

RENDERED: DECEMBER 5, 2008; 2:00 P.M.  
 NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2008-CA-000790-ME

CHANA HARRIS

APPELLANT

APPEAL FROM BARREN CIRCUIT COURT  
v. HONORABLE W. MITCHELL NANCE, JUDGE  
ACTION NO. 06-J-00177

CHRISTOPHER C. WARD

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON AND THOMPSON, JUDGES; LAMBERT,<sup>1</sup> SENIOR JUDGE.

LAMBERT, SENIOR JUDGE: Chana A. Harris appeals from an order of the Barren Circuit Court whereby Christopher C. Ward was designated the primary residential custodian of the parties' son, CCW. Discovering no abuse of trial court discretion, we affirm.

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<sup>1</sup> Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Harris and Ward met in August 2002 while living in Georgia. They moved together to Kentucky in September, but Harris returned to Georgia two months later. In November 2003, Harris returned to Kentucky and moved in with Ward at his parents' residence in Glasgow. CCW was born out-of-wedlock to Harris and Ward on February 3, 2005. Soon thereafter, Harris and Ward moved into a rented house elsewhere in Barren County.

On June 2, 2006, Harris filed a paternity complaint against Ward in the Barren Circuit Court for the purposes of establishing paternity, child support, and health care coverage for CCW. The complaint noted that Ward had voluntarily acknowledged that he was the child's father. Ward's paternity was confirmed by a genetic test, and he was adjudged to be CCW's father on September 11, 2006. Harris and Ward maintained their residence at the rental home until Ward began an unmarried cohabitation with Rebecca Marinan in February 2007. CCW remained with Harris, and in May 2007, Harris and CCW moved back in with Ward's parents.

In August 2007, Harris moved to Coweta County, Georgia, to live with her mother, sisters, and her three children, including CCW. On August 27, 2007, Ward filed a verified petition for custody of CCW in the Barren Circuit Court in an effort to prevent Harris from relocating him to Georgia. This action was consolidated with the existing paternity case that had been previously filed by

Harris. On September 5, 2007, the court awarded temporary joint custody of CCW to both parties and designated Harris as the child's temporary primary residential custodian. Ward was given temporary visitation rights and was later ordered to pay temporary child support. During this period, Ward resided primarily with his parents, but he continued to occasionally spend the night at Marinan's home.

Following an evidentiary hearing, the circuit court made findings of fact and conclusions of law, and rendered a joint custody, visitation, and child support order on February 18, 2008. The court held that it was in the best interest of CCW to grant Harris and Ward joint custody and to designate Ward as the child's primary residential custodian. On April 2, 2008, the court entered amended findings of fact that incorporated some factual suggestions made by Harris pursuant to Kentucky Rules of Civil Procedure (CR) 52.02.

Among the court's findings, on at least one occasion, Harris asked Ward's parents to look after her children, including CCW, for a few minutes but remained away from home for several hours. The court also noted that Harris would occasionally leave her children with Ward's parents and then remain away from home all night without returning to check on the children or communicating her whereabouts. The court also expressed concerns about the fact that Harris had failed to earn a full General Educational Development (GED) high school equivalency diploma, despite multiple attempts to do so, and her poor employment history. In contrast, the court noted that Ward was a high school graduate who had a stable employment history. The court also found that CCW had become

accustomed to interacting with Ward and his parents. It specifically noted that “the most stable time in the child’s young life thus far” had occurred while he was living in the home of Ward’s parents.

The court also admonished both parties to avoid exposing CCW “to the risks incidental to any unrelated unmarried adult cohabitation living arrangement.” In doing so, the court took judicial notice, pursuant to Kentucky Rules of Evidence (KRE) 201, of the fact that there is a high correlation between such living arrangements and incidents of domestic violence. The court also ordered the parties to consult with a licensed marriage and family therapist in order to improve their parenting skills.

On appeal, Harris argues that the circuit court abused its discretion when it designated Ward as primary residential custodian of CCW. We first note that Harris’ brief fails to comply with CR 76.12(4)(c)(iv) and (v). CR 76.12(4)(c)(iv) requires that a party’s “Statement of the Case” contain “ample references to the specific pages of the record, or tape and digital counter number in the case of untranscribed videotape or audiotape recordings, or date and time in the case of all other untranscribed electronic recordings, supporting each of the statements narrated in the summary.” CR 76.12(4)(c)(v) likewise requires that the “Argument” portion of a brief contain “ample supportive references to the record,” along with “a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.” Harris disregarded these requirements in her brief. Moreover, Harris took no opportunity to correct

these errors in a reply brief despite the fact that her failure to comply with CR 76.12 was brought to her attention by Ward and despite the fact that reply briefs may be used for such a purpose. *See Hollingsworth v. Hollingsworth*, 798 S.W.2d 145, 147 (Ky. App. 1990). It is not our responsibility to scour the record to find support for an appellant's contentions. *Smith v. Smith*, 235 S.W.3d 1, 5 (Ky. App. 2006).

Although noncompliance with CR 76.12 is not necessarily fatal to an appeal, it would be within our discretion to strike Harris' brief for its noncompliance with the rule. *See* CR 76.12(8)(a) ("A brief may be stricken for failure to comply with any substantial requirement of this Rule 76.12."). In lieu of this, however, we choose to follow of our decision in *Elwell v. Stone*, 799 S.W.2d 46 (Ky. App. 1990) and to undertake an overall review of the record to determine if any "manifest injustice" occurred. *Id.* at 48.

After considering the record thusly, we cannot say that the circuit court's decision resulted in a "manifest injustice." Indeed, we would be compelled to affirm the trial court's decision under the typical "abuse of discretion" standard of review. In designating Ward as CCW's primary residential custodian, the circuit court emphasized the stability that CCW had experienced while living with Ward and his parents and the significance of such stability in creating a "home" for a child. In doing so, the court noted its particular consideration of and reliance upon the factors set forth in Kentucky Revised Statutes (KRS) 403.270(2) to be used in determining the best interests of the child:

- (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[.]

The court also took particular note of Ward's stable employment history. The record reflects that he is part-owner of a business.

Harris argues that the court made "an unreasonable and unfair decision" because: (1) despite taking judicial notice of the fact that there is a high correlation between unmarried adult cohabitation living arrangements and incidents of domestic violence, the court designated Ward as primary residential custodian even though he had spent time living with a married woman and had previously exercised weekend visitation with CCW at her residence; (2) the court separated CCW from his two half-siblings, who lived with Harris in Georgia; and (3) Harris was acting as CCW's primary caretaker before this action was filed.

While these arguments are relevant and could have supported a different result, the evidence was entirely sufficient to support the circuit court's ultimate decision. There was no manifest injustice or abuse of discretion. *See Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982). The trial court used his best judgment to discover the best interest of this child and we find no fault with his effort.

The judgment of the Barren Circuit Court designating Christopher C. Ward as primary residential custodian of CCW is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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