

RENDERED: APRIL 10, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000883-MR
AND
NO. 2007-CA-001271-MR

JONATHAN D. COWAN, PH.D.

APPELLANT

APPEALS FROM OLDHAM CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 06-CI-00539

JUDI BLISS-LOVE AND
GINA CALVERT

APPELLEES

AND

NO. 2007-CA-000955-MR

GINA K. CALVERT

CROSS-APPELLANT

CROSS-APPEAL FROM OLDHAM CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 06-CI-00539

JONATHAN D. COWAN

CROSS-APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MOORE, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: Jonathan D. Cowan, Ph.D., *pro se*, brings Appeal No. 2007-CA-000883-MR from a March 20, 2007, order of the Oldham Circuit Court, Family Court Division (Oldham Family Court), denying his motion to set aside or quash a garnishment taken by Gina K. Calvert, *Guardian Ad Litem*, and denying Cowan's motion to set aside an order of the Jefferson Circuit Court, Family Division (Jefferson Family Court), ordering him to pay Calvert's fees. Gina K. Calvert, *Guardian Ad Litem (Guardian Ad Litem)*, brings Cross-Appeal No. 2007-CA-000955-MR from the same order. Cowan, *pro se*, also brings Appeal No. 2007-CA-001271-MR from a June 1, 2007, order of the Oldham Family Court, amending its March 20, 2007, order.¹ We affirm.

Cowan and Judi Bliss-Love (formerly Judith L. Cowan) were married August 29, 1987, and divorced by Decree of Dissolution of Marriage on September 9, 1993, by the Jefferson Circuit Court. (Action No. 92-CI-07591). One child, Ian, was born of the marriage on January 22, 1989.² The parties initially agreed to share joint custody of Ian with neither party being designated primary residential

¹ By order entered July 18, 2006, in the Jefferson Circuit Court, Family Court Division (Jefferson Family Court), Action No. 97-FC-01927 was transferred to the Oldham Circuit Court, Family Court Division (Action No. 06-CI-00539).

² The parties' child, Ian, is "a child with special needs and behavioral problems including mild mental retardation and an autistic spectrum disorder." Jonathan D. Cowan, Ph.D.'s Brief at 1.

custodian. This arrangement apparently continued until about 1997, when Bliss-Love decided to move from Kentucky to Arizona. A custody dispute ensued, but the parties eventually entered into a Custody and Support Agreement in October 1998, (Action No. 97-FC-01927).³ Therein, the parties agreed to share joint custody of Ian, Cowan was designated primary residential custodian, and Bliss-Love was granted visitation and agreed to pay child support. Under this agreement, Bliss-Love was granted seven weeks visitation during the summer and two weeks visitation during Christmas.

The issues currently on appeal arise from incidents that began in 2004. During the 2004 summer visitation, Bliss-Love experienced difficulty dealing with Ian's behavior. Bliss-Love apparently voiced her concern to Cowan and refused to accept further visitation with Ian. On May 19, 2005, Cowan filed a motion seeking to compel Bliss-Love to exercise her 2005 summer visitation with Ian. By order entered May 31, 2005, the Jefferson Family Court ordered the parties to mediate the visitation dispute. On that same date, Cowan placed Ian on an airplane to Arizona despite Bliss-Love's admonishment to the contrary. Upon Ian's arrival, Bliss-Love placed Ian in the custody of Arizona child protective services. On June 8, 2005, Bliss-Love filed a motion to suspend her visitation with Ian. In an attached affidavit, Bliss-Love averred that Ian's behavior was troubling and specifically alleged that Ian: (1) was very angry, shook his fists, and hit the wall and floor, (2) continued to repeat words/phrases and engaged in inappropriate

³ The Jefferson Family Court incorporated the parties' October 1998, Custody and Support Agreement into a November 4, 1998, order.

laughter for long periods of time each day, (3) used profanity and told dirty jokes, (4) almost caused Bliss-Love to be evicted from her home, (5) nearly caused Bliss-Love to lose her job, (6) was dismissed from a day camp program due to alleged inappropriate touching of another child, and (7) nearly caused Bliss-Love to have a nervous breakdown.

