not to contact Dr. James except in the event of an emergency concerning the minor child and was also ordered not to contact the daycare center attended by the minor child. The order also established an interim visitation schedule between Mr. Daymude and the minor child.

On June 19, 2000, the trial court issued an order appointing Dr. Brian T. Jordan as the custody evaluator in this case. On August 31, 2000, Dr. James filed a rule to establish custody and visitation, reiterating her earlier request to be granted sole custody of the minor child. In this rule, Dr. James stated that Dr. Jordan conducted a custody evaluation of the parties and the minor child, and that his report had been forwarded to the trial court and counsel of record for both parties. Dr. James also asked the court to establish a reasonable visitation schedule for Mr. Daymude and the minor child.

On October 13, 2000, Dr. James filed a rule asking that Mr. Daymude show cause why he should not be prevented from making inappropriate comments in front of and to the minor child, and from alienating the child's affection for her mother. On February 7, 2001, the trial court ordered both

parties to comply with the visitation schedule in effect. Both parties were also ordered to refrain from making negative comments about the other parent to or in front of the minor child or doing anything to alienate the affections of the child for the other parent. Mr. Daymude was ordered to exhibit appropriate behavior when he picked up and returned the child to Dr. James, and he was ordered not to linger in or near the place of pickup or delivery.

On March 16, 2001, Dr. James filed a rule for contempt against Mr. Daymude for his alleged failure to abide by the trial court's orders of January 11, 2000, May 25, 2000, and February 7, 2001. As of March 22, 2001, Mr. Daymude was no longer represented by counsel, and appeared in proper person. On March 23, 2001, the trial court granted a divorce to the parties. On March 28, 2001, Dr. James filed another rule for contempt against Mr. Daymude, alleging more violations of the trial court's earlier orders. She also requested an emergency status conference and cancellation of Mr. Daymude's visitation rights pending that conference. On that same date, the trial court scheduled an emergency status conference, and cancelled visitation pending further orders of the court.

An emergency hearing was held on April 2, 2001. On April 25, 2001, the trial court rendered judgment finding Mr. Daymude in contempt of court and as a penalty of that contempt, Mr. Daymude's visitation with his daughter was suspended because the court found his behavior contrary to the child's well being. The trial court also ordered Mr. Daymude to attend psychological counseling.

After trial in this matter on April 16, 2001, the trial court rendered judgment on May 1, 2001 granting sole custody of the minor child to Dr. James. The court ordered Mr. Daymude to attend psychological counseling by a psychiatrist or psychologist. The court further decreed that in order for the court to consider an award of supervised visitation to Mr. Daymude, he must attend counseling with a psychologist or psychiatrist who reports to the court's expert, Dr. Brian Jordan. The court stated that it would be guided by Dr. Jordan's recommendations before Mr. Daymude is awarded supervised visitation. The court adopted Dr. Jordan's recommendation of April 12, 2001 with modifications, and ordered that Mr. Daymude enter into individual psychotherapy with a qualified mental health professional for a period of at least six months and that during that time, Mr. Daymude's

therapist should send periodic reports to Dr. Jordan to inform him of Mr. Daymude's progress, and that if Mr. Daymude successfully completes therapy after the six month period and no longer demonstrates inappropriate and angry behavior, those results should be communicated to Dr. Jordan who will review the matter with possible changes in his recommendations to the court at that time. The trial court stated that it would not consider any change in the access situation until the above orders were fulfilled. Mr. Daymude now appeals the judgment of May 1, 2001.

The Civil Code articles pertaining to child custody were summarized in Harper v. Harper, 33,452, pp. 4-5 (La.App. 2 Cir. 6/21/00), 764 So.2d

1186, 1189, as follows:

La. C.C. arts. 131, 132 and 134, as amended by Act No. 261 of 1993, have as their focus the best interest of the child in any contest over joint or sole custody. Article 132 states that in the absence of an agreement regarding custody, "the court shall award custody to the parents jointly; however, if custody in one parent is shown by clear and convincing evidence to serve the best interest of the child, the court shall award custody to that parent." Article 134 provides twelve relevant factors for the court to consider in determining the best interests of the child.

