

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2003-CA-000708-MR

JAMES PATRICK JEFFRIES

APPELLANT

v. APPEAL FROM MCCRACKEN FAMILY COURT  
HONORABLE CYNTHIA SANDERSON, JUDGE  
ACTION NO. 02-CI-00602

JENIFER LYNN JEFFRIES

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI, McANULTY, AND TAYLOR, JUDGES.

McANULTY, JUDGE: James Patrick Jeffries (PJ), pro se, appeals the McCracken Family Court's order in his divorce case from Jenifer Lynn Jeffries (Jenifer). This order granted sole custody of the couple's two young sons to Jenifer. PJ argues that the trial court abused its discretion in awarding sole custody to Jenifer. And PJ disagrees with the trial court's decisions as to debt allocation and reimbursement of attorney's fees and costs. PJ argues that Jenifer should have been ordered to pay one-half of the couple's tax liability from the 1999 tax

year, which PJ paid in full prior to Jenifer's filing for divorce; and PJ contends that he should not have to reimburse Jenifer \$5,792.81 in attorney's fees and costs. We conclude that the trial court's findings of fact are supported by substantial evidence. And we conclude that the trial court did not abuse its discretion in awarding sole custody of the couple's children to Jenifer, in declining to recognize the 1999 tax liability as an outstanding marital debt, or in ordering PJ to reimburse Jenifer for a portion of her attorney's fees and costs. Thus, we affirm.

Jenifer and PJ married in 1997. Jenifer is a nurse, and PJ is a computer analyst. The couple has two sons, Devin and Ethan. Devin's date of birth is January 5, 2000, and Ethan's date of birth is January 23, 2002. When Devin was about eight months old, Jenifer and PJ moved from Memphis, Tennessee to Kentucky where they lived with PJ's parents. After about eight months of living with PJ's parents, Jenifer obtained an apartment. PJ stayed with Jenifer in the apartment off and on, but officially moved back in with his parents in April of 2002.

After their separation, Jenifer and PJ worked together on sharing the child care responsibilities, but, on June 9, 2002, PJ showed up at Jenifer's apartment unannounced, gathered up Devin's things and took Devin. Jenifer alleges that while PJ was there that night, he grabbed her by the neck while she was

holding Ethan causing the arm cradling Ethan to hit the doorframe. Jenifer called the police that night, and the next day she petitioned for divorce.

As to custody of the boys, both PJ and Jenifer sought joint custody and each wanted his or her home to be the primary residence. The trial court heard the issue of custody and initially ordered that Jenifer and PJ would have temporary joint custody and designated Jenifer as the primary residential custodian. After a final hearing on child custody held January 6, 2003, the trial court amended its temporary joint custody determination and found that it would be in the best interests of the children to award sole custody to Jenifer. After entering this order, the trial court held another hearing on March 7, 2003, to resume and conclude additional matters that were not addressed in the January hearing. After conducting this hearing, the trial court entered supplemental findings of fact and conclusions of law on March 21, 2003, from which PJ appeals.

PJ raises three arguments on appeal. First, PJ argues that the couple had a debt that the trial court failed to properly allocate between PJ and Jenifer. Second, PJ argues that he should not have to reimburse Jenifer for part of her attorney's fees and costs. Third, PJ argues that the trial

court abused its discretion in granting sole custody of the children to Jenifer.

We will begin with the trial court's decision on child custody. Facts on the two additional issues of attorney's fees and division of marital debt will be developed later in this opinion.

The trial court possesses broad discretion in determining whether joint custody or sole custody serves the child's best interest. See Squires v. Squires, Ky., 854 S.W.2d 765, 768 (1993). And "[f]indings of fact 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." CR 52.01. Our review is limited to whether the findings of the trial court are clearly erroneous or whether the trial court abused its discretion in awarding sole custody to Jenifer. See Carnes v. Carnes, Ky., 704 S.W.2d 207, 208 (1986). "[F]indings of fact are clearly erroneous only if there exists no substantial evidence in the record to support them." V.S. v. Com., Cabinet for Human Resources, Ky. App., 706 S.W.2d 420, 424 (1986).

KRS 403.270 provides several factors that a trial court shall consider when determining custody. Those factors include: the parents' wishes; the interaction and interrelationship of the child with his parents and any other

person who may significantly affect the child's best interests; the child's adjustment to his home, school, and community; the mental and physical health of all individuals involved; and information and evidence of domestic violence.

Throughout the proceedings below, PJ argued that he has been the children's primary caregiver and his home -- with his parents -- has been their primary residence, therefore it is clearly in the children's best interests for PJ and Jenifer to have joint custody with PJ being the primary residential custodian. In reviewing the record, we recognize that PJ demonstrated that he knows how to take care of a child's physical needs. Unfortunately, he also demonstrated that he and his parents do not know how to be mature and work together for the good of the children in a joint custody arrangement. The best illustration of this is the fact that after the trial court granted Jenifer sole custody in January of 2003, PJ did not see the children for his scheduled visits for two months. And in a hearing held in March of 2003, he informed the trial court that he did not contest Jenifer's moving to Texas because he had no intention of visiting with his children again.