Bliss-Love's motion to suspend visitation was set for a hearing on June 14, 2005. Following the hearing, the Jefferson Family Court entered an order stating the parties reached a settlement upon "the majority of the issues in mediation and requested that the Court remand this hearing and schedule a status conference." The Jefferson Family Court scheduled a status conference for September 9, 2005. The family court also incorporated the parties' mediation agreement into a June 17, 2005, order. The mediation agreement basically provided: (1) Bliss-Love would visit with Ian for at least two hours while he was in Arizona, (2) Bliss-Love would arrange and pay for Ian's return flight to Louisville on June 30, 2005, (3) Bliss-Love would pay the cost of Ian's care for the remainder of her scheduled visitation, and (4) the parties would communicate regarding Christmas visitation.

By motion filed July 14, 2005, Cowan sought to have Bliss-Love held in contempt for failure to abide by the mediation agreement and specifically sought to compel Bliss-Love to exercise her visitation with Ian. The Jefferson Family Court subsequently entered an order on September 12, 2005, denying the motion for contempt. Relevant to this appeal, the court stated as follows:

The remaining grounds contained in [Cowan's] affidavit supporting his Contempt motion pertain to what the Court considers a difficult area. [Cowan] alleges that [Bliss-Love] more or less refuses to take an active part in their son's life. While the Court has not heard both sides of that issue, even if the allegations as stated are factual, the Court does not know how to force someone to be an involved parent. The Court, to date, has never held anyone in Contempt for failing to exercise parenting time with a child; however, [Cowan] may choose to go forward on that issue. If he chooses to remand his motion, his counsel is to notify the Court. . . .

Subsequently, Cowan filed another motion seeking to hold Bliss-Love in contempt for her failure to exercise visitation with Ian. Cowan also sought an order requiring Bliss-Love to visit with Ian during Christmas 2005, as was contemplated by the mediation agreement. In an order entered December 7, 2005, the Jefferson Family Court declined to find Bliss-Love in contempt for refusing to visit or communicate with Ian and specifically held:

[T]he Court does not know how to force [Bliss-Love] to be involved in her son's life. The Court does not diminish the apparent frustration and disappointment that [Cowan] is experiencing. Nor, does the Court doubt that [Cowan] has Ian's best interest at heart. However, his requests, for the most part, are beyond the province of the Court.

By order entered February 15, 2006, the Jefferson Family Court appointed Gina K. Calvert as "Guardian Ad Litem for the minor child in lieu of referral to mediation." Then, on June 6, 2006, the Jefferson Family Court entered an order addressing sundry motions filed by Cowan and, relevant to this appeal, specifically ordered the following:

IT IS HEREBY ORDERED that [Cowan's] Motion to Alter the Court's Previous Ruling is **Denied**.

IT IS FURTHER ORDERED that [Cowan's] Motion to force [Bliss-Love] to exercise her summer vacation is **Denied**.

.....

IT IS FURTHER ORDERED that Ms. Calvert shall remain the Guardian [Ad] Litem in this case and each party shall pay one-half of her fees. Furthermore, in the future, the parties shall pay Ms. Calvert's fees within thirty (30) days of presentment. Failure by either party to make timely payment may result in finding of Contempt against the offending party.

IT IS FURTHER ORDERED that [Cowan's] Motion to Fine [Bliss-Love] for Failure to Obey Court Orders is **Denied**.

Cowan again filed numerous motions in the Jefferson Family Court which were addressed by order entered July 18, 2006. Therein, the Jefferson Family Court: (1) granted the motions of both parties attorneys to withdraw as counsel, (2) granted Calvert's motion to withdraw, (3) granted Calvert's motion for fees, (4) denied Cowan's "Motion to Alter, Amend, Vacate, or Clarify the Court's Order entered June 6, 2006," (5) granted Cowan's motion to "transfer this case to Oldham County due to *forum non conveniens*," and (6) ordered that Cowan "is not to phone, or otherwise contact, Family Court Division Two personnel regarding this case."

Immediately following transfer of the case to Oldham Family Court Cowan again filed numerous motions. Among these motions, Cowan once again

sought to compel Bliss-Love's visitation with Ian. By order entered March 20, 2007, the Oldham Family Court specifically ordered:

First, Mr. Cowan's motion before this Court to set aside the Jefferson Family Court Order for him to pay Guardian Ad Litem fees is denied.

