

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000313-ME

LORENA MARIE LASKY

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE PATRICIA WALKER FITZGERALD, JUDGE
ACTION NO. 06-CI-501203

ALLAN ROBERT LASKY-HEADRICK

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON AND DIXON, JUDGES; HENRY,¹ SENIOR JUDGE.

DIXON, JUDGE: Appellant, Lorena Marie Lasky, appeals *pro se* from an order of the Jefferson Family Court granting Appellee, Allan Robert Lasky-Headrick, unsupervised visitation with the parties' two minor daughters. Finding no error, we affirm.

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

The parties were married in Texas in September 1998. One child, S.H., was born of the marriage in 1998. A second child, H.H., was legally adopted in 2002. Prior to the parties' separation in 2003, they lived in Paraguay. However, in December 2003, Lorena and the girls moved to Louisville, Kentucky. Allan thereafter filed a petition for custody in the Texas court. Two days later, a petition was filed in Kentucky alleging that H.H. had recently revealed an incident of sexual abuse by Allan that had occurred in Paraguay.

Following a dependency hearing in March 2004, the Jefferson Family Court determined that there was insufficient evidence to conclude that sexual abuse had occurred. However, at the conclusion of the divorce and custody trial in 2005, a Texas court awarded Lorena sole custody of the children, and ordered supervised visits between Allan and the children. The Texas court concluded that although there was no specific finding that the alleged instance of abuse had occurred, a suspicion that there had been inappropriate behavior by Allan required the court to take protective action on behalf of the children.

The Jefferson Family Court gave full faith and credit to the Texas order and likewise required supervised visitation and professional monitoring. However, in 2007, the family court granted Allan unsupervised day-time visitation with the girls. Thereafter, in October 2007, Lorena filed a motion to again impose

supervised visitation. Following a hearing on October 30, 2007, the family court denied the motion. This appeal ensued.

Lorena argues that the family court erred in denying her motion to require supervised visitation between Allan and the girls. As she did in the family court, Lorena contends that there is sufficient evidence that the children were in physical danger and subjected to mental and emotional abuse while in Allan's care. Furthermore, Lorena argues that the family court failed to consider the advice and recommendations of mental health professionals in ordering unsupervised visitation.

On appeal, this Court will only reverse a trial court's determination as to visitation if it constitutes "a manifest abuse of discretion, or [is] clearly erroneous in light of the facts and circumstances of the case." *Drury v. Drury*, 32 S.W.3d 521, 525 (Ky. App. 2000); *see also Bales v. Bales*, 418 S.W.2d 763, 764 (Ky. 1967). The trial court's findings of fact are not erroneous if supported by "evidence of substance and relevant consequence sufficient to induce conviction in the minds of reasonable people." *Sherfey v. Sherfey*, 74 S.W.3d 777, 782 (Ky. App. 2002), *cert. denied*, 537 U.S. 1110 (2003), *overruled on other grounds in Benet v. Commonwealth*, 253 S.W.3d 528 (Ky. 2008). Furthermore, in reviewing the family court's decision, due regard must be given to that court's judgment as to the credibility of the witnesses. *Sherfey*, at 782. The question is not whether we would have come to a different conclusion, but whether the family court applied

the correct law and whether the family court abused its discretion. *B.C. v. B.T.*, 182 S.W.3d 213 (Ky. App. 2005).

KRS 403.320 provides that:

(1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

Upon request of either party, the court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.

(2) If domestic violence and abuse, as defined in KRS 403.720, has been alleged, the court shall, after a hearing, determine the visitation arrangement, if any, which would not endanger seriously the child's or the custodial parent's physical, mental, or emotional health.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

As the parent who is attempting to deny visitation, Lorena bears the burden of proving that unsupervised visitation with Allan would endanger seriously the girls' physical, mental, moral, or emotional health. *Smith v. Smith*, 869 S.W.2d 55, 56 (Ky. App. 1994).

Unquestionably, as the family court observed, much of the testimony presented in this matter consisted of "he said, she said" allegations and inadmissible hearsay. It is clear that the relationship between the parties is acrimonious, at best, with each attempting to sway the children to his or her "side."

Nonetheless, the family court was persuaded by reports submitted from Richard Nassr, who had been providing professional supervision and monitoring of Allan's visitation since 2004. Nassr opined that Allan was "nurturing, educating, and protective" of the children, and that he did not observe anything of "remarkable concern."² In contrast to Lorena's claims, Nassr discerned a strong attachment between Allan and the girls, noting that they exhibited no fear or hesitation in being with him. Accordingly, Nassr concluded that there was no basis for continuing supervised visitation.

In its January 21, 2009, order denying supervised visitation, the family court noted,

The Court has carefully considered the various concerns raised and the depositions submitted to the Court. It must be noted that some of the concerns go to somewhat odd behavior by Mr. Lasky-Headrick, but behavior which did not place the children at risk of harm. In reaching this conclusion, the Court must note that there has been a good bit of hearsay testimony regarding incidents which occurred between adults and which the Court may not consider given the nature of the testimony. Moreover, those incidents, if they occurred, did not involve the children. Essentially, therefore, the request to restrict Mr. Lasky-Headrick's visitation has produced no evidence of incidents of abuse since the allegations regarding an incident which is said to have occurred in Paraguay when these children were three and four years old and the nature or occurrence of which has never been specifically established. There is no evidence before this Court that Mr. Lasky-Headrick has since being before this Court endangered the children or that the children are at risk of sexual abuse

² In fact, the trial court observed that Lorena's motion for supervised visitation was based, in part, upon an incident that was alleged to have occurred during a supervised visit, and which Mr. Nassr confirmed could not have occurred.

As we previously noted, a trial court is in the best position to evaluate the credibility of the evidence and testimony of the witnesses. While we may or may not have reached the same decision, the record herein contains substantial evidence to support the family court's decision. *Sherfey*, at 782. As such, we cannot conclude that its determination constitutes "a manifest abuse of discretion, or [is] clearly erroneous in light of the facts and circumstances of the case." *Drury*, at 525.

The order of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Lorena Lasky, *Pro Se*
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