

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002291-MR

JAMI HALL

APPELLANT

v. APPEAL FROM PERRY CIRCUIT COURT
HONORABLE DOUGLAS C. COMBS, JR., JUDGE
ACTION NO. 01-CI-00462

JOHN TATE AND BARBARA TATE

APPELLEES

OPINION

AFFIRMING

** ** * * * * *

BEFORE: BARBER, DYCHE, AND McANULTY, JUDGES.

DYCHE, JUDGE. Jami Hall appeals from an order of the Perry Circuit Court finding John and Barbara Tate to be *de facto* custodians [KRS 403.270(1)(a)] of her daughter, and awarding custody of the child to the Tates. We affirm.

The child was born March 17, 1989 to Jami and Larry D. Cook, who is the brother of Barbara Tate. Jami and Larry were divorced by decree of the Knott Circuit Court on December 27, 1995; Jami was granted custody of the child by that decree. The

child lived with Jami until sometime in mid 2000, when she began living with the Tates. The trial court found that she began continuous residence with the Tates in May, 2000, after having spent considerable time with them beginning in 1996.

The trial court also found that the Tates provided the exclusive monetary support for the child beginning in May, 2000, and continuing until the hearing date in November 2001. As is so often in this type case, the child initially changed residence due to Jami suffering an unfortunate series of setbacks in her personal life which prevented her from being able to provide a secure and stable home for the child; the relationship with the Tates blossomed, and the child became integrated in the Tates' home.

Jami filed the present action in an effort to regain custody of the child after the Tates had filed a juvenile petition seeking an emergency custody order. The trial court's domestic relations commissioner conducted a hearing on the petition, and issued proposed findings of fact, conclusions of law, and a proposed order. Before the time for exceptions to be filed by the parties (CR 53.06), the trial court entered an order confirming the commissioner's report, and awarding custody to the Tates. This appeal followed.

Jami first argues that she was deprived of her procedural right to be heard by the trial court on any

exceptions she had to the commissioner's report. While we agree that the handling of the matter did not strictly follow the procedure set out in the Kentucky Rules of Civil Procedure, we agree with the Tates that the fact that Jami had hearings on her exceptions before the commissioner and the trial court, on separate occasions refutes her argument. Even though the hearings were not conducted prior to the entry of the final order, she had adequate opportunity to present her side of the issue. Any error in procedure was harmless.

Jami next argues that the evidence did not support the finding that the Tates had met the statutory requirements to be *de facto* custodians. We are bound to affirm the trial court's factual findings unless they are clearly erroneous. CR 52.01. We have examined the record, and read the transcript of the hearing, and cannot find clear error. There is evidence to support the finding that child had resided with the Tates for at least one year, and that during that period the Tates had provided the exclusive support for, and care of, the child.

The final argument is that the trial court improperly used the "best interest" test in determining custody of the child, as Jami had been awarded custody by the divorce decree. We disagree. Once the trial court found the Tates to be *de facto* custodians, KRS 403.270(2) mandates use of that standard.

While we might not have come to the same result, we cannot say that there was error in the trial court's decision.

ALL CONCUR.

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