RENDERED: OCTOBER 25, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-000262-ME

CHERYL RUNKEL — APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE PAMELA K. ADDINGTON, JUDGE
ACTION NO. 18-CI-01113

MARY JESSICA VANCE
AND JOSHUA DAVID VANCE — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: LAMBERT, NICKELL, AND K. THOMPSON, JUDGES.

NICKELL, JUDGE: Cheryl Runkel has appealed from the findings of fact, conclusions of law, and order entered by the Hardin Circuit Court, Family Division, denying her motion seeking visitation rights with her minor granddaughter. Following a careful review, we affirm.

Cheryl is Mary Jessica Vance's mother. Jessica and her husband, Joshua David Vance, are the parents of the six-year-old girl at the heart of the instant dispute. The child is Cheryl's only living grandchild. Cheryl was present when the child was born and has frequently visited the Vance family throughout the child's life, even though the parties have never resided in the same state. While the relationship with the parties was pleasant for quite some time, dissention began to grow when the Vances began perceiving Cheryl was not following explicit instructions regarding care of the child and was forming what they believed to be an unhealthy attachment to the child.

Tensions grew until April 2016, when the Vances severed all communication with Cheryl for four to six weeks. Upon resuming contact, the Vances had numerous discussions with Cheryl about their concerns. While some issues resolved, others remained. The Vances again believed Cheryl was overstepping her role and not heeding their directions. Matters came to a head in January 2018, when Cheryl confronted the Vances about their plans to take the child to see Disney on Ice without her. The Vances learned Cheryl had found out about their plans from Jessica's sister, Kellie Runkel, who had read private messages between Jessica and Kellie's ex-girlfriend. The Vances immediately severed all contact with Cheryl, for what they would later say was in the child's

best interests due to health concerns, safety concerns, and Cheryl's dependency issues.

On July 5, 2018, Cheryl filed the instant petition seeking grandparent visitation. A hearing was conducted on September 19, 2018, wherein the trial court heard testimony from Cheryl, Kellie, and Jessica. At the conclusion of the hearing, the trial court instructed both sides to submit proposed findings of fact and conclusions of law. On January 22, 2019, the trial court entered its order denying visitation which mirrored the proposed language submitted by the Vances. Cheryl timely appealed.

Cheryl first asserts the trial court improperly failed to make independent findings of fact and conclusions of law when it merely adopted the Vances' proposed order without correction or change. Both parties were requested to—and did—submit proposed findings of fact. Cheryl relies heavily on the decision of this Court in *Retherford v. Monday*, 500 S.W.3d 229 (Ky. App. 2016), to argue adoption of a party's proposed findings, without making significant changes, is improper and automatically renders such findings infirm. However, Cheryl fails to discern the later decision of this Court in *Keith v. Keith*, 556 S.W.3d 10 (Ky. App. 2018), which concluded any such holding is plainly in conflict with controlling precedent from the Supreme Court of Kentucky. "It is not error for the trial court to adopt findings of fact which were merely drafted by someone else."

Prater v. Cabinet for Human Resources, Commonwealth, 954 S.W.2d 954, 956 (Ky. 1997) (citing *Bingham v. Bingham*, 628 S.W.2d 628 (Ky. 1982)).

Further, where, as here, there is no evidence the trial court abdicated its duties pursuant to CR[1] 52.01 to make written findings of fact and conclusions of law or that the trial court was not in control of the decision-making process, adoption of a party's proposed findings of fact and conclusions of law is not erroneous *per se*. "[D]elegation of the clerical task of drafting proposed findings of fact and conclusions of law under the proper circumstances does not violate the trial court's responsibility." *Bingham*, 628 S.W.2d at 629. We discern no error.

Finally, Cheryl argues the trial court's findings of fact, conclusions of law and order is clearly erroneous as it contained four findings which were biased or unsupported by the record. She also contends the trial court failed to consider and weigh relevant evidence. We have reviewed the four particular findings about which Cheryl complains along with the relevant portions of the record and disagree with Cheryl's allegations of error.

Where testimony before a trial court is conflicting, as it was here, we may not substitute our decision in place of the judgment made by the trial court. *R.C.R. v. Commonwealth, Cabinet for Human Resources*, 988 S.W.2d 36, 39 (Ky.

[1] Kentucky Rules of Civil Procedure.

App. 1998) (citing *Wells v. Wells*, 412 S.W.2d 568, 571 (Ky. 1967)). Questions as to the weight and credibility of testimony are purely within the province of the court acting as fact-finder and due regard shall be given to the court's opportunity to judge the witness's credibility. CR 52.01; *Sherfey v. Sherfey*, 74 S.W.3d 777, 782 (Ky. App. 2002), *overruled on other grounds by Benet v. Commonwealth*, 253 S.W.3d 528 (Ky. 2008). The test is not whether we as an appellate court would have decided the matter differently, but whether the trial court's rulings were clearly erroneous or constituted an abuse of discretion. *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982) (citing *Eviston v. Eviston*, 507 S.W.2d 153 (Ky. 1974)). "[M]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal[.]" *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (footnotes omitted).

No challenge has been raised regarding the choice of law utilized by the trial court nor the legal standards on which it based its decision, and we discern no error therein. Thus, further discussion related to legal standards is unnecessary.

Our review of the record reveals the trial court received substantial, though controverted, evidence which would support its decision to deny Cheryl the relief she sought. While we agree one sentence of one paragraph of the findings is not supported by the record, inclusion of this sentence in the final order was harmless, at best, as it clearly did not form the sole basis of the trial court's determination and was related only to a collateral issue regarding care of a dog.

The trial court made detailed findings of fact and applied those findings to the legal framework set forth in *Walker v. Blair*, 382 S.W.3d 862 (Ky. 2012), to determine Cheryl had not met her burden of overcoming the presumption the natural parents were acting in the child's best interest in terminating contact. Although Cheryl points to contrary evidence elicited during the hearing and clearly disagrees with the trial court's determination, mere disagreement and dissatisfaction with the trial court's assessment and weighing of the evidence is simply an insufficient basis upon which to conclude an abuse of discretion occurred or to find clear error warranting reversal.

Because sufficient probative evidence was presented supporting the trial court's ruling, no clear error exists and Cheryl has failed to otherwise show an adequate basis to disturb the trial court's decision. For these reasons, the judgment of the Hardin Circuit Court, Family Division, is AFFIRMED.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEES:

Dawn Logsdon Johnson
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