

Supreme Court of Kentucky

2019-SC-0000093-MR

JERRY W. WELLS

APPELLANT

ON APPEAL FROM COURT OF APPEALS

CASE NO. 2018-CA-001467-OA

V. WARREN FAMILY COURT NO. 14-CI-00479

HON. CATHERINE HOLDERFIELD,
JUDGE, WARREN FAMILY COURT,
DIV. IV.

APPELLEE

AND

ROBBIN NELSON;
ROBERT ANDREW SHARP, JR.;
HEATHER ANNE GREENE SHARP;
A.K.S., A MINOR CHILD; AND
R.A.S. III, A MINOR CHILD

REAL PARTIES IN INTEREST

**ORDER DENYING PETITION FOR
REHEARING AND *SUA SPONTE*
CORRECTING STYLE OF CASE**

The Petition for Rehearing, filed by the Appellant, of the Memorandum Opinion of the Court, rendered October 31, 2019, is **DENIED**.

On the Court's own motion, the Memorandum Opinion of the Court is hereby corrected by the substitution of a new Memorandum Opinion, attached hereto, in lieu of the Memorandum Opinion as originally rendered. Said substitution is made to correct the style of the case. This correction does not affect the holding of the original Memorandum Opinion as

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rendered. Minton, C.J.; Hughes, Keller, Lambert, VanMeter, and Wright, JJ., all concur. Nickell, J., not sitting.

ENTERED: March 26, 2020

/s/ John Ellington

CHIEF JUSTICE

**COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
2019-sc-000093-MR**

An Original Proceeding was Tendered on 2/8/2019 Notice of Appeal. A copy of the Original Proceeding is attached.

PETITIONER	Jerry Wells
CI #	14-CI-00479
COUNTY	WARREN

RESPONSE

The matter brought up with regard to a statement in court that the undersigned may have stated at the initial hearing in May of 2014 was not brought to the attention of the Trial Court at any time prior to its mention in the filings in the Supreme Court of Kentucky. Had it been brought by appropriate motion to the Trial Court, it would have been addressed by the Trial Court. Mr. Wells was not a participant in the hearing nor has he at any time been a party to the action.

In an abundance of caution and to clarify, although the pleading filed by Ms. Heather Sharp dated June 5, 2019 is titled "Real Party in Interest Heather Anne Sharp's Response on behalf of Judge Catherine Rice Holderfield to Appellant's Motion for Leave to File a Motion to the Lower Court," such was not filed on the undersigned's behalf with any knowledge of or authority given by the undersigned and it is believed that such title was inadvertently misleading likely without

intention to mislead. The undersigned has not discussed this action or any related action with any party to the action nor with counsel for any party, nor with Mr. Wells who is not a party, without the presence of the parties or recorded proceedings if a party failed to appear).

I have attached the following:

1. The Notice of Appeal;
2. Appellant's "Motion for Leave of the Court to File a Motion to the Lower Trial Court for Correction of the Record, Specifically the Decree of the Order of May 15, 2014, and for Leave to File an Amended Appellee's Brief Following Correction of the Lower Court Records;" and
3. Appellee's "Real Party in Interest Heather Anne Sharp's Response on Behalf of Judge Catherine Rice Holderfield to Appellant's Motion for Leave to File Motion to the Lower Court"

NOTE TO RESPONDENT

Please fill in the blanks, date, sign and return. Include a copy of any order to which you have referred.

<u>June 11, 2019</u>	<u>/s/ Catherine Rice Holderfield</u>
Date	Respondent / Judge

**COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
ACTION NO. 2018-CA-001467OA**

**ORIGINAL ACTION ARISING FROM
WARREN CIRCUIT FAMILY COURT
ACTION 14-CI-00479**

JERRY W. WELLS PETITIONER

**NOTICE OF APPEAL
TO KENTUCKY SUPREME COURT**

VS.

CATHERINE RICE RESPONDENTS
HOLDERFIELD JUDGE,
WARREN FAMILY COURT,
DIV IV.

AND

ROBIN NELSON REAL PARTIES
ROBERT ANDREW SHARP, JR IN INTEREST
HEATHER ANNE GREEN SHARP
A.K.S., A MINOR CHILD
R.A.S., III, A MINOR CHILD

Pursuant to CR76.36(7)(a), and in conformity with the requirement of CR 73.03, notice is hereby given that the *pro se* Petitioner, Dr. Jerry W. Wells, hereby appeals the January 9, 2019 Order Denying Motion for Reconsideration and Extraordinary Writ of Prohibition/Mandamus.

1. The Appellant is Dr. Jerry W. Wells.
2. The trial court judge is Catherine Rice Holderfield, Judge, Warren Circuit Family Court, Division IV.
3. The names of the real parties in interest are: Robbin Nelson, Robert Andrew Sharp Jr, Heather Anne Greene Sharp, A.K.S., a minor child, and R.A.S.III, a minor child.
4. Counsel for real parties in interest are identified on the Certificate of Service, incorporated herein by reference.
5. Petitioner appeals from the Order and Opinion of the Kentucky Court of Appeals entered on January 9, 2019, denying Appellants emergency petition of his right to intervene and be declared De Facto Custodian in the circuit court case before final adjudication of a modification of custody hearing which was held October 12, 2018, from the Court's opinion regarding jurisdiction of the Warren Circuit Family Court, Division IV in this matter, and the failure of the Kentucky Court of Appeals to address erroneous discovery rulings and matters of recusal by the lower court.
6. A copy of the Court of Appeal's Order Denying Motion for Reconsideration and Extraordinary Writ, dated January 9, 2019, from which this appeal is being taken, is attached hereto as Exhibit "A," with a copy of the Court of Appeal's Order Denying Motion For Intermediate Relief, dated October 8, 2018 as Exhibit "B."

