

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000925-ME

P.C., MOTHER

APPELLANT

v.

APPEAL FROM MCCRACKEN CIRCUIT COURT,
FAMILY COURT DIVISION
HONORABLE CYNTHIA E. SANDERSON, JUDGE
ACTION NO. 06-J-00359

J.J., FATHER

APPELLEE

OPINION
VACATING AND REMANDING

** ** * ** * ** *

BEFORE: TAYLOR AND THOMPSON, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

TAYLOR, JUDGE: P.C. brings this appeal from an April 2, 2007, order of the McCracken Circuit Court, Family Court Division, awarding joint custody of the parties' minor child to the child's biological father, J.J., and designating J.J. as primary residential custodian. We vacate and remand.

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

P.C. and J.J. are the biological parents of E.C., born August 21, 2002. The parties were never married and never resided together. E.C. had resided with his mother, P.C., since his birth. Some four years after E.C.'s birth, on July 5, 2006, J.J. filed a motion seeking to establish his paternity and custody of E.C. Ultimately, J.J. was adjudged to be the biological father of E.C. by order entered November 29, 2006.

In March 2007, the family court conducted an evidentiary hearing on the custody issue and the bulk of the evidence presented pertained to the mental health of P.C. On April 2, 2007, an order was entered awarding the parties joint custody of E.C. and designating J.J. as E.C.'s primary residential custodian. This appeal follows.

P.C. contends the circuit court erred by designating J.J. as primary residential custodian. Specifically, P.C. alleges that the circuit court failed to make any findings of fact to support its award of custody and, most importantly, failed to consider the best interest of E.C. in reaching the custody determination. For the reasons hereinafter elucidated, we believe the circuit court erred as a matter of law by failing to make any findings of fact to support its award of custody.

The circuit court's order consisted of some five sentences and reads as follows:

HAVING BEEN sufficiently advised pursuant to a hearing held on March 26, 2007 and having previously established paternity of the minor child, [E.C.], as the biological son of [J.J.];

IT IS HEREBY ORDERED that the parties shall share joint custody of the minor child, with [J.J.], the father, as the primary residential custodian. Further visitation shall be liberal in order that [E.C.] shall have sufficient contact with his siblings. In the event the parties cannot work out an agreeable pattern of visitation, visitation shall be no less that [sic] the standard visitation schedule for McCracken County.

[J.J.] requested that no child support shall be required. The [J.J.] shall have the tax exemption for all years.

In an action tried by the court without a jury, Ky. R. Civ. P. (CR) 52.01 plainly requires the court to make specific findings of fact and separate conclusions of law. *Skelton v. Roberts*, 673 S.W.2d 733 (Ky.App. 1984); *Brown v. Shelton*, 156 S.W.3d 319 (Ky.App. 2004). The requirements of this rule have been held to be “mandatory.” *Brown*, 156 S.W.3d at 321. Where a circuit court fails to make any findings of fact as required by CR 52.01, such a complete omission of findings of fact constitutes reversible error as a matter of law; furthermore, there is no requirement that such a complete omission be initially brought to the attention of the circuit court under CR 52.02 or CR 52.04. *See Brown*, 156 S.W.3d 319. By contrast, where the circuit court makes some findings of fact, but these findings are inadequate, the inadequacy of the findings of fact must initially be brought to the circuit court's attention under CR 52.02 or CR 52.04 to preserve the issue for appellate review. *See Cherry v. Cherry*, 634 S.W.2d 423 (Ky. 1982).

In the case at hand, the circuit court failed to make any findings of fact as required by CR 52.01 to support its award of custody. We hold that the circuit court's failure to make any findings of fact constituted reversible error as a matter of law. It is axiomatic that a decision of the circuit court made without any findings of fact evade meaningful appellate review. Upon remand, the circuit court shall reconsider its award of custody in light of Kentucky Revised Statutes 403.270 and shall thereafter set forth its findings of fact and conclusions of law upon the issue of custody as required by CR 52.01. While we do not reach the ultimate issue of the award of custody, we would note for the family court that its decision should be based upon the statutory factors and that

the mental health of a parent should not be the sole determining factor in awarding custody. *See Reichle v. Reichle*, 719 S.W.2d 442 (Ky. 1986).

For the foregoing reasons, the order of the McCracken Circuit Court, Family Court Division, is vacated and this cause is remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
APPELLANT:

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BRIEF AND ORAL ARGUMENT FOR
APPELLEE:

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