La. C.C. art. 134 states as follows:

The court shall consider all relevant factors

in determining the best interest of the child. Such factors may include:

(1) The love, affection, and other emotional ties between each party and the child.

(2) The capacity and disposition of each party to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child.

(3) The capacity and disposition of each party to provide the child with food, clothing, medical care, and other material needs.

(4) The length of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment.

(5) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(6) The moral fitness of each party, insofar as it affects the welfare of the child.

(7) The mental and physical health of each party.

(8) The home, school, and community history of the child.

(9) The reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference.

(10) The willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party.

(11) The distance between the respective

residences of the parties.

(12) The responsibility for the care and rearing of the child previously exercised by each party.

The factors listed in Article 134 are nonexclusive, and the determination as to the weight to be given each factor is left to the discretion of the trial court. Jones v. Rodrigue, 2000-0899, p. 11 (La.App. 1 Cir. 11/3/00), 771 So.2d 275, 281-282. The trial court is in a better position to evaluate the best interest of the child from its observances of the parties and witnesses; thus, a trial court's determination in a child custody case is entitled to great weight on appeal and will not be disturbed unless there is a clear abuse of discretion. Hawthorne v. Hawthorne, 96-89, p. 12 (La.App. 3 Cir. 5/22/96), 676 So.2d 619, 625.

At the April 16, 2001 hearing, Brian Jordan, Ph.D., a clinical psychologist, testified that he was appointed by the court to conduct a custody evaluation for Dr. James and Mr. Daymude and their minor daughter. He conducted the evaluation in July and August 2000. He rendered a report in August 2000, in which he recommended that Dr. James receive sole custody of the minor child. He did this because he felt there was a predictable risk of lack of agreement between the parents. His opinion is that Mr. Daymude can be inconsistent because of his emotionality. He

explained this by saying that Mr. Daymude tends to be very idiosyncratic in his thinking and has very poor control over his emotions. He said he observed that Mr. Daymude has a tendency to blurt out things that are inappropriate and can become very angry and explosive.

Dr. Jordan said he learned of an incident of inappropriate behavior by Mr. Daymude directed to his child's daycare center, after which he was asked not to go to the center. He also had a copy of a letter from Dr. James' apartment building outlining incidents involving inappropriate behavior by Mr. Daymude. In the letter, the building management asked that Mr. Daymude cease and desist this type of behavior. Dr. Jordan stated that he felt that Mr. Daymude exhibited a pattern of poor impulse control, anger at the slightest provocation, making accusations against others and imposing his will on situations.

Dr. Jordan said that Mr. Daymude indicated to him that in the areas of religion, school and medical care regarding the child, he said he would not be able to agree with Dr. James on the issues of school and religion. Dr. James indicated to Dr. Jordan that she and Mr. Daymude also had disagreements over the child's medical care since the separation.

In Dr. Jordan's opinion, Mr. Daymude displayed a character trait known as oppositional behavior. Dr. Jordan explained that a person with

oppositional behavior is very immature, is determined to impose his will on others regardless of the consequences and becomes very defensive when he cannot have his way. A person with oppositional behavior then consciously or unconsciously seeks out confrontation in order to boost his ego and have a feeling that he is in control of his life. His opinion is that Mr. Daymude has a life long pattern of counterproductive behavior that has affected him professionally and in his role as parent and in getting along with his ex-wife in making decisions about the child. He said the goal of a person with oppositional behavior is to win an argument at any cost, and it is usually impossible to communicate with the person once he becomes upset. He said that is one of the reasons why he recommended that Dr. James be the sole custodian of the minor child so that she can be the sole decision maker for the child. He said that his opinion was that if the parties had joint custody and had disagreements regarding their daughter, Mr. Daymude would not be able to focus on the issues of the child, but would focus instead on his need to control and dominate and direct the situation.

Dr. Jordan said that his general tendency in custody evaluations is to recommend joint custody. However, in rare cases, such as this one, he recommends sole custody because there is great conflict and personality traits that would interfere with joint custody.

