

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

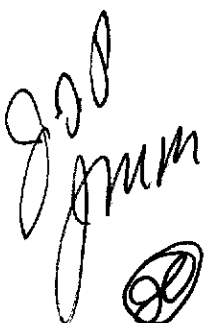
NO. 2008 CU 1628

DANA LOVETT HUMPHREYS

VERSUS

CLAY RANDALL HUMPHREYS

Judgment rendered December 23, 2008.



JOHN N. SAMAHA
BATON ROUGE, LA

DEBORAH P. GIBBS
BATON ROUGE, LA

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Appealed from the
Family Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. F161,114
Honorable Luke Lavernge, Judge

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ATTORNEY FOR
PLAINTIFF-APPELLEE
DANA LOVETT HUMPHREYS

ATTORNEY FOR
DEFENDANT-APPELLANT
CLAY RANDALL HUMPHREYS

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BEFORE: PETTIGREW, McDONALD, AND HUGHES, JJ.

PETTIGREW, J.

Dana Lovett Humphreys appeals from a judgment awarding custody jointly to her and her former husband, Clay Randall Humphreys, and designating Clay Randall Humphreys as the primary domiciliary parent of the couple's minor child. The parties were further ordered to submit a plan for the implementation of joint custody. For the reasons that follow we affirm.

The record reflects that Dana Lovett Humphreys and Clay Randall Humphreys were married on February 14, 2004. During the existence of the marriage, one child was born, namely, Danica V. Humphreys, on June 30, 2005. Dana Humphreys filed a petition for divorce on February 13, 2007, requesting sole custody of the minor child, or in the alternative, designation as the domiciliary parent pursuant to a plan of joint custody. Clay Humphreys reconvened with a reciprocal demand for sole custody, or in the alternative, that he be designated as the domiciliary parent in a joint custody arrangement.

The initial rule to determine provisional custody of the minor child was scheduled to be heard on March 13, 2007. On the day of the hearing, counsel for Ms. Humphreys moved to withdraw and filed for a continuance. The family court granted both motions and imposed an interim order granting the parties shared custody and designating Ms. Humphreys as the provisional domiciliary parent. As the minor child had previously been in the custody of Ms. Humphreys, the court directed that Mr. Humphreys commence his visitation immediately following the hearing. The custody rule was rescheduled for April 24, 2007, to allow Ms. Humphreys sufficient time to retain counsel.

Later that day, the family court was notified by a sheriff's deputy that Ms. Humphreys had made an allegation of sexual abuse against Mr. Humphreys concerning the minor child. Out of an abundance of caution, the family court ordered that the child be removed from Mr. Humphreys' home and, pursuant to its own motion, fixed an emergency hearing on the matter for two days later. Following a hearing on March 15, 2007, wherein lengthy testimony was put forth by both parties, the family court determined that there was insufficient evidence to conclude that Mr. Humphreys had sexually abused his minor child. The family court also recalled and vacated its earlier

March 13, 2007 judgment, which granted joint custody designating Ms. Humphreys as the provisional domiciliary parent, and rendered a new interim judgment granting joint custody to both parents without designation of a domiciliary parent. The family court further ordered both parties to submit to mental health evaluations, and returned the minor child to the custody of Mr. Humphreys, directing him to take his daughter to Our Lady of the Lake hospital for evaluation by a forensic pediatrician.

Ms. Humphreys thereafter retained new counsel who moved for child support and interim spousal support. Prior to the September 6, 2007 trial, both parties filed contempt motions against the other. Pursuant to an agreement by counsel for the parties, this matter was set for a one-day trial on the issue of permanent custody of the minor child. When the time allotted for trial proved to be insufficient, the family court granted additional time and continued the trial until September 19, 2007. At the end of the second day of trial, Ms. Humphreys attempted to introduce testimony from a forensic accountant to rebut testimony of Mr. Humphreys regarding his income. The family court then recessed, reserving the financial issues related to child support for another date and took the custody issue under advisement. While this matter was under advisement, Ms. Humphreys moved to reopen the case to present the testimony of additional witnesses she was unable to call. This motion was subsequently denied by the family court.

After taking the issue of custody under advisement on September 19, 2007, the family court issued written reasons awarding the custody of the minor child jointly to the parties. The family court also designated Mr. Humphreys as the domiciliary parent, and directed the parties to submit a plan for the implementation of joint custody.

It is from this judgment that Ms. Humphreys has appealed, assigning the following specifications of error:

1. The family court erred when it terminated the presentation of additional evidence in Ms. Humphreys' case-in-chief in connection with the trial on the merits on the issue of custody; and
2. The family court erred when it denied Ms. Humphreys' post-trial motion to reopen the case for presentation of this additional evidence.

On appeal, Ms. Humphreys claims the family court's refusal to hear her additional witnesses deprived her of the opportunity to present witnesses critical to her custody case, thereby violating her due process rights pursuant to both the United States and Louisiana Constitutions. Pursuant to La. Const. Art. 1, § 22, "[a]ll courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay." This grant of constitutional authority is tempered by the court's "power to require that the proceedings . . . be conducted . . . in an orderly and expeditious manner and to control the proceedings at trial, so that justice is done." La. Civ. Code art. 1631. As our bretheren on the Second Circuit noted in **Goodwin v. Goodwin**, the due process clauses of the Louisiana Constitution and the Fourteenth Amendment of the United States Constitution guarantee litigants a right to a fair hearing. Nonetheless, "due process" does not mean litigants are entitled to an unlimited amount of the court's time. **Goodwin v. Goodwin**, 618 So.2d 579, 583 (La. App. 2 Cir.), writ denied, 623 So.2d 1340 (La.1993).

The Second Circuit in **Goodwin** further noted that a litigant generally should have the right to present all evidence that he or she possesses with regard to a contested issue at trial if the evidence is relevant, admissible and not cumulative. This right is limited by La. C. E. art. 403, regarding evidence where the probative value is substantially outweighed by undue delay and waste of time, and by the power granted to trial judges in La. Code Civ. P. art. 1631 to ensure that relevant, admissible, noncumulative evidence is presented in such a way that time will not be unnecessarily wasted. **Goodwin**, 618 So.2d at 583.

The record in this case discloses that in the two days of trial, Ms. Humphreys had sufficient opportunity to call numerous witnesses, and certainly had ample time to make a proffer of any evidence available to her at the time of trial. This she failed to do. Based upon our review of the record and the family court's written reasons for judgment, it is evident the family court had great familiarity with this case, and we cannot say that had the excluded evidence been heard, a different result would have been reached.

For the above and foregoing reasons, we affirm the judgment of the family court and assess all costs against plaintiff-appellant, Dana Lovett Humphreys. We issue this memorandum opinion in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.1B.

AFFIRMED.