

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001400-ME

ASHLEY DENISE WOLFE

APPELLANT

v. APPEAL FROM METCALFE CIRCUIT COURT  
HONORABLE W. MITCHELL NANCE, JUDGE  
ACTION NO. 06-CI-00172

CARY RUSSELL WOLFE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON AND DIXON, JUDGES; GRAVES,<sup>1</sup> SENIOR JUDGE.

DIXON, JUDGE: Ashley Denise Wolfe appeals from the Findings of Fact, Conclusions of Law, and Decree of Dissolution of Marriage entered by the Metcalfe Circuit Court.

The court awarded the parties herein joint custody of their minor child. Ashley contends the court erred by designating Appellee, Cary Wolfe, as the primary residential custodian of their child. We find no error and affirm.

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<sup>1</sup> Senior Judge J. William Graves, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

The couple's son was born March 8, 2000, when Ashley was fifteen and Cary was nineteen. In June 2001, the couple married in Cumberland County, Kentucky. Thereafter, the family briefly resided in Georgia, while Cary served in the military. In April 2002, Ashley and Cary separated. Ashley and the child relocated to Florida and shared a home with her boyfriend, Sammy Coakley. Cary settled in Metcalfe County, Kentucky, and shared a home with his girlfriend, LaDonna Huddleston.

Ashley and Cary lived separate lives for more than four years, and Cary had little contact with his son. During this time, Ashley had a child with Mr. Coakley, and Cary had a child with Ms. Huddleston.

In September 2006, Ashley temporarily returned to Kentucky with the parties' son. In December 2006, Cary filed a petition for emergency custody in Metcalfe Circuit Court. The court granted the petition, and shortly thereafter, Cary filed a petition for dissolution of marriage.

An evidentiary hearing was held on April 26, 2007. The court heard testimony from the parties, Cary's mother, and Mr. Coakley. The court rendered lengthy findings of fact and conclusions of law on June 12, 2007. The decree awarded joint custody to the parties and designated Cary as primary residential custodian. In its findings of fact, the court acknowledged that Cary had minimal contact with his son during the first five years of the child's life. However, the court emphasized the child's positive integration into school and the community while residing with Cary. The court also found that Cary had long-term employment and could provide a stable environment

for the child. In contrast, the court noted that Ashley engaged in a “somewhat flamboyant” lifestyle.

We note that, “[a] trial judge has a broad discretion in determining what is in the best interests of [a] child[] when he makes a determination as to custody.” *Krug v. Krug*, 647 S.W.2d 790, 793 (Ky. 1983). On appeal, we uphold the trial court’s findings of fact “unless they are clearly erroneous, and due regard must be given to the opportunity of the trial judge to view the credibility of the witnesses.” *Polley v. Allen*, 132 S.W.3d 223, 228 (Ky. App. 2004). “A factual finding is not clearly erroneous if it is supported by substantial evidence.” *Sherfey v. Sherfey*, 74 S.W.3d 777, 782 (Ky. App. 2002).

In custody matters, the trial court must determine the “best interests of the child,” and give equal consideration to both parents. KRS 403.270(2). The relevant factors include: the wishes of the parents and child; the interpersonal relationships of the child with its parents, siblings, and others; the child’s assimilation to home, school, and community; mental and physical health issues; and evidence of domestic violence. KRS 403.270(2)(a-f).

On appeal, Ashley challenges the sufficiency of the evidence presented at the hearing. Ashley emphasizes that she was the child’s primary care giver and argues Cary made no effort to establish a relationship with the child. Ashley also contends that Cary had past indiscretions and argues that her “flamboyant” lifestyle did not affect the child.

First, we acknowledge Ashley’s argument that she reared the child for more than five years with little assistance from Cary. In fact, the court made a similar finding

in its order. However, the court's analysis could not end there. Rather, the court considered all of the evidence and made a decision in light of the factors outlined in KRS 403.270. Furthermore, contrary to Ashley's assertions, the court heard testimony regarding past domestic disputes involving Ashley and Mr. Coakley. After reviewing the testimony and evidence presented, we find that the court's decision was supported by substantial evidence.

Next, we address the sufficiency of the evidence relating to Ashley's lifestyle. At the hearing, most of the testimony from the parties was in conflict. However, it was clearly for the trial court to determine the credibility of witnesses and weigh the evidence. *Polley*, 132 S.W.3d at 228.

At the hearing, Cary introduced evidence from Ashley's "My Space" website. The evidence consisted of written journal entries referring to drug use, and photographs depicting promiscuity, alcohol use and drug use. While Ashley testified that her website had been "hacked," she authenticated a great deal of the evidence.

Although Ashley contends her "flamboyant lifestyle" did not affect the child, we are mindful that:

In many instances [the trial judge] will be able to draw upon his own common sense, his experience in life, and the common experience of mankind and be able to reach a reasoned judgment concerning the likelihood that certain conduct or environment will adversely affect children.

*Krug*, 647 S.W.2d at 792-93. "[T]he trial court is not precluded from consideration of circumstances where the neglect, abuse, or environment has not yet adversely affected the child[] but which, in his discretion, will adversely affect [the child] if permitted to continue." *Id.* at 793.

The evidence of Ashley's immature and inappropriate behavior was only a portion of the evidence considered by the court. However, the court was free to consider how Ashley's lifestyle could affect the child over time. *Id.* After reviewing the record, it is apparent the court made meticulous findings of fact based on the totality of the evidence. We conclude the court's decision was supported by substantial evidence.

For the reasons stated herein, the judgment of the Metcalfe Circuit Court is affirmed.

ALL CONCUR.

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