

COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

FILED
May 28, 1998
Cecil Crowson, Jr.
Appellate Court Clerk

BERNARD S. RUBIN) BRADLEY COUNTY
) 03A01-9711-CV-00502
Plaintiff - Appellee
)
)
v.) HONORABLE L. ROSS,
) JUDGE
)
JENNIFER RUBIN)
)
Defendant - Appellee)

~~AFFIRMED~~ AND REMANDED

SELMA CASH PATY OF CHATTANOOGA FOR APPELLATE
B. PRINCE MILLER, JR., OF CLEVELAND FOR APPELLATE

O P I N I O N

Goddard, P.J.

Jennifer Rubin appeals a final judgment of the Trial Court entered on June 5, 1997. The Trial Court awarded physical custody of the parties' only child, approximately 18 months of age at that time, with the father obligated to pay child support in the amount of \$1,000 per month. Jennifer appeals a further order of the Trial Court regarding the child's support.

a custody hearing entered on August 22
custody of the child to the father.

Ms. Rubin raises three issues on

I S S U E O N E

The Trial Judge erred in placing pr
custody of the child with the fathe
appellee, Bernard Rubin in the fina
entered June 5, 1997.

I S S U E T W O

The Trial Judge erred in ordering t
defendant / appellant, Jennifer Rubin
support in the final order of divor
1997.

I S S U E T H R E E

The Trial Judge erred in awarding s
father, Bernard Rubin, defendant / ap
entered August 22, 1997.

We conclude that our disposition
issues one and two moot.

As to issue three the Trial Court
evidentiary hearing subject to the pro
following findings of fact in his opin
his order pursuant thereto:

O P I N I O N F R O M T H E B E N C H

C O U : R T Now I ' m f a c e d w i t h t h e w h o l e d u m p e d b a c k i n m y l a p t r y i n g t o f i g d o o n a s i t u a t i o n t h a t I t h o u g h t w e w i t h a t l e a s t o p p o r t u n i t y t o s e t t l e w o r k t o w a r d a g o o d r e l a t i o n s h i p , a n d e c e n t a n d r e s p e c t a b l e w a y .

A s I s t a t e d e a r l i e r , I t r y t o k e e p t h e b a c k o f m y m i n d w h e n I m a k e a n d m a k e r u l i n g s f r o m t h e C o u r t b e c a u s e c e r t a i n t h i n g s e t e r n a l l y p l a c e d i n t h i n k i t ' s g o o d f o r a y o u n g c h i l d t o p u t i n t h e i r r e c o r d a b o u t e i t h e r o n t h e o t h e r , a n d I g u e s s I m a y b e w r o n g .

F o r t h e r e c o r d , a n d w e ' r e h e r e o n b o t h s i d e s t o a l t e r a n d a m e n d j u d g m e n t a t t h e t r i a l t h a t t h i s l a d y h a d t a k e n w i t h a m a n i n L a s V e g a s , e x t e n s i v e u s e o f h i m c r e d i t c a r d s , s u b s t a n t i a l m o n e y f l o w n o u t t h e r e t o s e e h i m o n h e r o t h e r t h e c h i l d h e r e . T h e r e w a s f u r t h e r a c t i o n t a k e n u p w i t h a m a n a n d I s p e c i f i c a l l y w a s c o m m i t t i n g a d u l t e r y a n d a w a r d e d d i v o r c e o n t h o s e g r o u n d s . N o w , i n w o r k i n g t h i n g s o u t , I t r i e d n o t t o p u t c e r t a i n t h i n g s t h a t I g u e s s m a y b e I a v o i d u s a l l b e i n g h e r e t o d a y .

I t a k e n o t e t h a t t h e o r d e r w e n t d o w n w a s f i l e d J u n e 5 t h o f ' 9 7 , a n d I ' m s a y i n g o n e i t h e r s i d e w i t h r u n n i n g a r o u n d t h e o t h e r , k e e p i n g d a i l y l o g s , p u t t i n g t h e m i n t h e r e c o r d a b o u t t h e c o n v e r s a t i o n s t h e y h a d a b o u t . A n d t h e p a r t i e s d i v o r c e d a n d i t c o m e s t o t h i n k i n g o f e a c h o t h e r , b u t I h a v e t o t a k e n o t e t o u n d e r s t a n d M r . R u b i n f i l e d h i s m o t i o n a n d M r s . R u b i n f i l e d h e r s . T h e r e h a v e b e e n o c c a s i o n s t o c o n t r a d i c t R u b i n ' s t e s t i m o n y , w h a t I s e e i n h e r t e s t i m o n y R u b i n e v i d e n t l y h a d o u t - o f - t o w n t r i p s t o t a k e t h e c h i l d t o s t a y w i t h h e r . A n d I t a k e n o t e f r o m t h e p r o o f p r e s e n t e d h e r e t o d a y t h a t n o o n e i o t a o f e v i d e n c e p r e s e n t e d s h o w s t h a t M r s . R u b i n h a s n o t d o n e a g o o d j o b b e i n g w i t h t h e p a r e n t a l c a r e f o r t h i s c h i l d .

Y e s , t h e y u s e a b a b y - s i t t e r . I t ' s t h e s a m e s i t t e r t h e y b o t h u s e d , t h a t t h e y b o

when they were married. But I find the best interests of this child with custody to repose with the father. actions since the divorce have shown have the best interests of this child want this in the order. These are that I don't like to put in orders, want these things in the order.

I've shown that she has shown a behavior here, arguing about buying baby powder for rashes, on her diaper who ought to buy that. That's by her. She was asked to pay \$100 per month support and she's quarreling about find that she has carried on an on going with a man in the presence of the court overnight, and I base that on testimony earlier as well as the testimony prior in the back of my mind I can't over the relationship she had with this which by her own testimony she flew left her child here. And I specifically has a pattern of behavior that shows interests above that of her child and interests of this child would be seen custody to the father, Mr. Bernard full and sole custody of the child.

I will give her visitation every normal visitation privileges when on custody. I would ask that her child calculated based upon the standard

ORDER ENTERED BY TRIAL COURT

FURTHER ORDERED that the Court finds that is in the best interest of the minor in the care, custody and control of S. Rubin.

The Court specifically finds that not acted or conducted herself in the child. She has a pattern of behavior the evidence heard in the original and corroborated further by the prior. She exhibits to this Court a clear pattern of conduct which places her that of the child and specifically

continued open and notorious relations
partners in the presence of the child

We conclude, that, upon giving due
judgment of the Trial Court as to the
and in this connection we note much of
Trial Court is not disputed by Ms. Rubin
preponderate against the Trial Court's

The Trial Court found that Ms. Rubin
"pattern of erratic behavior" and that
"she places her interests above those
evidence does not preponderate against
findings justify the Court's award of
provisions of T.C.A. 36-6-106, particularly
and (4) thereof.

For the foregoing reasons the judgment
Court is affirmed and the cause remanded
proceedings as may be necessary and costs
Costs of appeal are adjudged against Ms. Rubin

Houston M. Goddard, P. J.

C O N C U R :

C h a r l e s D . S u s a n o , J r . , J .

W i l l i a m H . I n m a n , S r . J .