

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
January 27, 2015 Session

**ALBERT FRANKLIN SUMMERS v. NAKISHA LAYNE**

**Appeal from the Chancery Court for Giles County  
No. 5235 Jim T. Hamilton, Judge**

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**No. M2014-01324-COA-R3-CV – Filed April 29, 2015**

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At issue in this appeal is a custody dispute between Albert Franklin Summers (“Father”) and Nakisha Layne (“Mother”). In addition to finding that Mother failed to comply with the parental relocation statute codified at Tennessee Code Annotated § 36-6-108, the trial court determined that it would be in the minor child’s best interests to designate Father as the primary residential parent. Although we conclude that the trial court erred in finding the parental relocation statute to be applicable to this case, we nonetheless determine that it conducted the proper analysis with respect to its custody decision. We affirm the trial court’s designation of Father as the primary residential parent.

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

ARNOLD B. GOLDIN, J. delivered the opinion of the Court, in which BRANDON O. GIBSON, J. and KENNY ARMSTRONG, J., joined.

J. Christopher William, Pulaski, Tennessee, for the appellant, Nakisha Layne.

Robert D. Massey, Pulaski, Tennessee, for the appellee, Albert Franklin Summers.

**MEMORANDUM OPINION<sup>1</sup>**

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<sup>1</sup> Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

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 When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION”, shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

## I. Background and Procedural History

The parties in this case are the unmarried parents of the minor child at issue, who was born on June 19, 2007. Father commenced the present action on December 7, 2011, by filing a petition to establish paternity in the Chancery Court of Giles County, Tennessee. In his petition, Father averred he was the minor child's natural biological father and asked that the trial court determine his parenting rights and obligations. Father claimed he was a fit and proper person to be designated as the primary residential parent of the child, and he prayed that the trial court enter a permanent parenting plan specifically designating him as such.

On December 21, 2011, the trial court entered an agreed order governing the parties' sharing of parenting time during the Christmas holiday, and on January 4, 2012, the trial court entered a temporary parenting plan pursuant to which the parties were ordered to share equal residential parenting time.<sup>2</sup> On March 14, 2013, Mother filed an answer to Father's petition and a counter-petition to modify the existing temporary parenting plan. Therein, Mother admitted that Father was the minor child's natural biological father, but she averred that she should be named the primary residential parent upon the entry of a permanent parenting plan. Father filed his answer to Mother's counter-petition on May 31, 2013. On April 9, 2014, the trial court conducted a custody hearing in this case.

At trial, the court heard proof from six witnesses. In addition to hearing the testimony of Mother, Father, and their respective fiancés, the trial court heard testimony from one of the minor child's former teachers, as well as testimony from one of Father's friends in Pulaski, Tennessee. Both Mother and Father retained residences in Pulaski as of the date of trial, but Mother testified that she desired to relocate to Kentucky, where she was already working for the Ford Motor Company and where her fiancé lived.<sup>3</sup>

On June 4, 2014, the trial court entered its order based on the proof heard at the April 9, 2014, custody hearing. The order stated that Mother had failed to comply with the parental relocation statute regarding her contemplated move to Kentucky and also found that the minor child's best interests would be served by adopting the parenting plan proposed by Father. The order further provided that, should Mother decide to relocate from Tennessee, the parties should submit a permanent parenting plan providing for visitation on certain specified terms that were outlined in the order. The order concluded

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<sup>2</sup> Prior to the litigation in this case, the parties appear to have shared custody of the child under informal parenting arrangements.

<sup>3</sup> We note, however, that Mother testified at trial she would not move to Kentucky without the child.

by directing the parties to submit the appropriate permanent parenting plan within fourteen days of the entry of the order.

