

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000586-MR

MICHAEL LYNN ADAMS

APPELLANT

v. APPEAL FROM CASEY CIRCUIT COURT
HONORABLE JAMES G. WEDDLE, JUDGE
ACTION NO. 92-CI-00164

ALICIA ANN ADAMS (NOW BLACK)

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BARBER, DYCHE, AND TACKETT, JUDGES.

TACKETT, JUDGE: Michael Lynn Adams appeals from the judgment of the Casey Circuit Court, which denied a change of custody of the parties' minor child, C.A., from Alicia to Michael. He argues that the court improperly excluded expert testimony about the psychological effects of an incident of physical abuse by the child's stepfather, and that the court improperly excluded testimony about Alicia's relationship with a new man after divorcing the stepfather who allegedly beat C.A. We affirm.

The motion for change of custody was made after an incident of physical abuse by the child's stepfather, Joe Black, who hit the child with a belt. A domestic violence order was issued in Pulaski County, and shortly thereafter Michael moved for a change of custody. The case was transferred to Casey County which had greater contacts with the parties. Michael does not appeal the transfer of venue.

At the hearing, the circuit court refused to admit testimony by Dr. Peter Schilling about the psychological effects of the physical abuse, and whether the child felt endangered by living with his mother. The court also refused to admit testimony about the mother's new relationship with a man she had met on the Internet, as there was no evidence that the man was any threat to the child. The court held that the incident of abuse "produced no permanent damage or ill effects" on the child, that there was no appreciable evidence that Alicia had failed to protect the child, that there was no evidence that Alicia had failed to provide proper security for the child, and a change of custody was not warranted. This appeal followed.

The standard of review with respect to evidentiary rulings is whether the court abused its discretion. Goodyear Tire and Rubber Co. v. Thompson, Ky., 11 S.W.3d 575 (2000). We conclude that it did not. The court was well within its discretion to conclude that the expert testimony was unnecessary

to its decision, as it is the court's decision whether expert testimony will be helpful to the finder of fact - in this case, the court itself. Likewise, the court could exclude any evidence of the mother's new relationship since there was no allegation of specific danger to the child. Kentucky Revised Statutes 403.270(3) states in pertinent part that the court "shall not consider conduct of a proposed custodian that does not affect his relationship to the child." Michael has failed to allege any facts that would take the matter out of this general prohibition; therefore, we cannot agree that the court abused its discretion in excluding the evidence.

The judgment of the Casey Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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