

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-001877-ME

WILLIAM BEARD

APPELLANT

v.

APPEAL FROM MEADE CIRCUIT COURT  
HONORABLE BRUCE T. BUTLER, JUDGE  
ACTION NO. 10-CI-00498

HEATHER BEARD

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON, LAMBERT, AND VANMETER, JUDGES.

CAPERTON, JUDGE: The Appellant, William Keith Beard, appeals the August 19, 2011, order of the Meade Circuit Court, confirming and adopting in its entirety the April 21, 2011, report of the Domestic Relations Commissioner, naming the Appellee, Heather Lynn Beard, as the primary residential custodian of the two minor children of the parties, N.R.B., and R.A.B. On appeal, Beard argues that the

trial court erred in affirming the Domestic Relations Commissioner and that the decision designating Heather as primary residential custodian is contrary to the best interests of the children. Upon review of the record, the arguments of the parties, and the applicable law, we affirm.

William and Heather were married on August 7, 2004, in Breckinridge County, Kentucky. They had two children, R.A.B., who was age five at the time of the filing for a petition for dissolution, and N.R.B., who was age three at that time. Throughout a majority of the children's lives, William, who was unemployed, stayed home with the children while Heather worked outside of the home.

The parties divorced, and in November of 2010, Heather filed a *pendente lite* motion to be named primary residential custodian of the children. William asserts that although Heather was named primary residential custodian in December 2010, she did not take custody of the children until late February 2011. Heather disputes this assertion, stating that she picked the children up on December 10, 2010, and that they remained with her until the new year. She states that at that time, William refused to give Heather the birth certificates and social security cards that she needed to enroll the children in school and daycare. Heather asserts that William volunteered to keep the children until Heather was able to receive the documents on February 18, 2011.

At that time, the children returned to Heather's care, where they remain at present. Heather conceded that William provided a loving, nurturing

home for the children during the time that they resided with him. During the time that the children have lived with Heather she has moved twice, the first time to Muldrugh, Kentucky, to be closer to her work, and subsequently to Indiana, where she asserts they could afford to live more cheaply because William was not paying his court-ordered child support.

A final hearing in this matter was held on April 21, 2011, before the Domestic Relations Commissioner. At that time, Heather had moved in with her fiancé, James Terrance, whom she had been dating for five months and to whom she had been engaged for three. Evidence submitted indicated that Terrance had a criminal history which included convictions for assault under extreme emotional disturbance, criminal trespassing in the third degree, driving under the influence of alcohol and/or drugs, possession of drug paraphernalia, possession of marijuana, reckless driving, failure to wear a seatbelt, and speeding.<sup>1</sup> William also expressed concerns that child abuse might be occurring in the home, stating that he noticed marks and bruises on his daughter's inner thighs. These charges were investigated by the Cabinet for Health and Family Services and were found to be unsubstantiated.

At the time the decision was rendered below, Terrance was employed part-time at a local landscaping business. William remained unemployed and received financial unemployment assistance in the amount of \$44.00 per week. In

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<sup>1</sup> Heather acknowledges these convictions, but asserts that they occurred prior to her relationship with Terrance, and not in the presence of the children. Moreover, she directs the attention of this Court to the submission of a recent background check indicating that at the time of the April 21, 2011, hearing, Terrance had not been charged with or convicted of any criminal acts since 2007.

his brief to this Court, William asserts that he has now secured gainful employment,<sup>2</sup> and in her brief to this Court, Heather asserts that she is currently in school and works part-time.

As noted, the court below reviewed the evidence submitted by the parties and ultimately affirmed the order of the Domestic Relations Commissioner naming Heather as primary residential custodian. In so doing, the court stated as follows:

Taking into consideration the evidence, testimony, and facts of this case, especially in light of Respondent's ongoing unemployed status and financial woes, the Court finds that the Commissioner's recommendations are, in fact, in the best interest of the children per KRS 403.270. The Respondent's objection is hereby overruled.

It is from that order that William now appeals to this Court.

Below, and now on appeal to this Court, William argues that he is the more fit and proper parent to be the primary caregiver and residential custodian of the children. In support of that argument, William asserts that the trial court ignored many factors listed in KRS 403.207, including the children's adjustment to home, school and community, and the fact that they were accustomed to William being their primary caregiver during the day. He also argues that the order fails to give weight to Heather's decision to move twice with the children and to Heather's choice to reside with Terrance, in light of his criminal record. William argues that the evidence is overwhelmingly in his favor, and the court failed to properly

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<sup>2</sup> This Court is uncertain as to what the nature of this employment is, as it is not indicated in William's brief.

explain its reasoning for designating Heather as primary residential custodian.

Thus, he asserts that its decision is arbitrary and capricious. Heather disagrees, and has filed a *pro se* brief asserting that the court correctly designated her as primary residential custodian.

In reviewing the arguments of the parties, we note that CR 52.01 provides that findings of fact made by the trial court shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to determine the credibility of the witnesses before it. *See* CR 52.01. A factual finding is not clearly erroneous if supported by substantial evidence. *See Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998).

Substantial evidence is that which has sufficient probative value to induce conviction in the mind of a reasonable person when taken alone or in light of all the evidence. *Id.*

We also note that the trial court has very broad discretion when determining matters pertaining to custody of children. *Krug v. Krug*, 647 S.W.2d 790 (Ky. 1983). A trial court's custody award, that is, the application of the law to the court's findings of fact, will not be disturbed unless it constitutes an abuse of discretion. *See Allen v. Devine*, 178 S.W.3d 517, 524 (Ky.App. 2005). A court abuses its discretion when its decision is arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Sexton v. Sexton*, 125 S.W.3d 258, 272 (Ky. 2004). Whether the trial court properly applied the law to the facts is a

question that we review *de novo*. *Allen* at 524. We review this matter with these standards in mind.

Having reviewed the record, the applicable law, and the arguments of the parties, we ultimately find no error in the order entered by the court below. The order at issue includes a detailed review of the facts of this case and the evidence submitted by both parties. Moreover, the court acknowledges the applicability of the best interest standard set forth in KRS 403.270 to the facts of this matter and indicated that it made its order in accordance with same. While the court did specifically indicate that a basis for its decision was William's lack of employment and income, this does not provide a basis for William's assertion that the court failed to consider the other factors enumerated in the statute. To the contrary, we find the court's order to be thorough insofar as the facts of this matter are concerned, and believing it to be supported by substantial evidence, find that no abuse of discretion occurred. Accordingly, we are compelled to affirm.

Wherefore, for the foregoing reasons, we hereby affirm the August 19, 2011, order of the Meade Circuit Court, the Honorable Bruce Butler, presiding.

ALL CONCUR.

BRIEF FOR APPELLANT:

Molly J. Burke  
Brandenburg, Kentucky

BRIEF FOR APPELLEE:

Heather Lynn Beard, *Pro Se*  
Corydon, Indiana