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February 7, 2019 Respectfully submitted,

/s/ Jerry W. Wells

Jerry W. Wells (*pro-se*)

PO Box 159175

Nashville, TN 37215

Phone: 270-392-0461

welljw@aol.com

CERTIFICATE OF SERVICE

The undersigned hereby states that a true and correct copy of the foregoing was sent via U.S. mail, postage paid, facsimile transmission, email, or hand delivery this 7th day of February 2019, to the following:

Catherine Rice Holderfield, Judge
Warren Circuit Court, Div. IV. Family Court
Warren County Justice Center
1001 Center Street, Suite 303
Bowling Green, KY 42101
Fax: (270) 746-7147
beckycohron@kycourts.net
kimiller@kycourts.net

Hon. D. Bailey Walton, Esq.
1131 Fairway Street, Ste. 3
Bowling Green, KY 42103
COUNSEL FOR REAL PARTY IN INTEREST,
ROBBIN NELSON
Fax: (270) 782-1357
dbwlaw@bellsouth.net

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Hon. Kenneth A. Meredith II., Esq.
316 Main Street
P.O. Box 194
Bowling Green, KY 42102-0194
COUNSEL FOR REAL PARTY IN INTEREST,
ROBERT A. SHARP, JR.
Fax: (270) 783-0681
kenmeredithii@gmail.com

Casey Hixson, Esq.
511 East Tenth Avenue
Bowling Green, KY 42101
COUNSEL FOR REAL PARTY IN INTEREST,
HEATHER SHARP
Fax: (270) 780-9487
caseycaseyhixson.com

/s/ Jerry W. Wells
Jerry W. Wells, (*pro-se*)

**COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
2019-SC-000093**

JERRY W. WELLS

APPELLANT

v.

**MOTION FOR LEAVE OF THE COURT
TO FILE A MOTION TO THE LOWER TRIAL
COURT FOR CORRECTION OF THE RECORD,
SPECIFICALLY THE DECREE OF THE OR-
DER OF MAY 15, 2014, AND FOR LEAVE TO
FILE AN AMENDED APPELLEE'S BRIEF
FOLLOWING CORRECTION OF THE
LOWER COURT RECORDS**

CATHERINE RICE HOLDERFIELD APPELLEE
ROBBIN NELSON,
ROBERT SHARP, JR.,
HEATHER SHARP,

**ON APPEAL FROM THE KENTUCKY COURT
OF APPEALS, NO. 2018-CA-001467 WARREN
CIRCUIT COURT FAMILY COURT, DIV. IV
No. 14-CI-00479**

CERTIFICATION

The undersigned does hereby certify that true and accurate copies of this notice/motion were sent by US Mail, postage prepaid this the 23rd day of May, 2019 to

the following: Catherine Rice Holderfield, Judge, Warren Circuit Family Court, Div., IV 1001 Center Street, Bowling Green, KY 42101, Kenneth A. Meredith II, 316 E Main Ave., Bowling Green, KY 42101, D. Bailey Walton, 1131 Fairway St, Ste 3, Bowling Green, KY 42103, Casey Hixson, 511 East Tenth Ave., Bowling Green, KY 42101, Samuel Givens, Clerk, Kentucky Court of Appeals, 360 Democrat Drive Frankfort, KY 40601.

/s/ Jerry W. Wells
Dr. Jerry W. Wells *pro se* Appellant
PO Box 159175
Nashville, TN 37215
270-392-0461

MOTION FOR LEAVE OF COURT

Appellant Dr. Jerry W. Wells, respectfully request and moves this Honorable Court for leave to file a Motion with the lower trial court, pursuant to CR 60.01 for correction of the record, and for leave to file an amended brief after correction of the lower court's order. For the reasons set forth in the accompanying Memorandum, Appellant respectfully request that this Court grant it leave to have the lower court correct the record because it will clarify and resolve one (1) issue of dispute between the parties, will not cause any prejudice to the Appellee or the real parties in interest, preserves the Appellant's substantial rights in the lower trial court, the Court of Appeals as well as this Honorable Court and substantially impacts the application of the rule of law in this action in consideration of the other four (4) issues before this Honorable Court.

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Respectfully submitted, this 23rd day of May,
2019.

/s/ Jerry W. Wells
Dr. Jerry W. Wells *pro se* Appellant
PO Box 159175
Nashville, TN 37215
270-392-0461

MEMORANDUM IN SUPPORT OF LEAVE OF COURT

Comes the Appellant, *pro se*, and for his Memorandum of law in support of its Motion for Leave of Court, states as follows:

INTRODUCTION

Appellant, Jerry W. Wells, while recently reviewing the court recordings of the hearings regarding the lower court case from which this appeal is taken, Case No. 14-CI-00479, recognized the lower Court's Order entered May 15, 2014, following the May 6, 2014 hearing, contains an omission from the judgement of the court. The omission was not the product of judicial reasoning and determination. It was a clerical error, specifically, the Decree within the Order mistakenly omits the court's findings of Appellant's De Facto Custodian status and custody of the minor children after having ruled and stating on the record (1:44:11), "And so I'm going to grant the de facto custodian status to you **and your husband** and also permanent custody at this time." Appellant submits that his rights are

substantially impacted by this omission, and he is entitled to have this mistake corrected as a matter of law.

ISSUES

The case presently before this Honorable Court contains five (5) main issues:

The inappropriate use of a forward related order by the Court of Appeals,

The question of jurisdiction,

The appropriateness of a writ of prohibition/mandamus,

Unethical conduct by Casey Hixson and other parties including ex parte communications, making false statements to the court about the facts of the matter, writing false statements in orders, fraud on the court, and

Appellant's "standing" with the Court. The correction of the lower court record completely resolves the issue of Appellant's standing and directly and substantially impacts the application of law in the remaining other four (4) issues.

STATEMENT OF THE CASE

Appellee's counsel Casey Hixson, as well as the lower court judge has taken the position Appellant has no standing in the lower court Case No. 14-CI-00479 and this stance significantly impact Appellant's rights in all issues presently before this Honorable Court.

This position by Appellee's counsel and the lower court is wrong as it is contradicted by the lower court's very own findings of judicial reasoning and determination during the hearing of May 6, 2014, whereby the lower court recognized the status of Appellant and ruled stating on the record (1:44:11), "And so I'm going to grant the de facto custodian status to you **and your husband** and also permanent custody at this time," The Decree of the Order of the lower court mistakenly omits the judicial findings of Appellant's De Facto Custodian status and custody of the minor children. Appellant is entitled to have this mistake corrected as a matter of law and cannot do so without leave of this Honorable Court.

