NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CU 1401

LORI STEVENS FRANKS

VERSUS

JACK FRANKS

Judgment Rendered: FEB - 7 2011

* * * * * * *

APPEALED FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF TANGIPAHOA
STATE OF LOUISIANA
DOCKET NUMBER 2006-0003744, DIVISION "F"

THE HONORABLE ELIZABETH P. WOLFE, JUDGE

* * * * * * *

Lila Tritico Hogan
Denham Springs, Louisiana

Attorney for Plaintiff/Appellee
Lori Stevens Franks

Jack Franks
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In Proper Person/
Defendant/Appellant

BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

McDONALD, J.

Lori Stevens and Jack Franks were married in Las Vegas, Nevada, on July 28, 2006. Ms. Stevens lived in Fort Lauderdale, Florida, and Mr. Franks, an attorney licensed in Pennsylvania, lived in Pittsburgh, Pennsylvania. The parties were together in Fort Lauderdale for the birth of their twin sons, Aidan and Connor, on October 6, 2006. Within two weeks after the children were born, Mr. Franks returned to his home in Pittsburgh. Shortly thereafter, Ms. Stevens moved to Hammond, Louisiana to live with her parents.

Mr. Franks filed a petition for divorce and shared custody of the children in the Court Of Common Pleas Of Allegheny County, Pennsylvania, Family Division, on November 1, 2006 (hereafter the Pennsylvania court). On November 17, 2006, Ms. Stevens filed an application for child and spousal support in the Pennsylvania court, asserting that she had not received any support from Mr. Franks since their October 13, 2006 separation.

Thereafter, Ms. Stevens filed a petition for temporary and permanent custody of the children on November 13, 2006, in the Twenty-First Judicial District in Tangipahoa Parish (hereafter the district court), asserting that Mr. Franks had abandoned her and the children a few days after their birth and had returned to his home in Pennsylvania. On December 15, 2006, Mr. Franks filed a declinatory exception raising the objection of lack of jurisdiction, asserting that Pennsylvania, rather than Louisiana, had jurisdiction over the child custody proceeding.

On May 9, 2007, Mr. Franks filed an answer to the petition in district court, asserting that the petition failed to state a cause of action for emergency temporary custody, and asking that the parties be awarded joint custody. On June 1, 2007, th parties reached an agreement whereby Mr. Franks would pay Ms. Stevens $3500.00 per month in alimony and child support for 24 months from August 1,

2007 to July 1, 2009. The parties also agreed that upon expiration of the specified time period, if a court had not yet rendered a support award, Mr. Franks would pay $1,500.00 per month in child support until such time as an order was entered. On June 13, 2007, the parties were divorced by judgment of the Pennsylvania court.

After a hearing on January 7, 2008, a stipulated interim judgment was rendered in the district court, granting the parties joint legal custody of the children, without prejudice to either party, naming Ms. Stevens as the domiciliary parent, and granting limited supervised visitation to Mr. Franks the last weekend of each month, so that the children could get to know their father and become accustomed to his presence. A parenting coordinator and a visitation monitor were appointed to the case. Thereafter, there were continuing problems between the parties regarding disagreements over visitation and an inability to communicate.[1]

On June 10, 2008, Ms. Stevens filed a rule to show cause, asking that the district court appoint a mental health professional to conduct a custody evaluation, and make a written report to the district court and counsel for both parties, with Mr. Franks to pay the costs for the evaluation, that Stephen W. Thompson (the parenting coordinator) be relieved from any further responsibility and involvement in the case, and that Ms. Stevens be granted sole custody, with supervised visitation to Mr. Franks.

On December 8, 2008, Mr. Franks filed a motion for recusal of the district court judge. The motion for recusal was set for a hearing.

Also, on December 8, 2008, Mr. Franks filed a motion for immediate interim visitation under the direction of Mr. Thompson, given that Ms. Stevens had asked for a continuance in the case. On December 9, 2008, the district court ruled that additional interim visitation was denied pending the hearing, and that visitation

[1] We do not recite the full history of this case herein, as the record consists of five volumes and over 1,000 pages. We refer only to those parts of the history which are pertinent to the issues before us in *this* appeal.

would proceed as previously ordered. Mr. Franks appealed the December 9, 2008 ruling, asserting that the district court judge was prohibited from acting in the case after a motion for her recusal had been filed.

