

IN THE SUPERIOR COURT OF MORGAN COUNTY
STATE OF GEORGIA

TYLER PERRY,

PLAINTIFF

v.

KAITLYN V. JENKINS,

DEFENDANT

CIVIL ACTION FILE NUMBER: 18-CA-030

FINAL HEARING

(OPENING STATEMENTS AND CLOSING ARGUMENTS ONLY)

BEFORE THE HONORABLE WILLIAM A. PRIOR, JR., CHIEF JUDGE
JUDGE, SUPERIOR COURTS
OCTOBER 29, 2018

APPEARANCES OF COUNSEL:

For the Plaintiff:

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Athens, GA 30604

For the Defendant:

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* * * * *

JEANNETTE V. CATHEY
OFFICIAL COURT REPORTER
OCMULGEE JUDICIAL CIRCUIT
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P R O C E E D I N G S

THE COURT: Call for a hearing Civil Action File Number 18-CA-030, Tyler Perry versus Kaitlyn V. Jenkins, Ms. Morris for the Plaintiff Movant and Mr. Evans for the Defendant.

Ready to proceed, Ms. Morris?

MS. MORRIS: Yes, sir.

THE COURT: Ready to proceed, Mr. Evans?

MR. EVANS: Yes, Your Honor.

THE COURT: All right. What are we -- do you want to make an opening statement, Ms. Morris, and tell me kind of what we're here for?

MS. MORRIS: Yes, sir. Yes, sir.

If you don't mind, first I would like to deal with the fact that we did not attend the Temporary Hearing in May -- on May 9th. The case went forward with the Temporary and we were not present. That was because we never received notice. We did not know about that. I was on leave of court. I didn't have any reason to check the Peach Court docket to know that there was a hearing, so I appreciate the Court not dismissing the case at that point and I appreciate Mr. Evans assuring the Court that that was not my usual mode of operation.

THE COURT: I'm sure not. I'm sorry that happened. Was I the Judge?

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MR. EVANS: You were, Judge.

THE COURT: Okay. Go ahead.

MS. MORRIS: We are here today to decide issues of custody, visitation, and, if necessary, child support. At the Temporary Hearing you found that Mr. Perry was the legal father and it was in the child's best interest for him to have legal rights to the child. Mr. Perry now requests primary physical custody with liberal visitation for the mother. He believes that this is in the child's best interest because he has been a part of the child's life from the beginning.

THE COURT: He has what, ma'am?

MS. MORRIS: He has been part of the child's life from the beginning in 2015, living with the child at least every other weekend until September, 2017. He has a loving bond with the child, as does his wife. He has tried to remain a part of the child's life constantly asking for more time with Carson. He has a house big enough for Carson to have his own room. He has a job which can support his family, a wife which can support -- provide support and assistance in the care and then extended family who is also there to help support him in the care of Carson. He has the capacity to provide structure and stability, as well as to help Carson with his age appropriate life skills, such as potty training,

1 feeding himself, dressing, and learning to take care of
2 himself as he grows up. He is dedicated to providing
3 age appropriate opportunities for socialization and to
4 help him prepare for school. He is willing and able to
5 facilitate and encourage the mother's relationship with
6 the child, even in the face of her standing in the way of
7 him having more time with Carson. He understands that
8 children need both parents and, in fact, a whole village
9 to take care of them and help them grow to be successful
10 adults. Mr. Perry wants more time with his children and
11 to do -- with his child and to do what's best for him and
12 the evidence will show that he is -- it's in the child's
13 best interest for him to have primary physical custody.

14 THE COURT: Is this the Final Hearing or the
15 Temporary?

16 MR. EVANS: It is, Judge. It's the Final.

17 THE COURT: The Final, all right.

18 Thank you, ma'am.

19 Do you want to make an opening statement, Mr. Evans?

20 MR. EVANS: Sure, Judge.

21 Judge, to give you a little background, obviously I
22 represent Kaitlyn Jenkins in this case. She and Mr. Perry
23 were in a relationship that ended about a year and a half
24 to two years ago. The parties were obviously never
25 married. Their relationship resulted in the birth of a

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child, a son, Carson, who is now three years old.

