

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001881-MR

HEATHER MICHELLE LEAMON

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT
HONORABLE KRISTI HOGG GOSSETT , JUDGE
ACTION NO. 05-CI-00396

JOSEPH WILLIAM LEAMON

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: HOWARD AND MOORE, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: Heather Leamon (“Heather”) appeals the Carter Circuit Court's Findings of Fact, Conclusions of Law and Decree of Dissolution entered July 21, 2006, in her and Joseph Leamon's (“Joseph”) divorce action. We affirm.

The parties were married on March 1, 2003, and separated on September 12, 2005. Three children were born of the marriage. An Agreed Order was entered

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

December 21, 2005, granting Heather temporary custody of the children and granting Joseph supervised visitation. At that time, all visitations were to be supervised by Joseph's mother, Melinda Leamon (“Melinda”) and two other adults.

On July 19, 2006, a final hearing was conducted on the issues of custody, visitation, division of marital debt, child support and maintenance. On July 21, 2006, the court ordered its Findings of Fact, Conclusions of Law and Decree of Dissolution of Marriage. That judgment ordered that Joseph have supervised visitation with the children for four hours on Tuesday and Wednesday one week and Tuesday and Saturday the alternating week. Visits were to be supervised by Melinda and one other adult to be chosen and/or approved by the Cabinet for Health and Family Services (“Cabinet”). Heather then filed a motion to alter or amend, asking that the visitation remain on Tuesday and Wednesday of every week and occur somewhere other than Melinda's home.² Joseph, who had been facing difficulties from the Cabinet in executing his visitation, filed a motion seeking to have the decree enforced. In an Order entered August 11, 2006, the court overruled Heather's motion regarding the visitation arrangements and sustained Joseph's motion to enforce the previously ordered arrangement. This appeal followed.

² Heather's motion sought several other alterations of the Decree, which are irrelevant to this appeal.

Heather argues that the circuit court abused its discretion in three ways: 1) by ordering visitation to occur at Joseph's home³; 2) by ordering Melinda as the primary supervisor; and 3) by ordering visitation to occur on a weekend.

KRS 403.320(1) states:

A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health. Upon request of either party, the court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.

“In the absence of an agreement between the parties, the trial court has considerable discretion to determine the living arrangements which will best serve the interests of the children.” *Drury v. Drury*, 32 S.W.3d 521, 525 (Ky.App. 2000) (citing *Wilhelm v. Wilhelm*, 504 S.W.2d 699, 700 (Ky. 1973) (overruled on other grounds)).

“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.” *Id.*

After reviewing the circuit court's findings and conclusions, we are satisfied that the best interests of the children have been served. The Cabinet, whose exclusive job is promoting the health and safety of families and children, has been involved with this family since the time of the parties' separation. Given that the court's order instructs the Cabinet to select and/or approve a second supervisor for visitations, there is no reason to

³ Joseph resides in the home of Melinda Leamon.

believe the children are in danger. Particulars, such as the location and time of visitation are decided under the broad discretion of the circuit court judge. We see no abuse of discretion in the designated time, location or supervisor(s) of Joseph's visitation.

For the foregoing reasons, the July 21, 2006, judgment of the Carter Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mary Hall Sergent
Ashland, Kentucky

BRIEF FOR APPELLEE:

W. Jeffrey Scott
Grayson, Kentucky