

Supreme Court of Kentucky

2021-SC-0110-DE
(2020-CA-0240 & 2020-CA-0744)

BETTY CAITLIN NICOLE SMITH

MOVANT

V. CALLOWAY CIRCUIT COURT
13-D-00044, 13-D-00044-001, & 13-D-00044-002

CHRISTIAN CIRCUIT COURT
20-CI-00165

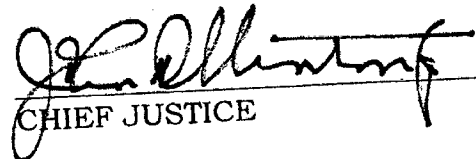
ZACHARY TAYLOR DANIEL

RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is
denied.

ENTERED: August 26, 2021.


CHIEF JUSTICE

Commonwealth of Kentucky
Court of Appeals

NO. 2020-CA-0240-ME

BETTY CAITLIN NICOLE SMITH

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE JAMES G. ADAMS, JUDGE
ACTION NOS. 13-D-00044, 13-D-00044-001 & 13-D-00044-002

ZACHARY TAYLOR DANIEL

APPELLEE

AND

NO. 2020-CA-0744-ME

BETTY CAITLIN NICOLE SMITH

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JASON SHEA FLEMING, JUDGE
ACTION NO. 20-CI-00165

ZACHARY TAYLOR DANIEL

APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: GOODWINE, MAZE, AND MCNEILL, JUDGES.

MAZE, JUDGE: Betty Caitlin Nicole Smith (Smith) appeals from separate orders of the Calloway Family Court and the Christian Family Court denying her relief in her actions against Zachary Taylor Daniel (Daniel). In the Calloway Family Court case, we find that the trial court did not abuse its discretion by declining to impose contempt for Daniel's alleged violations of an expired domestic violence order (DVO). In the Christian Family Court case, we conclude that the trial judge was not obligated to recuse himself from the matter. Hence, we affirm the orders in both cases.

This matter arises from two separate appeals but involves related facts. Smith and Daniel are the Mother and Father, respectively, of M.L.A.S., born in July 2013. In 2014, Daniel filed a paternity/custody action against Smith in the Calloway Family Court. On November 19, 2014, the family court entered an agreed order adjudicating Daniel as the father of the child and granting joint custody with Smith designated as the residential parent.

However, the parties continued to have disputes over visitation and custody. Based upon Smith's allegations of domestic violence by Daniel, the family court entered a DVO restraining Daniel from contact with Smith and

awarding Smith temporary custody of M.L.A.S. The terms of the DVO provided that it would be in effect until November 25, 2018.

Following entry of the DVO, both parties and the child relocated to Florida. In November 2016, Daniel brought an action in the circuit court for Madison County, Florida, seeking dissolution of his marriage to Smith and custody of M.L.A.S. Smith appeared in that action, contesting the jurisdiction of the court and filing a motion in that action seeking to enforce the Kentucky DVO. After finding that it had jurisdiction to modify the Kentucky custody order, the Florida court granted the parties joint custody of the child. However, an appeals court reversed that order, finding that the lower court failed to address how the Kentucky DVO affected the issues relating to shared parental responsibility and parenting time. *Smith v. Daniel*, 246 So. 3d 1279 (Fla. Dist. Ct. App. 2018).

Following remand of the matter to the Florida circuit court, the Kentucky DVO expired. The Florida court again determined that it had jurisdiction to modify the Kentucky order because neither the parents nor the child resided in Kentucky. Smith made additional allegations of domestic violence against her and M.L.A.S. However, the Florida court determined that she failed to substantiate those allegations. Consequently, the court denied Smith's request for a new order of protection. The court also noted ongoing disputes over custody, visitation, and support, primarily precipitated by Smith. Eventually, the court

granted sole custody of the child to Daniel, with Smith receiving supervised visitation.