Dr. James told Dr. Jordan that Mr. Daymude frequently returned his daughter to her with soiled diapers and that the child had recurring bladder infections. Mr. Daymude told him that he often would only give the child a sponge bath because she had a temper tantrum when he tried to give her a regular bath. He said that giving in to the child's tantrums demonstrated poor judgment on the part of Mr. Daymude and an inability to set appropriate limits for the child. He also felt that Mr. Daymude is overly permissive in allowing the child to do things that are not appropriate for her age. Dr. Jordan said that he did not think that Mr. Daymude could differentiate between his own frustrations and needs and parenting the child on a more objective basis. He recommended that contact between the two parents should be totally eliminated.

Dr. Jordan's opinion is that until Mr. Daymude gets psychological treatment or therapy for his problems, he should not have access to his daughter. He said that Mr. Daymude's access to his daughter should be supervised, but that the supervisor should be someone outside of his immediate family. He said that the supervisor should be someone with training in the field of mental health. The supervised visits should be one evening a week and one day on the weekend, but not overnight.

Dr. Jordan recommended that Mr. Daymude have at least six months

of independent individual psychotherapy with a mental health professional. He said that during the six month period, if the professional feels that Mr. Daymude has progressed to the point where he does not need supervision with his child, the professional should correspond with Dr. Jordan and give his or her findings. Dr. Jordan could then reassess the situation through interviews with both parents and the child to determine if there has been improvement. At the end of the six months, if the therapist feels that Mr. Daymude has worked on his problems, is no longer explosive, is no longer having problems with anger and is ready for unsupervised visitation, Dr. Jordan could again reassess the situation and make a recommendation to the trial court.

Dr. Jordan testified that in addition to having an oppositional personality, he also felt that Mr. Daymude had passive-aggressive and obsessive-compulsive tendencies. He said that Mr. Daymude does not like to take responsibility for his own actions.

On the positive side, Dr. Jordan said that he felt that Mr. Daymude has a great deal of love for his daughter and that he interacts with her despite his problems. He also said that Mr. Daymude is willing to spend time with his daughter and take her places and be a caring father.

Dr. Jeanne James testified that she is a pediatrician employed by

Tulane Medical School. She said she is the medical director for the Tulane University Hospital and Clinic and an assistant professor of pediatrics. She stated that she had concerns with Dr. Jordan's recommendation that Mr. Daymude have supervised visitation with his daughter while receiving therapy from someone in the mental health field. She said she wanted Mr. Daymude to receive therapy before the supervised visitation commences. Dr. James stated that Mr. Daymude has had several different kinds of visitation arrangements before and each time there were new problems because of Mr. Daymude's behavior.

She testified that she was asking for sole custody for several reasons. She said past efforts to communicate with Mr. Daymude about any decisions related to their daughter have been unsuccessful. She also said she has concerns about his ability to take care of the child's basic physical needs and to watch out for her safety. Dr. James said she thinks Mr. Daymude has gotten progressively more angry and volatile. He has yelled at Dr. James in front of the child and has also yelled at the child. She also said that Mr. Daymude has not adhered to times set in previous visitation schedules. He cancelled many visits, and when he did have his daughter with him, he routinely brought her home several hours late. She said that Mr. Daymude is generally critical of decisions she makes regarding the child. He disagrees

with Dr. James' medical judgments concerning their daughter. He has claimed that he will not give the child medicine sent by the mother if opened, because he claims that Dr. James might have tampered with it. On some occasions, he will not give medicine sent by Dr. James because he thinks that Dr. James overmedicates the child. He has wanted the child to be taken to the emergency room on other occasions, even though Dr. James did not feel that was warranted.

Dr. James stated that when her daughter returns from visits with her father, she often has not had a bath and has a diaper that has been soiled for at least a couple of hours. She said when Mr. Daymude returned the child from an overnight visit on March 23, 2001, her diaper was so soaked with urine that her clothing was also soaked and Dr. James' clothes got wet when she held her. She also said that Mr. Daymude had dressed his daughter with her clothes on backwards, making it difficult for the child to walk. She said that the child has had urinary tract infections that have required medical attention and catheterization. She said tests run on the urine samples suggested the infections were caused by inappropriate changing of diapers. She also alleges that Mr. Daymude has not participated in the child's toilet training.

