

RENDERED: AUGUST 19, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000167-ME

LYNN M. GARNER (NOW ROBBINS)

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE WARD, JUDGE
ACTION NO. 96-CI-00531

DAVID M. GARNER

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: CHIEF JUDGE COMBS; DYCHE AND SCHRODER, JUDGES.

DYCHE, JUDGE: Lynn M. Garner (Robbins) appeals, for the third time, the order of the Campbell Circuit Court which named her ex-husband, David M. Garner, "primary residential parent" of their daughter. David's motion seeking that designation was in response to Lynn's announced intention to move, with the child, to Wisconsin. Finding that the trial court considered the motion under the proper standard of review, and that the evidence supports the findings of the trial court, we affirm.

Lynn and David divorced in 1996, entering into a shared parenting agreement as a part of the decree. Equal time with the parents and no interference with the other parent's rights and relationship with the children (the parties have a son, who is now an adult) were vital components of the agreement. The agreement worked well until May of 1998 when Lynn announced her intention to move, with their daughter, to Wisconsin. David immediately filed the motion to change the designation of the residential parent. His motion was granted, and Lynn appealed.

This court vacated the order and remanded for reconsideration in light of changes in case law which developed during the pendency of the appeal. On remand, the trial court again granted the motion, and Lynn again appealed. The order was again vacated and remanded for reconsideration in light of Fenwick v. Fenwick, 114 S.W.3d 767 (Ky. 2003), and its interpretation of KRS 403.340 and 403.350 in effect at the time. The trial court again granted the motion, and this appeal followed.

We have stated the two primary issues above, but first dispose of two lesser issues argued by Lynn. She complains that David's motion should fail because of two procedural irregularities: that it is accompanied by only one affidavit, rather than the two or more contemplated by the statute; and,

that the motion fails to establish, by sufficient evidentiary allegations, even his right to a hearing. Each of these issues was dealt with, adversely to Lynn, in earlier opinions of this court, and those rulings are therefore the law of the case. Further consideration is prohibited. Taylor v. Commonwealth, 63 S.W.3d 151, 167 (Ky. 2001).

The issue in this case is whether "The child's present environment [with Lynn] endangers seriously [her] physical, mental, moral or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to [her]." The trial court, after examining the evidence, found that the child was suffering from endangerment to her mental, emotional, and physical well-being, and that any advantage of the move to Wisconsin would be outweighed by the effect on her relationship with David, and the severance of her ties to her friends, community, school, and church. Although the trial court did not use the term "seriously" when describing the effects of the move on the child, an overall view of its opinion shows that the court knew the proper standards, examined the evidence under those standards, and found sufficient serious damage to the child as a result of the move to Wisconsin to change the residential parent.

We have examined the record and find no error by the trial court, clear or otherwise. Ky. R. Civ. Pro. 52.01. The

evidence supports the trial court's actions. Especially persuasive is the brief, both here and below, of the Guardian *Ad Litem*. The effects of the move on the child, both physically and emotionally, are well-documented. Uprooting her from family, friends, and community for little or no reason seriously endangers her health. Her relationship with her father would be severely impaired, in violation of the shared parenting agreement.

The order of the Campbell Circuit Court is affirmed.

ALL CONCUR.

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