Daniel moved to Tennessee during the pendency of the case in Florida. After the Florida court granted him sole custody of the child, he and the child resided there permanently. Smith then filed a petition in the Christian Family Court seeking a modification of the original custody order. The court dismissed her petition, noting that Florida had already exercised jurisdiction on custody and the child was residing with Father in Tennessee. The court also took notice that there was a new custody proceeding pending in Tennessee. Smith filed a motion to disqualify the trial judge due to the alleged *ex parte* communication from Daniel's Tennessee counsel. The family court denied the motion.

Separately, on January 26, 2019, Smith filed a motion in the Calloway County case, alleging that Taylor had repeatedly violated the DVO while it was in effect.¹ The family court denied the motion, noting that the DVO had already expired and neither party resided in Kentucky. Smith appeals from both of these orders, and this Court directed that her appeals be heard together.

¹ The DVO involved in this case was filed under Calloway Family Court Case No. 15-D-01922. However, the DVO was issued under an earlier case involving these parties, No. 13-D-00044. Consequently, Smith brought her motion to hold Daniel in contempt under the latter case number, which is the subject of this appeal.

In her appeal from the Calloway Family Court matter, Smith argues that the court had jurisdiction to address alleged violations of the DVO committed while it was in effect. In addition to separate criminal penalties, a court has broad discretion to impose criminal contempt sanctions for violations of a DVO. See *Newsome v. Commonwealth*, 35 S.W.3d 836, 839 (Ky. App. 2001). However, we will not disturb a court's decision regarding contempt absent an abuse of its discretion. *Meyers v. Petrie*, 233 S.W.3d 212, 215 (Ky. App. 2007) (citing *Smith v. City of Loyall*, 702 S.W.2d 838, 839 (Ky. App. 1986)). "The test for abuse of discretion is whether the trial [court's] decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

In this case, the family court noted that the alleged violations of the DVO occurred after both parties left Kentucky. Several of the allegations involve contact that occurred while they were both living in Florida, and at least one while Daniel was living in Tennessee. The family court also had access to records from the Florida proceedings, at which Smith raised these allegations and was denied relief. Smith made no effort to bring the alleged violations of the DVO to the attention of the Calloway Family Court while the DVO was in effect or within a reasonable time thereafter. Consequently, we conclude that the family court did not abuse its discretion by declining to consider these allegations.

In her appeal from the Christian Family Court action, Smith argues that the trial judge should have recused himself due to *ex parte* communications. While Smith's new custody matter was pending, the trial judge was contacted by Daniel's Tennessee counsel, who advised the court that there was another custody matter pending in Maury County, Tennessee. The trial judge advised the parties of this contact and then contacted the Tennessee court to discuss which state should hear the custody matter. The family court ultimately concluded that Kentucky had already lost home state jurisdiction while the Florida case was pending. Since neither the parties nor the child remained in Kentucky, the family court found that it had no basis to exercise further jurisdiction over the custody matter.

Smith contends that the initial contact with Daniel's Tennessee attorney was improper and warranted recusal. However, the burden of proof required for recusal of a judge is an onerous one. *Stopher v. Commonwealth*, 57 S.W.3d 787, 794 (Ky. 2001). There must be a showing of facts "of a character calculated seriously to impair the judge's impartiality and sway his judgment." *Id.* (quoting *Foster v. Commonwealth*, 348 S.W.2d 759, 760 (Ky. 1961)). See also KRS² 26A.015(2)(e). The trial judge is "in the best position to determine whether questions raised regarding his impartiality were reasonable." *Jacobs v.*

² Kentucky Revised Statutes.

Commonwealth, 947 S.W.2d 416, 417 (Ky. App. 1997). We find no basis to conclude that the trial judge's impartiality in this matter was improperly swayed.

Generally, *ex parte* communications between judges and attorneys are prohibited unless "expressly authorized by law[.]" *Penticuff v. Miller*, 503 S.W.3d 198, 209 (Ky. App. 2016) (quoting SCR³ 4.300 Canon 3(B)(7)(e)). But here, Smith fails to show that any contact was unauthorized. Daniel's Tennessee counsel, who is not licensed in Kentucky and was not representing Daniel in this matter, merely advised the court of the pending custody matter in Maury County, Tennessee. The family court informed both Smith and Daniel of the contact.