Then, on February 2, 2009, Mr. Franks filed his notice of intent to take supervisory writs, and a motion to strike Ms. Stevens' request for an extension of time, to this court. He filed his writ with this court on February 18, 2009. The motion to strike was denied and the writ was denied. **Jack L. Franks v. Lori K. Stevens**, 2009 CW 0354, (La. App. 1st Cir. 4/14/09).

Thereafter, on May 15, 2009, Mr. Franks filed a motion to dismiss the appeal which he had sought from the December 9, 2008 district court ruling, and that appeal was dismissed by the district court on May 20, 2009.

Then, on August 3, 2009, Mr. Franks filed a motion to dismiss the motion for recusal and to cancel the hearing on the motion for recusal, asserting that he had become convinced that the district judge was fair and impartial. Subsequently, the motion to recuse the district court judge was dismissed and the recusal hearing was cancelled.

After a hearing on November 13, 2009, Mr. Franks' declinatory exception raising the objection of lack of jurisdiction was overruled, the district court finding that Tangipahoa Parish, Louisiana "is the proper venue" within which to bring the child support action. The district court also appointed Dr. Alicia Pellegrin, a clinical psychologist, to conduct an evaluation of the parties and the children for custody purposes, ordered the costs of the evaluation to be split 50/50 between the parties, and ordered both parties to cooperate with the evaluations.[2] On December 7, 2009, the district court, among other things, ordered Mr. Franks to pay Ms.

[2] On December 7, 2009, the district court reaffirmed its prior ruling, indicating that Tangipahoa parish "is the proper jurisdiction and venue."

Stevens $1500.00 per month in child support for the months of December 2009, January 2010, and February 2010.

On January 21, 2010, Mr. Franks filed a rule to show cause, asserting that counsel for Ms. Stevens had improperly procured the signature of Mr. Franks' attorney, after the attorney withdrew from the case, on the judgments rendered following the hearings on November 13, 2009, and December 7, 2009. Thus, Mr. Franks asserted the consent judgment should be stricken as his valid consent had not been given to the stipulations. The rule to show cause was set for hearing on February 22, 2010.

On February 24, 2010, Ms. Stevens filed a rule to terminate the visitation rights for Mr. Franks, asserting that Mr. Franks had failed to visit with his children for almost two years, despite numerous opportunities to do so, that Mr. Franks had failed to develop a parental relationship with his children and that he had refused to cooperate with the court-appointed (and stipulated) custody evaluator, and that the children did not know their father. Ms. Stevens also filed a rule for sanctions on February 24, 2010, asserting that Mr. Franks had falsely claimed that Ms. Stevens' counsel had wrongfully obtained Mr. Franks signature on two judgments rendered on November 13, 2009 and December 7, 2009, that these pleadings were frivolous, and that Mr. Franks was abusing the judicial process with these claims. Ms. Stevens asked that Mr. Franks be sanctioned, that his rule to show cause filed on January 21, 2010, be dismissed, and that he be ordered to pay Ms. Stevens' attorney fees and the costs of the sanction rule.

On March 1, 2010, Ms. Stevens filed a rule for contempt, asserting that Mr. Franks failed to pay Ms. Stevens child support in the amount of $1,600.00 (arrearages) immediately, and $1,500.00 per month for December 2009, January 2010, and February 2010, that he did not pay all of the amounts due, and asked that he should be held in contempt, ordered to pay Ms. Stevens' attorney fees and costs

for the contempt rule, and that he be made to pay all amounts owed at the time of the contempt hearing.

On March 22, 2010, a hearing was held in the district court on the rule to terminate visitation and for full custody filed by Ms. Stevens, and also the rule for sanctions filed by Ms. Stevens. Ms. Stevens was present with her attorney, but Mr. Franks did not attend the hearing (despite having received notice of the hearing) and did not file a motion to continue the hearing. At the hearing, Ms. Stevens testified, Dr. Pellegrin testified, and Dr. Nicholas Stevens (Ms. Stevens' father) testified.

As Mr. Franks had failed to appear to argue his motions, his motion to compel discovery filed on January 4, 2010, was dismissed, his rule to show cause filed on January 11, 2010, was dismissed, and his rule to show cause filed on January 21, 2010, was dismissed.

