NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 08-908

LEILANI C. GRISHAM (FIEBER)
APPELLANT

V.

BRIAN E. GRISHAM
APPELLEE

Opinion Delivered April 8, 2009

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, [NO. CV 1995-5418]

HONORABLE H. VANN SMITH, JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

Appellant Leilani Grisham Fieber appeals the order entered by the Pulaski County Circuit Court denying her motion for a change of custody. For reversal, she contends that the trial court's findings that no material change in circumstances had occurred and that a change in custody was not in the best interest of the child are clearly against the preponderance of the evidence. We affirm the trial court's decision.

Appellant and appellee Brian Grisham divorced in 1996, at which time the trial court awarded appellant custody of their son, B.G. In June 2006, the trial court granted appellee's motion for a change in custody when B.G. was eleven years old, based on appellant's cohabitation with a series of men and the child's desire to live with appellee. Appellant filed the present motion for a change in custody in February 2008. After a hearing, the trial court

entered an order setting out its findings and denying the motion for a change in custody. This appeal followed.

At the hearing, appellant offered testimony that B.G., age thirteen, was no longer happy living with appellee and his stepmother and that he now wished to live with appellant. Appellant also presented testimony that B.G. did not get along with appellee's wife; that appellee once referred to B.G. as being a "problem child" and had made a disparaging remark concerning B.G.; and that B.G.'s discontent caused his grades to suffer. Appellant testified that she was now married and could provide a suitable home for B.G., with whom she shared an excellent relationship. Appellant also pointed out that appellee was still living in two adjoining trailers and had yet to complete the home appellee said he was going to build at the last hearing. B.G. testified that appellee blamed him for not having sufficient funds to build the home because of the money he had to spend on attorney's fees defending the motion for a change of custody. Appellant also found fault with appellee's not taking B.G. to an allergist, and she spoke of an incident in which she had to take medicine to the child because appellee refused to interrupt a weekend fishing trip to retrieve the medication.

Appellee testified that he was self-employed in the exterminating business and that he was building his new house in stages as he acquired sufficient funds. He acknowledged that he had promised B.G. in the past that he could return to his mother's home if B.G. so desired, but appellee said that he did not believe that it was in B.G.'s best interest to live with appellant. Appellee explained that B.G., though mature and intelligent, was experiencing a phase of rebelliousness; that B.G. had acquired a girlfriend; that nothing made him happy at

present; that B.G. treated his stepmother with disrespect; and that B.G. "went out of his way to make us miserable." Appellee testified that B.G. was disciplined at school for talking too much and that appellee had recently denied cell-phone and computer privileges because B.G. would use them late at night. Appellee attributed B.G.'s declining grades to B.G.'s frustration with taking so many advanced-placement classes, his preoccupation with the internet, and the overuse of his cell phone. He testified that B.G. needed guidance and that he and his wife were doing the best they could to gain control of the situation.

Appellee admitted that he told B.G. that he was a "problem child," that he once called B.G. a disparaging name, and that he told B.G. that retaining an attorney had cost $1,000. He regretted that he had called the child derogatory names in anger, explaining that he did so after B.G. was rude to his wife. Appellee also stated that he made a mistake by mentioning the money spent on attorney's fees. Appellee further testified that he had become less flexible with appellant's visitation after she filed the motion for a change of custody because he felt that appellant and her husband were "brainwashing" B.G. He also said he felt that it was appellant's responsibility to deliver the medication the weekend of the fishing trip. He explained that appellant had sent the child home without the medication and that he could not retrieve the medicine because he was in charge of the father-and-son weekend outing sponsored by his church.

The trial court made detailed findings in support of its decision denying the motion to change custody. In essence, the trial court found that appellee and his wife had provided stability in the child's life and that, in terms of school work, the child was struggling with a

heavy load of difficult classes but that his grades had shown recent improvement. The court found that appellee was not inattentive to the child's health care, and the court attributed the problems existing between the parties to their inability to communicate. The court recognized that B.G. wished to live with appellant, but the court found that his preference alone was not sufficient to warrant a change in custody.

Appellant argues on appeal that the trial court erred by not finding that she presented sufficient evidence of a material change in circumstances affecting the best interest of the child. She argues that appellee demonstrated poor parenting skills and that the trial court erroneously ignored the child's wishes.

In child-custody cases, the primary consideration is the welfare and best interest of the child involved; all other considerations are secondary. *Walker v. Torres*, 83 Ark. App. 135, 118 S.W.3d 148 (2003). It is well settled in Arkansas that a judicial award of custody will not be modified unless it is shown that the circumstances have changed such that a modification of the decree would be in the best interest of the child. *Stehle v. Zimmerebner*, ___ Ark. ___, ___ S.W.3d ___ (Jan. 30, 2009). Also, courts generally impose more stringent standards for modification in custody than for initial determinations of custody in order to promote stability and continuity in the life of a child. *See Alphin v. Alphin*, 364 Ark. 332, 219 S.W.3d 160 (2005).

In child-custody cases, we review the evidence de novo, but we will not reverse the findings of the court unless it is shown that they are clearly contrary to a preponderance of the evidence. *Gray v. Gray*, 101 Ark. 6, 269 S.W.3d 834 (2007). We also give special deference

to the superior position of the trial court to evaluate and judge the credibility of the witnesses in child-custody cases. *Id.* We have often stated that we know of no cases in which the superior position, ability, and opportunity of the trial court to observe the parties carry as great a weight as those involving children. *Mason v. Mason*, 82 Ark. App. 133, 111 S.W.3d 855 (2003). To reverse a finding of fact by a trial court, the court must have clearly erred in making that finding of fact, which means that the reviewing court, based on the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Stehle v. Zimmerebner*, *supra*.

Examining the record with these settled principles in mind, we cannot conclude that the trial court's decision is clearly against the preponderance of the evidence. The record shows that appellee was endeavoring to provide discipline and stability during a period of unrest in the child's life. Also, while a child's preference is certainly a factor to be considered by the trial court, the child's preference is not binding. *Marler v. Binkley*, 29 Ark. App. 73, 776 S.W.2d 839 (1989). On the record as a whole, we are not left with a definite and firm conviction that a mistake was made. Accordingly, we affirm the trial court's decision.

Affirmed.

PITTMAN and GLADWIN, JJ., agree.