Dr. James also said that when her daughter returns from visits with her

father, she eats and drinks an unusually large amount. She thinks that Mr. Daymude gives the child inappropriate foods and does not let her take enough time to eat. She said she has concerns for her child's physical safety because of certain past episodes involving Mr. Daymude. She recounted an incident in the parking lot of her apartment building in which Mr. Daymude had put the child in a grocery cart provided for building tenants. He was angry with Dr. James and while at least ten feet away from her, he pushed the grocery cart toward her with the child still in it. He also lets her play in the valet parking area of Tulane Hospital, and encourages her to run around. When Dr. James tells him not to do this, he accuses her of limiting the child's freedom.

She testified about an incident in which Mr. Daymude called her from his cellular phone while he had his daughter in the car with him. Dr. James claimed that Mr. Daymude started yelling at her about how much time the child spent in day care and how Dr. James was evil because she had chosen a career instead of staying home with her daughter. She said on the first Christmas after the separation, they tried to spend the day together and open presents. When Dr. James said something that Mr. Daymude did not like, he started yelling in front of the child and left the house taking some of the presents he had brought. She said her daughter has started repeating to her

disparaging remarks that Mr. Daymude makes about her to the daughter. She said she does not make negative comments about Mr. Daymude in her daughter's presence.

Dr. James testified about an incident at the Kidopolis daycare center that her daughter attends. She said she received an emergency call from Laurie Richter at the daycare center, who told her that Mr. Daymude had made several phone calls to the center and was angry. Ms. Richter told Dr. James that she was worried about her daughter's safety and that she should come get her right away, which she did. Ms. Richter had already called the building's security office. In another incident, Mr. Daymude told Dr. James that he was going to go to the media and tell them what the chief medical officer at Tulane was doing to him and to their child. He also threatened to put all of the documents from the proceeding on the Internet.

She said that when Mr. Daymude picked up his daughter at Dr. James' apartment building, he would often linger with her in the lobby for as much as forty-five minutes. She received a letter from the management of her apartment building complaining about Mr. Daymude's behavior in the lobby. While in the lobby with his daughter, Mr. Daymude played hide-and-seek, let the child ride on an electric wheelchair belonging to another tenant, threw sofa pillows to the child and chased her around the lobby.

Dr. James said she tried to be flexible with past visitation schedules, but nothing worked. She said Mr. Daymude's behavior was angry and unpredictable. She said her daughter witnessed Mr. Daymude yelling at Dr. James during the times he picked her up and dropped her off. She also said her daughter witnessed an incident at Christmas in which Mr. Daymude threw a cup at her that missed her head and hit the wall. On another occasion, Mr. Daymude called Dr. James a derogatory name and slammed his fist in the door jamb right next to her head with the child standing right there. One time, the child said to her mother that Mr. Lowe (Dr. James' attorney) would not let Mr. Daymude come into the lobby of Dr. James' apartment building. Dr. James had not mentioned the name of her attorney to her daughter prior to that time. Another time, Mr. Daymude told his daughter, in Dr. James' presence, that Dr. James would not let the child go to the circus.

On cross-examination, Dr. James stated that she has not taken her daughter to a psychiatrist, and that at her daughter's most recent check-up, her pediatrician's recommendation was that she did not need to see a specialist at this time. When asked about her statement that Mr. Daymude lingered unnecessarily long when he picked up and dropped off his daughter, Dr. James said that she and Mr. Daymude disagreed about this. Mr.

Daymude felt that there was a need for a transition time at pick-up and drop-off, while Dr. James did not feel that a transition time was necessary.

Dr. James admitted that she cancelled one of Mr. Daymude's visits unilaterally during Mardi Gras season, but she said it was because she did not think he would be able to return his daughter at the appointed time because the parade would be passing in front of Dr. James' apartment building around that time. She also said she cancelled another one of Mr. Daymude's visits when she brought her daughter with her on a trip to Nashville, Tennessee. She said that if she gets paged and has to go to the hospital in the middle of the night, she brings her daughter with her. Dr. James said that when she took classes in 1999 before she and Mr. Daymude separated, Mr. Daymude watched their daughter. When the child was six months old, Dr. James left her with Mr. Daymude for two days while she went out of town to a business meeting.

