

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002394-MR

STEVEN GLEN TUCKER

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE REED RHORER, JUDGE
ACTION NO. 93-CI-01593

HEIDI LESLIE TUCKER

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: GUIDUGLI, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: Steven Glen Tucker brings this appeal from a September 15, 2000, order of the Franklin Circuit Court. We affirm.

The parties were married on August 25, 1991. During the marriage, one child, Dylan, was born on November 25, 1992. The Franklin Circuit Court entered a decree of dissolution of marriage on December 22, 1993. The 1993 decree specifically reserved the issue of Dylan's custody for future determination. The appellee was, however, to provide the primary residence for Dylan. On June 19, 2000, appellant filed a motion for final

custody determination. Therein, he sought primary custodianship of Dylan. On September 15, 2000, the circuit court entered its order. The circuit court determined that appellant and appellee should exercise joint custody of Dylan, with appellee serving as primary custodian. This appeal follows.

Appellant contends the circuit court committed reversible error by awarding appellee "primary residential custody" of Dylan. As an appellant court, we shall not set aside a circuit court's child custody decision unless such decision was clearly erroneous or constituted an abuse of discretion. See Squires v. Squires, Ky., 854 S.W.2d 765 (1993); Cherry v. Cherry, Ky., 634 S.W.2d 423 (1982).

Kentucky Revised Statutes (KRS) 403.270 provides, in part, "[t]he court shall determine custody in accordance with the best interests of the child, and equal consideration shall be given to each parent. . . ." The circuit court specifically found that Dylan was repeatedly tardy to school, and had missed several school days. The circuit court found that appellee, "during Dylan's kindergarten and first grade years, was negligent in not getting him to school on time." Appellant argues that appellee's:

. . . continued and repeated failure to attend to Dylan's schooling, supports the conclusion that his best interest would be served by making his primary residence in the home of his father. . . .the trial court's determination that it is in Dylan's best interests to live primarily with his mother is clearly erroneous, not supported by the evidence or findings, and thus constitutes an abuse of discretion.

We disagree.

The circuit court also found that Dylan had primarily lived with appellee continuously since 1993. The circuit court believed that both appellant and appellee love Dylan and were interested in his health, safety and educational progress. Appellee testified that Dylan's tardiness at school was related to the demands of attending college and of being a single working mother. The circuit court noted appellee obtained her degree from the University of Kentucky in May of 2000, and currently is employed by the University of Kentucky, Department of Allied Health. In her new job, she enjoys regular work hours.

KRS 403.270(2)(c) and (d) require the circuit court to consider the interaction, interrelationship of the child with his parent or parents, and also the child's adjustment to his home, school, and community. We observe that Dylan's primary residence has been with appellee since 1993. Therefore, his home, school, and community has revolved around his primary residence. Moreover, there was evidence in the record that Dylan enjoys a close relationship with his great-grandmother who lives near appellee. Upon the whole, we are of the opinion that the circuit court did not commit reversible error by granting appellee primary custodianship of Dylan.

For the foregoing reasons, the order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Catherine C. Staib
Frankfort, Kentucky

BRIEF FOR APPELLEE:

F. William Hensinger
Clearwater, Florida

