

IN THE COURT OF APPEALS
AT NASHVILLE

THOMAS A. KNIGHT, DAVIDSON CIRCUIT)
Plaintiff - Appellee) C.

vs. HON. MARIETTA SHIPLEY)
JUDGE)

NATALIE KNIGHT (N OAWF FAIMRBMREODS EA)N, D R E)M A N D E)
Defendant - Appellant)

KATHY A. LESLIE, Nashville, for Appellant

CLARK LEE SHAW, Nashville, for Appellee

O P I N I O N

McMurray, J

This is a post divorce proceeding and not a
partition or child support matter. After the trial court
made an extensive finding of fact and, among
other things, found that there had been a change of circumstances

change in custody. The trial court changed custody and awarded joint custody to the husband as the designated custodian. On appeal, the court found the insufficiency of the evidence. We affirm the trial court.

No verbatim transcript was available. The appellant filed a statement of the evidence and objected for incompleteness. The appellee's statement of the evidence containing additional material was also filed. The court ordered that both statements be read together.

We should note that the burden of proof is on the party seeking joint custody or a "preponderance of the evidence" standard. Therefore, it is necessary to establish a preponderance of the evidence in favor of the arrangement.

In Adelsperger v. Adelsperger, 201 S.W.2d 48 (Mo. App. 1997), this court made the following statement:

Notwithstanding the importance of stability and continuity, intervening changes in a child's circumstances may require modification of existing custody arrangements. Tenn. Code Ann. § 36-2-101 (Supp. 1997) empowers the court to change custody when the party seeking the change shows that the child's circumstances have changed in a way that could not have been foreseen at the time of the original decision, see Smith v. Hayes, 524 S.W.2d 497, 500 (Tenn. 1975), and McDaniel v. McDaniel, 421 S.W.2d at 169, and (child's best interests will be served by the existing custody arrangement). See Meantl. v. Tenn., 1995 WL 316255, *2 (Tenn. May 25, 1995) (No. 01A01-95R-App-P-11 application filed).

Custody decisions are factually dependent on the careful consideration of numerous factors. Holloway v. Bradley, 565 S.W.2d 230, 231 (Tenn. 1978). See airbrough v. S.W.2d, 96 (Tenn. 1988). Since the credibility of the parties' testimony is a matter for the trier of fact, appellate courts are reluctant to second-guess the findings of the trial court. See Gilbert v. Gilbert, 76 S.W.2d 81, 84 (Tenn. Ct. App. 1936). Accordingly, we decline to disturb custody unless they are based on a material and credible change in circumstances. See Harris v. Knight, 667 S.W.2d 554, 555 (Tenn. Ct. App. 1984). See Gaski v. Griffen, 1936 S.W.2d 626, 631 (Tenn. Ct. App. 1984).

Id. page 485.

While the circumstances show that the parents' respective statements of the evidence are not sufficient to warrant a change in custody, at the time of the original decree, the child was in a stable home environment. Since the child's home environment of time was a stable home environment.

home environment mother has not and, while
review the sparseness of the record,
in that mother's home environment has,
rated.

The evidence reflects that at the time
the husband was on active duty with the
returned civilian life. Both parties
father and his wife have a relationship appears
inestimably superior to that of the mother.

With regard to the mother's home the
following observations:

Ms. Knight's life is the same or
deteriorated. She admitted she had a dependent a
count the years ago. She admitted regular
marijuana use the time she was served
strains. She has married once.
now in carcerated. She had a child
another child by her man, who is blind,
making him quadriplegic. She is a
mother by that person. Since the divorce
unable work, primarily for children
two of which are involved in this
due to her lack of education. She does
help from the government, with the
stamp, relying solely on her child support
\$50 per month from her generous mother
want to live in a house, so she lived in
trap trailer for a while. In 1996,
a decent trailer for her in Dickson,
pays the rental payment to her mother
pays the utilities.

Richard Hedgepath visited the new family able to make arrangements ahead of and his wife. The Knights (father and have two children from his wife's. The house was neat and clean, although the bedroom. Both the father and wife are paying jobs. They seem to be quite settled household. Mr. Hedgepath was not able to mother and came to her home unannounced four bedrooms. The trailer was reassembled with things all around the house. assortment of things inside the trailer and in the kitchen. The food choice for at best limited. The children had plenty of them. There was an assortment of presents in the trailer, including a present for his wife. Cory is a 15 year old boy who is a paralympic friend. [original.]

The court cannot compare the defendant's environment with the environment of the defendant's father. The court is concerned about the school records. Cory had to repeat a grade, first because he could not read and second because he was behind in the room. Cory had potential diagnosis of ADHD, a meeting at his school in Dickson. Cory missed 35 days. Both had 18 days out of school, for "overslept", "missed bus", "power out" had about a "c" average.

The record also reflects that the defendant was arrested for possession of drugs and received probation.

¹Mr. Hedgepath was appointed to inspect the defendant's homes.

We, like the trial court, believe that sufficient change in circumstances exists of the evidence to warrant a change in

We affirm the judgment of the trial court. Costs are assessed to the appellant and the trial court.

Don T.

CONCUR :

Houston M. Goddard, Presiding Judge

Samuel L. Lewis, Special Judge

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NATALIE KNIGHT (N OAWF FAIMRBMREODS EA)N,D R E)M A N D E)
Defendant - Appellant)

JUDGMENT

This appeal was heard upon the record
Circuit Court of Davidson County, brief
Upon consideration thereof, this Court
was no reversible error in the trial
We affirm the judgment of the trial
Costs are assessed to the appellant and
the trial court.

Don T. McMurray, Judge

Houston M. Goddard, Pr

Samuel L. Lewis, Spec i