Next, this Court's concerns, since accepting the transfer of this case, has been and will remain to be analysis as to what is in the best interest of Mr. Cowan's son Ian while he remained under the jurisdiction of this Court, and to review any post divorce issues which arise between the parties that are subject to this Court's review. This Court will not review prior Orders of the Jefferson Family Court, except as they affect current actions of the parties.

Mr. Cowan has been zealous in his attempt to force his former spouse to remain involved in his child's life. The Jefferson Family Court recognized that it had no authority to force [Bliss-Love] to take such actions. That view has been reemphasized by this Court. It was clear from Judge Haynie's Order of July, 2006 that Mr. Cowan had worn out his welcome in Jefferson Family Court through his numerous unsupported motions and allegations. A review of this entire case history reveals there is little that remains to be done for Mr. Cowan, though it is clear that he remains unsatisfied. Spurious further litigation will not be tolerated and will be met with either contempt or Rule 11 Sanctions.

Cowan timely tendered a notice of appeal on April 17, 2007, from the March 20, 2007, order of the Oldham Circuit Court. The notice was tendered with the \$125 filing fee but did not include the \$25 court facilities fee. The notice of appeal was subsequently filed on April 30, 2007, (Appeal No. 2007-CA-000883-MR) when Cowan tendered the court facilities fee. Gina A. Calvert, *Guardian Ad Litem*, filed a cross-appeal (Cross-Appeal No. 2007-CA-000955-MR) from the

same March 20, 2007, order. Thereupon, the Court of Appeals ordered Cowan to show cause why Appeal No. 2007-CA-000883-MR should not be dismissed as untimely filed. By order entered August 14, 2007, this Court determined that sufficient cause had been shown and determined that the appeal was timely filed.

After filing the notice of appeal in Appeal No. 2007-CA-000883-MR, Cowan continued to file motions in the Oldham Family Court. In response, by order entered June 1, 2007, the circuit court disposed of the motions and specifically held:

First, this Court reemphasizes and reaffirms that under the provisions of KRS 403.213(3), Judy Bliss-Love is responsible for child support payments as previously ordered by the Jefferson Family Court until June, 2008, which is the end of the school year during which Ian Cowan will turn 19. Ms. Bliss-Love's responsibility for child support would only end prior to June, 2008 if Ian were to die or drop out of high school. The Court further reaffirms, as held by the Jefferson Family Court in its prior orders, that there is no statutory authority to require the petitioner to visit with Ian Cowan, who is now over the age of 18.

.....

Reviewing all other motions currently before the Court, this Court determines that Mr. Cowan is entitled to no further relief under Kentucky Statutes

Cowan then filed a notice of appeal (Appeal No. 2007-CA-001271-MR) from the June 1, 2007, order.

Both appeals and the cross-appeal are now being considered together by this Court.

APPEAL NOS. 2007-CA-000883-MR AND 2007-CA-001271-MR

We initially observe that Cowan filed a *pro se* appellant brief asserting some thirty allegations of error in Appeal Nos. 2007-CA-000883-MR and 2007-CA-001271-MR. Only two of the thirty allegations of error contain any citation to legal authority. And, many of the specific allegations of error focus upon Cowan's repeated attempts to compel Bliss-Love to exercise visitation with Ian. The Jefferson Family Court denied Cowan's various motions to compel visitation and to hold Bliss-Love in contempt for failure to exercise visitation. The Jefferson Family Court reasoned that it was "beyond the province of the Court" to force Bliss-Love to be involved in Ian's life. Upon transfer of the case to Oldham Family Court, the Oldham Family Court echoed the Jefferson Family Court and specifically held:

Mr. Cowan has been zealous in his attempt to force his former spouse to remain involved in his child's life. The Jefferson Family Court recognized that it has no authority to force [Bliss-Love] to take such actions. That view has been reemphasized by this Court.

