

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
September 7, 2016 Session

**HEATHER LEWIS v. MICHAEL JAMES PARMERTER**

**Appeal from the Chancery Court for White County  
No. 9840 Ronald Thurman, Chancellor**

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**No. M2015-01335-COA-R3-CV – Filed January 31, 2017**

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Father appeals the order entered on the motion of the Mother of four children awarding her sole decision-making authority regarding the children’s religious upbringing and designating that the children attend her church, contending, among other things, that the mandate that the children attend Mother’s church violates his and the children’s freedom of religious expression, as protected by the Federal and Tennessee Constitutions. We hold that the court did not abuse its discretion in granting Mother sole authority regarding the children’s religious upbringing and modify the order to remove that portion specifying the church that the children are to attend.

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

RICHARD H. DINKINS, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and W. NEAL MCBRAYER, J., joined.

Johnnie Louis Johnson, III, Reston, Virginia, for the appellant, Michael James Parmarter.

S. Brad Dozier, Brentwood, Tennessee, for the appellee, Heather Lewis.

**OPINION**

**I. FACTUAL AND PROCEDURAL HISTORY<sup>1</sup>**

Heather Lewis (“Mother”) and Michael James Parmarter (“Father”) are parents of four minor children born during the course of their marriage. Mother and Father

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<sup>1</sup> There was no transcript of any proceedings in this case, and the technical record contains orders entered on various motions, which are not a part of the record. The Statement of the Evidence was prepared by the trial court and summarizes, to some extent, the history of the case as well as the hearing that led to the order at issue, at which the parties appeared *pro se*.

divorced in 2008, and at the time of the divorce, the court enter a parenting plan which designated Mother as primary residential parent and gave Mother and Father joint decision-making authority with respect to the children's religious upbringing. Since the divorce, the parties have engaged in much contentious litigation concerning the children and, particularly, their religious upbringing. A new parenting plan was entered on March 30, 2012; pertinent to the issues in this case, Mother was retained as primary residential parent, and the parties retained joint decision-making authority with respect to the religious upbringing of the children.

On October 28, 2013, the court entered an order, *inter alia*, appointing a Guardian *ad litem* for the children.<sup>2</sup> On December 20, 2013, the court entered an order, *inter alia*, requiring Mother and Father to submit to a psychological evaluation in January 2014 and to follow counseling as recommended; the court set a review for March 25, 2014.<sup>3</sup>

On February 27, 2015, the court entered an order reciting that a review hearing was held on February 6, ordering that the parties continue in counseling, and setting a hearing for March 30 on Father's motion to modify the parenting plan.<sup>4</sup>

At the March 30, 2015 hearing, the court received evidence from Sheila Masters, psychotherapist for the family, in the form of a letter from Ms. Masters to the Guardian *ad litem*; the letter stated in pertinent part:<sup>5</sup>

As you know, I have been seeing the Parmerter family since February 6, 2015. . . . [Mother] has also reported that [Child 1] has become paranoid that "Jehovah" is watching everything that he does and that he will be punished when his father takes him back to "Jehovah's House", which Matthew has not identified as an issue at this point in therapy. . . .

I began holding sessions with the children on February 6, 2015 and have met with the children . . . individually and as a group. When asked what they would like to change about their life to make it better, all of the children identified spending more time with their father; [Child 1] would like their father to move closer so they could visit him whenever they want. [Child 2] would like to spend more time with her father. [Child 3] agreed with [Child 1], wanting Father closer so she could visit whenever she

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<sup>2</sup> The Statement of the Evidence recites that the Guardian was appointed "due to the continuing hostility between the parties."

<sup>3</sup> The Statement of the Evidence recites that the order was entered following a November 23 hearing on Mother's petition to modify the parenting plan and petition for civil contempt.

<sup>4</sup> The motion is not in the record before us. In her brief on appeal, Mother refers to the March 30 hearing as a "review hearing."

<sup>5</sup> The letter was introduced at the hearing and made a part of the record.

wanted. [Child 4] would like her father to be able to drive them to school so they could spend more time with him.

