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Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-000113-ME

CHASITY CHILDRESS APPELLANT

APPEAL FROM HARDIN CIRCUIT COURT
FAMILY DIVISION I
v. HONORABLE PAMELA K. ADDINGTON, JUDGE
ACTION NO. 14-CI-02031

MICHAEL BRANDON HART APPELLEE

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND GOODWINE, JUDGES.

GOODWINE, JUDGE: Chasity Childress (Mother) appeals from a Hardin Circuit Court order granting Michael Hart's (Father) motion requesting Mother to: (1) re-enroll their minor child, KJH, into Creekside Elementary School; and (2) relocate the child to Hardin County, Kentucky. After reviewing the record, we vacate the

order and remand to the family court for further findings of fact and separate conclusions of law consistent with this opinion.

BACKGROUND

The parties are the parents and joint custodians of KJH, age eight. The parties were never married, but both lived in Hardin County. In 2014, Mother filed a petition for custody, resulting in the parties entering an agreed order. Under that order, the parties were awarded joint custody, designating Mother as the primary residential parent and Father having visitation every other weekend, as well as every other Monday and Thursday.

Four years later, Mother received an offer from her employer to move to Tennessee. Because of this, and under FCRPP[1] 7(2), she petitioned the family court for permission to move to Tennessee with KJH. After a hearing, the family court denied her request, finding the move was not in the child's best interest. Following the family court's order, Mother, instead, relocated to Jefferson County for work—approximately fifty miles away from Father.

After the relocation, Mother enrolled KJH in a new school and various extracurricular activities in Jefferson County. The parties continued the agreed upon timesharing schedule, but Father admitted to missing some Monday time. However, because of the relocation, Father filed a motion requesting: (1) the child

[1] Kentucky Family Court Rules of Procedure and Practice.

to be enrolled in Creekside Elementary School in Hardin County; (2) the child to reside in Hardin County; (3) to enforce the parenting schedule; and (4) to be awarded parenting time in accordance with the Hardin Family Court rules.

The family court held another hearing and issued oral findings of fact and conclusions of law, determining the relocation was not in the child's best interest. Specifically, it found: "[B]ut what bothers me is that [KJH] has been removed from schoolmates . . . and uprooted from something she is accustomed to and that's why I ruled against [Mother] leaving the state. But it's also the fact [KJH] is leaving her little schoolmates; kids she's probably known for a while and it wasn't really necessary." (Video Record (VR) 4:11:10-30). After the oral findings, the family court entered an order that failed to articulate any findings or the best interest standard. Instead, it simply required KJH to be enrolled in Creekside Elementary—and if Mother did not comply, it would deem Father primary residential custodian.

Mother filed a motion to alter, amend, or vacate, which the family court denied. This appeal followed.

STANDARD OF REVIEW

On appeal, we review the family court's findings of fact only to determine if they are clearly erroneous. CR[2] 52.01. A family court's findings "are

[2] Kentucky Rules of Civil Procedure.

not clearly erroneous if supported by substantial evidence, which is 'evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men.'" *Eagle Cliff Resort, LLC v. KHBBJB, LLC*, 295 S.W.3d 850, 853 (Ky. App. 2009) (quoting *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998)).

ANALYSIS

Mother contends the family court erred by failing to issue written findings of fact regarding whether relocation was in KJH's best interest. On the other hand, Father believes this case was solely about relocation under FCRPP 7 and not a modification of parenting time or custody, making findings related to the best interest standard unnecessary. We disagree with Father's assertion and hold the family court erred by issuing a bare-bones, conclusory order.

First, we shall dispel Father's assertion. Although, he is correct that FCRPP 7(2) requires a parent to offer notice before relocating, Father opened the door to the requirement of a best interest analysis by filing motions after Mother moved that would effectually modify timesharing. *Pennington v. Marcum*, 266 S.W.3d 759, 765 (Ky. 2008); KRS[3] 403.340. There are several factors courts must consider in determining whether a modification of timesharing is in a child's best interest, which are partially listed in KRS 403.270. "The basis for a modification

[3] Kentucky Revised Statutes.

decision is thus fact-driven rather than law-driven, because the legal standard is whether the relocation is in the best interests of the child, which is stated plainly in the statute." *Anderson v. Johnson*, 350 S.W.3d 453, 455 (Ky. 2011). In review of the family court's decision on appeal, it is imperative to know what facts the court relied on to determine whether it made a mistake of fact or law. *Id.*

It is interesting Father argues this is not a case of modification, when he filed various motions requesting just that after learning of Mother's relocation. Those motions included: (1) enrolling KJH in Creekside Elementary School; (2) relocating KJH's residence to Hardin County; (3) enforcing the parties' December 2015 parenting schedule; and (4) **awarding him parenting time in accordance with the 9th Judicial Circuit Hardin Family Court Rules**. These motions reopen the final custody order by adding terms that are not originally included, as well as a potential shift in parenting time. Additionally, under *Pennington*, the burden of proving relocation is in the *best interest of the child* is on the relocating parent. 266 S.W.3d at 769. Therefore, Kentucky law requires family courts to make findings of whether relocation is in a child's best interest.

