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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000335-ME

SHARONNA RENEE WILLIAMS — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DOLLY W. BERRY, JUDGE
ACTION NO. 12-CI-501765

JOHN DAVID WILLIAMS — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, COMBS AND STUMBO, JUDGES.

STUMBO, JUDGE: Sharonna Williams appeals from an order of the Jefferson Circuit Court which found her in contempt for failing to comply with a parenting schedule ordered by the court and giving John Williams immediate possession of the parties' three minor children. For the following reasons, we affirm.

Appellant and Appellee were married and have three minor children. Appellant filed for legal separation on May 22, 2012. The parties originally agreed that the children would reside primarily with Appellant until further order of the court. A trial was held on September 27, 2013, in which all issues concerning the divorce were heard.[1] On January 8, 2014, the trial court entered a decree of dissolution of marriage. The decree awarded Appellee sole custody of all three minor children. More specifically, it ordered that Appellee would have immediate sole custody of the oldest child, but that the two younger children would remain with Appellant until the end of the school year. Once the school year was over, Appellee would then have sole custody of the other children. The same day as the entry of the decree, Appellant's counsel filed a motion to alter or amend.

On January 22, 2014, Appellee moved for the trial court to enter an order giving him immediate possession of all three children and to find Appellant in contempt. On January 27, 2014, the court held a hearing in which it took evidence concerning Appellant's motion to alter or amend the decree and on Appellee's motion for immediate possession of the children and contempt. On February 4, 2014, the trial court entered two separate orders. The first order concerned Appellant's motion to alter or amend. That order made minor changes to the original decree of dissolution in order to clarify it. It did not change the custody determination. The second order found that Appellant was in contempt for failing to comply with the parenting schedule ordered by the court. It also found

[1] The only issue pertinent to this appeal is child custody.

that Appellee should have immediate possession of all the children because Appellant's recent actions had caused concern for the court as to the wellbeing of the children. The court stated that the children "have been told details of this case (although not always accurate ones) and [Appellant's] opinion of the outcome, and all three children are abnormally protective of their mother and fearful of losing her forever." The court further stated that "[Appellant] does not appreciate the impact of her behavior on the children, and at present, she appears unable to distinguish between what she needs and what is best for them. She is not currently capable of recognizing or meeting the children's emotional needs."

On February 25, 2014, Appellant filed a notice of appeal. The notice states that Appellant was appealing "the Court's Order entered on January 27m 2914 [sic] finding Contempt of the Petitioner, threatening her with 30 days to serve and immediately removing two of her children from her care." Absent the typos in the notice of appeal, it appears as though the order being appealed from is the order entered into the record on February 4, 2014, relating to contempt and immediate possession of the children. The trial court made an oral ruling from the bench at the January 27, 2014 hearing which could be causing the confusion of the dates.

Appellant's brief does not make arguments concerning the order of contempt and immediate possession of the children. The brief argues that the trial court did not appropriately consider the best interests of the child standard set forth in KRS 403.270(2) when awarding Appellee sole custody of the children. More

specifically, she focuses her argument on the claim that the court ignored the wishes of the children in wanting to remain with her.

This issue is not properly before this Court. If Appellant wanted to appeal the custody decision, she should have appealed the decree of dissolution entered on January 8, 2014, which granted Appellee sole custody or the order denying her motion to alter or amend entered on February 4, 2014. She did not do so. The custody issue was not part of the order being appealed.[2]

Arguendo, had the custody decision been properly appealed, we would still affirm. Appellant is incorrect when she claims that the trial court did not properly consider the wishes of the children. On page 16 of the decree of dissolution, the trial court stated that the oldest child wanted to live with his mother. On the following page of the decree, the trial court stated that the oldest child was adamant about remaining with his mother. It appears as though the trial court relied heavily on the reports of Dr. Benzel[3] and Dr. James Shields.[4] Drs. Benzel and Shields believed Appellee should have sole custody of the oldest child, with Dr. Shields recommending that Appellee eventually have sole custody of all three children. Drs. Benzel and Shields were concerned that the oldest child had assumed "major responsibilities" and had taken up a parental role with his younger

[2] Possession of the children was an issue in the order being appealed; however, that is not the same as custody. Appellee was granted sole custody on January 8, 2014, and this decision was affirmed in another order entered on February 4, 2014. The order being appealed only moved up the timetable for giving Appellee possession of the two youngest children. The oldest child was already living with Appellee.

[3] The custodial evaluator.

[4] The children's therapist.

brothers and mother. The doctors also believed it would be best for the oldest child to live with Appellee in order to give him time to be a teenager and relieve him of his parental responsibilities. The trial court believed that Appellee would be "more likely to promote a healthy relationship between the children and their mother than [Appellant] would support between him and the boys." The court also stated that Appellee had "cooperated with therapy and appears to have benefitted from it. [Appellant] does not appear to recognize some of the problems with her parenting, and therefore, is less likely to be receptive to the changes needed to improve things for the children."

The trial court interviewed the oldest child and heard testimony that the children wished to remain with their mother; however, the court gave more weight to the testimony of the medical professionals in deciding the best interests of the children. This was not in error.

Appellant makes no argument regarding the court's finding that she was in contempt; therefore, we will not address it. Furthermore, Appellant does make an argument that the *guardian ad litem* assigned to the children "tragically failed her clients" and had limited contact with the children. Appellant does not state how this issue is preserved for our review nor does she state that it was brought to the trial court's attention; therefore, we will not address it. CR 76.12(4)(c)(v); *Skaggs v. Assad, By and Through Assad,* 712 S.W.2d 947 (Ky. 1986); *Pierson v. Coffey,* 706 S.W.2d 409 (Ky. App. 1985); *Combs v. Knott County Fiscal Court,* 283, Ky. 456, 141 S.W.2d 859 (Ky. 1940).

For the foregoing reasons, we affirm the order of the trial court finding Appellant in contempt and giving Appellee immediate possession of the children.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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