CORRECTION OF CLERICAL
MISTAKE STANDARD

CR 60.01 states:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

There is no question about the trial court's authority to enter the amended judgment pursuant to CR

60.01. In *Potter v. Eli Lilly and Company, Ky.*, 926 S.W.2d 449 (1996) the court wrote: We are well aware that CR 60.01 allows a trial court to correct clerical mistakes in its judgments and errors therein arising from an oversight or omission at any time on its own initiative. We do not believe CR 60.01 invests the trial court with either jurisdiction or authority to make substantive changes in a judgment. The effect of the rule is limited to mistakes that are clerical in nature.”

In *Buchanan v. West Kentucky Coal Company, Ky.*, 218 Ky. 259, 291 S.W. 32, 35 (1927) the court wrote: The distinction between clerical error and judicial error does not turn on whether the correction of the error results in a substantive change in the judgment. Rather, the distinction turns on whether the error “was the deliberate result of judicial reasoning and determination, regardless of whether it was made by the clerk, by counsel, or by the judge.” The court further wrote: “A clerical error involves an error or mistake made by a clerk or other judicial or ministerial officer in writing or keeping records.” 46 Am.Jur.2d, Judgments § 167.

There is therefore no dispute the CR 60.01 grants the authority of a trial court to correct the lower omission of the lower court’s findings of Appellant’s De Facto Custodian status and custody of the minor children upon a motion of any party; however, the Motion by Appellant cannot be submitted to the lower court without leave of this Honorable Court.

REQUEST FOR RELIEF

For all of the foregoing reasons, *pro se* Appellant respectfully requests that this Honorable Court grant leave of court to submit a CR 60.01 Motion to the lower court to correct the Decree of the Order of May 15, 2014, regarding his status of De Facto Custodian and custody of the minor children and to grant leave of court to amend his Brief in this matter following the correction of the Decree of the May 15, 2014 Order by the lower court.

05/23/19

Respectfully submitted,
/s/ Jerry W. Wells

COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
CASE NO. 2019-SC-000093-MR

JERRY W. WELLS

APPELLANT

v.

REAL PARTY IN INTEREST HEATHER ANNE
SHARP'S RESPONSE ON BEHALF OF JUDGE
CATHERINE RICE HOLDERFIELD TO APPEL-
LANT'S MOTION FOR LEAVE TO FILE A
MOTION TO THE LOWER COURT

HON. CATHERINE RICE
HOLDERFIELD, JUDGE,
WARREN FAMILY COURT,

APPELLEE

ROBBIN NELSON,

ROBERT ANDREW

SHARP, JR. HEATHER

ANNE GREENE SHARP,

A.K.S., A MINOR CHILD,

AND R.A.S. III, A MINOR

CHILD

REAL PARTIES IN INTEREST

Comes Real Party in Interest, Heather Anne Green Sharp (hereinafter "Heather"), by counsel, and provides the following Response to Appellant's Motion for Leave of the Court to File a Motion to the Lower Trial Court for Correction of the Record, Specifically the Decree of the Order of May 15, 2014, and for Leave to File an Amended Appellee's Brief Following Correction of the Lower Court Records on behalf of Judge Catherine Rice Holderfield:

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The Appellant is not a party to the underlying action. In his latest attempt to become a party, Appellant cites CR 60.01 alleging that the Trial Court made a clerical error which denied him the status of a party. Simply, that argument fails.

CR 60.01 provides:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

The rule does not permit substantive changes to a judgment. See *Potter v. Eli Lilly & Co.*, 926 S.W.2d 449 (Ky. 1996), abrogated on other grounds in *Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004).

Appellant argues that on May 6, 2014, the Trial Court made a clerical error when the Court stated “I’m going to grant the De Facto Custodian status to you and your husband . . .”. CVR: 05/06/2014; 14411, 14-CI-00479). That was not a clerical error, but likely an error in wording. The Trial Court’s wording does not confer Appellant the status of a party.

The Appellant fails to cite or discuss *Jude v. Morwood Sawmill, Inc.*, 726 S.W.2d 324 (Ky. App. 1987). In

that case, a judgment was entered against one of the Defendants. The Court, on its own motion, attempted to correct the judgment and stated it was the intent of the Court for the word "Defendant" to be "Defendants". "The rule cannot be used to enter judgment against a Defendant who was omitted from the original judgment." *Id.* at 326 citing *Stradley v. Cortez*, 518 F.2d. 488 (3rd Cir. 1975).

Unquestionably, the Appellant has never been a party. He was not included as a Petitioner and this has no standing. The written judgment only mentions and applies to Appellant's wife, Robbin Nelson. The record is void of any intent of any of the parties to grant a judgment in favor of the Appellant. Apparently, the language utilized by the Trial Court was surplusage and has no effect.

Wherefore, Heather Anne Green Sharp, on behalf of Judge Catherine Rice Holderfield, respectfully requests this Court to deny the Appellant's Motion.

Respectfully submitted this the 5 day of June, 2019.

/s/ [Illegible]
Casey A. Hixson
HIXSON LAW OFFICE
511 East Tenth Avenue
Bowling Green, KY 42101
Phone: 270/780-9655
Facsimile: 270/780-9487
Email: casey@caseyhixson.com
Web Site: www.caseyhixson.com

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing pleading was sent via U.S. Mail, on this the 5 day of June, 2019, addressed to the following:

Hon. Catherine Rice Holderfield, Judge
Warren Circuit Court, Div. IV
Family Court
Warren County Justice Center
1001 Center Street, Suite 303
Bowling Green, KY 42101

