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Kenneth H. Kato

COA No. 28899-4-11

APR 03 2012

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

EARTH FEATHER QUINTERO (now GUARDIPEE), Appellant,

v.

DAVID QUINTERO, SR., Respondent.

BRIEF OF RESPONDENT

David Quintero, Sr.
Respondent Pro Se
P.O. Box 104
Medical Lake, WA 99022
(509) 828-7679

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58). In June of 2007, an agreed parenting plan was entered providing for joint custody. As with the 2004 parenting plan, this 2007 parenting plan did not place any restrictions upon either parent. (RP 10).

Then, in October of 2008, the mother abruptly removed the children from Spokane County and Sunset Elementary without notice to either the father or the school. This resulted in Sunset Elementary filing a truancy petition and the Spokane County Court finding the mother in contempt. (RP 13, 15, 66, 68, 70, 89). The father was informed of the move and his children's whereabouts two months later after WaHeLut Indian School contacted Sunset Elementary. (RP 192-193).

The mother then filed a Petition for Modification on January 21, 2009. On April 15, 2009, Michael Little was appointed Guardian Ad Litem to this case, pursuant to RCW 26.09, and the matter was set for trial. (RP 9).

During a two day trial, the trial court listened to twelve witnesses, including the GAL, the principal of Sunset Elementary, and Sunset's speech-pathology expert, all of whom the court considered professional and unbiased. (CR 206).

All of the above named witnesses expressed concern with the children's education and testified the children would be better served by remaining with their dad where they have support, stability, and continuity

in their education. (RP 18-19, 70, 89; CR 209-212). In addition, the GAL testified Aztec wants to remain with his dad in his current school district. (RP 16). The GAL also testified that due to Sky's significant speech and language impediment, he is unable to communicate his desires. (RP 15).

Thus, the trial court denied the mother's motion to modify the parenting plan, and instead granted modification to the father based on the testimony and evidence presented over the course of the trial. The court also ordered the mother to pay child support based on imputed income. (CR 255). The mother subsequently filed this appeal.

III. ARGUMENT

A. The Evidence Supports Finding of Fact 2.2.

The spouse who challenges a trial court's decision in a dissolution action "bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court." *In re Marriage of Landry*, 103 Wash. 2d 807, 809 (1985) (citing *In re Marriage of Konzen*, 103 Wash. 2d 470, 478 (1985). Thus, this Court must affirm the trial court's decision unless it can find that "no reasonable judge would have reached the same conclusion." *Id.* at 810.

In this case, Ms. Guardipee's argument that the trial court erred has no merit. After the State of Washington established the 2006 dependency, placing the children with the father, the parties agreed upon a parenting

plan providing for joint custody in 2007. (RP 10, 57-58). During this entire time, the children attended Sunset Elementary in the Spokane School District. Then, in October of 2008, the mother abruptly moved to the other side of the state, taking her children with her. The mother did not provide notice to the school or the father before she moved. In fact, the record reflects the mother never contacted Sunset Elementary or the father. Instead, WaHeLut Indian School contacted Sunset Elementary two months later. (RP 13, 15, 66, 68, 70, 89, 192-93; CR 208-09). A move across the state by one parent is clearly a substantial change of circumstance, especially considering the parents had joint custody. *See* RCW 26.09.260. It is unreasonable to expect any child to attend two different schools during the course of a year, much less a developmentally delayed child. Indeed, this move resulted in a substantial alteration of the children's school and residential schedule to their detriment. (RP 15, 89).

The trial court considered this substantial alteration to the children's school and residential schedule, as well as the testimony of twelve witnesses, the court record, and the history of the parties' dissolution. In so doing, the court assigned greater weight to the testimony of the unbiased professionals, who were also more familiar with the children's educational needs, and to recent history. (CR 207-12). The court then reasonably concluded, after weighing all of the evidence, that a substantial

change of circumstance had occurred and the current joint custody arrangement must be modified to serve the best interest of the children, particularly their educational interests. (CR 212).

In sum, the record reflects that a comprehensive and thorough GAL investigation and the greater weight of the evidence supported the trial court's decision. As a result, this Court must affirm the trial court's ruling because it simply cannot find that "no reasonable judge would have reached the same conclusion." *In re Marriage of Landry*, 103 Wash. 2d at 810.

B. The Evidence Supports Finding of Fact 2.7 and the Trial Court's Decision to Designate Mr. Quintero as the Primary Custodial Parent.

