KRISTEN LAURENT	*	**NO. 2018-CA-0126**
VERSUS	*	**COURT OF APPEAL**
IVAN S. PREVOST	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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CONSOLIDATED WITH:	**CONSOLIDATED WITH:**
IVAN S. PREVOST	**NO. 2018-CA-0127**
VERSUS	
KRISTEN LAURENT	

JENKINS, J., CONCURS IN PART, DISSENTS IN PART

I concur with the majority's finding that the trial court committed no legal error in appointing an attorney for the minor children pursuant to La. R.S. 9:345.

I concur for the reasons assigned by Judge Ledet with respect to the trial court's factual finding that Mr. Prevost abused his minor children.

I dissent from the majority's decision to affirm the trial court's order granting Mr. Prevost "liberal supervised visitation with the minor children at least every other weekend until such time as he demonstrates satisfactory completion of a parenting class where he is to learn techniques of discipline."

La. R.S. 9:341 governs restrictions on visitation in child custody matters:

> A. Whenever the court finds by a preponderance of the evidence that a parent has subjected his or her child to physical abuse, or sexual abuse or exploitation, or has permitted such abuse or exploitation of the child, **the court shall prohibit visitation between the abusive parent and the abused child until such parent proves that visitation would not cause physical, emotional, or psychological damage to the child**. Should visitation be allowed, the court shall order such restrictions, conditions, and safeguards necessary to minimize any risk of harm to the child. All costs

> incurred in compliance with the provisions of this Section shall be borne by the abusive parent. (Emphasis in original.)

The trial court, after hearing testimony and reviewing the evidence introduced at the September 12, 2017 hearing on the Motion for Modification of Physical Custody (and other matters), made the following factual findings regarding Mr. Prevost's physical abuse of the minor children:

> THE COURT: And while much of their [the children's] testimony is very similar, the amount of detail that they were able to provide to me, and the things that actually differ, cause me to believe that they have actually been subject to what The Court would consider to be abusive behavior by Mr. Prevost.

The Court continued its discussion of Mr. Prevost's repeated acts of physical abuse:

> THE COURT: Now let me tell you what for me is turning, turns the tide in this particular case. And that is indeed the punishment of kneeling on the concrete outside of the home over a two year period of time over approximately 15 times with an average time of 30 minutes each time. That is abusive. It is abusive to require a child to kneel on concrete for 30 minutes. And while I don't believe it has happened as often as the children have indicated, I do believe it has happened more than what Mr. Prevost has indicated.
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> And it is for this reason that I am indeed granting custody of the minor children to Ms. Laurent, subject to the liberal, supervised visitation of Mr. Prevost until he is able to demonstrate that he has taken a parenting class wherein he is to learn techniques of discipline.

Based on the trial court's factual findings regarding Mr. Prevost's history of physical abuse of his minor children, I find that the trial court committed legal error in granting Mr. Prevost liberal supervised visitation. I find nothing in the record that would satisfy Mr. Prevost's burden of proving under La. R.S. 9:341 that visitation would not cause physical, emotional or psychological damage to the children. Because the trial court did not have authority to order visitation, I would vacate that portion of the trial court's judgment granting liberal visitation to Mr. Prevost.

Finally, I dissent from the majority's decision to classify the trial court's judgment as awarding Ms. Laurent temporary custody of the minor children.

Although the majority refers to the trial court's award of "temporary sole custody" to Ms. Laurent, nowhere in the December 12, 2017 judgment does the trial court state that its custody determination is "temporary" or "interim." Instead, the judgment states that "the minor children's 'Motion for Modification of Physical Custody' is hereby GRANTED," that "Kristen Laurent shall be the sole legal custodian of the minor children," and that "Ivan Prevost shall be granted liberal supervised visitation."

The confusion as to whether the December 12, 2017 judgment is a temporary or a permanent custody and visitation decree appears to have arisen when the appointed attorney for the minor children filed an "*ex parte*" motion for "modification of physical custody" in August 2017. In the motion, counsel for the children erroneously stated that the trial court had rendered a "considered decree" on June 1, 2015, which had established "joint legal custody" of the minor children.[1] The June 1, 2015 judgment, however, which was rendered following a hearing on a petition for protection from abuse, was not a "considered decree." The judgment stated as follows:

> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, on an **interim** basis, the parties are granted Joint Custody of their minor children in common. Ms. Laurent is granted, on an **interim** basis, a 'liberal' visitation schedule. . . . (Emphasis added.)