Because the family court must determine relocation is in the best interest of the child, we hold that it erred by issuing a bare-bones order. Here, the family court held a two-hour hearing, ultimately concluding, without specific findings, that moving to Jefferson County was not in the best interest of the child.

This is a clear violation of CR 52.01, which provides: "In all actions tried upon the facts without a jury or with an advisory jury, the court ***shall*** find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment[.]" (Emphasis added.)

CR 52.01 creates a general duty for trial courts to find facts and engage in *at least* a good faith effort at fact-finding and that the found facts be included in a written order. *Anderson,* 350 S.W.3d at 458. "Failure to do so allows an appellate court to remand the case for findings, even where the complaining party failed to bring the lack of specific findings to the [family] court's attention." *Id.*

> [T]he final order of [a family] court, especially in family law cases, often serves as more than a vehicle for appellate review. It often becomes a necessary reference for the parents and third parties, such as school officials, medical providers, or other government agencies with responsibilities requiring knowledge of the facts determined by the [family] court.

Keifer v. Keifer, 354 S.W.3d 123, 126 (Ky. 2011). "A bare-bone, conclusory order . . . setting forth nothing but the final outcome, is inadequate and will enjoy no presumption of validity on appeal." *Id.*

The family court decided the move would not be in KJH's best interest, which is a conclusion of law required under KRS 403.320. However, the order included no findings of fact to support this conclusion, which clearly violates

CR 52.01. As the Kentucky Supreme Court found in *Anderson*, simply saying that it is not in a child's best interest to move raises the question, "Why?" As a matter of judicial efficiency, we need more specific findings from family courts to adequately review their decisions. Without such findings, we, and third parties, will be at a loss regarding a court's decisions.

Furthermore, the family court's denial of Mother's motion to alter, amend, or vacate gives us further grounds to vacate the order. In her CR 59.05 motion, Mother asserted the family court "was unable to consider all relevant [best interest] factors based on a short two (2) hour hearing . . . ." (Record (R.) at 98). Since Mother requested, in writing, for the family court to undergo additional analysis for findings regarding KJH's best interest—and because the family court denied this request by overruling her motion to alter, amend, or vacate—we may remand for the "failure of the [family] court to make a finding of fact on an issue essential to the judgment[.]" CR 52.04.

Given the family court failed to make the appropriate findings, rendering this case remanded, we decline to address any arguments that it failed to properly utilize the best interest standard. Without the facts the family court used to support its decision, we are unable to determine if it was clearly erroneous.

We briefly note one other issue. As a reviewing court, it is necessary to review the entirety of the record. Under CR 75.01, it is the appellant's

responsibility to designate the contents of the record on appeal and to obtain transcriptions or videotapes of all proceedings upon which the appeal relies. Mother's counsel failed to designate the video record in a case where it is imperative to understand the family court's findings of fact and conclusions of law. Telling of this fact is that Mother acknowledged "that the legal question at bar may be resolved by reference to the record in this case[.]" Brief of Appellant, p. ii. She also cited to the video record *sixteen times* in her appellate brief, often using the citations as authoritative reinforcement for her arguments.

When the record on appeal is incomplete, "we are required to assume that the portions which have been omitted support the decision of the [family] court." *Harper v. Commonwealth*, 371 S.W.3d 763, 769 (Ky. App. 2011). Accordingly, we should have assumed the video record supported the family court's ruling. However, considering the circumstances of this case, and in the pursuit of justice, this Court obtained a copy of the video record by its own order. We urge Mother's counsel, and other appellate practitioners, to not make this a habit of appellate practice.

CONCLUSION

For the reasons stated above, we: (1) vacate the Hardin Circuit Court's October 9, 2018, order; and (2) remand to the Hardin Circuit Court to

make specific findings of fact and separate conclusions of law consistent with this opinion.

ALL CONCUR.

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