

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-000398-MR

ASHLEY ELAINE TAPP

APPELLANT

v.

APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE HENRY M. GRIFFIN, JUDGE  
ACTION NO. 98-CI-01144

TIMOTHY WAYNE TAPP,  
LOIS A. TAPP, AND  
THOMAS R. TAPP

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DYCHE, McANULTY, AND TACKETT, JUDGES.

DYCHE, JUDGE: The primary question herein is whether there is sufficient evidence in the record to support the trial court's grant of temporary custody of Ashley Elaine Tapp's two infant children to their paternal grandparents; the secondary question is whether the trial court abused its discretion in denying Ashley maintenance from her ex-husband Timothy W. Tapp. Answering the first question in the positive and the second in the negative, we affirm.

Ashley was a talented high school graduate with a bright future when she met Timothy, who was a regular drug user with a less than impressive personal history. She unfortunately fell under his influence, and began to use drugs with him on a regular basis, beginning with their second date. Their relationship developed to the point that she unfortunately became pregnant, and they married. Following the marriage, another child was born to them.

She reportedly abstained from drug use during her pregnancies, but following the births of the two children, she resumed the dissolute lifestyle. We will not go into great detail, but our review of the record includes testimony concerning high-speed driving with the children in the car, erratic discipline, an unexpected 24-hour absence from the children (leaving them in the involuntary care of an "exotic dancer"), a homosexual encounter with that same dancer, and more and more drug use while the children were in the house.

Ashley denies all of these allegations except for the drug use. Her argument is that because nothing has yet happened to the children as a result of her drug use, the evidence is not sufficient to meet the requirements of Boatwright v. Walker, Ky. App., 715 S.W.2d 237 (1986), and Forester v. Forester, Ky. App., 979 S.W.2d 928 (1998). Those cases mandate that in order to give custody of children to a non-parent over a natural parent, it must be shown by clear and convincing evidence that the standards for termination of parental rights have been met. Kentucky Revised Statutes 625.090.

In this particular case, the trial court found that Ashley had, for not less than six months, continuously or repeatedly failed or refused to provide or was substantially incapable of providing essential parental care and protection for the children. That finding is not clearly erroneous, and we will not set it aside. Kentucky Rules of Civil Procedure 52.01. Ashley's youth can be blamed for many of her shortcomings. It is the repeated and unapologetic nature of her drug use, in the children's presence, which concerns us most. She is not beyond redemption as a good parent, however, as the trial court found that there was reasonable expectation for improvement. Without this expectation, a grant of permanent custody might have been in order.

As far as maintenance, Ashley is a capable and bright young lady with the means to support herself. She does appear to be maintaining a steady job at this time. We find no abuse of discretion in the trial court's denial of maintenance.

The order of the Daviess Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Frank Stainback  
Owensboro, Kentucky

BRIEF FOR APPELLEES:

Phillip G. Abshier  
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