

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000441-ME

CHASITY WILLIAMS

APPELLANT

v.

APPEAL FROM ELLIOTT CIRCUIT COURT
HONORABLE JEFFREY L. PRESTON, JUDGE
ACTION NO. 06-CI-00067

JOSEPH BARKER

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: ACREE, J. LAMBERT, AND MAZE, JUDGES.

MAZE, JUDGE: This appeal arises from the Elliott Circuit Court's order overruling Appellant Chasity Williams' motion to restore timesharing with her minor son. As the evidence of record shows that there were no findings of fact regarding the best interest of the child, we are required to reverse and remand.

Background

This matter originated as a dispute between Appellant, Chasity Williams, and Appellee, Joseph Ryan Barker, concerning custody of their son,

J.B., born July 2005. On October 9, 2006 the trial court granted the parties joint custody of J.B. Additionally, the court ordered equal timesharing between both parents. Both parents continued to have joint custody and equal timesharing, until May 28, 2014, despite ongoing litigation since J.B.'s birth.

The testimony revealed that on or about May 12, 2014, Williams was attending J.B.'s baseball game. During the game Williams left for about twenty minutes. When she returned, another mother at the game, Melissa McIntosh, became worried that Williams was either under the influence of drugs or was having a medical emergency. McIntosh was concerned for J.B. to ride in the car with Williams after the game. McIntosh, therefore, asked the coach to keep the children after the game until J.B.'s paternal relatives could be contacted to pick him up from the game. During this time, McIntosh expressed her concerns to other parents at the game. Barker's parents were contacted. They then contacted Barker and his wife. Barker and his wife do not attend J.B.'s games, but on this date they drove to the field and picked up J.B. against Williams' wishes.

In response to this incident, Barker filed a motion for immediate emergency custody of J.B. on May 28, 2014. The trial court granted the motion until a hearing could be held on the issue. On June 11, 2014, the trial court held a hearing. Various people testified at the hearing. Those testifying included Williams, Barker, parents who attended the game, the coach, and a supervisor for Elliott County Social Services. The only people who testified that Williams appeared intoxicated were McIntosh, Barker, and Barker's relatives. Williams,

however, admitted to taking prescribed Methadone regularly. She also testified she has a prescription for Xanax, which she takes up to three times a day.

On June 18, 2014, the trial court entered an order. The court explained that “based upon the evidence presented, the Court can see no reason to change the current custody arrangement. The proof is not conclusive enough in regards to whether or not Ms. Williams was so intoxicated as to make her unable to properly care for the child.” The court, however, was concerned with Williams’ use of prescribed Methadone and Xanax. The court was also concerned that Williams was allowing her boyfriend to be around J.B., in violation of previous court orders. The court stated that,

it is therefore the order of this Court that Ms. Williams supply to the Court documentation from the Methadone Clinic and from the doctor that is prescribing her Xanax as to the reasons for the continued prescriptions and the anticipated course of treatment that would be undertaken to wean Ms. Williams from the use of those drugs. Said information shall be supplied to the Court within thirty (30) days. Once that information is received by the Court and the attorney for the Petitioner [Barker] files a proper motion before the Court in regards to Mr. Martin [Williams’ boyfriend], this Court will conduct a subsequent hearing to determine whether or not it is in the best interest of the child to continue the current custody arrangement.

Based on this order Williams and Barker retained joint custody with timesharing until Barker filed a proper motion and a best interest hearing could be held.

Barker filed a motion on July 10, 2014, to request the order be amended to allow J.B. to remain with Barker until the best interest hearing was

held. Williams responded requesting that Barker's motion be overruled. The court set the motion to be heard at the hearing on August 6, 2014. On August 1, 2014 Barker filed a motion to continue the best interest hearing until Williams provided sufficient medical documentation to comply with the June 18 order requiring her to present medical documentation within thirty (30) days. On August 11, 2014, the trial court ordered that the August 6 hearing be set aside until Williams produced "her medical records in their entirety to the Court and counsel for the Petitioner." Additionally, the court ordered that Williams' "timesharing with the parties' minor child [be] suspended pending further order of [the] court."

Following the suspension of Williams' timesharing, Williams filed a notice of medical records and a motion to reschedule the hearing on the issue of timesharing. Barker responded claiming that Williams had not supplied sufficient medical records. The trial court scheduled a hearing for December 15, 2014, and ordered "doctors appear with a written plan of weaning Respondent, Chasity Williams, off of drugs." No medical reports were filed at the hearing and the parties made an agreed order in which Williams,

shall have a weekly telephone call with J.B. and have a visit of at least one hour with J.B. on Christmas, said visit to be supervised by Melissa Barker [Barker's wife]. Respondent should schedule her weekly telephone call with J.B. by contacting Melissa Barker for a date and time. Upon filing of the medical information as required by previous court order, the court shall schedule a hearing on the issue of timesharing.

