ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISIONS II & III

CA07-1172

August 27, 2008

APPEAL FROM THE BENTON COUNTY CIRCUIT COURT
[DR -7-66-4]

WILLIAM VERNON WILLIAMSON
APPELLANT

V.

KARI LYNN WILLIAMSON
APPELLEE

HONORABLE JOHN R. SCOTT, JUDGE

SUBSTITUTED OPINION UPON DENIAL OF REHEARING

Appellee, Kari Williamson, was awarded custody of the parties' four children during their divorce proceeding. Her ex-husband, Bill, appeals, contending that "the circuit court's decision that it is in the children's best interests to be placed in the custody of Kari Williamson is contrary to Arkansas law." He divides his argument into three subpoints: 1) the trial court's finding that it was in the children's best interests to be placed in appellee's custody is clearly against the preponderance of the evidence, 2) certain of the factual findings upon which the trial court based its custody decision are inaccurate or irrelevant, 3) the trial court's custody determination was improperly based upon the court's decision to punish appellant for what the court deemed bad behavior rather than on the welfare and best interests of the children. We affirmed the trial court's decision in an opinion delivered June 25, 2008. Bill filed a

petition for rehearing, alleging both errors of fact and law. Although we find no error of law, we agree that there was a factual error in the opinion regarding the installation of an interlock device on Kari's vehicle. Although we deny Bill's petition for rehearing, we issue this substituted opinion to correct the factual error.

1) Best Interests

For his first subpoint, appellant contends that the trial court's finding that it was in the children's best interests to be placed in appellee's custody is clearly against the preponderance of the evidence. We disagree.

In child custody cases, we review the evidence de novo, but we will not reverse the findings of the court unless it is shown that they are clearly contrary to the preponderance of the evidence. *Gray v. Gray*, 101 Ark. App. 6, ____ S.W.3d ____ (2007). We 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.* at 8, ____ S.W.3d ____. 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.*, ____ S.W.3d ____. 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.*, ____ S.W.3d ____. Finally, in child-custody cases, the primary consideration is the welfare and best interests of the child involved; all other considerations are secondary. *Id.* at 8-9, ____ S.W.3d ____.

Here, the trial court's custody decision followed a two-day hearing held in July 2007 in which fifteen witnesses testified, including both parties. In support of his first subpoint, appellant argues 1) that appellee repeatedly and admittedly jeopardized the safety of their children, 2) that appellee failed to provide consistency or stability for their children, and 3) that appellee continually and admittedly exercised bad judgment in raising their children.

For the most part, the factual underpinnings for appellant's arguments are rooted in appellee's alcoholism (before she began her rehabilitation efforts), which she did not dispute. She acknowledged, for example, driving while intoxicated with the children in her vehicle. However, there is a problem with relying upon these pre-sobriety incidents because, by the time of the hearing, appellee had attended an inpatient rehabilitation program at Hazelden, which is located in Minnesota. Although she left that program on February 1, 2007, a week prior to completion, she then continued her rehabilitation efforts by attending Alcoholics Anonymous meetings and working with an AA sponsor, Linda Chitwood, who was a registered nurse and who testified at the hearing.

Ms. Chitwood explained that appellee had experienced two relapses in sobriety, that such relapses in the first months are "pretty common," and that many times they help open an alcoholic's eyes to the true nature of the disease. She stated that getting a diagnosis of alcoholism is devastating and that a part of you wants to believe that it is not true. She said that sometimes it takes a relapse in sobriety for an alcoholic to truly see that the doctors are correct, and that she believes appellee's relapses served that purpose. Ms. Chitwood explained that appellee had twice been required to start the AA program all over again at step one, and

that appellee was currently at step three. She testified that appellee was not out of compliance with her plan from Hazelden in any way; that appellee attended meetings on a regular basis, probably three to four times a week; that appellee called her "just about every day"; that they met at least once a week; that they had many discussions about appellee's children; that she knew appellee loved the children very much; and that she believed it had "clicked" with appellee that if she did not remain sober, she would not be able to be with the children. The post-sobriety incidents, also relied upon by appellant in making these arguments, included his assertions that appellee often either missed completely or was late for visitation with the children and that she had been romantically involved with a fellow recovering alcoholic, whom she introduced to the children.

The trial court acknowledged that appellee's sobriety was short-lived, that she had exposed the children to at least one romantic partner after divorce proceedings had begun but before the divorce, and that she had led an unstructured life. Those facts were also clearly of concern to the attorney ad litem, who recommended against giving appellee custody. However, after two days of testimony, the trial court concluded that it was in the children's best interests for appellee to have custody. After conducting an extensive de novo review of the trial court's determination, we are not left with a definite and firm conviction that the trial court made a mistake in granting custody to appellee. The situation described above is precisely why we give special deference to the superior position of the trial court to evaluate and weigh the credibility of the witnesses in child-custody cases.

2) Challenged Findings

For his second subpoint, appellant contends that some of the trial court's factual findings upon which it based the custody decision are inaccurate, including 1) that appellant failed upon repeated requests to provide the name of his children's counselor to appellee, 2) that appellant failed to provide any financial or personal support for appellee while she was in Hazelden, and 3) that appellant changed the school enrollments of two of the children without consulting appellee. In addition, he contends that some of the trial court's findings, including that he misled everyone involved in the intervention and that he had a bad attitude, were irrelevant. This subpoint could be encompassed within the first subpoint because it represents a continued challenge to the trial court's overall finding that it was in the children's best interests for appellee to have custody. We find no merit in the five findings challenged by appellant, but we will briefly address them.

A taped recording of a telephone conversation between appellant and appellee established that appellant was not initially forthcoming concerning the children's counselor's identity, despite appellee's repeated requests for her name. Appellee's testimony contradicted appellant's assertions that he provided *some* financial and personal support while she was at Hazelden, leading to the trial court's finding that appellant did not provide *any* such support. It was for the trial court to determine matters of credibility. Appellant contends that the trial court erroneously found that he changed the school enrollment for *two* of the children without consulting with appellee, but we first note that the trial court made that finding with respect to only one child, Blake. Paragraph 14 of the decree provides: "The Court finds that the Plaintiff changed the school enrollment of the minor child Blake without consulting the

Defendant in advance." While appellant offers an explanation as to why he changed Blake's school, he does not assert that he told appellee in advance of that change.

While appellant contends that the trial court's findings that he misled persons involved in the intervention and that he had a bad attitude were irrelevant, we disagree and merely note that a lack of forthrightness and a bad attitude in a custodial parent are not desirable qualities.

3) Punishment

For his third and final subpoint, appellant contends that the trial court improperly based its custody decision on a desire to punish appellant for what the trial court considered to be bad behavior rather than on the best interests of the children. We disagree and dispose of this issue quickly by pointing out that the trial court found multiple acts of bad behavior by both parents and admonished both parents in its ruling. There is no basis for concluding that the trial court based its custody decision on a desire to punish appellant.

Affirmed.

PITTMAN, C.J., ROBBINS, BIRD, GRIFFEN and MARSHALL, JJ., agree.