

1 FAMILY COURT OF THE STATE OF NEW YORK

2 COUNTY OF CAYUGA

March 20, 1996

3 -----x

4 MICHELLE DAVIS, : Index No. F1568-95

5 : Petitioner, :

6 : -against- :

7 LEROY LEUBNER, JR., :

8 : Respondent. : ~~Modify Support~~

9 LEROY LEUBNER, JR., : Index No. 00463-96

10 : Petitioner, :

11 : -against- :

12 MICHELLE DAVIS, :

13 : Respondent. : ~~Family Offense~~

14 MICHELLE DAVIS, : Index No. V0410/

15 : Petitioner, : 0412-96

16 : -against- :

17 LEROY LEUBNER, JR., :

18 : Respondent. : ~~MOAC Visitation~~

19 LEROY LEUBNER, JR., : Index No. V0464/

20 : Petitioner, : 0466-96

21 : -against- :

22 MICHELLE DAVIS, :

23 : Respondent. : ~~EOAC Visitation~~

24 -----x

25 Cayuga County Courthouse
Auburn, New York

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March 20, 1996

B e f o r e :

HON. PETER E. CORNING,

Justice

A p p e a r a n c e s :

SAMUEL P. GIACONA, ESQ.

Attorney for Department of Social Services
Cayuga County Office Building
Auburn, New York 13021

Lisa M. Clark
RPR, RMR, CSR

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THE COURT: Okay. This is Michelle Davis?

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MS. DAVIS: Yes.

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THE COURT: And Leroy Leubner?

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MR. LEUBNER: That's correct.

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THE COURT: Okay. What's this all about,

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Michelle?

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MS. DAVIS: Would you like to discuss the

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support issue first, Your Honor?

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THE COURT: Support? Well, I've got four

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issues.

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MS. DAVIS: I know.

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THE COURT: I've got the family offense.

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Leroy says there is a family offense here.

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I am having a hard time --

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MS. DAVIS: My papers were filed first,

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Your Honor, just so you know.

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THE COURT: Were they?

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MS. DAVIS: Yes.

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THE COURT: All right. Maybe I should get

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all this stuff -- you presently -- who has

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custody of the child, you do?

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MS. DAVIS: I have custody of my children,

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yes.

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THE COURT: By virtue of this decree of

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divorce?

MS. DAVIS: Yes.

THE COURT: Well, then why are you asking for visitation?

MS. DAVIS: There's problems with everything in there, Your Honor. It's -- I don't know what you want to handle first.

THE COURT: I don't either.

MS. DAVIS: It's all involved, but my first request --

THE COURT: You have custody?

MS. DAVIS: I have custody.

THE COURT: You have visitation, Mr. Leubner?

MR. LEUBNER: Yes. I have liberal and reasonable visitation, yes, sir.

THE COURT: All right, and there's a problem with that?

MS. DAVIS: Yes.

THE COURT: What's the problem from your point of view?

MS. DAVIS: Okay.

THE COURT: You both have the right to have an attorney, by the way. Do either one of

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you want to have a lawyer?

MS. DAVIS: No.

MR. LEUBNER: No, sir.

THE COURT: Leroy?

All right. Go ahead.

MS. DAVIS: Mr. Leubner does have liberal visitation. However, for the past two years he's -- visitations have consisted of one evening a week from four o'clock from four to four-and-a-half hours for three children.

THE COURT: For three children?

MS. DAVIS: Yes.

THE COURT: Okay.

MS. DAVIS: That is regardless of any type of vacation time that he has.

He is a correction officer. To my, last of my knowledge he has three two-week vacations a year.

My children have multiple school vacations. They have all summer vacation. This does not change.

He initiates no further contact other than the one evening a week for four to four-and-a-half hours.

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THE COURT: Right.

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MS. DAVIS: He calls me. He provides me with less than 24 hours notice of his visitation. I have asked him on numerous occasions and we have even agreed --

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THE COURT: Because, that differs because of his days off, does it or -- what days does he exercise?

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MS. DAVIS: It's usually Saturday evening. Because of his dictated visitation of one evening a week for four to five hours, I cannot permit my children to go on school nights. They go to bed at 7:00, 7:30 and 8:00. He does not pick them up until four p.m. That would mean a 4:00 to 6:30 visit which I don't believe is reasonable or considerate for three children.

