

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000919-ME

JACK LEE READNOUR

APPELLANT

v. APPEAL FROM KENTON FAMILY COURT
HONORABLE CHRISTOPHER J. MEHLING, JUDGE
ACTION NO. 13-CI-00555

LAUREN R. READNOUR

APPELLEE

OPINION
VACATING AND REMANDING

** ** * ** * ** *

BEFORE: CLAYTON, CHIEF JUDGE; COMBS AND KRAMER, JUDGES.

COMBS, JUDGE: This case involves family law. The Appellant, Jack Lee Readnour, appeals an order denying his motion to modify visitation entered by the Kenton Circuit Court, Family Division, on May 16, 2018. After our review of the record, we are compelled to vacate and remand this matter for additional findings.

The parties married on November 8, 1996, and five children were born of the marriage. This action was initiated when the Appellee, Lauren R. Readnour, filed a petition for dissolution of marriage in 2013. During the pendency of the divorce, Lauren filed dependency, abuse, and neglect (DNA) petitions against Jack on behalf of the children. Although no documents relating to the DNA matter are included in the record for this case, it appears from the video record that a hearing was held in 2015 and that the family court made findings resulting in a no-contact order between Jack and the children. Later, in 2016, the parties decided by an agreed order to seek reunification therapy for Jack and the children with Dr. Jean Deters. The parties also agreed that Jack would complete individual therapy with Dr. James Rosenthal.

In January 2018, Jack filed a motion to modify visitation, also requesting that supervised visitation and reunification therapy with Dr. Deters be terminated. The family court held a hearing on this motion in which Jack appeared, *pro se*, and Lauren was represented by counsel. The family court heard testimony from Eric Wigger, a neighbor who testified to his observations of the good relationship between Jack and his children -- although he acknowledged he had not seen Jack and the children together in more than three years. Jack then testified that he had completed individual therapy with Dr. Rosenthal, a batterer's intervention program, and parenting classes. He provided proof of completion for

the batterer's intervention program and parenting classes but not for individual therapy. He testified that he was uncomfortable continuing to see Dr. Deters because of an inappropriate comment that she allegedly made to him; *i.e.*, that he could seek employment as a male prostitute in order to ameliorate his inadequate financial situation. Jack presented no evidence other than his own testimony to support this allegation. Jack testified that it would be better for the children to see him in an unsupervised setting.

Lauren then testified, stating that reunification therapy had been going well in 2016 until Jack was incarcerated in September and that his incarceration halted any progress. She also stated she did not believe the children would be safe alone with Jack and that it would not be in their best interest to terminate reunification therapy in lieu of unsupervised visitation.

The family court denied Jack's motion. It cited back to findings of July 16, 2015, that Jack committed a series of bad acts; *i.e.*, that he: called one of his children inappropriate names, hit a car operated by Lauren to scare her, locked the children in their rooms, yelled at the children, came to the home when he was ordered not to do so, and used physical discipline on the children. The family court further noted that these findings had resulted in a no-contact order between Jack and the children. Although the family court made references to the DNA proceedings, neither these findings nor the no-contact order have been made part of

record in this case and thus are not available for review by this Court. The family court further referenced the 2016 agreed order in which the parties agreed to reunification therapy and individual therapy for Jack, which the court found had begun but was suspended due to Jack's incarceration. The family court was unconvinced by Jack's allegation that Dr. Deters made inappropriate comments to him. Based upon these findings, the family court denied Jack's motion to modify visitation. It also ordered that if Jack wished to proceed with reunification therapy with a therapist other than Dr. Deters, he would be allowed to submit the name of a new therapist to the court within thirty days. This appeal followed.

Modification of visitation is governed by KRS¹ 403.320(3), which provides that "[t]he court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child." Because "best interests" is not defined by the statute, "it is left to the sound discretion of the [family] court whether the party seeking modification has met his or her burden." *Williams v. Williams*, 526 S.W.3d 108, 113 (Ky. App. 2017) (citation and internal quotation marks omitted). Family courts are "vested with broad discretion in matters concerning custody and visitation." *Jones v. Livesay*, 551 S.W.3d 47, 51 (Ky. App. 2018) (citations omitted). "[T]his Court will only reverse a [family]

¹ Kentucky Revised Statutes.

court's determinations as to visitation if they constitute a manifest abuse of discretion, or were clearly erroneous in light of the facts and circumstances of the case." *Drury v. Drury*, 32 S.W.3d 521, 525 (Ky. App. 2000) (citation omitted).

On appeal, Jack argues the family court was clearly erroneous when it denied his request to terminate reunification therapy with Dr. Deters and supervised visitation. However, Jack's claim that the family court denied his motion to stop therapy with Dr. Deters is refuted by the record. In its order of May 16, 2018, the family court allowed Jack the opportunity to propose a new therapist with whom he and the children could pursue reunification therapy.

Jack also contends that the family court erred in denying his motion to modify visitation by failing to articulate findings regarding whether such a modification was in the children's best interests. "When visitation has already been denied, the standard for modification is not serious endangerment; rather, the best interests of the children governs." *McNeeley v. McNeeley*, 45 S.W.3d 876, 878 (Ky. App. 2001) (citing *Hornback v. Hornback*, 636 S.W.2d 24, 26 (Ky. App. 1982)). Upon a motion to modify visitation, the moving party should be given the opportunity to prove that visitation is in the children's best interests. *Miranda v. Miranda*, 536 S.W.3d 196, 201 (Ky. App. 2017). After a hearing, a family court "can properly rule on whether visitation is in the best interests of the children." *Id.* (citations omitted).

The family court gave Jack an opportunity to be heard on April 23, 2018. At that time, Jack presented evidence to support his argument that a modification of visitation was in the children's best interests, including proof of completion of a batterer's intervention program and parenting classes. Although he also claimed to have completed individual therapy, he provided no proof of completion. Lauren then testified that reunification therapy had been suspended in September 2016 due to Jack's incarceration and that it never restarted, an assertion that Jack did not contest. Lauren also expressed concern for the children's safety if they were left alone with Jack.

“[F]amily courts must make findings of fact and conclusions of law . . . when hearing modification motions.” *Anderson v. Johnson*, 350 S.W.3d 453, 457 (Ky. 2011). Although both parties testified to what they thought would be in their children's best interests, the family court made no findings of fact or conclusions of law regarding this standard. Instead, the family court stated findings from a hearing that occurred almost three years earlier in a separate action without specifying how those facts or any newly presented evidence related to the children's best interests. “[W]here the [family] court fails to fully articulate its decisional basis, appellate courts are prevented from discharging their duty of meaningful appellate review.” *Carpenter v. Schlomann*, 336 S.W.3d 129, 132 (Ky. App. 2011).

In the absence of adequate findings of fact or conclusions of law as to whether a modification of visitation would be in the children's best interest, we are compelled to vacate and remand the order of the Kenton Circuit Court, Family Division, for further findings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Harry P. Hellings, Jr.
Covington, Kentucky

BRIEF FOR APPELLEE:

Tasha K. Schaffner
Crestview Hills, Kentucky