

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TIMOTHY SEAN CRAFT

APPELLANT

VERSUS

NO. 2009-CA-00204-COA

DONNA GAYLE COOPER CRAFT

APPELLEE

APPEAL FROM THE CHANCERY COURT OF
JONES COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT
CAUSE NO. 2005-0032E

THE HONORABLE FRANKLIN C. MCKENZIE, JR., CHANCELLOR, PRESIDING

REPLY BRIEF OF APPELLANT

ORAL ARGUMENT NOT REQUESTED

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TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

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STATEMENT OF FACTS

Donna creates a problematic situation for Tim by not citing to the record the statements made in her Appellee's Brief. Tim would point out that the following facts in Donna's brief were not presented at the trial and therefore, are not contained in the record:

1. Tim was fired from his management job as a petroleum engineer at Delphi after "alleged pornographic photographs" of a female child were found downloaded and stored on his computer at his corporate office. (P. 8, Appellee's Brief). This statement is highly prejudicial and not in the record.

2. Tim personally took authorities to a rural location to dig up and retrieve photographs and videotapes portraying various explicit scenes of Lola Hulsey engaged in sexual abuse of a child which had been buried and hidden for a considerable amount of time. (P. 9, Appellee's Brief). This statement is highly prejudicial and not in the record.

3. Donna states that the allegations made against Tim of child exploitation were not known to the District Attorney's office at the time of the immunity agreement. (P. 9, Appellee's Brief). This statement is not in the record and prejudicial.

4. Since this appeal has been filed, the District Attorney of Lamar County has dismissed Tim's latest charges, without prejudice due to the alleged victim being unable to cooperate in the investigation at this time. (P. 10, Appellee's Brief). She quotes the District Attorney concerning the refiling of charges when the district attorney did not testify in this case.

5. Tim made upwards of \$90,000.00 per year and more. (P. 14, Appellee's Brief). There is no evidence in the record that Tim ever made such amount of money. This statement is not true and the evidence was undisputed that Tim was making \$1,000.00 per month at the time of the rehearing.

6. The evidence reveals that Tim is remarried and his latest wife does computer-related work and contributes considerably to his standard of living. (P. 15, Appellee's Brief). This statement is untrue. There is no evidence of Tim's current wife's income and this would be irrelevant anyway.

7. Donna's statement that "he dissipated presumptively marital property during the pendency of this matter" is untrue and there is no evidence in the record that Tim dissipated marital assets. (P. 15, Appellee's Brief).

8. The evidence reveals that Tim was then, and is now, in a much more favorable economic situation than Donna and has the higher relative financial ability to pay the fees. This statement is not true and there is no evidence in the record to support it. (P. 17, Appellee's Brief).

9. Donna quotes news reports in her brief. "News reports state that the evidence had been buried in a rural site for some time and Tim personally took police directly to the hidden site to recover the evidence." None of this information is in the record and is highly prejudicial. (P. 21, Appellee's Brief).

The above quoted statements in Donna's brief are just some of the misstatements of facts and exaggerations contained in her brief.

ARGUMENT

ISSUE 1: The Chancellor erred in restricting Tim Craft's visitation to an hour and one-half one day per week in the office of the Department of Human Services, Laurel, Mississippi.

Tim filed his brief in this appeal on or about July 30, 2009. At the time of the filing of his brief, Tim had gone 22 months with only visiting with his children an hour and one-half one day per week in the presence of the Department of Human Services. Since July 30, 2009, Tim has been under the same restriction for an additional four months. For over two

years these three children have been unable to have any meaningful visitation or develop a viable relationship with their father because of the visitation restriction. This Court in *Porter v. Porter*, 766 So.2d 55, 58 (Miss. Ct. App. 2000) reiterated that both parents must be allowed an opportunity to maintain a healthy relationship with their child. Restrictions on visitation can be placed if they are necessary to avoid harm to the child. Absence such evidence, such restrictions may be an abuse of discretion. *Dunn v. Dunn*, 609 So.2d 1277, 1286 (Miss. 1992). Unless compelling reasons are shown the noncustodial parent during permitted visits with his or her child should have essentially unfettered discretion regarding “the place and manner” of the visit bounded by the visitation schedule’s, transfer locations and time constrictions. *Cox v. Moulds*, 490 So.2d 866, 870 (Miss. 1986) As stated in Tim’s Appellant Brief, Tim has never been convicted of a felony. In fact, the District Attorney of Lamar County entered an order dismissing all charges against Tim. A copy of the Order is attached to this brief. The current visitation schedule is not conducive to the children establishing a viable relationship with their father. The children have been deprived of quality and quantity time with their father. The visitation has been limited to one room in the building of the office of the Department of Human Services in Jones County, Mississippi. Because there is no evidence in the record indicating that the three children were in any way threatened or placed in harms way by visiting with their father, Tim should be awarded standard visitation with his children.

