Cite as 2011 Ark. App. 495

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA10-1175

DUSTIN KYLE CHASTAIN
APPELLANT

V.

COURTNEY HEATHER CHASTAIN
APPELLEE

Opinion Delivered AUGUST 31, 2011

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FOURTEENTH DIVISION
[NO. DR-09-2630]

HONORABLE VANN SMITH, JUDGE

REBRIEFING ORDERED

CLIFF HOOFMAN, Judge

Appellant Dustin Kyle Chastain appeals from the trial court's order granting appellee Courtney Heather Chastain's motion to change custody and to relocate with the parties' two minor children. On appeal, appellant argues that (1) the trial court erred by considering evidence outside of the record; (2) the trial court's finding that the parties did not have true joint custody was against the preponderance of the evidence; (3) the trial court's finding that appellee should be allowed to relocate with the children without finding that the move was in the best interest of the children was clearly erroneous. We must order rebriefing due to deficiencies in appellant's addendum.

The parties to this appeal were married in 2005 and have two children, A.C. and B.C., who were five years old and three years old at the time of the hearing on appellee's motion to change custody. The parties entered into a marital-settlement agreement on May 12, 2009,

which was incorporated into their divorce decree entered on June 16, 2009. The parties provided in their agreement that parental responsibility would be shared by both parents and that custody of the children would be "joint and equal with the mother having the primary residence." The agreement further set out appellant's "Secondary Residential Responsibility" and "Visitation" schedule, which provided that the parties would split time equally with the children during months that appellant was assigned to the day shift and that during the months that appellant worked the night shift, he would have custody of the children during his two days off, with unlimited visitation on any other nights that he chose and was available. In addition, the agreement stated that both parties would split all child-related expenses evenly and that neither party was required to pay child support. It also provided that the parent granted primary residential responsibility of the children shall have the benefit of any tax deductions for the children.

On June 7, 2010, appellee, who was employed as an intelligence analyst with the Arkansas Air National Guard, filed a motion for change of custody and requested permission to move with the children to North Carolina to accept new employment as a civilian contractor. She stated that her new job opportunity in North Carolina would pay twice the salary of her current employment and that her schedule would be more conducive to parenting the children. She alleged that it was in the best interests of the children that custody be changed to her and that she be permitted to relocate with the children, with appellant being entitled to liberal visitation.

Appellant filed a response denying appellee's allegations. Prior to the hearing on the

motion, appellee was married to Joseph Dark, a Warrant Officer, who was stationed at Fort Bragg, North Carolina. At the hearing on September 27, 2010, appellee argued that she was the primary custodial parent and that she was entitled to a presumption in favor of relocation with the children. Appellant argued, however, that the parties had joint custody pursuant to their settlement agreement and that appellee was thus not entitled to this presumption. After testimony and evidence presented by the parties, the trial court requested that the parties file letter briefs arguing their respective positions and stated that it would make a decision after reviewing the briefs.

After the parties submitted their briefs, the trial court entered its decision on October 7, 2010, finding that appellee was the primary custodian based on the testimony of the parties and the terms of their settlement agreement. The trial court found that appellee was entitled to a presumption in favor of relocation and discussed the applicable factors set out in *Hollandsworth v. Knyzewski*, 353 Ark. 470, 109 S.W.3d 653 (2003), that are relevant to a petition to relocate. The trial court further found that appellant had failed to rebut this presumption and that appellee was allowed to relocate with the children to North Carolina. Appellant now appeals from this decision and presents several arguments challenging the findings of the trial court.

We are unable to address the merits of appellant's appeal at this time due to deficiencies in his addendum. Appellant's response to appellee's motion for change of custody and relocation is not contained in the addendum. Also missing from the addendum are the letter briefs filed by both parties addressing the issues relevant to the trial court's decision and to this appeal. According to Ark. Sup. Ct. R. 4–2(a)(8) (2011), an appellant's addendum must

contain true and legible copies of the nontranscript documents in the record on appeal that are essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal, including motions, responses, and related briefs. Our supreme court has held that it is impossible for an appellate court to make an informed decision on the merits of a case without the essential documents on which the trial court based its decision. *Dachs v. Hendrix*, 2009 Ark. 322, 320 S.W.3d 645. The documents missing from appellant's addendum here contain argument and citations to authority advanced by both parties relating to the same issues raised in this appeal and are essential to our understanding of the case. Therefore, because appellant has failed to comply with Ark. Sup. Ct. R. 4–2(a)(8), we direct appellant to file a supplemental addendum that includes these additional documents from the record within seven calendar days from our opinion, as is now authorized under the revised version of Ark. Sup. Ct. R. 4–2(b) (2011).[1]

Rebriefing ordered.

WYNNE and MARTIN, JJ., agree.

[1]*See In re 4-2(b) of the Rules of the Supreme Court and Court of Appeals*, 2011 Ark. 141 (per curiam).