

NOT DESIGNATED FOR PUBLICATION

DWAYNE HALEY * **NO. 2007-CA-0999**
VERSUS * **COURT OF APPEAL**
CHERYL G. LEARY * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

* * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2002-17470, DIVISION "K-DRS 3"
Honorable Herbert Cade, Judge

* * * * *

CHIEF JUDGE JOAN BERNARD ARMSTRONG

* * * * *

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray and Judge Edwin A. Lombard)

DWAYNE HALEY
3328 TIMBERLANEWAY DRIVE
#119
HARVEY, LA 70058

IN PROPER PERSON, PLAINTIFF/APPELLANT

CHERYL G. LEARY
7100 ALMEDA ROAD
#926
HOUSTON, TX 77054

IN PROPER PERSON, DEFENDANT/APPELLEE

AFFIRMED.

This appeal arises from an ongoing custody dispute between Dwayne Haley and Cheryl Leary. Mr. Haley and Ms. Leary have one daughter, A. L.-H., and were never married. Pursuant to a petition for joint custody and visitation that Mr. Haley filed on November 11, 2002, and Ms. Leary's rules for custody, child support, and psychological evaluation filed on January 2, 2003, the parties appeared in court and, following a hearing, the trial court signed a consent judgment on May 12, 2003. That judgment granted Ms. Leary interim sole custody of A. L.-H., pending court-ordered evaluations and Mr. Haley's successful completion of an anger management program.

On November 24, 2004, Mr. Haley filed a rule for sole custody and ancillary matters. At a hearing on November 30, 2004, the transcript shows that the parties consented to an interim judgment. On December 22, 2004, the trial court entered the consent judgment, which granted Ms. Leary sole custody of A. L.-H. for three months pending psychological evaluations, Mr. Haley's successful completion of a parenting class, and his follow-up interview with the court-appointed evaluator and

anger management instructor. The judgment ordered that Mr. Haley not harass Ms. Leary, her counsel, or the court-appointed evaluator. Mr. Haley did not appeal timely from that judgment, which is now final.¹

On February 24, 2006, the trial court heard motions filed by both parties, including Mr. Haley's motion for contempt regarding visitation, and Ms. Leary's motions for contempt regarding child support, and for sole custody because of Mr. Haley's failure to complete the requirements set forth in the consent judgment. Ms. Leary also filed a notice of relocation. Following an evidentiary hearing, the trial court denied both parties' motions for contempt, ordered Mr. Haley to pay \$71.50 in back child support and \$20 in sheriff's costs, and deferred Ms. Leary's request for sole custody pending receipt of information from the court-appointed custody evaluator concerning Mr. Haley's compliance with the prior consent order. That judgment was signed on March 8, 2006. The trial court denied from the bench Mr. Haley's motion to strike and for contempt against Ms. Leary's counsel. Mr. Haley appealed the denial of that motion, and this Court affirmed in Haley v. Leary, 06-0788 (La.App. 4 Cir. 10/4/06), 942 So.2d 55.

On November 14, 2006, Ms. Leary filed a request for sole custody, based on the consent judgment of May 12, 2003, the September 7, 2003 psychological evaluation prepared by the court-appointed evaluator, the interim judgments of September 28, 2004 and December 22, 2004 and judgment of March 8, 2006.

¹ Mr. Haley's appeal was dismissed as untimely in Haley v. Leary, unpub. 05-0722 (La.App. 4 Cir./ 1/18/06), 923 So.2d 988, writ denied, 06-0397 (La.4/28/06), 927 So.2d 292.

On November 27, 2006 and December 6, 2006, Mr. Haley filed rules for contempt alleging that Ms. Leary violated the visitation provisions of unspecified court orders². The trial court set the motions for hearing on January 26, 2007, and ordered, *ex proprio motu*, a hearing at the same time to traverse Mr. Haley's *In Forma Pauperis* affidavit, filed in connection with his rules. On December 21, 2006, Mr. Haley filed another rule for contempt alleging Ms. Leary's violation of his purported visitation rights. On January 10, 2007, Mr. Haley filed a rule for sole custody and motions for psychological and psychiatric evaluation and supervised visitation, alleging, *inter alia*, that the minor has been "physically abused, forced to eat fetus, hit upside the head with a television remote control, and has been a witness to domestic violence in the Leary family home and only God knows what else. The minor also has been associated with the Yoruba Community in particularly, the Asuar, Auset Society" involving "a beheaded goat in the yard, with blood on the tree stumped." On January 17, 2007, Mr. Haley filed a rule for contempt alleging that Ms. Leary has been disturbing A. L.-H.'s psychological well-being and interfering with the child's relationship with her father.