Considering that Cowan cites this Court to no contrary authority, we cannot say that the Oldham Family Court erred by refusing to compel Bliss-Love to exercise visitation with Ian. Most cases reviewed by this Court regarding visitation issues usually look to visitation being denied or frustrated. Upon review of the applicable statutes and case law, we can find no authority that requires mandatory visitation - although we cannot rule out that result in all circumstances. However, a parent who refuses to visit with or support the child could be subject to losing joint

custody, and in extreme situations, could have his or her parental rights terminated. Given the facts of this case, including Ian's age (19), we are not presented with those issues and decline to go down that road.

As to Cowan's numerous remaining allegations of error, we view all to be meritless. In particular, we believe the appointment and compensation of the *guardian ad litem* for Ian was proper, as well as the appointment and compensation of the mediator. Moreover, we perceive no error in the court ordered reimbursement of medical expenses to Cowan. After a careful review of the record, we cite approvingly the following admonishment to Cowan by the Oldham Family Court:

It was clear from Judge Haynie's Order of July, 2006 that Mr. Cowan had worn out his welcome in Jefferson Family Court through his numerous unsupported motions and allegations. A review of this entire case history reveals there is little that remains to be done for Mr. Cowan, though it is clear that he remains unsatisfied. Spurious further litigation will not be tolerated and will be met with either contempt or Rule 11 Sanctions.

Accordingly, we affirm the Oldham Family Court orders of March 20, 2007, and June 1, 2007.

CROSS-APPEAL NO. 2007-CA-000955-MR

Calvert argues that the Oldham Family Court erred by denying her motions for Kentucky Rules of Civil Procedure (CR) 11 sanctions against Cowan and to hold Cowan in contempt. In the motion for sanctions pursuant to CR 11, Calvert sought sanctions against Cowan for allegedly signing and filing an

affidavit containing false affirmations of fact. And, in the motion for contempt, Calvert sought to hold Cowan in contempt for his failure to comply with a July 18, 2006, order awarding attorney fees to Calvert.

When reviewing a circuit court's denial of a motion for CR 11 sanctions or a motion for contempt, our inquiry is limited to determining whether the circuit court abused its discretion. *Clark Equipment Co. Inc. v. Bowman*, 762 S.W.2d 417 (Ky.App. 1988); *Meyers v. Petrie*, 233 S.W.3d 212 (Ky.App. 2007).

In its order denying Calvert's motions for CR 11 sanctions and for contempt, the Oldham Family court reasoned:

Certainly, a part of Mr. Cowan's difficulties in this matter has been that he entered this Court not represented by counsel. To try to assist Mr. Cowan, this Court appointed counsel in his behalf. However, Mr. Cowan did not fully cooperate with appointed counsel and requested that appointed counsel be released from the appointment. This Court declines to hold Mr. Cowan in contempt for failure to fully follow and perform Judge Haynie's Orders of July 18, 2006. Being a non-attorney, Mr. Cowan [may] have had a rational belief as to whether or not Judge Haynie's rulings were final and appealable. The Court is willing to give Mr. Cowan the benefit of the doubt regarding the Guardian Ad Litem's contempt motion.

The Court also considered the motion for sanctions filed on behalf of the former Guardian Ad Litem against Mr. Cowan. For the same reasons as the Court's denial of contempt in this matter, the Court will deny the motion for Rule 11 sanctions. . . .

Based upon the above ratiocination, we cannot conclude that the Oldham Family Court abused its discretion by denying the above motions. And, we are unable to

conclude that the Oldham Family Court committed reversible error by denying the motions without holding a hearing. Indeed, Calvert failed to cite any legal authority supporting such argument. As such, we conclude that the Oldham Family Court did not abuse its discretion by denying Calvert's motion for CR 11 sanctions against Cowan or motion to hold Cowan in contempt.

For the foregoing reasons, the orders of the Oldham Circuit Court, Family Court Division, are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT/
CROSS- APPELLEE:

Jonathan D. Cowan, *Pro Se*
Goshen, Kentucky

BRIEF FOR APPELLEE JUDI
BLISS-LOVE:

Judi Bliss-Love, *Pro Se*
Cornville, Arizona

BRIEF FOR APPELLEE/CROSS-
APPELLANT GINA K. CALVERT:

I. Joel Frockt
Louisville, Kentucky