We are here today because Mr. Perry is seeking primary physical custody of his three year old son despite the fact that the child has lived with my client his entire life, both when the parties were in the relationship together and after the parties were no longer in a relationship. A chronology of the relevant events in this case tells a pretty clear story. A child support order was put in place in Walton County on or around December 12th of 2017. It should be noted that Ms. Jenkins did not pursue child support. It's my understanding that was pursued by the State. In any event child support was established on December 12th, 2017. He was ordered to pay \$445.00 per month beginning February 1, 2018. The petition in this case, him seeking more time or custody with the child, was verified on January 18th, two weeks before his first child support payment was due. So I think the evidence is going to show that it's very clear that this petition was filed in response to the child support order. Mr. Perry filed a Petition for Legitimation and my client counter-claimed admitting paternity, but asking that the Court award her with primary physical custody of the minor child and appropriate visitation time for Mr. Perry. A review of the petition in this case would show the following rationale for the drastic change in this

1 child's life that they are seeking. One, that Mr. Perry
2 is employed. That he has stable housing, transportation,
3 and has a support network. Those are the four items that
4 are identified in the petition. Now against Ms. Jenkins,
5 they say she is employed part-time. Since then she is
6 no longer employed. She recently had another child, but
7 she also lives with her parents and her grandmother.
8 Those are the two reasons why they say this child needs
9 to be wrenched from her and given to the father. So,
10 Judge, and I'm not sure if there is going to be any new
11 facts asserted here today in an attempt to support a
12 custody change, but what I've just described is what the
13 petition describes. And so anything that comes out today
14 that was not in the petition, was clearly not important
15 enough for the Court -- for the other party to put in the
16 petition, or for them to take any action prior to today's
17 date.

18 Now I do want to touch on what she has mentioned
19 about the hearing on May 9th. As the Court is well aware,
20 all this stuff is through Peach Court. Service is through
21 Peach Court, that's how all this is done now. So I can't
22 explain why or why -- why Ms. Morris did or did not
23 receive notice of that hearing, but the reality is -- and
24 I'm not bringing it up because she wasn't here -- I'm
25 bringing it up for the fact that in her opening she was

1 saying that my client was trying to keep the child from
2 the father. Well, what happened at that hearing was that
3 even though she wasn't present -- and she was right, we
4 could have asked that the case be dismissed -- we didn't.
5 What did we ask the Court to do? We asked the Court to
6 legitimate the child and we asked the Court to give him
7 every other weekend visitation from 9:00 a.m. to 5:00 p.m.
8 which is what you did. So we had an opportunity, if we
9 wanted to keep this child away from him, we could have
10 just asked the Court to dismiss the case. We never did
11 that. We said, "No, let's legitimate him. Let's make
12 sure that he has rights, and let's also make sure we have
13 a very clear schedule as to when he's supposed to see
14 this child." So at the end of the case, Judge, I think
15 you are going to -- we are going to ask that my client
16 be given primary physical custody. We are going to be
17 asking that he get visitation. I think the same schedule
18 that's been ordered is what's been -- is, I think, what
19 we should continue doing. Saturdays and Sundays, 9:00
20 a.m. to 5:00 p.m., every other weekend --

21 THE COURT: Is he getting both Saturday and Sunday?

22 MR. EVANS: Yes, but not overnight. Just 9:00 a.m.
23 to 5:00 p.m. every other weekend Saturday and Sunday.
24 And in child support, I believe my client -- my client has
25 had another child and that's a qualifying child under the

1 child support law. So we would ask that that be taken
2 into consideration. And I'm not entirely sure under the
3 State's worksheet whether they took into consideration any
4 health insurance that he needed to pay, because I don't
5 know if they knew or he knew at the time. So that's
6 something -- if he is, in fact, paying health insurance
7 related to the child, we need to make sure we take care
8 of that as well.

9 In addition I will be asking for attorney's fees
10 and expenses at the close of this case. It is our
11 position that the facts of this case do not justify a
12 trial and actually preclude the need for a trial. I feel
13 like as though my client has been forced to have this
14 trial forced upon her and she should not have to pay her
15 fees and expenses and at the end of the case I will be
16 asking and providing more rationale on that. That's it,
17 Judge.

18 THE COURT: So nobody is asking for a jury trial,
19 and this is the Final Hearing. Do you agree, Ms. Morris?

20 MS. MORRIS: Yes, sir.

21 THE COURT: Do you agree, Mr. Evans?

22 MR. EVANS: Yes, Judge.

23 THE COURT: Call your first witness, please, ma'am...
24 (Whereupon, this concludes the opening statements of
25 Ms. Morris and Mr. Evans made in this case.)

1 (Whereupon, the closing arguments in this case were
2 transcribed as follows:)

3THE COURT: All right. That gets us down to
4 argument. There is no jury present. I have listened
5 attentively. I know what the issues are. I know what
6 each party wants. I'll be glad to entertain brief
7 argument.

