

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2004-CA-002286-MR

PAUL D. HURT

APPELLANT

APPEAL FROM JEFFERSON FAMILY COURT  
v. HONORABLE PATRICIA WALKER FITZGERALD, JUDGE  
ACTION NO. 02-CI-501359

LENORA R. HURT

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, JOHNSON, AND TAYLOR, JUDGES.

BUCKINGHAM, JUDGE: Paul D. Hurt appeals *pro se* from an order of the Jefferson Family Court denying his motion to hold his ex-wife, Lenora R. Hurt, in contempt for failing to grant him visitation with their minor child. We affirm.

Paul is a prison inmate. He and Lenora were divorced by a decree of the Jefferson Family Court entered in August 2002. The decree incorporated an agreement of the parties that included provisions concerning custody and visitation of their child. The agreement provided that Paul "shall have reasonable visitation, upon advanced notice to [Lenora], with said children

at all times and dates as agreed to by the parties." Because Paul is in prison, Lenora has not made the child available for visitation.

Paul filed a motion with the court to have Lenora held in contempt for failure to comply with the decree and agreement. See KRS<sup>1</sup> 403.240(2). A hearing was held, and the court denied the motion in an order entered on October 5, 2004.<sup>2</sup> The court reasoned as follows:

The parties' agreement is ambiguous in two respects in that it requires that visitation be "reasonable" and that the schedule must be "agreed to by the parties." There is no evidence before the Court as to any agreement reached by the parties subsequent to the entry of the Decree concerning specific dates and times or as to a regular schedule of visitation to which Ms. Hurt has failed to make the children available.

. . . .

In light of the ambiguity in the parties' agreement, the absence of any subsequent agreement by the parties as to a visitation schedule, and the circumstances surrounding Ms. Hurt's belief that visitation is not reasonable at this time, this Court does not find Ms. Hurt in contempt and shall deny Mr. Hurt's motion as to the same.

"Contempt is the willful disobedience of - or open disrespect for - the rules or orders of a court." Commonwealth, ex rel. Bailey v. Bailey, 970 S.W.2d 818, 820 (Ky.App. 1998).

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<sup>1</sup> Kentucky Revised Statutes.

<sup>2</sup> Paul was not transported from the prison for the hearing.

Because Paul and Lenora have not agreed to specific times and dates for visitation, we cannot say that the family court erred in holding that Lenora was not in contempt of the court's order.<sup>3</sup> Furthermore, because Paul is incarcerated in a prison facility, what constitutes "reasonable visitation" is not readily apparent under the circumstances.

The order of the Jefferson Family Court is affirmed.<sup>4</sup>

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE:

Paul Hurt, *Pro Se*  
LaGrange, Kentucky

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<sup>3</sup> In Paul's petition to hold Lenora in contempt, he did not allege that there was any agreement as to his visitation other than the settlement agreement. Therefore, we fail to see how he could have presented any further evidence had he been transported from the prison to the courtroom for the hearing on his petition.

<sup>4</sup> We do not hold that Paul has no right of visitation merely because he is incarcerated. See Smith v. Smith, 869 S.W.2d 55, 57 (Ky.App. 1994). We hold only that the trial court did not err in refusing to hold Lenora in contempt.