Mr. Michael Parmerter has attended 6 individual sessions and a session with all of the children. During the family session, all of the children were observed to be very comfortable interacting with their father. All of the children have reported experiencing some anxiety associated with attending father's religious services, specifically [Child 1]. The severity of their complaints identified during therapy are based on their differing religious beliefs, boredom during the service and their father startling [Child 1] to wake him during the service, but not doing so to the other children. These issues were addressed with Mr. Parmerter, who agreed to work with the children in order to reduce any stress or anxiety related to these matters.

At this time I feel that the children would benefit from increased visitation and involvement with their father. I feel that it is important for [Father] to be involved in attending their doctor's appointments and extra-curricular events. I do, however, believe it would be extremely beneficial for the family (including [Mother]) to continue attending therapy. I feel that it is of utmost importance that [Mother] and [Father] increase their Congruent Parenting Skills, to learn to work better together in raising these wonderful children with a healthy relationship between their parents. I also feel that it would benefit [Child 1], if he were able to continue addressing any further issues he may have regarding conflict of religious beliefs – vs – attending a service with his father.

The court entered an order on April 28, modifying the parenting plan and giving mother sole decision-making authority over minor children's religious upbringing. Mother subsequently filed a "Motion to Amend/Parenting Plan From March 30, 2015," requesting, *inter alia*, that the court amend the April 28 order to "reflect this court's order that [Father] should not force the minor children to participate in or practice his religious beliefs."

The court held a hearing on the motion at which the court received another letter from Ms. Masters; pertinent to the issues in this appeal, the letter stated:

. . . As you know I have continued to see [Mother], [Father] and all of the [ ] children. Since their last court hearing I have noted a significant increase in emotional distress in all of the children, most affected is [Child 1]. In speaking with all of the children, it has been brought to my attention that they are attending Kingdom Hall (sometimes for 4+hours at a time) more frequently with their father, [ ]. All of the children are of the understanding that father was no longer allowed to take them to Kingdom

Hall. It has also been noted that the children have been provided excessive age inappropriate information related to court proceedings and the parents' reason for their divorce, of [sic] which tend to be derogatory toward the other parent. The children also continue to verbalize distress related to parental relations, especially while at the children's ball games, which [Mother] [reports] [Father] has violated their mutual restraining order. The children have also identified increased anxiety, distrust of father, feeling they are being forced to believe something they do not, that he is not considerate of their own thoughts and beliefs, that they are being pressured to choose between their mother or father.

I have addressed the aforementioned issues with both parents. The children's mother [ ] has agreed to make changes per therapeutic recommendations, addressing communication skills, Parenting Skills, co-parenting relations, avoiding age-inappropriate information for their children.

In addressing these issues with [Father], he does not state that he will take these into consideration, but he will do what he feels is right for his children. During therapeutic sessions, [Father] has demonstrated consistent resistance toward recommendations, which has been evidenced by body language, posturing, facial expressions and lack of follow-through. Although [Father] is attending therapy sessions, he continues to be resistant to carrying through recommendations made by this therapist to aid in reducing the children's emotional stress.

Ms. Masters recommended that the children continue in therapy with their parents, and that "the children's thoughts and beliefs should be taken into consideration in all aspects of their life."

On June 15, 2015, the court entered an order stating in pertinent part:

Mother is awarded the authority to make decisions regarding the children's religious upbringing, that the children shall exclusively attend Trinity Church as the Mother has requested, although Father is not obligated to take them to said Church during his parenting time.

Father appeals, stating the following issues:

1. Did the trial court abuse its discretion when it ordered that the parties' four minor children must exclusively attend Trinity Church?

2. Did the trial court violate the parties' and the children's fundamental freedoms, as provided in the Federal and Tennessee State Constitutions, by ordering the parties' four children to exclusively attend Trinity Church even though the record below shows there was no clear and affirmative evidence or testimony from lay or expert witnesses showing that any of the four minor children were suffering from a present or imminent risk of substantial harm as a direct result of exposure to their Father's religious community, practices or belief.

