

RENDERED: NOVEMBER 6, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-002163-MR
AND
NO. 2013-CA-000748-ME

NATALIE MOORCROFT

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE CATHERINE RICE HOLDERFIELD, JUDGE
ACTION NO. 11-CI-01444

FLORA T. STUART

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, NICKELL, AND TAYLOR, JUDGES.

NICKELL, JUDGE: In this grandparent visitation action, Natalie Moorcroft has appealed from the Warren Circuit Court's November 16, 2012, order holding her in contempt for failing to abide by earlier orders of the court primarily relating to temporary visitation with Ms. Moorcroft's minor children. In a related appeal, Ms. Moorcroft challenges the Warren Circuit Court's March 4, 2013, Findings of Fact,

Conclusions of Law and Judgment¹ awarding grandparent visitation to Flora Stuart, Ms. Moorcroft's mother and the minor children's maternal grandmother. Having carefully reviewed the extensive record, the briefs and the law, we affirm.

Ms. Moorcroft, a licensed and practicing attorney, is the biological mother of three minor children. Ms. Stuart, also a licensed and practicing attorney, is the biological mother of Ms. Moorcroft, and the maternal grandmother of Ms. Moorcroft's minor children. At all relevant times, Ms. Moorcroft was married to Patrick Moorcroft. Mr. Moorcroft is not the biological father of the three minor children, nor has he adopted any of them. While it appears the parties agreed that Mr. Moorcroft was the legal father of the children, no proof of such relationship appears on the face of the record on appeal.

The historical facts precipitating the current dispute are lengthy and convoluted. In the interest of judicial economy, we have chosen to truncate our recitation of those facts and include only a brief overview. Additional facts will be discussed as necessary in our analysis of the issues presented for review.

Beginning in 2001, Ms. Moorcroft was employed by Ms. Stuart as an attorney in Ms. Stuart's law practice. Ms. Moorcroft birthed her children in 2003, 2005 and 2008. The Moorcroft children enjoyed a close relationship with Ms. Stuart, her husband, and her other children. The two families often dined and vacationed

¹ The March 4, 2013, order was amended by an order entered on March 21, 2013, to address specific arrangements for drop-off and return of the children. By order entered on March 28, 2013, the March 21, 2013, order was made final and appealable. Neither of these amendments made substantive changes to the trial court's factual findings or legal analysis and no arguments are presented challenging their validity.

together, spent holidays and summer weekends together, and were generally a close-knit family unit. Sometime in 2010, difficulties arose in the personal and professional relationships of Ms. Moorcroft and Ms. Stuart. These difficulties progressively worsened; heated arguments ensued—both in public and in private; and the relationships continued to deteriorate and become more acrimonious. By February of 2011, Ms. Moorcroft had terminated nearly all contact between her children and Ms. Stuart. On March 11, 2011, Ms. Moorcroft left Ms. Stuart's employ, and the following day, Ms. Moorcroft loudly and publicly ordered Ms. Stuart to leave a birthday party being held at a local roller skating rink for Ms. Moorcroft's oldest child.

On August 30, 2011, Ms. Stuart petitioned the Warren Circuit Court for grandparent visitation with the Moorcroft children pursuant to the provisions of KRS² 405.021, naming both Natalie Moorcroft and Patrick Moorcroft as respondents in the action. Upon learning the action had been instituted, both of the Moorcrofts intentionally and repeatedly evaded service of process. After nine attempts to effectuate service, Ms. Moorcroft was served at her Bowling Green office on September 15, 2011, when a special process server ascended a fire escape and delivered the petition to Ms. Moorcroft through a window. Mr. Moorcroft likewise evaded service, going so far as to misrepresent his identity to a special process server before fleeing the state; he was ultimately served pursuant to CR³

² Kentucky Revised Statutes.

³ Kentucky Rules of Civil Procedure.