Furthermore, KRS 403.832(2) authorized the family court to contact the Tennessee court to determine which court was the more appropriate forum. Smith presents no authority to support her assertion that the trial judge's initial contact with the Tennessee attorney affected his partiality in any way. And since Smith does not challenge the family court's conclusion that it lacked jurisdiction to modify custody, she cannot show that this initial contact improperly swayed the outcome of the case. Under these circumstances, the trial judge had no obligation to recuse himself in this matter.

³ Kentucky Supreme Court Rules.

Accordingly, we affirm the orders of the Calloway Family Court and the Christian Family Court in the above-styled matters.

ALL CONCUR.

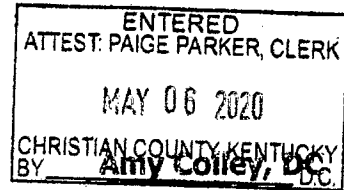
BRIEFS FOR APPELLANT:

Betty Caitlin Nicole Smith, *pro se*
Hopkinsville, Kentucky

BRIEF FOR APPELLEE:

Zachary Taylor Daniel, *pro se*
Columbia, Tennessee

COMMONWEALTH OF KENTUCKY
CHRISTIAN CIRCUIT COURT
FAMILY COURT DIVISION
CIVIL ACTION 20-CI-00165



BETTY CAITLIN NICOLE SMITH,

PETITIONER,

**VS. FINAL ORDER DENYING ALL PENDING MOTIONS FOR
LACK OF SUBJECT MATTER JURISDICTION AND CANCELLING ALL HEARINGS**

ZACHARY TAYLOR DANIEL,

RESPONDENT.

**THE COURT BEING FULLY AND SUFFICIENTLY ADVISED, HEREBY
ENTERS THE FOLLOWING FINAL ORDER:**

1. The Petitioner filed a Motion for Ex Parte Order on March 5, 2020. This Motion was denied on March 9, 2020. The Court incorporates the rationale in the denial herein as part of its Final Order finding that it does not have UCCJEA jurisdiction over this case. The "Order Denying Ex Parte Motion" is attached as Exhibit A and incorporated herein by reference.
2. On March 2, 2020, the Petitioner filed a Petition for Order which was set for a hearing by Notice of March 4, 2020. The Petition was renoticed by the Court on April 21, 2020, due to Court restrictions from the Supreme Court of Kentucky due to the COVID-19 Pandemic.
3. On March 31, 2020, the Christian Circuit Clerk's Office received a letter from Hon. Mark A. Free notifying the Court that a case was pending in Maury County, Tennessee. The undersigned Judge did not see this letter until the Petitioner filed a Motion to Disqualify and a Motion to prohibit Mr. Free from getting any information about this case. These

Motions were denied by a separate order which was entered on this same date. The Court incorporates that Order Denying those Motions as if set forth herein in their entirety.

4. Once the Court was aware of a “simultaneous” proceeding, the Court had the obligation under KRS 403.832 to contact the Maury County, Tennessee, Chancery Court Judge. The Court notes that a “simultaneous” proceeding is different than what the Petitioner claims occurred in Florida. By the time the Florida case occurred, there was no pending cases in Kentucky. All motions and judgments had been entered even though there was an active Domestic Violence Order at some parts of the Florida case. The Kentucky case would have been closed at the entry of the DVO. A “simultaneous” proceeding is not defined in the UCCJEA, therefore, the Court must use its plain meaning as defined by the Webster’s Dictionary. Webster’s defines “simultaneous” as “occurring, operating or done at the same time.” The Tennessee case is still an open case with temporary orders entered. Therefore, it is a “simultaneous” case under the UCCJEA.
5. Whenever there is a “simultaneous” case, the UCCJEA requires the Courts to communicate. KRS 403.832. The Petitioner has filed 3-4 inches of documents in this Court doing a great job of outlining her argument on why Kentucky has jurisdiction. The Court has examined her documents before contacting the Judge in Tennessee. The Court finds under KRS 403.816(2) that the Petitioner was given the opportunity to present facts and legal arguments before the jurisdiction decision was made. The Court also finds that this Final Order is the official record of the communication between the Courts as agreed by the Judges in the two jurisdictions. KRS 403.816(4) and (5).
6. On April 29, 2020, the undersigned Judge contacted Judge Christopher Sockwell of the Maury County, Tennessee, Chancery Court. The Court wants to thank Judge Sockwell

