

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA11-153

NATHAN D. LOFTIS

APPELLANT

V.

STEPHANIE COLEMAN NAZARIO

APPELLEE

Opinion Delivered February 1, 2012

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT,
[NO. DR-07-440-1]

HONORABLE JOHN HOMER
WRIGHT, JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Nathan D. Loftis appeals from an order of the Garland County Circuit Court denying his motion to change custody of his minor child. On appeal, he argues that the trial court erred in (1) failing to consider and apply the “presumption” that it is not in the best interest of the child to remain in the custody of an “abusive” parent, which he contends is contained within Arkansas Code Annotated section 9-13-101(c)(1); and (2) failing to find a material change in circumstances and that it would be in the best interest of the child to change custody. We affirm.

On June 23, 2010, Loftis petitioned to be awarded custody of his six-year-old son (T.). In his petition, Loftis alleged that since April 8, 2010, the date of the last order in this case, circumstances had changed. He asserted that the child’s mother, Stephanie Coleman Nazario, had been placed on the Arkansas Child Maltreatment Registry for subjecting T. to



“environmental neglect”; had allowed T. to be present when illegal narcotics were being used; had separated from the child’s stepfather; had allowed T. to spend the night with his stepfather, who was cohabitating with a girlfriend; and had been living with at least two other non-related adults.

At a hearing on the petition, Freeman Peters, an investigator for the Arkansas Department of Human Services (ADHS), testified that after receiving a hotline call, he investigated Nazario’s residence. He found the home was filthy and infested with roaches. At the time, Nazario was living with her husband Micha, two children, and at least two other adults. A subsequent visit found the same adults still present in the home. He reported a “true” finding of environmental neglect and a protective services case was opened. Nazario was placed on the child- maltreatment registry.

Peters further testified that the child expressed knowledge of drug use in the home. He drug-tested Nazario and her husband. Nazario tested negative; Micha did not. Nonetheless, T. appeared to be clean and in good physical condition. According to Peters, although Nazario was placed on the child-maltreatment registry, her name will be deleted “within six months to a year.”¹ According to Peters, he had contacted Loftis in the course of his investigation.

Loftis testified that he was serving in the United States Army at Fort Hood, Texas. He

¹ Pursuant to Arkansas Code Annotated section 12-18-908 (b)(2) (Repl. 2009),
(2) If an offender has been entered into the registry as an offender for the named types of child maltreatment identified under subdivision (b)(1) of this section, the offender’s name shall be removed from the registry on reports of this type of child maltreatment if the offender has not had a subsequent true report of this type for one (1) year and more than one (1) year has passed since the offender's name was placed on the registry.



stated that he exercised extended visitation with his son the past summer because Nazario lacked transportation. He expressed concern about T. appearing to be “too skinny.” Loftis described his residence as a three-bedroom townhouse. He lived there with his wife and their two-year-old daughter P. Loftis stated that T. also had a room at the residence.

Although Loftis claimed that the thought of T. being raised in the type of home Peters described disgusted him, he nonetheless credited Nazario with “doing a good job raising T.” and noted that she had strong support from her immediate family. Loftis also admitted that he had cohabitated with his current wife prior to marriage.

Nazario testified that although she still resided at the apartment that Peters had investigated, she had separated from her husband shortly after Peters came to the house. The two other adults living there left approximately a week later. Nazario expressed a desire for T. to remain in contact with Micha. She claimed that the house was clean “at this point in time” and that she no longer had a “bug problem” because she “bombed and sprayed.” She disputed Peters’s description of her home, asserting that it was merely “lived in.” Nazario denied illegal-drug use. According to Nazario, she worked two jobs, and when she was absent, her mother watched the two children. She opined that T.’s grades in school were “great.” Nazario was aware that T. told his teacher that he was hungry because there was no food at his house, but she denied it was true. Nazario claimed that T.’s weight was appropriate for his height. She admitted that T. stayed with Micha overnight while Micha was cohabitating with a girlfriend and “didn’t see anything wrong with it.” However, she asserted that Micha had recently left the girlfriend. Nazario testified that she got a driver’s license a



few days before the hearing, but admitted that she was dependent on others for transportation. She admitted that in the past, she had transported T. and allowed Micha to transport T. when neither had a driver's license.