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I'm having a problem with him calling me six o'clock, seven o'clock, last Friday 7:20 for visits on the next day. It doesn't enable me to make plans with my children, provides no stability for my children; and when I have told Leroy that --

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THE COURT: So you'd like more notice?

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MS. DAVIS: Yes. That's my whole issue

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with Leroy --

THE COURT: Any problem with that, Leroy?

MS. DAVIS: -- is more notice.

MR. LEUBNER: No, sir.

If I could explain a couple of things? I don't want to get in an argument, sir.

THE COURT: Right.

MR. LEUBNER: Okay. The reason it's only weekends is because that's what she's whittled it down to. It used to be before I was in a relationship I was taking them every night, two, three hours, four hours, whatever I could.

THE COURT: Um hum.

MR. LEUBNER: She had a problem with the person that I was living with or seeing, then living with because she had a child and other reasons and she decided that I couldn't take them on school nights, just arbitrarily decided that.

First thing I just wanted to make it sort of an open relationship where the kids lived with her but they saw me when they could. You know, it was more normal, natural.

She's the one that's made that that

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strict, weekends only, only Saturday. She's the one that created that situation.

I have tried to give her more than 24 hours notice. I considered it a consideration, but she became very argumentative anyways so I have been calling her the day before.

MS. DAVIS: And he has not been initiating any contact with the children other than the one night a week. Your Honor, he -- the children were on vacation recently --

THE COURT: Okay. Well, I know but the --

MS. DAVIS: Okay.

THE COURT: I don't -- certainly being a prison guard, of course your days are different.

MS. DAVIS: Right.

THE COURT: How old are the children now?

MR. LEUBNER: They are twelve, nine and six.

MS. DAVIS: Um hum.

THE COURT: What, what do you -- what would you like, Mr. Leubner, from your point of view?

MR. LEUBNER: I would like to have it back to the way it used to be.

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THE COURT: What is that?

MR. LEUBNER: Where is I could call on the
weekday --

MS. DAVIS: No.

MR. LEUBNER: -- and maybe get one or two
of the kids or all of the kids, whoever wanted
to come. I used to call up and say, who wants
to come today and I'd take them to the library
or things like that. I'd have them over for
supper. They could do homework at my house and
things like that.

I live five houses down from a big play
ground, the WMCA field. I have a nice house in
the nice neighborhood, same school district they
are in and everything.

I just want to be able to enjoy --

THE COURT: Now you're living with
somebody else now?

MR. LEUBNER: Yes, I am.

MS. DAVIS: Your Honor, my children have
to be to bed 7:00 my youngest, 7:30 my son,
eight o'clock my daughter. He doesn't get out
of work till four. They don't get home from
school till four. Is four o'clock to 6:30 a

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reasonable visit?

THE COURT: Well, I would have to say to you that a half an hour one way or the other one night a week wouldn't, wouldn't upset anybody, but --

MS. DAVIS: But that's it. There will be no other visit from him. There has never been any other additional visit from him. The one night a week --

THE COURT: Well, what I would say is this. The children are in school. So --

MS. DAVIS: Um hum.

THE COURT: -- that probably precludes anything but an evening visit during the week.

MR. LEUBNER: Correct.

THE COURT: But it, it seems to me, and I had a number of cases involving correctional officers, that you know your schedule a year ahead of time.

MR. LEUBNER: Um hum.

THE COURT: So on those days when your vacation falls on weekends, you know, there's no reason that you shouldn't take the children for an extended period of time.

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MR. LEUBNER: Again, I do get them. It's not only four o'clock no matter what.

MS. DAVIS: He's right. He gets them from one to six.

MR. LEUBNER: I have them sleep over occasionally too.

THE COURT: Yeah.

MR. LEUBNER: I understand --

THE COURT: But I can't, because of your schedule -- I mean, to be truthful with you, Michelle, if he got -- if the kids went, got home at 7:30, 4:00 to 7:30, there would be no -- the earth wouldn't shake as a practical matter one night a week.