Both Ms. Stevens' rule to show cause why child support of $3,500.00 per month (the initial child support payment amount) should not be continued to be paid to her after the stipulated judgment period ended, filed August 3, 2010, and her rule for contempt, filed on March 1, 2010, were stayed, pending Mr. Franks' appeal on the issue of whether Louisiana or Pennsylvania child support guidelines would apply to the case.[3]

In the interim, following the March 22, 2010 hearing, and until the issue of which state's child support guidelines would apply could be heard, the district court rendered judgment ordering Mr. Franks to pay Ms. Stevens $1,500.00 per month interim child support, retroactive to August 3, 2009, as set on December 7, 2009, to be made payable to Ms. Stevens. Mr. Franks was given a credit for amounts paid since August 3, 2010, in the amount of $3,482.39. Thus, the amount of support due from August 3, 2009, to March 22, 2010, of $8,517.61 was made

[3] That appeal was filed by Mr. Franks on December 14, 2009, from the district court judgment rendered on December 7, 2009, which determined that Louisiana child support guidelines would apply to the case.

executory, plus legal interest from the date each payment was due. Further, the district court ordered that Ms. Stevens' rule for sanctions, filed on February 24, 2010, based upon Mr. Franks filing a frivolous rule to show cause on January 21, 2010, was granted, and Mr. Franks was ordered to pay Ms. Stevens' $1,500.00 for attorney fees. Pursuant to Ms. Stevens' rule to show cause, filed on June 10, 2008, Ms. Stevens was granted the sole custody of the minor children, Aidan and Connor Franks. Pursuant to the rule to terminate visitation rights filed by Ms. Stevens on February 24, 2010, Mr. Franks' visitation with the children was terminated. Further, Ms. Stevens' rule for protective order, filed on February 24, 2010, was determined to be moot because Mr. Franks' motion to compel discovery was dismissed.[4]

On April 5, 2010, Mr. Franks filed a motion to vacate the judgment rendered on March 22, 2010, asserting that he was instructed by the Pennsylvania court judge that she had conferred with the district court judge and that the matters set for March 22, 2010 had been postponed, and thus, he did not appear at the hearing. The district court judge denied the motion to vacate, with handwritten reasons indicating that Mr. Franks had sent two separate letters to the court stating that he would not attend the March 22, 2010 hearing and finding that Mr. Franks had failed to file a motion for continuance of the hearing.

Mr. Franks is appealing the judgment rendered March 22, 2010. He asserts that the trial was conducted without his receiving notice, and contrary to the instructions given to him by the Pennsylvania judge; that the child support order was the product of the abusive use of the Louisiana courts by Ms. Stevens, used to thwart the rulings made by the Pennsylvania court that mandated application of the

[4]Also, in response to the March 22, 2010 judgment, Mr. Franks filed a motion in the Pennsylvania court to strike the district court judgment. At a hearing on July 19, 2010, Pennsylvania Judge Cathleen Bubash found that "the order was obtained by fraud. I was specifically told on that Friday that there was not going to be a hearing on Monday." Judge Bubash entered an order on that date, decreeing that the March 22, 2010 district court judgment, filed in the Pennsylvania court on May 3, 2010, was stricken because petitioner Franks was not given notice properly as required by 23 PACS 7605 A&B.

Pennsylvania child support guidelines in all support proceedings; that the district court erred in dismissing his objections to the family court judge improperly relegating her judicial authority onto opposing counsel and punishing Mr. Franks for his inability to comply with the injudicious terms dictated by opposing counsel; that the district court erred in requiring Mr. Franks to submit to evaluations by appointing a long-time expert witness for the opposition under the guise of a court appointee; that the district court erred in refusing to implement any recommendation made by the neutral court-appointed parenting coordinator, and in allowing Ms. Stevens to terminate the court-appointed parenting coordinator and replace him with her own biased witness; and that the district court erred in permitting Ms. Stevens to continuously re-introduce inflammatory documents into the record and use them as a basis to deny visitation and terminate custody.

Further, Mr. Franks asserts that the district court erred by sanctioning him for objecting to ex-parte renditions of judgments crafted by opposing counsel, submitted them to appellant's former attorney without authority to enter into them, and then submitted them to the district court judge in order to persuade the district court judge to render an adverse judgment against Mr. Franks.

THE APPEAL

At the outset, we note that many issues have been raised by Mr. Franks in his briefs to this court. However, the only issues before *this* court, in *this* appeal, are those assignments of error which address the judgment rendered on March 22, 2010, following the hearing on that date.

