

RENDERED: OCTOBER 21, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-001108-MR

RICHARD BUSCHING

APPELLANT

v.

APPEAL FROM HARDIN FAMILY COURT  
HONORABLE MATTHEW B. HALL, JUDGE  
ACTION NO. 08-CI-00094

BORGHILDUR GUDMUNDSDOTTIR

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, THOMPSON AND VANMETER.

THOMPSON, JUDGE: Richard Busching appeals an order of the Hardin Family Court awarding custody of his two children and dividing his marital debt. For the reasons stated, we affirm.

In 1999, Borghildur Gudmundsdottir, a native of Iceland, and Richard were married while he was stationed in Iceland as a member of the U.S. Navy.

After the parties' first child was born in November 1999, the couple moved to New Mexico to live with Richard's family in April 2000. In September 2000, the family relocated to Fort Drum, New York, during which time Richard was deployed for a significant portion of their stay there.

At the custody hearing, Borghildur testified that Richard did not provide financial assistance to her and their son during their time in New York. She testified that she and the parties' son were relegated to eating cereal during Christmas 2000 due to a lack of funding. She further testified that she was practically her son's sole caregiver during this period. In late 2002, the family moved to Wurzburg, Germany, where the couple's second child was born in September 2004. While Richard was deployed to Iraq, Borghildur remained a stay-at-home mother and raised the parties' two children in Germany.

In June 2005, Richard was assigned to Fort Knox, Kentucky, and the family relocated to Radcliff, Kentucky. Borghildur testified that she remained the children's primary caregiver as had been the couple's prior arrangement. In April 2007, Richard was reassigned to Fort Riley, Kansas. According to Borghildur's testimony, the parties then reached an agreement in late 2007 that she would stay at the couple's home with their children while he was deployed to Afghanistan. The record reveals that the parties agreed to divorce when Richard returned. Richard further agreed to financially provide for his family during his deployment.

In January 2008, Borghildur travelled with the parties' two children to Iceland to live. Borghildur testified that she returned to Iceland because Richard

ended his financial support and she could no longer provide for her children in Radcliff. Richard testified that Borghildur contacted him in January 2008 and informed him that she was filing for divorce. He then testified that Borghildur surreptitiously moved the children to Iceland using her revoked power-of-attorney.

After Borghildur moved to Iceland, Richard filed and obtained a divorce decree from a Kansas court. He also filed a petition for custody of his two children in the Hardin Family Court in Kentucky. After filing for custody in Kentucky, Richard commenced a legal action in an Iceland court and obtained an order requiring the return of the parties' children to Kentucky for the purpose of litigating their custody. Prior to the Iceland court's order, Borghildur and the children lived in Iceland from January 2008 to August 2009.

On January 14, 2010, the family court conducted an evidentiary hearing on the issues of child custody and the division of their marital property.<sup>1</sup> Following the hearing, the family court awarded Richard and Borghildur joint custody of the children and designated Borghildur as the children's "primary residential custodian." The family court ordered Borghildur to ensure that the parties' children were able to freely travel between Iceland and the United States. The family court further ordered Richard to pay \$10,446.18 of the parties' credit card debt and Borghildur was ordered to pay \$5,593.16. This appeal follows.

Richard contends that the family court erred by not designating him as the "primary residential custodian" of the parties' two children. He argues that the

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<sup>1</sup> There were other issues addressed at the hearing which are not relevant in this appeal.

children's best interest would be served by his designation as primary residential custodian of the children. Specifically, he argues that Borghildur's relocation of the children to Iceland should preclude her custody designation. He further argues that he has a great relationship with the children, has stable employment compared to Borghildur's multiple jobs in Iceland, and that the children were adjusted to life in the United States prior to their relocation to Iceland.

In child custody cases, a family court's findings of fact cannot be set aside unless they are manifestly against the weight of the evidence. *Frances v. Frances*, 266 S.W.3d 754, 756 (Ky. 2008). Appellate courts must provide family courts due regard in their determination concerning the credibility of witnesses. *Id.* If the family court's factual findings are not clearly erroneous, our task will then be to determine whether the family court's decision constituted an abuse of discretion. *Chappell v. Chappell*, 312 S.W.3d 364, 366 (Ky.App. 2010).

