

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001839-ME

LEILA NICOLE NEW (now SMITH)

APPELLANT

v. APPEAL FROM CLARK CIRCUIT COURT
HONORABLE JEFFREY M. WALSON, JUDGE
ACTION NO. 07-CI-00339

GLEN ERIC NEW

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER AND THOMPSON, JUDGES; GRAVES,¹ SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Leila Nicole New (now Smith) appeals from a custody determination designating Glen Eric New as primary residential custodian of their child. She argues that the trial court's findings were clearly erroneous and that it abused its discretion. We affirm.

¹ Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Leila Smith and Glen New met in 1999. Leila lived in Canada and Glen lived in Kentucky. Glen moved to Canada in July 1999 to live with Leila. They lived in Canada until November 2001 when Glen returned to Kentucky and Leila remained in Canada. Subsequently, Leila discovered that she was pregnant and the couple married in Kentucky on July 11, 2002. The child was born five days later. The couple experienced financial difficulties and Leila returned to Canada with the child. Glen rejoined the family shortly thereafter.

Glen returned to Kentucky with the child in September 2005. Leila visited Glen and the child for two weeks in October 2005. Leila returned to live with the family in Kentucky in January 2006. In August 2006, Leila again moved back to Canada with the child without notifying Glen. After protracted litigation in the Canadian court system, the Canadian court determined that custody decisions should be made in Kentucky. Glen filed a petition for the dissolution of marriage in Clark Circuit Court on June 1, 2007. The parties mediated the case and reached an agreement on all issues except custody. The court held a hearing on the matter wherein several witnesses testified. The court determined that Glen would be the primary residential custodian of the child. This appeal followed.

Findings of fact in child custody matters shall not be disturbed on appeal unless they are clearly erroneous. *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986); CR 52.01. Custody of minor children in Kentucky is governed by KRS 403.270, which states, in relevant part:

(2)The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent ... The court shall consider all relevant factors including:

(a) The wishes of the child's parent or parents, . . . as to his custody;

(b) The wishes of the child as to his custodian;

(c)The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;

(d) The child's adjustment to his home, school and community;

(e) The mental and physical health of all individuals involved;

(f) Information, records and evidence of domestic violence as defined in KRS 403.720; . . .

When confronted with a custody issue, trial courts exercise broad discretion in determining the best interests of a child. *Krug v. Krug*, 647 S.W.2d 790, 793 (Ky. 1983).

We have reviewed the testimony in this case as well as the trial court's oral and written findings. The trial court reached a decision in a difficult case because there was evidence presented in support of each party's position. Neither party is a perfect parent. The trial court is in the best position to determine the credibility of witnesses and to weigh the evidence. The trial court's findings are supported by substantial evidence in the record. Therefore, this Court cannot

simply substitute its own judgment for the decision of the trial court. We discern no abuse of discretion in the trial court's custody determination.

Accordingly, the judgment of the Clark Circuit Court is affirmed.

ALL CONCUR.

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