

No. 25017 -- Dale Patrick D., Appellee v. Victoria Diane D., Appellant
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Brooke Kaitlyn D., Infant, Appellant

Workman, J., concurring, in part, and dissenting, in part:

I must dissent. It is incredible that the family law master and lower court made a finding of fact that the charges of domestic violence were completely meritless and without basis in light of the compelling evidence of record.¹

¹There was evidence of the Appellee's conduct which is illustrative of his violent proclivities: Dale testified regarding domestic violence against Victoria: "I threw her down and hit her on the buttocks three times with my open hand." (10-14-94 hearing.) He admitted that he got on top of his wife, holding her shoulders and legs down and leaving bruises on her body. (10-14-94 hearing.)

In an incident while vacationing in Florida which required law enforcement intervention, Dale threw a can of beer at Victoria, dragged her across the floor, threw her on the floor, and banged her head against the floor. (10-14-94 hearing. Also referenced by step-mother, Mrs. Lawton in 9-7-94 hearing.) Dale carried and dragged Victoria's son up the stairs, holding him by his feet or ankles and dropping him head first at the top of the stairs. (9-7-94 hearing -Victoria and her children testified.) Dale pushed Victoria's daughter while she was holding Brooke, resulting in dropping Brooke into the crib and the daughter falling. (9-7-94 hearing. children and Victoria testified as to the incident.) Dale revved the car engine and maneuvered the car in the driveway so that Victoria's son believed he would be hit by the car. (9-7-94 hearing - children and Victoria.)

Dale entered upon the property of Victoria's father and step-mother, forcing the door open and bracing himself against the door. He made threatening and hostile remarks to the step-mother. (9-7-94 - Mrs. Lawton). Dale challenged Victoria's father to get out of his car and fight, calling him an "old bastard." (10-14-94 - Victoria's father). Dale threatened to "kick [Bill R.s] ass" if Jason R. reported domestic violence to Jason's father, Bill. (9-7-94 hearing, Dale and Jason R.) Dale locked himself in the bedroom with the infant child Brooke, refusing communication or access by other family members. (10-14-94 - Dale.) Dale yelled, screamed, and expressed anger, rage, and hostility to

Victoria and her children on a regular basis. (9-7-94 - Dale, children.) Dale used profanity in front of children and testified that "Profanity and retaliation is necessary." (9-7-94 - Dale.)

Dale testified, regarding the visitation supervisor, that he "reamed her ass" when he brought his new wife to visitation and the supervisor properly objected to the wife's presence. (10-14-94 - Dale.) Dale's first wife left him due to verbal abuse, his manic depressive disorder, and alcohol abuse. (9-9-94 - Dr. Rosenbloom.) Dale admitted "hostile behavior" toward his first wife. (10-14-94 hearing.) Dale testified that his first wife left and took their child to her mother after he drank and "was all hooched up." (10-14-94 - Dale.)

Although the majority is correct in its conclusion that, had the lower court made a finding of domestic violence, the result would have been the same (i.e. supervised visitation), it seems vitally important not only that domestic violence be recognized and labeled; but also that this seven-year-old child receive the necessary protection.

The record here reflects an individual with deep-seated problems, who at minimum has a substantial temper control problem with a proclivity for violence and who indeed may even be very dangerous. Although such an individual should not be deprived of the opportunity to have a relationship with his child,² that child also has rights. She is entitled to protection as best the legal system can afford, for her safety has been placed in our hands.

Interestingly, the Appellee on oral argument indicated on rebuttal that although he and his present wife were in the midst of a divorce, there had been no allegations of domestic violence, nor any problem with regard to his unsupervised contact with the child of that marriage. Upon a motion to supplement the record by the guardian ad litem, however, we discovered that indeed the wife of the present marriage has filed

²I believe very strongly in the right of each parent (and the right of every child) to have a relationship with one another, and indeed that concept is embedded into the law of this state in syllabus point nine of White v. Williamson, 192 W.Va. 683, 453 S.E.2d 666 (1994), wherein this Court said it was the duty of the family law master and the circuit courts to protect the rights of non-custodial parents to a continued relationship with their children.

several domestic violence petitions against the Appellee, including allegations that she fears for both her own and her child's safety.

On remand, the therapist, the family law master, and the trial court should be very cautious in examining the progress of the family therapy and the gradual restoration of unsupervised visitation. Unsupervised visitation should only be allowed if the therapist and the courts below have a sure feeling that this child will be safe. As we said in syllabus point three of Carter v. Carter, 196 W. Va. 239, 470 S.E.2d 193 (1996), the risk of harm of supervised visitation to a parent if he or she is innocent of abuse charges must be weighed against the risk of harm to the child if the parent is guilty of abuse charges, and caution should be exercised on the side of the protection of the child.