IN THE COURT OF APPEALS
AT KNOXVILLE

GERALD A. OTTINGER,) C.A. NO. 03A01-9801-
Plaintiff-Appellee)
vs.)
HON. BEN W. HOOPER, JUD
KIMBERLY S. OTTINGER,)
Defendant-Appellee) REMANDE

J. RONNIE GREER, Greeneville, for Appe

CLYDE A. DUNN, Newport, for Appellee.

OPINION

McMurray, J

This is a child custody case in which (father) and Kimberly Ottinger (mother) fi resent in a custody of their daughter, Marl The trial court granted joint legal cu award per primary residential custody to th

appeals, asserting that the court shou
residential custody. We affirm the ju

The parties were divorced on December
marital dissolution agreement, incorpo
of divorce, provided that the parties
be shared equally between them.

This arrangement proved satisfactor
"schoaogle." On February 10, 1997, the m
modify judgment," in which she asked the
previous judgment herein by awarding to he
custoodfy the parties'. .m.i" nor The chifa ther re
with his own request for custody of Ma

The case was heard at a bench 1997. trial io
order disposing of the case, the trial

> This is a most difficult decision
> the application of the comparative fi
> the relevant sfeatc tourts in T.C.l.A. e.a.v.s 36-5-
> the parties virtually dead even. T
> assessment of each other shows only
> a great deal of respect for one ano
> an abundanlo ve o,f affection and the motiona
> child. Both parents are more than adequat
> provide the child with food, clothing,
> and education. This is a case where t
> ity with regard to the custody agreem
> end. There is no evidence of physical

or the preference of the child. The balance as to mental health physical and the character behavior of other peo associate with the child. Sufficient evidence regarding the two which are available for the child's education (or t communities) which to base an inform The remaining factors are the stabil unit, the home of the child, and the differe communities.

* * * *

Overall and for some of those reasons preceding paragraph, the Court the child best interests be served by being with the The court feels that the father's h will by far serve the best interest c compared with the downtown home and mother, which will most likely expose associations and influences of a that negative will not be found in the rural settin been a little better in exposing the c also seems to better in handling his fin than the mother. These are that certainly have a tremendous impact on a child w The father has already demonstrated th to his daughter's needs and to provid nurturing home surrounded by her ex

The court made further findings of fa of which are well-supported by the evi

The mother presents the following is verbatim:

1. Did the trial court err in basing least in part, facts not contained in and not heard by him at the trial

2 Does the evidence preponderate aga
court denial of the petition of the mother, Kimberly Ottinger, to dy for the custody parties' minor child?

Regarding the first issue, the mother following finding of fact by the trial c reflects that the mother has been in the presently works a regular job of 40 ho of 28 hours a week and will continue t all her bills are paid up or caught up points out that transcript reflects that the mother was p to the court regarding the mother's i court. However, the record contains a " filed by the mother, which contains th[1]

> The [father], Gerald Ortega, has refused an neglect to obtain a release of the li trailer and to deliver the [mother] for the mother's trailer. The [father] has advised is holding the trailer to the mother's detriment for the [mother's] Chapter 7 Bankru Petition in the United States Bankruptcy Court for the Eastern District of Tennessee.

Thus, there is information in the rec mother regarding the fact that the filed near the ti bankruptcy court.

[1]The petition for contempt was subsequently voluntarily dismissed.

We are of the opinion, however, tha justified finding that dwom to wmnot Greenev reseindce and neighborhood "will most to like associations and influences of a negat found in the rural Thewatsinngo. "evidence pres the respective neighborhoods of the par permit the courts to taikce of judicial noticeacts order to be judicially noticed, a fact within the territorial jurisdiction of th of accurate and ready determination by accuracy cannot reasonably See Tequest Ri. on Evdi 201(b). Negative "associations and influe geographic area, in the context of this c subjects for judicial notice.

It is clear that the trial icfourent con relevant factors in a tarritsvicon conclusion has. the We consider oaft icommunity coamtpabreisstonshairsm, les under the circumstances of this case. this court, trial courts are vested with of child cu Ksotcohdyv., 874 S.W.2d 571, 575 1993). The primary reason for this rule unlike the appellate courts, can observe and and credibility of witnessaensd, vandtsaiggeniifni

making findings of fact. See Massengale v. Massengale, 915 S.W.2d 818 (Tenn. App. 1995).

We are of the opinion that the evidence preponderates against the trial court's judgment. The judgment is affirmed in its entirety. Costs on appeal are assessed against the appellee. This case is remanded to the trial court for collection of costs assessed below.

_____
Don T. McMurray, Judge

CONCUR:

_____
Houston M. Goddard, Presiding Judge

_____
Charles D. Susano, Jr., Judge

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HON. BEN W. HOOPER,
) JUD
)
KIMBERLY S. OTTINGER,)
)
Defendant-Appellant) REMANDE

JUDGMENT

This paple came to be heard upon the re
Circuit Court of Cocke County, briefs an
Upon consideration thereof, this Court i
no reversible error in the trial court

The judgment is affirmed in its appeal a
assessed to the lapna and this case is remand
court.

PER CURIAM