

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001075-ME

HOLLY EDELENBOS (F/K/A HARDESTY)

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE MATTHEW BRENT HALL, JUDGE
ACTION NO. 04-CI-01166

BRIAN HARDESTY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: NICKELL AND VANMETER, JUDGES; SHAKE,¹ SENIOR JUDGE.

NICKELL, JUDGE: Holly Edelenbos (f/k/a Hardesty) has appealed from the

April 6, 2010, opinion and order of the Hardin Circuit Court, Family Division,

which granted Brian Hardesty sole custody of the parties' two minor children.

After a careful review of the record and the law, we affirm.

¹ Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Holly and Brian were married in 2000 and divorced in 2004. The marriage produced two minor children. Under the terms of the separation agreement entered into during the divorce proceedings, the parties were awarded shared custody of the children. The parties experienced significant difficulties with the shared parenting arrangement, leading Brian to file a failed motion to modify custody in late 2005. The parties entered into an agreed order in April 2006 awarding Brian parenting time according to the local rules of the Hardin Family Court. On January 6, 2010, Brian again moved the trial court to modify the custody arrangement. Holly objected to the modification and a hearing was held on the motion on March 25, 2010. The trial court heard testimony from Brian, Holly, her husband, Hank Edelenbos, and the children.

On April 6, 2010, the trial court entered an opinion and order modifying custody of the parties' minor children, granting Brian sole custody and awarding Holly visitation in accordance with the local rules. Holly's motion to reconsider was denied. This appeal followed.

Holly contends the trial court clearly erred and abused its discretion in awarding Brian sole custody of the children. She alleges the trial court's findings were unsupported by substantial evidence and that its decision was not in the best interest of the children. Holly argues the trial court failed to consider evidence she presented and that the opinion showed a clear bias against her. She alleges the trial

court erroneously considered the testimony presented by Brian as true without regard to the contradictory evidence she presented. She believes this is apparent from the trial court's devotion of only three-fourths of a page in its order to a discussion of her testimony and evidence, while devoting over one and one-half pages to discussing Brian's testimony. She further argues the trial court's failure to include a mention of several pieces of evidence or instances of testimony confirms the trial court's decision is infirm. We disagree.

The Supreme Court of Kentucky set forth the appropriate standard of review for appellate courts in another custody case, *Moore v. Asente*, 110 S.W.3d 336, 353-54 (Ky. 2003), wherein it held a reviewing court may set aside a trial court's findings only if those findings are clearly erroneous; that is to say, those findings are not supported by substantial evidence. *Moore* further held:

“[S]ubstantial evidence” is “[e]vidence that a reasonable mind would accept as adequate to support a conclusion” and evidence that, when “taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men.” Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, “due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses” because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court. Thus, “[m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal,” and appellate courts should not disturb trial court findings that are supported by substantial evidence. [footnotes omitted].

Id. at 354. We review the trial court's application of the law to those facts *de novo*.

Lindley v. Paducah Bank & Trust, 114 S.W.3d 259, 263 (Ky. App. 2002).

Additionally, trial courts are granted broad discretion in determining the best interests of children when making custody awards, *Krug v. Krug*, 647 S.W.2d 790, 793 (Ky. 1983), and thus custody determinations will not be disturbed in the absence of an abuse of that discretion. *Allen v. Devine*, 178 S.W.3d 517, 524 (Ky. App. 2005). We review this matter with those standards in mind.

It is well settled in this Commonwealth that the “trier of fact has the right to believe the evidence presented by one litigant in preference to another. The trier of fact may believe any witness in whole or in part.” *Bissell v. Baumgardner*, 236 S.W.3d 24, 29-30 (Ky. App. 2007) (quoting *Commonwealth v. Anderson*, 934 S.W.2d 276, 278 (Ky. 1996) (internal citations omitted)). Thus, as there was no jury impaneled, the trial court alone was vested with the discretion to determine the credibility of the witnesses and to adjudicate the matter. Based upon a careful review of the record we conclude the trial court’s decision was supported by substantial evidence and its determination of which evidence was most credible was not clearly erroneous.

The trial court heard testimony from multiple witnesses at the March 25 hearing and examined the written record including exhibits produced by each of the parties. On that basis, the trial court issued its findings of fact. Although conflicting evidence was presented, there was evidence of substance to support the trial court’s findings. It is apparent from a review of the record that the trial court carefully and thoroughly reviewed and weighed the evidence presented. As the trial court was in the best position to judge the weight of the evidence and the

credibility of the witnesses in this matter, we will overturn the decision only if the trial court abused its discretion. CR² 52.01, *Moore*.

The trial court set forth a detailed recitation of the evidence supporting its findings of fact. The trial court showed an appreciation and understanding of all of the testimony and documentary evidence before it as well as the arguments of the parties. Our review of the record indicates both parties presented evidence in support of their respective positions, thus requiring the trial court to weigh the conflicting evidence in making its determination. The evidence presented could be viewed as reasonable to support a finding in favor of either party. Therefore, we conclude the trial court's factual findings were supported by substantial evidence and we will not substitute our judgment for that of the trial court. We are unable to say the trial court's decision was arbitrary, capricious, unreasonable or unfair under the circumstances, and we are thus bound by the trial court's factual findings. *Allen*, 178 S.W.3d at 524.

The only remaining issue for our resolution is whether the trial court erred in applying the law to the facts as it did. As stated earlier, our review indicated there was substantial evidence supporting the trial court's decision to modify the custody arrangement. There has been no allegation that the trial court utilized an incorrect legal standard in making its determination. When the correct rule of law has been applied to factual findings which are supported by substantial

² Kentucky Rules of Civil Procedure.

evidence, the resulting judgment must be affirmed. *Bowling v. Natural Resources and Environmental Protection Cabinet*, 891 S.W.2d 406, 410 (Ky. 1994).

Holly clearly disagrees with the trial court's final custody determination. She sets forth detailed recitations of the evidence she believes is supportive of her position. She also argues vehemently regarding the weight which should have been afforded to such evidence. She makes much of the fact that the trial court failed to mention numerous items of evidence as being illustrative of the trial court's failure to consider all of the evidence. We have carefully reviewed and considered each of her allegations. However, as noted earlier, even if there is disagreement, appellate courts cannot substitute their judgment for that of the trial court. *Moore*. Holly has failed to show the trial court's decision was unsupported by substantial evidence, that the trial court utilized an incorrect legal standard, or that it erred in its application of the law to the facts. Absent any of these errors, the decision of the trial court must stand as there is simply no basis for reversal.

Therefore, for the foregoing reasons, the judgment of the Hardin Circuit Court, Family Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Carol B. Meinhart
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