

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
KAREN R. BAKER, JUDGE

DIVISION I

CA06-01099

KRISTIE MUNOZ WILLIAMS

JUNE 27, 2007

v. APPELLANT

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[E-98-1126-6]

HOMER MUNOZ

APPELLEE

HONORABLE MARK LINDSAY, JUDGE

AFFIRMED

Appellant Kristie Munoz Williams appeals the Washington County court's change of custody of the parties' minor children to appellee Homer Munoz. She asserts three points of error: (1) The trial court erred in finding that there was sufficient evidence to warrant a change of custody where the only issue proven at trial was that Ms. Williams had previously violated the court's no-cohabitation clause, but where that issue was moot at the time of trial inasmuch as Ms. Williams had not cohabited with anyone other than her children in the seven-month period preceding trial of this matter and where there was no evidence whatsoever adduced that the cohabitation had adversely affected the parties' children; (2) The trial court erred in modifying custody where the trial court, contrary to Arkansas law, divested Ms. Williams of custody as a means of punishing her for violation of the court's no-cohabitation orders; (3) The trial court erred in changing custody without addressing what, if any, detrimental effect Ms. Williams's violation of the no-cohabitation clause

had caused the children and without addressing why it was in the children's best interests to be placed in the appellee's custody.

Appellant's argument and appellee's response focus upon the trial court's finding and statement in its order that it found that a material change in circumstances warranted transfer of primary custody of the parties' minor children based upon appellant's violation of the provision in the court order that required that neither party shall cohabit with or have overnight guests of the opposite gender in the presence of the minor children. Appellant's challenge to the trial court's finding is based in part on the following statement by the trial court:

Because I believe that is the type of lack of morality that the Arkansas cases have talked about, and that's based on my perceptions of her, as well as, the testimony today, I believe it is in the children's best interest to live with their father.

Appellant is correct that violations of a trial court's orders do not compel a change of custody. See *Powell v. Marshall*, 88 Ark. App. 257, 197 S.W.3d 24 (2004)(citing *Carver v. May*, 81 Ark. App. 292, 101 S.W.3d 256 (2003)). However, our de novo review of the record in this case leads us to conclude that appellant's characterization of the evidence relied upon by the trial court is incomplete.

Although appellant argues that the only issue proven at trial was that appellant had previously violated the co-habitation order, the evidence also established that appellant chose to release an order of protection from a man with whom she had cohabited and then resumed co-habitation with him in her home with the children. Testimony at trial established that one of the men with whom appellant had cohabited had battered her leaving her visibly bruised and swollen for weeks with at least one fractured facial bone and other injuries. Despite her initial request for an order of protection, appellant dismissed the protective order, borrowed money to bail her attacker out of jail, and her batterer returned to appellant's home and resided with her and her children in

her home for a period of time.

Under these facts, we are not left with a firm conviction that the trial court erred in its decision to change custody. In child-custody cases, we review the evidence *de novo*, but we do not reverse the findings of the court unless it is shown that they are clearly contrary to the preponderance of the evidence. *Carver v. May*, 81 Ark. App. 292, 101 S.W.3d 256 (2003). We also give special deference to the superior position of the trial court to evaluate and judge the credibility of the witnesses in child-custody cases. *Id.* We have often stated that we know of no cases in which the superior position, ability, and opportunity of the trial court to observe the parties carry as great a weight as those involving children. *Id.* A finding is clearly against the preponderance of the evidence, when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.*

The severity of the assault upon appellant, her abandonment of a protective order, and her decision to reintroduce the attacker into her home with her children and expose her children to her attacker by voluntarily resuming co-habitation with him are acceptable facts for the trial court to consider in determining whether a material change of circumstances warranted a change of custody in the best interests of the children. Accordingly, we find no error and affirm.

Affirmed.

GLOVER and MILLER, JJ., agree.