

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 2003 Session

BELINDA KULLMAN RHOADS v. CHRISTOPHER KULLMAN, SR.

**Appeal from the Chancery Court for Dickson County
No. 4573-96 Leonard W. Martin, Chancellor**

No. M2002-02716-COA-R3-CV - Filed March 29, 2004

WILLIAM C. KOCH, JR., P.J., M.S., dissenting.

I respectfully disagree with the court's conclusion that Ms. Rhoads is not entitled to Tenn. R. Civ. P. 60.02(1) relief from the June 26, 2002 order removing her children from her custody. Her lawyer mishandled her case in three significant ways. First, he set the hearing on his motion to withdraw as Ms. Rhoads's counsel on the same day as the final custody hearing. Second, he told Ms. Rhoads that the case would most likely be continued until August 2002 after his motion was granted. Third, he did not tell Ms. Rhoads that her presence was required at the June 25, 2002 hearing.

I find no evidence in this record that Ms. Rhoads had been otherwise dilatory about this case. Based on her lawyer's comments, Ms. Rhoads could reasonably have concluded that her presence in court on June 25, 2002 was not required because the trial would be continued until August 2002. Ms. Rhoads's predicament is her lawyer's making, not hers. In my mind, these circumstances justify granting relief under Tenn. R. Civ. P. 60.02(1).

WILLIAM C. KOCH, JR., P.J., M.S.