D. Bailey Walton
WALTON LAW
1131 Fairway Street
P.O. Box 128
Bowling Green, KY 42102-0128

Kenneth Meredith
316, E. Main Avenue
Bowling Green, KY 42101

Jerry Wells
P.O. Box 159175
Nashville, TN 37215

/s/ [Illegible]
Casey A. Hixson

<div style="text-align: center;"> <h1>F A X</h1> <p>Dishman McGinnis Elementary School</p> <p>Bowling Green [LOGO] City Schools</p> </div>	To: The Covenant School Fax number: 615-467-2315
	From: Theresa Roberts, Secretary Fax number: 270-842-3188
	Date: 3-23-17
	Pages: <u> 1 </u> (including cover)
<i>Dishman McGinnis Elementary School</i> <i>375 Glen Lily Road</i> <i>Bowling Green, Kentucky 42101</i> <i>Office: (270)746-2250</i> <i>Fax: 270-842-3188</i>	

[Jennifer → person I talked to]

Request for Student Records	
<u>Adrianna Sharp</u>	<u>1</u>
Student Name	Grade
<u>Robert Sharp III (Drew)</u>	<u>Pre School</u>
Student Name	Grade
<u> </u>	<u> </u>
Student Name	Grade

**Please fax immunization records
at your earliest convenience.**

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TO KATHERINE KOONCE, 615-467-2315

FROM DICK KOONCE

THIS IS A FAX FROM ME TO YOU

LET ME KNOW IF YOU RECEIVE IT – LET ME
KNOW IN ADVANCE IF YOU WANT TO FAX TO ME
TO TEST THE WAY IT WORKS

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COMMONWEALTH OF KENTUCKY
IN THE CIRCUIT COURT OF WARREN COUNTY
FAMILY COURT
DIVISION IV
CASE NO. 14-CI-00479

ROBBIN NELSON PETITIONER

VS.

ROBERT ANDREW SHARP, JR. RESPONDENT

HEARING

MAY 6, 2014

1:35 P.M.

BEFORE THE HONORABLE
CATHERINE RICE HOLDERFIELD

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APPEARANCES

FOR THE

PETITIONER: MR. JOHN MCCRACKEN
JOHN H. MCCRACKEN AND
ASSOCIATES, PLLC
941 LEHMAN AVENUE #103
BOWLING GREEN, KY 42103

[4] (THE FOLLOWING PROCEEDINGS WERE HELD:)

MR. MCCRACKEN: MOTION TO SUBMIT, YOUR HONOR. WE HAVE A – IT'S – GRANDPARENTS GETTING –

THE COURT: RIGHT.

MR. MCCRACKEN: – CUSTODY OF –

THE COURT: I DO NEED TO TAKE SOME BRIEF PROOF. DO YOU HAVE THEM HERE TODAY?

MR. MCCRACKEN: I DO. I HAVE HER.

THE COURT: OKAY.

MR. MCCRACKEN: NOW, THE OTHERS ARE NOT HERE. AND – BUT I'LL BE GLAD TO DO WHATEVER YOU WANT.

THE COURT: IS – IS MS. NELSON?

MR. MCCRACKEN: MS. NELSON IS HERE.

THE COURT: UH-HUH.

MR. MCCRACKEN: SHE'S GRANDMA – GRANDMOTHER.

THE COURT: AND ARE THE SHARPS – THEY ARE AWARE OF TODAY'S HEARING?

ROBBIN NELSON: YES.

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MR. MCCRACKEN: THEY – THEY ARE.
YES, YOUR HONOR.

ROBBIN NELSON: YES.

THE COURT: OKAY.

MR. MCCRACKEN: WE HAVE –

THE COURT: OKAY. THEN, ROBBIN NELSON, I'LL [5] JUST ASK YOU TO RAISE YOUR RIGHT HAND, PLEASE. DO YOU SOLEMNLY SWEAR OR AFFIRM THAT THE TESTIMONY YOU GIVE TODAY WILL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH SO HELP YOU GOD?

ROBBIN NELSON: I DO.

THE COURT: YOU'LL NEED TO SPEAK UP A LITTLE BIT.

ROBBIN NELSON: I DO.

THE COURT: OKAY. GO AHEAD, MR. MCCRACKEN.

EXAMINATION

BY MR. MCCRACKEN:

Q. AND WHAT IS YOUR NAME, PLEASE?

A. IT'S ROBBIN NELSON.

Q. AND WHERE DO YOU LIVE, ROBBIN NELSON?

A. I'M AT 2076 CHESAPEAKE DRIVE HERE IN BOWLING GREEN.

Q. ARE YOU MARRIED?

A. YES.

Q. AND WHO ARE YOU MARRIED TO?

A. DR. JERRY WELLS.

Q. AND DO YOU HAVE A –

THE COURT: YEAH. YOU'RE GOING TO HAVE TO SPEAK UP A LITTLE BIT.

MR. MCCracken: YEAH. YOU'RE GOING TO HAVE TO [6] TALK A LOT LOUDER. I'M SORRY.

THE COURT: IT'S NOT RECORDING YOUR VOICE.

ROBBIN NELSON: ALL RIGHT.

A. I'M MARRIED TO DR. JERRY WELLS. HE'S HERE WITH ME.

Q. AND DO YOU HAVE A SON NAMED ROBERT ANDREW SHARP, JR.?

A. I DO.

Q. AND WHAT IS YOUR DAUGHTER-IN-LAW'S NAME?

A. HEATHER ANNE GREENE SHARP.

Q. OKAY. DO THEY HAVE ANY CHILDREN TOGETHER?

A. THEY HAVE TWO CHILDREN.

Q. AND ARE YOU – HAVE YOU SIGNED A – AN AGREEMENT, A CUSTODY AGREEMENT WITH – BETWEEN YOURSELF, YOUR SON ROBERT ANDREW SHARP, JR., AND YOUR DAUGHTER-IN-LAW HEATHER ANNE SHARP REGARDING CUSTODY OF THOSE CHILDREN?

A. THAT IS CORRECT. WE – WE HAVE – HAD REACHED AN AGREED ORDER FOR ME TO TAKE CUSTODY OF THE CHILDREN.

Q. AND, IF YOU WOULD, JUST BRIEFLY TELL THE COURT, HOW LONG HAVE THESE TWO CHILDREN LIVED WITH YOU – PHYSICALLY LIVED WITH YOU?