for the courtesy that he showed in this case. The Court believes that the type of productive communication that occurred between the Courts is the exact type of contact and communication that the framers of the UCCJEA intended on Judges to have to settle jurisdictional disputes without requiring unnecessary expense or vexatious litigation by the parties.

7. The two Judges discussed this case and were in complete agreement that Tennessee has UCCJEA jurisdiction over this matter. In fact, Judge Sockwell went through his file which he described as extremely large taking up multiple folders because he had been transferred the case from Florida. Judge Sockwell then sent several documents to the undersigned Judge. Everyone of these documents and their significance will be discussed below and all the documents attached as part of the record. The documents clearly show that Tennessee has jurisdiction over this matter.
8. The first document which is attached as Exhibit B and incorporated herein by reference is the Florida Order of July 18, 2019, in which Florida explains why it had jurisdiction and Kentucky no longer has jurisdiction. It is VERY similar to this Court's Order Denying the Ex Parte Order that is attached as Exhibit A. The Court finds that Florida clearly went through the UCCJEA process and determined that Florida was the home state of the child at the time of its case. The Court agrees with its rationale and assessment. Once Florida assumed proper UCCJEA jurisdiction, Kentucky lost continuing and exclusive jurisdiction over the matter. See 403.824 and Exhibit A.
9. The next document that was sent is attached as Exhibit C and incorporated herein by reference. It is an Order in Florida entered on August 1, 2019, which denied the mother's emergency request to issue a pick up order of the child.

10. The next document is attached as Exhibit D and incorporated herein by reference. It is a Petition filed by the mother in Maury County, Tennessee's Juvenile Court for "Custody or Guardianship." This document shows that as of September 20, 2019, the mother is an outward and overt sign that she believed that Tennessee had jurisdiction over the child otherwise she would have not filed a custody petition in Tennessee. The Tennessee Court initially granted an Emergency Order of Temporary Custody on September 20, 2019. See Exhibit E, attached hereto and incorporated herein by reference. The Maury County Juvenile Court held a hearing on September 23, 2019, and on September 27, 2019, denied the Petition on the merits and stated that if either party wished to file a modification of the Florida order, then they would need to do so in the Tennessee Chancery Court. See Exhibit F, attached hereto and incorporated herein by reference.
11. On September 27, 2019, the mother filed a Petition in the Chancery Court of Maury County, Tennessee. This document shows that as of September 27, 2019, the mother is an outward and overt sign that she believed that Tennessee had jurisdiction over the child otherwise she would have not filed a custody petition in Tennessee. See Exhibit G, attached hereto and incorporated herein by reference. A hearing was held on October 11, 2019, and Judge Sockwell denied the Emergency Petition. See Exhibit H, attached hereto and incorporated herein by reference. As a side note, on October 30, 2020, the Maury County Juvenile Court formally transferred its case to the Maury County Chancery Court. See Exhibit I, attached hereto and incorporated herein by reference.
12. Sometime thereafter, the mother did the same thing she did in this Court. When the mother did not get a decision she agreed with, she made a Motion for the Judge to Recuse. This Motion was denied on November 22, 2019. In the Order denying, the Court

noted that Florida had transferred the case to Tennessee and that Tennessee had accepted the proper transfer of the case under the UCCJEA. In addition, the Court noted that it had a separate hearing on the case on October 28, 2019. See Exhibit J, attached hereto and incorporated herein by reference.

