

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

C.F.

Appellee

v.

R.F.

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 490 EDA 2012

Appeal from the Order Entered December 20, 2011
In the Court of Common Pleas of Monroe County
Civil Division at No(s): 1166 D.R. 2010 & 9119 CIVIL 2011

BEFORE: MUNDY, J., OTT, J., and PLATT, J.*

MEMORANDUM BY MUNDY, J.:

Filed: February 8, 2013

Appellant, R.F. (Father), appeals from the December 20, 2011 order granting Appellee, C.F. (Mother), primary physical custody of their biological daughter, A.F.¹, and permission to move to North Carolina with A.F.² After careful review, we affirm.

The relevant facts and procedural history, as gleaned from the certified record, are as follows. Mother and Father met online while Father was serving in the Marine Corps and stationed in Japan. Mother and Father were married in October 2008, when Father transferred to Jacksonville, North

* Retired Senior Judge assigned to the Superior Court.

¹ The record reflects that A.F. was born in August 2009.

² We note that Mother did not file a brief in this matter.

Carolina. A.F. was born in North Carolina in August 2009. The parties separated in March 2010, when A.F. was seven months old, and divorced in March 2011. Mother was A.F.'s primary caretaker during the marriage and after separation.

Mother met B.D. (Stepfather), in Jacksonville, North Carolina, and began a romantic relationship with him in April 2010, after her separation from Father. Mother moved back to her parents' home in Stroudsburg, Pennsylvania in July 2010. Mother testified as to her reasons for moving as follows.

I needed to have a steady job. I wanted to go to school. Going to college here in Pennsylvania was much cheaper than North Carolina because I'm a Pennsylvania resident. I have been continuing my education since, and [Stepfather] ... supported my decision 100 percent to move home. He knew that I was doing it for the right reasons. And we made our relationship work. We decided that we were going to try and we did. And we held a long distance relationship. He came up on the weekend whenever he could just to come see us. That was up until he deployed. He went to Afghanistan in December of last year and just returned home in July.

N.T., 12/20/11, at 17.

Father left the Marine Corps in May 2010. He attempted to obtain a position with the New Jersey State Police, but was unsuccessful. When Father moved to Pennsylvania, the parties entered into a written custody agreement in which they agreed that, if they lived more than 100 miles apart, they would equally share custody of A.F. *Id.* at 50. When Father

moved to Pennsylvania, he took custody of A.F. for a month. It was then that Mother decided to move back to Pennsylvania, in part because she did not like the month-long separation from A.F.

Father was living with his parents at the time of the hearing, and was attending Northampton County Community College. Father was receiving military benefits to assist him with tuition and expenses. Since the parties have lived in Pennsylvania, Father has seen A.F. every other weekend. In August or September 2011, Mother told Father she intended to move to North Carolina, with A.F., to live with Stepfather.

On October 21, 2011, Father filed his complaint for custody. The trial court held a hearing on Father's complaint on December 20, 2011. Mother sought primary custody at the hearing in this matter, and testified that she felt that it would be better for A.F. to be living with her and Stepfather, not with her and her parents and younger brother. *Id.* at 18. Mother will be moving to a three-bedroom home with Stepfather, where A.F. will have her own room. Mother is also expecting a child with Stepfather. Mother testified that, if she were not allowed to relocate, she would remain with her parents in Stroudsburg. *Id.* at 23, 33.

As noted, on December 20, 2011, the trial court entered an order granting Mother primary physical custody of A.F., and permission to move to North Carolina with A.F. Specifically, the order determined Mother and Father would share custody on a rotating basis where Mother has A.F. for six

weeks, followed by Father having A.F. for three weeks, with exceptions to accommodate holidays. The parties share legal custody. On January 17, 2012, Father filed a timely notice of appeal along with a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i).

On appeal, Father raises the following issues for our review.

- I. Did the trial court err and/or abuse its discretion in granting [Mother]'s relocation based upon the potential strain on [Mother]'s new marriage absent the relocation where [Mother] and her new spouse had never cohabited, where [Mother]'s spouse made at least monthly visits to Pennsylvania, where [Mother] testified that she would remain in Pennsylvania if she were not granted primary physical custody and permission to relocate and where [Mother] admitted that within approximately 2 years, she would likely return to reside in Pennsylvania[?]
- II. Did the trial court err and/or abuse its discretion in granting the relocation without considering the significant extended family relationships to the child in the Pennsylvania and New Jersey areas, the feasibility of preserving [Father]'s relationship with [A.F.] from approximately 500 miles away, [Mother]'s actions to thwart [Father]'s relationship with [A.F.], and the lack of any evidence that the relocation would enhance the quality of life for [A.F.] in any way[?]
- III. Did the trial court err and/or abuse its discretion in granting [Mother] primary custody and in particular finding that the parties had only minimal communication difficulties where [Mother] admitted that she did not share [A.F.]'s information with [Father], [Mother] refused to include [Father] in decisions about

[A.F.]’s development, health and education, [Mother] allowed her new husband to berate, insult and curse at [Father] in [A.F.]’s presence during a custody exchange which was the first meeting between the new husband and [Father], and where [Mother]’s new spouse’s testimony berated and insulted [Father] regarding his status as a veteran[?]