A. THE GRANDDAUGHTER HAS BEEN WITH US SINCE SHE WAS FOUR WEEKS OLD. AND THE LITTLE BOY HAS BEEN WITH US SINCE HE WAS SIX WEEKS OLD.

[7] Q. AND HOW OLD ARE THEY NOW?

A. THE GRANDDAUGHTER IS FOUR YEARS OF AGE. AND OUR GRANDSON IS TWO YEARS OF AGE.

Q. OKAY. NOW, SO THE COURT WILL UNDERSTAND WHY WE'RE HERE TOO EVEN BETTER, YOUR SON, DOES HE HAVE ANY MEDICAL CONDITIONS?

A. YES, HE DOES.

Q. AND WHAT – BEST DESCRIBE, IF YOU CAN, WHAT'S GOING ON WITH HIM.

A. MY SON HAS A CONDITION THAT IS REFERRED TO AS REVERSE NARCOLEPSY AND CATAPLEXY. AND THAT ESSENTIALLY MEANS THAT HE IS UNABLE TO FALL ASLEEP WITHOUT MEDICATION. AND THE CATAPLEXY PORTION OF THAT IS THAT HE HAS SLEEP PARALYSIS.

THIS REQUIRES MEDICATION. ONCE HE TAKES THE MEDICATION, HE IS RENDERED INCAPACITATED AND IS NOT ABLE TO CARE FOR HIMSELF, LET ALONE THE CHILDREN.

Q. NOW, JUST SO THE JUDGE WILL KNOW WHY YOU'RE SAYING THIS, WHAT IS – DO YOU HAVE A DEGREE IN –

A. I'M A REGISTERED NURSE.

Q. OKAY. NOW, AS FAR AS YOUR DAUGHTER-IN-LAW –

A. MY DAUGHTER – MY DAUGHTER-IN-LAW HAD SUFFERED SOME SORT OF HEAD INJURY EARLIER IN HIGH SCHOOL, AND THEN SHE ALSO SUFFERED FROM POSTPARTUM DEPRESSION AFTER THE BIRTH OF THE CHILDREN.

[8] AND SO, SHE HAS SIGNIFICATION DEPRESSION. IS ALSO NOT ABLE TO REALLY APPROPRIATELY CARE FOR THE CHILDREN.

Q. OKAY. AND JUST FOR THE RECORD, WE'RE NOT HERE TO SAY ANYTHING – WE'RE NOT HERE TO SAY ANYTHING GOOD OR BAD ABOUT EITHER ONE OF THESE PARENTS.

A. NO.

Q. YOU'RE JUST HERE TO HELP AND –

A. THAT IS CORRECT. WE – WE WOULD LOVE TO SEE THESE – THESE PARENTS HAVE A REVERSAL WITH THEIR MEDICAL CONDITIONS. THEY ARE SEEKING MEDICAL CARE.

MY SON SEES A SPECIALIST IN NASHVILLE. THEY ARE CHANGING AND EVALUATING HIS MEDICATION. AND MY DAUGHTER-IN-LAW IS ALSO WORKING WITH A PHYSICIAN TO GET SOME HELP AND SOME MEDICATION.

Q. OKAY. AND HAVING THIS CUSTODY AGREEMENT, WILL THAT HELP YOU WITH LEGAL MATTERS, SUCH AS SCHOOL, DOCTORS, THOSE TYPE OF THINGS?

A. IT WILL. AS A MATTER OF FACT, I JUST GOT A CALL TODAY WHERE A PHYSICIAN NEEDS SOME INFORMATION – OR THE SCHOOL NEEDS INFORMATION, AND I DON'T HAVE THE LEGAL ABILITY TO GO GET IT.

AND I NEED TO – OUR – OUR GRANDDAUGHTER IS ENROLLED AT THE BOWLING GREEN CHRISTIAN ACADEMY. AND THE GRANDSON WILL ALSO BE ENROLLED THERE THIS FALL.

AND THEY [9] NEED BIRTH CERTIFICATES, AND THAT SORT OF THING.

AND I REQUESTED IT FROM THE PARENTS, BUT THEY HAVEN'T BEEN ABLE TO PRODUCE IT YET.

Q. OKAY. NOW, AS FAR AS CHILD SUPPORT, YOU'RE NOT ASKING FOR CHILD SUPPORT, ARE YOU?

A. WE ARE NOT ASKING FOR CHILD SUPPORT. WE ARE FINANCIALLY HELPING MY SON AND MY DAUGHTER-IN-LAW AT THIS TIME.

Q. AND YOU HAVE SUFFICIENT INCOME FROM WHICH TO PROVIDE FOR THESE CHILDREN'S NEEDS?

A. WE DO, YOUR HONOR. WE HAVE SUFFICIENT INCOME TO PROVIDE FOR BOTH OF THEIR NEEDS.

MR. MCCracken: I CAN BE GLAD TO GIVE YOU A FLOOR (SIC), WHICH USUALLY STATES IT ABOVE, IF YOUR HONOR WOULD LIKE. WE HAVEN'T FILLED OUT AN AOC-152 AT THIS POINT. BUT I WILL BE GLAD TO DO SO AS FAR AS -

THE COURT: OKAY. I JUST NEED THE INFORMATION REQUIRED IN THE STATUTE UNDER 403.270. AND SO - FOR THE DE FACTO.

Q. OKAY. AND THE – HAVE THE CHILDREN – BOTH CHILDREN LIVE WITH YOU FOR IN EXCESS OF ONE YEAR?

A. YES, MA'AM. THEY HAVE.

Q. HAVE THEY LIVED WITH YOU CONTINUOUSLY IN EXCESS OF ONE YEAR?

A. YES, YOUR HONOR. THEY HAVE.

[10] Q. AND HAS ANYONE – ANY OF THE CHILDREN – YOUR CHILDREN OR ANY OTHER PERSON FILED FOR ANY TYPE OF CUSTODY PROCEEDING RELATED TO THESE CHILDREN IN THE PAST ONE YEAR?

