

FAYETTE CIRCUIT COURT
CIVIL BRANCH
EIGHTH DIVISION

JAN 09 2008

LISA WOOD, Individually,
And as Administratrix of
The Estate of MEGAN RENEE SMITH,
Deceased

PLAINTIFF

V

Mark Vranicar, M.D.

DEFENDANT

AND

LISA WOOD, Individually

PETITIONER

V

FINDINGS OF FACT
CONCLUSIONS OF LAW AND JUDGMENT

SAMMIE BRIAN SMITH

RESPONDENT

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This matter is submitted to the Court following and evidentiary hearing conducted before the Court on June 7, 2007 and June 27, 2007. The Court having considered the evidence presented and the record herein and being sufficiently advised hereby renders the following Findings of Fact, Conclusions of Law and Judgment.

FINDINGS OF FACT

1. Petitioner, Lisa Wood (hereinafter "Wood"), and Respondent, Sammie Brian Smith (hereinafter "Smith"), were previously married and are the biological parents of Megan Renee Smith. Megan was born with certain medical conditions resulting in her having surgery to repair a heart and artery defect when she was born. She had additional surgery when she was a pre-teenager. She underwent a surgical procedure at age 15 on July 23, 2004 at the

University of Kentucky Medical Center and she died on that date as a result of complications from the surgery.

2. Wood and Smith were divorced in April, 1993 and Wood was granted sole custody of the parties four minor children and Wood was granted visitation privileges and was ordered to pay child support for the parties minor children.
3. Wood was appointed Administratrix of Megan's estate and filed the within wrongful death action. In December 2006 a confidential settlement was reached between the parties prior to trial. Wood amended her complaint and filed a petition pursuant to KRS 411.137 (Mandy Jo's Law) naming Smith as Respondent and requested a hearing and ruling from this Court as to Smith's rights, if any, under KRS 411.137 and to the proceeds of the wrongful death settlement.
4. Smith was incarcerated at the time of the amended complaint, however, he was provided notice of the amended complaint. Smith appeared in the within action, with counsel, and filed a written response to the amended complaint as well as testified and participated in the June 7, 2007 hearing by video conferencing and appeared in the June 27, 2007 hearing telephonically, all by agreement of counsel.
5. Both parties agreed, pursuant to KRS 411.137, the proceeding before this court was a non-jury proceeding. The Court heard the testimony of the parties and their witnesses on June 7, 2007 and the conclusion of the hearing was continued to June 27, 2007 due to family medical issues of a witness who

could not attend on June 7th. On June 27, 2007 the Court heard the testimony of the remaining witnesses and rebuttal witnesses.

6. The parties entered into the record a Joint Stipulation evidencing Smith, as of July 23, 2004, the date of Megan's death, was in arrearage for all four children in the amount of \$19,767.13. The Joint Stipulation further reflects Smith paid child support in the amount of \$40,660.87 from February 4, 1993 through July, 2004
7. As previously noted, the parties divorced in 1993 and Wood was granted sole custody of the parties four minor children. Smith was ordered to pay child support and was awarded visitation privileges with the children. There is a dispute between the parties as to what transpired between 1993 and 1995. Smith argues Wood intentionally withheld the children from visitation by moving often and failing to advise Smith of her new address or location. Wood testified she was always in the Bell and Whitley County area and Smith always knew where she and the children were residing and Smith merely chose not to exercise his visitation. The record does reflect Smith initiated court proceedings in the Knox Circuit Court in 1996 seeking a court order enforcing his visitation privileges and the Knox Circuit Court granted that request.
8. The evidence shows Smith, upon discovering an extramarital relationship between Wood and another family member, requested the divorce and left the area. He worked and traveled as a long distance truck driver and had very limited contact with the children from 1993 to 1996. In 1995 Smith moved to

Alabama and began regular employment and maintained a residence in Alabama. Smith remarried and in 1996 instituted the court proceedings in Knox Circuit Court and was granted a graduated visitation schedule to re-inject him into the lives of the children. After a period of time Smith was afforded visitation every other weekend.

9. The evidence indicates the children visited with Smith in Alabama in the summer of 1996 and at Cherokee Lake, Tennessee in 1998. Both Smith, and his mother, testified he routinely exercised his every other weekend visitation despite the ten-hour commute. Wood testified Smith exercised his visitation sporadically during this time period.
10. In June, 2000 Smith and his then and still current wife, moved to Arkansas for his wife to be closer to her family. Smith and other family members testified the drive from the area in which Wood and the children resided to Smith's residence in Arkansas was approximately ten hours each way.
11. There is dispute in the testimony regarding how often Smith exercised his visitation in 2000, 2001, 2002 and 2003 while Smith and his wife resided in Arkansas.
12. The Court finds from the evidence Smith occasionally traveled to Kentucky in 2000 and sporadically saw the children. Further, the Court finds the children did not travel to Arkansas to visit Smith.
13. The Court finds in 2001 the children along with other family members traveled to Arkansas to visit Smith. The children and other family members stayed in a motel and did not stay at Smith's residence. The Court also finds

the children saw Smith occasionally during this visit and did not reside with him in his residence during this time period.

