

Judgment rendered July 1, 2009.
Application for rehearing may be filed
within the delay allowed by art. 2166,
La. C.C.P.

No. 44,427-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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MEGHANN CLAYTON

Plaintiff-Appellee

versus

CHARLES ABBITT

Defendant-Appellant

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 508,397

Honorable Michael A. Pitman, Judge

* * * * *

DALE N. MONTGOMERY, II

Counsel for
Appellant

JUSTIN H. COURTNEY

Counsel for
Appellee

MEGHANN CLAYTON

Pro Se

* * * * *

Before BROWN, CARAWAY and LOLLEY, JJ.

LOLLEY, J.

Defendant, Charles Allen Abbitt, appeals the grant of a protective order by the First Judicial District Court, Parish of Caddo, State of Louisiana, against him and in favor of plaintiff, Meghann Gill Clayton and her minor children. For the following reasons, we reverse.

FACTS

Zane Abbitt and Meghann Clayton have two minor children together, B.A. and M.A. Eventually the couple separated and agreed to joint custody of the children. However, Meghann filed, on behalf of herself and the children, a Petition for a Protective Order against Zane's father, Charles Abbitt, based on allegations of inappropriate conduct with the children. The protective order was granted on February 28, 2007 and expired August 27, 2008. On September 5, 2008, Meghann refiled a second Petition for a Protective Order pursuant to La. R.S. 46:2131 *et seq.*, and La. R.S. 46:2151. On September 23, 2008, after the trial had ended, the trial court granted the second protective order. This appeal by Charles ensued.

LAW AND DISCUSSION

We review domestic protective orders for abuse of discretion. *Culp v. Culp*, 42,239 (La. App. 2d Cir. 06/20/07), 960 So. 2d 1279. Here, there were no new allegations nor new evidence that Charles had acted inappropriately with his grandchildren. In fact, there was evidence to the contrary as indicated by the report from the psychologist Dr. Susan Vigen where she found that the children wanted to see Charles, and there were no signs that Charles was ever inappropriate with them.

The trial court made much of the fact that Meghann was not informed about Dr. Vigen's interview with the children; however, we find this to be of no consequence. Whether she was informed or not does not have an effect on the issue at hand. In addition, we find that the trial court erred in its reliance on a statement made by Charles **after** the trial was over without being given an opportunity to explain his statement. We find that the record contains insufficient evidence to support the issuance of a protective order, and therefore reverse the trial court's decision. In light of our findings, we pretermitted a discussion of whether Charles is a member of the class of people whom a protective order may be issued against.

CONCLUSION

For the foregoing reasons, we reverse the trial court's grant of a protective order against Charles Abbitt. Costs of this appeal are assessed against Meghann Clayton.

REVERSED.