RENDERED: June 4, 1999; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003077-MR

BRENDA J. WATSON APPELLANT

v.

APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JOSEPH F. BAMBERGER, JUDGE
ACTION NO. 97-CI-315

MARK WATSON APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BUCKINGHAM, EMBERTON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from that portion of a decree of dissolution determining custody and support for the parties' minor child. Upon reviewing appellant's arguments in light of the record herein and the applicable law, we affirm.

Appellant, Brenda Watson, and appellee, Mark Watson, were married on November 30, 1991. One child was born of the marriage, Jordan Nicole Watson, born June 11, 1992. On April 1, 1997, Mark filed the petition for dissolution of marriage. The parties reached an agreement as to all issues except custody, visitation, and support of Jordan. A hearing on those issues was

held before the domestic relations commissioner on September 2, 1997.

In the hearing, evidence was presented that Mark had a serious problem with alcohol and that he had been hospitalized and arrested for problems related to his alcohol abuse. There was further evidence that the child had ridden in a car with Mark when he had been drinking alcohol. There was evidence that Brenda had in the past smoked marijuana around the child and had likewise driven the child while she was under the influence of alcohol.

In his recommendations, which were ultimately adopted by the court, the commissioner did not find either parent unfit. However, the commissioner did express concern for the child's well-being in the care of both parents, especially Mark. The commissioner recommended joint custody, with each parent having possession of the child on alternating weeks. The commissioner further recommended that on the weeks when Mark had the child, his mother, who has frequently cared for the child, would monitor and supervise Mark's custody of the child. The commissioner advised that if at any time the paternal grandmother determines that Mark's condition poses a threat to the child, she has the authority to temporarily terminate Mark's possession of the child. The commissioner also recommended that the paternal grandmother continue to provide after school and other work-related day care services.

As to "support" for the child, the commissioner stated:

> The parties shall each provide for the support of the child while the child is in

> their respective possession, and each party should be ordered to pay the paternal grandmother the sum of $25.00 per week as support for the child, . . .

From the judgment adopting the above recommendations of the commissioner, Brenda now appeals. We note that no appellee's brief was filed in the case.

Brenda first argues that the court's ruling which requires the paternal grandmother to monitor and supervise Mark's custody of the child is essentially an award of joint custody to her and the paternal grandmother. Brenda cites those cases which hold that a court can only award custody to a non-parent if it has found that the parents are unfit. Fitch v. Burns, Ky., 782 S.W.2d 618 (1989); Davis v. Collinsworth, Ky., 771 S.W.2d 329 (1989); McNames v. Corum, Ky., 683 S.W.2d 246 (1984). Brenda also cites Greathouse v. Shreve, Ky., 891 S.W.2d 387 (1995), wherein it was held that the best interest test did not apply to a custody decision between the natural father and the maternal grandmother, even though the child's mother joined in the maternal grandmother's petition.

We would distinguish the case at hand from those cited above by the fact that it was a joint custody award where neither parent was denied custody. Although the paternal grandmother was given the authority to monitor and supervise the father's physical custody of the child, the grandmother was not named a joint custodian. The decision was clearly for the purpose of safeguarding the welfare of the child in the father's custody, where there were concerns as a result of the father's alcohol problems but perhaps not sufficient basis to find the father

unfit. We see nothing wrong with such stipulations. On the contrary, we applaud the court's prophylactic measures to protect the child.

In Calhoun v. Calhoun, Ky., 559 S.W.2d 721 (1977), it was held that cohabitation of parent and the child's grandparent does not give rise to the grandparent being the de facto custodian. In the absence of evidence that Mark has abandoned the child in the care of the grandmother, we cannot say the award of custody to him was actually an award to the grandmother. Accordingly, the court did not abuse its discretion in its award of joint custody. See Eviston v. Eviston, Ky., 507 S.W.2d 153 (1974).

Brenda also argues that the court erred in ordering the parents to pay the paternal grandmother $25.00 a week "as support for the child." Brenda maintains there is no authority for requiring a parent to pay support to a non-custodian of the child. We agree that the order could have been more artfully worded because there is no authority for paying child support to a non-custodian. See KRS 403.211(1). However, upon further review of the order, it is apparent that the monies were not "support" under KRS 403.211, but were actually compensation for day care provided by the grandmother ($40.00 a week) and for expenses of the child while in the grandmother's care ($3.75 a week for school breakfast). A trial court's findings of fact in a domestic action will not be reversed unless they are clearly erroneous. Ghali v. Ghali, Ky. App., 596 S.W.2d 31 (1980). As

the payment to the grandmother was justified by the record, we cannot say it was clearly erroneous or an abuse of discretion.

Finally, Brenda complains about the court's order requiring the parents to use the paternal grandmother for after school and work-related day care services. There was evidence that the paternal grandmother had provided these services in the past and apparently had a close relationship with the child. Given our interest in promoting the special bond between grandparents and grandchildren, see King v. King, Ky., 828 S.W.2d 630 (1992), cert. denied, 506 U.S. 941, 113 S. Ct. 378, 121 L. Ed. 2d 289 (1992), and in preserving the stability in the child's daily schedule, we do not feel the court abused its discretion in requiring the parents to continue to use the paternal grandmother for after school and work-related day care. We also note that the court likewise encouraged the continuation of the close relationship between the child and the maternal grandmother.

In sum, we do not see the court's decision as a ruse to circumvent the law and allow the paternal grandmother to have custody. Therefore, for the reasons stated above, we affirm the judgment of the Boone Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Greg D. Voss
Edgewood, Kentucky

NO BRIEF FOR APPELLEE