

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-000286-ME

BRADLEY RAHME

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JOSEPH W. O'REILLY, JUDGE  
ACTION NO. 09-CI-502188

MEREDITH RAHME

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON, NICKELL AND WINE, JUDGES.

NICKELL, JUDGE: Bradley Rahme has appealed from the order of the Jefferson Circuit Court, Family Division, awarding sole custody of his minor daughter to his ex-wife, Meredith Rahme. We affirm.

Bradley and Meredith were married on September 25, 2004. One child was born to the union. The couple's relationship became turbulent and

quickly deteriorated following the birth. They separated on June 16, 2009, and Meredith obtained an emergency protective order<sup>1</sup> shortly thereafter based on Bradley's paranoid and threatening behavior. On June 25, 2009, Bradley petitioned for legal separation from Meredith. Meredith responded on July 1, 2009, and filed a counter-petition for dissolution of the marriage. Because the parties were unable to reach an agreement regarding custody and a permanent parenting schedule, the trial court conducted a hearing on September 24, 2010, to resolve all custody issues. The court took testimony from both parties, a court-appointed custody evaluator, and a physical therapist.<sup>2</sup> After hearing and carefully considering the testimony and evidence presented, the trial court awarded sole custody of the minor child to Meredith. In its order the trial court concluded:

. . . it is in the best interest of the minor child that [Meredith] be awarded sole custody. Based on the history of domestic violence, the mental health issues of [Bradley] and the strained communication between the parties, the Court concludes it would be difficult for the parties to joint decision make at this time. [Bradley] appears to this Court to harbor significant paranoia toward [Meredith] and her actions, including his assertions that she neglects the child and is an unfit parent. [Bradley] constantly second guesses the medical treatment of the child for even the most routine of illnesses and consistently requests multiple opinions

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<sup>1</sup> Following a hearing on the emergency protective order, the court entered a Domestic Violence Order (DVO) effective through June 30, 2010. The terms of the DVO required Bradley to remain 1,000 feet away from Meredith, but allowed for visitation with the parties' daughter, contact at exchanges of the child, and limited communication between the parties on issues related to the child. The DVO was subsequently extended to June 30, 2011. It is unclear from the record whether an additional extension was sought.

<sup>2</sup> The trial court also took testimony from a person Bradley believed had been having an extramarital affair with Meredith. The testimony indicated no such relationship ever existed.

related to the child's illnesses. [Bradley] also appears to be unwilling to accept responsibility for his actions and has refused to participate in meaningful mental health treatment to address the concerns raised in the custody evaluation. All of these factors lead the Court to conclude [Bradley] is currently unable to co-parent the child with [Meredith].

Bradley subsequently moved the court to alter, amend or vacate its previous order and further moved the court to make additional factual findings. The trial court allowed Meredith time to respond to the allegations contained in Bradley's motion before rendering its decision. Following a short briefing time, the trial court took the matter under submission. On January 12, 2010, the trial court entered an order setting forth the basis for its earlier findings in relation to the factors set forth in KRS<sup>3</sup> 403.270 for determining the best interests of the child. After setting forth its analysis, the trial court denied Bradley's motion to alter, amend or vacate the earlier order. This appeal followed.

Before this Court, Bradley contends the trial court abused its discretion in finding he was unable to co-parent the minor child and finding an award of sole custody to Meredith was in the child's best interests. He further contends the trial court abused its discretion in making findings based on facts not in evidence. We have reviewed the record and discern no abuse of discretion.

Our standard of review in the area of child custody and visitation is well settled. "[T]he change of custody motion or modification of visitation/time-sharing must be decided in the sound discretion of the trial court." *Pennington v.*

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<sup>3</sup> Kentucky Revised Statutes.

