

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001942-ME

JENNIFER ENGLAND

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DONNA DELAHANTY, JUDGE
ACTION NO. 12-D-502677

JAMES KEEDY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MOORE AND THOMPSON, JUDGES.

DIXON, JUDGE: Jennifer England appeals a domestic violence order entered against her by the Jefferson Circuit Court, finding that she committed acts of domestic violence against James Keedy and awarding James temporary custody of their eleven-year-old daughter, A.K. We affirm.

Jennifer and James were never married, and they ended their relationship shortly after the birth of A.K. in 2001. At the time of the events in question, A.K. primarily resided with Jennifer and her husband, Michael, and A.K. had visitation with James. On September 17, 2012, James filed a domestic violence petition against Jennifer following a confrontation in a parking garage. The argument took place in the presence of A.K., and James contended that Jennifer hit him in the face, scratched him, and threatened to kill him. The court granted James an EPO and set a date for an evidentiary hearing.

At the hearing, the court heard testimony from five witnesses: James, Candy McCarty (James's paramour), Jennifer, Michael, and A.K. (who testified in chambers). According to Jennifer, she was angry that James had taken A.K. out of school. Jennifer admitted that she "snapped" when she confronted James and began hitting him. James testified consistently with the allegations in his petition, and he stated that he was afraid of Jennifer. A.K. testified that she was scared when she witnessed her mom hitting her dad and yelling at him. A.K. told the court that she did not want to see her mother or go back to her mother's house.

The court concluded that domestic violence had occurred and may again occur, and the court issued a one-year DVO against Jennifer, restraining her from having any contact with James. The order further awarded James temporary custody of A.K. and granted supervised visitation to Jennifer. This appeal followed.

A court may grant a DVO, following a full hearing, “if it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur[.]” KRS 403.750(1). To satisfy the preponderance standard, the evidence believed by the fact-finder must show that the victim “was more likely than not to have been a victim of domestic violence.” *Commonwealth v. Anderson*, 934 S.W.2d 276, 278 (Ky. 1996). “On appeal, we are mindful of the trial court's opportunity to assess the credibility of the witnesses, and we will only disturb the lower court's finding of domestic violence if it was clearly erroneous.” *Buddenberg v. Buddenberg*, 304 S.W.3d 717, 720 (Ky. App. 2010).

On appeal, Jennifer concedes that there was sufficient evidence of domestic violence in the record to support the DVO; however, she argues the court improperly modified custody without making the requisite findings required by the modification statute, KRS 403.340.

Jennifer does not dispute the court’s finding of domestic violence; accordingly, the court was vested with the discretion to award temporary custody to James after considering the criteria set forth in the custody statutes. KRS 403.750(1)(f). To determine the arrangement that is in the child’s best interests, the court must consider all relevant factors, including: the wishes of the parents and child; the interpersonal relationships of the child with its parents, siblings, and others; the child’s assimilation to home, school, and community; mental and physical health issues; and evidence of domestic violence. KRS 403.270(2)(a-f).

After hearing all the evidence, including the wishes of A.K., the court concluded that the circumstances warranted a temporary grant of custody to James. Ruling from the bench, the court summarized its view of the evidence, specifically stating it believed A.K.'s testimony that she was terrified and did not want to return to her mother's home. The court also stressed that the custody determination was temporary and noted that the DVO could be amended following the outcome of a pending social services investigation. We conclude the court's decision regarding temporary custody was supported by substantial evidence. Although Jennifer is obviously dissatisfied with the court's decision, we are not persuaded the court abused its broad discretion.

For the reasons stated herein, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Kyle A. Burden
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