

RENDERED: NOVEMBER 22, 2006; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-002337-ME

MARK E. CROWLEY

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT  
HONORABLE SHELIA NUNLEY FARRIS, JUDGE  
ACTION NO. 05-CI-00431

CHARLES PRUITT,  
SHELLY VIARS,  
AND  
JUSTIN ANDREW PRUITT,  
A minor

APPELLEES

OPINION  
VACATING AND REMANDING

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BEFORE: JOHNSON AND TAYLOR, JUDGES; BUCKINGHAM,<sup>1</sup> SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: Mark E. Crowley appeals from an order of the Henderson Family Court denying his motion seeking custody of a minor child, Justin Andrew Pruitt, as a de facto custodian.<sup>2</sup>

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<sup>1</sup> Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

<sup>2</sup> Crowley is representing himself in this appeal.

Because the family court did not follow the correct statute and did not enter findings of fact to support its decision, we vacate and remand.

Justin was born on November 3, 1992. His natural parents are Charles Pruitt and Shelly Viars. The record indicates that Justin was left with Pruitt due to Viars's substance abuse and criminal problems.

From November 2003 until February 2005, Pruitt left Justin in the care of Crowley, a family friend. Pruitt gave Crowley authority to care for Justin, including authority relating to Justin's education. During this period, Crowley was Justin's primary caregiver and financial provider.

At some point prior to June 2005, the juvenile division of the Henderson District Court entered a temporary custody order in favor of Pruitt.<sup>3</sup> This led Crowley to file a motion to modify custody in the Henderson Family Court. Crowley also sought de facto custodian status. Justin was 12 years old at the time.

The court conducted hearings in July 2005. This resulted in the court entering an order declaring Crowley to be

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<sup>3</sup> The record does not indicate why this order was entered.

Justin's de facto custodian.<sup>4</sup> A final hearing was held in October 2005. On November 3, 2005, the court entered a final order stating that "Petitioner's Motion for Modification of Custody is hereby DENIED and Charles Pruitt shall retain custody, care and control of his minor son, Justin Andrew Pruitt." This appeal by Crowley followed.

The court erred by treating the dispute as one of custody modification under Kentucky Revised Statutes (KRS) 403.340 rather than a custody determination under KRS 403.270. Because this was a custody dispute to be resolved under KRS 403.270, findings of fact were required to be made. Because the court failed to follow the standards of KRS 403.270 and failed to make specific findings of fact, we must vacate the court's order and remand.

As we have noted, prior to entering its order denying Crowley custody of Justin, the court declared Crowley to be Justin's de facto custodian. Once that determination was made, the court was required to give Crowley the same standing as Pruitt in regard to Justin's custody. See KRS 403.270(1)(b). Then, the court was required to "determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian."

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<sup>4</sup> No appeal has been taken from this determination by the court.

See KRS 403.270(2). Further, the court was required to consider all relevant factors, including those specifically set forth in KRS 403.270(2). See *Stafford v. Stafford*, 618 S.W.2d 578, 580 (Ky.App. 1981), *overruled in part on other grounds by Largent v. Largent*, 643 S.W.2d 261 (Ky. 1982).

The court's error in following KRS 403.340 and not KRS 403.270 was likely the result of Crowley's motion being improperly designated as one to modify the prior temporary custody order of the juvenile division of the Henderson District Court. Crowley's motion, although improperly designated as a motion to modify custody, was actually a motion seeking custody as a de facto custodian under KRS 403.270. The temporary custody order of the Henderson District Court was not a custody decree that was subject to modification under KRS 403.340.<sup>5</sup>

On remand, the family court should treat Crowley's motion as one under KRS 403.270 and should follow the standards set forth in that statute rather than the standards for custody modification set forth in KRS 403.340. Further, the court should make specific findings of fact as required by the applicable rule and case law. See Kentucky Rule of Civil Procedure 52.01; *Stafford, supra*; *Reichle v. Reichle*, 719 S.W.2d

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<sup>5</sup> As noted in *Shifflet v. Shifflet*, 891 S.W.2d 392, 393 (Ky. 1995), "[t]he standards set forth in [KRS 403.340] are intended to apply only to modifications of permanent awards of custody."

442,444 (Ky. 1986); *McFarland v. McFarland*, 804 S.W.2d 17, 18  
(Ky.App. 1991).

The order of the Henderson Family court is vacated and  
remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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