

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002515-ME

GWENDOLYN ROBARDS

APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE T. STEVEN BLAND, JUDGE
ACTION NO. 05-CI-01762

JOSHUA GIDDINGS

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON AND VANMETER, JUDGES; GRAVES,¹ SENIOR JUDGE.

VANMETER, JUDGE: Gwendolyn Robards appeals from a custody order entered by the Hardin Circuit Court. For the reasons stated hereafter, we affirm.

Robards and appellee Joshua Giddings, who were never married to one another, are the parents of a son who was born in July 2004. In October 2005, Robards filed the underlying action seeking custody of the child. Giddings responded with a counterclaim seeking custody. In November 2006, after a hearing and a supplemental

¹ Senior Judge John W. Graves, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

hearing, the circuit court entered findings, conclusions, and a judgment awarding sole custody of the child to Giddings. This appeal followed.

KRS 403.270(2) provides in pertinent part:

The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent The court shall consider all relevant factors including:

- (a) The wishes of the child's parent or parents . . . as to his custody;
- (b) The wishes of the child as to his custodian;
- (c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;
- (d) The child's adjustment to his home, school, and community; [and]
- (e) The mental and physical health of all individuals involved[.]

Further, “[t]he court may grant joint custody to the child's parents . . . if it is in the best interest of the child.” KRS 403.270(5).

As the parties and the court are very familiar with the evidence, we will not provide a detailed summary herein. Suffice it to say that the parties adduced drastically conflicting evidence regarding the child's relationships, adjustment and best interest, as well as regarding the mental and physical health of the individuals involved in the proceeding. As stated by the trial court, although “each parent is at least minimally

qualified to be the primary physical custodian of [the child]. . . . neither is without blemish.”

Here, Robards contends that the trial court erred by failing to make certain factual findings required by KRS 403.270(2). More specifically, she asserts that the court failed to carefully consider the evidence in light of KRS 403.270(2)(c) and (d), which require consideration of the child's interaction and interrelationship with significant others, as well as the child's adjustment to home, school and community. However, appellant failed to file a motion requesting more specific findings pursuant to CR² 52.04. Further, the court in any event acknowledged the need to consider each of the pertinent factors mentioned in KRS 403.270(2) when finding:

In this case, each parent desires to be the custodial parent. The child is of such young age that he has no preference. There is likewise no preference as to interaction with home and other family members, and school and neighborhood adjustment. The really relevant factor to the Court is (e), the mental and physical health of all individuals involved. Based on what the Court has seen and heard the Court finds and concludes that [Giddings] is the far more stable, and trustworthy, parent (his military conviction notwithstanding). [Robards] has lived a less than perfect adult life so far, and has attempted to deliberately deceive this Court with perjured testimony and forged documents. The Court finds it difficult to believe anything that [Robards] has said, quite frankly, and is not willing to entrust the balance of [the child's] life to her oversight. In fact, the Court is so suspect of [Robards] that the court believes that [Giddings] should be awarded the sole care, custody and control of [the child].

² Kentucky Rules of Civil Procedure.

Contrary to Robards' claim on appeal, the trial court clearly considered each of the relevant factors set out in KRS 403.270(2). Although the court's decision turned on factors which Robards asserts are less important than others, the court was free to judge the witnesses' credibility, and to weigh and value the evidence as it deemed appropriate. *Hunter v. Hunter*, 127 S.W.3d 656, 659 (Ky.App. 2003). Further, although Robards seeks to deemphasize the seriousness of her admitted perjury and presentation of intentionally falsified documents to the trial court, it certainly was within that court's prerogative to judge Robards' credibility, to mistrust the remainder of her evidence below, and to question the wisdom of entrusting the child's upbringing to her. *See Caudill v. Acton*, 175 S.W.3d 617, 619 (Ky.App. 2004). Given each party's substantial but dramatically conflicting evidence, and regardless of whether a panel of this court might have interpreted or weighed the facts differently, we cannot say that the trial court clearly erred when making its findings of fact. CR 52.01. *See Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982).

Next, Robards asserts that the trial court abused its discretion by awarding sole custody to Giddings despite that court's alleged usual preference for joint custody in the absence of extenuating circumstances, Robards further claims that the court erred by failing to painstakingly consider all of the facts and circumstances, as mandated by *Squires v. Squires*, 854 S.W.2d 765, 768 (Ky. 1993). We disagree, as our review of the record, including the videotaped proceedings, clearly demonstrates that the trial court was attendant to and involved in the proceedings, and that Robards' clear pattern of deception

left the court unwilling to assume that she would comply with the court's orders or act in the child's best interest. *See Caudill*, 175 S.W.3d 617. We cannot say that the trial court abused its discretion by awarding sole custody to Giddings.

Finally, Robards asserts that insufficient evidence existed to support the court's finding that issues regarding her mental health prevented her from being named as the child's custodian. We disagree.

Although some of the allegations below were shown to be unsubstantiated, the evidence supported other allegations relating to “the mental and physical health of all individuals involved[.]” KRS 403.270(2)(e). The record includes substantial evidence pertaining to the mental health issues of Robards' daughter from a previous relationship, allegations that Robards may have overmedicated the parties' child, and Robards' apparent longstanding pattern of deception. Again, as the court was free to believe some parts and disbelieve other parts of the evidence, it did not err when it relied on certain evidence when making its findings below.

The court's judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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