

RENDERED: NOVEMBER 1, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-001545-ME

RENEA D. MARTIN-BOSTIC

APPELLANT

APPEAL FROM RUSSELL FAMILY COURT
v. HONORABLE JENNIFER UPCHURCH EDWARDS, JUDGE
ACTION NO. 12-CI-00016

RANDY D. WRIGHT

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MAZE, CAPERTON, AND VANMETER, JUDGES.

MAZE, JUDGE: Renea Martin-Bostic appeals from an order of the Russell Family Court granting and designating the father, Randy Wright, as primary residential parent of their child. Renea argues that the trial court clearly erred and abused its discretion in finding that her proposed relocation to Missouri would not

be in the best interests of the child and that Randy should be designated as primary residential parent. Finding no clear error or abuse of discretion, we affirm.

Renea and Randy are the natural parents of Joshua Adam Wright, who was born in June 2004. The parties were never married but lived together for most of the first year after Joshua was born. After their separation, the parties entered into an informal timesharing agreement. Joshua has spent considerable time with each parent throughout his life. Their general schedule included Joshua spending weekdays with Renea and weekends with Randy.

Both parties have resided in Russell or Adair County from Joshua's birth until 2012. In January of 2012, Randy filed a motion to establish joint custody. On February 16, 2012, the trial court entered a temporary order of joint custody and directed the parties to mediate timesharing and custody issues. That mediation was unsuccessful. In April, Renea advised the court that she had obtained new employment in Platte City, Missouri, and she planned to move there with Joshua and her boyfriend. Randy objected to the move. On April 12, the trial court entered a new temporary custody order designating Renea as primary residential parent but specifying that the child shall not be removed from Kentucky until further order.

Thereafter, Renea filed a motion to modify custody to allow her to move to Missouri with Joshua. After conducting an evidentiary hearing, the trial court denied the motion. Although the trial court found that both parents are fit and proper for custody, the court concluded that it would not be in Joshua's best

interests to move to Missouri. Accordingly, the trial court continued joint custody with Randy as the primary residential parent and Renea exercising timesharing. Renea now appeals from this order.

Since there was no prior custody order in this case, the trial court properly treated this matter as an initial custody determination under Kentucky Revised Statutes (KRS) 403.270. *Frances v. Frances*, 266 S.W.3d 754, 756-57 (Ky. 2008). As with all initial custody determinations, the statute requires the trial court to evaluate one parent's desire to relocate based upon the best interests of the child. *Id.* at 757. KRS 403.270(2) sets out a number of non-exclusive factors which the court must consider when making this determination, 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; [and]
- (f) Information, records, and evidence of domestic violence as defined in KRS 403.720[.]

The trial court's factual findings regarding the best interests of the child shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses. Kentucky Rules of Civil Procedure (CR) 52.01; *Eviston v. Eviston*, 507 S.W.2d 153 (Ky. 1974). When based upon properly supported factual findings, the trial court's

decisions regarding custody of the child shall not be disturbed except for abuse of discretion. *Frances*, 266 S.W.3d at 756. An abuse of discretion generally “implies arbitrary action or capricious disposition under the circumstances, at least an unreasonable and unfair decision.” *Kuprion v. Fitzgerald*, 888 S.W.2d 679, 684 (Ky. 1994).

In this case, the trial court made detailed factual findings regarding each of the parents and the child. Although neither parent is without faults, the trial court found that both Randy and Renea are good parents who are each fit to have custody of Joshua. Renea alleges that Randy has a bad temper and that he hit her during an argument around the time when they separated. Randy admits that he has a temper, but testified that it is under control. He also admitted that he hit Renea on the arm once during an argument. The trial court did not specifically address whether this incident would have amounted to domestic violence and treated it as an isolated incident.

Renea and Randy criticize each other’s parenting and life choices. Renea contends that Randy has shown disrespect toward her in front of Joshua and that has affected the child’s behavior. She also states that Randy has allowed Joshua and his daughter to engage in excessive roughhousing. Randy has concerns about Renea properly dressing Joshua and making sure that his clothes and shoes are in good condition. He also has concerns that Renea has moved an excessive number of times.

The trial court primarily focused on the effect of Renea's proposed move to Missouri on Joshua. Although Joshua has primarily resided with Renea during his life, Randy has been actively involved in the child's life. Randy's mother, siblings and numerous extended family members reside in the Russell County area and are actively involved with Randy and his children, including Joshua. In addition, Randy has stable employment in Russell County and is involved in the community and his local church.

Renea has valid reasons for accepting her new employment in Missouri. However, she is also in the process of divorcing her current husband and is living with her new boyfriend. Renea has no family in Platte City, Missouri, but her mother and sister reside in Missouri approximately 1 ½ hours away from Renea's new residence. Notwithstanding her personal difficulties, Renea notes that she has consistently provided a stable and structured home where Joshua has done well. She also states that Joshua will be able to maintain his relationship with Randy despite the distance.

Renea relies heavily on *Fenwick v. Fenwick*, 114 S.W.3d 767 (Ky. 2003), which required a party who opposed a custodial parent's relocation to show that the child's welfare would be seriously endangered by the move. *Id.* at 786. However, this aspect of *Fenwick* was subsequently overruled by the Kentucky Supreme Court in *Frances* and its companion case, *Pennington v. Marcum*, 266 S.W.3d 759 (Ky. 2008). Particularly in cases where no prior custody order has

been entered, the trial court must evaluate one parent's decision to relocate based on the best interests of the child. *Frances*, 266 S.W.3d at 757.

The current case aptly demonstrates why such determinations are committed to the sound discretion of the trial court. While Renea has valid reasons for relocating to Missouri, the move would be disruptive to Joshua's established relationships with his father, extended family and community. On the other hand, the benefits of the move may well offset any short-term disruptions to Joshua and Randy. The trial court properly weighed the benefits and detriments of the move and concluded that the relocation would not be in Joshua's best interest. Since this finding was supported by substantial evidence of record, we find no clear error or abuse of discretion by the trial court.

Accordingly, the order of the Russell Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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