

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
October 14, 2003 Session

CHARLES F. KNIGHT
v.
RAMONA D. KNIGHT

An Appeal from the General Sessions Court for Hardin County
No. 5345 Daniel L. Smith, Judge

No. W2003-00001-COA-R3-CV - Filed December 4, 2003

This is a child custody case. The mother alleged abuse by the father and the father alleged that mother had psychological problems, failed to prepare nourishing meals, and had difficulty establishing her authority as a parent. The trial court designated the father as the primary residential parent for the parties' minor son. We affirm, finding no abuse of discretion by the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the General Sessions Court Affirmed

HOLLY M. KIRBY, J., delivered the opinion of the court, in which DAVID R. FARMER, J., and ALAN E. HIGHERS, J., joined.

Betty Stafford Scott, Jackson, Tennessee, for the Appellant Ramona D. Knight.

Bob G. Gray, Selmer, Tennessee, for the Appellee Charles F. Knight.

OPINION

Plaintiff/Appellee Charles F. Knight ("Father") and Defendant/Appellant Ramona D. Knight ("Mother") were married on December 31, 1997. Their son, Dwayne, was born February 9, 1998.

On May 6, 2002, Father filed a Complaint for Divorce. Along with the petition for divorce, Father filed a proposed parenting plan which named him the primary residential parent for Dwayne. In an "Affidavit For Temporary Parenting Plan," Father alleged:

The mother has suffered psychological difficulties for at least six years, and she has been hospitalized . . . for this condition on at least one occasion. The father believes

that her lack of stability would be detrimental to his son and reasonably fears for his safety. The father has provided the daily care for his son. . . .

On May 9, 2002, Mother filed an answer and counter-complaint, along with her own proposed parenting plan and affidavit. Mother's proposed parenting plan named her as the primary residential parent. In her affidavit she alleged:

The father has physically assaulted the mother on several occasions, and has repeatedly threatened to kill the mother The father is a dangerous, violent individual and the mother fears for the safety of her child. The mother has also provided all of the daily requirements for the child since the child was born.

The parties each underwent a psychological evaluation but later stipulated that the evaluations would not be entered into evidence as they did not have a bearing on parental fitness. A bench trial was held on October 24 and October 31, 2002. Although there is no transcript of the proceedings, the trial court approved a "Statement of the Evidence" summarizing the two days of testimony.

Mother testified that she had been physically and mentally abused by Father. She said that Father threatened to kill her if she tried to leave him and take Dwayne with her, and that Father tried to control her mind. She asserted that Dwayne was afraid of Father because he had witnessed Father's abuse of Mother and because Father yelled and cursed in front of Dwayne. Mother acknowledged that she had gone to Pathways, apparently a mental-health facility, but asserted that she went of her own volition because Father "was always telling me that I was crazy and I wanted to find out for myself." At Pathways, Mother said, her counselor told her that her problems were caused by a reaction to a birth control shot and the adverse conditions of living with Father. She admitted that she had taken prescription medicine for her psychological problems but discontinued their use without first consulting her physician. She admitted to a brief affair with a married man, and testified that no drugs or alcohol were used during the marriage. She said that she worked at Dwayne's day care center once or twice a week. Mother said that she prepared "quick" meals for Dwayne and was the only one to take Dwayne to the doctor.

Father testified as well, criticizing Mother's parenting skills. Father said that Mother was unable to discipline Dwayne and had difficulty keeping him clean. He claimed that Mother characterized her relationship with Dwayne as "brother and sister." Father asserted that Mother had psychological problems, depicting her as argumentative, un-cooperative, and violent. Father said that Mother tried to start fights with and physically attack others, including Father. He noted that, prior to the marriage, Mother spent a week at Pathways, the afore-mentioned mental-health facility. On one occasion during their marriage, Father said, Mother went "beserk" when he tried to get her into the car to go to Pathways. Father denied abusing Mother but admitted that he once pulled her hair to prevent her from attacking him. He said that he and Mother had both called the police to report domestic violence, but that neither was ever arrested. Father testified that he can cook and

that he had provided a variety of meals for Dwayne. He testified that has never had an extra-marital affair and that Dwayne had been in his care since he and Mother separated.

Several of Father's family members testified. His stepsister recalled an argument between Father and Mother the day that Dwayne's paternal grandmother returned from heart surgery. The stepsister testified that Mother pulled Dwayne off of a table, causing him to fall. Father's mother asked Mother to leave, if she could not control herself, and Mother left without taking Dwayne with her. Father's mother corroborated this, and asserted that Father prepared meals for Dwayne while Mother only served foods such as pizza, hot dogs, and macaroni. Father's aunt testified that Mother "acted jealous and pouted" at family reunions and tried to make Father watch after Dwayne at the reunions.

Mother's mother, Callie Kirk ("Kirk"), testified on Mother's behalf. Kirk testified that she witnessed Father pull Mother off the porch by her hair and threaten to shoot Mother if she tried to leave and take Dwayne. She asserted that she heard Father tell Mother that he would shoot Kirk if Kirk tried to call the police. Kirk said no child should be taken away from his mother.

A worker at Dwayne's daycare, Vickey Sipes ("Sipes"), also testified. Sipes said that Mother worked at the daycare once or twice a week and could be depended upon "to do what needed to be done." She testified that Mother was usually the person to bring Dwayne to daycare and to pick him up, and that Mother always took Dwayne to the doctor when he was sick. She observed that Dwayne always seemed happy when Mother brought him and that he was always clean and well dressed. She testified that she noticed bruises on Mother's arms one day, and Mother told her that she had a fight with Father. Sipes said that Mother was a good parent and that it was obvious that she and Dwayne loved each other very much. She acknowledged that, as far as she knew, Father was a good parent.