8 Ms. Morris, you're the Movant. You have opening
9 and concluding.

10 MS. MORRIS: Well, Your Honor, Mr. Perry has been in
11 this child's life the whole time. He has the resources
12 to take care of this child. Whether she was obligated to
13 give him visitation with the child legally or not, it was
14 in the child's best interest for him to have visitation
15 with his father, who he had had ample visitation before
16 Ms. Jenkins noticed that he had a new girlfriend, and that
17 was the reason that she withheld the type of visitation
18 with him that she had granted before. Ms. Jenkins doesn't
19 have any income, doesn't have the wherewithal to take care
20 of the child. The father has a job. He has a wife. He
21 has an extended family. The child has a room of his own.
22 At three years old they should start to be socializing
23 with other children and in a more structured environment
24 to get ready for school. So the idea that he wants to put
25 him into a preschool or a daycare is actually in the

1 child's best interest to expand his horizons. Yes, it's
2 nice to have, you know, things the old fashioned way
3 where the child is always with the parents, but there
4 were still opportunities to socialize granted to children
5 in that situation. Children have been going to preschool
6 forever. But beyond that, this child -- this mother is
7 not supporting the child. Her family is supporting the
8 child. Her boyfriend is supporting the child, but she is
9 not contributing to the support of the child. My client
10 can contribute to the support of the child, can take care
11 of the child, has a wife to support him in caring for the
12 child however he needs. He has been involved from the
13 beginning and he wants to continue to be involved on an
14 equal basis with the mother, and the law provides for
15 that. The law provides that no discrimination between
16 mother and father should happen if you have fit parents.
17 Now the testimony today is that both parents are generally
18 fit. There have been incidents of domestic violence of
19 the mother toward the father. That was back when they
20 were living together. They are no longer living together
21 so I don't anticipate any future domestic violence between
22 them, but that's there nonetheless. Mr. Perry obviously
23 has the way -- the means, the way, the knowledge, the
24 energy to take care of this child and he wants to do that
25 as a father would, and he has tried to do that from the

1 time he was born. And but for Ms. Jenkins standing in
2 the way, he would be doing it today still fifty/fifty
3 like they were doing before. So we ask that you grant
4 him primary physical custody, or in the very least shared
5 custody so that he would be able to care for the child
6 fifty per cent of the time. Thank you.

7 THE COURT: Thank you, Ms. Morris.

8 Mr. Evans, do you want to make an argument?

9 MR. EVANS: Yes, Judge.

10 Your Honor, the evidence that we have heard today is
11 that the child is doing well. The child is intelligent,
12 well-adjusted, well-behaved. He's happy. The child has
13 lived with my client his entire life. My client has cared
14 for the child his entire life. And I don't discount
15 Mr. Perry or his family's impact on the child. I'm sure
16 he loves them, but the fact that the child is doing so
17 well is in large part due to my client, because the child
18 is with my client the vast majority of the time. And so
19 if we take this case and we apply the factors in §19-9-3
20 to this case, it's clearly in the best interest of the
21 child to have my client continue to be the primary
22 physical custodian of the child. She always has been.
23 There is clearly love bonds, strong emotional ties between
24 her and the child. She has demonstrated that she has the
25 capacity and the disposition to give the child love and

1 affection. There's no one more familiar with the child's
2 needs than her. And she has provided, despite the
3 argument of co-counsel -- of opposing counsel, she has
4 provided food, clothing, care, day-to-day needs, and other
5 necessary basic care with the child -- for the child with
6 or without child support. And she did work. She was
7 working part-time prior to her having a second baby. So
8 the fact that she was -- she did have the wherewithal to
9 go out and work -- and I'm sure she is technically on
10 maternity leave right now -- so I think she will at some
11 point probably go back to work, because the child -- the
12 baby that she just had, it's so recent. So if you apply
13 all of those factors -- and there's seventeen, so I'm not
14 going to go through all of them -- but if you apply those
15 factors, they all lead you to the same conclusion, that
16 my client should be the primary physical custodian in this
17 case. It doesn't make any sense to award him primary
18 physical custody and then him -- have him spend forty to
19 forty-eight hours working away from the child when the
20 child could be with his mother, who he has always been
21 with. It just -- that does not seem to make any sense to
22 me and I don't think it would make any sense to the Court
23 either.