*Marcum*, 266 S.W.3d 759, 769 (Ky. 2008). It is also well settled that an appellate court may set aside a lower court's findings:

only if those findings are clearly erroneous. And, the dispositive question that we must answer, therefore, is whether the trial court's findings of fact are clearly erroneous, i.e., whether or not those findings are supported by substantial evidence. "[S]ubstantial evidence" is "[e]vidence that a reasonable mind would accept as adequate to support a conclusion" and evidence that, when "taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men." Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses" because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court. Thus, "[m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal," and appellate courts should not disturb trial court findings that are supported by substantial evidence.

*Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (footnotes omitted). *See also* CR<sup>4</sup> 52.01; *Reichle v. Reichle*, 719 S.W.2d 442 (Ky. 1986). We review the trial court's application of the law to those facts *de novo*. *Lindley v. Paducah Bank & Trust*, 114 S.W.3d 259, 263 (Ky. App. 2002). Additionally, trial courts are granted broad discretion in determining the best interests of children when making custody awards, *Krug v. Krug*, 647 S.W.2d 790, 793 (Ky. 1983), and, thus, custody determinations will not be disturbed in the absence of an abuse of that discretion. *Allen v. Devine*, 178 S.W.3d 517, 524 (Ky. App. 2005). Based upon a careful

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<sup>4</sup> Kentucky Rules of Civil Procedure.

review of the record we conclude the trial court's decision was supported by substantial evidence and its determination of which evidence was most credible was not clearly erroneous. We likewise discern no abuse of discretion in the trial court's decision to grant Meredith sole custody of the minor child.

Bradley first contends the trial court erred in concluding the best interest of the couples' daughter would be best served by granting Meredith sole custody. He alleges the decision was manifestly against the weight of the evidence and failed to take all of the evidence into account. He argues the trial court abused its discretion in deciding the best interest of the child since its decision was based on flawed factual findings.

Where there is conflicting evidence, it is the responsibility of the fact-finder to determine and resolve such conflicts, as well as matters affecting the credibility of the witnesses. *Bierman v. Klapheke*, 967 S.W.2d 16, 19 (Ky. 1998). The finder of fact may believe any part or all of the testimony of any of the witnesses, or may disbelieve all of it. *Gillispie v. Commonwealth*, 279 S.W. 671, 672 (Ky. 1926).

The trial court heard several hours of testimony from multiple witnesses at the hearing on September 24, 2010, and examined the written record of the matter, including photographs, e-mail communications, and medical and counseling records. On that basis, the court issued its findings of fact. Bradley challenges the findings of fact as well as the application of the law to those facts. However, we cannot conclude that any of the findings made by the trial court were

clearly erroneous, because although conflicting evidence was presented, there was substantial evidence to support the trial court's findings.

Having reviewed the record, it is apparent that the trial court thoroughly reviewed and weighed the evidence in this matter. Because the trial court was in the best position to judge the weight of the evidence, and the credibility of the witnesses in this matter, we will overturn only in the event that the trial court abused its discretion. CR 52.01; *Moore*. Our review of the record does not bear out such a conclusion.

The trial court carefully recited the evidence it relied upon in making its findings of fact in its initial order, and even more thoroughly in its order denying Bradley's motion to alter, vacate or amend. The trial court analyzed the factors set forth in KRS 403.270(2) and determined under the totality of the circumstances they weighed in favor of awarding Meredith sole custody. The trial court discussed each of the listed factors in relation to the evidence presented. The trial court showed an appreciation and understanding of all of the testimony and documentary evidence before it as well as the arguments of the parties. Our review of the record indicates both parties presented evidence in support of their respective positions, thus requiring the trial court to weigh the conflicting evidence in making its determination. It is reasonable for Bradley to assert there was also substantial evidence presented to have supported a contrary result. However, as we noted above, the mere fact that conflicting evidence is presented does not form a sufficient basis for overturning the judgment of a trial court who viewed the

testimony firsthand. Unless there is no substantial evidence in the record to support the trial court's findings, they will not be upset on appeal. *W.A. v. Cabinet for Health and Family Services*, 275 S.W.3d 214, 220 (Ky. App. 2008). The findings here were amply supported and we are unable to say the trial court's decision was arbitrary, capricious, unreasonable or unfair under the circumstances. *Allen*. Accordingly, we are bound by the trial court's findings of fact, and are limited to a determination of whether the trial court abused its discretion in applying the law to the facts as it did.

