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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 8, 2020 Session

JOHN MICHAEL SINGER v. JESSICA JO SINGER

Appeal from the Chancery Court for Robertson County
No. CH18-CV-371 Ted A. Crozier, Judge

No. M2019-00924-COA-R3-CV

In this divorce proceeding, the Father appeals the designation of Mother as the primary residential parent of the parties' minor child. Finding no reversible error, we affirm the judgment.

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

RICHARD H. DINKINS, J., delivered the opinion of the court, in which ANDY D. BENNETT and J. STEVEN STAFFORD, P.J., W.S., joined.

D. Scott Parsley, Michael K. Parsley and Joshua G. Strickland, Nashville, Tennessee, for the appellant, John Michael Singer.

Joseph T. Zanger, White House, Tennessee, for the appellee, Jessica Jo Singer.

MEMORANDUM OPINION¹

John M. Singer ("Father") and Jessica J. Singer ("Mother") were married on August 20, 2016; one child, Presley, was born February 2018. Father filed a Complaint for Divorce on August 23, 2018. The trial was held on April 4, 2019, and the court entered a final order on May 9, declaring the parties divorced, dividing the marital property, designating Mother as the primary residential parent, and entering a parenting

¹ Rule 10 of the Rules of the Court of Appeals states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

plan that granted Father 130 days of parenting time and decreased his child support obligation to accommodate the cost of long-distance transportation of the child.

Father appeals, contending that the court erred in designating Mother as primary residential parent and in allowing Mother to relocate to Washington without making a determination, in accordance with the relocation statute at Tennessee Code Annotated section 36-6-108, that it would be in the best interest of Presley.

We review the trial court's factual findings *de novo* upon the record, accompanied by a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). Review of the trial court's conclusions of law is *de novo* with no presumption of correctness afforded to the trial court's decision. *Kaplan v. Bugalla*, 188 S.W.3d 632, 635 (Tenn. 2006).

As an initial matter, we conclude that the relocation statute is inapplicable to this case since the determination at issue is an initial custody determination, which is governed by Tennessee Code Annotated section 36-6-106(a).² See *Nasgovitz v.*

² Tennessee Code Annotated section 36-6-106(a) states, in relevant part:

(a) In a suit for annulment, divorce, separate maintenance, or in any other proceeding requiring the court to make a custody determination regarding a minor child, the determination shall be made on the basis of the best interest of the child. In taking into account the child's best interest, the court shall order a custody arrangement that permits both parents to enjoy the maximum participation possible in the life of the child consistent with the factors set out in this subsection (a), the location of the residences of the parents, the child's need for stability and all other relevant factors. The court shall consider all relevant factors, including the following, where applicable:

(1) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child;

(2) Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;

(3) Refusal to attend a court ordered parent education seminar may be considered by the court as a lack of good faith effort in these proceedings;

(4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;

(5) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

Nasgovitz, No. M2010-02606-COA-R3-CV, 2012 WL 2445076 at *7 (Tenn. Ct. App. June 27, 2012) (“[Tennessee Code Annotated section 36-6-106] governs any requests to relocate with a minor child during the pendency of a divorce proceeding until a final or permanent parenting plan is ordered. Consequently, the Relocation Statute does not apply during that time.”)

We next turn to the designation of Mother as Primary Residential Parent. The court properly made the determination in accordance with section 36-6-106(a), and held that factor (2) favored Father, factors (1), (5), (9), and (10) favored Mother, factors (3), (4), (6), and (14) favored each party equally, and the remainder were inapplicable. Father disputes the court’s factual determination with respect to factors (1), (5), (9), and (10), and contends that factors (7) and (11), which the court held were inapplicable, should have been held in his favor. Mother disputes the court’s holding for factor (2).

With respect to factor (1), the court found that “Mother quit her job and became a full-time caregiver of the child. . . . [and] spent the majority of the time with the child, much to [Father’s] detriment.” Similarly, the court found, with respect to factor (5), that

(6) The love, affection, and emotional ties existing between each parent and the child;

(7) The emotional needs and developmental level of the child;

(8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. The court may order an examination of a party under Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party under § 33-3-105(3). The court order required by § 33-3-105(3) must contain a qualified protective order that limits the dissemination of confidential protected mental health information to the purpose of the litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings;

(9) The child’s interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child’s involvement with the child’s physical surroundings, school, or other significant activities;

(10) The importance of continuity in the child’s life and the length of time the child has lived in a stable, satisfactory environment;

(11) Evidence of physical or emotional abuse to the child, to the other parent or to any other person. The court shall, where appropriate, refer any issues of abuse to juvenile court for further proceedings;

(12) 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;

(13) 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. The preference of older children should normally be given greater weight than those of younger children;

(14) Each parent’s employment schedule, and the court may make accommodations consistent with those schedules; and

(15) Any other factors deemed relevant by the court.

