

LOST VISITATION CAN BE REGAINED

By K. Dean Kantaras

FLORIDA SPECIFICALLY addresses the not uncommon problem of visitation denial or frustration, caused by a former spouse, by both statute and appellate court decisions. The statute specifically requires a trial court to determine the extent of the visitation "improperly denied" and to then award to the parent denied visitation enough extra timesharing to make up for the time missed. The statute also requires the make-up visitation time to be begun as quickly as possible, as long as the method of make-up visitation to be given is in the best interests of the child.

The trial judge is required to consider the convenience of the parent whose time with the child has been denied or restricted. The court may also require the offending parent to pay the costs of the make-up visitation. It is interesting to point out that the statute also provides for remedies against a parent who is provided visitation, but fails to exercise that visitation. However, that's the subject of another discussion.

In November of last year, the First District Court of Appeal (that's the "Taj Mahal" court in Tallahassee we've all been reading about that caused the Chief Judge to resign) issued an opinion in a case which involved visitation problems for an autistic child residing with his mother in Florida. The parties divorce was granted by an Illinois court. The mother moved to Florida with the child. The father was awarded visitation by the divorce judgment. He stayed in Illinois. When the mother moved to Florida, she domesticated the Illinois judgment, which means it is treated as though the Florida courts had issued the judgment. This procedure not only makes enforcing or modifying the judgment in Florida easier, but possible.

The former wife had continually denied the former husband visitation. She had also been alienating the child from the father. The situation had been bad enough



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that the father had filed at least six motions for contempt. The father alleged he had only seen the child one time since 2009. At the conclusion of one hearing, the court told the mother to cooperate with the parent coordinator appointed by the court and to stop alienating the child. At a later hearing, the court warned the mother that, if she continued to fail to cooperate with the parent coordinator and continued to deny visitation, the court could impose several remedies, including changing custody. The court told her it was a "last chance." The next month, the father filed his sixth motion for contempt based on the same basic facts. After the hearing, the court found that the mother had denied almost all visitations for three years and prevented almost all contact with the child. The court ruled that the mother had prevented the father from seeing the child for the 150 days to which he was entitled.

The trial judge awarded the father an immediate right to 100% "time sharing"

(visitation) with the child for 150 days. The court also prohibited the mother from criticizing the father during the mother's telephone contact with the child. In spite of what seems to be bitter and punitive efforts by the former wife to punish her ex-husband, the appellate court reversed the trial judge. The reversal wasn't because the father didn't have a right to make-up visitation time. The reversal was based on the court's opinion that the terms of the make-up visitation were not in the best interest of the child, and the child's best interests are the overriding factor to be considered. Because the child would be uprooted from Florida to Illinois in the middle of the school year and because there was evidence presented by the mother that that was not in the child's best interest, the appellate court sent the case back to the trial judge to find a better plan of make-up visitation.

This confirmed the concept that when visitation is deprived, there is a remedy. However, that remedy, whatever the plan is, must be in the best interests of the child. ■■■

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