

RENDERED: DECEMBER 11, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000013-ME

DEBORAH FULMER CHEEKS

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE LINDA R. BRAMLAGE, JUDGE
ACTION NO. 10-CI-00783

DENNIS FULMER

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, THOMPSON, AND VANMETER, JUDGES.

CLAYTON, JUDGE: This is an appeal from the Boone Circuit Court changing custody and parenting time of the parties' three minor children. Based upon the following, we affirm the decision of the circuit court.

BACKGROUND SUMMARY

The Appellant, Deborah Fulmer Cheeks, and the Appellee, Dennis Fulmer, were married on February 12, 2007, and divorced on May 5, 2013. The parties entered into a Separation Agreement wherein they agreed to joint custody of their children. Dennis had parenting time based upon the circuit court's order entered November 20, 2012.

On February 14, 2014, the Boone County Juvenile Court held a temporary removal hearing at which it was found that an emergency existed. The children were removed from Deborah and placed in the temporary custody of Dennis. This removal was due to Deborah being arrested for Driving Under the Influence with the children in her car on February 11, 2014.

On December 5, 2014, the circuit court entered Findings of Fact and Conclusions of Law in which the court found that Deborah was in denial about her issues and that the children's environment while living with her would endanger their physical, mental, moral, or emotional health. As a result, the court awarded Dennis sole custody of the minor children. The court also allowed Deborah to have unsupervised parenting time with the children for three of four weekends per month as well as two non-consecutive weeks in the summer and alternating holidays, including Mother's Day. The court also allowed Dennis to have the tax exemptions associated with the children since he would be providing the majority of their care.

Deborah then brought this appeal.

STANDARD OF REVIEW

Trial courts are vested with broad discretion in matters concerning custody and visitation. *Drury v. Drury*, 32 S.W.3d 521, 525 (Ky. App. 2000). Further, in the absence of an abuse of discretion, we will not disturb a trial court's decision. *Young v. Holmes*, 295 S.W.3d 144, 146 (Ky. App. 2009). "Abuse of discretion in relation to the exercise of judicial power implies arbitrary action or capricious disposition under the circumstances, at least an unreasonable and unfair decision." *Sherfey v. Sherfey*, 74 S.W.3d 777, 783 (Ky. App. 2002)(*overruled on other grounds by Benet v. Commonwealth*, 253 S.W.3d 528 (Ky. 2008))(internal quotation marks omitted). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citation omitted). The test is not whether we as an appellate court would have decided the matter differently, but whether the trial court's rulings were clearly erroneous or constituted an abuse of discretion. *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982).

Addressing the appellate review of a trial court's findings of fact, the standard is well-established. Questions as to the weight and credibility of a witness are purely within the province of the court acting as fact-finder and due regard shall be given to the court's opportunity to judge the witness's credibility. Kentucky Rules of Civil Procedure (CR) 52.01; *Sherfey*, 74 S.W.3d at 782. Therefore, factual determinations made by the circuit court will not be disturbed on

appeal unless clearly erroneous. CR 52.01. Findings of fact are not clearly erroneous if supported by substantial evidence. *Sherfey, supra*.

Finally, we conduct a *de novo* review of the trial court's application of the law to the established facts to determine whether the ruling was correct as a matter of law. *Laterza v. Commonwealth*, 244 S.W.3d 754, 756 (Ky. App. 2008). "Under this standard, we afford no deference to the trial court's application of the law to the facts[.]" *Id.* (Citation omitted.)

With these standards in mind, we turn to the case at hand.

ANALYSIS

Deborah has filed her appeal *pro se*. While she sets forth a Statement of the Case and assertions that many of her rights were violated by the court's change in custody, she does not cite to the record nor does she set forth specific legal arguments regarding her claims. Deborah argues that her fourth, sixth and sixteenth amendment rights were violated. There is no support for this argument.

In its findings and conclusions, the circuit court held that, pursuant to Kentucky Revised Statutes (KRS) 403.340(2)(a), Dennis should be awarded sole custody because "the children's present environment may endanger seriously their physical, mental, moral or emotional health...." Findings and Conclusions at p. 6. Deborah has not argued that there was a lack of substantial evidence, that the court misapplied the law or that the court abused its discretion. Therefore, we affirm the decision of the circuit court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Deborah Fulmer Cheeks, *Pro Se*
Dry Ridge, Kentucky

BRIEF FOR APPELLEE:

Tabitha Wooldridge
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