Mother had acted as the primary caregiver. With respect to factor (10), the court found that Mother had been Presley's primary caregiver and thus the factor favored Mother. Pertinent to these three grounds, Mother and Father each testified that Mother had not worked since January of 2018 and had been a stay at home parent since Presley's birth. Thus, these findings are supported by the testimony and Father has not cited to evidence which preponderates against the findings.

The court found that factor (9) favored Mother because "although Father has a brother and sister-in-law, and nieces and nephews, they have only seen the child once. While Mother has a great deal of family in Washington state, they have also seen the child once." Father does not dispute the factual finding. Contrary to the finding, Mother testified that her mother had seen Presley about eight times, her father and stepmother had seen her twice, and that the rest of the family members had only seen her once; and that Father's relatives had only seen Presley twice. While the evidence preponderates against the court's factual finding, it supports the determination that this factor favors Mother.

The court held that factors (7) and (11) were inapplicable because, respectively, there was no evidence related to Presley's emotional needs and developmental level other than her age and because there was no evidence of physical or emotional abuse. While Father takes issue with the court's holding, he does not cite to evidence in the record that would preponderate against the court's holding or otherwise relating to the matters addressed in the factors. Accordingly, his contentions are without merit.

With respect to Mother's argument regarding factor (2), which the court held favored Father, the court found as follows:

The Court finds that Mother has been trying to keep dad out of the child's life by: filing parenting plans that only allow the child to see father for a few hours at a time, calling the police when father walked away from Mother in the Target Department Store, then keeping the child away from her Father for 51 days, and by, finally attempting to put forth evidence that he is a risk because he drinks alcohol on occasions. . . . Mother could only point out four occasions when Father drank to excess, and on two of those occasions, Mother also drank to excess. No evidence or testimony was presented that would make the Court believe that either party is a risk to the child.

While Mother does not agree that this factor favors Father, she does not dispute the court's factual findings or cite to evidence that preponderates against them.

Having reviewed the evidentiary support for the factual findings, we address the court's application of the statutory factors to the findings.

“Trial courts have broad discretion in devising permanent parenting plans and designating the primary residential parent.” *Burton v. Burton*, No. E2007-02904-COA-R3-CV. 2009 WL 302301, at *2 (Tenn. Ct. App. Feb. 9, 2009). As noted in *Armbrister v. Armbrister*:

“[D]etermining the details of parenting plans is peculiarly within the broad discretion of the trial judge. . . . A trial court’s decision regarding the details of a residential parenting schedule should not be reversed absent an abuse of discretion. An abuse of discretion occurs when the trial court ... appl[ies] an incorrect legal standard, reaches an illogical result, resolves the case on a clearly erroneous assessment of the evidence, or relies on reasoning that causes an injustice. A trial court abuses its discretion in establishing a residential parenting schedule “only when the trial court’s ruling falls outside the spectrum of rulings that might reasonably result from an application of the correct legal standards to the evidence found in the record.

414 S.W.3d 685, 693 (Tenn. 2013) (internal quotations and citations omitted; brackets in original).

The court applied the correct legal standard when it based its decision on its findings as to the factors found at section 36-6-106, which, as we have explained above, are supported by the testimony relative to the issues before us; neither party has pointed to evidence preponderating against the findings. In making its decision, the court determined which of the factors favored Mother and which favored Father; while either party may disagree with a specific factual finding or holding, viewing the evidence in its entirety, the decision to designate mother as primary residential parent is not illogical or unreasonable and reflects an appropriate weighing of the factors. Affording the trial court’s decision the deference called for by our standard of review, we do not conclude that the court abused its discretion.

For the foregoing reasons, we affirm the judgment of the trial court in all respects.

RICHARD H. DINKINS, JUDGE