Now she wants and deserves to know, I think she should know a week ahead of time what night you're going to take them.

MR. LEUBNER: Okay. I'll give her advance notice. I have no problem with that.

THE COURT: And let me say this to you. The psychologists tell us that the most adjusted child is the one that spends the most time with both parents, and the ones that aren't quite as well adjusted are deprived of the relationship

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between a parent.

As a practical matter, Michelle, the children belong to both of you on an equal basis. You know, there's some wives' tale that, about mothers, but New York doesn't recognize it.

So I would say, first of all, the family offense, I'm not going to pay much attention to, Roy (sic), because it doesn't rise to that level; but I think if, if what you're saying is that you want extended visitation, I think you should have it. I think it probably should be more than one evening a week.

MR. LEUBNER: I agree to that too.

THE COURT: But I think that Michelle should have at least a week's notice of visitation.

MR. LEUBNER: Okay.

THE COURT: All right?

MR. LEUBNER: All right.

MS. DAVIS: Your Honor?

THE COURT: What else have we got?

MS. DAVIS: May I ask you one thing?

THE COURT: Yes, you may.

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MS. DAVIS: I have never refused, I have not refused Leroy, maybe three times personally.

My children often refuse to go with their father, except for my youngest one Kimmy who will go with her father all the time. My son seldomly goes and my oldest daughter goes reluctantly.

Do I have to force -- I asked them. Do I have to force crying children to go?

THE COURT: No, no, you don't because the problem is this, there's got to be a reason why they don't.

MS. DAVIS: Yes.

THE COURT: And if the reason is because you're telling them that dad's a jerk every --

MS. DAVIS: No.

THE COURT: Well, let me tell you this. I, I sense from you, Michelle, a certain amount of anger.

MS. DAVIS: Only because of my children have waited on him and he has not called for them.

THE COURT: I know, but I'm sensing it right in this courtroom.

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Now what's happening is this. Whether you know it or whether you don't know it, your feelings toward Mr. Leubner are transmitted to those children, and children want to do what they think will please both of you.

Now I don't know either one of you, right, but I'll guarantee you I know what happens. The children are reluctant to go with Mr. Leubner. You want to know why? Because they think that by going with him that they are somehow displeasing you because they know your feelings toward him. So they say, I don't want to go. Mom, I love you.

MS. DAVIS: (shaking negatively)

THE COURT: Let me finish. I don't know either one of you.

MS. DAVIS: Okay.

THE COURT: This is, this is the way it's coming down, and I strongly suspect that once they're out of the door and they are in dad's company everything is wonderful.

MS. DAVIS: Wrong.

THE COURT: Am I right?

MS. DAVIS: Wrong.

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MR. LEUBNER: To a degree. There are some things. My son --

MS. DAVIS: Yeah.

MR. LEUBNER: She, she will walk him right to the car, talk into his ear. He gets to the car and say, well, here's \$10, you can take Dan to the mall and buy him something, where I didn't even plan on going to the mall; therefore, if I don't take him to the mall, I'm the bad guy. Then he gets upset for a couple of hours. Daddy -- he wants to go home because mommy --

THE COURT: I can't spend the whole day with you, I'm sorry.

MR. LEUBNER: I understand that.

THE COURT: But you've got to -- I'm going to grant him liberal visitation. It should be more than one night a week. There's nothing wrong if it's a week night from four to seven. That, it's not going to kill these children to be up another half an hour.

MS. DAVIS: Um hum.

THE COURT: On the nights, on the weekends he probably should be able to take the children

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2 with him for extended periods of time even to
3 the extent of being overnight, but certainly not
4 exposing the children to anything that's
5 improper; but in any event, she should have a
6 week's notice of what you intend to do.

7 MR. LEUBNER: Okay.

8 THE COURT: Okay. Now where are we?

9 MS. DAVIS: If, Your Honor, I make plans
10 on, with my children on a day he wants to
11 exercise, may I tell him --

12 THE COURT: You've already got the plans,
13 sure.

14 MS. DAVIS: -- without repercussion?

15 THE COURT: Sure. If he calls and says, I
16 want them next Tuesday and you say, look it,
17 there's a birthday party, he's got to --

18 MR. LEUBNER: That's obvious.

19 THE COURT: -- reschedule.

20 Okay. Modify support?

21 MS. DAVIS: Um hum.

22 THE COURT: In what sense, Michelle?

23 MS. DAVIS: I've, Your Honor, I've
24 received additional information from the New
25 York State Department of Social Services

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regarding the Child Support Standard Act. I believe Mr. Leubner's child support is significantly below his payment that he's paying now.

