

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000780-ME

DEREK A. SCHALL

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE JULIA H. GORDON, JUDGE
ACTION NO. 13-CI-00046

LINDSEY N. STOVALL

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Derek A. Schall brings this appeal from an October 17, 2017, Order and April 26, 2018, Order of the Daviess Circuit Court, Family Court Division, denying his request to receive one-half of the social security disability dependent benefit his son receives as a result of Schall's disability. We affirm.

Schall and Lindsey N. Stovall were never married but had a child in common. Their son, S.P.S., was born in 2012; Schall was not identified on the

birth certificate. Schall was subsequently adjudicated the father of S.P.S. in Daviess District Court (Action No. 12-J-000485). Schall was ordered to pay child support of \$480.20 per month.

On January 15, 2013, Schall filed a Verified Petition for Custody in the Daviess Circuit Court, Division I.¹ Therein, Schall sought joint custody of S.P.S. and reasonable visitation. By Recommended Order² entered May 3, 2013, the parties were awarded joint custody of S.P.S., and Stovall was designated the primary residential parent. Schall was granted twice weekly visitation/time-sharing and was ordered to undergo substance abuse and anger management assessments. Schall was also ordered to pay child support of \$381.07 per month.

A few months later, on July 20, 2013, Schall was involved in a serious motorcycle accident in Pennsylvania. Schall suffered a paraplegic spinal cord injury and is confined to a wheelchair. After the accident, Schall stayed in Pennsylvania to be near family and complete rehabilitation. In the summer of 2014, Schall moved back to Owensboro, and, on June 26, 2014, Schall filed a Motion for Guideline Visitation. Following an evidentiary hearing, Schall was

¹ Both actions, the district court action (Action No. 12-J-000485) to establish paternity and the circuit court action to determine custody (Action No. 13-CI-00046) were filed before a unified family court was established in Daviess Circuit Court. During the pendency of the custody action, a Family Court Division of the Daviess Circuit Court was created.

² The May 3, 2013, Recommended Order became a final order ten days after entry by operation of Kentucky Rules of Civil Procedure 52.01 and Family Court Rules of Practice and Procedure 4, as no exceptions to the Recommended Order were filed.

granted limited supervised visitation due to the young age of the child and Schall's recent confinement to a wheelchair.

Some six months later, by order entered December 17, 2014, Schall was awarded guideline visitation to be supervised by a responsible adult. The parties continued to be unable to agree regarding almost every aspect of Schall's visitation, including who constituted a suitable adult to supervise the visitation. By order entered March 10, 2016, the family court ultimately determined Schall's visitation did not need to be supervised.

Relevant to this appeal, on April 11, 2017, Schall filed a motion requesting, *inter alia*, equal parenting time and equal division of the social security disability dependent benefit S.P.S. receives due to Schall's disability. Schall proposed that instead of guideline visitation the parties utilize a one-week alternating schedule. And, Schall further sought that S.P.S.'s social security disability dependent benefit be divided equally between Stovall and Schall. A case management conference was conducted, and the parties agreed upon some issues, including equal visitation/time-sharing. The division of the social security disability dependent benefit was not resolved and was presented to the family court at an evidentiary hearing.

By order entered October 17, 2017, the family court denied Schall's request to equally divide the social security disability dependent benefit. The

family court ordered that Stovall would continue to receive and administer the benefit for S.P.S. The family court further ordered that since Stovall would receive and administer the social security disability dependent benefit she would, likewise, be “solely responsible for the child’s needs including school fees, extracurricular activities, unreimbursed medical costs and reasonable clothing purchases.”

October 17, 2017, Order at 2.

Schall filed a motion pursuant to Kentucky Rules of Civil Procedure (CR) 52.04 for more definite findings of fact on issues essential to the October 17, 2017, order. By order entered April 26, 2018, the family court made additional findings of fact but again ordered that Stovall should receive the social security disability dependent benefit of S.P.S. And, the family court reiterated that as Stovall would receive and administer the benefit on behalf of S.P.S., she would be solely responsible for S.P.S.’s needs as previously identified in the October 17, 2017, order. This appeal follows.

Schall contends the family court erred by failing to make findings of fact on an issue essential to the division of the social security disability dependent benefit. More specifically, Schall asserts that the family court did not make essential findings of fact regarding the amount of the social security disability dependent benefit S.P.S. receives monthly and the amount actually expended upon the child’s needs.

When a family court conducts an evidentiary hearing, it is required to make separate findings of fact and conclusions of law in accordance with CR 52.01 so as to provide a clear record for appellate review. *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986). If the family court fails to make a finding on an issue essential to the judgment, reversal or remand may be required. *Truman v. Lillard*, 404 S.W.3d 863, 867-68 (Ky. App. 2012). However, the family court is not required to:

specifically mention each and every piece of evidence or argument of counsel to pass muster. Such a requirement would be unduly burdensome on the courts and litigants and serve no justifiable purpose.

Id. at 867-68. And, if a family court’s written order demonstrates “it engaged in the required ‘good faith effort at fact-finding,’ and complied with the mandates of CR 52.01” it will be sufficient. *Id.* at 868 (quoting *Keifer v. Keifer*, 354 S.W.3d 123, 125 (Ky. 2011)).

Contrary to Schall’s assertion, the family court’s “failure to mention every piece of evidence” referenced by Schall “does not render the ensuing order infirm.” *See id.* at 868. A finding regarding the amount of the monthly social security disability dependent benefit and the amount expended on S.P.S.’s needs each month is not an essential fact necessary to determine which parent will

administer the benefit on behalf of S.P.S.³ The court ordered that Stovall, as the primary residential parent, would be solely responsible for payment of the child's everyday basic needs, including medical and clothing expenses. Additionally, Stovall was required to reimburse Schall for any of these expenses that he incurred for the child.

Accordingly, upon review of the October 17, 2017, and April 26, 2018, orders, we believe the family court's findings of fact are sufficiently detailed to satisfy its duty to make separate findings of fact as required by CR 52.01. *See Anderson v. Johnson*, 350 S.W.3d 453, 458 (Ky. 2011). Additionally, those findings of fact were supported by substantial evidence in the record below. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). Thus, the family court did not err by ordering that Stovall would continue to receive and administer the social security disability dependent benefit for S.P.S.

For the foregoing reasons, the Order of Daviess Circuit Court, Family Court Division, is affirmed.

ALL CONCUR.

³ We note that the amount of the social security disability dependent benefit (\$938 per month) received by S.P.S. was uncontroverted in the record below nor in dispute on appeal.

BRIEF FOR APPELLANT:

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Louisville, Kentucky

BRIEF FOR APPELLEE:

Clay Wilkey
Owensboro, Kentucky