4.04(8) on November 2, 2012. Although aware of the nature and pendency of the action, Mr. Moorcroft absented himself from the proceedings and failed to participate in any way. A partial default judgment against him was entered on January 23, 2013. Throughout the proceedings, Ms. Moorcroft relied upon Mr. Moorcroft's absence as a basis for her voluminous challenges to the trial court's orders and exercise of jurisdiction.⁴ None of these challenges were successful.

On October 14, 2011, Ms. Moorcroft moved the trial court to dismiss Ms. Stuart's petition for lack of jurisdiction, alleging her residency had changed to Tennessee on August 29, 2011—the day before the petition was filed. Following a period of discovery related to the residency issue and an evidentiary hearing on the matter, the trial court denied the motion to dismiss in a twelve-page order entered on May 30, 2012. The order outlined the timeline of events leading up to the Moorcroft family's move to Tennessee including events occurring after August 30, 2011, indicative of their continued residency within the Commonwealth. Further, the order noted numerous inconsistencies in Ms. Moorcroft's testimony which negatively impacted her credibility. Based on its findings, the trial court concluded the purported change of residence did not, in fact, occur until mid-September 2011, at the earliest, and therefore its exercise of jurisdiction over the matter was proper.

⁴ Counsel for Ms. Moorcroft insisted he did not represent nor advise Mr. Moorcroft in any way. However, many of the arguments he presented ostensibly on behalf of Ms. Moorcroft focused more upon the rights of Mr. Moorcroft than his own client. Such arguments were correctly resisted by the trial court.

Ms. Moorcroft's subsequent motion to alter, amend or vacate the May 30, 2012, order was denied.

Ms. Moorcroft permitted two visits to occur between Ms. Stuart and the Moorcroft children—once in July and once in August. In her deposition conducted on July 11, 2012, Ms. Moorcroft agreed it would be in her children's best interests to visit and have a relationship with Ms. Stuart. She further indicated her preference and desire that no court orders be entered regarding her children, visitation with them, or attempts at reconciliation with her mother. Ms. Moorcroft indicated at that time she would do anything within her power to comply if any orders were entered by the court.

On July 18, 2012, Ms. Stuart moved the trial court for an order awarding temporary visitation pending a final hearing on her original petition. An evidentiary hearing was conducted on August 28-29, 2012, after which the trial court entered a specific and detailed order on September 11, 2012, granting temporary visitation which was to occur prior to the final trial on Ms. Stuart's petition. As with nearly every order entered prior or subsequently, Ms. Moorcroft moved the trial court to alter, amend or vacate its ruling. While this motion was pending, Ms. Moorcroft refused to comply with the order for temporary visitation. To date, compliance has not been forthcoming.

Unbeknownst to the trial court or Ms. Stuart, and in a thinly veiled attempt to thwart the Warren Circuit Court's authority and divest it of jurisdiction, on September 12, 2012, Mr. Moorcroft caused a complaint for legal separation to

be filed in the Circuit Court for Sumner County, Tennessee. On September 20, 2012, an order of legal separation—along with a legal separation agreement and an agreed temporary parenting plan—was entered in the Tennessee action. According to the parenting plan agreement, Ms. Moorcroft voluntarily granted custody and control of her three minor children to Mr. Moorcroft, except during the hours of 11:00 p.m. to 7:00 a.m., Monday through Saturday. Any other visitation periods with Ms. Moorcroft required advance permission from Mr. Moorcroft. Ms. Moorcroft was specifically prohibited from leaving the state with the children. The Tennessee court was provided with only a cursory mention of the pending action in Warren County, Kentucky. Following entry of the agreed judgment in Tennessee, Ms. Moorcroft refused to comply with the Warren Circuit Court's orders regarding temporary visitation, claiming it was legally impossible to comply with both competing court orders—because following one would necessarily violate the terms of the other. The Tennessee order was never properly registered as a foreign judgment.