14. The Court finds the children traveled to Arkansas in the summer of 2002 and resided with Smith in his residence for a period of time. There is dispute between the parties as to the duration of this trip and the reason for the children's departure, however, the Court finds the children did go to Arkansas during this time period to visit with their father.
15. The Court finds Smith and his wife moved from Arkansas back to Kentucky in 2004 primarily for the purposes of being closer to his family and the children and there was contact by Smith with the children subsequent to his move back to Kentucky up and until the time of Megan's death. As found herein, Megan died July 23, 2004.
16. The Court finds there was considerable animosity between the parties during and subsequent to the divorce and as a result of that animosity there were continuing difficulties experienced by Smith in regards to visitation with his children. The Court finds, as supported by the Laurel Circuit record, Smith was required to have Petitioner brought before the Court to enforce Smith's visitation rights. The Court finds from the evidence that Petitioner at various times intentionally interfered with Smith's visitation rights with the children, including Megan.
17. The Court also finds, based upon Smith's limited education and employment opportunities, employment and relocation for employment was a substantial factor affecting Smith's ability to exercise his visitation privileges.

18. The parties have stipulated Smith was obligated to pay the amount of \$389 per month for the support of the minor children, including Megan, and his total support obligation at the time of Megan's death was \$60,427 and of this amount \$40,660.87 had been paid, or approximately 67% of his total support obligation. The Court finds the payment of the amount of child support, though not in full compliance with the court ordered child support does evidence an intent to support his minor children and is inconsistent with the argument of abandonment.
19. The Court further finds from the evidence, in spite of an acrimonious relationship with his former spouse, at times significant distances to travel to exercise his visitation privileges and limited financial resources which inhibited the long distance visitation, Smith did attempt to maintain contact and a relationship with the children, including Megan, and such attempts do not support the allegation of abandonment.
20. The Court finds Smith had been deprived of the custody of his children, specifically Megan, under an order of a court of competent jurisdiction and the he substantially complied with all orders of the Court requiring contribution to the support of the children, including Megan. Though the record reflects, by agreement of the parties, Smith paid only 67% of the total child support obligation due under the existing court order this Court finds the payment of that amount substantially complies with the existing court order.

21. The Court finds there is testimonial and demonstrative evidence introduced into the record supporting Smith's assertions he maintained and attempted to maintain contact and support of the parties minor children, including Megan.
22. Pursuant to Kentucky Revised Statutes the surviving parents of a deceased child are each entitled to one-half of any wrongful death proceeds unless precluded by KRS 411.137.
23. That Smith is in arrears in his child support obligations in the amount of \$19,767.13 as of July, 2004.
24. The Court finds from the evidence Smith did contribute to the funeral and burial expenses of Megan.
25. Finally, the Court finds Smith did support his child during her life and that Smith did not abandon Megan pursuant to KRS 411.137.

CONCLUSIONS OF LAW AND JUDGMENT

1. Petitioner, Lisa Wood (formerly Smith) and Respondent, Sammie Brian Smith are the biological parents of Megan Renee Smith, who died July 23, 2004.
2. The wrongful death civil action initiated by Petitioner in the Fayette Circuit Court under KRS 411.110 has resulted in a monetary recovery and both Petitioner and Respondent are entitled to have those funds distributed equally pursuant to KRS 411.137.

3. By order of the Court Petitioner's share of the proceeds have been distributed to her there being no dispute by the parties Petitioner was entitled to one-half of the wrongful death proceeds.
4. Petitioner has not met her burden of proof pursuant to KRS 411.137 and KRS 391.033 and Kimblor v Arms, 102 S.W.3d 517 (Ky. App. 2003), and has not established that Respondent abandoned Megan by clear and convincing evidence.
5. Respondent is entitled to receive one-half of the wrongful death proceeds in this matter, and further, there shall be deducted from the disbursement the sum of \$19,767.13 which is the amount of child support arrearage owing to Petitioner as of the death of Megan.
6. There being no just cause for delay this is a final and appealable judgment.

Entered this 8 day of January, 2008.

/s/ Thomas L. Clark
A True Copy
ATTEST: WILMA F. LYNCH, CLERK
FAYETTE CIRCUIT COURT
By: [Signature] Deputy

JUDGE, FAYETTE CIRCUIT COURT

This is to certify a copy has been mailed
this 9 day of January, 2008 to the following:

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BY: *[Handwritten Signature]*