## II. STANDARD OF REVIEW

Decisions regarding parenting arrangements are within the broad discretion of the trial court. *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001) (citing *Suttles v. Suttles*, 748 S.W.2d 427, 429 (Tenn. 1988)). Accordingly, the trial court's decision regarding parenting arrangements should not be reversed, absent an abuse of discretion. See *Armbrister v. Armbrister*, 414 S.W.3d 685, 693 (Tenn. 2013) (citing *Eldridge*, 42 S.W.3d at 88)). "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." *Armbrister*, 414 S.W.3d at 693 (quoting *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011)).

## III. ANALYSIS

Father contends that the trial court abused its discretion in ordering that the children exclusively attend Trinity Church, arguing, *inter alia*, that the evidence does not support such a restriction. In our resolution of this issue, we first examine whether awarding Mother sole decision-making authority regarding the children's religious upbringing was a proper exercise of the court's discretion.<sup>6</sup>

We have previously held that "where the parents are unable to agree on matters of great importance to the welfare of their minor children, the primary decision-making authority must be placed in one parent or the other." *Coley v. Coley*, No. M2007-00655-COA-R3-CV, 2008 WL 5206297, at \*7 (Tenn. Ct. App. Dec. 12, 2008) (no Tenn. R. App. P. 11 application filed). The record before us, particularly Ms. Master's letters, show, amongst other things, the extent of disagreement between the parents regarding the religious training of the children, the effect that disagreement is having on the emotional well-being of the children, and the anxiety they experience when they are required to go to church with Father. Ms. Master's observations, opinions and recommendations letters

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<sup>6</sup> While Father does not specifically argue that the court abused its discretion in granting Mother this sole authority, it is appropriate that we discuss the evidentiary support for the court's ruling as a prerequisite to addressing Father's specific objection.

provide a substantial evidentiary basis for the decision to vest Mother with sole decision-making authority regarding the children's religious upbringing. In an effort to bring a degree of stability to that aspect of the children's lives as well as to diminish conflict between the parents, the court did not abuse its discretion in giving Mother that authority.<sup>7</sup>

Having granted Mother the authority to make decisions regarding the children's religious upbringing, we now address whether the record supports the specific restriction that the children only attend Trinity Church. We have determined that it does not.

Ms. Master's letters identify Father's church as the source of the children's anxiety and distress; she does not recommend that the children be compelled to attend Mother's church, Trinity. While Mother is free to have the children attend Trinity, there is no evidence in the record to support the order that they do so. Their religious upbringing is, on the state of the record before us, solely vested in Mother. While we acknowledge that the specific designation of Trinity Church may bring a degree of certainty to where the children go to church, in her motion Mother requested only that the order reflect that the children would not be forced to participate in or practice Father's beliefs; granting her sole decision-making authority accomplishes that objective. Accordingly, we modify the order to remove the requirement that the children attend Trinity Church.

In light of our decision, Father's remaining issues are pretermitted.<sup>8</sup>

For the foregoing reasons, the judgment of the trial court is affirmed, as modified.

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RICHARD H. DINKINS, JUDGE

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<sup>7</sup> In the Statement of the Evidence the court discussed the nature of the parties combative history:

There has been much contention between the parties over their children's religious upbringing. Since that divorce, the parties have filed numerous Petitions for Contempt, Orders of Protection, and Motions to Modify arising out of, among other disagreements, the control of their children and their religious beliefs. Much of this conflict centers around [Father's] refusal or interference with his children participating in extracurricular [sic] activities, such as Scouts, football and other sports which he claims violates his religious beliefs.

<sup>8</sup> The law is well settled that constitutional issues need not be decided where the case can be resolved on nonconstitutional grounds. *Bah v. Bah*, 668 S.W.2d 663, 668. (Tenn. Ct. App. 1983) (citing *Watts v. Memphis Transit Management Co.*, 462 S.W.2d 495, 498 (1971)).