

IN THE COURT OF APPEALS OF TENNESSEE

GARY WAYNE SHOEMAKER,) C/A NO. 03A01-9509-CV-00312
) GREENE COUNTY CIRCUIT COURT
 Plaintiff-Appellee,)
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)
)
 v.) HONORABLE WILLIAM L. JAMES,)
) JUDGE)
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)
 DEBBIE LYNN SHOEMAKER,)
)
 Defendant-Appellant.) AFFIRMED AND REMANDED

FILED
May 24, 1996
Cecil Crowson, Jr.
 Appellate Court Clerk

JACK H. BURKHARD, Greeneville, for Appellant
 ROGER A. WOOLSEY, Greeneville, for Appellee

O P I N I O N

Susano, J.

In this post-divorce case, the trial court changed the custody of the parties' minor children, James Wayne Shoemaker (DOB: February 26, 1987) and Cody Ernest Ray Shoemaker (DOB: January 5, 1990), from the children's mother to their father. Mother appeals, arguing, in effect, that the evidence preponderates against the lower court's judgment.

Our examination of this case is undertaken pursuant to well-established principles. The standard of appellate review in child custody cases is the same as in other non-jury cases. **Hass v. Knighton**, 676 S.W.2d 554, 555 (Tenn. 1984). Rule 13(d), T.R.A.P., mandates that we examine the record *de novo*; however, we are instructed that there is a presumption that the trial court's judgment is correct. We must honor that presumption and affirm the trial court's judgment unless we find that the evidence preponderates against any and all findings that would legally support the trial court's judgment. **Doles v. Doles**, 848 S.W.2d 656, 661 (Tenn. App. 1992).

In order to change custody in a modification case, "the trial judge must find a material change in circumstances that is compelling enough to warrant the dramatic remedy of changed custody." **Musselman v. Acuff**, 826 S.W.2d 920, 922 (Tenn. App. 1991). "'Changed circumstances' includes any material change of circumstances affecting the welfare of the child or children including new facts or changed conditions which could not be anticipated by the former decree." **Dalton v. Dalton**, 858 S.W.2d 324, 326 (Tenn. App. 1993).

In cases involving the custody of children, a trial court has broad discretion and its decision will ordinarily not be reversed unless that discretion has been abused. **Suttles v. Suttles**, 748 S.W.2d 427, 429 (Tenn. 1988). In such cases, the welfare of the children--their best interests--is the "paramount consideration." **Luke v. Luke**, 651 S.W.2d 219, 221 (Tenn. 1983).

We have carefully reviewed the four volumes of transcript and the various exhibits received into evidence in this case. Much has transpired since the initial award of custody to the appellant on March 9, 1990¹. There is substantial evidence in the record, much of which was undisputed at trial, that reflects poorly on the appellant's attitudes, decisions, and conduct, as they relate to her parenting of the parties' children. For example, there is undisputed evidence that from August, 1990, to the date of the hearing, the appellant had four live-in boyfriends². Furthermore, there is substantial proof, which, if believed, indicates that the children were adversely impacted by the appellant's improper decisions and conduct, particularly some of the live-in relationships. There is also proof of mother's use of marijuana and possession of this illegal substance in the house where she lived with her children. On this later subject, the appellant vigorously denied current drug use; but the trial court apparently resolved this dispute against her. Credibility findings by the trial court are reviewed by us with the following in mind:

¹The trial court's hearing in this modification case was held on March 2, 1995.

²She married the last of the four shortly after the modification hearing.

The findings of the trial court which are dependent upon determining the credibility of witnesses are entitled to great weight. **Town of Alamo v. Forcum-James Co.**, 205 Tenn. 478, 483, 327 S.W.2d 47, 49 (1959). The reason for this is that the trial judge alone has the opportunity to observe the manner and demeanor of the witness while testifying. On an issue which hinges on the credibility of witnesses, the trial court will not be reversed unless there is found in the record clear, concrete, and convincing evidence other than the oral testimony of witnesses which contradict the trial court's findings. **Tennessee Valley Kaolin Corp. v. Perry**, 526 S.W.2d 488, 490 (Tenn. App. 1974).

Galbreath v. Harris, 811 S.W.2d 88, 91 (Tenn. App. 1990).

We cannot say, based upon our review of the record, that the evidence preponderates against the trial court's determination that there had been a material change of circumstances since the divorce that warranted a change in the children's custody. This being the case, the presumption of correctness attached to that finding "carries the day" and we must honor it.

The judgment of the trial court is affirmed. This case is remanded for the collection of costs assessed below, pursuant to applicable law. Costs on appeal are taxed to the appellant and her surety.

Charles D. Susano, Jr., J.

CONCUR:

Houston M. Goddard, P.J.

Don T. McMurray, J.