

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002143-MR

JAMIE M. LUCKETT

APPELLANT

v.

APPEAL FROM HARDIN FAMILY COURT
HONORABLE PAMELA ADDINGTON, JUDGE
CIVIL ACTION NO. 03-CI-01676

MATTHEW B. LUCKETT

APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART AND REMANDING
* * * * *

BEFORE: KNOPF AND TACKETT, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

HUDDLESTON, SENIOR JUDGE: On July 24, 1993, Jamie M. Lockett (Jamie) and Matthew B. Lockett (Matt) were married in Daviess County, Kentucky. Jamie and Matt eventually moved to Elizabethtown in Hardin County, Kentucky, where Jamie worked as a school teacher in the public school system and Matt worked as a school psychologist in the Fort Knox school system. Jamie and Matt had two children, Lucas, born August 17, 1999, and Seth,

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

born October 3, 2002. Jamie and Matt separated on June 19, 2003, and, on September 22, 2003, Matt filed a petition for dissolution of the parties' marriage.

Shortly after moving to Hardin County, Matt met Jean Allen Brashear (Jean Allen), an elementary teacher at Fort Knox. During the autumn of 2001, Matt and Jean Allen began having an affair. At the time, Jean Allen was married and had three children. After Jean Allen's husband learned of the affair, he filed for dissolution of their marriage in May 2003.

While Matt tried to keep the affair secret, Jean Allen appeared to flaunt the affair in front of Jamie. During the summer of 2002, Jean Allen convinced her husband that they should switch churches and start attending Severns Valley Baptist Church, Jamie's and Matt's church. In October 2002, while Jamie was in the hospital after giving birth to Seth, Jean Allen visited Jamie and gave both Jamie and Matt gifts. Around Thanksgiving, Jamie began receiving phone calls, when Matt was not home, from an unknown person. Later, Jamie accused Jean Allen of making the calls, and, according to Jean Allen's cell phone bill, calls had been made, during that time, from Jean Allen's cell phone to Jamie. Despite this, Jean Allen denied making the calls. Then, in January 2003, Jamie began receiving e-mails from an unknown person. In the e-mails, this person alluded to knowing something, in retrospect the affair, which

Jamie did not know. Later, Jamie accused Jean Allen of sending the e-mails. Jean Allen denied this, but a computer expert examined Jean Allen's computer and found the e-mails in the computer's memory. Despite this, Jean Allen continued to deny sending the e-mails. Then, in May 2003, Jamie received an envelope in the mail which contained a Mother's Day card that Matt had given to Jean Allen, a hand-written note that Matt had given to Jean Allen and a hardcopy excerpt from an e-mail that Matt had sent to Jean Allen. Jamie confronted Matt with the mail, and he confessed to the affair. Although Jamie accused Jean Allen of sending the envelope, Jean Allen denied it. At the final hearing before Hardin Family Court's domestic relations commissioner (DRC), Jamie argued that she should receive sole custody of Lucas and Seth because Jean Allen's prior behavior demonstrated that she was unstable and that she would be a negative influence on the boys.

After Seth was born in October 2002, Jamie took a leave of absence from work. Following the separation in June 2003, Jamie quit teaching and took a job as an accountant at Severns Valley Baptist Church. The accounting job paid considerably less than teaching and required Jamie to work longer hours as well. However, the boys attended daycare at the church, and, by working at the church, Jamie claimed that she was able to actually spend more time with the children than she

would have had she remained a teacher. Jamie felt this advantage outweighed the decreased wages. Matt contended that Jamie's decision to work at the church was not in the best interest of the children. By the time of final hearing, Jamie had returned to teaching.

At final hearing, Matt testified that, after the separation, he kept the children approximately 41% of the time and Jamie kept them the remaining 59% of the time. Matt testified that this was the minimum amount of parenting time he would accept. He testified that he would accept joint custody with an even split between himself and Jamie, but he testified that he wished to be designated as the boys' primary residential custodian because he feared that, if Jamie were the primary residential custodian, she would move to Owensboro. Not surprisingly, Jamie testified that she should be given sole custody and that it would be fair if the court only awarded Matt standard visitation. In addition, she testified that she had no plans to move to Owensboro, but she would not rule out such a move since she grew up there and her parents still lived there.

