

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001154-ME

EUGENE LAWS, JR.

APPELLANT

v.

APPEAL FROM WAYNE CIRCUIT COURT
HONORABLE JENNIFER CLARK, JUDGE
ACTION NO. 01-CI-00014

BARBARA LAWS

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: LAMBERT, MOORE, AND VANMETER, JUDGES.

LAMBERT, JUDGE: Eugene Laws, Jr. appeals the Wayne Circuit Court's order modifying custody. After careful review, we vacate and remand.

Eugene and Barbara Laws were divorced by decree entered October 27, 2003, and were granted joint custody of their minor daughter, Joella. Since the divorce, custody has been modified on at least one prior occasion. On March 7, 2008, Barbara filed a motion to modify custody of Joella and for establishment of

child support. The court conducted a hearing on April 22, 2008, and entered an order on May 30, 2008, modifying custody to joint custody with Barbara designated as the primary residential custodian. Eugene was granted standard visitation and ordered to pay child support.

The events causing Barbara to file the motion to modify custody occurred in February 2008. At that time, Eugene was Joella's primary custodian, and Barbara saw Joella three weekends a month. Joella testified that she was listening to loud music and that her father asked her to turn it down, which she claims she did. Later, her father burst into her room with a shotgun and threatened to shoot her with the gun if she did not follow his rules. Eugene testified that Joella was listening to loud, vulgar music and was asked several times to turn it down. When she did not, he aimed an unloaded shotgun at Joella's computer and threatened to shoot the computer that was playing the music. Eugene admitted to using a shotgun but stated that he did not threaten to kill Joella and stated that the shotgun was never loaded.

Eugene also testified that Joella was acting out, had anger issues, and had undergone counseling for a year prior to the events in February 2008. He testified that a week prior to the hearing on April 22, 2008, Joella was diagnosed with bi-polar disorder and was prescribed medication. At the hearing, Joella also expressed her desire to live with her mother, who resides in Cincinnati, Ohio.

In its May 30, 2008, order the trial court made specific findings of fact regarding the testimony provided at the April 2008 hearing. The trial court also

stated that it had jurisdiction and that it must consider the factors under KRS 403.340(3) and KRS 403.270(2). The order then modified custody and designated Barbara as the primary custodian, but the order does not specifically make any findings regarding the child's best interest under KRS 403.340(3) or KRS 403.270(2). This appeal followed.

When we review a trial court's child custody decision, we will not reverse unless its findings of fact are clearly erroneous or its decision reflects a clear abuse of the considerable discretion granted trial courts in custody matters. Kentucky Rule of Civil Procedure (CR) 52.01. *See also Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986).

Eugene argues that the trial court failed to properly apply KRS 403.270 and KRS 403.340 because it failed to apply the findings of fact in its judgment to its conclusions of law. We agree. While the trial court states in its order that it must consider those statutory sections, it does not specifically enumerate the factors or the evidence in this particular case which justified a modification of custody. Specifically, the trial court did not set out the weight given to the child's wishes or to the fact that the child had previously lived with Barbara and sought to live with Eugene prior to the events at issue in this case. In reality, the court's order does not reflect whether the court gave more weight to Joella's version of events or Eugene's and does not articulate clearly that a change in custody is in Joella's best interests.

Therefore, we vacate and remand with instructions for the Wayne Circuit Court to enter an order consistent with this opinion and the statutory provisions of KRS 403.270 and KRS 403.340.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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