

RENDERED: JUNE 24, 2022; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-0269-MR

MEGAN CASH

APPELLANT

v. APPEAL FROM MCCREARY CIRCUIT COURT
HONORABLE PAUL K. WINCHESTER, JUDGE
ACTION NO. 18-CI-00170

STEPHEN CASH

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, JONES, AND K. THOMPSON, JUDGES.

ACREE, JUDGE: Megan Cash appeals the McCreary Circuit Court's order granting sole custody of her two minor children Z.C. and H.C. to Stephen Cash and terminating Stephen Cash's child support payments. Finding no error, we affirm.

BACKGROUND

On November 13, 2018, Stephen Cash filed to dissolve his marriage to Megan Cash after Megan disappeared with the couple's two young children.

(Record (“R.”) at 11-12). On October 29, 2018, Stephen alleges Megan left with the two children, Z.C. and T.V.,¹ to visit her father after telling Stephen her father had been in a car accident. However, Megan did not return as planned and on November 5, 2018, Stephen had to have law enforcement do a welfare check to confirm Megan and the two children were okay. According to Stephen, this type of behavior was not uncommon for Megan.²

On December 22, 2018, the McCreary Circuit Court entered an *ex parte* order giving *pendente lite* custody of Z.C. to Stephen. (R. at 18). At the same time, Megan took Z.C. to Gadsden, Alabama, and she filed for a protective order alleging Stephen physically abused her and sexually abused their two children. (R. at 68). Because of Megan’s allegations, law enforcement chose not to enforce the December 22, 2018 order and Megan retained custody of their children. Megan made numerous unsubstantiated claims against Stephen that he in some way sexually abused their children.³ Stephen alleges Megan levied five

¹ In total, there are three children to this appeal. There are Z.C. and H.C. Their natural parents are Megan and Stephen. There is also T.V., who is Megan’s child from a prior relationship.

² Stephen alleges at one point, prior to the divorce petition, T.V. was hospitalized and, while hospitalized, Megan stepped out to have a cigarette only to disappear for eight hours. (R. at 11-12).

³ For instance, Megan made unsubstantiated claims on April 25, 2019, that Stephen anally raped their children, but the children’s family care doctor found no evidence to support the allegation. On June 4, 2019, the DRCs who investigated the claim found no evidence to support the allegations.

claims against him ranging from sexually abusing the children to torturing them, all of which sparked four to six-month investigations where the domestic relations commissioners (DRCs) found no evidence to support Megan's claims. No evidence supporting Megan's claims was found by the DRCs who investigated, nor by the McCreary Circuit Court. (R. at 627). The only effect of Megan's claims merely was to stall this litigation and prolong the children's unstable situation.

The last of these investigations concluded on August 29, 2020. On October 26, 2020, the DRC held the final hearing and determined reunification between Stephen and the children was proper. The DRC scheduled weekend parenting dates for Stephen and the children. However, immediately following the hearing, Megan disappeared with the children.

On November 30, 2020, Stephen again filed an *ex parte* motion in the McCreary Circuit Court to receive *pendente lite* custody of their children, which the circuit court granted on December 1, 2020. (R. at 482-85). The DRC also conducted a remote hearing on December 21, 2020, to determine whether Stephen should be awarded sole custody. The DRC heard evidence from both parties, various family members, Z.C.'s speech therapist, and a licensed counselor who conducted psychological assessments of the parties. When the hearing concluded, the DRC recommended awarding sole custody of the children to Stephen.

Since losing custody of her children, Megan and the children's whereabouts are unknown. She failed to release custody of her children at an appointed time after the hearing and refuses to disclose her location to the court, Stephen, or law enforcement. She withdrew Z.C. from school and speech therapy, to the chagrin of Z.C.'s counselor. Stephen has actively worked with law enforcement to locate his children, but Megan has been uncooperative, violating the McCreary Circuit Court Order giving sole custody of the children to Stephen.

Megan appeals that McCreary Circuit Court order.

STANDARD OF REVIEW

When reviewing a trial court's custody award, the appropriate standard is:

Since the family court is in the best position to evaluate the testimony and to weigh the evidence, an appellate court should not substitute its own opinion for that of the family court. If the findings of fact are supported by substantial evidence and if the correct law is applied, a family court's ultimate decision regarding custody will not be disturbed, absent an abuse of discretion. Abuse of discretion implies that the family court's decision is unreasonable or unfair. Thus, in reviewing the decision of the family court, the test is not whether the appellate court would have decided it differently, but whether the findings of the family court are clearly erroneous, whether it applied the correct law, or whether it abused its discretion.

