

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001675-MR

RAE ANN JACKSON (NOW SAGRAVES)

APPELLANT

v. APPEAL FROM CARTER FAMILY COURT
HONORABLE KRISTI HOGG GOSSETT, JUDGE
ACTION NO. 02-J-00223

RONALD D. HENDERSON, JR.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

DYCHE, JUDGE: Rae A. Jackson and Ronald D. Henderson are the parents of a child born on August 25, 2002. Jackson sought a determination of paternity in a complaint brought by the Carter County Attorney versus Henderson on November 5, 2002. After paternity was established, Henderson, in January 2003, filed a motion for custody, alleging that Jackson suffered from a substance abuse problem. An agreed order entered later that

month established that Henderson would pay child support of \$603 per month and enjoy standard visitation with the child.

The record then contains various motions filed by Henderson because of Jackson's repeated interference with visitation rights. The allegations of Jackson's drug usage continued as well. Court-ordered mediation occurred in November 2003, after which an order was entered that effected the following: joint custody, with Jackson as primary residential custodian of the child; standard guideline visitation; continued support from appellee; and provisions regarding tax exemptions, health insurance, and reimbursement for medical costs.

The problems between the parties continued, and Henderson moved in April 2004 that Jackson be held in contempt for failing to comply with the visitation schedule. The matter was assigned for a show cause hearing on the 23rd of that month, and was then continued to May 11, 2004. On that date Jackson did not appear, but an attorney appeared on her behalf. Counsel stated that Jackson was suffering from multiple sclerosis and "was taking medication that rendered her physically unable to attend court." The family court ordered Jackson to appear the following week to explain her absence and to provide a sworn affidavit from her physician excusing Jackson from her May 11 court date.

Jackson did not appear on May 18, but she did phone and ask for more time. The court continued the hearing until May 25, 2004, to enable Jackson to obtain the necessary documentation. On that date, the matter was redocketed for June 1, 2004. On June 8, 2004, the Carter Family Court entered an order for Jackson's arrest. After obtaining a release of information from Jackson, the court had called appellant's doctor only to learn that Jackson had not been seen on May 11; the court, convinced of Jackson's prevarication, found her in contempt and sentenced her to fourteen days' incarceration.

By June 24, the sheriff was still unable to locate Jackson, and the court entered a further order allowing appellant five days to surrender or the punishment would double. Jackson turned herself in, served seven days, obtained new counsel, filed a notice of appeal, and made bond (\$100 cash). She names Henderson as her appellee.

The sole issue on appeal is whether the lower court abused its discretion in imposing the sentence for contempt without first holding a hearing. Jackson insists that the contempt is criminal (indirect) in nature and that she was entitled to full due process. See Commonwealth v. Burge , 947 S.W.2d 805, 808 (Ky. 1997).

What Jackson fails to concede is that she was given numerous opportunities to purge herself of this contempt and that it was her continual disregard for the visitation schedule and the court's subsequent show cause orders and failure to appear at hearings that landed Jackson in jail. Even if the contempt were characterized as criminal in nature, Jackson was afforded due process. She received notice of the hearings, was represented by counsel, and had the opportunity to be heard. That she failed to avail herself of those opportunities does not give rise to a denial of due process.

The order of the Carter Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Michael J. Curtis
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