

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001198-ME

DAVID BOWMAN

APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 04-CI-00750

DONNA BOWMAN

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: DYCHE, McANULTY, AND TACKETT, JUDGES.

DYCHE, JUDGE: David Bowman appeals from an order of the Greenup Circuit Court denying his motion to change custody of the parties' 16-year-old son; David maintains that the proof in the record adequately demonstrates that the change is in the child's best interest.

We have read the entire record, including the transcript of the hearing before the Domestic Relations Commissioner, and find the physical altercations between the child and his mother, and the fact that the child has failed the

eighth grade once, and was perilously close to repeating that feat, to support David's motion. The Commissioner was equally concerned, but found these factors to be outweighed by the move from Kentucky to Ohio.

Donna has not filed a brief with this court. In such a case, we are authorized to:

(i) accept the appellant's statement of the facts and issues as correct; (ii) reverse the judgment if appellant's brief reasonably appears to sustain such action; or (iii) regard the appellee's failure as a confession of error and reverse the judgment without considering the merits of the case.

CR 76.12(8)(c). We elect option (ii), as David's brief supports reversal. The order of the Greenup Circuit Court is reversed, and this matter is remanded for entry of an order consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Rhonda M. Copley
Ashland, Kentucky