

RENDERED: DECEMBER 2, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002460-ME

TOMMY MICHAEL LOYD AND
VELLA LOYD

APPELLANTS

v. APPEAL FROM MCCREARY CIRCUIT COURT
HONORABLE JERRY D. WINCHESTER, JUDGE
ACTION NO. 03-CI-00500

JILL M. DORAN

APPELLEE

OPINION
VACATING AND REMANDING
WITH DIRECTIONS

** ** * * *

BEFORE: TAYLOR AND VANMETER, JUDGES; POTTER, SENIOR JUDGE.¹

TAYLOR, JUDGE: Tommy Michael Loyd and Vella Loyd appeal from a November 15, 2004, order of the McCreary Circuit Court denying their petition to be declared *de facto* custodians for Jeannie Brooke Doran (Brooke) daughter of Jill Doran. We vacate and remand with directions.

¹ Senior Judge John W. Potter sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

This action was initiated on December 30, 2003, by the Loyds filing a petition to be declared *de facto* custodians for Brooke. The Loyds alleged in their petition that in July 1995, when Brooke was one-month old, Brooke's mother Jill left her with the Loyds. The Loyds further alleged that Brooke remained with them continuously for the next two and one-half years. The Loyds asserted that in 1997, Jill took Brooke and kept her for approximately one year. Jill returned Brooke to the Loyds in 1998. The Loyds asserted that Brooke lived with them for the next five years except for sporadic visits with Jill. In April 2003, while Brooke was visiting Jill, the Cabinet for Families and Children (Cabinet) removed all of the children in Jill's custody.² The Loyds also asserted that they had requested the Cabinet place Brooke with them, but the request was denied because they resided in Tennessee. The Loyds were granted visitation.

The Loyds' petition to be declared *de facto* custodians was referred to the domestic relations commissioner for a hearing. Ky. R. Civ. P. (CR) 53.03. On June 29, 2004, the Loyds appeared at the hearing with counsel; Jill was not present and no one appeared on her behalf. Following the hearing, the commissioner prepared his report and recommendations on July 13,

² Although the record is unclear, Jill apparently had other children before Brooke was born. Jill's other children are not relevant to this appeal as the Loyds only asserted *de facto* custodian status as to Brooke.

2004. The commissioner recommended that the Loyds be determined to be the *de facto* custodians for Brooke and further recommended they be awarded sole custody.

On September 23, 2004, the Loyds filed a motion requesting the circuit court to enter an order confirming the report of the commissioner, or in the alternative, to set a hearing upon the "objections" filed by Jill.³ The circuit court conducted a hearing on October 29, 2004, at which time the court announced its ruling from the bench. The court noted that following the Cabinet's temporary removal of Brooke and her siblings, the children had been placed back in Jill's custody and had remained there for several months. The court merely stated that Jill "is entitled to have custody of her children if the Cabinet removed them and gave them back to her."

On November 8, 2004, the Loyds filed a motion to alter, amend or vacate the circuit court's order. On November 15, 2004, the court entered an order denying the Loyds' petition to be declared *de facto* custodians. This appeal follows.

The Loyds contend that the circuit court erred by not finding them to be *de facto* custodians under Kentucky Revised Statutes (KRS) 403.270. Having reviewed the record and

³ On July 26, 2004, Jill filed a handwritten note with the court stating that she objected to the Loyds being awarded custody of Brooke. She did not dispute the Loyds allegations regarding the factors relevant to their *de facto* custodian status.

applicable law, we are of the opinion that the circuit court failed to make the required findings of fact.

CR 52.01 provides that “[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specifically and state separately its conclusion of law” The primary reason for this requirement is to provide a record that will “show the basis of the trial judge’s decision so that a reviewing court may readily understand the trial court’s view of the controversy.” Reichle v. Reichle, 719 S.W.2d 442, 444 (Ky. 1986). It is well-established that the language of CR 52.01 is mandatory and that failing to make any findings of fact will result in reversal. Brown v. Shelton, 156 S.W.3d 319 (Ky.App. 2004).

In this case, the circuit court tried this matter without a jury but failed to make any findings of fact concerning the *de facto* custodian status of the Loyds in its November 15, 2004, order. In fact, the circuit court ignored the recommendations of the commissioner who had conducted an evidentiary hearing on this issue. Pursuant to the precepts of Brown v. Shelton, the failure of the circuit court to make findings of fact is reversible error under CR 52.01. Upon remand, the circuit court is directed to reconsider its November 15, 2004, order and to make findings of fact concerning the *de facto* custodian status of the Loyds under CR 52.01.

We would observe that it appears the Loyds may have met the factors necessary to be considered *de facto* custodians. It also appears that the Cabinet has once again assumed custody of Brooke.⁴ Having reviewed the videotape of the hearing, we encourage the circuit court to carefully reconsider its order in light of the above.

For the foregoing reasons, the order of the McCreary Circuit Court is vacated and this cause remanded with directions to reconsider its November 15, 2004, order and make specific findings of fact regarding the *de facto* custodian status of the Loyds.

ALL CONCUR.

BRIEF FOR APPELLANTS:

NO BRIEF FOR APPELLEE

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⁴ This fact was referenced in the Loyds' November 8, 2004, motion to alter, amend, or vacate, which was included in the original circuit court record on appeal.