

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-001914-ME

CASSONDRA STRINGER (NKA JUMP)

APPELLANT

v. APPEAL FROM BALLARD FAMILY COURT  
HONORABLE TIMOTHY LANGFORD, JUDGE  
ACTION NO. 05-CI-00007

CHRISTOPHER STRINGER

APPELLEE

OPINION AFFIRMING  
AND  
ORDER DENYING MOTION TO STRIKE<sup>1</sup>

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

JONES, JUDGE: Cassandra Stringer (NKA Jump) appeals from an order of the Ballard Family Court denying her motions to modify legal custody, timesharing,

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<sup>1</sup> When final disposition of an appeal is made by an “Opinion and Order,” as in this case, the party adversely affected may move for reconsideration as provided by Kentucky Rules of Civil Procedure (CR) 76.38(2) within ten days of entry, but a petition for rehearing is unauthorized. CR 76.32(1).

domestic violence order and child support termination/modification. Because no manifest injustice occurred, we affirm.

## **I. BACKGROUND**

Cassandra Stringer (“Mother”) and Christopher Brian Stringer (“Father”) were married on October 11, 1997, in Pulaski County, Illinois. Two children were born to the parties during their marriage, D.S. and B.S. On January 28, 2005, Mother filed a petition for dissolution of marriage in Ballard Circuit Court. Thereafter, the family court entered a series of orders addressing temporary custody, visitation, and child support.

After a lengthy final hearing, in December of 2005 the family court awarded joint legal custody to Mother and Father. Although the family court noted that Mother’s past conduct (including exposing the children to a pedophile) caused the court some concern, it found that the past conduct did not result in harm to the children and Mother appeared to be in a better position than Father to care for the children on a day-to-day basis, and therefore, designated her to be their primary residential custodian. Father was granted “reasonable visitation with the children as may be agreeable between the parties, but to be no less than set out in the standard Ballard Circuit Court visitation schedule.” Father was also ordered to pay Mother \$920.18 per month for child support.

The parties appear to have abided by the December 2005 order for several years without incident. However, things changed sometime in 2012. On May 31, 2012, Father filed a motion with the family court to modify custody and

timesharing. Father alleged that Mother had been using illegal drugs including marijuana and cocaine, which led to her being enrolled in a drug treatment program. He further alleged that Mother used drugs in front of the children, which they had reported to him. He also stated that Mother did not provide any structure for the children, allowing them stay up all hours of the night playing video games and watching television while neglecting their school work. He also noted that Mother allowed her seventeen-year-old daughter from a prior relationship to date a thirty-three-year-old man and to use illegal drugs in Mother's presence.

Following a period of discovery, on January 2, 2013, the family court entered an order modifying custody. The family court found that Mother had used drugs in the presence of the children, and that, while Mother was in drug treatment, there was a chance of relapse because of the number of stressors in her life.<sup>2</sup> In contrast, the family court found Father to be sober with steady employment and a family situation that was conducive and appropriate for child rearing. As a result, the family court ordered that "the parties shall continue to share joint legal custody of the [children], but [Father] shall be designated as the primary residential parent subject to the children remaining in the Ballard School System, and further order of this Court."

Thereafter, Mother filed a motion to review the timesharing arrangement. In her motion, Mother asserted that the children should be returned to

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<sup>2</sup> Mother testified that she tended to fall into drug use during periods of great stress in her life. The family court noted that Mother was unemployed, still in drug treatment, in the process of obtaining a divorce, and was stressed by the custody proceedings.

her and for Father to have visitation in accordance with the family court's standard visitation schedule. Along with her motion, Mother included an affidavit in which she recounted various incidents of verbal and emotional abuse suffered by the children while in Father's care as well as several behavioral issues that they had developed since Father was designated as their primary residential custodian. Following a hearing, the family court entered a new "custody order." As part of the order, the family court found that even though Mother had remained sober, she continued to associate with her handyman from whom she had previously obtained the illegal substances she consumed. The family court also expressed concern that a video shown during the hearing showed the children "playing with fire and aerosol cans while at [Mother's] residence." The family court found Mother had failed to present any convincing evidence to substantiate her claims that the children had been abused while in Father's care. As such, the family court denied Mother's motion that she be re-designated as the primary residential custodian. Nevertheless, the family court allowed Mother to have visitation with the children every Wednesday after school until the children returned to school the following morning. The court also allowed Mother to have visitation on weekends and Thursdays "so long as [she and her children] attend Celebrate Recovery treatment/counseling." Additionally, the parties stipulated that Mother "would pay child support pursuant to the state statutory minimum codified in KRS 403.212(4) in the amount of \$60.00 per month" to Father.