24 So for all of those reasons we would ask that the
25 Court enter as a Final Order in this case the Temporary

1 Order that is already entered, and that is that my client
2 be the primary physical custodian. That she have all
3 decision making authority. Obviously she would have an
4 obligation to, in good faith, to discuss any sort of
5 changes in the child's life with Mr. Perry, but ultimately
6 she would be the tie breaker. We would also ask that the
7 visitation as it currently is is Saturday from 9:00 a.m.
8 to 5:00 p.m. and Sunday from 9:00 a.m. to 5:00 p.m. every
9 other weekend, we ask that to continue and that child
10 support be established to his current income, which is
11 \$2,773.00. My client should have income imputed to her
12 at forty hours a week, 4.35 weeks per month at minimum
13 wage. That he be given credit for his health insurance
14 payment, which, I think, is \$130.00 a month, and that she
15 be given credit for the qualifying child that resides in
16 her house. So I would ask that child support be computed
17 using all of those figures. And as it relates to
18 attorney's fees, Judge, what we have heard today -- we
19 have heard that -- from even the Petitioner's side in this
20 case, that my client is a good mother. She has no mental
21 issues. She has -- you know, the child is well-behaved.
22 The child is, you know, happy. The fact that we are here
23 having a trial in a case trying to wrench that child from
24 that situation is completely inappropriate. It's
25 unreasonable and for that reason, it's certainly not in

1 the child's best interest, but I think that that would
2 justify an award of fees here. First, he has much greater
3 opportunity and capacity to pay for it. He's been saying
4 it the whole day. That he has -- he has all the money.
5 That he can provide for the child better than my client
6 could. Well, then he can pay for my fees too. And the
7 reality is our circuit has a standard visitation order.
8 It's put on notice to everyone. Everyone knows that it
9 exists and it does not include split visitation and since
10 there is not any sort of rational basis to give him
11 primary, the only other argument to have is to ask for
12 split, which our circuit just generally does not do. And
13 so they are asking for two things that they were never
14 going to get in this court. And so for that reason, I
15 think I should be awarded fees. And, you know, I know
16 ultimately that's up to the Court, but that's my case,
17 Judge. Thank you.

18 THE COURT: Thank you.

19 Do you want the last word, Ms. Morris?

20 MS. MORRIS: Your Honor, I don't practice in this
21 circuit, so I'm not -- I don't know what happens in this
22 circuit, but I know that legally primary physical custody
23 can go to my client, and I know that legally shared
24 custody is available, regardless of the practices of this
25 Court. So I don't think it is frivolous to ask for what

1 my client wants. You know, as far as the standard
2 visitation order, I understand that that's the standard
3 order, but the Judge has great discretion in making
4 amendments to that and providing for what's in the best
5 interest of the child. So I do not believe that we have
6 asked for anything unreasonable at all. My client is
7 willing to accept less than primary physical custody.
8 He just wants to be part of his child's life. He wants
9 to be a father. He wants to be more than just a weekend
10 dad and that's what he has tried to be from the beginning.
11 And as far as, yes, he does have the wherewithal to take
12 care of this child and she does not, and I think that
13 should have some importance. Yes, he works. Yes, the
14 child would go to daycare some time, but he also has a
15 wife who can care for the child at home. They can make
16 arrangements as a team, as they've been acting as a team.
17 So, you know, I don't think him having to work should be
18 held against him. And we just ask for you to consider
19 all of the options.

20 THE COURT: Thank you, Ms. Morris. And you are
21 right. I mean, from time to time we certainly deviate
22 -- or often deviate from the standard visitation...
23 (Whereupon, this concludes the closing arguments made
24 by Ms. Morris and Mr. Evans in this case.)
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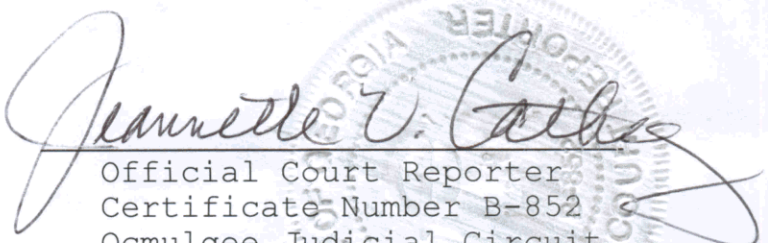
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GEORGIA, MORGAN COUNTY:

I, JEANNETTE V. CATHEY, Official Court Reporter,
Certificate Number B-852, Ocmulgee Judicial Circuit, do
hereby CERTIFY that the foregoing pages, numbered 2 through
16, do contain a true, complete, and correct transcript of
the evidence, motions, colloquies, objections, and rulings
of the Court in the matter as stated in the caption.

I FURTHER CERTIFY that I bear no statutorily
prohibitive relationship to any of the parties in this case,
that I am not of counsel and have no personal or financial
interest in the pending events or the outcome of this matter.

This, the 7th day of January, 2019.


Official Court Reporter
Certificate Number B-852
Ocmulgee Judicial Circuit