On August 18, 2014, the trial court entered a permanent parenting plan. The plan designated Father as the primary residential parent for the minor child and provided that Mother's visitation was to occur on the terms outlined in the trial court's June 4, 2014, order that were contingent on Mother's relocation. Specifically, the permanent parenting plan allocated Mother parenting time "[o]ne weekend per month except for December[.]" in addition to certain specified holiday and vacation periods.<sup>4</sup> Mother now appeals.<sup>5</sup>

## II. Issues Presented

The issues raised by Mother on appeal, as stated in her brief, are as follows:

1. Whether the trial court erred in finding that Mother had failed to comply with the statutory parental relocation requirements despite there never having been an initial custody order in this case and despite the Father having admitted that he had known of Mother's intent to relocate for an entire year before trial and the two of them having discussed it many, many times.
2. Whether the trial court erred in making an adverse credibility ruling against Mother and in failing to make an adverse credibility ruling against Father.
3. Whether the trial court erred in concluding it was in the best interest of the child to designate Father as the primary residential parent.

## III. Standard of Review

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<sup>4</sup> We note that on December 3, 2014, the trial court entered an amended permanent parenting plan that slightly modified the calendar pertaining to Mother's parenting time. This amended plan did not change the number of days allocated to the parties and was entered *nunc pro tunc* to August 18, 2014.

<sup>5</sup> The appeal in this case originally came to be considered on January 27, 2015, with oral argument being held in Nashville, Tennessee, on that date. Upon our review of the record after oral argument, we questioned the parties *sua sponte* whether a final judgment existed in this case. Rather than dismissing the case, we gave Appellant time to file the necessary orders from the trial court indicating that the case was final. A supplemental record responsive to our instructions was filed in this Court on March 20, 2015.

In reviewing any findings of fact by the trial court, our review is *de novo* “upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.” Tenn. R. App. P. 13(d). We review a trial court’s conclusions on questions of law *de novo*, but no presumption of correctness attaches to the trial court’s legal conclusions. *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000).

#### IV. Discussion

We first address whether the trial court erred in finding that Mother failed to comply with the parental relocation requirements found in Tennessee Code Annotated § 36-6-108. This issue is easily resolved by the nature of the proceedings. This Court has previously held that the parental relocation statute does not apply when a court is making an initial custody decision or parenting arrangement. *Nasgovitz v. Nasgovitz*, No. M2010-02606-COA-R3-CV, 2012 WL 2445076, at \*5 (Tenn. Ct. App. June 27, 2012). Rather, the parental relocation statute is “clearly geared towards situations where . . . a[n] [initial custody] determination has already been made.” *Id.* at \*6. Temporary or *pendente lite* parenting arrangements are not considered to be initial custody determinations in this context. *Id.* at \*6 n.7. Thus, although the trial court entered a temporary parenting plan prior to the trial in this case, it is clear that the entry of the order and permanent parenting plan following trial constituted the “initial custody decision.” Given this fact, we conclude that the trial court erred in finding the parental relocation statute to be applicable. Although Father has essentially conceded this point on appeal, he argues that the trial court’s error on the issue has no real impact on the outcome of this particular case. We agree. When making an initial custody decision, the trial court must consider what is in the minor child’s best interests. *Rudd v. Rudd*, No. W2009-00251-COA-R3-CV, 2009 WL 4642582, at \*6 (Tenn. Ct. App. Dec. 9, 2009). In this case, there is no dispute that the trial court conducted a best interest analysis incident to its designation of Father as the primary residential parent. As such, notwithstanding its consideration of Mother’s efforts with regard to the parental relocation statute, the trial court still conducted the proper analysis with respect to its custody decision.

Having reviewed Mother’s concerns about the trial court’s application of the parental relocation statute, we now turn to the issues Mother has raised concerning the trial court’s determinations regarding custody and the parties’ credibility. It is well-settled that trial courts have significant discretion in matters of child custody, visitation, and related issues, and on appeal, we are reluctant to second-guess a trial court’s decision. *Marlow v. Parkinson*, 236 S.W.3d 744, 748 (Tenn. Ct. App. 2007) (citations omitted). Indeed, because custody determinations “often hinge on subtle factors, such as the parents’ demeanor and credibility during the proceedings[.]” trials courts must have wide latitude “to fashion custody . . . arrangements that best suit the unique circumstances of each case.” *Id.* (citations omitted). “In light of the deference given to the trial court’s decision in parenting matters, we will not disturb the trial court’s

parenting arrangement unless we determine that its decision is based on a material error of law, is against logic or reasoning, or is contrary to the preponderance of the evidence.” *Williams v. Singler*, No. W2012-01253-COA-R3-JV, 2013 WL 3927934, at \*8 (Tenn. Ct. App. July 31, 2013) (citations omitted).

