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FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF CAYUGA

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LEROY LEUBNER, : Index No. V0464/
Petitioner, : 0466-96
-against- :
MICHELLE DAVIS, : Violation
Respondent. : Visitation

-----x

Cayuga County Courthouse
Auburn, New York

November 6, 1996

B e f o r e :

HON. PETER E. CORNING,
Justice

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

PATRICIA A. LAWLER, ESQ.
Attorney for Respondent
302 Metcalf Plaza
Auburn, New York 13021

Lisa M. Clark
RPR, RMR, CSR

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MS. LAWLER: Judge, my client has an objection to I guess it's the petitioner's girlfriend being in the courtroom. She's not related, really isn't part of this proceeding.

MR. LEUBNER: She's my domestic partner, sir. She can verify a lot of the facts in the case. I don't know. I was told that she could come in.

THE COURT: Well, under the law a person in Family Court may bring a friend with them. I think it's statutory. So I -- if you want me to look it up for you, I'll do it.

MS. LAWLER: No. That's all right, sir.

THE COURT: Okay.

Okay. This is Leroy Leubner?

MR. LEUBNER: Yes, it is, sir.

THE COURT: And Michelle Davis?

MS. DAVIS: Yes.

THE COURT: Okay. There was an order of visitation, ordered that petitioner is granted the following visitation: Liberal visitation, to give her one week's notice for extended visitations, which is probably pretty vague.

He has filed a petition saying that the

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children have the right of choice and they don't want to visit. Is that the position taken over here or are they visiting?

MS. LAWLER: They're visiting now. The oldest girl Melissa, she's almost 13, there was a period of time that she had a problem going to visit with her father.

My client made sure that the three of them spoke about this back in May. I think they got it resolved and actually before the petition was mailed out on October 7th they had another meeting and Melissa has been going to visit with her dad.

The youngest one Kimberly always goes. She doesn't have a problem. She's almost seven.

The middle child Daniel, he's ten years old, he's autistic so there's a real problem with him. He will usually, he'll go if Melissa goes. I don't think there's a problem now.

One of the difficulties is getting the one week's notice. The parties were in court, Your Honor, on, let's see, earlier in the year.

THE COURT: Well, they were here May --
March 20th.

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MS. LAWLER: March 20th.

THE COURT: And that's when I had that order.

MS. LAWLER: I got a copy of the transcript. Since I wasn't here, I'd like to know what was going on.

I think the order said something about, the actual order ended up saying a week for extended visits.

THE COURT: Yep.

MS. LAWLER: Although the transcript is clear that it was supposed to be a week for any visitation.

Mr. Leubner is a prison guard. He knows his --

THE COURT: Schedule?

MS. LAWLER: -- schedule in advance, but I understand he works days. He visits with the kids typically just once a week.

My client's complaint back in March was he doesn't visit with the kids often enough.

THE COURT: Right.

MS. LAWLER: But he visits them typically during the week.

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THE COURT: As prison guard what do they work, four days on, three days off?

MR. LEUBNER: Yes. They call it a week. It's a backwards rotating schedule.

THE COURT: What does it do?

MR. LEUBNER: Four days on, two days off, four days on, two days off, backwards rotating until you get to the weekends. It's like five and one thing. It's very regular, yes.

THE COURT: It's very regular?

MR. LEUBNER: Yes.

THE COURT: But complicated.

MR. LEUBNER: Well --

THE COURT: What we do is -- let me ask you this question: Of those two days off or whatever, what days would you want visitation, both of them or just on one of them or whatever?

MR. LEUBNER: Well, what I wanted when I came back to court for in March was to be able to visit them on days that I worked and days that I didn't work. I didn't come here because I wanted to visit them once a week. I wanted to visit them more than once a week.

Things got bad. I was -- my visitation

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was restricted again.

THE COURT: Well, that's all right.
Whatever it was it is, but we're -- we don't go
backwards.

My question is: Would you want the
children with you on your days off?

MR. LEUBNER: Both of my days off?

THE COURT: Yeah.

MR. LEUBNER: I like to have the option of
having them on my days off and having them when
I'm working also, when I get out of work.

MS. LAWLER: Your Honor, that really isn't
a problem visiting on the days off or the days
that he works because he works the daytime
hours; so whether he's working that day or not,
by the time the kids are out of school he's out
of work so we don't need to rely on his days
off. All we need to -- is have one week's
notice rather than one or two day's notice.
That's all she wants 'cuz she's got things
scheduled for the kids. They're involved in
activities like -- what's one doing today?

MS. DAVIS: Spanish Club.

MS. LAWLER: Spanish Club, so if she has

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2 one week's notice, then they can plan a little
3 bit better, that's all. That's what the
4 previous order was supposed to be.

5 MR. LEUBNER: The reason I came here, sir,
6 I was unable to see my oldest daughter for
7 sixteen-week period, one time in 16 weeks.

