

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA09-802

HOLLY MEDINA

APPELLANT

V.

CLAYTON ROBERTS

APPELLEE

Opinion Delivered 17 FEBRUARY 2010

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT,
[NO. DR-2008-976-5]

HONORABLE XOLLIE DUNCAN,
JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

This appeal challenges a child-custody determination. Five-year-old J. is the daughter of Clayton Roberts and Holly Medina. Roberts and Medina were high school sweethearts who never married. J. was born during the early years of the couple's relationship. At first Roberts and Medina worked together to raise J., but this cooperation ended when Roberts retrieved J. from Medina's moving car while Medina attempted to leave with her. Medina, a dispatch operator for the Rogers Police Department, then petitioned for child support and filed a motion for custody of J. The court gave Medina temporary custody *ex parte*. But after a hearing, the court gave Roberts temporary custody. The court eventually granted Roberts permanent custody



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and Medina visitation rights. She appeals.

When a child is born outside of marriage, the biological father must show three things to gain custody: he is fit to raise the child, he has assumed his responsibilities to the child, and the child's best interest favors custody with the father. Ark. Code Ann. § 9-10-113(c) (Repl. 2008). In some circumstances, the father must also show a material change of circumstances. *Harmon v. Wells*, 98 Ark. App. 355, 358–59, 255 S.W.3d 501, 503–04 (2007). Here, there is no question raised about Roberts's fitness or assumption of parental responsibilities. Those issues were resolved at the threshold of this case. The only issue at the hearing that resulted in the permanent custody order, and the only issue that Medina presses on appeal, is the circuit court's best-interest determination.

The court found Roberts "fit and proper" and granted him permanent custody of J. In its statement from the bench, the court explained its reasoning. "[B]oth of these individuals are very young, and have a very young child. And I think their behavior is probably not atypical of a couple of youngsters." The court found Medina's home to be "certainly not any better, if as good, as Mr. Roberts'[s] situation." Moreover, Medina's "stability leaves a lot to be desired." The court also found that both parties were using J. as leverage with each other. But "Ms. Medina has gotten the benefit of much more time with the child, as a result of Mr. Roberts'[s]



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attitude toward the situation.” As to Medina’s concerns about Roberts’s brother and the underage drinking and parties at the Robertses’ residence, Medina “knew all that when she left this child in the Roberts[es]’ home.”

Giving due regard to the circuit court’s credibility determinations, we review its findings for clear error. *Stehle v. Zimmerebner*, 375 Ark. 446, 454–56, 291 S.W.3d 573, 579–580 (2009). The supreme court recently clarified our standard of review in this kind of case. *Ibid.* Though our review is *de novo* on the whole record, we will not set aside a court’s factual findings unless they are clearly erroneous. *Ibid.*

We see no clear error here. The court considered much evidence about each party’s fitness to be the custodial parent. Medina gave lengthy testimony about her care and dedication to her daughter. She raised J. in her own apartment for a short time after high school, before eventually moving in with Roberts at his mother’s home. And she presented evidence about the unfitness of the Robertses’ home. His brother, who lives with Roberts, had multiple criminal charges and Medina allegedly found the brother naked on the couch with a young woman at one point. Roberts threw at least one party where underage drinking occurred at the home. J. was not present for either event. But the record supports the court’s conclusion: Medina knew all of this when she moved out and left J. in Roberts’s care.

There is evidence that Medina lacked stability and that the Robertses’ home was



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more stable. At the time of the hearing, Medina lived in a one-bedroom apartment where her sister regularly slept. It was not clear whether J. had her own bed at Medina's apartment. While both of the parties had moved around—sometimes together and other times separately—Roberts had the longest period of residence. At the Robertses' home, J. had her own bedroom, furniture, and pets. Medina and Roberts even lived there together with J. for a time. Then Medina moved out, leaving J. mostly with Roberts. If given custody, Medina testified that she would move again.

Medina also allowed Roberts's mother, who works out of town and comes home on the weekends, to watch over J. while Roberts was away on business. At the time of the hearing, Roberts worked at a car dealership and was no longer attending college. But his mother was an integral part of J.'s upbringing, and testified that she planned to continue supporting her household financially. The court's finding about stability was not clearly erroneous.

There is also evidence that J. had become leverage between her parents. Roberts accompanied J. during extra visitation to continue his relationship with Medina. For her part, Medina encouraged this behavior because she wanted more time with J. During her short period as the custodial parent, however, Medina minimized J.'s contact with Roberts. Roberts made it clear, moreover, that he wanted



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J. to have a good relationship with her mother. The court's conclusion that Roberts would better promote J.'s relationships with both her parents was not clearly erroneous.

The parties made a full record in what was essentially a swearing match about who would be the better custodial parent. By all accounts J. was and is a healthy and happy child. Medina put on evidence about Roberts's younger girlfriends, including compromising pictures of some of these young ladies allegedly taken from their online social networking sites. There was also testimony that one of Roberts's exploits ended with a young lady's mother visiting Roberts early one morning. The circuit court was in the best position to judge the witnesses' credibility, and we defer to its decision. The court's rulings banning alcohol, drugs, and cohabitation by unwed or non-blood relatives adequately address any other issues about Roberts's custody being in J.'s best interest.

Affirmed.

GLADWIN and BAKER, JJ., agree.

Rhoads & Teague, P.A., by: *Johnnie Emberton Rhoads*, for appellant.

Williams Law Firm, by: *Kevin Carl Bonner*, for appellee.