

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001396-MR

TRENTON CLAY HATFIELD

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE DANIEL J. VENTERS, JUDGE
ACTION NO. 99-CI-00587

ALAN WALTERS AND ROSE WALTERS;
COMMONWEALTH OF KENTUCKY, CABINET
FOR FAMILIES AND CHILDREN;
AMANDA WALTERS WOODS;
JERRY HATFIELD AND KATIE HATFIELD

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: JOHNSON, SCHRODER, AND TACKETT, JUDGES.

TACKETT, JUDGE: Trenton Hatfield appeals from an order of the Pulaski Circuit Court awarding permanent custody of his minor son to the maternal grandparents. After careful consideration of the legal issues involved and a thorough review of the trial court's findings of fact and conclusions of law, we reverse and remand.

Hatfield married Amanda Walters in 1993 and their son, T.H., was born on September 28, 1994. When T.H. was four months old, Hatfield re-enlisted in the Army and moved to Louisiana. At first, Amanda and the baby remained in Kentucky, living with her parents, Alan and Rose Walters. Two months later, Amanda and T.H. moved to Ft. Polk where Hatfield was stationed and remained there until the summer of 1995 at which time they moved back to Kentucky to live with her parents. After about a month, Amanda moved out of her parents' home and Alan and Rose cared for T.H. exclusively from his first birthday until he was 25 months old. During this time, Hatfield and Amanda were granted a divorce by a judgment entered in Leesville, Vernon Parish, Louisiana, which did not adjudicate child custody or support between the parties. Amanda and Hatfield agreed between themselves that T.H. would remain with Amanda and Hatfield would pay child support.

Amanda, who suffers from bipolar affective disorder, has been unable to care for T.H. for long periods of time. He was removed from her custody on October 6, 1995, by order of the Pulaski Circuit Court which granted temporary custody to the Cabinet for Families and Children (CFC). Over the years, CFC intermittently had temporary custody of T.H., and he has resided at different times with Amanda, her parents, and his paternal grandparents, Jerry and Katie Hatfield. By July of 1997, Amanda

had married Tom Woods and had given birth to another child, and T.H. was residing with Alan and Rose. For approximately the next eighteen months, Amanda only visited her son sporadically while his father had no contact with him. The paternal grandparents, however, visited regularly. After his fourth birthday, T.H. moved into the home that Amanda shared with her husband and new baby. He lived with his mother this one last time until June 1999 when Amanda was forced to enter a spouse abuse shelter and T.H. again returned to his maternal grandparents' home.

During this time his paternal grandparents, Jerry and Katie, began a legal battle to establish visitation rights which lasted until May 2001. Although the paternal grandparents were awarded visitation, T.H. remained with Alan and Rose until October 2001 when they requested that CFC place their grandson in foster care. During this time, Hatfield remained on active duty with the Army, paid child support, and saw his son approximately three times a year when he was on leave. At those times, T.H. was usually in the company of Hatfield's parents, and Hatfield alleges he was unaware that Amanda was no longer raising the child. Hatfield became aware of the extended custody/visitation battles between the grandparents as he was about to be deployed to Kosovo.

When Hatfield returned from his tour of duty in Kosovo in December 1999, Alan and Rose filed a petition requesting permanent custody of T.H. Hatfield entered an appearance and requested sole custody of his son. CFC was made a party in April 2002 and affirmatively pled, based on the home evaluation of Hatfield and his fiancée, Anastasia DeMattos, that T.H. should be placed with his father. The trial court held a hearing and made findings of fact and conclusions of law determining that Hatfield had not waived his superior parental right to custody of T.H., but that he was unfit to have custody due to his lack of involvement with his son. Alan and Rose were awarded permanent custody of T.H., subject to visitation by Hatfield and the paternal grandparents, and Hatfield was ordered to pay child support. This appeal followed.