The next witness was Helen Holzenthal, who was called to testify by Mr. Daymude and who stated that she had known Mr. Daymude for eighteen years. She testified that she had seen Mr. Daymude lose his temper and scream and yell, but she said he never physically hurt her or threatened to physically hurt her. She said she thinks Mr. Daymude wants to be a good father, but that he does not know how to be one at this time. Her opinion is

that Mr. Daymude needs professional help for his anger problem. She described Mr. Daymude as having a volatile personality. She said he does not like anyone disagreeing with his opinion.

The next witness was Eugene Daymude. He testified that he felt that joint custody was in the best interest of the child, and that Dr. James had not carried her burden of proving that she should be awarded sole custody. He stated that the origin of the child's urinary tract infections could have been the daycare center or the mother's home. He said that the child was only in his care for thirty hours per week, and in that time she was never harmed or had to get medical attention. He said he was supportive of Dr. James' career while they were married, but he did not want their daughter in daycare. Mr. Daymude stated that he trusts Dr. James' medical judgments, but that he likes to be overly cautious with his daughter's health care. He said when he plays with his daughter in the lobby of Dr. James' apartment building, it is only for ten or fifteen minutes and only because the child asks him to play with her.

Mr. Daymude said that he is louder than some people, but he does not think that warrants being forced to undergo psychotherapy before he can resume visitation with his daughter. He said that being forced to have his visitation supervised by a stranger would marginalize him, and send a

message to his daughter that he is a bad person. He testified that Dr. James wants sole custody so she can leave the area if she gets a job offer in another part of the country.

Mr. Daymude said that he would be willing to get therapy as a condition of being awarded joint custody. However, he said that if Dr. James were awarded sole custody, he would be reluctant to get therapy. He said he does not have an anger problem and does not think the psychotherapy process has credibility.

The deposition of Laurie Richter was also admitted into evidence. Ms. Richter testified that she is the director of the child care program at Tulane University Health Sciences Center, a department of Tulane Medical School. The program is called Kidopolis Child Development Center. The minor child of Dr. James and Mr. Daymude attends daycare at Kidopolis five days a week. She recounted a telephone call with Mr. Daymude during which he inquired about attendance records for the center. He became upset during the conversation and raised his voice. She said she found the tone of his voice to be threatening, so she hung up the telephone. Mr. Daymude called back several times and started paging her. The frequency of the calls prompted her to call security. She explained that is standard protocol when there is even a hint of trouble where someone seems upset. She said she did

not recall any other significant problems with Mr. Daymude at the daycare center.

The transcript of the emergency status conference held on April 2, 2001 was also introduced into evidence. Dr. James and Mr. Daymude were the only witnesses at that proceeding. Dr. James recounted an incident on March 26, 2001 when she went to the parking lot of her building to pick up her daughter who was being returned by Mr. Daymude. She said her daughter was not in a car seat when she got to Mr. Daymude's car. She said that was the incident when her daughter said to her "Mr. Lowe won't let Daddy come into the lobby." This was the same incident where Mr. Daymude told her daughter that her mother would not let her go to the circus. She said Mr. Daymude started yelling and she grabbed her daughter out of the car while Mr. Daymude reached his arm into the back seat trying to block Dr. James from closing the door. He was screaming out of the car window while Dr. James walked away with her daughter, and then slammed the car door shut and raced out of the parking lot with his tires squealing. She said her daughter cried for half an hour after this incident.

Dr. James stated that her sister witnessed the incident where Mr. Daymude returned his daughter from a visit with a diaper that was soaked with urine. The sister did not testify.

Mr. Daymude responded to Dr. James' testimony about his daughter not being in a car seat by stating that she was in a car seat until he parked his vehicle. When he parked the car, he let the child out of her car seat until her mother arrived. Regarding Dr. James' testimony about her daughter being returned with a soaked diaper, Mr. Daymude denied that accusation and said he always changed his daughter's diaper before he returned her to her mother. He said he would not be aware if the child wet her diaper on the ride home because her mother always retrieved her from the back seat of Mr. Daymude's car. Mr. Daymude also denied that he raced out of Dr. James' parking lot with his tires squealing. He also denied telling his daughter that her mother would not let her go to the circus.

At the conclusion of the April 16, 2001 hearing, the trial court awarded sole custody to Dr. James and made the following statement to Mr. Daymude:

Mr. Daymude, after hearing the testimony from Dr. Jordan, all of the lay witnesses, Dr. James, my observation of the demeanor and credibility of everyone who's testified and your last testimony and response to Mr. Lowe's questions, you have got to get professional psychological counseling for me to even consider awarding you joint custody of your daughter.

