

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2002-CA-000253-MR

CARLA FRAZIER

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE KAREN A. CONRAD, JUDGE  
ACTION NO. 96-CI-00353

RONNIE FRAZIER

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, MILLER, and PAISLEY, Judges.

COMBS, JUDGE: Carla Frazier appeals from an order of the Oldham Circuit Court which granted primary physical custody of the parties' minor child, Chelsea, to Ronnie Frazier. We affirm.

Carla and Ronnie married in March 1994, but they separated before Chelsea was born in August. The couple divorced and then remarried in May 1995. The relationship continued to be troubled, however, and they finally separated in February 1998. While they agreed to share joint custody of Chelsea, they could not resolve which of them would provide the child's primary residence. The matter was heard before the circuit court on September 4 and September 26, 2001. In an order entered on

December 17, 2001, the court determined that the child's best interests would be served if she were to reside primarily with Ronnie. Carla appeals from that order.

Carla argues that the trial court erred by designating Ronnie as the primary residential custodian. She contends that the decision is manifestly contradictory to the weight of the evidence presented. We disagree.

Our standard of review in this context is well established.

Since this case was tried before the court without a jury, its factual findings 'shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.'

Cole v. Gilvin, Ky. App., 59 S.W.3d 468, 472 (2001). If a factual finding is supported by substantial evidence, it is not clearly erroneous. Id. Substantial evidence is evidence of substance and relevant consequence sufficient to induce conviction in the minds of reasonable people. Id. It is within the province of the fact-finder to determine the credibility of witnesses and the weight to be given to the evidence. Id.

We must consider whether there is substantial evidence to support the circuit court's factual findings and to determine whether the court abused its discretion in designating Ronnie as the primary residential custodian. In reviewing the record, we note that the trial court's findings are supported by substantial evidence and that they are not clearly erroneous. Evidence presented at trial indicated that Carla was less than diligent with regard to Chelsea's health and safety; that Carla has an

inability to discipline her daughter in an acceptable fashion; and that Carla suffers with rather severe health problems. Other evidence suggested that Ronnie was willing and able to provide a safe, stable home for his daughter and that he was better able to meet the child's medical, educational, and emotional needs. The trial court did not err by designating Ronnie as the primary residential custodian.

Carla also contends that the trial court erred by denying her motion for attorney's fees. Again, we disagree.

Kentucky Revised Statute (KRS) 403.220 provides:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceedings under this chapter and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

The law is well settled that the trial court enjoys broad discretion in determining this issue. Wilhoit v. Wilhoit, Ky., 521 S.W.2d 512 (1975). While a disparity in financial resources may justify granting attorney fees, the trial court enjoys discretion and is not obligated to make such an award. Furthermore, the trial court need not make specific findings of fact regarding the issue.

The purpose of KRS 403.220 is to prevent one party to a divorce action from controlling the outcome solely because he or she is in a position of financial superiority. The record reveals that the trial court was fully aware of the parties'

respective financial circumstances in this case. There is simply no indication that Ronnie was able to control the outcome of this matter because of any financial advantage.

The judgment of the Oldham Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gregory C. Black  
Louisville, Kentucky

BRIEF FOR APPELLEE *PRO SE*:

Ronnie D. Frazier  
Pekin, Indiana