PJ argues that the trial court's findings on custody are inconsistent with the evidence presented, rely on inadmissible and irrelevant evidence and are unfairly biased against PJ. In particular, PJ asserts that the court-ordered

domestic violence evaluation that took place as a result of the pushing incident on June 9, 2002, should not have been entered into evidence or considered for a variety of reasons. But PJ had no problem with the evaluation being admitted as evidence during a hearing on January 6, 2003, even after the trial court asked him if he wanted to see it before it got in the record. PJ's response was "No, I've seen it."

Now he argues that he did not understand the evaluation was being admitted as evidence. Having reviewed the hearing during which the trial court admitted the evaluation and the subsequent findings issued by the trial court directly commenting on the content of the evaluation, we can give no credence to this assertion.

On the issue of custody, we conclude that the trial court's findings are supported by substantial evidence. And we hold that the trial court appropriately and carefully considered the relevant factors in making its custody determination.

We move to the issue of attorney's fees. The trial court ordered PJ to reimburse Jenifer a portion of her attorney's fees amounting to \$5,792.81. In reaching this decision, the trial court considered two factors. First, the trial court found that PJ made numerous unsubstantiated and unwarranted allegations about Jenifer that Jenifer was forced to defend. In the trial court's findings, it stated that the

evidence PJ put on in an attempt to prove that Jenifer was a drug addict was incredible and unworthy of belief. Second, the trial court found that PJ had greater financial resources than Jenifer.

PJ argues that Jenifer is not entitled to reimbursement for a part of her attorney's fees because she did not demonstrate that he had a financial advantage over her. And PJ asserts that it was Jenifer's own tactics -- not PJ's -- during the proceedings that caused her excessive attorney's fees.

Under KRS 403.220, a trial court is permitted to order a party to pay a reasonable amount to the other party for costs and attorney's fees. In ordering PJ to reimburse Jenifer for costs and attorney's fees, the trial court found a disparity in their financial resources. And under KRS 403.220, no more is required. See Gentry v. Gentry, Ky., 798 S.W.2d 928, 937 (1990). But the trial court also found that Jenifer incurred a portion of her attorney's fees because PJ persisted in putting on unbelievable evidence of Jenifer's alleged drug addiction.

The record supports the trial court's findings on the issue of attorney's fees. PJ accuses Jenifer of clouding the issues in their divorce proceedings with allegations of infidelity and drug abuse. But our review of the record shows that PJ persevered in trying to prove that Jenifer was having an

affair -- consistently denying that Ethan was his, but never taking a paternity test -- abusing alcohol, abusing pain killers and smoking marijuana. These issues were litigated in every hearing, costing Jenifer for her attorney's time and other related expenses. There is no abuse of discretion in ordering PJ to reimburse Jenifer for his inappropriate litigation and controlling and abusive tactics. And the costs and fees assessed by the court were reasonable.

Finally, we address PJ's argument that the couple's 1999 tax liability was a debt the trial court failed to allocate. On this issue, the trial court found as follows:

6. The Respondent testified that the parties had a joint tax liability for the 1999 tax year in the amount of \$3,833.15. The Respondent testified that he borrowed \$3,200 from his employer and paid the full liability on June 3, 2002. The Respondent further testified that he repaid his employer \$3,200 thereafter with funds he alleged were his non-marital property. The Respondent requested that the debt be considered a marital obligation and that the Petitioner be ordered to reimburse him for one-half (1/2) of the amount paid or one-half (1/2) of the \$3,200 in alleged non-marital funds which he claimed to repay his employer. The Court finds that because the tax liability was paid prior to the entry of the Decree, and, in fact, prior to the divorce action even being commenced, there is no debt to divide by the Court. Accordingly, the Court finds that the Respondent is not entitled to any deduction or credit against his share of the marital estate and the Court will not order the Petitioner to reimburse the Respondent any



amount in light of the payment of the tax obligation.

PJ does not dispute that he paid the tax liability to the IRS before Jenifer petitioned for divorce, but claims that in order to pay the debt, he had to borrow money from his employer. So where he satisfied one debt, another debt took its place. PJ made this argument during the proceedings below, but he produced no documents nor presented any testimony to prove that he did receive a loan from his employer. As PJ presented no proof to support his argument, the trial court was correct in deciding the tax liability issue as it did. There was no debt to divide.

For the reasons discussed above, we affirm the trial court's judgment on the issues of child custody, reimbursement of Jenifer's attorney's fees and costs, and the allocation of marital debt.

ALL CONCUR.

BRIEF FOR APPELLANT:

James Patrick Jeffries, pro se  
Mayfield, Kentucky

BRIEF FOR APPELLEE:

Brian S. Katz  
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