The first issue to be addressed is whether Mr. Franks received notice of the hearing held on March 22, 2010. A review of the record clearly shows that Mr. Franks had notice of the hearing. The record shows that on December 7, 2009, in open court, Mr. Franks was given notice of the custody and visitation hearing set for March 22, 2010. On January 11, 2010, he was sent the Notice of Judgment,

which included the March 22, 2010 hearing date. On January 21, 2010, Mr. Franks requested by motion to the district court that the child support hearing set for February 22, 2010, be moved to March 22, 2010, since discovery disputes and other rulings relative to child support were to be heard on that date. Mr. Franks acknowledged in a letter to the district court on March 11, 2010, that he knew of the hearing set for March 22, 2010.

In his brief, Mr. Franks asserts that his attorney told him that the Pennsylvania judge and the district court judge had communicated by telephone, and that his attorney told him that the March 22, 2010 hearing would be postponed. The district court judge at the hearing acknowledged that she and Judge Cathleen Bubash (the Pennsylvania court judge) discussed the March 22, 2010 hearing on March 19, 2010, and the district court judge stated in court prior to the hearing:

> I had told her Friday that I wasn't sure if today was going or not because he had indicated he couldn't be here. But at that point Friday, he hadn't filed a motion to continue. So, we'll proceed despite my reservations. You're correct, Mr. Franks doesn't own our court system and if he's not going to comply with the proper proceedings for either being here or filing a motion to continue, while I try to accommodate everybody, I'm not going to raise the agitation level of anybody anymore. I know you've prepared a lot for this and again, Mr. Franks had notice to be here. I'm going to put this letter in the record saying he knew about it and he just chose not to be here. So, any motion to continue Madam Clerk? No. All right. You may proceed.

We find no abuse of discretion in the district court's decision to move forward with the hearing after finding that Mr. Franks chose not to attend the hearing and failed to file a motion to continue the hearing.

In his second assignment of error, Mr. Franks asserts that the district court erred in awarding interim child support in the amount of $1,500.00 per month, as provided in the parties' agreement. Mr. Franks asserts that Ms. Stevens commenced child support litigation in the Pennsylvania court, in November 2006,

and he asserts that the Pennsylvania court has original, exclusive, and continuing jurisdiction over the parties' child support matters.

A review of the record shows that the March 22, 2010 judgment stayed the child support and contempt hearing (for Mr. Franks' failure to pay support as ordered), pending Mr. Franks' appeal on the issue of whether Louisiana or Pennsylvania child support guidelines should apply. That issue is not before this court in this appeal. The judgment at issue herein set interim child support at $1,500.00 per month, and made it retroactive to August 3, 2009, the date of Ms. Stevens' filing of the rule for child support. The interim child support of $1,500.00 per month is the amount set by the parties in their agreement of June 1, 2007. We find no manifest error by the district court in this ruling.

In his third assignment of error, Mr. Franks asserts that the district court erred by terminating all visitation and custody rights of Mr. Franks: a) by improperly relegating its judicial decision-making authority onto opposing counsel and then punishing Mr. Franks for his inability to comply with the injudicious terms dictated by opposing counsel; b) by requiring Mr. Franks to submit to evaluations by the long-time expert witness of the opposition, under the guise of a court-appointee; c) by refusing to implement any recommendation made by the neutral, court-appointed parenting coordinator, ignoring the court-appointed parenting coordinator, refusing to allow him to testify, and allowing the opposition to terminate his appointment and replace him with their own biased long-term expert witness; and d) by permitting the opposition to continuously re-introduce into the record inflammatory documents since 2005 and re-utilizing them as a basis to deny visitation and terminate custody in 2010.

The paramount consideration in any determination of child custody is the best interest of the child. Each child custody case must be viewed in light of its own particular set of facts and circumstances. The trial court is vested with vast

discretion in matters of child custody and visitation, and its determination is entitled to great weight and will not be disturbed on appeal unless a clear showing of abuse of discretion is made. **Stephens v. Stephens**, 02-0402 (La. App. 1 Cir. 6/21/02), 822 So.2d 770, 774.

As to 3(a), Mr. Franks' argument that the district court erred by dismissing his objection to the district court judge for having improperly relegated her judicial decision-making authority unto opposing counsel and then punishing Mr. Franks for his inability to comply with the injudicious terms dictated by opposing counsel. This appears to be a reference to Mr. Franks' motion to recuse the district court judge from the case. However, Mr. Franks dismissed his motion to recuse the district court judge, and the recusal issue is not before this court in this appeal.

