

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-002049-ME

SUE PERKINS

APPELLANT

v. APPEAL FROM MONTGOMERY CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 09-CI-00003

PATSY MAPEL AND
BILLY MAPEL

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CAPERTON, THOMPSON, AND VANMETER, JUDGES.

THOMPSON, JUDGE: Sue Perkins appeals from a judgment of the Montgomery Circuit Court finding that venue was proper in Montgomery County and awarding primary custody of her grandchild to his paternal grandparents. For the reasons stated herein, we affirm.

On April 2, 2007, B.M. (child) was born to M.P., the mother, and R.M., the father in Montgomery County, Kentucky. After the child's birth, he and his mother resided in Montgomery County for the majority of the time. In September 2008, the mother and child moved to Morgan County where the mother's mother and stepfather resided. Subsequently, on December 10, 2008, the mother was allegedly murdered by the father in Morgan County. According to the record, the father has been charged with the mother's murder.

Following mother's death, Perkins, the maternal grandmother, filed a juvenile dependency, neglect, and abuse petition and an emergency custody petition in the Morgan Family Court. The documents filed by Perkins were notarized by Morgan County Attorney Steve O'Connor. On November 13, 2008, pursuant to Kentucky Revised Statutes (KRS) 610.010, the family court issued an emergency custody order and found that the child was in immediate danger due to his parents' failure to provide for his safety or needs. The family court awarded Perkins temporary custody of the child and granted visitation rights to the paternal grandmother.

On January 12, 2009, Patsy and Billy Mapel, the child's paternal grandparents, filed for custody in Montgomery Circuit Court. The next month, Perkins moved to transfer the Montgomery County custody action to Morgan County, arguing that Montgomery County was not the proper venue. The Montgomery Circuit Court then issued an order to the Cabinet of Health and

Family Services to produce all of its Morgan and Montgomery County records regarding the child and scheduled a hearing on the venue issue.

At the venue hearing, the circuit court heard extensive testimony regarding the child's contact with Morgan and Montgomery County. From this testimony, the circuit court found that the child had resided in Montgomery County except for a few months of his life. Further, the circuit court found the following:

The only relative the child has in Morgan County is this child's 69 year-old maternal grandmother, Sue Perkins. The child has numerous relatives in Montgomery County, including a sister, grandmother, grandfather, aunts, uncles, and cousins. The child is not yet in school; therefore[,] the majority of the witnesses are family members, who all reside in Montgomery County.

Additionally, the child's guardian *ad litem* issued a report to the circuit court providing that she was "of the opinion that either Montgomery County or Morgan County would be [an] appropriate forum for this matter to be heard," due to their significant contact with the child.

Based on these facts, the Montgomery Circuit Court ruled that Montgomery County was the appropriate venue. The circuit court further ruled that Montgomery County was the home county of the child within six months before the commencement of the proceeding. Thus, the circuit court ruled that venue in Montgomery County was proper pursuant to KRS 403.822 (1)(a).

On August 31, 2009, the circuit court conducted an evidentiary hearing to determine custody of the child. Based on the testimony, the circuit court found that the paternal grandparents would be more actively involved in the young

child's life, including taking the child fishing, walking, and riding on the tractor.

In comparison, Perkins's granddaughter testified that Perkins would remain inside her residence the majority of the time while her grandchildren played outside.

The circuit court further found that R.P., Perkins's husband, was the subject of a substantiated claim of sexual abuse against one of the child's siblings. Because of this substantiation, the circuit court noted that the Morgan Family Court precluded R.P. from being alone with the child. Finally, the circuit court noted the extensive family network available to support the child in Montgomery County in the event of the paternal grandparents' inability to care for the child compared to his lone family member in Morgan County. Based on these findings, the circuit court awarded joint custody of the child to Perkins and the paternal grandparents, but primary custody was awarded to the paternal grandparents. Perkins was awarded visitation rights. This appeal followed.

Perkins contends that the Montgomery Circuit Court erred by deciding the parties' custody issue on the merits when venue was improper. She contends that the Montgomery Circuit Court was precluded from hearing the parties' custody case because the Morgan Family Court had accepted exclusive jurisdiction of the case by entering a temporary custody order. She further contends that the Montgomery Circuit Court erroneously found that the child had to reside in Morgan County for more than six months before asserting venue.

As stated in *Pettit v. Raikes*, 858 S.W.2d 171, 172 (Ky. 1993), we note the following:

When the custody dispute is wholly intrastate, the issue is not jurisdiction, it is venue. In such circumstances, any circuit court in Kentucky possesses jurisdiction to decide the case; the only question is which of Kentucky's 120 circuit courts is the appropriate venue.

Fundamentally, venue relates to the proper place for a claim to be heard. *Dollar General Stores, Ltd. v. Smith*, 237 S.W.3d 162, 166 (Ky. 2007). In child custody cases, looking to the “‘more convenient and most interested’ forum provides the best approach,” for determining venue where the issue to be determined is the best interests of a child. *Lancaster v. Lancaster*, 738 S.W.2d 116, 117 (Ky.App. 1987). Matters of venue are left to the trial court’s discretion and must be upheld absent abuse of discretion. *Williams v. Williams*, 611 S.W.2d 807, 809 (Ky.App. 1981).

While we acknowledge that the Morgan Family Court issued an emergency custody order for the child, the statutory provisions authorizing the court’s emergency custody order do not create exclusive venue and authority to decide permanent custody and do not prejudice a permanent custody action. KRS 610.010(9); KRS 620.060(3). While Perkins had custody of the child based on an emergency custody motion, she had not initiated permanent custody proceedings in Morgan Family Court when the paternal grandparents filed their action for permanent custody in Montgomery Circuit Court. Accordingly, the previous Morgan County case did not preclude venue in Montgomery County.

Additionally, Perkins incorrectly argues that the Montgomery Circuit Court was prohibited from factoring the six-month residency requirement of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) found in

KRS 403.822(1) into its venue determination. While the UCCJEA governs jurisdictional determinations between states in child custody cases and not intrastate venue questions, trial courts can use UCCJEA's provisions for guidance in venue decisions. *Wallace v. Wallace*, 224 S.W.3d 587, 589-91 (Ky.App. 2007). Thus, the Montgomery Circuit Court's use of the UCCJEA was not erroneous.

In addition to its use of the UCCJEA, the circuit court's factual findings make clear that it believed Montgomery County had significant connections to the child to permit the case to be heard in the county. As stated in *Lancaster*, 738 S.W.2d at 117, it is the best approach to choose the most convenient and interested forum in child custody cases. Here, the circuit court found that most of the child's relatives were in Montgomery County, most of the witnesses were from Montgomery County, and the child spent the majority of his life in Montgomery County. Accordingly, the circuit court's finding that venue was proper in Montgomery County was not an abuse of discretion.

For the foregoing reasons, the judgment of the Montgomery Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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