

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-001499-ME

ERIN SKAGGS

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE CATHERINE R. HOLDERFIELD, JUDGE  
ACTION NO. 04-CI-01165

CHARLES RAY YOUNG, II

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT, STUMBO AND THOMPSON, JUDGES.

STUMBO, JUDGE: Erin Skaggs appeals from an order of the Warren Circuit Court which granted Charles Young's motion to modify parenting times and designating him as the primary residential parent of the parties' thirteen-year-old daughter, E.J.Y. We find no error and affirm.<sup>1</sup>

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<sup>1</sup> Mr. Young did not file a brief in this appeal. Pursuant to CR 76.12(8)(c), if an Appellee does not file a brief, this Court may "(i) accept the appellant's statement of the facts and issues as correct; (ii) reverse the judgment if appellant's brief reasonably appears to sustain such action; or

The parties married in August of 2000, and had E.J.Y. the same year. The parties separated in January of 2004, and a dissolution of marriage decree was entered on August 19, 2005. At that time, the parties were awarded joint custody of E.J.Y. and neither was designated primary residential parent.

The current matter came before the trial court on a motion to modify co-parenting time filed by Mr. Young on November 7, 2012. At that time, Ms. Skaggs and E.J.Y. were living in LaRue County since around June of 2011. After her divorce, Ms. Skaggs married Timothy Skaggs.<sup>2</sup> Mr. and Ms. Skaggs also have a son, B.L.S. Mr. Young had continued living in Warren County since the dissolution of marriage. Mr. Young was living with his fiancé, Molly Grimes, and her two minor children. Further facts regarding this family will be discussed later in this opinion.

A hearing was held on the motion to modify parenting time on January 3, 2013, and further testimony was heard on January 29. E.J.Y. was interviewed by the court *in camera* on February 14 and another hearing was held on February 26. The court ultimately granted Mr. Young's motion, designating him the primary residential parent of E.J.Y. Ms. Skaggs was given parenting time every other weekend. This appeal followed.

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(iii) regard the appellee's failure as a confession of error and reverse the judgment without considering the merits of the case." "The decision as to how to proceed in imposing such penalties is a matter committed to our discretion." *Roberts v. Bucci*, 218 S.W.3d 395, 396 (Ky. App. 2007)(citation omitted). Because this case involves custody issues, we will review it as if Mr. Young did file a brief.

<sup>2</sup> At the time these proceedings began, Ms. Skaggs was in the process of divorcing Mr. Skaggs. Also, Ms. Skaggs has a domestic violence order against Mr. Skaggs and he is not allowed near her, the home, or her children.

Kentucky Rules of Civil Procedure (CR) 52.01 directs that “[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” A judgment “supported by substantial evidence” is not “clearly erroneous.” *Owens–Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). Substantial evidence is defined as “evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable men.” *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972).

In reviewing the trial court’s decision, we must determine whether it abused its discretion by awarding custody of the children to [the parent at issue]. An abuse of discretion occurs when a trial court enters a decision that is arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000); *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). We will not substitute our own findings of fact unless those of the trial court are “clearly erroneous.” *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986). Further, with regard to custody matters, “the test is not whether we would have decided differently, but whether the findings of the trial judge were clearly erroneous or he abused his discretion.” *Eviston v. Eviston*, 507 S.W.2d 153, 153 (Ky. 1974); *see also Cherry v. Cherry*, 634 S.W.2d 423 (Ky. 1982).

*Miller v. Harris*, 320 S.W.3d 138, 141 (Ky. App. 2010).

“With regard to visitation/timesharing modification, a circuit court must consider the ‘best interests of the child’ in light [of] KRS 403.320(3).” *Meekin v. Hurst*, 352 S.W.3d 924, 925 (Ky. App. 2011). KRS 403.320(3) states in pertinent

part that “[t]he court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child[.]” The best interests of the child are determined by looking at the factors set forth in KRS 403.270(2) which states:

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[.]<sup>3</sup>

These are the facts as they relate to KRS 403.270:

#### EVIDENCE OF DOMESTIC VIOLENCE

We will begin with this issue because it will have some bearing on the other 403.270(2) factors. E.J.Y. has been exposed to domestic violence by both of her parents. In 2006, a juvenile case was opened in Warren County when Mr. Young spanked E.J.Y. with a belt that resulted in bruises on her legs. Mr. Young had

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<sup>3</sup> KRS 403.270(2) lists other factors, but they are not relevant to the case at hand.

supervised visitation with E.J.Y. for a couple of months and attended parenting classes to learn about proper discipline. Then, in 2010, Mr. Young, E.J.Y., Ms. Grimes, and Ms. Grimes' children were visiting Ms. Grimes' family. Mr. Young caught E.J.Y. stealing some items from Ms. Grimes' parents' house. Mr. Young smacked E.J.Y. in the mouth. Upon E.J.Y.'s return home, Ms. Skaggs filed for an emergency protective order in Warren County. A domestic violence order was entered which required Mr. Young to attend domestic violence counseling, attend family counseling, and to have supervised visitation for three months. Mr. Young complied with all of these conditions.

