

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-70

ALAN ROSS

APPELLANT

V.

SHANNON ROSS

APPELLEE

Opinion Delivered JUNE 16, 2010

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[DR-2008-366-2]

HONORABLE MICHAEL R.
LANDERS, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Alan Ross appeals from an order awarding custody of the parties' minor son to the child's mother, Shannon Ross. He contends that the trial court's decision is based upon incorrect findings of fact, arbitrarily ignores important evidence, and is clearly erroneous. We hold there is no clear error and affirm the trial court's decision.

Shannon and Alan were married in 1989 and divorced by decree entered on October 13, 2009. The parties have one child, a daughter born September 30, 2002, of whom both parties requested custody. After hearing the testimony of both parties, both sets of the child's grandparents, the child's Taekwondo teacher, the attorney ad litem, and various friends of the parties, the trial court awarded custody to Shannon and granted standard visitation to Alan. The trial court's order incorporated a letter opinion dated September 25, 2009, setting out the court's findings and conclusions.

The trial court first stated that, although both parties were working and had similar incomes, Shannon had worked for one employer, the United States Postal Service, for over twenty years while Alan had eight different employers during the marriage and an eighteen-month period of unemployment. The court found that both parties were loving, concerned parents and were actively involved in the child's education and extracurricular activities. The court also recognized that all of the grandparents lived in the area and were active participants in the upbringing of the child.

Although Alan testified that he had been the child's primary caregiver since birth, the court found that the evidence did not "necessarily establish that fact." Although Shannon returned to work following maternity leave, leaving Alan with responsibility for caring for the child during Shannon's work hours, and Alan was very involved when Shannon worked the night shift, the court recognized that Shannon had worked a regular day shift for the past several years and was actively involved with the child on a daily basis. The court found that both parties participated with the child in extracurricular activities but that Shannon often scheduled playdates with the child's friends and their parents.

The court also said that both parties admitted that they had, on occasion, consumed alcohol, but the court found no evidence that either party drank to excess or that their occasional use had adversely affected the child. The court noted that there was "considerable testimony" concerning the volume of telephone messages and texts sent or received by Shannon from sources that included a male friend she met at a postal-service meeting in

Oklahoma. But the court found no indication that these communications were detrimental to the child or showed a lack of concern by Shannon for the child.

Noting that the attorney ad litem recommended custody with Shannon, the court found it was in the best interest of the child for Shannon to be awarded custody, subject to “reasonable and seasonable visitation” with Alan. The court’s order awarded custody to Shannon. Alan brought this appeal.

In child custody cases, we review the evidence de novo, but we do not reverse the findings of the trial court unless they are clearly erroneous. *Ford v. Ford*, 347 Ark. 485, 491, 65 S.W.3d 432, 436 (2002). A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. *Id.* Because the question of whether the circuit court’s findings are clearly erroneous turns largely on the credibility of the witnesses, we give special deference to the superior position of the trial judge to evaluate the witnesses, their testimony, and the child’s best interest. *Sharp v. Keeler*, 99 Ark. App. 42, 44, 256 S.W.3d 528, 529 (2007). There are no cases in which the superior position, ability, and opportunity of the trial judge to observe the parties carry as great a weight as those involving minor children. *Bailey v. Bailey*, 97 Ark. App. 96, 100, 244 S.W.3d 712, 715 (2006).

Alan contends on appeal that the trial court’s decision to award custody to Shannon was clearly erroneous. He argues that the evidence presented at the hearings demonstrates that he would better provide for the child’s stability and continuity; that he was the primary

caregiver and is currently the most attentive parent to the child's needs; that Shannon is more concerned with her cell phone; that Shannon drank alcohol in the past; that the child will not continue to attend the same school if she lives with Shannon; and that Shannon used prescription pills (prenatal vitamins) prescribed to another person, displaying a moral, ethical, and legal problem.

On this record, we cannot say that the trial court's finding that it was in the child's best interest to be placed in Shannon's custody was clearly erroneous. Alan's arguments with the court's findings fall within the trial court's province to make credibility determinations. It is not our role but that of the trial judge to evaluate the witnesses, their testimony, and the child's best interest. Further, the evidence demonstrates that both parties are good parents and that either is capable of being the primary caregiver. Accordingly, we affirm the trial court's order.

Affirmed.

ROBBINS and HENRY, JJ., agree.