

## Appearing without counsel can be fatal to your child custody case

Written by Australian Business

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An Arkansas mother found out the hard way that her failure to hire an attorney to assist with her custody matters would greatly affect the future of her family. In *Cervantes v. Cervantes*, the Court of Appeals of Arkansas affirmed the decision of the lower court to award custody of two young children of a soon-to-be divorced couple to the children's father.

Several factors led to the decision of the court, including the applicable standard of review, the conduct of the mother and the mother's delay of proceedings, which she blamed on her inability to attain and retain an attorney.

Matters seemed to be progressing in favor of the mother, as she was awarded temporary custody and child support to be provided by the father. The tables soon turned after a certain course of conduct led the court to award emergency custody to the father, just months after the temporary order was in place. The court, in its decision favoring the father, considered his claims that the mother refused to allow him to exercise visitation with his children, and accused him of molesting them. Soon after these claims were considered by the court, it entertained a motion by the mother's attorney, in which he sought to be relieved of representing her. The court approved the motion, after considering that she had not made payments on her account, and that she signed a form, agreeing to release him as her attorney.

Better late than never; better never late

The mother attempted to continue without an attorney in the proceedings that followed. However, after she failed to arrive on time for the final hearing in the matter, the court approved a motion by the father, seeking a dismissal of the case based on the mother's failure to prosecute. The mother arrived at the end of the father's testimony, and the court held in his favor, announcing the decision to award him custody of their children.

The mother immediately requested a continuance, seeking an adjournment to delay the proceedings. She claimed that she needed more time to hire counsel. The lower court denied

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her request, considering that two months had passed since her last attorney was relieved. On appeal, she learned that the standard of review would be an obstacle she would be unable to overcome. She sought a decision from the appellate court that would overturn the lower court's refusal to grant her a continuance. The Court of Appeals applied the abuse of discretion standard expressed in *Sims. v. Moser*, which held that an appellant must not only demonstrate that the circuit court abused its discretion by denying the motion but also must show prejudice that amounts to a denial of justice. After considering arguments the mother made on her own behalf, and sustaining objections to certain evidence, made by the father's attorney, the court upheld the lower court's decision.

It's no secret that divorce and custody matters are complicated and can cause great stress to all involved. When faced with the need for court intervention to resolve a child custody dispute, consistent assistance from experienced counsel can make all the difference.