I'd like you to see whether that should be modified and I would like, because Leroy and I don't get along, we don't cat fight but because we don't get along, I do not want to personally deal with him to collect my child support payments.

THE COURT: What's the law now? They entered a divorce in '94.

MS. DAVIS: This paper says before '91.

MR. GIACONA: Every three years, Your Honor. To modify?

THE COURT: Yeah.

MR. GIACONA: Every three years it's, it should automatically come back in for review.

THE COURT: Okay. I'll -- it should be -- what, three kids?

MS. DAVIS: I have three children.

THE COURT: Okay. Should be your salary times --

MS. DAVIS: Twenty-nine percent.

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THE COURT: Less Social Security, times 29 percent, whatever that comes out, but --

MR. LEUBNER: If I may mention, just mention --

THE COURT: Yep.

MR. LEUBNER: When, at the time of the divorce I was -- I signed off the house completely and I paid \$5,000 towards the home equity loan. I lost approximately \$25,000 in equity towards the house in -- and in return I got a slightly lower rate.

Presently I'm paying \$740 a month support plus I'm paying a hundred and thirty-five dollars a month on a loan.

THE COURT: What's your salary?

MR. LEUBNER: My salary, approximately -- I take home about \$40,000 a year.

THE COURT: No. What's your gross?

MR. LEUBNER: I don't have -- I have my taxes done. I don't have my W-2 with us.

THE COURT: You take home 40?

MR. LEUBNER: No, I don't take home 40 at all.

THE COURT: What's your biweekly gross, do

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you know?

MR. LEUBNER: Not right off the top of my head, sir. It's over a thousand dollars, though.

THE COURT: All right. I'll refer the matter to the Hearing Examiner to -- because she's entitled to a -- what you're saying needs to be taken into consideration if -- and that's why it should be --

MR. LEUBNER: I understand you don't have the time for that.

THE COURT: More time than I've got to give it.

MS. DAVIS: I also refinanced \$11,000 of that home equity loan, Your Honor, double --

THE COURT: Okay. Thank you.

MS. DAVIS: Your Honor, there is another issue.

THE COURT: What?

MS. DAVIS: Garnishment, income execution. I do not want to have to deal with him on a personal level.

THE COURT: Well, that's up to the Hearing Examiner.

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MS. DAVIS: Okay. Tax --

THE COURT: That whole thing is going to
him.

MS. DAVIS: Tax deductions?

THE COURT: That's him too.

MS. DAVIS: Okay. Where is that? That
goes to another court?

THE COURT: Yep.

MR. LEUBNER: At another time or is this
today?

THE COURT: Another time, yeah. It's --
the Hearing Examiner handles all the support
matters.

MS. DAVIS: Will we be notified, Your
Honor?

THE COURT: Yes, you will, Michelle.

MS. DAVIS: Okay. Thank you.

THE COURT: Thank you.

Number 26 is adjourned.

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REPORTER'S CERTIFICATION

I, Lisa M. Clark, do hereby certify that I am an Official Court Reporter of the County Court at Auburn, New York, duly appointed.

That I reported in stenotype shorthand the Modify Support, Family Offense, MOAC Visitation, EOAC Visitation had before the HON. PETER E. CORNING, Family Court Judge, on the 20th day of March, 1996, in the matter of MICHELLE DAVIS, PETITIONER, vs. LEROY LEUBNER, JR., RESPONDENT and LEROY LEUBNER, JR., PETITIONER, vs. MICHELLE DAVIS, RESPONDENT; and

That the transcript herewith numbered pages 1 through 20 is a true, accurate and correct transcript of those stenotype shorthand notes.

DATED AT: Auburn, New York
this 5th day of August, 19 97,

Lisa M. Clark