Mr. Skaggs also has a history of domestic violence toward Ms. Skaggs, which E.J.Y. was exposed to. Testimony revealed that there were at least two instances of domestic violence that E.J.Y. was exposed to: 1) Mr. Skaggs pushed Ms. Skaggs down and threatened her with abusive language and 2) E.J.Y. was in the house when she heard Mr. and Ms. Skaggs arguing. Also worth noting, there was an incident where Mr. Skaggs used abusive language toward Mr. Young on one occasion during a visitation exchange. Finally, testimony revealed that Mr. Skaggs was violent throughout the marriage. He would use threatening and abusive language toward Ms. Skaggs and was known to kick doors throughout the house. Sally Smith, Ms. Skaggs' mother who lived with them, would also barricade herself into her room at night with the Skaggs' son because she was afraid of Mr. Skaggs' temper and was fearful that he would try to run off with B.L.S.

The trial court was concerned with all instances of domestic violence that E.J.Y. had been exposed to. The court determined that Mr. Young had cooperated with the courts on both occasions he perpetrated domestic violence toward E.J.Y. The court was convinced this would not happen again. The court found Ms. Skaggs' behavior more concerning. Mr. and Ms. Skaggs were married for eight years. Even though Ms. Skaggs testified that E.J.Y. only witnessed two instances of domestic abuse between the Skaggs, the court believed it likely she had been exposed to more. The court was also concerned with Ms. Skaggs' admission that she knew Mr. Skaggs had been diagnosed as depressed and needed to be on psychiatric medicine, but was not taking the medicine. The court found it unacceptable that Ms. Skaggs would allow E.J.Y. to be exposed to this kind of violent environment for so long.

#### WISHES OF THE PARENTS

Simply stated, Mr. Young and Ms. Skaggs both want to be the primary residential parent. Both believe the other's home environment would be detrimental to E.J.Y.

#### WISHES OF THE CHILD

The trial court interviewed E.J.Y. *in camera*. E.J.Y. wishes to remain with her mother. The trial judge specifically stated that she believed Ms. Skaggs had spoken to E.J.Y. about the specifics of the court proceedings, which she had been ordered not to do. The judge believed E.J.Y. was making an effort to answer her

questions in such a manner as to persuade the court to allow her to remain with her mother.

#### INTERACTION AND INTERRELATIONSHIP OF CHILD WITH OTHERS

E.J.Y. has a half-brother, B.L.S., who resides with Ms. Skaggs. According to E.J.Y.'s testimony, she and B.L.S. have a good relationship and love each other. She further testified that she is more comfortable around her mother, is scared of her father, and does not trust her father. E.J.Y. stated that Mr. Young is stricter than Ms. Skaggs. She testified that she has fun at both her mother and father's houses and has a good relationship with both sets of grandparents. E.J.Y. testified that she is nice to Ms. Grimes, but does not like her.

Ms. Skaggs' mother testified that she and E.J.Y. have a good relationship and that she helps provide supervision of E.J.Y. and B.L.S. while Ms. Skaggs is at work.

Ms. Grimes testified that she and E.J.Y. have a good relationship and that she tries to give E.J.Y. good advice.

Ms. Skaggs tried to elicit testimony that Mr. Young and Ms. Grimes have a drinking problem and argue frequently, but the trial court found this unconvincing. The trial court found more convincing Mr. Young's testimony that he and Ms. Grimes only drink occasionally, mainly socially. Also, Mr. Young and Ms. Grimes testified that they have disagreements, but nothing more serious than that of a typical couple.

The trial court had concerns regarding E.J.Y.'s relationship with her mother. The court believed that the relationship was more akin to friendship than a parent-child relationship. The court recounted two examples. The first involved an incident of what Mr. Young called "sexting".<sup>4</sup> Mr. Young testified that he once found inappropriate text messages on E.J.Y.'s cell phone. Mr. Young advised Ms. Skaggs of what he had found. Ms. Skaggs did not take his concerns seriously and did not believe his account of the messages. Ms. Skaggs also called Mr. Young "stupid". The second example involved a series of comments on E.J.Y.'s Facebook page. The comments were as follows:

E.J.Y.: "Another birthday went wrong /:"

Ms. Skaggs: "Only w/ your dad...lol bc mama gotcha what you wanted...lol"

J.K.M. (friend of E.J.Y.): "...what did your dad get you"

E.J.Y.: "...puppy puzzles. I guess he thinks I'm turning 3."