Following an evidentiary hearing, on January 26, 2007, the trial court entered judgment finding that Mr. Haley's *In Forma Pauperis* affidavit was traversed, that he not be allowed to proceed as a pauper and ordering him to pay all costs associated with the case. That judgment was not appealed and is final.

² The record does not contain any court orders granting absolute visitation rights to Mr. Haley.

On January 26, 2007, Mr. Haley filed a motion to strike frivolous pleadings and all negative statements regarding Mr. Haley and a rule for contempt as to Ms. Leary's counsel. The trial court denied the motion and rule the same day they were filed. By judgment dated February 6, 2007, the trial court awarded sole custody of A. L.-H. to Ms. Leary, and denied and dismissed Mr. Haley's rules for contempt filed on November 27, 2006 and December 6, 2006; the rule for contempt and for psychological evaluation filed January 17, 2007; and the rule for sole custody and motion for psychological and psychiatric evaluation and supervised visitation filed January 10, 2007. The trial court ordered that there be no visitation order in effect for Mr. Haley, noting that attempts were made to set visitation and Mr. Haley would not cooperate.

On January 31, 2007, Mr. Haley re-filed the motion to strike and rule for contempt, asking that they be set for hearing; another rule for contempt against Ms. Leary alleging violation of his visitation rights and his right to receive information concerning his daughter's health care and education; an emergency motion for visitation of grandparents and siblings; a motion for new trial of the January 26, 2007 denial of his motion and rule. The trial court set all of these motions and rules for hearing on March 13, 2007. On February 6, 2007, Mr. Haley filed a rule to show cause why he should not be awarded visitation "for the amount of time lost post Katrina" and for a modification of the custody or visitation decree. The trial court set this rule for March 13, 2007 as well. On February 26, 2007, Mr. Haley filed a motion to determine the best interest of the minor and for his daughter's

psychological evaluation. The trial court set this motion for hearing on March 13, 2007. Again, in March of 2007, Mr. Haley filed another emergency motion for visitation of grandparents and siblings, which was set for hearing on April 11, 2007.

On March 17, 2007, Mr. Haley filed a motion to obtain access to his daughter's health care and school records.

On March 19, 2007, Mr. Haley filed a motion to reset his motion for new trial with respect to the Judgment of January 26, 2007; the motion to strike frivolous pleadings and negative statements and rule for contempt as to counsel for Ms. Leary; rule to show cause relative to visitation for the time lost post-Katrina and modification of the custody and visitation decree; and motion to determine the best interest of the minor and for her psychological evaluation. The trial court set these motions and rules for hearing on April 11, 2007.

On April 11, 2007, during the course of the hearing on the various motions and rules, the trial court found Mr. Haley to have been in contempt of court and sentenced him to serve fifteen days in the Orleans Parish Prison, not subject to being purged. The record contains an order dated April 11, 2007 recalling the attachment and ordering Mr. Haley's release. Following an evidentiary hearing, the trial court entered judgment on April 27, 2007 denying Mr. Haley's motions for new trial and to set aside the judgment of January 26, 2007. The trial court denied and dismissed Mr. Haley's motions to strike frivolous pleadings and negative statements and rule for contempt as to Ms. Leary's counsel, noting that Mr. Haley

had previously filed the same motions, that the trial court had ruled on same, and that Mr. Haley had (unsuccessfully) appealed those judgments. The trial court denied and dismissed Mr. Haley's emergency motions for visitation of grandparents and siblings and his motions to reset rule to show cause relating to his claim for visitation post-Katrina and modification of the custody and visitation decree. The trial court also denied and dismissed Mr. Haley's motions to determine the best interest of A. L.-H. and motions for her psychological evaluation. The trial court noted in the judgment that:

The parties have had fourteen (14) Court Appearances. The Court further notes that Dwayne Haley was not present for the remainder of the hearing because he was held in Contempt of Court for his misbehavior in Open Court and sentenced to fifteen (15) days in jail to be served at Orleans Parish Prison and that he may not purge his contempt.³

On April 25, 2007, Mr. Haley filed an objection to the withdrawal of Ms. Leary's counsel of record. The trial court denied the objection on May 1, 2007.

