

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CA10-289

MEGAN ANN STOUFFER  
BROTHERS

APPELLANT

V.

ROBERT BRIAN STOUFFER, CINDY  
BLASINGAME, and MINOR CHILD

APPELLEES

**Opinion Delivered** November 3, 2010

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT  
SMITH DISTRICT  
[No. DR-94-1254]

HONORABLE HARRY FOLTZ,  
JUDGE

AFFIRMED

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**LARRY D. VAUGHT, Chief Judge**

Appellant Megan Ann Brothers appeals from an order of modification awarding appellee Robert Stouffer custody of the parties' minor child. On appeal, Megan argues that the trial court erred in denying her motion for a continuance and that the trial court clearly erred in its custody determination. We see no error and affirm the decision of the trial court.

Megan and Robert were divorced in 1995. At the time of the divorce, the parties had one child—a daughter, C.S. Although custody of the child was originally placed with Megan, in 1996 the child began residing with her maternal grandmother, Cindy Blasingame.<sup>1</sup> When C.S. began the fourth grade, she once again began living with her mother.

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<sup>1</sup>Blasingame is an Intervenor in this case.

From 1998 until 2005, C.S.'s father, Robert, received five felony convictions and was incarcerated on four occasions. During this time period, Robert conceded that he had no involvement with C.S. and had accumulated a substantial child-support arrearage.

In 2005, following his release from prison, Robert sought to renew his relationship with C.S. An agreed order was entered by the trial court on August 28, 2006, providing Robert with a "gradually increasing schedule of visitation." On August 7, 2008, Robert filed a motion alleging that Megan refused to comply with his court-ordered visitation. Shortly thereafter, in early November 2008, Megan abandoned C.S. According to the record, C.S. was left to live with Blasingame without even the most basic of necessities—including clothing, prescription glasses, and personal belongings.

Following this event, on December 5, 2008, Robert filed a motion for emergency ex parte custody. In the motion, Robert also alleged that C.S. had been physically abused by both Megan and Megan's current husband. Robert asked the trial court to transfer custody of C.S. from Megan to him. He further requested, for the child's stability, that she be permitted to continue residing with Blasingame.

An agreed temporary order was entered on December 29, 2008, in which temporary custody of C.S. was placed with Blasingame. The order stated:

It is agreed that temporary custody of [C.S.], age 14, born December 28, 1993, is hereby placed with the Intervenor until further order of this court. As this is a temporary placement by agreement of all parties, neither the Plaintiff nor Defendant will need to establish a change of circumstances in order to set this temporary custody aside at a final hearing. Further, all parties may petition the court at any time for a final custody determination in this case . . . .

On March 24, 2009, Megan filed a motion to set aside the temporary order and to restore her custody of C.S.

A hearing on the matter was conducted on November 17, 2009; however, Megan was not in attendance. At the commencement of the hearing, Megan's attorney asked for a continuance arguing "surprise" as to the nature of the hearing. Specifically, Megan's counsel claimed that they did not realize that custody of C.S. would be considered at the hearing until November 5, 2009. Megan's counsel argued that more time was needed to prepare and that Megan's presence and participation was an important component of the child-custody determination.

After a thorough discussion of the issue, the trial court denied the continuance. The court noted that, according to Megan's counsel's own admission, at a minimum Megan had two weeks' notice that Robert planned to pursue custody of C.S. at the hearing. The court ultimately found that the last-minute continuance request, coupled with the fact that so many witnesses were present for trial, supported its decision to deny the continuance.

At the close of evidence, the trial court found that Megan was "clearly unfit to have custody of the parties' child, C.S." The court specifically found that Megan had "abused the child, both physically and mentally and ha[d] allowed the child's step-father to abuse the child both physically and emotionally." The court noted that its decision was influenced by the testimony of both C.S. and her counselor and that it would be "extremely damaging emotionally and against the child's best interest" for Megan to receive custody. Based on the

fact that C.S. was only two years shy of the age of majority, the trial court also considered as relevant her preference to live with her father in its final-custody determination.

