IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

FILED

August 19, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

LAURA DAVIS	)	HAMBLEN COUNTY
	)	
Plaintiff-Appellant,	)	
Counter-Appellee	)	
	)	
	)	HON. DENNIS H. INMAN
v.	)	03A01-9512-CH-00456
	)	
	)	HON. WILLIAM L. JENKINS
JOHNNY DOUGLAS DAVIS	)	(Sitting by Interchange)
	)	03A01-9602-CH-00074
Defendant-Appellee,	)	
Counter-Appellant	)	
	)	AFFIRMED AND REMANDED

MINDY NORTON SEALS OF MORRISTOWN and P. RICHARD TALLEY OF DANDRIDGE AT TRIAL; SARAH Y. SHEPPEARD OF KNOXVILLE ON APPEAL FOR LAURA DAVIS

PAUL G. WHETSTONE OF MORRISTOWN FOR JOHNNY DOUGLAS DAVIS

OPINION

Goddard, P.J.

Laura Davis appeals that portion of a divorce decree which awarded custody of Kristin (minor child of the parties, who was just over three-and-a-half years old at the time of the initial hearing below) to her father, Johnny Douglas Davis. She

also contends the Trial Court was in error "in failing to delete from the final judgment those provisions added by husband's counsel but not ordered by the Judge." We note in this connection that the judgment was prepared and signed by counsel for Mr. Davis and was not approved by counsel for Ms. Davis, and never submitted to her.[1]

Mr. Davis also appeals the Trial Court's order in a subsequent proceeding, which denied his application for an injunction to prohibit unsupervised visitation by Ms. Davis with Kristin.

A motion to modify the final divorce judgment was filed by Ms. Davis on December 22, 1994, and thereafter, by order entered April 18, 1995. Chancellor Inman, on his own motion, transferred the case "to the Honorable William Jenkins, as Judge by Interchange." Judge Jenkins ultimately ruled on the motion to modify, as well as the petition seeking an injunction.

As to the issue of custody, we conclude this is an appropriate case for affirmance under Rule 10(a) of this Court.

In reaching our conclusion we are aware, as insisted by Ms. Davis, that the Trial Court may have misstated the dates

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[1] In Mr. Davis' response to the motion to modify he contends that Ms. Davis' trial attorney "agreed that I should simply have a judgment prepared and serve her pursuant to Rule 58 of the Tennessee Rules of Civil Procedure after the Judge signed it."

certain inappropriate actions by Ms. Davis toward the child occurred, and also that testimony was elicited upon cross-examination from witnesses testifying to Ms. Davis' inappropriate action, which would tend to discredit their testimony, viz., failure to advise Mr. Davis of Ms. Davis' conduct prior to the divorce suit being filed. However, it is clear from the Chancellor's memorandum opinion that he accredited Mr. Davis and the other witnesses relative to her inappropriate conduct when he stated the following:

> The various witnesses who testified to these incidents were all persuasive and all manifested a genuine concern for the welfare of this three-year old child.

Given the presumption of correctness as to factual findings of the Trial Court mandated by Rule 13 of the Tennessee Rules of Appellate Procedure, and the deference the appellate courts accord trial courts in evaluating the credibility of witnesses, we find that the evidence does not preponderate against his award of custody.

As to Ms. Davis' second issue, she complains that the Trial Court's memorandum opinion did not make a specific determination as to visitation and, consequently, the detailed visitation set out in the decree (see appendix) was erroneously prepared by Mr. Davis' counsel.

The Chancellor's memorandum opinion does provide the following:

> **IV. VISITATION**
>
> Wife should have the standard visitation schedule of this court, with which counsel should be intimately familiar. That schedule should be inserted into the judgment with specificity.

The Chancellor obviously had a standard visitation schedule which he employed,[2] even though it is apparently true, as Ms. Davis' counsel points out, it is not a part of the local rules.

In any event, the Trial Court, by signing the decree as prepared, notwithstanding the fact it was not submitted to counsel for Ms. Davis, clearly shows that this was the visitation schedule he envisioned, and his failure to place it in his memorandum opinion does not impair its validity.

Subsequent to the divorce decree being entered, Mr. Davis filed a petition seeking to enjoin Ms. Davis from having unsupervised visitation with the child because the child had suffered a dog bite from Ms. Davis' dog while visiting her, and

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[2] Counsel for Ms. Davis filed an unverified motion to alter the judgment wherein she alleged that Section 11 of the final decree relative to spring vacation was "not this court's 'standard order.'" Apparently no hearing was had as to her motion, and there is no proof in the record relative to this allegation, which is negated by the prior entry of the memorandum opinion and final judgment of divorce.

also because Mr. Davis believed Ms. Davis, who is a registered nurse, had been unnecessarily administering shots to the child.

The Trial Court granted an injunction to prevent the child from being in the presence of Ms. Davis' dog while visiting, but denied Mr. Davis any further relief. The proof as to the administering of shots to Kristin consisted of testimony of witnesses quoting Kristin and the denial of Ms. Davis.

Because the evidence does not preponderate against the Trial Judge's finding of fact relative to this issue, we concur in his denial of an injunction to preclude unsupervised visitation.

In conclusion, we point out that if in fact there is a problem with visitation, transportation or otherwise, Ms. Davis is at liberty to file a petition in the Trial Court seeking appropriate relief.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for such further proceedings, if any, as may be necessary and collection of costs below. Costs of appeal are adjudged one-half against Ms. Davis and one-half against Mr. Davis.

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Houston M. Goddard, P.J.

CONCUR:

_____
Herschel P. Franks, J.

_____
Joseph M Tipton, Sp. J.