

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CU 1923

JEREMY G. HOFFPAUIR

VERSUS

KEATEN WILSON HOFFPAUIR

Judgment rendered: February 9, 2007

**On Appeal from the 16th Judicial District Court
Parish of St. Mary, State of Louisiana
Docket Number 111,678; Div. C
The Honorable John E. Conery, Judge Presiding**

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**Counsel for Defendant/Appellee
Keaten Wilson Hoffpauir**

BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

DOWNING, J.

Jeremy G. Hoffpauir appeals a judgment that designated his former wife, Keaten Wilson Bella,¹ as the domiciliary parent of their minor child, Zephaniah Isaac, and set times for exercise of physical custody of the child. Mr. Hoffpauir asks this court to reverse the judgment of the trial court, name him as domiciliary parent, and make his home the child's principle residence. For the following reasons, we affirm the judgment of the trial court.

PERTINENT FACTS AND HISTORY

By a consent decree in January 2004, Mr. Hoffpauir and Ms. Bella were granted joint custody of Zephaniah, and the parties were designated "co-domiciliary" parents.² This judgment was modified in July 2004, again by consent. In the Fall of 2004, Mr. Hoffpauir was forced to transfer from St. Mary Parish by his employer, but the custody arrangement remained in place.

In April 2005 Mr. Hoffpauir filed a rule for change of custody alleging, among other things, that Ms. Bella was not providing their child with a stable, healthy and wholesome environment, that she was morally unfit, that she was cohabiting with a man by whom she had become pregnant, that the child had been exposed to physical and verbal abuse, that the child has become anxious and confused as a result, and that the child had suffered physical cruelty by Ms. Bella and her then paramour.

Ms. Bella filed an answer and reconventional demand requesting that she be given domiciliary status. She alleged, among other things, that Mr. Hoffpauir moved more than 150 miles away from the child's extended

¹ The record reflects that Mr. Hoffpauir's ex-wife has remarried and is now Keaten Wilson Bella, though the matter remains captioned in her married name.

² Louisiana law does not specifically recognize a status of "co-domiciliary" parent. It is lawful, however, to not name a domiciliary parent in appropriate circumstances. *See* La. R.S. 9:335.

family, that she was the primary caregiver, that the child would soon have a sibling, that Mr. Hoffpauir was causing alienation of affection between her and the child, and that Mr. Hoffpauir had been lying about her. She further alleged in an amended answer and reconventional demand that Mr. Hoffpauir was morally unfit due to certain alleged illegal actions.

After a hearing in March 2006, the trial court denied Mr. Hoffpauir's motion, modified the joint custody decree to name Ms. Bella as domiciliary parent, and maintained her residence as the child's primary residence.

Mr. Hoffpauir appeals, assigning two assignments of error:

1. The trial court abused its discretion in disregarding the expert testimony of all 3 of the expert witnesses testifying in this cause, including its own expert appointed pursuant to La. R.S. 9:331.
2. The decision of the trial court is contrary to both the law and the evidence, and constitutes clear and manifest error and an abuse of discretion

DISCUSSION

Assignment of Error No. 1

In addressing the trial court's discretion to disregard or give little weight to an expert's testimony, the Louisiana Supreme Court has said "[c]redibility determinations are for the trier of fact, even as to the evaluation of expert witness testimony." **Green v. K-Mart Corp.**, 03-2495, p. 5 (La. 5/25/04), 874 So.2d 838, 843. The supreme court noted that the trier of fact may accept or reject, in whole or in part, an expert's opinion. **Id.** It then stated: "The trier of fact may substitute common sense and judgment for that of an expert witness when such a substitution appears warranted on the record as a whole." **Id.**

In the matter before us, the trial court gave extensive oral and written reasons explaining why it gave little weight to the expert testimony. These

reasons are factually based and supported by the record. Therefore, the decision to give little regard to these opinions is within the trial court's discretion. Accordingly, Mr. Hoffpauir's first assignment of error is without merit.

Assignment of Error No. 2

In his second assignment of error, Mr. Hoffpauir earnestly argues his belief that Zephaniah's health and safety are at risk under the current custody arrangement. The trial court, however, specifically rejected this view. It found "from all of the credible evidence" that any verbal abuse "was of short duration and no longer takes place or continues to be a factor." It also found that Mr. Hoffpauir "did not prove by a preponderance of the evidence that there was ever any 'physical abuse' . . . to either Keaten or Zeph."

The trial court accepted a view of the evidence different from that offered by Mr. Hoffpauir. It found that Ms. Bella and her new husband "have a good solid relationship and an excellent ability to care for and parent Zeph, along with their new son, Cru." It then concluded that it would be in Zeph's best interest to remain in his mother's custody as domiciliary parent, as she has been his primary caregiver. In so concluding, the trial court noted the difficulty caused by the distance between the parties, the presence of the child's extended family in St. Mary Parish, and all the factors set forth in La. C.C. art. 134 regarding the determination of a child's best interest.

"Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong." **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). Here, the trial court's factual findings were not manifestly erroneous even though they did not comport with Mr. Hoffpauir's understanding of the matter, nor did they

constitute an abuse of its discretion. Accordingly, Mr. Hoffpauir's second assignment of error lacks merit.

We note that Mr. Hoffpauir has recourse to the court should any evidence develop regarding verbal or physical abuse of Zephaniah.

DECREE

For the foregoing reasons, we affirm the judgment of the trial court. We issue this memorandum opinion in compliance with Uniform Rules – Courts of Appeal, Rule 2-16.1.B. Costs of this appeal are assessed to Jeremy G. Hoffpauir.

AFFIRMED