

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-001137-MR

ROBERT A. FRALEY

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT  
HONORABLE KRISTI HOGG GOSSETT, JUDGE  
ACTION NO. 01-CI-00027

REBECCA MARIEA FRALEY

APPELLEE

OPINION  
REVERSING AND REMANDING

\*\* \*\* \* \* \*

BEFORE: DYCHE, McANULTY, AND TACKETT, JUDGES.

DYCHE, JUDGE: Robert A. Fraley complains that the trial court did not follow this court's instructions and, upon remand, did not grant him sufficient visitation with his daughter. No brief has been filed with this court on behalf of Robert's ex-wife, Rebecca, with whom Robert has a contentious and stormy relationship. Robert's brief reasonably appears to sustain reversal of the trial court's order. We therefore reverse and remand for entry of an order consistent with this court's

previous opinion, and with this opinion. Ky. R. Civ. Pro. 76.12(8)(c)(ii).

This is the second time this controversy has been before a panel of this Court. On October 8, 2004, our opinion in No. 2003-CA-1364-MR reversed the trial court's "drastic curtailment" (from the recommendation of the Domestic Relations Commissioner) of Robert's visitation rights, and directed the court to establish a visitation schedule "more in line with the ability and desire of the non-custodial parent, and the recommendation of the expert witnesses."

The trial court tinkered with the disapproved schedule, granting Robert one more day per week with his child, but otherwise making no substantial changes. Despite this court's directions in the earlier opinion, the trial court seems wedded to "guidelines," no matter that Robert appears to be an exceptionally caring father, who desires the maximum contact with his daughter, and has conducted his life accordingly. The trial court seems to have ignored the teaching of Drury v. Drury, 32 S.W.3d 521 (Ky.App. 2000):

We further emphasize that trial courts should not give undue weight to the terms of a "standard" visitation order. Frequently, judicial circuits or trial courts prepare these documents to aid the trial court in drafting visitation orders. As in the present case, these documents contain "typical" visitation schedules, as well as recitations of common conditions for

managing visitation. However, the use of a standard visitation order should not supplant the trial court's obligation to make its own findings of fact as required by CR 52.01. See also Bingham v. Bingham, Ky., 628 S.W.2d 628 (1982).

. . . .

Consequently, we do not hold that a trial court's use of a standardized visitation schedule is automatically grounds for reversal, even in a case involving an award of joint custody. Rather, this Court will only reverse a trial court's determinations as to visitation if they constitute a manifest abuse of discretion, or were clearly erroneous in light of the facts and circumstances of the case. Wilhelm v. Wilhelm, Ky., 504 S.W.2d 699, 700 (1973). We would consider it an abuse of discretion for a trial court to give presumptive weight to a standard visitation schedule, requiring the non-residential parent to prove why that schedule should not be applicable.

32 S.W.3d at 524, 525.

The order of the trial court on remand gives short shrift to this court's prior opinion. We trust the same thing will not happen again. We do not deem it necessary to direct the trial court's specific findings. The order of the Carter Circuit Court is reversed, and this matter is remanded for entry of an order consistent with this opinion and the prior opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Jeffrey D. Hensley  
Hensley & Coburn, P.S.C.  
Flatwoods, Kentucky