At the close of the testimony, the trial court denied the petition to change custody, finding that the circumstances described were "not of the magnitude to warrant a change of custody." Loftis timely appealed.

At the outset, we acknowledge that it is axiomatic that the primary consideration in child-custody cases is the welfare and best interest of the children; all other considerations are secondary. *Alphin v. Alphin*, 364 Ark. 332, 219 S.W.3d 160 (2005). However, a judicial award of custody should not be modified unless it is shown that there are changed conditions that demonstrate that a modification of the decree is in the best interest of the child, or when there is a showing of facts affecting the best interest of the child that were either not presented to the trial court or were not known by the trial court at the time the original custody order was entered. *Id.* Generally, courts impose more stringent standards for modifications in custody than they do for initial determinations of custody. *Id.* The reasons for requiring these more stringent standards for modifications than for initial custody determinations are to promote stability and continuity in the life of the child, and to discourage the repeated litigation of the same issues. *Id.*

Loftis first argues that the trial court erred as a matter of law in failing to take into consideration and apply Arkansas Code Annotated section 9-13-101(c)(1) and (2)'s presumption that it is not in the best interest of a child to remain in the custody of an abusive



parent. We disagree with this argument. The statutory section that Loftis relies on does not apply to the case at bar. It states:

(c)(1) If a party to an action concerning custody of or a right to visitation with a child has committed an act of domestic violence against the party making the allegation or a family or household member of either party and such allegations are proven by a preponderance of the evidence, the circuit court must consider the effect of such domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such facts and circumstances as the circuit court deems relevant in making a direction pursuant to this section.

(2) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in cases in which there is a finding by a preponderance of the evidence that the parent has engaged in a pattern of domestic abuse.

The record is completely devoid of any evidence of domestic violence. While we do not condone poor housekeeping, we decline to subscribe to Loftis's theory that poor housekeeping is a form of domestic violence.

Loftis next argues that the trial court clearly erred in finding that there was no material change of circumstances. He asserts that the ADHS finding of environmental neglect and Nazario's placement on the child-maltreatment registry, coupled with her allowing T. to be present while unmarried persons cohabitated in her home and allowing illegal drugs to be used in T.'s presence, are material changes. We find this argument unpersuasive.

We note first that very little time has passed in this case since the parties were last before the trial court. While we are concerned about the adults that were living in the home, their presence seems to have been temporary. The trial court apparently found credible Nazario's assertion that these unrelated adults were no longer staying with her. Further, while



Cite as 2012 Ark. App. 98

we are mindful that Nazario wanted T.'s stepfather to remain in the child's life in some capacity, the trial court ordered Nazario not to allow it. Accordingly, while a change in the custodial parent's relationships can constitute a material change of circumstances, *Alphin v. Alphin, supra*, we do not believe that the departure of the adults from the home in this case is the type of change that would necessitate a review of the child's custodial placement.

We are also mindful of Nazario's acceptance of the kind of moral laxity that has been held to be a material change of circumstances. *Holmes v. Holmes*, 98 Ark. App. 341, 255 S.W.3d 482 (2007). However, the trial court concluded that the situation that Loftis identified in his petition had been altered, and we cannot say that the trial court's conclusion was clearly against the preponderance of the evidence. Moreover, Loftis himself cohabitated with his current wife before his marriage. Accordingly, we cannot say that Nazario's attitude, without more, constitutes a material change of circumstances.

Affirmed.

GLADWIN and WYNNE, JJ., agree.

Miller Churchwell, PLLC, by: *Joseph Churchwell*, for appellant.

Tracy Turner, for appellee.