Father’s Brief at 10.

In addressing a custody order, our scope and standard of review is as follows.

In reviewing a custody order, our scope is of the broadest type and our standard is abuse of discretion. We must accept findings of the trial court that are supported by competent evidence of record, as our role does not include making independent factual determinations. In addition, with regard to issues of credibility and weight of the evidence, we must defer to the presiding trial judge who viewed and assessed the witnesses first-hand. However, we are not bound by the trial court’s deductions or inferences from its factual findings. Ultimately, the test is whether the trial court’s conclusions are unreasonable as shown by the evidence of record. We may reject the conclusions of the trial court only if they involve an error of law, or are unreasonable in light of the sustainable findings of the trial court.

C.R.F., III v. S.E.F., 45 A.3d 441, 443 (Pa. Super. 2012).

Additionally, we have stated the following.

[T]he discretion that a trial court employs in custody matters should be accorded the utmost respect, given the special nature of the proceeding and the lasting impact the result will have on the lives of the parties concerned. Indeed, the knowledge gained by a trial court in observing witnesses in a custody

proceeding cannot adequately be imparted to an appellate court by a printed record.

Ketterer v. Seifert, 902 A.2d 533, 540 (Pa. Super. 2006), *quoting Jackson v. Beck*, 858 A.2d 1250, 1254 (Pa. Super. 2004).

The primary concern in any custody case is the best interests of the child. “The best-interests standard, decided on a case-by-case basis, considers all factors that legitimately have an effect upon the child’s physical, intellectual, moral, and spiritual wellbeing.” **Saintz v. Rinker**, 902 A.2d 509, 512 (Pa. Super. 2006), *citing Arnold v. Arnold*, 847 A.2d 674, 677 (Pa. Super. 2004).

Prior to our discussion of the merit of Father’s claims, we must first address two fatal shortcomings in Father’s brief. Father’s brief cites the factors set forth in 23 Pa.C.S.A. §§ 5328 (regarding custody), and 5337(h) (regarding relocation), but fails to cite any other statute or case law in support of his contentions. Father makes no effort whatsoever to link the facts of his case to the law. In sum, Father does not make any attempt to develop a coherent legal argument to support his claims that the trial court erred in awarding primary legal custody to Mother and permitting her to relocate with A.F.

This Court has held, that “[t]he failure to develop an adequate argument in an appellate brief may result in waiver of the claim under Pa.R.A.P. 2119.” **Commonwealth v. Beshore**, 916 A.2d 1128, 1140 (Pa.

Super. 2007) (internal citation omitted). Additionally, “arguments which are not appropriately developed are waived. Arguments not appropriately developed include those where the party has failed to cite any authority in support of a contention.” **Lackner v. Glosser**, 892 A.2d 21, 29-30 (Pa. Super. 2006) (internal citations omitted); **see also Chapman-Rolle v. Rolle**, 893 A.2d 770, 774 (Pa. Super. 2006) (stating, “[i]t is well settled that a failure to argue and to cite any authority supporting an argument constitutes a waiver of issues on appeal”) (citation omitted). Furthermore, “the ‘argument’ section of an appellate brief must contain a full discussion of the points raised accompanied by citation to pertinent authority.” **In re Child M.**, 681 A.2d 793 (Pa. Super. 1996). Accordingly, on this basis alone we could deem Appellant’s issues waived.

Moreover, our review reveals that in the “Argument” section of Father’s brief, he examines the evidence in light of the trial court’s findings and asks us to reach a different conclusion. We note that this Court may not reweigh the evidence if the trial court’s findings are supported by the record.

The trial court, not the appellate court, is charged with the responsibilities of evaluating credibility of the witnesses and resolving any conflicts in the testimony. In carrying out these responsibilities, the trial court is free to believe all, part, or none of the evidence. When the trial court’s findings are supported by competent evidence of record, we will affirm even if the record could also support an opposite result.

In re A.K., 936 A.2d 528, 533 (Pa. Super. 2007) (quotation omitted). Our review of the record in this case reveals that the trial court's findings are supported by competent evidence. Because we are unable to discern, and Father does not identify for us, any abuse of discretion on the part of the trial court, we are compelled to accept the trial court's findings. ***See id.***

Lastly, we conclude the trial court's findings are supported by the record. The trial court made its decision and analyzed that decision on the record at the close of the hearing on December 20, 2011. N.T., 12/20/11, at 100-111. In that analysis, the trial court examined each of the sixteen factors listed in sections 5328 and 5337(h), and gave the reasons for its finding pursuant to each. Our review of the record reveals that the hearing transcript supports the trial court's findings for each of those factors. Absent an abuse of discretion, we will not disturb the findings of the trial court.

Accordingly, for the foregoing reasons, we affirm the December 20, 2011 order of the trial court granting primary physical custody of A.F. to Mother and permission to relocate with A.F. to North Carolina.

Order affirmed.