A. NO, YOUR HONOR.

Q. AND HAVE YOU-ALL PROVIDED – OR WHO HAS PROVIDED THE FINANCIAL STABILITY FOR THESE TWO CHILDREN?

A. MY HUSBAND AND I.

Q. IN THE PAST YEAR?

A. SINCE THEIR BIRTH.

Q. OKAY. AND WHO HAS PROVIDED FOR THEIR EMOTIONAL AND PHYSICAL WELL NEEDS?

A. WELL, MY HUSBAND AND I HAVE PROVIDED FOR THAT, YOU KNOW. WE COME TOGETHER. I MEAN, THEY TRY – WE TRY TO INCLUDE THE PARENTS AS MUCH AS WE CAN.

BUT THEY'RE MAINLY WITH MY HUSBAND AND I.

MR. MCCrackEN: ANY OTHER INFORMATION REGARDING –

THE COURT: WHO – WHO HAS BEEN THE PRIMARY CAREGIVERS FOR THE TWO CHILDREN FOR AT LEAST A YEAR?

THE WITNESS: I HAVE BEEN, YOUR HONOR.

THE COURT: OKAY. AND WHO HAS BEEN THE PRIMARY FINANCIAL SUPPORTER FOR THE – THOSE TWO?

THE WITNESS: WELL, I HAVE AS – ALONG WITH MY HUSBAND.

[11] THE COURT: OKAY. AT LEAST A YEAR?

THE WITNESS: YES, MA'AM.

THE COURT: OKAY. AND ARE YOU AWARE OF ANY CUSTODY ACTIONS THAT HAVE BEEN FILED REGARDING THESE CHILDREN OTHER THAN THIS ONE?

THE WITNESS: NO.

THE COURT: OKAY.

THE WITNESS: NO OTHER CUSTODY ACTIONS HAVE BEEN FILED.

THE COURT: AND THEN YOU'RE ALSO ASKING – ARE YOU ASKING TODAY FOR PERMANENT CUSTODY AS WELL AS DE FACTO?

MR. MCCracken: THAT IS CORRECT, YOUR HONOR.

THE COURT: AND THE – AND WHY DO YOU BELIEVE IT'S IN THE BEST INTEREST OF THE CHILDREN FOR THEM TO RESIDE WITH YOU TWO?

THE WITNESS: DUE TO THE MEDICAL CONDITIONS OF BOTH PARENTS, THEY ARE JUST NOT ABLE TO MEET THE NEEDS OF THE CHILDREN.

THE COURT: DO THE PARENTS RESIDE WITH YOU?

THE WITNESS: THEY – THEY DID FOR EIGHT MONTHS. THEY NOW HAVE THEIR OWN HOME.

THE COURT: OKAY.

THE WITNESS: BUT WHEN THE CHILDREN HAVE VISITED THE PARENTS IN THE PAST, WE HAVE HAD TO HAVE A [12] THIRD PARTY ACCOMPANY THEM FOR OVERNIGHTS.

THE COURT: AND THEN HOW DO YOU AND YOUR HUSBAND INTERACT WITH THE CHILDREN? AND – AND HOW ARE THOSE RELATIONSHIPS WITH THE TWO OF YOU?

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THE WITNESS: I THINK IT'S GREAT, YOU KNOW.

THE COURT: AND YOU'RE WILLING AND ABLE TO TAKE THIS ON?

THE WITNESS: YES, MA'AM.

THE COURT: NO MATTER HOW LONG IT LASTS?

THE WITNESS: THAT IS CORRECT.

THE COURT: AND ARE – HOW ARE YOUR AND YOUR HUSBAND'S MENTAL AND PHYSICAL HEALTH?

THE WITNESS: I THINK WE'RE IN GREAT SHAPE. THE NORMAL AGING PROCESS, YOU KNOW, THE FEW ACHES AND SO FORTH THAT GO ALONG WITH GETTING OLDER. BUT WE'RE FINE.

THE COURT: AND THIS AGE CHILDREN, YOU KNOW, IT'S GOING TO PROBABLY REQUIRE A LOT OF ENERGY.

THE WITNESS: THEY KEEP US YOUNG.

THE COURT: OKAY. AND I'M JUST GOING THROUGH THE STATUTE NOW.

MR. MCCracken: THAT'S FINE.

THE COURT: BUT I DO HAVE TO ASK. HAS THERE BEEN ANY DOMESTIC VIOLENCE IN

YOUR HOME WITH EITHER YOU OR YOUR HUSBAND INVOLVED?

THE WITNESS: NO.

[13] THE COURT: OKAY.

THE WITNESS: NO.

THE COURT: AND HAS THERE BEEN ANY TIME DURING THE LAST ONE YEAR THAT THESE CHILDREN HAVE BEEN PRIMARILY CARED FOR BY THEIR PARENTS?

THE WITNESS: NO, YOUR HONOR.

THE COURT: OKAY. AND SO, I AM GOING TO GRANT THE DE FACTO CUSTODY AND STATUS TO YOU AND YOUR HUSBAND AND ALSO PERMANENT CUSTODY AT THIS TIME. AND IT DOES INDICATE THAT THE AGREEMENT'S BEEN FILED WITH THE COURT.

BUT I KNOW THAT THERE ARE FINDINGS REQUIRED AS WELL. SO IF YOU'LL JUST DRAFT THE ORDERS, PLEASE, MR. MCCRACKEN –

MR. MCCRACKEN: OKAY.

THE COURT: – FROM TODAY. AND IT WILL NEED TO BE – SINCE IT IS THE FINAL WITH REGARD TO THAT PETITION, IT WILL NEED TO SAY JUDGEMENT OR DECREE.

MR. MCCRACKEN: I'LL BE GLAD TO DO THAT, YOUR HONOR.

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THE COURT: OKAY. OKAY. THAT CONCLUDES TODAY'S PROCEEDING –

MR. MCCRACKEN: OKAY.

THE COURT: – IN THE NELSON VERSUS SHARP.

MR. MCCRACKEN: AS – JUDGE, AS FAR AS CHILD SUPPORT, DO YOU EVEN WANT ME TO ADDRESS THAT OR –

[14] THE COURT: JUST INDICATE IT AS ZERO.

MR. MCCRACKEN: OKAY. BE GLAD TO.

THE COURT: OKAY.

