

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001106-MR

JOSHUA MICHAEL SHOUSE

APPELLANT

v. APPEAL FROM UNION CIRCUIT COURT
HONORABLE TOMMY W. CHANDLER, JUDGE
ACTION NO. 01-CI-00220

CHRISTINA MICHELLE SHOUSE

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM and COMBS, Judges; and MILLER, Senior Judge.¹
COMBS, JUDGE. Joshua Shouse appeals from an order of the Union
Circuit Court dissolving his marriage to Christina Shouse and
awarding her sole custody of the parties' son. Joshua argues
that the trial court erred in awarding sole custody to Christina
instead of making an award of joint custody. Upon review of the
record, we conclude that the trial court did not abuse its
discretion. Therefore, we affirm.

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of
the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution
and KRS 21.580.

The parties were married in July 1999. Their only child, Joshua Coy Shouse, was born on March 21, 2000. In his petition for dissolution of the marriage, filed on October 11, 2001, Joshua sought sole custody of his son. Christina, who had moved with the child to her home state of Michigan in May of that year, also sought sole custody of the infant. An evidentiary hearing was conducted before the Domestic Relations Commissioner in February 2002.

In his report, the Commissioner made detailed findings of fact with respect to the issue of custody and concluded that it was in the best interest of the child that Christina be granted sole custody. He also recommended that Joshua be awarded two weeks of continuous visitation with the child every other month. Both parties filed exceptions to the report. On April 23, 2002, the trial court entered an order affirming the report and adopting the recommendations. In its ruling, the trial court found that the Commissioner "tried to reach a reasonable resolution to the [custody] issue." This appeal followed.

The only issue raised by the appellant is the failure of the trial court to address the issue of joint custody. He argues that he is entitled to a rehearing solely because the trial court failed to make any findings as to the ability of the parties to be joint custodians of their son. In response,

Christina observes that neither party sought joint custody. Joshua did not raise the issue of joint custody in his exceptions to the Commissioner's report nor did he move the court for more specific findings regarding the award of custody. The issue of joint custody was not mentioned in Joshua's pre-hearing statement on appeal. For all these reasons, Christina contends that Joshua has failed to preserve the issue for our review.

The principal consideration in every case involving custody is the best interest and welfare of the child. Even though neither party sought joint custody, it was incumbent upon the trial court to consider all potential arrangements in determining the one best suited for the child. See, Squires v. Squires, Ky., 854 S.W.2d 765 (1993). Our review does not permit us to substitute our judgment for that of the trial court. Reichle v. Reichle, Ky., 719 S.W.2d 442, 444 (1986). Our function is to determine whether the trial court's findings of fact are supported by the evidence and whether it abused its discretion in concluding that sole custody was appropriate under the circumstances. Id.

We have not received a transcript or videotaped recording of the evidence. Nor has a narrative statement been provided. Therefore, we are bound to conclude that the trial court's findings are supported by substantial evidence. Dillard

v. Dillard, Ky.App., 859 S.W.2d 134 (1999). Those findings reveal that it applied the criteria outlined in KRS² 403.270. Although it did not directly address the issue of joint custody, the court carefully considered the circumstances of the parties in determining that joint custody was not warranted. Specifically, it found that both parties are young and immature, depending upon their respective parents for financial support and child care. Their marriage was brief, unstable, and somewhat tumultuous. Additionally, they now live a long distance apart from one another. Our review of the findings in the context of the circumstances of these parties persuades us that the court did not abuse its discretion in making an award of sole custody.

The judgment of the Union Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jill Brady
Henderson, Kentucky

BRIEF FOR APPELLEE:

Catherine C. Staib
Frankfort, Kentucky

² Kentucky Revised Statutes.