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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000158-ME

LERIN MARIE MARTIN

APPELLANT

v. APPEAL FROM HOPKINS FAMILY COURT
HONORABLE SUSAN WESLEY MCCLURE, JUDGE
ACTION NO. 13-CI-00110

KENNETH LEROY CHAMBERS

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, CHIEF JUDGE; JONES AND LAMBERT, JUDGES.

ACREE, CHIEF JUDGE: Lerin Marie Martin appeals the October 14, 2013 Order of the Hopkins Circuit Court granting her joint custody and designating Kenneth Leroy Chambers as the primary residential parent of the parties' minor child. Because the trial court did not abuse its discretion, we affirm.

I. Background

This appeal stems from Mother's January 30, 2013 Petition for Sole Custody. The Hopkins Family Court conducted a two-day evidentiary hearing on the petition on July 8 and July 17, 2013. The following facts are taken from both the family court's October 14, 2013 Order and its January 3, 2014 Order issuing supplemental fact-finding.

Mother and Father are the parents of a 7-year-old boy. While Mother and Father never married, they lived together with the child at Father's home in Hopkins County after Child's birth in 2007. However, in 2009, Father, Mother, and Child moved in with Mother's parents, Chris and Robin Martin, due to a severe ice storm. After the ice storm, Father returned to his home while Mother continued to live with Grandparents. In 2012, Mother moved to Owensboro to work as a registered nurse, leaving Child in Hopkins County. Since then, Child has resided through the week in Hopkins County in the care of either Father or Grandparents. Mother cares for Child in Owensboro on some weekends and on rare weekdays when her work schedule permits her to return to Hopkins County. On those occasions, Mother and Child stay with Grandparents.

Sometime after Child's birth, the relationship between Mother and Father soured. The two struggle to communicate with one another; the record reveals considerable bitterness and hurt feelings on both sides. While there is no evidence of domestic violence, it is undisputed that Father sent Mother hurtful text messages in the past that have strained their ability to meaningfully communicate. Now, the

rift between Mother and Father is so deep and wide that Grandparents often act as intermediaries. Even now, Father does not attend Child's extracurricular activities if Mother is present, citing his belief that it would not be good for the child.

Mother maintains this inability to communicate is solely attributable to Father, and she argues this justifies award of sole custody to her or, alternatively, appointing her as primary residential parent. Either of which would allow her to remove Child to Owensboro. Father disagrees with Mother's claim, arguing he deserves either full custody or designation as primary residential parent.

Despite the parties' mutual animosity, the family court heard evidence that Child is thriving in Hopkins County. Aside from weekend visits to Mother's apartment, child has spent his entire life in Hopkins County. He attends school where his behavior is satisfactory and his grades excellent; the family court found that he is well-adjusted to his school, and is active in sports and extracurricular activities in the community. Conversely, the family court noted that Child would be forced to move to a new school in Owensboro. Moreover, the court noted that Mother had only conducted cursory online research about Owensboro schools and that neither Mother nor Child had ever visited or attended those schools.

Further, the family court determined that Child has a strong support system in Hopkins County, comprised of relatives from both Mother's and Father's respective families. Grandparents have provided critical childcare and support and have established an appropriate, loving bond with Child. Father's relatives, including Child's aunt and paternal grandfather, also maintain healthy and

appropriate relationships with Child, and it was undisputed that those relationships provide a stable, positive influence in Child's life.

The family court also considered both Mother's and Father's testimony. In weighing testimony, the family court assessed the demeanor of both parties. Accordingly, the family court gave little weight to mother's testimony because she seemed "stilted," and "emotionally detached." Most troubling, said the court, was Mother's failure to describe or mention any feelings of "love, bonding, affection, guidance, etc." for the child.

On the other hand, the court afforded Father's testimony more credibility. In its view, the family court determined Father had an active and appropriate role in Child's life; although Father did not attend the same extracurricular functions as Mother, Father explained to the court that he did not do so because he did not want Child to be upset by any perceived animosity. The family court specifically found that father was credible because his demeanor and speech indicated his "strong desire to do what was best for the child." While Father admitted he still harbors animosity towards Mother, he acknowledged that his relationship with Mother produced Child. The court noted both Father's loving bond with Child, and that Father's reluctance to attend the same extracurricular functions as Mother resulted from Father's choice "to place the child's well-being above his own personal feelings," this indicating his "ability to properly parent the child."

After hearing both testimony and argument, the family court granted Mother and Father joint custody, designating Father as the primary residential parent. The

court determined that joint custody was in the child's best interest pursuant to KRS 403.270(2). To ameliorate the inability of Mother and Father to communicate, the family court ordered both parents to enroll in a private, online message board, where the two could publish all correspondence involving Child. In response to the family court's order, Mother moved the family court for additional fact-finding and to alter, amend, or vacate its original order pursuant to CR¹ 52 and 59. The trial court refused to undo its previous order, and instead issued additional findings of fact to bolster its initial determination.