On February 9, 2015, Williams filed a motion with the court to restore timesharing with J.B. Williams submitted an email from the Huntington Treatment Center where she receives Methadone, explaining how she will detox out of the program. Williams explained that she was experiencing difficulty obtaining similar information from her doctor who prescribed her Xanax. Barker filed a response claiming that Williams had not provided sufficient medical documentation as ordered by the court. Williams' counsel responded stating that Williams,

is not a person of means and has attempted over and over to comply with the order of the court . . . Respondent [Williams] is only allowed to speak with her son for 20 minutes each week. She has seen him twice since the Motion to Terminate Timesharing was filed. She has attempted to comply with court orders and requests that her timesharing be restored.

On February 12, 2015, the trial court overruled Williams' motion to reinstate timesharing. This appeal follows.

Standard of Review and the KRS 403.320 Standard

Trial courts retain a high level of discretion concerning timesharing determinations and will only be reversed if their determinations “constitute a manifest abuse of discretion, or were clearly erroneous in light of the facts and circumstances of the case.” *Drury v. Drury*, 32 S.W.3d 521, 525 (Ky. App. 2000). The trial court's findings of fact will only be disturbed if clearly erroneous. Kentucky Rules of Civil Procedure (CR) 52.01; *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982). The question for the reviewing court is not whether it would have decided the issue differently, but whether the family court applied the correct

law and whether the family court abused its discretion. *B.C. v. B.T.*, 182 S.W.3d 213, 219 (Ky. App. 2005). To amount to an abuse of discretion, the trial court's decision must be "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000), citing *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). Additionally, questions of law are reviewed *de novo*. *Carroll v. Meredith*, 59 S.W.3d 484, 489 (Ky. App. 2001).

The standard for analyzing a visitation order is set forth in Kentucky Revised Statute (KRS) 403.320. A parent is entitled to reasonable visitation unless the trial court finds that visitation is not in the child's best interest. KRS 403.320. This Court has "applied the reasonable visitation standard set forth in KRS 403.320(1) to evaluate timesharing orders in shared custody cases. Reasonable visitation is decided based upon the circumstances of each parent and child, with the best interests of the child in mind." *Hudson v. Cole*, 463 S.W.3d 346, 351 (Ky. App. 2015), citing *Drury*, 32 S.W.3d at 524-25.

Analysis

On appeal, Williams contends that the trial court erred in overruling her motion to reinstate timesharing with her son. Williams claims that the trial court erred by terminating her timesharing without making any findings concerning the best interests of the child.

KRS 403.320 is the controlling law on issues of visitation. The statute states that,

a parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health. Upon request of either party, the court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.

KRS 403.320(1).

In *Drury*, this Court “applied the reasonable visitation standard set forth in KRS 403.320(1) to evaluate timesharing orders in shared custody cases.”

32 S.W.3d at 524-25. Additionally, KRS 403.320 also states that,

the court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

KRS 403.320(3).

The statute requires the trial court to make findings concerning the best interest of the child, which includes findings related to the child's physical, mental, moral, and emotional health.

Here, the trial court made no findings concerning the best interests of J.B. In fact, in the June 18, 2014 order the trial court explained that “based upon the evidence presented, the Court can see no reason to change the current custody arrangement. The proof is not conclusive enough in regards to whether or not Ms. Williams was so intoxicated as to make her unable to properly care for the child.” The court went on to say that a subsequent hearing would be held “to determine

whether or not it is in the best interest of the child to continue the current custody arrangement” after Williams complies with supplying medical documentation and Barker files a proper motion. A subsequent hearing to determine J.B.’s best interests was never held.

The trial court, based on Williams’ apparent failure to supply adequate medical records that comply with the court order, suspended her timesharing. It appears the trial court had concerns with timesharing until Williams could provide medical records. The trial court, however, never made a finding that it could not make a decision without the medical records. The trial court denied Williams’ latest motion to reinstate her timesharing, thus leaving Williams with no timesharing indefinitely. By overruling her motion, the trial court is in essence permanently restricting Williams’ timesharing with J.B. A decision affecting timesharing in this manner must be made in accordance with KRS 403.320. *Drury*, 32 S.W.3d at 524. Findings of fact regarding the safety and welfare of the minor child must be made, and in this case they were not.

It very well may be that it is in J.B.’s best interest for timesharing with Williams to be monitored or restricted in some way. As KRS 403.320(3) explains, visitation can be modified to serve the best interest of the child. This determination, however, needs to be made based upon specific factual findings as required by the statute.

Conclusion

Accordingly, the order of the trial court overruling Williams' motion to restore timesharing is reversed and remanded for further proceedings and entry of an order in accordance with the best interests of the child standard.

ALL CONCUR.

BRIEF FOR APPELLANT:

Malenda Haynes
Louisville, Kentucky

BRIEF FOR APPELLEE:

Joseph Barker
Olive Hill, Kentucky