Another daycare worker corroborated that Dwayne was always happy, clean and well dressed when brought to daycare. She also corroborated that Dwayne and Mother obviously had a loving relationship. She said that Father seemed to be a nice person as well.

On January 13, 2003, the trial court issued a final decree holding both parties to be entitled to a divorce and setting out the division of marital property. The decree also incorporated a "Permanent Parenting Plan," which designated Father as the primary residential parent. The trial court issued "Findings of Fact and Opinion," though it does not articulate the trial court's reasoning for designating Father as the primary residential parent. Mother now appeals the trial court's decision to name Father the primary residential parent.

The standard of review is set forth in Rule 13(d) of the Tennessee Rules of Appellate Procedure. *Hass v. Knighton*, 676 S.W.2d 554, 555 (Tenn. 1984). Generally questions of law are reviewed *de novo*, with no presumption of correctness. *Jahn v. Jahn*, 932 S.W.2d 939, 941 (Tenn. Ct. App. 1996). Findings of fact are reviewed *de novo*, with a presumption of correctness; such findings will not be reversed unless the preponderance of the evidence is otherwise. *Hass*, 676 S.W.2d at 555; *Farien v. Farien*, 2001 WL 687144, at *8 (Tenn. Ct. App. June 13, 2001).

_____ In a child custody decision, the paramount concern is the best interest of the child. *Lentz v. Lentz*, 717 S.W.2d 876, 877 (Tenn. 1986); *Whitaker v. Whitaker*, 957 S.W.2d 834, 837 (Tenn. Ct. App. 1997). The trial court must determine which of the available custodians is comparatively more fit to care for the minor child by engaging in a “comparative fitness” analysis. *See Gaskill v. Gaskill*, 936 S.W.2d 626, 630 (Tenn. Ct. App. 1996); *Bah v. Bah*, 668 S.W.2d 663, 666 (Tenn. Ct. App. 1983). Tennessee Code Annotated section 36-6-106(a) sets forth many of the factors to be considered.¹ These include love and emotional ties between the parents and child, the parents’ disposition to provide necessary care to the child, the extent to which the parent has been the primary caregiver, the parents’ mental and physical health, the importance of continuity and stability in the child’s life, and evidence of child or spousal abuse. Tenn. Code Ann. § 36-6-106(a)(1), (2), (3), (5) & (8) (2001). The particular facts of each case affect the determination of the child’s best interest. *See Taylor v. Taylor*, 849 S.W.2d 319, 326 (Tenn. 1993); *In re Parsons*, 914 S.W.2d 889, 893 (Tenn. Ct. App. 1995).

We are mindful that “ ‘the details of custody of and visitation with children are peculiarly within the broad discretion of the Trial Judge whose decisions are rarely disturbed.’ ” *Dirr v. Dirr*, 2003 WL 22345479, at *2 (Tenn. Ct. App. Oct. 15, 2003) (quoting *Edwards v. Edwards*, 501

¹The section 36-6-106(a) factors are:

- (1) The love, affection and emotional ties existing between the parents and child;
- (2) The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver;
- (3) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;
- (4) The stability of the family unit of the parents;
- (5) The mental and physical health of the parents;
- (6) The home, school and community record of the child;
- (7) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request;
- (8) Evidence of physical or emotional abuse to the child, to the other parent or to any other person;
- (9) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child; and
- (10) Each parent's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interest of the child. . . .

S.W.2d 283, 291 (Tenn. Ct. App. 1973)). The trial court’s ability to assess firsthand the parents’ demeanor and credibility is given great deference. *Gaskill v. Gaskill*, 936 S.W.2d 626, 631 (Tenn. Ct. App. 1996); *see also Lee v. Lee*, 66 S.W.3d 837, 843, 851 (Tenn. Ct. App. 2001) (considering the apparent weight that the trial court gave to the respective parents’ testimony, even absent express findings of fact).

From the “Statement of the Evidence” in this case, it is clear that Mother’s allegations of Father’s abuse were sharply disputed. On the other hand, Father’s testimony regarding Mother was largely undisputed, although Mother offered explanations. For example, Father noted that Mother had been treated at a mental-health facility for psychological problems. Mother did not dispute this, but explained that she was told by a counselor that her problems stemmed from an adverse reaction to a birth-control shot as well as the stress of living with Father. Mother admitted that she had taken prescription medication for her psychological problems and that she discontinued taking the medication without consulting her physician. Mother did not dispute Father’s testimony² that she prepared only convenience foods for Dwayne, such as pizza and hot dogs, although she described these as “quick” meals. Mother did not dispute Father’s testimony that she had characterized her relationship with Dwayne as akin to that of “brother and sister,” Father’s allegation that she tended to argue with Dwayne or give in rather than discipline him, or the testimony detailing the physical attack in which she caused Dwayne to fall from a table during an argument with Father. Father’s assertion that he cooked a variety of meals for Dwayne was undisputed. Other testimony established that both parents had a loving relationship with Dwayne and that neither parent used drugs or alcohol during the marriage.

Although the trial court made no express findings of fact, we must presume from the designation of Father as the primary residential parent that the trial court credited Father’s denial of any abuse and discredited Mother’s allegations. Since there was little corroboration of Mother’s allegations in the Statement of the Evidence, and given the great deference accorded a credibility determination by the trial court, we cannot conclude that the trial court erred in this regard. Considering the record as a whole, we cannot conclude that the trial court erred in designating Father as the primary residential parent.

The decision of the trial court is affirmed. Costs are taxed against Defendant/Appellant Ramona D. Knight and her surety, for which execution may issue if necessary.

HOLLY M. KIRBY, JUDGE

²Mother admitted Father’s testimony that she had an affair with a married man, but described the affair as quite brief. There was not an allegation that this impacted her ability to parent.