The court ordered Mr. Daymude to attend counseling with a psychiatrist or psychologist. When told this, Mr. Daymude responded that he rejected that order and that there will be no more visitations. The trial

court then stated that Mr. Daymude had to get counseling for a minimum of six months before supervised visitation can begin. The court stated that it did not doubt that Mr. Daymude loves his daughter, but that the testimony is overwhelming that he cannot care for her basic physical needs of food, proper clothing and hygiene.

Representing himself on appeal, Mr. Daymude argues that the trial court erred in its entire judgment of May 1, 2001. He first argues that the trial court erred in awarding sole custody to Dr. James, and that joint custody should have been granted. The trial court evaluated the credibility of the witnesses and awarded sole custody to Dr. James. We have thoroughly reviewed the entire record and find no abuse of discretion in the trial court's decision on that issue. Dr. James proved by clear and convincing evidence that awarding sole custody to her was in the best interest of the child.

The testimony showed that Dr. James has been the primary caregiver of the child and has provided well for the child's physical and emotional needs. The record showed that Dr. James has tried to facilitate Mr. Daymude's visitation with his daughter since the separation, and only sought to limit his access until he receives professional help when the problems with Mr. Daymude's behavior escalated to the point that she had concerns for her daughter's well-being.

In concluding that Mr. Daymude should not be awarded joint custody, the trial court apparently believed Dr. James' testimony and rejected Mr. Daymude's testimony regarding the numerous incidents detailed above in which Mr. Daymude exhibited angry and/or inappropriate behavior in front of his child. The trial court's credibility determinations are reasonable and will not be disturbed.

The record shows that Mr. Daymude's angry outbursts and other irrational behavior have gotten progressively worse since the separation between him and Dr. James. In addition to Dr. James' testimony, the testimony of Mr. Daymude's own witness, Helen Holzenthal, and the deposition testimony of Laurie Richter support Dr. James' testimony regarding Mr. Daymude's volatile behavior. Furthermore, as noted by the trial court in its oral reasons at the end of the hearing, the trial court also believed Dr. James' testimony that Mr. Daymude is unable at this time to provide for his daughter's basic physical needs of food, proper clothing and hygiene. That factual finding is supported by the record and will not be disturbed.

Even though Mr. Daymude obviously loves his daughter, it is also clear from his escalating pattern of volatile behavior in her presence that he is not able at this time to refrain from behavior that is emotionally unhealthy

for his child to witness. Furthermore, Mr. Daymude's continued denigration of Dr. James in the presence of the child shows an attempt to undermine Dr. James' relationship with her daughter. Dr. Jordan stated his opinion that Mr. Daymude has personality traits that would interfere with joint custody. His unwillingness to have reasonable communication with Dr. James regarding the minor child has been demonstrated repeatedly. After a thorough review of the record and the factors listed in La. C.C. art. 134, we conclude that the trial court did not abuse its discretion in concluding that the best interest of the child is served by Dr. James having sole custody.

Mr. Daymude's remaining arguments concern the trial court's order that he seek counseling from a psychiatrist or psychologist for six months before an award of supervised visitation will be considered. Mr. Daymude takes issue with every element of the trial court's order, including the order that he get therapy and the structure of his therapy.

It is important to note that the trial court did not dictate a particular psychologist or psychiatrist for Mr. Daymude to consult. Under the trial court's order, Mr. Daymude can seek counseling from the psychologist or psychiatrist of his choice. That professional will then report to the court-appointed evaluator, Dr. Jordan, who will, in turn, reassess the situation and report to the trial court. The trial court order does not require Mr. Daymude

to seek counseling from Dr. Jordan. The order also does not permanently terminate Mr. Daymude's access to his daughter as suggested by Mr. Daymude in his brief. He simply must participate in therapy as ordered and then the issue of visitation can be revisited. We find that the record supports the trial court's decision ordering Mr. Daymude to undergo psychological counseling before an award of supervised visitation can be considered.

For the reasons stated above, the trial court judgment is affirmed.

AFFIRMED