On September 17, 2012, Ms. Stuart filed a motion seeking to hold Ms. Moorcroft in contempt of court based on her failure to abide by the trial court's order, specifically her refusal to appear for visitation on September 15, 2012. An additional contempt motion was filed on October 26, 2012, alleging Ms. Moorcroft had failed to bring the children to an ordered visitation on October 20, 2012, and failed to notify Ms. Stuart of the time and place for a November visit as required by the Warren Circuit Court's previous order. Ms. Moorcroft challenged the

contempt motion on grounds that it was a legal impossibility for her to comply with the Warren Circuit Court's orders in light of the Tennessee judgment, and further that a pending motion to alter, amend or vacate the temporary visitation order stayed enforcement of the visitation order.

A hearing on the motions was conducted on November 8, 2012, following which the trial court found Ms. Moorcroft in contempt of court, sentenced her to 179 days incarceration, with service of said term of incarceration being held in abeyance conditioned upon Ms. Moorcroft abiding by the trial court's orders. Ms. Moorcroft was assessed a fine of \$3,500.00 for each of the three violations found by the trial court, which sums were to be paid within thirty days. Ms. Moorcroft timely appealed the contempt finding to this Court in Case No. 2012-CA-002163-MR. Our review of the record reveals although she had previously been ordered to be in attendance at all court dates, Ms. Moorcroft did not personally appear in court again after the November 8, 2012, hearing.

On October 1, 2012, while the contempt motion was pending, Ms. Moorcroft moved for the trial court to recuse itself and separately moved to dismiss the action against her. Both motions were denied. As the case wore on, Ms. Moorcroft continued to file motions seeking relief from the requirements imposed by the temporary visitation order, CR 59.05 motions in response to nearly every order entered by the trial court, and generally attempted to thwart and delay the proceedings at every turn.⁵ Most—if not all—of these motions parroted

⁵ Contrary to her deposition testimony that she would comply with any order handed down by the trial court, Ms. Moorcroft challenged nearly every order of substance entered in this case. In

previously made and rejected arguments. None were successful in obtaining the requested relief. Nevertheless, Ms. Moorcroft's noncompliance with the trial court's orders continued unabated.

In an additional avenue of attack on the trial court's jurisdiction and authority, while the contempt, recusal and dismissal motions were pending, on October 31, 2012, Ms. Moorcroft filed an original action in this Court seeking a writ of prohibition and intermediate relief. In that action, Ms. Moorcroft sought to prohibit enforcement of the temporary visitation order. Discerning she was not entitled to the requested relief, a panel of this Court denied the petition by order entered on December 10, 2012.

The matter finally proceeded to a trial on the merits on January 31, February 1, and February 7, 2013. Contrary to prior order of the court that she attend all court dates, Ms. Moorcroft did not appear at any time during the trial; her counsel, however, participated fully. The trial court heard testimony from fourteen witnesses, received a significant amount of documentary and photographic exhibits and evidence, and heard substantial arguments from counsel for both parties. At the conclusion of trial, the matter was taken under submission and both parties were permitted to submit proposed findings of fact, conclusions of law and judgment.

some instances, and in an obvious attempt to delay enforcement, she contested the denial of her initial challenge. The creativity in fashioning motions for relief to obfuscate the true intent of derailing the proceedings bordered on the absurd. Counsel's contrary contentions are dubious, at best.

On March 4, 2013, the trial court entered its forty-four page⁶ Findings of Fact, Conclusions of Law and Judgment setting forth the law, facts and the issues to be decided in great detail. Specifically, the trial court considered the facts of the matter in light of KRS 405.021(1) and the factors set forth in *Vibbert v. Vibbert*, 144 S.W.3d 292 (Ky. App. 2004), and *Walker v. Blair*, 382 S.W.3d 862 (Ky. 2012). Upon so doing, the trial court concluded the best interests of the children would be served by having visitation with Ms. Stuart. Thus, the circuit court granted Ms. Stuart the relief requested in her original petition, but set specific conditions and limitations on the periods of visitation. Ms. Moorcroft appealed that decision in Case No. 2013-CA-000748-ME. In the interest of judicial economy, the two appeals have been consolidated for resolution in a single Opinion.