13. On November 27, 2019, the Maury County Chancery Court entered an "Order" in which it found that the mother and father had now begun ongoing cross-petitions to modify custody (See Exhibit K, attached hereto and incorporated herein by reference). The Court found that it had been transferred the case from Florida and accepted the transfer. Paragraph 4 stated that the mother "repeated her desire to be heard on the petition for change of custody." The Court held a hearing on November 22, 2019, on the recusal motion which was denied and on the request by the father for the mother to have supervised visitation. The Court granted the mother supervised visitation and also set forth some discovery and home studies of both parties. The Court concluded that "Upon receipt of said information and after both parties have had an adequate opportunity to take discovery, this matter will be set for a full hearing and a final determination regarding any custody issues or issues related thereto at that time. All other matters are reserved." This "Order" clearly shows that Tennessee had assumed the transferred jurisdiction from Florida and that the "Order" was a temporary order so there is still a simultaneous proceeding in Tennessee. In addition, the Tennessee Court actually granted the mother visitation in that order and there was relief granted on the Petition that she initiated in the proper forum of Tennessee, albeit, probably not the relief she wanted (i.e. supervised visitation). The Court notes that another order relieving counsel and transferring the Juvenile Case to the Maury County Chancery Court was entered

December 13, 2020. The Court just notes this because it was in the materials sent by Judge Sockwell. See Exhibit L, attached hereto and incorporated herein by reference.

14. The mother then appealed the recusal order to the Supreme Court of Tennessee which was denied on procedural grounds on November 26, 2019. See Exhibit M, attached hereto and incorporated herein by reference. The mother then properly appealed. The Maury County Chancery Court continued the proceedings at the request of the mother pending the appeal. See Exhibit N, attached hereto and incorporated herein by reference.
15. On December 13, 2019, the Court of Appeals of Tennessee affirmed the Maury County Chancery Court and remanded the case back to the Maury Chancery Court for further proceedings. This Court finds it VERY significant and both Judges in its UCCJEA phone call found it significant that on page 6 of the Court of Appeals of Tennessee Opinion that it found “We also note that the Mother was aware of the fact that the record would be transferred. She filed a motion in the Florida court stating that she did not object to Florida’s loss of jurisdiction and **that Tennessee should exercise jurisdiction over the custody matter.**” [Emphasis added]. The Court of Appeals of Tennessee specifically found that Tennessee had jurisdiction over the matter under the UCCJEA. See Exhibit O, attached hereto and incorporated herein by reference.
16. It was only after the mother did not get her way in Tennessee that she then filed a Petition in the Calloway Family Court on February 24, 2020, that was later transferred to the Christian Family Court. This is one of the worst cases of forum shopping that this Court has seen. The mother has litigated this matter fully in Florida (including to the appeals court), filed a Petition in Tennessee which is still pending but filed an interim appeal, and when she lost the interim appeal attempted to refile a case in Kentucky. The mother has a

proper place to litigate this matter and the Kentucky and Tennessee Courts agree (and evidently the Florida Court as well since it transferred the case) and that place is Tennessee.

17. Specifically, the Petitioner claims that Florida did not have jurisdiction to modify the Orders of the Calloway Family Court because Kentucky never released jurisdiction over the minor child M.L.A.S. However, under the UCCJEA, Kentucky did not have to release jurisdiction if the Petitioner, Respondent and child did not reside in Kentucky. Under KRS 403.824(1)(b), a court of another state can determine that neither the child, the child's parents, nor a person exercising custodial control resides in the state where the order was issued (i.e. Kentucky) at the time of the Motion/Petition to modify in the other state (i.e. Florida).
18. While the mother has now moved back to Kentucky, at the time of the Petition/Motion in Florida, it appears from the filings and the findings of the Florida Court that the mother and child resided in Florida and the father resided in Tennessee. Since this was true, Florida would have had jurisdiction under the UCCJEA to modify the Kentucky Agreed Order of November 19, 2014.
19. Once Florida modified that order, then the Florida Order becomes the controlling order and jurisdiction remains in Florida until the child and both parents no longer reside in Florida which appears to be the case at this time. The Florida Order remains in effect until modified by the Court of UCCJEA jurisdiction. The child is now residing in Tennessee primarily; therefore, the place of proper UCCJEA jurisdiction is Tennessee. See KRS 403.824 (1)(b). Thus, the mother needs to follow through with her action in Tennessee if she wishes to modify the Florida Order.