"Unchallenged findings are verities on appeal." *Robel v. Roundup Corp.*, 148 Wn. 2d 35, 43 (2002). Here, the mother never challenged the trial court's findings of fact 2.7. Nevertheless, the evidence fully supports finding of fact 2.7, as well as the trial court's resulting decision to designate Mr. Quintero as the primary custodial parent.

"On appeal, the reviewing court must defer to the sound discretion of the trial court unless that discretion is exercised in an untenable or manifestly unreasonable way. *In re Marriage of Wayt*, 63 Wn. App. 510, 513 (1991).

It is undisputed the mother abruptly relocated the children across the state without notifying the school or father. (RP 13, 15, 23, 66, 68, 70, 89, 192-93; CR 208-09). Although the trial court did not quarrel with Ms. Guardipee's reasons for moving, her reasons are irrelevant to the best interest of her children. (23, 193; CR 208). The court record showed Ms. Guardipee's sudden relocation caused a significant change of circumstance under RCW 26.09.260(1), rendering the 2007 parenting plan unreasonable and inoperable. In addition, all the professional witnesses testified her abrupt move negatively impacted the children's education. (RP 14, 15, 66, 68, 70, 89).

Moreover, the GAL also testified and the witnesses reported the mother was not involved with her children's school or education and had limited contact, if any, with Sunset Elementary. (RP 14-15). Meanwhile, the same witnesses testified the father was very involved and responsive to his children's education needs and Sunset Elementary. (RP 14, 71, 72, 77). Further, although his grades need to improve, Aztec is doing well at Sunset Elementary and both children have very good attendance. (RP 14, 15, 19, 28, 68). Thus, it is evident from the record and testimony the father proved most involved in the children's education and provided the more stable, consistent environment – which is in any child's best interest. Thus, the trial court's finding of fact 2.7 and resulting decision to

designate Mr. Quintero as the primary custodial parent flowed naturally from the court record and evidence.

In light of such evidence, the mother cannot now maintain that the trial court exercised its discretion in an untenable or manifestly unreasonable way. To the contrary, the evidence overwhelmingly supports the trial court's sound reason and discretion. Therefore, this Court must defer to the sound discretion of the trial court and uphold its decision to designate Mr. Quintero as the primary custodial parent.

C. The Court Imputed Income to Ms. Guardipee Based on the Evidence Presented.

"A trial court exercises broad discretion in modification of the child support provisions of a divorce decree. [This Court must] review a trial court's decision regarding child support for abuse of discretion, recognizing that such decisions are seldom disturbed on appeal." *In re Marriage of Pollard*, 99 Wn. App. 48, 52 (2000) (citing *In re Marriage of Blickenstaff*, 71 Wash. App. 489, 498 (1993); *In re Marriage of Griffin*, 114 Wash. 2d. 772, 776 (1990).

Here, the trial court found the mother failed to present any evidence she was a student, failed to provide any financial information, was not disabled, and was voluntarily unemployed.

RCW 26.19.071(6) provides in pertinent part:

> The court shall impute income to a parent when the parent is voluntarily unemployed or underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors.

Ms. Guardipee asserts the record clearly reflects she was in college. It does not. The record reflects she "planned" on going to college, but was not yet attending college, which is exactly what Ms. Guardipee's mother testified. (RP 116). Instead, the record shows Ms. Guardipee was going to WorkSouce. (RP 116). Further, Ms. Guardipee failed to cooperate with the court, as ordered, with Mr. Quintero in providing any financial information. As a result, Spokane Tribal TANF provided the information based on their records of the family income, as Ms. Guardipee's suggested.

Thus, the evidence clearly demonstrated Ms. Guardipee was voluntarily unemployed and the court properly ordered child support based on imputed income pursuant to RCW 26.19.071(6).

IV. CONCLUSION

For the aforementioned reasons, this Court must defer to the sound discretion of the trial court and uphold the trial court's decision to modify the parties' 2007 parenting plan and designate Mr. Quintero as the primary custodial parent. The trial court's decision was reasonably based on the

court record, evidence presented during a two day trial, and on a thorough Guardian Ad Litem investigation, report, and recommendation.

RESPECTFULLY SUBMITTED this 30th Day of March, 2012.

David Quintero
Respondent Pro Se and Father

CERTIFICATE OF SERVICE

I certify that on April 2, 2012, I served a true and correct copy of the Brief of Respondent by personal service on Kenneth H. Kato, 1020 N. Washington Street, Spokane, WA 99201.

David Quintero