Case No. 2012-CA-002163-MR

Ms. Moorcroft challenges the trial court's November 16, 2012, order which found her in contempt for failing to comply with three separate provisions of the temporary visitation order entered on September 11, 2012. Ms. Moorcroft attempts to raise numerous issues related to other proceedings and orders, however none of those issues are properly before us in the instant appeal. The sole order appealed from is the November 16, 2012, order and our discussion will thus be limited to discussion of the issues directly related to that order. The crux of Ms.

⁶ The order also included a four-page attachment setting forth the trial court's findings as to the timeline of events beginning with the date of Ms. Stuart's birth, through and including the date of trial.

Moorcroft’s allegation of error centers on her oft-repeated argument that it was “impossible” for her to comply with the Warren Circuit Court’s orders without violating the terms of the Tennessee agreed judgment and under the terms of that judgment, Mr. Moorcroft “determines the availability of the children, even to Ms. Moorcroft.” Because of this alleged impossibility of performance, Ms. Moorcroft argues it was improper to find her in contempt. We disagree.

We begin with a statement of the law regarding contempt:

A trial court has inherent power to punish individuals for contempt, and nearly unfettered discretion in issuing contempt citations. We will reverse a finding of contempt only if the trial court abused its discretion in imposing the sentence. Abuse of discretion is defined as conduct by a court that is arbitrary, unreasonable, unfair, or unsupported by sound legal principles.

Contempt is the willful disobedience of—or open disrespect for—the rules or orders of a court. Contempt may be either civil or criminal, depending upon the reason for the contempt citation. Civil contempt, the focus of this appeal, is the failure to do something under order of court, generally for the benefit of a party litigant. Thus, courts have inherent power to impose a sanction for a civil contempt to enforce compliance with their lawful orders.

Crowder v. Rearden, 296 S.W.3d 445, 450 (Ky. App. 2009) (internal citations and quotations omitted).

As in *Crowder*, the circuit court’s exercise of its civil contempt power is at issue in this case. The purpose of a court’s exercise of its civil contempt power is to force compliance with its orders or to compensate for losses or damages caused by noncompliance. *Smith v. Loyall*, 702 S.W.2d 838, 839 (Ky.

App. 1986). Here, the circuit court sought to compel Ms. Moorcroft to comply with its September 11, 2012, order. “The power of the court to compel respect for its judgments by committing a contumacious litigant until he obeys may be exercised without infringing any provision of the constitution.” *Rebham v. Fuhrman*, 139 Ky. 418, 50 S.W. 976, 977 (1899). Our courts have inherent power to punish individuals for their willful disobedience of the court’s orders. *Newsome v. Commonwealth*, 35 S.W.3d 836 (Ky. App. 2001). When a court exercises its contempt powers, it does so with nearly unfettered discretion.

It cannot reasonably be contested that Ms. Moorcroft willfully failed to comply with the circuit court’s September 11, 2012, order when she continually refused to produce the children for ordered visitation periods and failed to inform Ms. Stuart of a time and location for later visitations as ordered, even after the failure of her numerous attempts to challenge that order. In fact, Ms. Moorcroft carefully avoids making any such argument, instead focusing her allegations upon the supposed impossibility of complying with the court’s temporary visitation order.

Ms. Moorcroft correctly states that the inability of a party to obey an order of contempt is ordinarily sufficient to purge it of the contempt charged. “Whether civil or criminal, a party cannot be punished for contempt for her failure to perform an act which is impossible.” *Crowder*, 296 S.W.3d at 450 (citing *Blakeman v. Schneider*, 864 S.W.2d 903, 906 (Ky. 1993)). However, Kentucky only recognizes impossibility as a defense to contempt where the party claiming it

can prove she is not at fault for her inability to comply. *See Campbell County v. Com., Kentucky Corrections Cabinet*, 762 S.W.2d 6, 10 (Ky. 1988); *see also Tucker v. Commonwealth*, 299 Ky. 820, 187 S.W.2d 291, 294–95 (1945). This, Ms. Moorcroft cannot do.