20. The mother completely skips over the “OR” between KRS 403.824 (1)(a) and (1)(b).

While KRS 403.824(1)(a) requires the Court of Kentucky to make the determination in some circumstances, (1)(b) which is what would have been applicable at the time of the Florida case since neither party nor the child resided in Kentucky allowed Florida to make this determination. The Court has reviewed the Florida ruling on this matter and finds it consistent with the UCCJEA and adopts its rationale as if set forth herein in its entirety. Florida had the right to determine whether the child was residing in Florida or it was a temporary absence from Kentucky and Florida determined that the mother was residing in Florida. The Petitioner could have appealed that finding in Florida. This Court has no right to disturb it. Under KRS 403.816(1), the Florida court could have communicated with Kentucky, but there was no requirement to do so. This case appears to have been fully litigated in Florida over a period of several years and the mother cannot now come back to Kentucky and ask Kentucky to just void everything that was properly litigated in Florida. This Court has to give Full Faith and Credit to the Florida Order. Moreover, the case was then transferred without objection of the mother to Tennessee and the mother filed an action in Tennessee. The Court of Appeals of Tennessee found that Tennessee had jurisdiction. It was only after she lost the interim appeal that she filed the case in Kentucky. The purpose of the Full Faith and Credit Clause is to keep parties from this very type of forum shopping.

21. The Petitioner also claims that Florida entered a new custody order not a modification.

Family law does not get into the specifics of how a Motion or Order is titled, it is the end request and result that matters. Florida’s actions were a modification even though it went through and modified the entire Kentucky Order. *See Pennington v. Marcum*, 266

S.W.3d 759 (Ky., 2008) (the Court must look at the relief being sought; not the style of the Motion).

22. Finally, the mother keeps bringing up the Domestic Violence Order in Calloway County.

That order expired on November 25, 2018, and has no legal bearing at this time.

23. For the foregoing reasons, the Court does not believe that the November 19, 2014,

Agreed Order of the Calloway Family Court is the current valid court order. The Florida

Orders as modified by the Tennessee temporary order is what is in effect at this time.

24. The mother's forum of relief is in Tennessee and both the Tennessee and Kentucky

Judges are in complete agreement of that.

WHEREFORE, after consultation with the Tennessee Court under the simultaneous

proceedings portions of the UCCJEA, the Court finds that Tennessee has proper

UCCJEA jurisdiction over the minor child in this matter, M.L.A.S. Therefore, all

pending motions and petitions in this Court are hereby denied for lack of subject matter

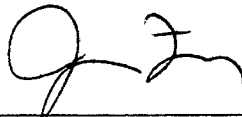
jurisdiction under the UCCJEA and all hearings are hereby cancelled. Any further relief

sought by the mother needs to be filed in the pending Tennessee action.

THERE BEING NO JUST CAUSE FOR DELAY,

THIS IS A FINAL AND APPEALABLE DECISION.

SO ORDERED, this 6 day of May, 2020.



JASON SHEA FLEMING
CHRISTIAN CIRCUIT JUDGE
FAMILY COURT DIVISION

Cc: Petitioner: Betty Caitlin Nicole Smith, 130 Old Major Lane, Hopkinsville, KY 42240

Respondent: Zachary Taylor, 2914 Carters Creek Station Road, Columbia, Tn. 38401

Hon. Christopher Sockwell, Judge, Maury Chancery Court, 41 Public Square, Columbia,
TN 38401 (Triple Certified Copy)

COMMONWEALTH OF KENTUCKY
CALLOWAY FAMILY COURT
CASE NO. 13-D-00044-002

THIS 1-9 ENTERED 20-20
CALLOWAY CIRCUIT/DISTRICT
BY SP D.C.

BETTY CAITLIN SMITH

PETITIONER

VS.

