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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001592-MR

KAREN MARIE BROWN — APPELLANT

v.

APPEAL FROM RUSSELL CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 97-CI-00169

JAMES BAXTER BROWN — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: BUCKINGHAM, KNOX, AND SCHRODER, JUDGES.

KNOX, JUDGE: Karen Brown (Karen) appeals the decision of the Russell Circuit Court ordering she and her former husband, James Baxter Brown (Baxter), share joint custody of the parties' two (2) minor children. Having reviewed the record, briefs of counsel and applicable law, we affirm.

Karen and Baxter were married in May 1993 and are the parents of two (2) minor children, Jordan, born in 1989, and Christopher (Chris), born in May 1994. In June 1997, Baxter filed a petition for dissolution with the Russell Circuit Court which, at the time, was his county of residence. Subsequently, he moved to Guadalajara, Mexico, to pursue a business venture.

An initial hearing with respect to temporary custody, visitation, and support of the children was held before the domestic relations commissioner (DRC) on August 13, 1997. As a result of that hearing the DRC awarded temporary sole custody of Jordan and Chris to Karen. Baxter requested the DRC reconsider this decision, which request was denied. Thereafter, Baxter filed exceptions to the DRC's recommendations. The circuit court found the DRC had not abused his discretion in awarding temporary sole custody to Karen.

The parties were able to reach a settlement agreement on all issues excepting permanent custody, visitation, support and other issues regarding the children. Following a May 14, 1998, hearing on the matter, the court entered its findings of fact, conclusions of law and decree, granting the parties, inter alia, permanent joint custody of Jordan and Chris, naming Karen as the primary residential custodian. This appeal ensued on the sole issue of custody.

Karen argues it was an abuse of discretion for the court to award joint custody as such an award was not supported by the evidence. She relies on the DRC's earlier recommendation of sole custody as well as testimony from the May 14, 1998 hearing which indicates Baxter has had limited involvement with the children throughout the course of their young lives. Karen posits that given this history, the only proper custodial arrangement is to vest sole custody with her.

Baxter points out that Karen's brief is devoid of any case law or statutory authority in support of her argument. He

contends the circuit court correctly applied the statutory factors enumerated in KRS 403.270 and the dictates of Squires v. Squires, Ky., 854 S.W.2d 765 (1993). We agree.

As a primary matter we look to the statutory directives. The applicable statute unquestionably directs the court to determine custody in conformity with the best interests of the child. KRS 403.270(1).[1] Similarly, our legislature envisioned joint custody as an acceptable arrangement whereby the best interests of the child will be served. KRS 403.270(4). The standard by which the circuit court should evaluate whether an award of joint custody is appropriate has been examined by our appellate Courts on numerous occasions and we heed to the established law. Specifically, our Supreme Court has opined:

> Initially, the court must consider those factors set forth in KRS 403.270(1). By application of these, the child whose custody is being litigated is individualized and his or her unique circumstances accounted for. In many cases, appropriate consideration of KRS 403.270(1) may reveal the result which would be in the child's best interest. Thereafter, we believe a trial court should look beyond the present and assess the likelihood of future cooperation between the parents. It would be shortsighted to conclude that because parties are antagonistic at the time of their divorce, such antagonism will continue indefinitely. Emotional maturity would appear to be a dependable guide in predicting future behavior. By cooperation we mean willingness to rationally participate in decisions affecting the upbringing of the child.

Squires, 854 S.W.2d at 769 (1993).

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[1] We cite the statutory subsections in effect at the time this case was decided, prior to the effective date of the 1998 amendments to KRS 403.270 which are, nonetheless, inapplicable to the matter sub judice.

Having reviewed the videotape record of the May 14, 1998, hearing, we believe the court correctly decided the matter when it made the following finding of fact:

> 10. The Court is reasonably satisfied that joint decision making serves the best interest of these children and believes that these parties have the ability and willingness to rationally participate in the decisions with regard to the upbringing of these children. The Court, in analyzing the current situation of the parties, had initial concerns with regard to the long distant nature of the relationship and whether these parties could make decisions jointly regarding the children under those circumstances. However, upon further reflection, the Court is satisfied that with the use of communication systems which are readily available, the parties can communicate through e-mail, fax, internet, and phone, and therefore, determines that joint custody is appropriate for the parties.

Although Karen testified that she had previously experienced a less than communicative relationship with Baxter regarding the children, she further testified that she would, from that point forward, be willing to cooperate with him respecting the upbringing and care of the children. We believe this testimony comports with the Squires instruction that the court is to look at the likelihood of the parents future cooperation, rather than focus on past acrimonious attitudes. Further, there is no evidence in the record which might give rise to the notion that the Brown children's best interest would not be served through their parents' joint participation in their upbringing.

Our examination of the court's findings of fact and conclusions of law reveal no departure from the mandates of KRS

403.270 and case law interpreting application of that statute. The decision is amply supported by the evidence contained in the record and well within the court's proper exercise of judicial discretion. We will not disturb the court's findings unless they are clearly erroneous. This standard is particularly applicable in domestic relations matters. Aton v. Aton, Ky. App., 911 S.W.2d 612, 615 (1995). We do not believe the circuit court erred in granting joint custody of Jordan and Chris to their parents. As such, the judgment of the Russell Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Robert E. Gillum Somerset, Kentucky	Laura Henry Harris Columbia, Kentucky