As discussed at length above, the alleged “impossibility” of performance was one of Ms. Moorcroft’s own making. While she resisted every order entered by the Warren Circuit Court, she made no effort to inform the Tennessee courts of her supposed legal dilemma, nor did she seek any relief from that court. Such actions speak volumes for her motivation in this matter and cut in favor of the trial court’s belief the Tennessee action was a sham intended solely to thwart the Kentucky proceedings. Furthermore, Ms. Moorcroft’s attempts at avoiding service of process, continued intentional disregard of court orders, lack of candor, and general disrespect for the judicial institution—while unacceptable from any litigant—is even more troublesome because of her position as a practicing attorney and officer of the court. The gamesmanship and lack of a sense of fair play shown throughout the proceedings below cast a long shadow over any arguments that Ms. Moorcroft was doing “everything within [her] power to follow any and all court orders” and assurances of same by her counsel. The antics and tactics employed in this case have no place in our courts, most especially when practiced by those whose actions should and must be governed by the Rules of Professional Conduct⁷ and the heightened ethical considerations imposed upon

⁷ Rules of the Supreme Court (SCR) 3.130.

them by their chosen professions and the license granted to them to pursue the same.

For these reasons, and having created the impediment behind which she attempts to hide, Ms. Moorcroft's contumacious behavior cannot be shielded by the defense of impossibility, and the circuit court had discretion to hold her in contempt. The court acted wholly within its discretion in making this determination. Consequently, there are no grounds for reversal on this basis.

Case No. 2013-CA-000748-ME

Ms. Moorcroft next challenges the Warren Circuit Court's March 4, 2013, Findings of Fact, Conclusions of Law, and Judgment, as amended, granting grandparent visitation to Ms. Stuart. Her challenge is primarily based upon the absence of Mr. Moorcroft from the proceedings which she believes deprived the trial court of jurisdiction to award visitation. Further, Ms. Moorcroft again contends it is legally impossible for her to comply with the final judgment in light of the existence of the Tennessee agreed judgment. Finally, Ms. Moorcroft contends the trial in this matter was a "nullity" based on her belief the trial court had prejudged the issues to be decided as evidenced by its prior temporary orders concerning interim visitation. We discern no error.

Initially, we will comment briefly on Ms. Moorcroft's contentions which are premised upon the impossibility of compliance. As previously discussed herein, just as Ms. Moorcroft was not entitled to hide behind the claim of impossibility as a means to disregard the lawful orders entered in this matter, she is

likewise not shielded by such a claim with respect to the trial court's final judgment. The agreed judgment upon which Ms. Moorcroft purports to rely has never been properly registered as a foreign judgment in any court of the Commonwealth, and the trial court specifically determined the alleged judgment was not entitled to full faith and credit due to its dubious nature and the apparent fraudulent and subversive tactics employed by the Moorcrofts. Our review of the record gives us no reason to doubt the accuracy of the trial court's determination. Thus, Ms. Moorcroft's allegations grounded in impossibility are wholly without merit and warrant no further comment.

Next, we turn to Ms. Moorcroft's contention that the trial court was without jurisdiction or authority to grant grandparent visitation. She argues any such order would be improper as Mr. Moorcroft was served under CR 4.04(8), which service expressly forbids personal judgments in the absence of an appearance. Thus, Ms. Moorcroft argues the trial court's failure to have personal jurisdiction over both custodial parents precluded entry of a judgment awarding visitation as doing so would improperly "infringe upon Respondent Patrick Moorcroft's 'fundamental liberty interest in the care, custody, and control' of the Moorcroft children." She attempts to bolster her argument by reliance on the Tennessee agreed judgment awarding primary custody and nearly unfettered

control over the children to Mr. Moorcroft.⁸ Ms. Moorcroft's arguments are misplaced, unconvincing, and without merit.