As previously stated, our review of the record reveals substantial evidence was presented to support the trial court's decision to grant Meredith sole custody. There is no allegation the trial court utilized incorrect legal standards in making its determination. When the correct rule of law has been applied to factual findings which are supported by substantial evidence, the resulting judgment must be affirmed. *Bowling v. Natural Resources and Environmental Protection Cabinet*, 891 S.W.2d 406, 410 (Ky. 1994).

It is clear that Bradley disagrees with the trial court's decision. His brief is filled with references to evidence he believes supports his position. We have carefully considered his arguments. However, as noted previously, we cannot substitute our judgment for that of the trial court. *Moore*. Bradley has simply failed to show a lack of substantial evidence supporting the trial court's factual findings, that the trial court utilized an incorrect rule of law, or that an error

occurred in applying the law to the facts. In the absence of any of these errors, no basis for reversal exists and the decision of the trial court must stand.

Finally, Bradley contends the trial court relied upon facts which were not admitted into the record or otherwise properly before the court. He alleges the trial court improperly relied on an emergency psychiatric examination of him conducted in conjunction with a failed attempt to have him involuntarily committed under a mental inquest warrant near the time of the parties' separation. The results of that examination, never introduced directly into the record, revealed a diagnosis of delusional disorder, jealous type. The trial court mentioned Bradley's mental health issues in its initial findings and in its order denying Bradley's post-judgment motion. He alleges that since the actual written examination was never introduced, the trial court could not properly rely on any conclusions or statements contained therein. We disagree.

Dr. Sally Brenzel, the court-appointed custody evaluator, testified that she had reviewed Bradley's psychiatric evaluation as part of her investigation. She reported the findings in her report to the trial court as well as in her testimony at the trial of this matter. Bradley takes no issue with Dr. Brenzel's reliance on these records in forming her opinion. However, without citation to authority supporting his position, he appears to contend it was improper for the trial court to rely on Dr. Brenzel's testimony regarding the mental health diagnosis in making its decision. We cannot follow this logic. Bradley did not object to Dr. Brenzel's testimony regarding his mental health condition or diagnosis. He did not contest her



additional testimony regarding his mental status and behaviors exhibited during the parties' marriage and subsequent separation which was separate and apart from her testimony regarding the delusional disorder diagnosis. Further, Bradley made no mention of the trial court's reliance on this testimony in his post-judgment motion for relief. Thus, we are concerned that Bradley has not properly preserved this argument for our review.

Nevertheless, a careful review of the trial court's orders indicates the court referred to Bradley's diagnosis only twice, and one of those references was to a "possible diagnosis" for which Bradley was not seeking treatment. The orders of the court do, however, contain numerous references to Bradley's paranoid behavior and exhibited mental health issues. The trial court specifically noted:

[t]he Court has significant concerns regarding [Bradley's] mental health. These concerns were also expressed by the custody evaluator in this case. As stated above, the allegations made by [Bradley] in this case appear to not be based in a realistic interpretation of the facts. Equally concerning to the Court is [Bradley's] failure to address these issues and instead attempting to make [Meredith] the villain. . . . Again, these concerns were also stated by the custody evaluator in this case.

We are unable to conclude that the trial court improperly relied upon documents not in evidence. It is clear the court shared Dr. Brenzel's concerns regarding Bradley's mental state and its effect on his relationship with his daughter and his ex-wife. Nothing in the record indicates the court's decision was improperly based on medical records which were not in evidence nor any diagnosis contained therein. There was no error.

For the foregoing reasons, the judgment of the Jefferson Circuit Court,  
Family Division, is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Hugh W. Barrow  
Louisville, Kentucky

BRIEF FOR APPELLEE:

J. Hays Lawson  
Louisville, Kentucky