

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000614-MR
NO. 2003-CA-001215-MR
NO. 2003-CA-002151-MR
NO. 2003-CA-002313-MR

FASIKA A. SHIFERAW

APPELLANT

v. APPEALS FROM CLARK CIRCUIT COURT
HONORABLE JEAN CHENAULT LOGUE, JUDGE
ACTION NO. 99-CI-00123

SAMUEL D. MILLS

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE, AND McANULTY, JUDGES.

McANULTY, JUDGE: Fasika A. Shiferaw (Fasika) filed four separate appeals from the divorce decree and subsequent orders issued in her divorce proceedings from Samuel D. Mills (Sam). Because each issue raised in the four appeals either has a procedural defect or no substantive factual or legal basis, we affirm the judgment and orders of the trial court on all issues.

Fasika and Sam were married on August 10, 1991, in Georgia. Fasika is a native of Ethiopia. Fasika and Sam have

one child, Christine Mary Mills (Christy), whose date of birth is May 24, 1992. After Christy's birth, the family moved to Kentucky around 1994.

Sam filed his petition for dissolution of marriage from Fasika in March of 1999. As to custody of Christy, in April of 1999, the trial court initially ordered temporary joint custody. But the trial court amended this order three months later to temporary sole custody to Sam after Fasika failed to abide by the visitation schedule. By this same order, Fasika's visitation rights were also suspended until further order of the court.

Upon Fasika's motion, the trial court took up the matter of Fasika's visitation on August 6, 1999. The trial court ordered that visitation would resume the following weekend. On that weekend, Fasika did not return Christy to her father on Sunday as she was ordered to do. Instead, she took Christy to Ethiopia and was not heard from again for almost a year. Christy was finally returned to Sam on July 20, 2000.

On September 15, 1999, while Fasika was out of the country, the trial court issued the decree of dissolution. In the decree, the trial court awarded sole custody of Christy to Sam. Fasika was not to have any visitation until she provided assurances to the trial court that she could comply with its orders. And the trial court adopted the findings of fact and

conclusions of law of the domestic relations commissioner pertaining to marital property and debts, which determined that the marital residence in Lexington, Kentucky should be sold.

In July of 2001, Fasika made a motion for visitation with Christy. In October of 2001, the trial court issued an order allowing Fasika supervised visits. A year and a half later, Fasika sought unsupervised visitation, which the trial court denied after finding that (1) unsupervised visitation would pose a serious danger to Christy; (2) Fasika failed to follow any court orders; (3) Fasika has not turned over all her passports; (4) Fasika continues to speak to Christy about court matters; and (5) Fasika fails to cooperate with supervised visitation.

Undaunted by the trial court's denial of unsupervised visitation, Fasika made a motion to modify custody. Fasika wanted sole custody of Christy. The trial court denied the motion because Fasika presented no proof in support of the motion. And the trial court ordered Fasika to pay Sam's attorney's fee of \$300 for her continued filing of motions with no legal or factual basis.

Fasika filed four separate appeals. In appeal number 2003-CA-000614-MR, Fasika challenges the venue of the Clark Circuit Court. In appeal number 2003-CA-001215-MR, Fasika appeals from the Clark Circuit Court's denial of her motion to

allow unsupervised visitation with her child. In appeal number 2003-CA-002151-MR, Fasika appeals from the Clark Circuit Court's order directing Fasika to execute a deed conveying the marital residence to Samuel in order to facilitate the sale of the property. In appeal number 2003-CA-002313-MR, Fasika appeals from the Clark Circuit Court's order denying Fasika's motion to modify custody and ordering Fasika to pay Samuel's attorney's fee of \$300 due to Fasika's filing of a motion with no legal or factual basis.

We will address the issues in the order in which Fasika filed her appeals.

2003-CA-000614-MR

First, Fasika argues that Clark County was an improper venue. But Fasika did not state her defense of improper venue either by motion before she filed her response or in her response. See CR 12.02; CR 12.08. Thus, Fasika waived this defense.

2003-CA-001215-MR

Second, Fasika argues that under KRS 403.320(3), a court may modify an order denying reasonable visitation rights when modification would serve the best interests of the child. But KRS 403.320(3) continues to state that a court may restrict a parent's visitation rights if it finds that the "visitation

would endanger seriously the child's physical, mental, moral, or emotional health."

In this case, the trial court denied Fasika's request to modify her supervised visitation and allow her unsupervised visitation. In so doing, the trial court made a number of findings, including a finding in compliance with KRS 403.320(3) that unsupervised visits would pose a serious danger to the safety of the child. "Findings 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. Considering Fasika's continuous violation of previous visitation orders culminating in her removal of the child from the country, this finding was clearly not erroneous.

2003-CA-002151-MR

Third, Fasika argues that she was not in the United States on September 15, 1999, when the trial court entered the decree of dissolution ordering the marital residence to be sold. She does not want to sell the house. But Fasika did not appeal the sale of the marital residence until October of 2003, four years after the decree was entered. Thus, her appeal is untimely. See CR 73.02(1)(a),(2). It makes no difference that she was not in the United States when the trial court issued the decree.

Even if we were to consider this issue on the merits, we cannot overlook the fact that Fasika filed only one exception to the domestic relations commissioner's report and that exception pertained to the commissioner's recommendation of joint custody. In other words, she had no problem with the sale of the marital residence at the time it was recommended.

2003-CA-002313-MR

Finally, Fasika argues that the trial court abused its discretion in denying Fasika's motion to modify custody. On the day Fasika provided on the notice for her motion to be heard, she asked for a continuance. Fasika had no evidence to present that day in support of her motion. In an effort to get through to Fasika that her persistent, baseless motions and lack of preparation would not be tolerated, the trial court granted Sam's motion for attorney's fees of \$300. At the conclusion of the hearing, the trial court denied Fasika's motion to modify custody, but added, "When you are prepared, you can present it [motion to modify custody], but I'm going to deny your motion." Instead of putting her time and resources to the task of getting evidence together to support her motion to modify custody, Fasika filed this, her fourth appeal.

Under these circumstances, there is no abuse of discretion in the trial court's denial of Fasika's motion to modify custody.

For the foregoing reasons, the orders and judgment of the Clark Circuit Court on all issues raised are affirmed.

ALL CONCUR.

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