Mother filed another motion to modify timesharing in November of 2013. She asserted that the children's grades and emotional health had deteriorated significantly since living with their Father. Father denied the allegations and attributed any emotional problems to the death of the children's paternal grandfather. Following a series of agreed continuances, the family court held a hearing on the matter on July 8, 2014. The court again denied Mother's motion to modify timesharing, noting that it "did not hear any evidence . . . sufficient to show that it was in the best interest of the minor children to modify the timesharing schedule."

On April 17, 2015, the court entered an order finding Mother in contempt for her nonpayment of child support; at that time, Mother had a child support arrearage of \$1,080.00. The court ordered Mother to have visitation on Easter through April 8, 2015, and that Mother could no longer remove the children from school without Father's approval. The family court also ordered that neither parent could take the children to the doctor without mutual agreement, absent an emergency. The family court adopted the standard visitation schedule for the children's school breaks and holidays in the event the parties were unable to agree on the matter. On June 5, 2015, the court entered an order allowing Mother to have visitation with the youngest child during a period in summer.

Mother then filed a series of *pro se* motions, which are the subject of this appeal, including motions to modify custody, timesharing, and child support. The family court held a hearing on these matters on September 23, 2015. This

hearing only concerned Mother's youngest son, B.S.; the court took judicial notice of the Ballard District Court's order directing Mother to have no contact with D.S. other than physician or counselor appointments.<sup>3</sup> Mother stated that she would like to reestablish visitation with D.S., but the court found that the district court still had jurisdiction over that case.

During the hearing, Mother admitted that she was currently under conditional discharge after pleading guilty to shoplifting at a Wal-Mart in McCracken County in September 2014. She also admitted that she had pending criminal charges against her.<sup>4</sup> Mother acknowledged that although the Illinois Department of Children and Family Services had been notified about Father seven times, each time the allegations against Father were determined to be unfounded. Mother also admitted that she had not been paying child support. After Mother finished testifying, the court declined to hear any proof from Father. The family court then denied all of Mother's motions, finding that she had failed to meet her evidentiary burden on any of them. The court concluded that Mother's criminal issues contributed to the children's "instability" and noted that Father continued to diligently transport the children to school in Ballard County each day. The court also observed that while the younger child's grades were not excellent, they were "mostly B's and C's" and did not cause the court "any major concern."

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<sup>3</sup> As per the hearing on May 15, 2015, this apparently stems from an incident in which D.S. assaulted Mother.

<sup>4</sup> Mother was indicted for identity theft under Kentucky Revised Statutes (KRS) 514.160, a Class D felony. She had also been indicted for several misdemeanors.

This appeal by Mother followed.

## II. Motion to Strike

Father requests us to strike Mother's brief and summarily affirm the family court due to Mother's failure to comply with the Kentucky Rules of Civil Procedure for the filing of appellate briefs. We agree that Mother's brief is deficient in a number of respects. CR<sup>5</sup> 76.12(4)(a)(ii) mandates that appellate briefs should be double-spaced. Mother's brief is single-spaced. Mother has not included a statement of points and authorities as required by CR 76.12(4)(c)(iii). Although Mother has included a statement of the case in her brief, it does not include any references to specific parts of the record under CR 76.12(4)(c)(iv). There are no statements of preservation in Mother's brief as required by CR 76.12(4)(c)(v). We also note that Mother has not cited any legal authority in her brief other than general references to the Ninth and Fourteenth Amendments to the United States Constitution.

“Our options when an appellate advocate fails to abide by the rules are: (1) to ignore the deficiency and proceed with the review; (2) to strike the brief or its offending portions, CR 76.12(8)(a); or (3) to review the issues raised in the brief for manifest injustice only, *Elwell v. Stone*, 799 S.W.2d 46, 47 (Ky. App. 1990).” *Hallis v. Hallis*, 328 S.W.3d 694, 696 (Ky. App. 2010). The only legal issues raised in Mother's brief concern violations of her rights under the United States Constitution, issues not raised before the family court. “It has long been this

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<sup>5</sup> Kentucky Rule of Civil Procedure.

Court's view that specific grounds not raised before the trial court, but raised for the first time on appeal will not support a favorable ruling on appeal.” *Fischer v. Fischer*, 348 S.W.3d 582, 588 (Ky. 2011). This makes it impossible for us to review the appeal on the merits. Ordinarily, we would be inclined to dismiss the appeal. However, since this case involves the rights of children who are not represented by separate counsel, we have elected to review this matter for manifest injustice. As such, we deny Father’s motion to strike.

### III. Manifest Injustice Review

“To discover manifest injustice, a reviewing court must plumb the depths of the proceeding . . . to determine whether the defect in the proceeding was shocking or jurisprudentially intolerable.” *Martin v. Commonwealth*, 207 S.W.3d 1, 4 (Ky. 2006). Although not entirely clear, it appears Mother’s basic argument is that the family court ignored her “evidence” that it was in the children’s best interest to live primarily with her. Having reviewed the record in detail, we cannot ascertain any error by the family court that constitutes manifest injustice.

