

RENDERED: DECEMBER 6, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2012-CA-002161-ME

JESSICA L. SKAGGS (NOW HARPER)

APPELLANT

v. APPEAL FROM ELLIOTT CIRCUIT COURT  
HONORABLE JOHN R. COX, JUDGE  
ACTION NOS. 12-CI-00057, 12-J-00033,  
AND 12-J-00038

JEREMY HAMILTON,  
COMMONWEALTH OF  
KENTUCKY, EX REL., R.H.,  
AN INFANT

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: CAPERTON, CLAYTON, AND JONES, JUDGES.

CLAYTON, JUDGE: This is an appeal of a decision of the Elliott Circuit Court regarding custody of a three-year-old boy, R.H. Based upon the following, we affirm the trial court's decision.

## BACKGROUND SUMMARY

The father of R.H., Jeremy Hamilton, brought an action in the Elliott Circuit Court regarding the custody of R.H. The child's parents, Hamilton and Jessica Skaggs, were not married to one another at the time of R.H.'s birth. Hamilton became the primary caregiver of R.H. during the day while Skaggs worked as a critical nurse per agreement between the parties.

Skaggs is currently living with Alan Harper who was found responsible for "excessive corporal punishment" of R.H. As a result of this finding, Skaggs would stay with her grandmother when she had parenting time with R.H., since Harper could not be on the same property as R.H.

After a hearing, the trial court found that harm to R.H. by Harper had been established and granted custody to Hamilton with standard timesharing with Skaggs with the condition that Harper not have any contact with R.H. Skaggs then brought this appeal.

## STANDARD OF REVIEW

CR 52.01 provides that "[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given the opportunity of the trial court to judge the credibility of witnesses." A judgment is not "clearly erroneous" if it is "supported by substantial evidence." *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). Substantial evidence is "evidence of substance and relevant consequence having the fitness to induce conviction in the

minds of reasonable men.” *Id. Kentucky State Racing Comm’n v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972).

In determining whether the trial court erred in granting or denying custody, the appellate court must determine whether the findings of the court were clearly erroneous or whether there was an abuse of discretion. *Eviston v. Eviston*, 507 S.W.2d 153 (Ky. 1974). With these standards in mind, we review the trial court’s decisions.

## DISCUSSION

Skaggs contends that the trial court erred in awarding sole custody of R.H. to Hamilton (whom she asserts is a known oxycodone addict), erred in ignoring its own recommendations following a dispositional hearing in a juvenile case, and exceeded its authority in a clearly erroneous order by denying Harper the right ever again to be around her son.

KRS 403.270(2) provides that custody shall be determined based upon the following:

(2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. The court shall consider all relevant factors including:

- (a) The wishes of the child's parent or parents, and any de facto custodian, 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;
- (e) The mental and physical health of all individuals involved;
- (f) Information, records, and evidence of domestic violence as defined in KRS 403.720;
- (g) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;
- (h) The intent of the parent or parents in placing the child with a de facto custodian; and
- (i) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school.

In the present case, the trial court held a lengthy hearing and determined that Harper had abused the child in the past, refused to admit that he had, and that Skaggs also refused to admit that Harper's punishment of the child was excessive. There was no error in the trial court's prohibiting any contact between Harper and the child. Skaggs also argues that she was a *de facto* custodian. However, as the natural mother, *de facto* custodian status was unnecessary and inapplicable to her. KRS 403.270(1). Given these findings, the trial court determined that the child's

best interest was in his living with his father. The trial court applied the statutory factors but was not required to consider the wishes of a three-year-old child. We find no error in the trial court's findings.

As to Hamilton's past drug abuse, the trial court also took that into account and found that Hamilton had completed a rehabilitation program and was currently not engaged in illegal drug use. Again, we find the trial court's findings are not in error.

Based upon the above, we affirm the decision of the trial court.

ALL CONCUR.

BRIEF FOR APPELLANT:

W. Jeffrey Scott  
Grayson, Kentucky

BRIEF FOR APPELLEE:

Tracy D. Frye  
Russell, Kentucky

John Preston Thompson  
Grayson, Kentucky

Rhonda M. Copley  
Ashland, Kentucky