II. Standard of Review

The standard of review for any custody determination is well-established:

Since the family court is in the best position to evaluate the testimony and to weigh the evidence, an appellate court should not substitute its own opinion for that of the family court. If the findings of fact are supported by substantial evidence and if the correct law is applied, a family court's ultimate decision regarding custody will not be disturbed, absent an abuse of discretion. Abuse of discretion implies that the family court's decision is unreasonable or unfair. Thus, in reviewing the decision of the family court, the test is not whether the appellate court would have decided it differently, but whether the findings of the family court are clearly erroneous, whether it applied the correct law, or whether it abused its discretion.

Coffman v. Rankin, 260 S.W.3d 767, 770 (Ky. 2008) (quoting *B.C. v. B.T.*, 182 S.W.3d 213, 219-20 (Ky. App. 2005)).

III. Analysis

¹ Kentucky Rules of Civil Procedure.

Mother argues the family court abused its discretion by granting joint custody and designating Father as the primary residential parent. In reviewing the family court's determination in light of the record, we find no abuse.²

Our review of a family court's fact-finding is largely deferential. We observe that "judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court." *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). "[R]egardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding . . . appellate courts should not disturb trial court findings that are supported by substantial evidence." *Id.* Substantial evidence is evidence sufficient to induce conviction in the mind of a reasonable person. *B.C. v. B.T.*, 182 S.W.3d 213, 219 (Ky. App. 2005).

Likewise, if the family court reasonably concludes that it is in the child's best interests to reside primarily with one parent as opposed to another, taking into consideration relevant factors enumerated in KRS 403.270(2), this Court will not reverse. As to the family court's legal conclusions, we will only reverse them if they are "arbitrary, unreasonable, unfair, or unsupported by legal principles." *Lawson v. Lawson*, 290 S.W.3d 691, 694 (Ky. App. 2009).

In the end, the family court must determine custody based on the best interest of the child. KRS 403.270 guides that determination. *See Frances v.*

² Mother also alleges, in the alternative, that even if a single error by the family court does not warrant relief, the family court's overall decision was so riddled with errors that the cumulative effect of those errors warrants our intervention. Because we find no errors in the family court decision, we need not address any alleged cumulative effect.

Frances, 266 S.W.3d 754, 759 (Ky. 2008). That statute sets out a non-exclusive list of factors to be considered when making a best-interest determination. Factors relevant to this matter include:

- (a) The wishes of the child's parent or parents, and any de facto custodian, as to his custody;
- (b) 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;
- (c) The child's adjustment to his home, school, and community

KRS 403.270(2).

Our review of the record reveals ample evidence supporting the family court's determination. The court heard evidence from a bevy of witnesses, including Mother, Father, members of their respective families, and Child's teacher. The court clearly assessed the demeanor of all witnesses, particularly Mother and Father, and assigned weight to their respective statements depending upon the court's impressions. Clearly, the family court found Father's testimony more persuasive than Mother's due to his demeanor and description of his love for Child. As fact-finder, the family court's impressions regarding witness credibility were proper.

Based on those impressions, the court considered the wishes of Mother and Father, respectively, in light of the acrimony between them, noting both requested sole custody or, in the alternative, designation as the primary residential parent. Despite each parent's assertions that they deserve full custody, the court heard

substantial evidence that both parents' provided acceptable parental care. Specifically, during the hearing, Mother admitted that joint custody was feasible. Accordingly, it was not unreasonable for the court to determine that joint custody was appropriate.

Moreover, in designating Father as primary residential parent, the court clearly considered substantial evidence of the child's connections to the local community, his current performance in school, and his extracurricular activities. This evidence was presented through several witnesses, including Child's teacher, and both Mother's and Father's respective families. Such evidence supported the family court's conclusion that Child was well-adjusted to his current environment. Therefore, the court reasonably concluded that Child's current environment was satisfactory, and that moving Child to a new town with few community ties could unsettle Child and remove him from his stable support network of relatives.

Overall, the family court's considerations were thorough, well-founded, and consistent with the evidence adduced at the hearing. Moreover, its order clearly articulated the family court's findings and evidence supporting them, thus dispelling any notion that any of its conclusions were arbitrary or unreasonable. To be sure, some conflicting evidence exists, as it does in virtually all custody battles; but the mere presence of conflicting evidence does not necessarily render a family court's fact-finding clearly erroneous, nor its legal conclusions arbitrary. Designating Father as primary residential parent in this case was supported by substantial evidence and was legally sound.

For the foregoing reasons, we affirm the family court's judgment.

ALL CONCUR.

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