At Mr. Haley's request, the trial court entered reasons for judgment. The court noted that Mr. Haley did not present any evidence in support of his motions for new trial; neither did Mr. Haley present any new evidence to support the motions to strike frivolous pleadings and negative statements and for contempt against Ms. Leary's counsel, which motions had been ruled on previously. The court noted that Mr. Haley was not the proper party to bring the emergency motions for visitation of grandparents and siblings.

³ Mr. Haley has not appealed his contempt sentence.

On May 7, 2007, Mr. Haley filed a motion for appeal of the trial court's judgment rendered April 27, 2007.

In reviewing the factual findings of a trial court, an appellate court is limited to a determination of manifest error. Hill v. Morehouse Parish Police Jury, 95-1100 (La. 1/16/96), p. 4, 666 So.2d 612, 614.

We have reviewed the record in its entirety. The record contains the following documentary evidence admitted without objection by the trial court:

1. Certificate from Barbara B. LeBlanc, MSW, LCSW, of The Parenting Center at Children's Hospital, showing that Ms. Leary successfully completed the Focus on Children Divorce Program on November 10, 2004;

2. Tarot cards that Mr. Haley sent along with a letter and information about rituals with evil spirits, devils and animal sacrifice;

3. A mailing from Mr. Haley concerning sorcery, witchcraft, and "mysterious powers":

4. Another mailing from Mr. Haley concerning another society engaged in various types of spiritual rituals; and

5. A. L.-H.'s school records showing the child's performance on the Stanford Achievement Test, Tenth Edition, as well above average, in the 99th percentile for age-based scores and the 89.6 percentile for grade-based scores. Her national age percentile bands were between 95+ and 99, and her national grade percentile bands were between 94 and 99. Her pattern completion, reasoning by analogy and total cluster scores were all above average.

When questioned at the April 11, 2007 hearing as to the basis of his motions for new trial, Mr. Haley suggested that the previous judgments were contrary to the Post-Separation Family Violence Relief Act, La.R.S. 9:361, *et seq.* Under the provisions of that statute, sole custody is not granted to a parent who has a history of perpetrating domestic violence. The statute defines “family violence” for purposes of the Act as abuse and any offense against the person as defined in the Louisiana Criminal Code, except negligent injuring and defamation, committed by one parent against the other parent or against any of the children. La.R.S. 9:362(3). Mr. Haley did not contend that Ms. Leary was violent toward him or to the child, but rather toward Ms. Leary’s siblings. As a matter of law, Mr. Haley’s allegations fall outside the scope of the Act under which he makes his claim. Therefore, as a matter of law, the ruling of the trial court is affirmed as correct.

The trial court then considered Mr. Haley’s emergency motions for visitation by grandparents and siblings. When questioned by the court, Mr. Haley admitted that the request was made on behalf only of his own sister and his mother. He further admitted that he was not licensed to practice law in Louisiana. Therefore, the trial correctly concluded that he lacked standing to present his mother’s and sister’s claims. We note further that Mr. Haley cannot claim the benefit of La.R.S. 9:344 (D). That statute grants certain reasonable visitation rights to grandparents of a deceased or incarcerated party during the grandchild’s minority. The statute does not apply in the present context, since there is no evidence of record that Mr. Haley was incarcerated (except briefly on the day of trial for his contumacious

behavior) and it is apparent from his extensive *pro se* filings that he is very much alive.

The trial court then noted that the remaining motions were duplicative of motions and rules presented by Mr. Haley on previous occasions, that were the object of prior judgments and appeals to this Court.

Ms. Leary, through counsel, agreed to provide the child's medical records and delivered her school records to Mr. Haley, making his motions for production of those records moot. Mr. Haley expressed his thanks for these records in open court.

Based on our complete review of the record taken in its entirety, we conclude that the factual conclusions of the trial court are not manifestly erroneous or clearly wrong, and that its legal conclusions are correct. For the foregoing reasons, we affirm the judgment of the trial court.

AFFIRMED.