

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003171-MR

LARRY WHOBREY, and
FRAN WHOBREY

APPELLANTS

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE THOMAS R. LEWIS, JUDGE
ACTION NO. 96-CI-001420

CRAIG ANDERSON

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: EMBERTON, KNOPF AND KNOX, JUDGES.

KNOX, JUDGE: Appellants, Larry and Fran Whobrey (the Whobreys), appeal the judgment of the Warren Circuit Court placing permanent custody of the Whobreys' minor grandchild with the child's natural father, appellee, Craig Anderson (Anderson). Having reviewed the record and applicable law, we affirm.

This matter came before the court upon Anderson's petition for permanent custody of his minor child. Anderson and the child's natural mother divorced in 1993. Three (3) years later, in April 1996, the mother passed away. Following her death, the Whobreys, maternal grandparents of the child, stepped in to raise the child. In December 1996, Anderson, after having

unsuccessfully attempted to procure his child from the Whobreys, petitioned the court for permanent custody.

The domestic relations commissioner heard approximately nine (9) hours of testimony on April 25 and August 13, 1997, and issued his report and recommendations on August 29, 1997, concluding permanent care and custody should be granted to Anderson. The Whobreys filed exceptions. However, the circuit court adopted, approved, and ratified the commissioner's report on November 19, 1997. This appeal ensued.

The Whobreys argue the court erred in applying the principles of Greathouse v. Schreve, Ky., 891 S.W.2d 387 (1995), in evaluating whether the Whobreys had overcome the superior right of a parent to custody of his minor child.¹ They also argue the court erred in failing to consider public policy relating to "de facto custodian" principles. Not only do we believe the court properly applied the law in reaching its conclusions and order, but we believe the Whobreys have failed to identify the alleged assignments of error either through any substantive argument on appeal, or pursuant to our rules of civil procedure.

It is undisputed that the law of this Commonwealth directs that:

KRS 403.270, the "best interests of the child" standard, does not apply in deciding custody between a parent and a non-parent, albeit a grandparent; that KRS 405.020(1) and a trilogy of cases from this Court recognize a parent's superior right to obtain custody

¹ We note the court further appropriately applied KRS 405.020(1) in its evaluation.

of the child vis-a-vis a grandparent unless proved unfit.

. . . .

. . . [O]nly if the trial court is persuaded the evidence is clear and convincing that the natural father waived his superior custodial right under KRS 405.020, shall custody between the natural father and the maternal grandmother be decided based on what is in the best interests of the child.

Greathouse v. Shreve, Ky., 891 S.W.2d 387, 389-90 (1995) (citations omitted).

On appeal, the Whobreys provide no legal basis for arguing the precedent of this Commonwealth should be disregarded. Rather, they argue this Court should supersede our Supreme Court and adhere to the decisions of sister states. This we cannot and shall not do. Furthermore, our review of the commissioner's report reveals that the criteria applicable to a determination of child custody as enunciated in Greathouse were, indeed, properly applied and evaluated in accordance with our law. As such, we find no error with the court's conclusions and judgment.

We note that the Whobrey's brief on appeal is devoid of any reference to the record respecting any issue of fact which demonstrates the court below erred in judgment. We have afforded this appeal an overall review of both the record and applicable law concerning the matters before the circuit court. Having found neither manifest injustice nor misapplication of prevailing legal precedent, we decline to further address any issues not presented in accordance with CR 76.12(4)(c)(iv).

In concert with the foregoing, the judgment of the Warren Circuit Court is affirmed.

ALL CONCUR.

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