“The party seeking modification of custody or visitation/timesharing is the party who has the burden of bringing the motion before the court[.]” *Williams v. Frymire*, 377 S.W.3d 579, 589 (Ky. App. 2012) (quoting *Pennington v. Marcum*, 266 S.W.3d 759, 769 (Ky. 2008)). In making its custody determination, the family court considers the statutory factors in KRS 403.340(3),<sup>6</sup> KRS

<sup>6</sup> Under KRS 403.340(3), a court may modify its prior custody decree if it finds that a change in circumstances has occurred and that modification would serve the best interests of the child,



403.270(2),<sup>7</sup> and KRS 403.350.<sup>8</sup> *Williams*, 377 S.W.3d at 590; *Robinson v. Robinson*, 211 S.W.3d 63, 69 (Ky. App. 2006). A family court considers the best interests of the child in motions to modify timesharing by joint custodians. *Wood v. Woeste*, 461 S.W.3d 778, 781 n.1 (Ky. App. 2015).

“[M]otions to modify visitation/timesharing are brought under KRS 403.320(3),<sup>9</sup> which permits modification when it ‘would serve the best interests of the child.’” *Humphrey v. Humphrey*, 326 S.W.3d 460, 464 (Ky. App. 2010) (quoting *Pennington*, 266 S.W.3d at 769)). “Regarding the best interests standard, ‘any factual findings are reviewed under the clearly erroneous standard; any decisions based upon said facts are reviewed under an abuse of discretion standard.’” *Williams*, 377 S.W.3d at 590. (quoting *Young v. Holmes*, 295 S.W.3d 144, 146 (Ky. App. 2009)).

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considering several different factors.

<sup>7</sup> KRS 403.340(3)(c) implicates KRS 403.270(2), which provides, in relevant part, that “[t]he court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent . . . .” There are additional factors listed for the trial court’s consideration.

<sup>8</sup> KRS 403.350 requires two affidavits accompany a motion to modify custody.

<sup>9</sup> KRS 403.320(3) provides that “[t]he court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not restrict a parent’s visitation rights unless it finds that the visitation would endanger seriously the child’s physical, mental, moral, or emotional health.”

KRS 403.213(1) and (2)<sup>10</sup> “set forth the criteria for modification of child support orders.” *Dudgeon v. Dudgeon*, 318 S.W.3d 106, 109 (Ky. App. 2010). The burden is similarly on the movant for a motion to modify child support. *See Combs v. Daugherty*, 170 S.W.3d 424, 426 (Ky. App. 2005).

The family court did not err when, considering the best interests of the children, it denied Mother’s motions to modify custody and timesharing. At the time that the family court made its determination on Mother’s motions to modify timesharing and custody, she was facing possible incarceration. The family court also noted that Mother could face additional criminal charges due to her failure to pay child support. The court stated that Mother’s continued problems with the law likely contributed to the children’s instability. At the hearing, the court noted there was a no contact order in place against Mother involving her younger son and the court was inclined to keep the children together. Furthermore, not only did the court find the allegations of abuse against Father to be unsubstantiated, the record reflects that Father was a diligent caregiver, transporting the children approximately forty-five miles to school every day. Having reviewed the record, we can determine no manifest injustice in the family court’s denial of Mother’s motion to modify timesharing or custody.

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<sup>10</sup> Under KRS 403.213(1), “The provisions of any decree respecting child support may be modified . . . only upon a showing of a material change in circumstances that is substantial and continuing.” Under KRS 403.213(2), a change in circumstances is rebuttably presumed to be substantial if application of the child-support guidelines contained in KRS 403.212 to the new circumstances would result in a change in the amount of child support of 15% or more.

Mother also failed to meet her burden to modify child support.

Father's counsel reminded the court that Mother had been ordered to pay the statutory minimum in child support. Mother merely testified that she did not have any income and that Father made more money,<sup>11</sup> and Mother failed to present any evidence or testimony under KRS 403.213(1) or (2). *See Shelton v. Shelton*, 446 S.W.3d 663, 666 (Ky. App. 2014) (holding that the movant failed to meet his burden of proof under KRS 403.213(1)). Because Mother put forth no proof at the hearing to establish that she is entitled to a reduction of child support, we can determine no manifest injustice in regard to this issue.

#### IV. CONCLUSION AND ORDER

For the reasons set forth above, we affirm the Ballard Circuit Court as no manifest injustice appears from a careful review of the record. IT IS ORDERED that Father's motion to strike is DENIED.

ALL CONCUR.

ENTERED: July 7, 2017

/s/ Allison E. Jones  
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

BRIEF FOR APPELLEE:

Cassandra Jump, *pro se*  
Barlow, Kentucky

Jeffery P. Alford  
Paducah, Kentucky

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<sup>11</sup> Mother stated that Father made approximately \$20,000 a year to her approximately \$700 a year. She then clarified that she meant "a month." It is not clear if she misspoke regarding these figures.