

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CU 0308

KELVIN PAUL WELLS

VERSUS

GENEVA BANKS

Judgment Rendered: June 11, 2010

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Appealed from the Family Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 135,511

Honorable A.J. Kling, Judge

* * * * *

Kelvin Wells
Baton Rouge, LA

George E. Downing, Jr.
Keelus Miles
Baton Rouge, LA

In Proper Person
Plaintiff – Appellant

Attorneys for
Defendant – Appellee
Geneva Banks

* * * * *

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

Hughes, Jr., concurs.

WELCH, J.

Kelvin Wells appeals a judgment granting him supervised visitation with his minor children. Finding no error in the judgment rendered by the trial court, we affirm in compliance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B).

Kelvin Wells and Geneva Banks were involved in a relationship that resulted in the birth of two children. In April 2000, in accordance with a court approved consent agreement, a protective order pursuant to La. R.S. 46:2131, *et seq.*, was granted in favor of Geneva Banks. The protective order granted Geneva Banks temporary custody of the minor children and granted Kelvin Wells visitation with the minor children every other weekend from Friday at 5:00 p.m. until Monday at 8:00 a.m. The protective order was subsequently modified in July 2000, with regard to the place where the minor children were to be exchanged to facilitate Kelvin Wells' visitation.

On April 12, 2001, a judgment was signed ordering psychological evaluations of the parties for the purpose of making a recommendation for custody and visitation of the children between the parties and modifying the visitation granted to Kelvin Wells to provide for visitation every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m. The judgment also provided that at the time of the exchange of the minor children, the appropriate representative of the Office of Community Services could examine the children for any alleged injuries that may have occurred during the time period of the visitation by the respective parties.

On April 30, 2001, the trial court instituted supervised visitation for Kelvin Wells based on the recommendation of Dr. Fain, who apparently was chosen to perform the psychological evaluation of the parties. While there is no judgment in the record to this effect, the minutes of the trial court stated that

Kelvin Wells would be granted supervised visitation for one hour per week as soon as he submitted and the trial court approved a supervisor for such visitation. The record does not reflect that the name of a proposed supervisor was ever submitted to the court for approval. Kelvin Wells did, however, file a series of pleadings requesting that he be awarded custody of the minor children and seeking to have Geneva Banks held in contempt of court for her failure to allow him visitation.

After a trial, on July 30, 2009, the trial court signed a judgment granting Kelvin Wells supervised visitation with the minor children every Saturday (through the end of October 2009) from 10:00 a.m. until noon on the same date. The supervised visitation was to occur at his mother's home. Additionally, the judgment provided that in October 2009, the court would set a hearing date to review this supervised visitation. From this judgment, Kelvin Wells has appealed. On appeal, Kelvin Wells essentially claims that the trial court erred in not granting him custody of the minor children and in awarding him supervised visitation.

Every child custody case must be viewed within its own particular set of facts. **Connelly v. Connelly**, 94-0527, p. 4 (La. App. 1st Cir. 10/7/94), 644 So.2d 789, 793. In this regard, the trial court is in the best position to ascertain the best interest of the child given each unique set of circumstances. Accordingly, a trial court's determination of custody is entitled to great weight and will not be reversed on appeal unless an abuse of discretion is clearly shown. **Thompson v. Thompson**, 532 So.2d 101 (La. 1988) (*per curiam*); **Bercegeay v. Bercegeay**, 96-0516, p. 5 (La. App. 1st Cir. 2/14/97), 689 So.2d 674, 676.

Kelvin Wells' main contention is that Geneva Banks has abused the children, has allowed the children to be in the presence of a person that allegedly

sexually abused her, and has violated the previous court orders with regard to visitation. Therefore, he claims that he should be awarded sole custody of the children. In support of his position, he points to a number of complaints or police reports that he filed with the East Baton Rouge Parish Sheriff's office and/or Child Protective Services claiming that Geneva Banks was abusing the children. However, we find the record before us devoid of any evidence supporting his claims of such abuse by Geneva Banks. In fact, the record before us discloses that Dr. Fain performed a psychological evaluation of the parties at the request of Child Protective Services. Although Dr. Fain's recommendation is not in the record, apparently, his evaluation of the parties led to the trial court's decision, in April 2001, to institute supervised visitation for Kelvin Wells—not Geneva Banks. Furthermore, we also note that the record discloses that as a result of filing some of the police reports alleging abuse by Geneva Banks, Kelvin Wells was charged with three counts of violating La. R.S. 14:126.1—false swearing for purpose of violating public health or safety.

The testimony at trial established that Kelvin Wells had not visited with his children since 2001. Although Kelvin Wells claimed that he did not exercise any visitation because Geneva Banks refused to allow the visitation, according to the trial court's previous order, it was Kelvin Wells' responsibility to find a supervisor for his visitation and submit the name of the proposed supervisor to the court for its approval, yet he failed to do so. In reaching its decision that Kelvin Wells should be granted supervised visitation, the trial court noted that it had been many years since Kelvin Wells had been with his children, and rather than thrusting the children into a relationship for which they may not be prepared, determined that Kelvin Wells' visitation with the children should be reinstituted gradually in a way that would be beneficial and in the best interest of the children. Hence, the trial court instituted supervised visitation for Kelvin

Wells, with the matter to be “reviewed” by the court several months thereafter.¹

Following a thorough review of the record and relevant jurisprudence, we cannot say that the trial court abused its discretion in its determination that Kelvin Wells should be granted supervised visitation. Accordingly, the July 30, 2009 judgment of the trial court is hereby affirmed. All costs of this appeal are assessed to the appellant, Kelvin Wells.

AFFIRMED.

¹ Although we are mindful that a trial court’s judgment setting a matter for “review” *ex proprio motu* may be erroneous, see **R.J. v. M.J.**, 2003-2676, pp. 14-15 (La. App. 1st Cir. 5/14/04), 880 So.2d 20, 28-29, Kelvin Wells has not assigned error to that portion of the judgment, and Geneva Banks has not answered the appeal complaining about that provision. Accordingly, and given the unique circumstances of this case, we decline to address that issue herein.