IN THE COURT OF APPEALS
AT KNOXVILLE

HEATHER MARIE LONGH,AMBLEN DOMESTIC REL
C.A. NO. 03A01-9801-
)
Petitioner-Appellant)
)
vs.)
HON. JOYCE M.) WARD
) JUD
)
ROBERT DEAN CROXDALE,)
)
Respondent-Appellee AND)REMANDE

ROBERT T. SIMPSON, Eshbaugh, Simpson and
Appellant.

JIM W. STAMBAUGH, Stambaugh Law Office

OPINION

McMurray, J

This is a child custody case. Heath
Robert Croxdale (father) each filed a p
custody, in the alternative, primary resi
their son, Travis Dean Croxdale, who was
trial court awarded primary custody to th

having physical custody during two month
mother appeals, asserting that the chancellor
primary custody. We affirm the judgme

The parties were divorced pursuant to
entered August 14, 1995. The marital d
provided that the parties "will have custody share
changing every week on Sunday at 6:00 p.m.
arrangement worked satisfactorily unti
age." On February 20, 1997, the mother filed
primary residential custody of Travis. Th
petition likewise seeking primary resident
stipulated that their arrangement of custody share
was no longer appropriate.

The case was heard by the Hon. Robert Cook
Court on October 31, 1997. The trial co
thorough memorandum opinion, found the

> With regard to the nine statutory cr
> § 36-6-102, and the thirty criteria
> courts for modification of custody decrees,
> finds equities on both sides. The Court has
> no doubt about either party's love for and
> the minor child. Each party is obvi
> provide the child food, clothing, medical tre
> education, and other necessary care
> the obvious ability to provide these things with
> torhome environment. Neither party
> or physical health problems. Both partie
> strate concern over the child's emotion

and social development. An approach involving a child of such tender years, the evidence of the child's preference rega
Neither party appears to have been allyinflicting physical or emotional
Finally, there is no evidence that either party has brought into his/her home any perso
or behavior.

Given two such qualified custodia
apparent desire of each to provide for th
welfare, it is only the parties' agreem
joint custody is no longer feasible which
Court to select one of many recommendations. pr
... the equities are closely balanc
will be based on an evaluation of the pa
strated conduct in their past deali

The Court believes that, in determi
custodian parties will be more likely to pr
child's long-term interests, it is instructiv
examine the conduct of each of the
of extreme stress. The evidence in this case
during the stressful time surrounding
separation and divorce, [father's] condu
with the child was superior. to the
(Emphasis in original). The Court
be the overcrowding in attitudes otherwise cl
balanced case.

On the basis of the foregoing and analysis, di-
ering the parties' agreement that join
ment as relnonger appropriate, **the** Court
welfare of the child will be best to be serve
designa[tfiant her] as the primary cust
(All footnotes in the original are

The sole issue on the appeal, limit from the
brief is, "did the trial court err to join mod
order to place custody with the Father
Mother's pre-divorce conduct?"

The mother argues in her brief as f

> What was not warranted, however, the court's application of the comparat to create a new rule of law (the so-c and considering facts which occurre of the divorce decree. Para. Thieve fitness a is only appropriate at the time of decree, when an modification action is Musselvman, A.cu8f2f6 S.W.2d 920, 922 (Tenn

The Musselompainnitohne, only acuittheodriitny suppo this argument, in no way stands for or that a comparative fitness analysis is considearionhgild custody modifMusselomanac opinisoinmply states that "[w]hen the is whethteor modify a prioritcunsetoddrynpoeradtert,h comparaftiitvneess analysis that is appropr originaulstody decree." We, therefore mothear'sgumenft, and the coturrita'ls considerati therelevantwafsacatpsproprtiatecuincumstances case[1]. Theialtrcourt did not "create a new rathercontemplatingtafnactual consideratio respective parties reacted under stres this to be a persuasive factyorclionsdeana o difficcualsteI.t is apparent constidereedcourt of other relevainntmakingortshe determinat childb'esst interest, and thus did not a

[1] In thicsontex, we should note that the parties' originaulstody arrangement wasopniontiownorkcionngcs,hairtnguetoeusr of circumstances justifying a change in the custo

find the rule as r Beriutmeirtatve, d 4 8 m u S m . i t 3 2 0 d

(T e n A p p . 1 9 9 7) t o b e p a r t i c u l a r l y g e r n

c o n s i d e r a t i o n h e r e :

> W h i l m e y p r o c e e d i n g s i n t h e l a w a r e
> d r i v e t n h , i i s s p a r t i c u l a r c u s t o d y c a s e s , b o
> o n i n i t i a l a w a r d s a s w e l l a s i n c a s e s
> t o m o d i f y a p r e v I n s u c h a c a s e s , a t r i a l
> h a s w i d e d i s c r e t i w h i c h , n a t d a w e p e r w i t h
> d i s c r e t i o n b e s s t h e f a c t s d e m o n s t r a t e t
> f a c t h a s a b u s e d h i s o r h e r d i s c r e t i o n
> t h e c h i l d i s a l w a y s t h e p a r a m o u n t
> (C i t a t i o n s o m i t t e d .)

I d,. a t p a g e 7 4 0 .

W e f i n d t h a t t h e e v i d e n c e d o e s n o t s u p p
t r i a c u r t a w a r d o f p r i m a r y r e s i d e n t i a l c u
a n d t h a t t h e t r i a l c o u r t d i d n o t a b u s e
c o u r t j u s d g m i e s n t a f f i r m e d i n a C l o l s t r s e s o p n e c a t p s p . e a
a s s e d s t o t h e a p p e l l a n t a n d t h i s c a s e i s
c o u r t .

_ _
D o n T . M c M u r r a y , J u d

C O N C U R :

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ROBERT DEAN CROXDALE,)
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Respondent-Appellee) AND) REMANDE

JUDGMENT

This appeal came on to be heard upon the record of the Domestic Relations Court of Hamblen County, and argum counsel. Upon consideration thereof, this there was no reversible error in the t

The trial court's judgment is affirme on appeal are assessed to the appellan to the trial court.

PER CURIAM