We review a trial court's factual findings for clear error. CR 52.01. Findings supported by substantial evidence are not clearly erroneous. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). Substantial evidence is that which is "sufficient to induce conviction in the mind of a reasonable person." *Rearden v. Rearden*, 296 S.W.3d 438, 441 (Ky. App. 2009). Furthermore, due regard must be given to the trial court's opportunity "to judge the credibility of the witnesses." CR 52.01. Interpretation of KRS 405.021 and the application of the appropriate standard to the facts are issues of law and, consequently, are reviewed *de novo*. *Hill v. Thompson*, 297 S.W.3d 892, 895 (Ky. App. 2009).

Pursuant to KRS 405.021, grandparent visitation may be granted only if the trial court concludes it is in the child's best interest to do so. As correctly noted by the trial court, consideration of a petition seeking grandparent visitation requires a trial court to presume a fit parent is making decisions which are in the child's best interest. *Walker*, 382 S.W.3d at 870. A grandparent may overcome that presumption only upon showing by clear and convincing evidence that visitation is in the child's best interest. *Id.* at 871. Thus, the grandparent must

⁸ Ms. Moorcroft further alludes to her family's status as Tennessee residents at the time of entry of the challenged order as a potential barrier to the Warren Circuit Court's exercise of jurisdiction. She makes no direct claim of error but intertwines this theory throughout her brief. This allegation is clearly a red herring and is without merit. The trial court had previously concluded all were residents of Kentucky at the time the action was instituted and for a substantial time thereafter. Ms. Moorcroft offers no credible argument to the contrary and nothing in the record supports her position. Thus, this insinuation of error warrants no further discussion.

prove the fit parent is clearly wrong in his or her belief that grandparent visitation is not in the child's best interest. *Id.* "If the grandparent fails to present such evidence to the court, then parental opposition alone is sufficient to deny the grandparent visitation." *Id.* The *Walker* Court proceeded to delineate numerous factors a trial court may consider in determining whether visitation is in the child's best interest, recognizing the modified best interest standard established by our Court sitting *en banc* in *Vibbert v. Vibbert*, 144 S.W.3d 292 (Ky. App. 2004).

Vibbert held a trial court must consider a broad array of factors, including but not limited to:

the nature and stability of the relationship between the child and the grandparent seeking visitation; the amount of time spent together; the potential detriments and benefits to the child from granting visitation; the effect granting visitation would have on the child's relationship with the parents; the physical and emotional health of all the adults involved, parents and grandparents alike; the stability of the child's living and schooling arrangements; [and] the wishes and preferences of the child.

Id. Therefore, a grandparent seeking visitation must address these factors and establish—by clear and convincing evidence—that the best interest of the child will be served by the requested visitation. In *Walker*, the modified best interest standard set forth in *Vibbert* was approved, but another factor was added for the trial court's consideration—the motivation of the adults in either prohibiting or pursuing visitation. *Walker*, 382 S.W.3d at 871.

Here, the trial court's duties were somewhat circumscribed because, in one of her depositions conducted in December of 2011, Ms. Moorcroft admitted

it would be in her children's best interests to have visitation with Ms. Stuart. However, despite this judicial admission, Ms. Moorcroft continued—and still continues—to prevent any such visitation from occurring, thus necessitating a trial on the merits of Ms. Stuart's petition and entry of a final judgment by the trial court.

Following the final hearing, the trial court rendered its comprehensive judgment delineating the factual and legal basis for its decision. No challenge is presented as to the factual findings. Rather, Ms. Moorcroft takes umbrage with the trial court's exercise of jurisdiction based primarily on the absence of Mr. Moorcroft from the proceedings. Our review of the record indicates the trial court's factual findings were not clearly erroneous as they were supported by substantial evidence and will therefore not be disturbed. CR 52.01; *Moore*. The jurisdictional question requires *de novo* review with a more detailed analysis.

