

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2016-CA-000936-ME

TYRREN LAVAL BONDS

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE JAY A. WETHINGTON, JUDGE  
ACTION NO. 15-CI-00756

NICOLE TALBOTT

APPELLEE

OPINION AND ORDER  
DISMISSING

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BEFORE: ACREE, COMBS AND D. LAMBERT, JUDGES.

ACREE, JUDGE: Tyrren Bonds appeals the Daviess Circuit Court's denial of his exceptions to the recommendations of the Domestic Relations Commissioner (DRC) awarding joint custody between Bonds and Nicole Talbott with Talbott as the primary residential parent of their two children. After review, we dismiss this appeal on jurisdictional grounds.

Bonds and Talbott have never been married to each other, but have two children together.

In August 2015, Tyrren filed a verified petition in Daviess Circuit Court asking the court to determine custody, set parenting time, determine child support and medical support, award a tax exemption, and consider a name change. He also filed a verified temporary motion including the same requests as in the petition. At the time of these filings, the children were 12 and 14 years old.

The parties entered into an agreed order in October 2015 granting Tyrren parenting time every other weekend, and changing the last name of the one of the children from Talbott to Bonds so the child would have the same last name as his sibling (both would have the last name Bonds). All other issues were reserved for a hearing. The hearing was held over two days in November 2015 and January 2016. The DRC heard the testimony of several witnesses at the hearings.

Based on the evidence presented, the DRC recommended a joint custody arrangement with Nicole as the primary residential parent. The DRC further declined to interview the two children in relation to the custody determination because the Commissioner believed there was sufficient evidence of record to make a decision. The DRC declined to remove the children from their stable life in Owensboro with Nicole, who had been their primary caregiver for their entire lives and presented no concerns with her parenting abilities. The DRC recognized that the children were involved in their communities and each parent's families and believed it would not be in their best interests to disrupt such stability

by moving them to Evansville, Indiana, to primarily reside with Tyrren. The DRC also decided the other issues set forth in Tyrren's petition relating to child support and the tax exemption.

Tyrren filed exceptions to the DRC's recommendations. Tyrren mainly took issue with some facts that he felt were not portrayed accurately, the DRC's decision not to interview the children, and the DRC's exclusion of evidence of domestic violence Tyrren attempted to put on at the hearings. The Daviess Circuit Court held a hearing on the matter in April 2016; shortly thereafter, an order was entered denying the exceptions. This appeal followed.

We must first determine whether a properly entered judgment exists from which an appeal can be taken.

CR<sup>1</sup> 52.01 mandates that a court engage in at least a good faith effort to make findings of fact and conclusions of law and include them in a written order. *Anderson v. Johnson*, 350 S.W.3d 453, 458 (Ky. 2011); CR 52.01. "If a judge must choose between facts, it is clearly relevant which facts supported his opinion." *Id.* at 456. The rule further provides: "[t]he findings of a commissioner, to the extent that the court adopts them, shall be considered as the findings of the court." CR 52.01. When matters are referred to a commissioner, "the specific provisions of the rules relating to commissioners prevail." *Eiland v. Ferrell*, 937 S.W.2d 713, 716 (Ky. 1997). The rules relating to commissioners are contained within CR 53. Circuit courts have "the broadest possible discretion with respect to

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<sup>1</sup> Kentucky Rules of Civil Procedure

the use it makes of domestic relations commissioners.” *Id.* “[T]he court may adopt, modify or reject [the recommendations], in whole or in part, and may receive further evidence or may recommit it with instructions.” *Id.*; CR 53.05(2). In this case, the circuit court failed to comply with CR 53.05(2).

The DRC ultimately decided that joint custody between Bonds and Talbott with Talbott remaining the primary residential parent was in the best interest of the children. Numerous findings of fact to support this conclusion were included in the report based upon the testimony and evidence presented at the hearings. While the content of the DRC’s report is more than adequate for purposes of appellate review, the recommendations are only just that and do not constitute a final judgment. CR 54.01 (“A judgment is a written order of a court adjudicating a claim or claims in an action or proceeding. A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02.”).

The DRC’s recommended findings and judgment were neither adopted, nor incorporated into the court’s May 26, 2016 order. The order simply denied Tyrren’s exceptions to the DRC’s recommendations:

This matter is before the court on the 18th day of April, 2016 on the petitioner’s exceptions to the report of the Domestic Relations Commissioner filed February 1st, 2016, having been timely filed and re-scheduled and the court having reviewed the record herein, the findings and conclusions of the DRC and having considered the argument of counsel hereby finds and orders as follows:

The evidence established that for most of their lives the primary caregiver of the children has been the respondent mother and that they are healthy, well-adjusted and, now, wanted by both parents. They are acclimated in school with family and long-term friends in Daviess County. They are involved with the petitioner's family here that has provided nurture, support, love and affection when the petitioner was absent. The respondent does not object to joint custody and encourages frequent contact with the petitioner.

The court finds that it would not be in the children's best interest to remove them from the primary residential custody of their mother. The petitioner's exceptions are DENIED.

(R. 123-24). Such an order lacks the necessary judicial action required by CR 53.05(2) of adopting the report, or modifying it, or rejecting it in whole or in part, or taking further evidence, or recommitting it with instructions. CR 53.05(2). The circuit court did none of these. As a result, there has not yet been a final judgment entered in this case from which to take an appeal; the May 26, 2016 order does not have the effect of making the DRC's recommendations final. Tyrren's notice of appeal states that he "hereby appeals the order from Daviess County Circuit Court, Divison I, granting judgment for Nicole Talbott, the Defendant and Appellee, in Case 15-CI-00756 filed on May 26, 2016." (R. 125). The May 26, 2015 order also does not contain the CR 54.02 recitation of finality language.

Based on the foregoing, we are compelled to dismiss this appeal for lack of a final and appealable judgment.

ALL CONCUR.

ENTERED: July 21, 2017

/s/ Glenn E. Acree  
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

Tyrren Bonds, *Pro Se*  
Evansville, Indiana

BRIEF FOR APPELLEE:

Steven R. Dowell  
Owensboro, Kentucky