

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

NO. 2009-CA-002314-ME

MELISSA HARDWICK  
(PREVIOUSLY ANDERSON)

APPELLANT

v. APPEAL FROM WAYNE CIRCUIT COURT  
HONORABLE JENNIFER UPCHURCH CLARK, JUDGE  
ACTION NO. 07-CI-00268

JOHN ANDERSON

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: VANMETER AND WINE, JUDGES; SHAKE,<sup>1</sup> SENIOR JUDGE.

VANMETER, JUDGE: Melissa Hardwick (previously Anderson) appeals *pro se* from a judgment of the Wayne Circuit Court awarding John Anderson sole custody of the parties' three minor children. For the following reasons, we vacate and remand.

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<sup>1</sup> Senior Judge Ann O'Malley Shake 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.

Melissa and John were divorced by a decree of dissolution on February 25, 2008 after being married for twenty-two years and having three minor children. By agreement between the parties, Dr. David Feinberg conducted a custodial evaluation and submitted a report recommending shared joint custody of the minor children. In addition, the court interviewed the children to ascertain their wishes regarding custody and visitation. Following a final hearing on issues of division of property, division of debts, custody, support and visitation rights, the court awarded John sole custody of the parties' three minor children. Melissa appeals.

Melissa contends the trial court erred by failing to make findings of fact to support its conclusion that an award of sole custody to John was in the best interests of the three minor children. We agree.

Our standard of review for a determination of child custody is whether the trial court's findings of fact were clearly erroneous. CR<sup>2</sup> 52.01; *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986). Specifically, CR 52.01 states, "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specifically and state separately its conclusion of law thereon[.]" The reason "for the rule is to have the record show the basis of the trial judge's decision so that a reviewing court may readily understand the trial court's view of the controversy." *Reichle*, 719 S.W.2d at 444 (citations omitted). The court's findings of fact are of particular importance in child custody cases. *Id.*

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<sup>2</sup> Kentucky Rules of Civil Procedure.

KRS 403.270(2) requires the court to make a custody determination that serves the best interests of the child. In doing so, the court must consider all relevant factors including:

- (a) The wishes of the child's parent or parents, and any *de facto* custodian, as to his custody;
- (b) The wishes of the child as to his custodian;
- (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;
- (f) Information, records, and evidence of domestic violence as defined in KRS 403.720;
- (g) The extent to which the child has been cared for, nurtured, and supported by any *de facto* custodian;
- (h) The intent of the parent or parents in placing the child with a *de facto* custodian; and
- (i) The circumstances under which the child was placed or allowed to remain in the custody of a *de facto* custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a *de facto* custodian to allow the parent now seeking custody to seek employment, work, or attend school.

KRS 403.270(2).

In the instant case, the trial court did not make sufficiently specific findings of fact to support its conclusion that the best interests of the children would be served by awarding sole custody to John. It appears the court relied on the custodial evaluation by Dr. Feinberg, as well as the interview the court conducted with the minor children, to make its custodial determination. However, the trial court failed to specifically state factual findings upon which its determination was based. Thus, we have no findings of fact for purposes of meaningful review. Accordingly, we vacate the award of sole custody to John and remand this matter for the court to make specific findings of fact regarding the best interests of the children consistent with CR 52.01.<sup>3</sup>

The judgment of the Wayne Circuit Court is vacated and remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Melissa Hardwick, *Pro se*  
Burnside, Kentucky

BRIEF FOR APPELLEE:

Charlie C. Pharis  
Somerset, Kentucky

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<sup>3</sup> Since we are vacating the judgment and remanding this matter to the trial court to make specific findings in regards to the best interests of the parties' minor children, we decline to address Melissa's additional claims of error involving the admissibility of evidence of her religious practices, her denial of legal aid services, and the deficiency of her retained counsel.