

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001362-MR

ELIZABETH VICTORIA MCGRATH

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 15-CI-01143

MICHAEL DAVID MCGRATH

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

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

JOHNSON, JUDGE: Elizabeth McGrath, (“Elizabeth”), appeals from the July 29, 2016 Order, and the August 25, 2016 Order, denying in part and granting in part her motion to alter, amend or vacate and denying her motion for more specific findings, issued by the Campbell Circuit Court, Family Court Division. Having reviewed the record and applicable law, we AFFIRM the orders of the court.

BACKGROUND

Elizabeth and Michael McGrath (“Michael”) were married in July 2010. During the marriage, the couple had two children, who were five (5) and three (3) years of age at the time of separation. Initially, Elizabeth and Michael attempted to negotiate the various issues involved in the dissolution of their marriage but were unsuccessful. On November 20, 2015, Elizabeth filed a Petition for Dissolution of Marriage. In January 2016, Elizabeth left the marital residence in Campbell County and moved to Burlington in Boone County to live temporarily with her parents. She later moved to Florence, which is also located in Boone County. The parties entered into a Separation and Property Settlement Agreement on April 14, 2016, agreeing to joint custody and resolving all other issues except for where the children would attend school.

On March 21, 2016, Michael filed a motion seeking primary residential custodian status, specifically asking the court to enroll the older child in kindergarten in the Campbell County Public Schools system. Elizabeth objected to the motion and sought to enroll the child in the Boone County Public Schools system. On July 18, 2016, the court held a hearing on the issue.

On July 29, 2016, the court entered an order designating Michael as the primary residential custodian solely for the purpose of placing the parties’ children in the Campbell County Schools. Under this order, the older child was to

begin kindergarten in the Campbell Public Schools, and the younger child was to be enrolled in a Campbell County daycare facility.

On August 8, 2016, Elizabeth filed a Motion to Alter, Amend or Vacate Pursuant to Kentucky Rule of Civil Procedure (CR) 59.05, and a Motion for More Specific Findings Pursuant to CR 52.02. On August 25, 2016, the court, in two separate orders, denied the motion for more specific findings and granted that part of the motion to alter or amend to make technical changes to the July 29, 2016 Order and denied the rest of the motion. On September 12, 2016, Elizabeth filed her appeal from the August 25, 2016 Orders, and on September 14, 2016, amended the appeal to include the July 29, 2016 Order.

STANDARD OF REVIEW

The trial court shall determine custody in accordance with the best interests of the child. *Young v. Holmes*, 295 S.W.3d 144, 146 (Ky. App. 2009) (citing *Burchell v. Burchell*, 684 S.W.2d 296, 300 (Ky. App. 1984)).

In reviewing a child-custody award, the appellate standard of review includes a determination of whether the factual findings of the family court are clearly erroneous. A finding of fact is clearly erroneous if it is not supported by substantial evidence, which is evidence sufficient to induce conviction in the mind of a reasonable person.

B.C. v B.T., 182 S.W.3d 213, 219 (Ky. App. 2005) (Citations omitted).

Questions of law are reviewed *de novo*. *Ragland v. DiGiuro*, 352 S.W.3d 908, 912 (Ky. App. 2010).

ANALYSIS

Elizabeth and Michael separated and ultimately divorced. Their separation agreement resolved all the issues involved in the dissolution with the exception of the schooling of their two young children. Their inability to agree on where their children should attend school resulted in their abdication of the decision to the court.

The court heard extensive testimony of both parents discussing the current custody arrangements, preschool programs the children have been in, extended family care, the amount of commute time to and from preschool and school whether in Boone or Campbell County. The court also heard testimony from the father concerning the current extracurricular activities of the children in Campbell County. By deposition, Robin Poynter, an expert witness, testified regarding a comparison of the educational opportunities of schools in the Campbell and Boone districts.

Contrary to Elizabeth's contention that the court only chose Campbell County because that is where the divorce occurred, the record supports that the court considered many other factors before making a final decision. The court stated in its July Order, that both school systems were distinguished, each with

positives and negatives. In addition, the court noted that the main point of contention between Elizabeth and Michael apparently was the travel time, not for the children, but for the parents.

The court then shifted its attention to what would be in the best interests of the children as required by Kentucky Revised Statutes (KRS) 403.270(2). The court noted that originally it was the intention of the parents that both children would likely attend Campbell County schools. The court found that schooling in Campbell County would provide more consistency in education for both children, additional and greater opportunities for extra-curricular activities, and would allow the children to attend the same school as other family members. Based upon those findings the court designated Michael as the primary residential custodian solely for the children's schooling.

In reviewing the findings of the court, we find no error. The court heard testimony from both parents and considered the best interests of the two children before making a decision. The court's decision was based upon substantial evidence in the record. Once the parents have abdicated their role as custodians to the trial court, its decision is binding on the parties. *Burchell*, 684 S.W.2d at 300. The opinion of the court is well-reasoned and applied the correct law. While reasonable minds may differ as to the proper outcome, it cannot be said that the court was either unreasonable or unfair.

CONCLUSION

Based upon the foregoing, we **AFFIRM** the Orders of the Campbell Circuit Court Family Court Division on all issues.

ALL CONCUR.

BRIEF FOR APPELLANT:

William G. Knoebel
Florence, Kentucky

BRIEF FOR APPELLEE:

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