MR. MCCRACKEN: THANK YOU, JUDGE.

THE WITNESS: THANK YOU.

THE COURT: THANK YOU.

(PROCEEDINGS CONCLUDED.)

[15] CERTIFICATE

I, FELICIA B. THOMAS, CERTIFIED COURT REPORTER, DO HEREBY CERTIFY THAT THE FOREGOING HEARING WAS TRANSCRIBED BY ME FROM DVD FOR THE PURPOSE IN THE CAPTION STATED; AND THAT THE FOREGOING IS A FULL, TRUE AND COMPLETE TRANSCRIPT OF SAID HEARING SO GIVEN TO THE BEST OF MY ABILITY.

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I FURTHER CERTIFY THAT I AM NEITHER
OF COUNSEL, NOR OF KIN TO EITHER OF THE
PARTIES TO THIS ACTION, AND AM IN NO WAY
INTERESTED IN THE OUTCOME OF SAID AC-
TION.

/s/ Felicia B. Thomas

FELICIA B. THOMAS, CCR
NOTARY PUBLIC

**CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

The Constitutions' full faith and credit clause, Article IV section 1, states:

Full faith and Credit shall be given in each State to the public Acts, records, and judicial proceedings of every other State, And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U.S. CONST. art. IV §1

The Parental Kidnapping Prevention Act 28 U.S. Code § 1738A, establishes national standards for the assertion of child custody jurisdiction providing full faith and credit given to child custody determinations as follows:

- (a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.
- (b) As used in this section, the term –
 - (1) “child” means a person under the age of eighteen;

- (2) “contestant” means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;
- (3) “custody determination” means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;
- (4) “home State” means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;
- (5) “modification” and “modify” refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;
- (6) “person acting as a parent” means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;
- (7) “physical custody” means actual possession and control of a child;
- (8) “State” means a State of the United States, the District of Columbia, the Commonwealth of

Puerto Rico, or a territory or possession of the United States; and

(9) “visitation determination” means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if –

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child’s home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B)

(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child’s present or

future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D)

(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if –

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

28 U.S.C. A. § 1738A

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws.”

U.S. CONST. amend. XIV.

The Supremacy Clause found in Article VI, Paragraph 2 of the United States Constitution provides, in pertinent part:

“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”

U.S. CONST. Article VI, Clause 2.

The Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) provides, in pertinent part:

Section 103. Proceedings Governed by other law.
“This [Act] does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.”

UCCJEA § 103

Tennessee Code Annotated (T.C.A.) § 36-1-116(f)(1) Upon the filing of the petition, the court shall have exclusive jurisdiction of all matters pertaining to the child, including the establishment of paternity of a child pursuant to chapter 2, part 3 of this title, except for allegations of delinquency, unruliness or truancy of the child pursuant to title 37; provided, that, unless a party has filed an intervening petition to an existing adoption petition concerning a child who is in the physical custody of the original petitioners, the court shall have no jurisdiction to issue any orders granting custody or guardianship of the child to the petitioners or to the intervening petitioners or granting an adoption of the child to the petitioners or to the intervening petitioners unless the petition affirmatively states, and the court finds in its order, that the petitioners have physical custody of the child at the time of the filing of the petition, entry of the order of guardianship, or entry of the order of adoption, or unless the petitioners otherwise meet the requirements of §36-1-111(d)(6). T.C.A. § 36-1-116(f)(1)

T.C.A. § 36-1-116(h) The filing of the petition shall be deemed the commencement of a custody proceeding for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), compiled in chapter 6, part 2 of this title. T.C.A. § 36-1-116(h)

T.C.A. § 36-6-201 This part may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act.
T.C.A. § 36-6-201

T.C.A. § 36-6-216(a) (a) Except as otherwise provided in § Code Sec. 36-6-219">36-6-219, a court of this state has jurisdiction to make an initial child custody determination only if: (1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six (6) months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state; (2) A court of another state does not have jurisdiction under subdivision (a)(1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under §§ 36-6-221 or 36-6-222, and: (A) The child and the child's parents, or the child and at least one (1) parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and (B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;(3) All courts having jurisdiction under subdivision (a)(1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under §§ 36-6-221 or 36-6-222; or (4) No court of any other state would have jurisdiction under the criteria

specified in subdivision (a)(1), (2), or (3). **(b)** Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state. **(c)** Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination. T.C.A. § 36-6-216(a)

Kentucky Revised Statutes (K.R.S.) 199.470(1). Any person who is eighteen (18) years of age and who is a resident of this state or who has resided in this state for twelve (12) months next before filing may file a petition for leave to adopt a child in the Circuit Court of the county in which the petitioner resides. Ky. Rev. Stat. 199.470(1)

KRS § 403.800. Definitions for KRS 403.800 to 403.880

As used in KRS 403.800 to 403.880:

- (1) “Abandoned” means left without provision for reasonable and necessary care or supervision;
- (2) “Child” means an individual who has not attained eighteen (18) years of age;
- (3) “Child custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes permanent, temporary, initial, and modification orders.

The term does not include an order relating to child support or other monetary obligation of an individual;

(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Article 3;

(5) "Commencement" means the filing of the first pleading in a proceeding;

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination;

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six (6) months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period;

(8) "Initial determination" means the first child custody determination concerning a particular child;

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- (9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under KRS 403.800 to 403.880;
- (10) "Issuing state" means the state in which a child custody determination is made;
- (11) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination;
- (12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity;
- (13) "Person acting as a parent" means a person, other than a parent, who:
 - (a) Has physical custody of the child or has had physical custody for a period of six (6) consecutive months, including any temporary absence, within one (1) year immediately before the commencement of a child custody proceeding; and
 - (b) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state;
- (14) "Physical custody" means the physical care and supervision of a child;
- (15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United

States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(16) “Tribe” means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state; and

(17) “Warrant” means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Ky. Rev. Stat. § 403.800.

K.R.S. § 403.802. Proceedings governed by other law.

KRS 403.800 to 403.880 shall not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

Ky. Rev. Stat. § 403.802

K.R.S. 403.270 Custodial issues – Best interests of child shall determine – Rebuttable presumption that joint custody and equally shared parenting time is in child’s best interests – De facto custodian.