8 THE COURT: Well, maybe she didn't want
9 to.

10 MR. LEUBNER: My son has no problem coming
11 now since they've been served. All three of
12 them have been coming every time right on time,
13 no problem, no argument.

14 I mean, before I was calling. I was
15 getting lectures about what I was doing with my
16 children, where I was going, who was there,
17 where -- what they were eating, stuff like that.
18 Well, she's the one --

19 THE COURT: Well, we know that's not
20 appropriate, but okay. Then we'll amend the
21 order to he may have visitation on his days off
22 and/or on days he works just by letting her know
23 a week ahead of time what days he wants and what
24 hours he wants.

25 How is that?

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MR. LEUBNER: Okay. Do my children have the right to refuse because I can't verify if it comes from her or from them?

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THE COURT: Well, let me tell you. When I was a young lawyer a guy named Jerry Hewitt sat where I'm sitting now and I had a case, I remember it very well, and we ran into a situation where the mother said, Judge, the kids don't want to visit him, and I think I represented the mother; and Jerry Hewitt said, nope, by God, they ought to see their father and they are going to visit.

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Well, he couldn't go to her house and she couldn't go to his house so they agreed that they would meet right down here on the corner, and I was there for that meeting; and this lady is coming down Court Street with two kids screaming and she's got them by the nape of the neck and they are kicking and they are fighting; meets them in the corner, and she was a tough girl, I got to say that for her, and she, here, Ed, you want them, Judge Hewitt says you're going to have them, you're going to have them and Ed takes them down Genesee Street screaming

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all the way and my heart just went out.

I said I could never do that and so I vowed that I would never order that scenario to take place 'cuz I think it was certainly unproductive.

What you're going to run into, truthfully, Roy, is like Melissa's 13. She's becoming an individual. She's getting her own life. She's going to do, you know, she's going to have her own activities, she's going to have her own clubs, she's going to have her girlfriends, she's going to have her overnight parties and all this and you're going to have to learn to live with that.

MR. LEUBNER: I offered her the option --

THE COURT: Very humble -- very humbling.

MR. LEUBNER: I'm sorry. I'll stop. I'm
oops
sorry.

THE COURT: So anyway, it's a humbling experience but it's one that -- so my answer is they certainly should be highly encouraged to visit. They should have very strong reason for not visiting, but as far as me ordering them that they be hauled down the street with their --

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MR. LEUBNER: I would never take them kicking and screaming.

THE COURT: Okay. All right.

MS. LAWLER: Judge, the previous order was from four to 7:30 during the school week. Would that continue too?

THE COURT: Fine with me.

Four to 7:30, is that fine?

MR. LEUBNER: Four to 7:30 on school nights?

MS. LAWLER: School nights.

MR. LEUBNER: She wants them home before 7:30 I don't have a problem with that.

One more thing. This, the ongoing thing here, okay, my children are instructed not to speak to her. I mean, my, my kids won't speak to her. Everything they ask, all the questions they ask, they trade to me.

THE COURT: Even when they are visiting?

MR. LEUBNER: Yes. It's very unnatural. That's the root of the whole problem.

THE COURT: Well, let me say this to you, mom. These kids -- it is, again, it's maddening but another woman is in your children's life but

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2 eventually they're going to have to come to the
3 realization that there are going to be other
4 women in his life and hopefully other men in
5 your life and they are going to -- they may not
6 like that any better but give them a chance.
7 You know, hopefully -- don't you enter into
8 that, okay?

9 MS. DAVIS: No. That's correct.

10 THE COURT: I've seen, I've seen children
11 really react and thinking that if they do react
12 and get the friend out of the picture, that dad
13 will go back with mom and that's what we really
14 want -- that's what they really want.

15 MR. LEUBNER: Yeah.

16 THE COURT: So they figure maybe if they
17 can draw her out of the picture, that you'll go
18 back with mother; but if that's not to be, it's
19 not to be and eventually they'll come around to
20 that; but I mean, I've had cases where the
21 children have gone to the extent of alleging
22 sexual abuse against the friend to get them out
23 of the picture and it took us a long time to get
24 through that and -- but we did, but it took a
25 year and a half to ultimately come to the

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resolution that the children had manufactured these allegations simply to get a friend out of the picture.

Okay. Good luck.

MS. LAWLER: Thank you.

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2 REPORTER'S CERTIFICATION
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5 I, Lisa M. Clark, do hereby certify that I am an
6 Official Court Reporter of the County Court at Auburn, New
7 York, duly appointed.

8 That I reported in stenotype shorthand the Violation
9 Visitation had before the HON. PETER E. CORNING, Family
10 Court Judge, on the 6th day of November, 1996, in the
11 matter of LEROY LEUBNER, PETITIONER, vs. MICHELLE DAVIS,
12 RESPONDENT; and

13 That the transcript herewith numbered pages 1 through 12
14 is a true, accurate and correct transcript of those
15 stenotype shorthand notes.

16

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18 DATED AT: Auburn, New York

19 this 5th day of August, 19 97,

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----- Lisa M. Clark -----