In this same *ex parte* motion, the attorney for the children compounded the confusion by also referring to a January 19, 2016 judgment as a "considered decree" establishing a physical custody schedule. Again, the January 19, 2016 judgment was not a "considered decree." It set an interim holiday visitation schedule between Christmas 2015 and Easter 2016, and ordered the parties to submit to a custody evaluation.

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[1] A "considered decree" is an award of permanent custody in which the trial court receives evidence of parental fitness to exercise care, custody, and control of children. *Rodriguez v. Wyatt*, 11-82, p. 9 (La. App. 5 Cir. 12/12/11), 102 So.3d 109, 114.

In *Ventura v. Rubio*, 00-0682 (La. App. 4 Cir. 3/16/01), 785 So.2d 880, this Court discussed the problem of trial courts issuing judgments meant to rule on issues of interim or temporary custody but issuing judgments that appear to resolve permanent custody issues. This Court stated, in pertinent part, as follows:

> The case at bar is an example of a recurrent problem that this court has observed respecting interim and temporary orders issued in domestic relations matters. The trial courts in domestic matters are issuing judgments intended as interim or temporary orders, only to be effective until a trial on the merits, but without specifically designating in the judgment that the orders are, in fact, interim or temporary only and without setting a date for a trial from which permanent orders would emanate. Additionally, orders intended as interim or temporary are issued without an explanation as to what, if anything, they are based upon. In the absence of a record indicating the facts forming the basis of an interim or temporary order, no reviewing court can conduct a proper review as to whether the trial court has abused its discretion in entering the orders. The result is that interim and temporary orders effectively operate, because of delay, as permanent orders, thereby denying the parties a timely and appropriate adjudication of the issues. . . .

Ventura, 00-0682, p. 14, 785 So.2d at 890-91.

Thus, in order to expedite and facilitate prompt disposition of domestic relations matters, the *Ventura* decision requires trial courts to do the following when entering interim and temporary orders in domestic matters:

> (1) have a court reporter present during discussions leading up to the order, and if the court reporter is unavailable, a recording capable of transcription shall be made of discussions by the judge, and if recording equipment is unavailable, the judge shall specify factual information upon which each part of the order is based in sufficient detail that a reviewing court may ascertain the nature and extent of information relied upon;
> (2) at the time of the ruling issuing the interim or temporary order, the court shall set a date for the merits trial of final order, and the date shall not be more than 120 calendar days from date of service of pleadings directed to issues of support and custody; and
> (3) the trial court may not circumvent trial of the final orders by entry of one or more new interim or temporary orders or by modification of original interim order.

Id., 00-0682, pp. 17-18, 785 So.2d at 892-93.

In *Ventura*, the Court found that the transcript of the hearing clearly indicated that all orders were to be interim or temporary, but that the judgment

varied from that, and there was no clear indication that the custody and visitation orders were interim or temporary pending a full trial on those issues. The Court, therefore, amended that part of the judgment "to state that the orders relative to custody and visitation [were] temporary only." The *Ventura* Court further ordered that the trial of the "permanent matters" be set "not later than 90 calendar days from the date of [the] decision, and that, if necessary, interim and temporary orders may issue as warranted under the circumstances. . . ." *Id*., 00-0682, p. 18, 785 So.2d at 893.

Here, as in *Ventura*, there is no clear indication that the custody and visitation orders in the December 12, 2017 judgment are interim or temporary, pending a full trial on those issues. I, therefore, dissent from the majority's conclusion that this is a temporary custody order. I would follow *Ventura* and amend the judgment to state that "the orders relative to custody and visitation are temporary only." As in *Ventura*, I would also amend the judgment to order that "the trial of the permanent matters be set not later than 90 calendar days from the date of this decision," and further state that, "if necessary, interim and temporary orders may issue as warranted under the circumstances but not in contradiction of this decision."