"The liberty interest at issue in this case - the interest of parents in the care, custody, and control of their children - is perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme] Court." Troxel v. Granville, 530 U.S. 57, 65; 120 S.Ct. 2054, 2060; 147 L.E.2d 49, 56 (2000). "In order to protect the superior right of a parent where a third party seeks custody, the parent must prevail unless it can be demonstrated by clear and convincing evidence that the parent is unfit as required by the factors set forth in Kentucky Revised Statute (KRS) 625.090." Forester v.

Forester, Ky. App., 979 S.W.2d 928, 930 (1998). The trial court made a specific finding that the home Hatfield and his fiancée shared in Fayetteville, North Carolina, was suitable for rearing a child. Nevertheless, the trial court concluded that Hatfield's "failure to exercise any substantial involvement in the child's life" supported a finding that Hatfield was an unfit parent. The conclusions of law portion of the trial court's order explained the decision as follows:

Trenton Hatfield is not shown to be a person of general immoral character. He is apparently serving honorably in the United States Army and has demonstrated his commitment to the Army and to his country by making it a career. By so doing, he has at least indirectly provided the financial support for his child through an Army allotment of child support. He has a home which is an appropriate environment for a child. He has a bright, intelligent and energetic fiancée who is willing to assist in the care of his child. It is, however, clearly and convincingly established by the evidence in this case, that [T.H.] has a critical relationship with the Walters, created by virtue of the fact that they have been his most consistent family care providers of him during his infancy and childhood, and that the placement of [T.H.] with Trenton, with whom he has no close relationship, and with Trenton's future wife, with whom [T.H.] has virtually no relationship, would uproot [T.H.] and disrupt the critical relationship he has with the Walters. That situation would be difficult for a child with no health issues, but with [T.H.], who has a number of health issues, the disruption is even more significant.¹ On top of that, it is apparent

¹ T.H. is being treated for juvenile bipolar affective disorder, allergies and attention deficit hyperactive disorder.

from the evidence that Trenton and the paternal grandparents are not inclined to follow the ongoing treatment prescribed by Dr. Blackburn in favor of alternative treatment. The disruption of [T.H.'s] treatment with his physician is another factor bearing on Trenton's suitability to the trust of caring for the child.

Once the trial court found Hatfield to be an unfit parent, it determined that it was in his son's best interest to live with the maternal grandparents, Alan and Rose.

The trial court's findings of fact must be upheld on appeal if supported by substantial evidence. Reichle v. Reichle, Ky., 719 S.W.2d 442 (1996), Combs v. Combs, Ky., 787 S.W.2d 260 (1990). Substantial evidence has been defined as "evidence of substance and relevant consequence sufficient to induce conviction in the minds of reasonable people." Ky. State Racing Comm. V. Fuller, Ky., 481 S.W.2d 298 (1972), Sherfey v. Sherfey, Ky. App., 74 S.W.3d 777 (2002). KRS 625.090 sets forth the grounds which the trial court must find, by clear and convincing evidence, prior to a termination of parental rights. These are the same grounds which must be found by a trial court allowing a third party to prevail in a child custody dispute against the child's parent. Forester at 930. These grounds include such factors as abandonment, infliction of physical or sexual abuse, and failure to provide care for the child.

The trial court in this instance fails to cite any of the factors in KRS 625.090 in support of its conclusion that Hatfield is an unfit parent. Moreover, KRS 625.090(2)(e) and (g), which deal with a parent's failure to provide parental care and medical care both require an additional finding that there is "no reasonable expectation of improvement" in the parent's capacity to provide such care. The trial court concluded that Hatfield is not a person of immoral character, that he has provided financially for T.H. and that the home he shares with his fiancée is suitable to rearing a child. In contrast, the finding that Hatfield is an unfit parent because he has not been substantially involved in his son's life does not rest on the type of substantial evidence which would compel us to accept the trial court's decision to award permanent custody to the maternal grandparents pursuant to Sherfey.

For the forgoing reasons, the judgment of the Pulaski Circuit Court is reversed and this case is remanded with instructions to make findings pursuant to KRS 625.090 prior to determining whether to award custody of T.H. to his father or to his maternal grandparents.

ALL CONCUR.

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