When ruling in a child custody case, a family court must determine what custodial arrangement is in the best interest of the child. *Gates v. Gates*, 412 S.W.2d 223, 224-25 (Ky. 1967). KRS 403.270(2) sets out the guidelines which a family court must consider in making an award. In pertinent part, KRS 403.270(2), listing the factors to be considered, provides the following:

- (a) The wishes of the child's . . . parents . . . as to his custody;
- (b) The wishes of the child as to his custodian;
- (c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person

who may significantly affect the child's best interests;

(d) The child's adjustment to his home, school, and community; [and]

(e) The mental and physical health of all individuals involved[.]

The family court heard testimony that Borghildur had been the children's primary caregiver since their birth and that she was a good mother. The record contains testimony that Borghildur would be employed upon her return to Iceland. Borghildur further testified that she and her children had lived with her fiancé for thirteen months before returning to the United States to litigate the custody case and would return to that residence.

Additionally, the family court noted that each parent had commended the other's parenting skills and observed that each parent had the ability to successfully parent the children. The testimony revealed that the children were being properly cared for and nurtured in Borghildur's home. One of the children's teachers testified that the parties had a bright child who was a good helper in the classroom. Renata Surrate, Borghildur's neighbor, testified that Borghildur was a wonderful mother. Todd Livingston, another neighbor of Borghildur's, testified that Borghildur was an honest, clean, and well-mannered mother.

While Richard argues that Borghildur's decision to take the children to Iceland and to require the utilization of the Hague Convention's international child abduction law was so outrageous as to preclude her from being designated as the children's primary residential parent, the family court was authorized to

consider this fact as one of the many factors to consider in making a custody determination. *Id.* A custody determination must be made based on all of the circumstances involved in a case and not based on one determinative factor.

*Squires v. Squires*, 854 S.W.2d 765, 769 (Ky. 1993). Ultimately, the family court must make a decision that is in the best interests of the children. KRS 403.270(2).

In its written order, the family court made multiple references to the Hague Convention's application in the case. However, the family court noted testimony that Borghildur was unaware that she was using a revoked power-of-attorney to obtain the children's entry into Iceland. Further, the family court noted testimony that Borghildur made several attempts to call Richard after she arrived in Iceland. While the family court found that Borghildur "wrongfully" removed the children, there was sufficient other evidence that she was a suitable parent.

We further recognize Richard's arguments that he had a nurturing relationship with his children, that he maintained steady employment, and that the children were adjusted to their environment prior to being moved to Iceland. The family court heard all of this testimony and testimony that the children had a nurturing relationship with their mother and had a stable home in Iceland. While Richard maintained employment longer than Borghildur, the testimony revealed that she had a job in social services in Iceland upon her return. Accordingly, because the family court's decision was not arbitrary, unreasonable, unfair, or unsupported by sound legal principles, we conclude that the family court did not

abuse its decision by designating Borghildur as the children's primary residential parent. *Miller v. Harris*, 320 S.W.3d 138, 141 (Ky.App. 2010).

Richard contends that the family court erred by dividing the credit card debt in a manner unsupported by the evidence. He argues that he should have only been held responsible for his personal use of the card. Alternatively, he argues that the family court should have apportioned the debt equally as requested by Borghildur during the hearing. Contending that the family court deviated from the arguments of both parties, he argues that its ruling was erroneous.

Questions regarding the determination of marital and nonmarital debt and its equitable division are left to the sound discretion of the family court. *Rice v. Rice*, 336 S.W.3d 66, 68 (Ky. 2011). Regarding the parties' \$16,039.34 credit card balance, Borghildur presented the family court with evidence that Richard personally incurred \$6,602.95, Borghildur personally incurred \$1,749.94, and that \$7,686.46 was incurred for the benefit of both parties.

The family court noted that Borghildur presented more detailed evidence than Richard on the issue of the credit card debt and, thus, was more credible than Richard. Based on this evidence, the family court assigned each party the debt that each person personally incurred and then evenly divided the joint debt. Thus, we conclude that the family court did not abuse its broad discretion.

For the foregoing reasons, the Hardin Family Court's findings of fact, conclusions of law, and order is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Phyllis K. Lonneman  
Dawn Lonneman Blair  
Elizabeth, Kentucky

BRIEF FOR APPELLEE:

David T. Wilson, II  
Radcliff, Kentucky