In regard to Robert and his less-than-stellar past, the court acknowledged that Robert had failed in many respects. However, after considering the specifics of Robert's past, the court still found that it was in C.S.'s best interest to be placed in her father's custody. The court explained that it was "well aware" of Robert's felony convictions, prison time, extended lack of participation in C.S.'s life, and "large" child-support arrearage. The court further found that Robert had been drug-free for the last several years, was steadily employed, had a suitable home for the child, had "been in no trouble with the law," and had been remarried for several years.

The court also noted that Blasingame, who raised the child for a significant portion of her life, supported the decision to place C.S. in her father's custody. Also, the court relied on the recommendation of C.S.'s counselor, who acknowledged Robert's background (and subsequent reformation) in her recommendation that Robert be awarded permanent custody of C.S.

The court ordered Megan to pay \$102 in weekly child support to Robert. However, the court ordered an offset that allowed Megan's obligation to be met by incrementally reducing Robert's approximately \$15,000 child-support arrearage. Finally, the court denied Megan visitation with C.S., but left the question open for future consideration if Megan completed recommended rehabilitative counseling. It is from this order that Megan appeals.

For her first point on appeal, Megan contends that the circuit court erred by denying her motion for a continuance. The granting or denial of a motion for a continuance is within the sound discretion of the circuit court, and that decision will not be reversed absent an abuse of discretion amounting to a denial of justice. *Ashcroft v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 244, 374 S.W.3d 743. Here, the trial court heard extensive argument for and against Megan's request for a continuance. The court was aware that Megan was unable to attend the would-be final hearing due to an alleged work-related hardship and her counsel's claim of "surprise" as to the primary topic of the hearing—whether Robert should be granted custody of C.S. However, the court placed much emphasis on Megan's counsel's admission that (at least) two weeks prior to the hearing, the parties were aware that custody of C.S. would be considered. The court found that at that time—November 5—Megan should have requested a continuance in order to prepare for the hearing. Instead, she waited until the day of trial to request a continuance (after witnesses had traveled and the case was docketed). Based on these facts, we hold that the trial court did not abuse its discretion in its denial of Megan's motion for a continuance.

As to Megan's second point, whether the trial court erred in its finding that it was in C.S.'s best interest to be placed with her father, we review the decision de novo but will not reverse unless the decision is clearly contrary to the preponderance of the evidence. *Hollinger v. Hollinger*, 65 Ark. App. 110, 986 S.W.2d 105 (1999). Because the question of preponderance of the evidence turns largely on the credibility of the witnesses, we defer to

the superior position of the trial court to make such determinations. *Id.* at 112, 986 S.W.2d at 106. In fact, we know of no cases in which the superior position, ability, and opportunity of the trial court to observe the parties carries as great a weight as those cases involving children. *Id.*, 986 S.W.2d at 106. A finding is clearly against the preponderance of the evidence when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake had been made. *Id.*, 986 S.W.2d at 106.

Here, we are left with no such conviction because there is ample evidence to support the trial court's decision. After weighing the testimony and credibility of the witnesses, the trial court made an affirmative finding that Megan and Megan's new husband had abused C.S. The court specifically noted that it found C.S.'s testimony to be credible and believed that she had suffered physical abuse at the hands of her mother and stepfather. The record also contains photographic evidence that bolsters C.S.'s claim of abuse. The court further found that Megan had established that she was unable to adequately parent C.S. as evidenced by Megan's past decisions to abandon C.S. to Blasingame's care. The record also shows that C.S. specifically requested that she have no relationship with her mother based on fear and instability. C.S. testified that she preferred the environment of the inpatient mental institution (where she briefly resided) to her mother's home because she felt more secure at the institution.

The record demonstrates that the trial court considered Megan's primary complaint—that Robert engaged in felonious behavior and had no meaningful emotional or financial involvement with C.S. for the greater portion of the child's life. Despite this

undisputed reality, the court believed that Robert had rehabilitated himself and sufficiently repaired his relationship with C.S. The court considered all relevant factors in assessing Robert's fitness, including the opinions of C.S., her ad litem, her counselor, and Blasingame—all of whom agreed that Robert was a fit parent. As such, because a preponderance of the evidence supports the trial court's decision to award Robert custody of his teenage daughter, C.S., we affirm.

Affirmed.

GLOVER and BAKER, JJ., agree.