When stripped of its hyperbole, Ms. Moorcroft's argument is simply that the trial court did not have personal jurisdiction over both custodial parents of the children and was, therefore, without authority to enter any order relating to visitation of the children which could potentially impact the absent parent's rights. Essentially, she alleges the trial court was powerless to act in Mr. Moorcroft's absence. We disagree.

This action was instituted and prosecuted as a grandparent visitation action under KRS 405.021. However, once the Moorcroft family relocated to Tennessee, the provisions of the Kentucky Uniform Child Custody Jurisdiction and

Enforcement Act (UCCJEA)⁹ were implicated and must be considered. The fundamental purpose of the UCCJEA is to avoid jurisdictional competition and conflicts between sister states in child custody matters. The UCCJEA governs initial child custody determination proceedings as well as modification proceedings. KRS 403.822 – 403.824. Under the UCCJEA, a

“child custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or *visitation* with respect to a child. The term includes permanent, *temporary*, initial, and modification orders. The term does not include an order relating to child support or other monetary obligation of an individual[.]

KRS 403.800(3) (emphasis added). Here, contrary to Ms. Moorcroft’s assertion below, the trial court’s September 11, 2012, temporary visitation order constitutes an “initial child custody determination.” Jurisdiction to modify the temporary order was retained by the Warren Circuit Court and unaffected by the Moorcroft family’s relocation to Tennessee. KRS 403.824(2); 403.822(1)(a).

Perhaps most importantly, and pertinent to Ms. Moorcroft’s allegation the trial court was without authority to proceed without first obtaining personal jurisdiction over Mr. Moorcroft, KRS 403.822(3) explicitly states “[p]hysical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.” Additionally, KRS 403.812(1) directs “[n]otice required for the exercise of jurisdiction when a person is outside this state shall be given in a manner prescribed by the law of this state for service

⁹ KRS 403.800 *et seq.*

of process Notice shall be given in a manner reasonably calculated to give actual notice but may be by warning order if other means are not effective.” It is undisputed that Mr. Moorcroft was properly served pursuant to CR 4.04(8) and had actual notice of the nature and pendency of the proceedings.

Thus, based on the facts and the plain statutory language, it is clear the trial court did not proceed outside its jurisdiction in ordering grandparent visitation with Ms. Stuart, nor were the proceedings improper or irregular simply because Mr. Moorcroft willfully and intentionally absented himself therefrom. Ms. Moorcroft’s vehement arguments to the contrary are inapposite. Lastly, we note that although the trial court did not specifically reference or rely upon the provisions of the UCCJEA cited herein, it is axiomatic that we may affirm a trial court’s decision for any reason if supported by the record. *McCloud v. Commonwealth*, 286 S.W.3d 780, 786 (Ky. 2009). There was no error.

Finally, we are not persuaded by Ms. Moorcroft’s contention that the trial court improperly prejudged the matters to be decided at trial. The mere fact temporary orders had been previously entered which contained findings contrary to Ms. Moorcroft’s position does not equate to prejudgment or prejudice against her. In its final judgment, the trial court set forth the appropriate legal standard, carefully analyzed the testimony and documentary evidence, and applied the facts to the law. Nowhere in the written or videotaped record of the trial or in the final judgment does there appear any indication the trial court applied an incorrect legal standard, short-circuited the process, or imposed an incorrect burden upon any

party. Ms. Moorcroft paints with a broad brush when disparaging the trial court's process and orders, yet a careful reading reveals her brush is dry and lacks paint. Her passing citation to statutory provisions and case law add nothing to her otherwise bare assertions of prejudice or error. Our review of the record reveals no support for her contentions and we are convinced none exists. Again, there was no error and further discussion is unwarranted.

For the foregoing reasons, the judgment of the Warren Circuit Court is
AFFIRMED.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Peter Gray-Whiteley
Bowling Green, Kentucky

BRIEFS FOR APPELLEE:

Peter L. Ostermiller
Louisville, Kentucky