Donna admits in her brief that the Chancellor erred in finding that Tim was statutorily precluded from consideration for custody of his children. (P. 22, Appellee’s Brief). The visitation schedule is not tied to any compelling evidence that indicates in any way that the children are in any danger from visiting with their father at his home or the home of their grandmother, Cecile Craft. The focal point of consideration should be the children’s rights to

develop a relationship with their father, the children's rights to spend time with their father, and what is in the best interest of the children. The focal point of custody and visitation is what is in the best interest of the children. *Albright v. Albright*, 437 So.2d 1003 (Miss. 1983). Although Donna wants the Court to deprive Tim of visitation as punishment for Tim, this Court has to look at what is in the best interest of the children. Depriving children of time with one parent is not and never has been in the best interest of children absent evidentiary facts indicating the children are in danger.

Donna makes a blatant misrepresentation in her brief when she disputes that the Chancellor found there was no evidence of abuse by Tim. During the trial, the Court stated, "well I hadn't heard anything about any abuse yet myself other than perhaps a spanking which folks differ nowadays about capital -- not capital, but corporal punishment for children and some people think it's the thing to do and other people think it's not the thing to do. And I simply say that I think it is appropriate if necessary that parents spank their children..." (T. 269)

At that point in the trial, the Chancellor had heard from Sean Craft, Alayna Craft, Donna Craft, and Tim Craft. Subsequent to that point during the trial, the Chancellor heard no more testimony of any abuse or neglect by Tim Craft toward his three children. Therefore, it is undisputed that these three children were never in harms way as a result of their father's actions that would justify visitation restricted to an hour and one-half on a Friday afternoon at the Department of Human Services.

Donna attempts to justify the restricted visitation by making general statements such as Tim being a confessed sexual deviant as a basis for restricting visitation. However, Tim has never confessed to any misconduct in the presence of or toward his children. Further, Tim has never confessed to any felony crime. Donna's hatred toward Tim and her isolation

of the children away from their father has damaged these children's relationship with their father. Donna has no intention of these children having any meaningful visitation with their father.

Two of the children testified they wanted their father to have their custody and to live with him. (T. 1-21, 42-54, 350, 365). Not only did they testify in Court but they testified on two separate occasions spanning two years that they wanted to spend more time with their father.

Not only has the restriction on Tim's visitation adversely affected his relationship with his children, the visitation on Friday afternoon of an hour and one-half has also interfered with his ability to earn more income. (T. 488-489). Tim has been unable to work on Fridays because he has to travel two hours from Sandy Hook, Mississippi to Laurel, Mississippi to see his children at the Department of Human Services. Tim drives a truck for Prichard Trucking. (T. 488).

Therefore, the Chancellor's decision should be reversed and Tim Craft awarded full and standard visitation privileges with his children.

CONCLUSION

The Chancellor should have granted Tim standard unrestricted visitation with the parties' children. Absent of showing that the three children were in danger, Tim should have been granted full standard visitation with his children.

Therefore, Tim respectfully requests that this Court reverse the Chancellor's award of alimony, attorney's fees, restrictive visitation privileges and his decision not to find Donna Craft in contempt of court.

Respectfully submitted,

TIMOTHY SEAN CRAFT

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CERTIFICATE OF SERVICE

I, Terry L. Caves, Attorney for Timothy Sean Craft, do hereby certify that I have this date mailed a true and correct copy of the above and foregoing document to Honorable Harry R. Lane, Post Office Drawer 1728, Hattiesburg, Mississippi 39403; and, Honorable Franklin C. McKenzie, Jr., Chancellor, Post Office Box 1961, Laurel, Mississippi 39441, their usual post office address.

This the 1st day of December, 2009.

Terry L. Caves
TERRY L. CAVES

IN THE CIRCUIT COURT OF LAMAR COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

CAUSE NUMBER: 2008K-459P

TIMOTHY CRAFT

ORDER OF NOLLE PROSSE

THIS DAY this cause coming to be heard on Motion by the State of Mississippi by and through the District Attorney in and for Lamar County for this cause to be Nolle Prossed without prejudice and with the right to re-file, in the interest of justice. The Court having heard and considered said motion finds the same is well-taken and should be sustained.

IT IS, THEREFORE, ORDERED and ADJUDGED that the above styled and numbered cause be, and the same is hereby, Nolle Prossed without prejudice and with the right to re-file.

SO ORDERED and ADJUDGED on this the 8th day of September, A.D., 2009.


CIRCUIT JUDGE



CERTIFIED TRUE COPY

Is 28 day of September 2009
Leslie Wilson, Circuit Clerk
Lamar County, Mississippi

By Condra Murren D.C.

FILED

LAMAR COUNTY SEP 08 2009 CIRCUIT CLERK

Leslie Wilson

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