

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000979-ME

TAMMY SUZANNE FERRELL

APPELLANT

APPEAL FROM WARREN CIRCUIT COURT
v. HONORABLE CATHERINE RICE HOLDERFIELD, JUDGE
ACTION NO. 12-CI-00722

REBECCA LYNN VALENTINE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

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

LAMBERT, D., JUDGE: Tammy Suzanne Ferrell brings this appeal from the Warren Family Court's June 17, 2016 order granting Rebecca Lynn Valentine's motion to modify timesharing. After reviewing the relevant facts and applicable law, we affirm the modification.

I. BACKGROUND

Tammy and Rebecca's marriage ended in 2012. Since 2013, they have shared custody of their one minor child.¹ Tammy has been the primary residential custodian. Rebecca initially was awarded timesharing with the child one evening per week and every other weekend. This arrangement changed, however, after Tammy moved from Bowling Green, Kentucky, to Seattle, Washington. The family court entered an order allowing Tammy to take the child with her to Washington.

In early 2016, Rebecca filed a motion to modify the timesharing arrangement and become the child's primary residential custodian. Rebecca argued that it was no longer in the child's best interests to live with Tammy. Rebecca specifically argued that Tammy had failed to communicate that she was raising their daughter along with her new step-son, a teenager undergoing medical therapy to become a female. Rebecca also presented evidence that Tammy sought to reduce the amount of time the child spends with Rebecca and restrict the manner in which they communicate. On one occasion, Tammy insisted Rebecca cut her visit four and one-half hours short because of holiday traffic at the Nashville airport. Tammy also insisted that the child only communicate with Rebecca via text message, even though the family court order allows them to visit via video message.

¹ Tammy is the child's biological mother. Rebecca is the child's adoptive parent.

In response to Rebecca's motion, Tammy filed two motions. One sought a passport for the child. The other was a petition to replace Rebecca as the party responsible for maintaining the child's health insurance. After a hearing, the family court granted Rebecca's motion and denied Tammy's motions. The family court determined it was best for the child to primarily reside with Rebecca. This appeal followed.

II. STANDARD OF REVIEW

In assessing the best interests of a child, "any factual findings are reviewed under the clearly erroneous standard; any decisions based upon said facts are reviewed under an abuse of discretion standard." *Young v. Holmes*, 295 S.W.3d 144, 146 (Ky. App. 2009).

III. DISCUSSION

On appeal, Tammy asserts that the family court abused its discretion by granting Rebecca's motion to modify timesharing. Tammy contends that non-cooperative behavior between the parents is an improper consideration vis-à-vis timesharing. Tammy further contends that the family court misapplied the best-interest standard to the facts. For the following reasons, we disagree.

A joint custodian who moves to become the primary residential custodian merely seeks a timesharing modification under KRS² 403.320. *Pennington v. Marcum*, 266 S.W.3d 759, 769 (Ky. 2008). KRS 403.320(3) requires the modification to serve the best interests of the child. KRS 403.270

² Kentucky Revised Statutes

provides the relevant, non-exhaustive factors for evaluating the potential modification:

- (a) The wishes of the child's parent or parents, and any de facto custodian, as to his custody;
- (b) The wishes of the child as to his custodian;
- (c) 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;
- (d) The child's adjustment to his home, school, and community;
- (e) The mental and physical health of all individuals involved; [and]
- (f) Information, records, and evidence of domestic violence as defined in KRS 403.720[.]

The trial court sits in the best position to weigh these factors in light of the conflicting evidence presented; as long as the decision is reasonable, it will not be disturbed. *See Frances v. Frances*, 266 S.W.3d 754, 758 (Ky. 2008) (abrupt removal of child from school and relocation to Iowa without notifying other parent was a substantial factor, but not the deciding factor, in the court's analysis of the child's best interest).

Here, contrary to Tammy's claims, the family court properly applied the statutory factors before reaching its ultimate conclusion. While the family court certainly focused on the child's interactions and relationships while in Seattle, that was not the only factor considered. In addition to finding that Tammy was oblivious to what was occurring within her own household (she admitted

ignorance of her step-son's ongoing gender transition) the family court clearly acknowledged the parents' opposing wishes. The family court also stressed that Tammy's behavior, including her refusal to communicate with Rebecca directly and her failure to comply with the joint custody orders, had a negative effect on the child's well-being because it deprived the child of the love and support from both parents. Finally, the family court addressed whether a return to Bowling Green would disadvantage the child. The family court found that it would not since she would get along just as well academically and socially in Kentucky as she has in Washington.

As these findings were supported by substantial evidence from the record, the family court did not abuse its discretion. The judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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