Ms. Skaggs: "Lmbo [which means laughing my butt off]...ur too funny..."

Testimony also revealed that Ms. Skaggs and E.J.Y. moved frequently and that each time, Mr. Young was not aware of the relocation until after it happened. The court believed that this was due to Ms. Skaggs' inability to co-parent with Mr. Young and her instructing E.J.Y. not to tell her father. Due to these relocations, E.J.Y. attended six schools in seven years.<sup>5</sup>

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<sup>4</sup> "Sexting" is where one person sends sexually explicit messages or pictures to another via text messaging.

<sup>5</sup> One school she attended twice, first for kindergarten and 1<sup>st</sup> grade and then again for the beginning of 5<sup>th</sup> grade.



Finally, the court questioned the supervision E.J.Y. receives at Ms. Skaggs' home and was concerned with the fact that Ms. Skaggs downplays the inappropriate actions of E.J.Y. For example, 13 pictures of E.J.Y. were introduced into evidence. Some of these pictures came from her Facebook page. The judge found the pictures to be inappropriate because E.J.Y., who was then 12 years old, was dressed in short shorts and low cut tops. The judge also believed some of the poses were provocative. The court was concerned that Ms. Skaggs did not find the pictures inappropriate and found her parenting style to be "loose and liberal".

#### ADJUSTMENT TO HOME, SCHOOL AND COMMUNITY

E.J.Y. is a good student who makes A's and B's. E.J.Y. is involved with the speech and debate team at LaRue County Middle School and testimony suggested that she was interested in joining some sports teams as well. She has many friends in LaRue County and testified that she would be sad if she had to leave them. She has also kept in touch with some of her friends in Warren County. E.J.Y. testified that if she had to move to a new school, it would not pose a problem. She stated that she could make new friends or get reacquainted with old friends. The court was concerned that E.J.Y. had attended six schools in seven years due to the frequent moves made by Ms. Skaggs; however, E.J.Y. seems to be able to adjust easily to new surroundings.

E.J.Y. has her own room at Ms. Skaggs' house. Mr. Young currently lives with three other people and the children have to share bedrooms. Mr. Young

stated that if E.J.Y. were to live with him, he would build her a new room onto the house so she could have some privacy.

E.J.Y. also attends church regularly with her mother and has friends there. Mr. Young does not attend church regularly, but is unhappy with E.J.Y.'s church in LaRue County. Mr. Young stated he had heard E.J.Y. was involved in a physical altercation with another youth at church. Ms. Skaggs and E.J.Y. both denied this.

#### MENTAL AND PHYSICAL HEALTH OF ALL PARTIES

There was no indication that any party suffered from mental illness. In addition, no one was seriously ill. Mr. Young did have some medical concerns. He was concerned that E.J.Y. had not seen a dentist since 2008 and had not seen an eye doctor since December of 2011. Also, E.J.Y. was supposed to wear glasses, but she had not been doing so while at Mr. Young's home.

#### CONCLUSION

As can be seen from the facts set forth, the trial court authored a detailed and reasonable order. The order was 28 pages in length and set forth the trial court's reasoning using specific facts from the four days of hearings. While some of the court's findings of fact were disputed, the court found Mr. Young's testimony and evidence more credible and reliable. The facts the trial court relied upon were supported by substantial evidence. While this case may have been a close call due to Mr. Young's previous issues of domestic violence and E.J.Y.'s desire to live with her mother, we cannot say that the trial court abused its

discretion in determining it was in E.J.Y.'s best interest for Mr. Young to be the primary residential parent. The court was concerned with Ms. Skaggs' parenting style, her frequent residential relocations, her abusive relationship with Mr. Skaggs, and her lack of cooperation with Mr. Young.<sup>6</sup>

For the foregoing reasons, we affirm the order of the Warren Circuit Court designating Mr. Young as the primary residential parent.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Ronald D. Mather  
Hodgenville, Kentucky

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<sup>6</sup> The case of *Meekin, supra*, previously cited by this Court has similar facts to the case at hand. In that case, a mother petitioned to be designated the primary residential parent. The trial court denied the petition in part because the mother moved around frequently and exposed the child to a violent home environment. Also, the court indicated that there was some strife between the child and the father because they were living with the father's new fiancé and her minor child.