

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-000421-ME

JACOB KERR

APPELLANT

v.

APPEAL FROM BARREN FAMILY COURT
HONORABLE W. MITCHELL NANCE, JUDGE
ACTION NO. 07-J-00122

MELISSA BARR (NOW BRITT)

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, MOORE AND VANMETER, JUDGES.

ACREE, JUDGE: Jacob Kerr urges reversal of the Barren Family Court's order of child custody and visitation. More specifically, Jacob contends that the Family court failed to consider all the requisite statutory factors in making an initial determination of custody and that its findings were not based upon the evidence presented. Finding no manifest injustice, we affirm.

I. Facts and procedure

A child, Emilie, was born to Jacob and Melissa, an unmarried couple, on September 5, 2006. There had never been a permanent order of custody prior to the order now at issue on appeal; rather, the parties operated under either temporary orders of custody or agreement.

Following a disagreement as to where to enroll Emilie in preschool, the parties sought a permanent order of custody. The family court conducted an evidentiary hearing and awarded Jacob and Melissa joint custody of Emilie. Melissa was named the primary residential parent, and Jacob was permitted visitation.

Displeased with the disposition, Jacob appealed the order. He argues the family court failed to consider all the factors required by Kentucky Revised Statute (KRS) 403.270 and claims its factual findings were not supported by the evidence.

II. Standard of review

It is well-established that a trial court's findings of fact are reviewed for clear error, while its conclusions of law are reviewed *de novo*. *Commonwealth v. Coffey*, 247 S.W.3d 908, 910 (Ky. 2008). Those standards may be disregarded, however, when an appellant fails to substantially comply with the appellate guidelines articulated in Kentucky Rule of Civil Procedure (CR) 76.12; rather, the palpable error, or manifest injustice, standard may govern. CR 76.12(8); *see also Elwell v. Stone*, 799 S.W.2d 46, 48 (Ky. App. 1990).

Jacob has appeared in this action *pro se*, as did the appellant in *Hallis v. Hallis*, 328 S.W.3d 694 (Ky. App. 2010). His *pro se* status does not exempt him from the duty to comply with the rules of appellate practice.

Because [Jacob] is not an attorney, we cannot expect the elegance or sophistication of legal thought we should expect from members of our learned profession. However, we have every reason to expect the briefs filed by *pro se* appellate advocates to demonstrate a good faith attempt to comport with CR 76.12, our rule for preparing briefs.

Id., 328 S.W.3d at 697-98 (citations and quotation marks omitted).

We have chosen in this case to apply the palpable error standard because Jacob's brief is deficient in several respects. *Id.* It contains neither a single citation to the record nor a statement of preservation. CR 76.12(4)(c)(iv); CR 76.12(4)(c)(v). Furthermore, Jacob's lone reference to legal authority, KRS 403.270, consists of merely a summary of the contents of that statute. CR 76.12(4)(c)(v). This citation to the law is far from "ample" and does not delineate the appropriate standards of review or support for Jacob's arguments or rationale. In short, it does not aid us in reviewing Jacob's claims.

We turn now to Jacob's arguments, reviewing them only for manifest injustice.

III. Failure to consider all the statutory factors

Jacob first contends the family court's order was deficient because it did not include findings on all the factors identified in KRS 403.270(2). However, Jacob did not file a motion with the family court seeking additional findings on the

factors not explicitly discussed in its order, and we are therefore not permitted to reverse on this basis. CR 52.04.

IV. Sufficiency of the evidence

Jacob's final assertion is that the family court's award of custody and timesharing is contrary to the evidence. That argument is not borne out by the record, however; our review of the record reveals there is evidence supportive of the family court's findings, and therefore there was no palpable error.

V. Conclusion

We affirm the February 14, 2011 order of the Barren Family Court granting the parties joint custody, with Melissa designated as the primary residential parent and Jacob having reasonable visitation.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jacob Kerr, *Pro se*
Edmonton, Kentucky

BRIEF FOR APPELLEE:

Temple Dickinson
Glasgow, Kentucky