When making a child custody decision, “the needs of the child are paramount[.]” *Chaffin v. Ellis*, 211 S.W.3d 264, 286 (Tenn. Ct. App. 2006) (citation omitted). The desires of the parents, in contrast, are simply secondary considerations. *Id.* (citation omitted). The required “inquiry is necessarily fact driven, and the trial court must take into consideration all of the facts and circumstances of the case in reaching its conclusion.” *Id.* (citation omitted). “In choosing which parent to designate as the primary residential parent for the child, the court must conduct a ‘comparative fitness’ analysis, requiring the court to determine which of the available parents would be comparatively more fit than the other.” *Id.* (citing *Bah v. Bah*, 668 S.W.2d 663, 666 (Tenn. 1983)). To carry out such an analysis, the court must consider the best interest factors set out in Tennessee Code Annotated § 36-6-106(a). *Id.*

In this case, the trial court considered each of the relevant statutory factors in determining that Father should be designated the primary residential parent.<sup>6</sup> On appeal, Mother has vigorously contested the trial court’s designation, in part, by suggesting the trial court erred in its credibility rulings. In addition to suggesting that the trial court erred in making an adverse credibility ruling against her, Mother suggests that the trial court erred in its failure to make an adverse credibility ruling against Father. We note that “trial courts are in the most favorable position to resolve factual disputes hinging on credibility determinations.” *Wells v. Tenn. Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999) (citations omitted). Unlike this Court sitting on appeal, “trial courts are able to observe witnesses as they testify and to assess their demeanor, which best situates trial judges to evaluate witness credibility.” *Id.* (citations omitted). As such, we will not re-evaluate a trial judge’s assessment of witness credibility absent clear and convincing evidence to the contrary. *Id.*

By citing to statements in the trial court’s June 4, 2014, order, Mother argues that the trial court’s adverse credibility ruling as to her was predicated on two bases: (1) her opinions concerning the educational system in Pulaski and (2) her failure to report to the government income she earned cutting hair. Having reviewed the June 4, 2014, order, we agree with Mother that the trial court’s credibility determination appears to have been influenced, in part, by these considerations. Immediately after stating that it was “not impressed with the credibility of [Mother,]” the trial court stated as follows:

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<sup>6</sup> The trial court applied a prior version of Tennessee Code Annotated § 36-6-106(a) that contained ten statutory factors for trial courts to consider in ascertaining a child’s best interest. We note that the statute was amended subsequent to the entry of the trial court’s June 4, 2014, order.

[Mother] apparently, on Facebook and in court, feels that the educational and extracurricular system in Pulaski, Tennessee for children and young adults is not the type of system within which productive young people can be raised. The Court finds that her position borders on the absurd. She admits to being untruthful with the government regarding her income while evidencing a cavalier attitude regarding same.

To the extent that the trial court discredited Mother's testimony due to her feelings towards Pulaski and the greater Giles County area, we agree with Mother that the trial court was in error. Mother's opinion on the quality of the educational system in Pulaski simply has no meaningful relevance on her propensity to tell the truth.<sup>7</sup> Moreover, we agree with Mother that her testimony regarding her failure to report the income she earned cutting hair was not a sufficient basis on which to find her generally untruthful. Mother's testimony indicated that she occasionally cut hair for her friends and family in her spare time; Mother also claimed that she only received payment for her services "sometimes." Notwithstanding any obligation Mother may have had to report the *de minimis* amount of income she earned from cutting hair, we fail to see how, based on Mother's limited testimony on the topic, to which she gave truthful answers, the trial court could properly conclude she lacked credibility with respect to unrelated matters concerning the minor child's custody. Although Mother also asserts the trial court erred in finding Father to be credible, we find no clear and convincing evidence to warrant a contrary finding. As already noted, "trial courts are able to observe witnesses as they testify and to assess their demeanor[.]" *Wells*, 9 S.W.3d at 783.

