

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002449-ME

DOUGLAS W. WILSON

APPELLANT

v. APPEAL FROM HART CIRCUIT COURT
HONORABLE JOHN DAVID SEAY, JUDGE
ACTION NO. 06-CI-00294

CHRISTY J. GROCE

APPELLEE

OPINION
REMANDING

** ** * ** * ** *

BEFORE: LAMBERT, MOORE, AND WINE, JUDGES.

WINE, JUDGE: Douglas W. Wilson (“Wilson”) appeals the Hart Circuit Court’s order denying him unsupervised visitation with his minor son, Samuel Aiden Groce (“Samuel”). After a thorough review, we remand this case for further findings.

On December 1, 2006, Samuel’s mother, Christy J. Groce (“Christy”), filed a verified complaint requesting sole custody of Samuel and requesting that

any visitation granted to Wilson be supervised. On August 7, 2007, the court entered an order granting sole custody of Samuel to Christy. Although the order is not in the record, it appears that at some point the court also granted Wilson supervised visitation with Samuel. Wilson did not appeal that order.

However, on August 29, 2007, Wilson petitioned the court for modification of visitation and requested that his visitation with Samuel be unsupervised. The court held a hearing on Wilson's motion on October 15 and 16, 2007. Upon hearing the testimony of Wilson, Christy, and Tonya Dishman ("Dishman") from the Cabinet for Health and Family Services ("the Cabinet"), the trial court concluded unsupervised visitation was not in the best interest of the child. This appeal followed.

As a preliminary matter, the trial court's order dated October 23, 2007, from which this appeal is taken, mistakenly refers to the "Petitioner hav[ing] made progress" and "Petitioner should not be given unsupervised visitation." In fact, Christy was the Petitioner and Wilson was the Respondent. After a review of the trial court's hearing on October 15 and 16, 2007, it is clear the trial court meant to refer to the Respondent, Wilson, in its order.

On appeal, Wilson essentially argues that the court improperly considered a prior judgment terminating his parental rights to three other children. In a 2002 action, the Cabinet sought to involuntarily terminate Wilson's parental rights to three children, two of which he fathered by Anna Mae Smith and a third whose parentage he questions. In an order dated May 9, 2002, the circuit court

concluded that the children were abused and neglected as defined in Kentucky Revised Statutes (“KRS”) 600.020(1) and termination of parental rights would be in the best interest of the children. Wilson contends that the trial court in this case improperly used the prior termination of his parental rights as the sole criteria for its determination that he should not receive unsupervised visitation with Samuel.

KRS 403.320(3) states that the circuit court may restrict a non-custodial parent’s right to visitation only upon finding, after a hearing, that visitation would seriously endanger the child’s “physical, mental, moral or emotional health.” The trial court did not make such a finding. Based on the representation of the Cabinet that it was not advisable at this time to award unsupervised visitation to Wilson, the court denied Wilson’s motion to modify. Dishman noted that supervised visitation with Samuel was going very well. However, she discussed the prior termination action and stated that was a factor in her opinion that Wilson should not be awarded unsupervised visitation with Samuel. Dishman also spoke of the substantiated reports of abuse and neglect, and physical and emotional abuse of the children in Wilson’s past. Dishman referred to Wilson’s psychological evaluation wherein Wilson was found to have characteristics associated with anti-social personality disorder. The evaluation also concluded that Wilson has problems controlling his anger impulses and while he may feel initially remorseful for his outburst, has difficulty learning from his experiences. While all of these considerations may be sufficient factors to conclude that unsupervised visitation is not in the best interest of the child, the

court never made a specific finding that the child's health would be in danger of physical, mental, moral or emotional risk pursuant to the statute.

Accordingly, this matter is remanded to the Hart Circuit Court for additional findings.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEE

Douglas Wilson, *pro se*
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