As to argument 3(b), Mr. Franks asserts that he was required to submit to evaluations by the long-time expert witness of the opposition, under the guise of a court-appointee. Dr. Pellegrin was appointed by the district court as the psychologist mandated to evaluate the parties following a hearing on November 13, 2009, in a judgment rendered that date, which was not appealed by Mr. Franks. At the November 13, 2009 hearing, Mr. Franks' counsel stipulated to the use of Dr. Pellegrin as the court-appointed expert and stipulated to her expertise, stating that "she would be extremely competent." This issue is not properly before the court in this appeal, and further, has no merit.

In Mr. Franks' argument 3(c), he asserts that the district court erred by "refusing to implement any recommendation made by the neutral [c]ourt-appointed Parenting Coordinator, ignoring him, refusing to allow him to testify, and allowing [Ms. Stevens] to terminate his appointment and replace him with their own biased long term expert witness" and in the removal of Mr. Stephenson as court-appointed parenting coordinator and the appointment of Dr. Pellegrin as a court-appointed psychologist to render evaluations in this case. Again, these issues were not part of

the judgment rendered on March 22, 2010, but rather, were from previous judgments, and thus are not before this court in this appeal. Further, as pointed out in response to Mr. Franks' argument 3(b), Mr. Franks' attorney stipulated to the appointment of Dr. Pellegrin, and stipulated to her expertise. This argument has no merit.

In Mr. Franks' argument 3(d), he asserts that the district court erred in permitting Ms. Stevens to "continuously re-introduce into the record inflammatory documents and things since 2006 and re-utiliz[e] them as a basis to deny visitation and to terminate custody in 2010." This argument is vague, and we must again point out that the only judgment before this court, in this appeal, is the March 22, 2010 judgment. Everything that has occurred in this case *since 2006* is not before this court. We find no merit in this argument.

In assignment of error number four, Mr. Franks asserts that the district court erred by sanctioning him for objecting to ex-parte judgments crafted by opposing counsel, "who without notice had procured their consents from an attorney known to her to not have authority to enter into such, and then submitted them without signature by the trial judge as final judgments in Pennsylvania to persuade that Court to an adverse action against [Mr. Franks]." Mr. Franks' filed a rule to show cause on January 21, 2010, asserting that without Mr. Franks' knowledge, Ms. Stevens' attorney procured the signatures of Mr. Franks' attorney to a series of stipulated judgments, after Mr. Franks' attorney had withdrawn from the case. Mr. Franks asserted in his rule to show cause that Ms. Stevens' attorney knew that Mr. Franks' attorney no longer had authority to enter into a consent judgment, and that Ms. Stevens' attorney obtained Mr. Franks' attorney's signature on two separate occasions after his resignation from the case.

On the dates these judgments were rendered, Mr. Franks was present in court with his attorney, and stipulations were entered into by Mr. Franks' attorney

on behalf of Mr. Franks. Under the Twenty-First Judicial District Court Rule 25.3, V-A, Section 6:

> Attorneys are expected to expedite the preparation and signing of judgments once they have been rendered by the court. Except in emergency circumstances requiring immediate signing, they shall first submit the judgment to the opposing counsel for his/her approval. If the opposing counsel does not sign within five days the judge shall sign it without the approval provided it is accompanied by a certificate that it was submitted but not signed.

Under the local court rule, the judgments could have been submitted to the court five days later without his attorney's signature, because they were rendered in open court. Therefore, the district court's ruling granting Ms. Stevens' rule for sanctions and assessing of $1,500.00 in attorney fees against Mr. Franks is affirmed.

In her brief, Ms. Stevens asks that the transcript from a July 2010 hearing, attached to Mr. Franks' brief as an exhibit, be stricken from this record as it is not part of this proceeding. Ms. Stevens did not file a motion to strike in compliance with the Uniform Rules – Courts of Appeal, Rule 2-7.2 and Rule 2-7.3. Thus, we cannot act upon this request.

However, the appellate court cannot review evidence that is not in the record on appeal and cannot receive new evidence. **Willis v. Letulle**, 597 So.2d 456, 464 (La. App. 1st Cir. 1992). Therefore, we have not considered exhibits attached to Mr. Franks' brief.

After a thorough review of the record, we find no manifest error or abuse of discretion by the district court and the judgment rendered March 22, 2010 is affirmed. The costs of this appeal are assessed against Mr. Franks.

AFFIRMED.