Even though there is clear and convincing evidence that the trial court erred in questioning Mother's credibility on the basis of the two reasons stated in its order, we cannot conclude that the evidence preponderates against the trial court's ultimate designation of Father as the primary residential parent. In particular, we agree with the trial court that designating Father as the primary residential parent would best further continuity and stability in the child's life. The trial court found these considerations favored Father whether or not Mother moved to Kentucky, and having carefully reviewed the record transmitted to us on appeal, we determine that the evidence does not preponderate against the trial court's findings in this regard.

Throughout her testimony, Mother expressed a sincere desire to leave Pulaski and relocate to Kentucky. From her perspective, the child's best interests would be served by moving with her to Kentucky. Father's testimony indicated that the area where Mother planned to relocate was about a four-hour drive from Pulaski. Although Mother's fiancé

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<sup>7</sup> Moreover, we note that the trial court's characterization of Mother's testimony in this regard does not even accurately reflect the sentiments she expressed at trial. We agree with Mother that the entirety of her testimony demonstrated that her concern with Pulaski was not with the quality of the school system itself, but rather, with the drug culture she alleged existed among Father and his circle of friends.

lived in Kentucky, Mother claimed that the primary motivating factor for her proposed relocation was the job she had obtained at Ford Motor Company in Louisville. She testified that the job at Ford was a good job, in contrast to a previous job she held in Pulaski that did not offer any benefits or provide insurance. Although she testified that she had not formally moved as of the date of trial, she stated that she had begun work at her new job approximately two weeks prior to trial. She further testified that, notwithstanding her desire to move and the fact that she was already working in Kentucky, she would not relocate without the child. This representation appears to have been a hollow promise; based on the supplemental record filed in this Court in March 2015, we note that Mother now resides in Brooks, Kentucky.<sup>8</sup>

In this case, the trial court did not err in finding that it would be in the minor child's best interests to remain in Pulaski with Father. The minor child has been raised in Pulaski for the majority of his life, and the evidence suggests that his upbringing there has been good. He has participated in several sports, and Father has previously coached his tee-ball and soccer teams. The child also has significant family connections in Pulaski. In addition to Father's mother, many of Mother's family members live in the area. As the trial court commented in its June 4, 2014, order:

[T]he majority of the friends and almost all of the family which [the child] has on both the paternal and maternal side reside in the Giles County area. This is important in this case. [The child] needs all of the family support he can get from both sides of the family. The Court finds that family and extended family support is important to the appropriate development of a child[.]

The weight the trial court gave to this consideration is not without merit. Aside from the expected animosity that has frequently occasioned the interactions between Mother and Father, the evidence indicates that the child has had a stable life in Pulaski, participating in many community and family activities. We cannot say that the trial court erred in finding that designating Father as the primary residential parent furthers this continuity and stability in the child's life. Mother's testimony that she would not move to Kentucky without the child does not change our conclusion on this issue. Like the trial court, we agree that the evidence supports the fact that Father is actively involved in his child's life. One of Father's friends, Jared Miller, testified that Father had a "very admirable relationship" with the parties' child and even stated that the relationship was one he wished he had with his own son. He further testified that Father appeared to give the child "top priority" when the two were together. We note that even Mother's fiancé testified that Father was "a good father" and "a good man."

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<sup>8</sup> According to the testimony of Mother's fiancé, Brooks, Kentucky, is an area right outside of Louisville.

Mother's testimony gave little insight on what her plans for the child would be were she to remain in Tennessee. In fact, her testimony concerning the child's future focused almost entirely on what the child's life would be like in Kentucky. Although she expressed concern that her job prospects in Giles County were limited, she admitted that she had not attempted to look for a job that provided benefits in the Giles County area. Moreover, notwithstanding her testimony that she would not move without the child, we again note that the supplemental record filed in this Court in March 2015 indicates that Mother is now living in Kentucky.

## **V. Conclusion**

Although the trial court erred in finding the parental relocation statute to be applicable, the evidence does not preponderate against its decision to designate Father as the primary residential parent. This cause is remanded to the trial court for all further proceedings as are necessary and consistent with this Opinion. Costs on appeal are assessed against Mother, Nakisha Layne, and her surety, for which execution shall issue if necessary.

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ARNOLD B. GOLDIN, JUDGE