

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**SUSAN M. CANNON (RANDALL),
APPELLANT
vs.**

**JAMES R. CANNON,
RESPONDENT**

DOCKET NUMBER WD72997

DATE: November 1, 2011

Appeal from:

The Circuit Court of Cole County, Missouri
The Honorable Robert D. Schollmeyer, Judge

Appellate Judges:

Division Three: James E. Welsh, P.J., James M. Smart, Jr. and Joseph M. Ellis, JJ.

Attorneys:

William P. Nacy, for Appellant

Clifford W. Cornell, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

SUSAN M. CANNON (RANDALL), APPELLANT

v.

JAMES R. CANNON, RESPONDENT

WD72997

Cole County, Missouri

Before Division Three Judges: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Susan Randall ("Mother") appeals from a judgment entered in the Circuit Court of Cole County modifying the visitation provisions of the decree dissolving her marriage to James Cannon ("Father"). Prior to the modification, Father completed the sentences on his convictions for the first-degree statutory rape and first degree statutory sodomy of his former step-daughter. In its modification judgment, the trial court dramatically increased Father's supervised visitation with the two natural children he had with Mother and included two, three, and fourteen-day supervised overnight visitations. The trial court also approved Father's new wife as an appropriate supervisor.

REVERSED AND REMANDED.

Division Three holds:

- (1) Mother's claim that an increase in Father's supervised visitation was not an issue before the trial court is without merit. Father's request that visitation be changed from supervised to unsupervised along with a request that visitation be increased can certainly be read to include an implicit request for increased supervised visitation if unsupervised visitation is denied.
- (2) By refusing to allow additional testimony relevant to the best interests of the children following remand from the Missouri Supreme Court, the trial court failed to correctly interpret the mandate of the Supreme Court and improperly entered a judgment based upon stale evidence. The Supreme Court's mandate restored the judgment in effect prior to Father's filing of his motion to modify, and all of the issues raised in Father's motion to modify were actively before the trial court. Furthermore, by refusing to hear or consider additional evidence, the trial court based its judgment on evidence that was over 34 months old and, accordingly, improperly entered its judgment based upon stale evidence.
- (3) Pursuant to § 452.400.2(3), an individual appointed by the court to supervise visitation must be a responsible adult, must be able to be in the

presence of the child throughout the visitation, and must be able to protect the child.

(4) While evidence was presented calling into question the availability of William Cannon and Dr. Barb Abshier to supervise much, if any, visitation between Father and the children, no evidence was presented that either of these previously approved supervisors were not responsible adults that could sufficiently protect the children if and when available. Accordingly, the trial court cannot be deemed to have erred in approving these individuals as appropriate supervisors.

(5) The trial court erred in appointing Father's current wife, Veronica, as an appropriate supervisor for his supervised visitation with the children. Under existing statutes, as a person residing with an individual that has pled guilty to violations of §§ 566.032 and 566.062, Veronica could not be awarded custody of or unsupervised visitation with her own children. By virtue of these statutory provisions, the legislature has declared that Veronica is incapable of adequately protecting her own children from Father without supervised visitation by a third party. Since she is deemed unfit to have unsupervised visitation with her own children, Veronica certainly cannot be deemed a responsible adult that can sufficiently supervise and provide protection for Father's children.

(6) The trial court erred in awarding supervised overnight visitation and supervised visitation for periods of two to fourteen days. Such visitation would require multiple, qualified supervisors, working in shifts. Such a situation is clearly impractical, and, absent clear evidence of a workable manner in which adequate supervision would be provided, overnight and/or extended supervised visitation should not be awarded.

Opinion by: Joseph M. Ellis, Judge

Date: November 1, 2011

This summary is *UNOFFICIAL* and should not be quoted or cited.