(1)(a) As used in this chapter and KRS 405.020, unless the context requires otherwise, “de facto custodian” means a person who has been shown by

clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.

(b) A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the definition of de facto custodian, the court shall give the person the same standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, 403.822, and 405.020.

(2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. Subject to KRS 403.315, there shall be a presumption, rebuttable by a preponderance of evidence, that joint custody and equally shared parenting time is in the best interest of the child. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian has with the

child and is consistent with ensuring the child's welfare. The court shall consider all relevant factors including:

- (a) The wishes of the child's parent or parents, and any de facto custodian, as to his or her custody;
- (b) The wishes of the child as to his or her custodian, with due consideration given to the influence a parent or de facto custodian may have over the child's wishes;
- (c) The interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child's best interests;
- (d) The motivation of the adults participating in the custody proceeding;
- (e) The child's adjustment and continuing proximity to his or her home, school, and community;
- (f) The mental and physical health of all individuals involved;
- (g) A finding by the court that domestic violence and abuse, as defined in KRS 403.720, has been committed by one (1) of the parties against a child of the parties or against another party. The court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to each party, with due consideration given to efforts made by a party toward the completion of any domestic violence treatment, counseling, or program;

- (h) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;
 - (i) The intent of the parent or parents in placing the child with a de facto custodian;
 - (j) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school; and
 - (k) The likelihood a party will allow the child frequent, meaningful, and continuing contact with the other parent or de facto custodian, except that the court shall not consider this likelihood if there is a finding that the other parent or de facto custodian engaged in domestic violence and abuse, as defined in KRS 403.720, against the party or a child and that a continuing relationship with the other parent will endanger the health or safety of either that party or the child.
- (3) The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.
- (4) If the court grants custody to a de facto custodian, the de facto custodian shall have legal

custody under the laws of the Commonwealth. Ky.
Rev. Stat. 403.270.

KRS 403.340 kids removed in contravention of best interest hearing

Modification of custody decree – Modification based on active duty deployment to revert back on parent or custodian’s return.

- (1) As used in this section, “custody” means sole or joint custody, whether ordered by a court or agreed to by the parties.
- (2) No motion to modify a custody decree shall be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe that:
 - (a) The child’s present environment may endanger seriously his physical, mental, moral, or emotional health; or
 - (b) The custodian appointed under the prior decree has placed the child with a de facto custodian.
- (3) If a court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the court shall not modify a prior custody decree unless after hearing it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best

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interests of the child. When determining if a change has occurred and whether a modification of custody is in the best interests of the child, the court shall consider the following:

- (a) Whether the custodian agrees to the modification;
 - (b) Whether the child has been integrated into the family of the petitioner with consent of the custodian;
 - (c) The factors set forth in KRS 403.270(2) to determine the best interests of the child;
 - (d) Whether the child's present environment endangers seriously his physical, mental, moral, or emotional health;
 - (e) Whether the harm likely to be caused by a change of environment is outweighed by its advantages to him; and
 - (f) Whether the custodian has placed the child with a de facto custodian.
- (4) In determining whether a child's present environment may endanger seriously his physical, mental, moral, or emotional health, the court shall consider all relevant factors, including, but not limited to:
- (a) The interaction and interrelationship of the child with his parent or parents, his de facto custodian, his siblings, and any other person who may significantly affect the child's best interests;
 - (b) The mental and physical health of all individuals involved;

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(c) Repeated or substantial failure, without good cause as specified in KRS 403.240, of either parent to observe visitation, child support, or other provisions of the decree which affect the child, except that modification of custody orders shall not be made solely on the basis of failure to comply with visitation or child support provisions, or on the basis of which parent is more likely to allow visitation or pay child support;

(d) If domestic violence and abuse, as defined in KRS 403.720, is found by the court to exist, the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.

(5) (a) Except as provided in paragraph (b) of this subsection, any court-ordered modification of a child custody decree, based in whole or in part on:

1. The active duty of a parent or a de facto custodian as a regular member of the United States Armed Forces deployed outside the United States; or

2. Any federal active duty of a parent or a de facto custodian as a member of a state National Guard or a Reserve component;

shall be temporary and shall revert back to the previous child custody decree at the end of the deployment outside the United States or the federal active duty, as appropriate.

(b) A parent or de facto custodian identified in paragraph (a) of this subsection may consent to a modification of a child custody decree that continues past the end of the deployment outside the

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United States or the federal active duty, as appropriate.

(6) Subject to KRS 403.315, if the court orders a modification of a child custody decree, there shall be a presumption, rebuttable by a preponderance of evidence, that it is in the best interest of the child for the parents to have joint custody and share equally in parenting time. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian has with the child and is consistent with ensuring the child's welfare.

(7) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

Ky. Rev. Stat. 403.340

KRS 199.470(1) Petition for adoption of child – Parties – Residence requirement – Approval of secretary – Exceptions. (1) Any person who is eighteen (18) years of age and who is a resident of this state or who has resided in this state for twelve (12) months next before filing may file a petition for leave to adopt a child in the Circuit Court of the county in which the petitioner resides. Ky. Rev. Stat. 199.470(1)

Code of Conduct for United States Judges provides, in pertinent part:

Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

A. *Respect for Law.* A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. *Outside Influence.* A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

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The duties of judicial office take precedence over all other activities. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased. The judge should adhere to the following standards:

A. Adjudicative Responsibilities. *Guide to Judiciary Policy, Vol. 2A, Ch. 2 Page 6*

(4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested.

B. Administrative Responsibilities.

(1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel.

(6) A judge should take appropriate action upon receipt of reliable information indicating the likelihood that a judge's conduct contravened this Code, that a judicial employee's conduct

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contravened the Code of Conduct for Judicial Employees, or that a lawyer violated applicable rules of professional conduct.

C. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) acting as a lawyer in the proceeding;

(iii) known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

(e) the judge has served in governmental employment and in that capacity participated as a judge (in a previous judicial position), counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy. Code of Conduct for U.S. Judges (*effective March 12, 2019*)
