

RENDERED: OCTOBER 12, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001897-ME

ERICA SHAWN TA HOLLOWAY

APPELLANT

v. APPEAL FROM CALDWELL CIRCUIT COURT
HONORABLE C. A. WOODALL, III, JUDGE
ACTION NO. 14-CI-00060

MICHAEL EUGENE RILEY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, DIXON, AND TAYLOR, JUDGES.

DIXON, JUDGE: Erica Shawnta Holloway appeals from a judgment of the Caldwell Circuit Court denying her motion to modify time-sharing. Finding no error, we affirm.

Erica was previously involved in a romantic relationship with Michael Eugene Riley, and their daughter, M.L.R., was born in February 2012. Both

parties resided in Princeton, Kentucky, and an agreed custody order was entered in May 2014, which provided for joint custody and designated Erica as the primary residential parent. Michael had parenting time with M.L.R. each weekday (totaling approximately eleven hours per week) and every other weekend. In October 2015, Erica filed a notice of intent to relocate with the child, and Michael filed a motion objecting to relocation. To support her argument, Erica relied on a provision in the agreed order stating, once the child was three years old, Erica would be permitted to relocate approximately forty miles, to Christian County, to be closer to work. Following an evidentiary hearing, the court denied Erica's request to relocate, concluding it was not in the child's best interests to move to Christian County.

Nearly two years later, in July 2017, Erica filed a second motion to relocate/modify time-sharing. Erica argued the court should permit her to relocate with the child to Christian County and modify Michael's parenting time by eliminating weekdays and adding an additional weekend each month. The court held an evidentiary hearing and heard testimony from the parties and Aaron Jackson, Erica's second cousin.

Erica testified she was employed as a Certified Nursing Assistant at Western State Hospital in Hopkinsville, Kentucky. She explained she wanted to relocate to the city of Oak Grove, approximately fifteen minutes away from the hospital. Erica asserted her job paid a higher hourly rate than CNA positions in

Princeton; however, the commute to Hopkinsville was sometimes longer than an hour. Erica stated M.L.R. would enroll in kindergarten at South Christian Elementary, and she would have an approximately one-hour bus ride to and from school. At the end of the school day, the bus would drop off M.L.R. at 3:10 p.m. Erica testified her second cousin, Aaron Jackson, would meet the child at the bus stop each afternoon when he finished his job in Clarksville, Tennessee; however, she admitted Jackson's work shift ended at 2:30 p.m. and that it would take him 25 to 30 minutes to get to Oak Grove.¹ Erica opined she believed living in Oak Grove would provide more stability and "more options" for M.L.R.

Michael testified that he was a supervisor at a factory in Princeton and worked third shift. He noted he drove M.L.R. to school each morning and picked her up in the afternoon. Michael opined his extended family lived in Princeton, and he wanted M.L.R. to grow up with family, including his second child, who was two years younger than M.L.R. Michael asserted plenty of activities existed for M.L.R. in Princeton, and he did not think M.L.R. would benefit by moving to Oak Grove. On cross-examination, Michael acknowledged an incident of domestic violence had occurred between his mother and father while M.L.R. was in the home, although he was unsure if she witnessed the incident.

¹ Jackson testified on Erica's behalf and asserted he was willing to meet M.L.R. at the bus stop, acknowledging he worked each day until 2:30 p.m.

The trial court rendered an order denying Erica's motion to relocate/modify timesharing, finding it was in M.L.R.'s best interest to remain in Princeton. This appeal followed.

It is well-settled that "modification of visitation/timesharing must be decided in the sound discretion of the trial court." *Pennington v. Marcum*, 266 S.W.3d 759, 769 (Ky. 2008). On review, we will not disturb the trial court's factual findings unless they were clearly erroneous, and we are mindful of the lower court's opportunity to assess witness credibility. *Humphrey v. Humphrey*, 326 S.W.3d 460, 463 (Ky. App. 2010).

On appeal, Erica challenges the sufficiency of the evidence supporting the court's best interest of the child analysis, contending the court failed to fully consider the factors set forth in KRS 403.270(2).

Pursuant to KRS 403.320(3), "[t]he court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child[.]" The statutory "best interests" factors include: the wishes of the parents and child; the interpersonal relationships of the child with its parents, siblings, and others; the child's assimilation to home, school, and community; mental and physical health of the parties; and evidence of domestic violence. KRS 403.270(2)(a-g).

After thoroughly reviewing the record, it is apparent the trial court considered the statutory factors and weighed the evidence to reach its determination that relocation/modification of time-sharing was not in M.L.R.'s best interest. The court noted all of Michael's extended family resided in Princeton, along with Erica's grandmother and brother. The court found Michael was an active parent, noting he took M.L.R. to and from school each day and enjoyed quality time with her for several hours on Tuesday and Thursday afternoons. In contrast, if M.L.R. relocated to Oak Grove, she would have a lengthy bus ride, and Erica would rely on her second cousin to meet M.L.R. at the bus stop each afternoon. The court found, in Princeton, if M.L.R. was sick or did not have school, she was able to stay with either her paternal grandmother or maternal great-grandmother. After hearing all the evidence, the court specifically concluded that it would not be in M.L.R.'s best interest to modify Michael's parenting time and allow the child to relocate to Oak Grove. Based on our review, we are not persuaded the trial court abused its discretion by denying Erica's motion to modify time-sharing.

For the reasons stated herein, the judgment of the Caldwell Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Stephanie Ritchie Mize
Clarksville, Tennessee

BRIEF FOR APPELLEE:

Jennifer Sacharnoski Nelson
Princeton, Kentucky