

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000824-MR

JOHANNA K. BOWLING

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE GARY D. PAYNE, SPECIAL JUDGE
ACTION NO. 07-CI-00194

JEFFERY L. BOWLING

APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** * ** * ** *

BEFORE: ACREE, DIXON AND STUMBO, JUDGES.

DIXON, JUDGE: Johanna K. Bowling appeals the Bell Circuit Court's findings of fact and conclusions of law in a dissolution of marriage action. Because we believe additional findings as to child custody are warranted, we affirm in part, reverse in part, and remand.

Johanna and Jeffery L. Bowling were married for approximately fourteen years, and they have four children. The court held a five-day trial in June 2008, to resolve several contested issues, including custody, visitation, division of the parties' multi-million dollar marital estate, maintenance, and attorney's fees. Over the course of the trial, the court heard from numerous witnesses and received a vast amount of evidence. In December 2008, the court rendered its findings and conclusions, awarding Johanna and Jeffery joint custody of the children, then-aged 13, 11, 8, and 3. The court specifically concluded as follows:

2. Though the court finds that neither party is unfit to parent the children, [Jeffery] is awarded their primary residential custody. The court finds that it is in the best interest of the children to remain in the community in which they have been raised since birth.

On December 22, 2008, Johanna filed several post-judgment motions, including a motion for additional findings of fact pursuant to CR 52.04. On the issue of custody, Johanna specifically sought additional findings from the trial court regarding the best interest of the child factors delineated in KRS 403.270(2). On April 21, 2009, the court denied Johanna's motion for additional findings, and this appeal followed.¹

¹ We note that Jeffery contends that this appeal is untimely because he filed a notice of appeal from the trial court's judgment on December 11, 2008, and he asserts that Johanna should have perfected a cross-appeal at that time. Although Jeffery's direct appeal was ultimately dismissed by agreement, he maintains that the trial court did not have jurisdiction to rule on Johanna's post-judgment motions due to his then-pending direct appeal in this Court. In May 2009, Jeffery filed a motion to dismiss the instant appeal as untimely, which was denied by a motion panel of this Court on July 15, 2009. Accordingly, we decline to revisit this issue.

On appeal, Johanna asserts that the trial court rendered inadequate findings of fact regarding child custody, as the court failed to make specific findings pursuant to KRS 340.270(2) to determine what custody arrangement was in the best interests of each child. We agree.

We acknowledge that a trial court enjoys broad discretion in custody matters, as it is in the best position to weigh the evidence and assess witness credibility. *B.C. v. B.T.*, 182 S.W.3d 213, 219 (Ky. App. 2005). However, in such matters, the court is required to “consider all relevant factors including those specifically enumerated in KRS 403.270[(2)] in determining the ‘best interests of the child.’” *McFarland v. McFarland*, 804 S.W.2d 17, 18 (Ky. App. 1991). “In so doing, it is mandatory under CR 52.01 that the facts be so found specifically.” *Id.* (citation omitted).

In the case at bar, the trial court recited the statutory language set forth in KRS 340.270(2)² in its conclusions of law; however, the court failed to specifically address any of the statutory factors in relation to the evidence presented. We recognize that the trial court faced a voluminous record in this case, and the court rendered a lengthy opinion resolving several highly contested issues. However, while the court concluded that the children should live in the family home with

² The statute requires the court to determine a custody arrangement that is in the child’s “best interests.” KRS 403.270(2). In the case at bar, the relevant statutory factors include: a) the parents’ wishes as to custody; b) the child’s wishes as to his/her custodian; c) the relationships between parents and child, the child and his/her siblings, and any other significant interpersonal relationships impacting the child; d) the child’s adjustment to his or her home, school, and community; e) the mental and physical health of all parties; and f) information and evidence of domestic violence. *Id.*

their father, the court failed to analyze the statutory “best interest” factors to ensure that a custody determination for each child was “individualized and his or her unique circumstances accounted for.” *Squires v. Squires*, 854 S.W.2d 765, 769 (Ky. 1993). As a result, we believe the court failed to make adequate findings to support its custody determination as required by KRS 340.270(2) and CR 52.01; consequently, we must reverse that portion of the judgment and remand this case for additional proceedings consistent with this opinion.

For the reasons stated herein, we affirm in part, reverse in part, and remand the judgment of the Bell Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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