ZACHARY TAYLOR DANIEL

RESPONDENT

ORDER

This matter was brought before the court pursuant to the Petitioner's Motion for Charges to be Brought. The Domestic Violence Order in this case expired November 25, 2018. The Petitioner's Motion is denied. Neither party currently resides in the Commonwealth of Kentucky.

ORDERED this the 9 day of January, 2020.

James M Adams
JUDGE, FAMILY COURT

CLERK'S CERTIFICATE

I hereby certify that a copy of the foregoing Order has been mailed first class mail postage paid to the following:

- ☒ Petitioner/Attorney for Petitioner
☒ Respondent/Attorney for Respondent

Linda Blum
Clerk, Calloway Family Court

1 1

IN THE KENTUCKY SUPREME COURT

Case No.

KY Court of Appeals No. 2020-CA-0240 and 2020-CA-0744

Circuit Court: 20-CI-00165 and 13-D-00044, 13-D-00044-001, 13-D-00044-002

BETTY CAITLIN NICOLE SMITH

Movant

V.

ZACHARY TAYLOR DANIEL

HON. JUDGE JASON SHEA FLEMING

HON JUDGE JAMES G. ADAMS

Respondents

Motion for Discretionary Review

COMES NOW the Movant by Pro Se and files this Motion for Discretionary Review. In Support of this Motion Movant states as follows:

1. This Motion for Discretionary Review is for the Order entered by the Kentucky Court of Appeals on March 5th 2021 which merged two separate cases into one. No supersedeas bond, or bail on appeal, has been executed, this is a matter on child custody and a domestic violence order.

2. Two different cases on two different issues from two different counties were merged by the Kentucky Court of Appeals on March 5th 2021. These two cases should not have been merged and heard together. One appeal was over the matter of a domestic violence order being violated multiple times. The Other appeal was over a Judges actions in a case that never had a hearing.
3. The Court of Appeals in their order made many mistakes of the facts of the cases that went against the evidence and facts. Including but not limited to statements such as, Stating the movant contested Jurisdiction of the Florida court and that the Florida Court found it had Jurisdiction. In fact, the Florida court refused to hear the matter of jurisdiction. The Kentucky Appeals court also states, "Following the remand of the matter to the Florida circuit court, the Kentucky DVO expired. The Florida court again determined that it had jurisdiction to modify the Kentucky order," The DVO did not expire until well after the Florida court's actions, it was still very much in effect. The Florida court would never acknowledge the existence of the Kentucky custody order, and disregarded the Kentucky Domestic Violence Order.

The Kentucky Appeals Court states, "Eventually, the court granted sole custody of the child to Daniel, with Smith receiving supervised visitation." That was not the Florida Court, as the Appeals court states. The Kentucky Appeals Court also makes the statement, "Daniel moved to Tennessee during the pendency of the case in Florida." Daniel was never living in Florida, and was the whole time of the case living in Tennessee. The Kentucky Appeals Court states, "Smith then filed a petition in the Christian Family Court seeking a modification of the

these allegations and was denied relief.” Again, Daniel was not living in Florida. Also, beyond attachments by the movant to the motion to Calloway over the violations of the DVO, Calloway had no other access to the Florida records and proceedings. Farther, the reason the motion was filed was because Kentucky would do nothing because Smith was in Florida at the time of the violations and Daniel in Tennessee, which Florida would not enforce a Kentucky Domestic Violence Order, nor would Tennessee. It again was not a motion for charges to be brought, but for a hearing over if charges should be brought against Daniel for the violations.

The Kentucky Appeals Court states, “In her appeal from the Christian Family Court action, Smith argues that the trial judge should have recused himself due to ex parte communications. While Smith’s new custody matter was pending, the trial judge advised the parties of this contact and then contacted the Tennessee court to discuss which state should hear the custody matter. The family court ultimately concluded that Kentucky had already lost home state jurisdiction while the Florida case was pending. Since neither the parties nor the child remained in Kentucky, the family court found that it had no basis to exercise further jurisdiction over the custody matter.

