

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001268-MR

TINA M. RAINES

APPELLANT

v. APPEAL FROM SIMPSON CIRCUIT COURT
HONORABLE WILLIAM R. HARRIS, JUDGE
ACTION NO. 01-CI-00062

JOHN PAUL RAINES

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND DYCHE, JUDGES.

DYCHE, JUDGE. Tina M. Raines appeals from an order of the Simpson Circuit Court, which granted her and her ex-husband joint custody of their daughter, and named the ex-husband as primary residential custodian. Finding no abuse of discretion or other error, we affirm.

Tina first complains that it was an abuse of discretion for the trial court not to agree to transfer venue of this action to the Warren Circuit Court. She cites the fact

that she and the child's father lived in Warren County during the marriage, that she and the child lived there until the present order was entered, and that Paul, the child's father, had only lived in Simpson County for eleven days at the time he filed the petition for dissolution. While we might agree that a change of venue to Warren County would not have been error, we cannot agree that failure to do so was error. KRS 452.470 mandates that a dissolution action "be brought in the county where the husband or wife usually resides." Paul's eleven-day residence satisfies that requirement. In addition, Tina makes no credible argument that she was in any way prejudiced by the case being heard in Simpson County. There was no abuse of discretion.

Tina next, and primarily, complains of the trial court's consideration of her sexual behavior in making its decision on custody and residence of the child. She cites KRS 403.270(3), which provides that, "The Court shall not consider conduct of a proposed custodian that does not affect his relationship to the child." She makes no denial or apology for her promiscuous behavior; her family, with whom the child would presumably spend increased time should Tina be primary residential custodian, finds no fault in her multiple and continuing liaisons. She has not denied taking the child to a tryst with her current paramour.

Krug v. Krug, Ky., 647 S.W.2d 790 (1983), allows the trial court to consider evidence of conduct "likely to affect" the child adversely. That is what the trial court did in this case. We find no error. Tina has not been denied visitation, or any participation in making decisions about the child's upbringing. She is not the primary custodian; this is, according to the evidence, in the child's best interest. The order of the Simpson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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