Coffman v. Rankin, 260 S.W.3d 767, 770 (Ky. 2008) (citing *B.C. v. B.T.*, 182 S.W.3d 213, 219-20 (Ky. App. 2005)); see *Varney v. Bingham*, 513 S.W.3d 349,

351-52 (Ky. App. 2017). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000). With these principles in mind, we turn to Megan’s appeal.

ANALYSIS

The first issue on appeal is whether the trial court made sufficient findings of fact to support the court awarding Stephen sole custody. Megan contends the court failed to do so, instead only issuing vague and incomplete findings of fact. Megan relies on CR⁴ 52.01, which requires, in relevant part: “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[.]” She further relies on *Anderson v. Johnson* for the proposition that “family courts must make findings of fact and conclusions of law, and must enter the appropriate order of judgment when hearing [child custody] modification motions.” 350 S.W.3d 453, 456-57 (Ky. 2011). Having reviewed the order, this Court concludes the circuit court did make sufficient findings of fact to award Stephen sole custody and to allow meaningful appellate review.

⁴ Kentucky Rules of Civil Procedure.

To begin, it is unclear whether Megan properly preserved this issue for appeal. Her brief is not compliant as it does not contain a statement, with citations to the record, showing how Megan properly preserved this issue for appeal, thereby violating CR 76.12(4)(c)(v). Further, it does not appear Megan made this argument below. “It has long been this Court’s view that specific grounds not raised before the trial court, but raised for the first time on appeal will not support a favorable ruling on appeal.” *Jones v. Livesay*, 551 S.W.3d 47, 52 (Ky. App. 2018). “A new theory of error cannot be raised for the first time on appeal.” *Springer v. Commonwealth*, 998 S.W.2d 439, 446 (Ky. 1999).

When it comes to CR 52.01, if a court fails to make a finding of fact, the Kentucky Supreme Court “require[s] a litigant to request that finding if he wishes to have an appeal of that judgment, because the judgment is not whole without it.” *Anderson*, 350 S.W.3d at 458. Accordingly, this motion must be made at the circuit court level. *Id.* Megan failed to make the proper motion and failed to preserve the issue for appeal. Additionally, there is no palpable error which may excuse Megan’s failure to comply with the rules.

However, assuming *arguendo* Megan did properly preserve this issue for appeal, Megan’s argument would still fail. Megan alleges the court made only vague findings of fact, but contrary to this contention, the circuit court heard evidence from both parties, various family members, Z.C.’s speech therapist, and a

licensed counselor who conducted appropriate psychological assessments. The circuit court detailed its findings in its order, including the following significant findings: (1) Megan made numerous unfounded sexual abuse claims against Stephen, (2) Megan removed Z.C. from school and speech therapy, both of which were not in the best interest of Z.C., and (3) Megan disappeared with the children and refuses to disclose her location or the children's location. These are significant facts the circuit court enumerated in its findings that readily support the court's conclusion it was in the best interest of the children for Stephen to have sole custody. Therefore, the circuit court made sufficient findings of facts.

Next, we turn to the issue of child support. Megan contends the circuit court improperly terminated Stephen's child support obligations. Megan's argument is somewhat vague, but the crux of it appears to be that Megan believes termination of child support was a punitive measure taken out against her. As a punitive measure, she argues, termination of Stephen's child support obligations should be improper because each parent should bear the responsibility of supporting children equally. Megan expresses that she is offended by the termination of Stephen's obligations because she believes she has acted in good faith in violating the circuit court's order and hiding the children. To the contrary, Megan has not acted in good faith and, even if she had, her argument fails.

The circuit court awarded sole custody of the children to Stephen and awarded no visitation to Megan.⁵ Awarding Megan child support would be so antithetical to the legislative scheme that it would require the circuit court to specifically identify a “factor of an extraordinary nature” to justify it. *See Dudgeon v. Dudgeon*, 318 S.W.3d 106, 110 (Ky. App. 2010) (quoting KRS⁶ 403.211(3)(g)). We agree with Stephen that to require him to pay child support now would be illogical. Megan refuses to disclose her location. Even if we required Stephen to pay her child support, where would he send the check? For these reasons, the circuit court did not err in terminating Stephen’s child support obligations.

Megan’s behavior is both alarming and disturbing. Nothing brought forth in this appeal shows the circuit court abused its discretion. Megan’s actions are dangerous and harmful to children of whom she is no longer entitled to legal custody. We hope Megan surrenders the children to end this ordeal and allow the healing process to begin for these children.

⁵ Megan does not argue that this determination was not in the best interest of the children, and thus, we will not partake in that analysis.

⁶ Kentucky Revised Statutes.

CONCLUSION

For the foregoing reasons, we find no error in the McCreary Circuit Court's orders awarding Stephen sole custody of the children and terminating his child support payment obligations.

THOMPSON, K., JUDGE, CONCURS.

JONES, JUDGE, CONCURS IN RESULT ONLY.

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