Smith contends that the initial contact with Daniel’s Tennessee attorney was improper and warranted recusal. However, the burden of proof required for recusal of a judge is an onerous one,” And the Kentucky Appeals Court states, “But, here Smith fails to show that any contact was unauthorized. Daniel’s Tennessee counsel, who is not licensed in Kentucky and was not representing

Daniel in this matter, merely advised the court of the pending custody matter in Maury County, Tennessee. The family court informed both Smith and Daniel of the contact.” And also “Smith presents no authority to support her assertion that the trial judge’s initial contact with the Tennessee attorney affected his partiality in any way. And since Smith does not challenge the family court’s conclusion that it lacked jurisdiction to modify custody, she cannot show that this initial contact improperly swayed the outcome of the case. Under these circumstances the trial judge had no obligation to recuse himself in this matter.”

Smith had no idea this contact between the Judge and Daniel’s attorney until the day she filed the First motion to recuse the judge. Two it is the order denying the second motion to recuse which the appeal was over. Which brings up the fact that Smith had no idea of the contact, and the fact that the judge contact the Tennessee court without Smith knowing, and allowed Smith no chance to present a case against the jurisdiction. And Smith has argued against Tennessee’s jurisdiction in her appeal. Along with the long list of things the Christian County Judge did, after being called out for the contact with Daniels’s attorney, which Smith was unaware of. Also it was sent to the Judge that Daniel would via video for a hearing from said Attorney’s office, sent by the attorney to the Judge. Which Smith, again was made aware of, far after the fact.

4. Some of the laws, statutes, and case laws brought up in the appeals are, Kentucky Statutes 403.816, KRS 26A.015 (a) and (e) Nichols v. Commonwealth, 839 S.W.2d 263, 265 (Ky.1992), SCR 4.300 Kentucky Code of Judicial Conduct Cannon 3, Jeanie Holsclaw v. Ivy Hall Nursing Home, Inc., E2016-02178-COA-

T10B-CV (Tenn. Ct. App. 2016), *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D. Conn. 1984), *UNITED STATES v. CASTLEMAN* No. 12–1371 March 26th 2014, and The Inter-American Commission on Human Rights REPORT No. 80/11 CASE 12.626 MERITS JESSICA LENAHAH (GONZALES) ET AL. *UNITED STATES* (*) July 21, 2011.

5. The fact that the Kentucky Appeals court merged two very separate issues, which should not have been merged, has one was a judge refused to recuse himself after taking improper actions, in a case where the movant was requesting a hearing to get a true statement, that Florida had not contacted Kentucky, that the Kentucky record was still in Kentucky, that the original custody order in Kentucky had not been changed, as reflected by the record, and that the domestic violence order had not been changed and expired. The other case, over violations of a domestic violence order, which no one would enforce, ever. These were two very different cases.
6. The Kentucky appeals court makes it clear they did not read the briefs in the cases, nor look at the appendixes, as they did not get any facts of the cases correct, nor what the issues on appeal were in the cases as is proven by the facts above. Which leaves the movant to ask the question, of what was even the point of writing the briefs or providing the appendixes, if they were just going to be ignored.
7. The movant does not have a petition for rehearing or motion for reconsideration pending in the Court of Appeals.

Wherefore the Movant respectfully requests this Honorable Court grant this Motion for Discretionary Review of the Kentucky Appeals Court's Order dated March 5th 2021.

Betty Smith

March 26th 2021

130 Old Major Lane

Hopkinsville, KY 42240

270-874-2059

Certificate of Service

I, Certify a true copy of this Motion was mailed to the Appellee on March 26th 2021 to Zachary Daniel 2914 Carters Creek Station Rd Columbia, TN 38401.

I, Certify a true copy of this Motion was mailed to Hon. Judge Jason Fleming at 100 Justice Way, Hopkinsville, KY 42240 on March 26th 2021.

I, Certify a true copy of this Motion was mailed to Hon. Judge James Adams at 100 Justice Way, Hopkinsville, KY 42240 on March 26th 2021.

I, Certify a true copy of this Motion was mailed to the Kentucky Court of Appeals at Court of Appeals Clerk 360 Democrat Drive, Frankfort, KY 40601 on March 26th 2021.