

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000292-MR

JANET BALLMAN

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 00-CI-01581

JOSEPH KELLY BALLMAN

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUIDUGLI, JOHNSON, AND KNOPF, JUDGES.

KNOPF, JUDGE: Janet Ballman appeals from a decree of the Hardin Circuit Court, entered December 4, 2001, dissolving her marriage to Joseph Kelly Ballman (Kelly), awarding the couple joint custody of their three daughters, and designating Kelly the residential custodian. Janet contends that the trial court abused its discretion by assigning the children's residence to Kelly. We affirm.

After almost sixteen years of marriage, Janet and Kelly separated in October 2000. Janet petitioned for divorce

that same month. For most of the marriage the couple had lived in Breckinridge County, near Kelly's parents, and had enjoyed access to the Ballman family farm. Kelly raised show hogs and sheep on the farm, and as his daughters became old enough they joined him in that pursuit, each year selecting and raising what they judged to be promising animals, then in the summer showing the animals at various competitions. At the time of the separation, Janet and Kelly's oldest daughter, Hope, was fifteen years old and already a seasoned and enthusiastic participant in these farming activities. She was a member of the Future Farmers of America and was taking classes at Breckinridge County High School in preparation, she hoped, for an agriculture-related major in college. The younger daughters, Ashley, then aged ten, and Samantha, aged eight, also worked with Kelly on the farm and participated in the summer livestock shows.

When the couple separated, Janet took the three children with her to Hardin County, where she had been offered a job and where she would be near her father and brother. Hope, however, desired not to be removed from her high school and very soon returned to her home with Kelly. This arrangement—Hope living with Kelly, Ashley and Samantha with Janet—was formalized in a temporary custody order entered in December 2000.

The domestic relations commissioner held the final custody hearing in September 2001. At the hearing, both parties

essentially conceded the propriety of joint custody; they each acknowledged that the other had been a loving, fit, and committed parent. Both expressed the desire to provide a residence for all three girls, although Janet recognized Hope's desire to remain where she was, and both raised certain objections to the residential arrangements of the other, primarily having to do with care and supervision of the children while the parents worked. Although neither parent's situation was ideal, the commissioner found that each of them is a suitable custodian who could provide a residence for the girls. The commissioner recommended joint custody, therefore, but further recommended that Kelly be the residential custodian because the girls would benefit, the commissioner found, from remaining together and from having the lives they had grown used to and thrived in disrupted no more than necessary. The trial court adopted the commissioner's findings and recommendations without change.

Although she concedes that under KRS 403.270 the trial court has broad discretion to award custody and its accompaniments such as residency,¹ Janet maintains that the trial court abused its discretion in this instance. She notes that in making custody determinations the trial court is to attempt to

¹ Squires v. Squires, Ky., 854 S.W.2d 765 (1993).

further the best interests of the children,² and she contends that the best interests of the two younger girls, at least, would be served by their residing with her. Not only has she been Ashley's and Samantha's primary caregiver, the person they are used to for everything from meals to baths to bedtime rituals, but she asserts that Kelly is not as able as she is to provide the sort of daily care that young girls need. Aside from his time with them on the farm, Kelly had been less involved than Janet in the girls' daily routine, in their school life, and in their formation as young women. Kelly's job as a truck driver had kept him away from home two evenings a week and would probably continue to do so. On those evenings the girls would be left in the care of Kelly's elderly mother. Further, Janet worried that Kelly's admitted bouts of temper might sometimes render him impatient with the girls' normal limitations and immaturities.

While all of these facts properly bore on the trial court's decision, we are persuaded, contrary to Janet's assertions, that the trial court duly considered them as well as the other relevant factors listed in KRS 403.270 (2). In addition to Ashley's and Samantha's daily interaction with their mother, of which no one would deny the importance, the court had also to consider their interactions with their sister and their

² KRS 403.270.

father as well as their need for a measure of stability as they attempt to adjust to their parents' divorce. The commissioner's and the trial court's resolution of this dilemma attempts to leave intact as much of the girls' former life as possible, a life that seems to have served them well. Although this is not the only resolution imaginable, neither is it unreasonable or clearly erroneous. Notwithstanding problems shared by many single parents, Kelly would appear to be both willing and able to provide his daughters with a nurturing residence. He would also appear to offer no resistance to Janet's joint custody or to her efforts to include her daughters fully in her new life.

Because we are thus persuaded that the Hardin Circuit Court did not abuse its discretion, we affirm its December 4, 2001, decree.

ALL CONCUR.

BRIEF FOR APPELLANT:

Barry Birdwhistell
Bland & Birdwhistell
Elizabethtown, Kentucky

BRIEF FOR APPELLEE:

Lyn Taylor Long
Moulton & Long, PLLC
Elizabethtown, Kentucky