

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000535-ME

TIMOTHY PARTIN

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT
HONORABLE ALLAN R. BERTRAM, JUDGE
ACTION NO. 04-CI-00324

CANDACE ELAINE PARTIN (Now DEBOARD)

APPELLEE

OPINION
VACATING AND REMANDING

** ** * ** * ** *

BEFORE: COMBS AND DIXON, JUDGES; ISAAC,¹ SENIOR JUDGE.

ISAAC, SENIOR JUDGE: Timothy Partin appeals from an order of the Taylor Circuit Court designating Candace Partin (now DeBoard) as the primary residential custodian of the parties' minor child. Timothy argues the trial court erred by: (1) failing to make findings of fact as required by Kentucky Rules of Civil Procedure

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

(CR) 52.01; and (2) awarding primary custody without a sufficient factual basis.

After reviewing the record and briefs, we vacate and remand.

The trial court entered a decree dissolving the marriage of Timothy and Candace on July 27, 2005. There is one minor child of the marriage. The decree stated that a separate custody order would be subsequently entered. A temporary custody order was entered on September 5, 2005, which provided for joint custody with the parties alternating physical custody of the child from week to week. Because Timothy resided in Adair County and Candace resided in Pulaski County, the week to week custody arrangement was no longer feasible when the child reached school age. Timothy filed a motion to modify custody and to make him the primary residential custodian on May 30, 2009. Candace responded with her own motion for primary custody.

The trial court held a hearing on the motions on June 29, 2009. On August 14, 2009, the trial court orally advised the parties of its ruling designating Candace as the primary residential custodian. On August 19, 2009, the trial court entered a written temporary order designating Candace as the primary residential custodian. The order stated that it “shall be binding on the parties, pending a more extending (sic) Findings of Fact and Conclusions of Law from this Court.” On January 25, 2010, the trial court entered an order purporting to incorporate a temporary order entered on June 5, 2009. The order stated that it was final and appealable. As there was no order entered on June 5, 2009, Timothy filed a motion

to alter or amend the order and for additional findings of fact. Following a hearing, the trial court entered an order on March 1, 2010, amending the January 25, 2010, order to reflect that it incorporated and made final the August 19, 2009, order designating Candace as the primary residential custodian. The March 1, 2010, order also denied the motion for additional findings of fact. This appeal followed.

Timothy argues that the trial court erred by failing to make findings of fact and conclusions of law. We agree.

CR 52.01 requires the trial court to make specific findings of fact and separate conclusions of law in all actions tried without a jury. *Skelton v. Roberts*, 673 S.W.2d 733 (Ky.App. 1984). The requirements of CR 52.01 are mandatory. *Id.* Moreover, CR. 52.01 applies to child custody cases and “the findings of fact are particularly important in such situations.” *Reigle v. Reigle*, 719 S.W.2d 442, 444 (Ky. 1986).

In the present case, the trial court made no specific findings of fact in its written orders. At the hearing on August 14, 2009, the trial court simply stated that it was designating Candace primary residential custodian “after considering the factors in the statute.”² After our review of the August 14, 2009, hearing, we conclude that the trial court’s remarks are insufficient to constitute findings of fact under CR 52.01. We hold that the trial court’s failure to make findings of fact and state conclusions of law constitutes reversible error. *Brown v. Shelton*, 156 S.W.3d 319, 321 (Ky.App. 2004). As the failure to make findings of

² Presumably, Kentucky Revised Statutes (KRS) 403.270.

fact precludes meaningful appellate review, we will not address the merits of Timothy's remaining argument concerning the sufficiency of the evidence to support the custody determination. Upon remand, the trial court shall reconsider its award of custody in light of KRS 403.270 and shall thereafter set forth its findings of fact and conclusions of law upon the issue of custody as required by CR 52.01. In view of the circumstances of this case, the trial court is directed to expedite this matter.

Accordingly, the order of the Taylor Circuit Court is vacated and this case is remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

James I. Howard
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BRIEF FOR APPELLEE:

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