The DRC found that Jamie and Matt were both excellent parents and noted that Jamie's main objection to joint custody

was Matt's involvement with Jean Allen.² Regarding Jean Allen, the DRC stated:

A reasonable interpretation of the testimony and documentary evidence leaves one to conclude that Jean Allen Brashear deliberately set out to break up this marriage, and was successful in doing so, but many, if not most marriages terminate because of some involvement by one or both the parties . . . with another person.

However, despite Matt's involvement with Jean Allen, the DRC found that Matt was a devoted parent who had acted in the boys' best interest. The DRC concluded that Jean Allen was not a danger to the boys and found Jean Allen's prior behavior was not sufficient to preclude joint custody.

On September 21, 2004, a decree dissolving the Lucketts' marriage was entered. In the decree, the family court adopted the DRC's recommendations and granted joint custody to Jamie and Matt with each parent getting the children on a weekly basis. Although the family court granted joint custody, it did not designate either Jamie or Matt as the primary residential custodian. To Jamie's dismay, the family court also gave Jean Allen permission to pick up the boys if Matt was unable to do so. Regarding financial matters, the family court ordered Matt to pay child support in the amount of \$300.28 per month and to pay maintenance in the amount of \$400.00 per month for four

² By the time the parties filed their respective briefs, Matt and Jean Allen had married.

years. Jamie appeals the issues of custody and child support to this Court.

On appeal, Jamie argues that the family court abused its discretion when it granted joint custody to her and Matt. Jamie points out that, at the final hearing, only Matt and Jean Allen testified on Matt's behalf, and Jamie insists that Jean Allen was simply not credible because she lied about sending Jamie the e-mails, lied about calling Jamie and lied about mailing the envelope to Jamie. In contrast to Matt's evidence, Jamie points out that she presented multiple witnesses all of whom testified that she is an outstanding mother concerned only with the boys' best interests. Jamie asks this Court to review the testimony and to apply the standard set forth in Kentucky Revised Statutes (KRS) 403.270 in resolving the case at hand. In other words, Jamie requests this Court to substitute its judgment for that of the Hardin Family Court.

In addition, Jamie argues that Jean Allen intentionally destroyed Jamie's and Matt's marriage and then took steps to cover up her actions. Citing KRS 403.270(3), Jamie reasons that based on Jean Allen's prior behavior, Jean Allen would be a bad influence on Lucas and Seth. Jamie also argues that the family court based its decision on the

possibility that she might relocate. Citing *Fenwick v. Fenwick*,³ Jamie argues that the family court erred in basing its decision on the possibility of her relocation and argues that the family court was trying to prevent her from moving, which is prohibited by the holding in *Fenwick*.

When we review a child custody decision, we reverse only when the family court's findings of fact are clearly erroneous or its decision reflects a clear abuse of the considerable discretion granted such courts in custody matters.⁴

While we understand Jamie's concerns regarding Jean Allen's past behavior which casts her in a poor light, the family court's findings are supported by substantial evidence. The record clearly shows that Matt was and is a devoted father to Lucas and Seth, and Jamie does not dispute this. While this Court may have reached a different decision and would have designated a primary residential custodian, it is clear that the family court did not abuse its discretion when it granted joint custody to Jamie and Matt. Thus, we affirm the custody decision.

As to Jamie's concern that she has been prohibited from moving, there is nothing in the family court's decree that prohibits this. Even so, if Jamie does move, she will still be

³ 114 S.W.3d 767 (Ky. 2003).

⁴ Ky. R. Civ. Proc. (CR) 52.01. See also *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986).

bound by the parenting schedule set forth in the decree unless modified by the family court.

As to child support, Jamie argues that the family court erred since it never considered the child care costs paid by Jamie. Matt concedes that the family court should have considered Jamie's child care costs when it set child support. Thus, on the issue of child support, we reverse and remand with instructions that the family court recalculate child support to take into consideration amounts paid by Jamie for child care.

That portion of the decree relating to child custody is affirmed, while that portion of the decree relating to child support is reversed in part and this case is remanded to Hardin Family court for a recalculation as set forth herein.

ALL CONCUR.

BRIEF FOR APPELLANT:

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