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Commonwealth of Kentucky

Court of Appeals

NO. 2022-CA-0534-MR

SPENCER G. STONE — APPELLANT

v. — APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE LAUREN ADAMS OGDEN, JUDGE
ACTION NO. 17-CI-501586

CATHERINE STONE — APPELLEE

AND

NO. 2023-CA-0344-MR

SPENCER STONE — APPELLANT

v. — APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE LAUREN ADAMS OGDEN, JUDGE
ACTION NO. 17-CI-501586

CATHERINE STONE — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, EASTON, AND GOODWINE, JUDGES.

GOODWINE, JUDGE: In appeal No. 2022-CA-0534-MR ("first appeal"), Spencer Stone ("Spencer"), *pro se*, appeals from the April 27, 2022 order of the Jefferson Circuit Court, Family Division. In appeal No. 2023-CA-0344-MR ("second appeal"), he appeals from the court's February 20, 2023 order. After careful review, we affirm both orders.

BACKGROUND

Spencer and Catherine Stone ("Catherine") married in 2005. The parties are parents to two minor children, J.S. and G.S.[1] Spencer petitioned for the dissolution of the marriage in 2017.

The parties entered into a marital settlement agreement ("MSA") in 2017. As to custody and timesharing, the parties agreed

> The parties reserve for [c]ourt determination the issue of custody and parenting schedule. In order to assist the [c]ourt in making this determination, the parties agree to a Custodial Evaluation to [be] performed by Dr. Anne Hammon. The parties also agree to the appointment of a Guardian Ad Litem for the children and agree to Nicole T. Cook for this appointment. The parties will tender separate agreed orders to the [c]ourt for these

[1] They also have two adult children, D.S. and A.S. A.S. was a minor when the parties divorced. Some of the expenses discussed in this appeal were incurred when she was still a minor.

> appointments and will divide the cost of these appointment[s] equally.

Record ("R.") at 38. The parties also agreed to

> divide all unreimbursed medical expenses and agreed upon extracurricular activities equally. So long as the children continue to attend St. Raphael, the parties will split the cost of tuition equally. So long as the parties' oldest daughter attends Mercy, the parties will split the cost of tuition for her equally.

Id. at 39. Without resolving the custody and timesharing issues, the family court entered a decree dissolving the marriage and incorporating the MSA by reference on August 23, 2018.

The parties have since disagreed about the terms of the MSA. Catherine moved to hold Spencer in contempt for failure to pay his share of the children's extracurricular activity expenses. She also asked the court to resolve issues relating to educational expenses. The family court entered an order on the expenses. Spencer appealed.[2]

In *Stone v. Stone*, Nos. 2019-CA-0546-ME, 2019-CA-1863-MR, 2021 WL 406310 (Ky. App. Feb. 5, 2021), this Court considered Spencer's obligation to pay for the children's school expenses and extracurricular activities under the terms of the MSA. In relevant part, the Court held "tuition includes *only* mandatory costs or fees which must be paid in order to attend the school(s) in

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[2] Spencer also filed a second appeal from an order on attorney fees.

question." *Id*. at *4. The Court's analysis distinguished tuition from other "fees and costs" which may not be mandatory. *Id*. The Court reasoned that the parties could have agreed to divide all costs but chose not to do so, meaning Spencer is only obligated to pay his share of the "mandatory and unavoidable" costs associated with the children's private education. *Id*. Specifically, the Court defined "registration fees, uniforms, books, and iPad deposit expenses" as mandatory. *Id*.

As to the extracurricular expenses, the Court held every contract contains an "implied covenant of good faith and fair dealing[.]" *Id*. (citation omitted). The Court found "[i]n this case, that implied covenant of good faith and fair dealing means that Spencer was not required to agree to any particular new extracurricular activity fees." *Id*. at 5. On this basis, the Court ruled Spencer was required to pay half the expenses for activities in existence when the parties entered the MSA, but not for activities he did not agree to thereafter. *Id*. The Court also affirmed the family court's order holding Spencer in contempt for failing to join in decision-making regarding extracurricular activities because this was a violation of his duty of good faith and fair dealing. *Id*.

Thereafter, Catherine moved for Spencer to pay fees per this Court's opinion. She also moved for payment of medical expenses under the terms of the MSA. Catherine provided documentation of these expenses. In the MSA, the

parties agreed that J.S. and G.S. would remain at St. Raphael Catholic School but did not address high school education. Catherine moved to enroll J.S. in St. Xavier High School and divide the cost according to the MSA. She also moved to transfer G.S. to The Collegiate School, another private school.

The family court scheduled a hearing on the motions. Catherine testified to the medical, educational, and extracurricular expenses for which she claimed Spencer had not paid his portion. The trial court also heard from the parties regarding the children's schools.

In its April 27, 2022 order, the family court found Spencer refused to pay his share of the children's unreimbursed medical expenses, and mandatory school fees and agreed-upon extracurricular activities. The court found he "does not pay until contempt findings are issued and he is threatened with incarceration." R. at 699. The court then listed the specific expenses he owed. Regarding unreimbursed medical expenses, the court ordered him to pay $6,218.76 for the children's psychiatrist, braces, rheumatologist, glasses, and prescriptions. *Id*. The court ordered him to pay $3,480.99 for mandatory school fees, including registration fees, schoolbooks, technology/iPad fees, testing fees, uniforms, and a required senior retreat. *Id.* The court also ordered him to pay $9,511.70 for agreed-upon extracurricular activities, including piano lessons, basketball, and

baseball.[3] *Id*. at 700. The court also found the parties owed the children's therapists $1,845.00. Their therapists had refused to continue treatment because of nonpayment.

The family court was generally unconvinced by Spencer's testimony. He refused to pay his portion of the children's counseling bills because he was unsatisfied with their treatment and wished to have access to their confidential mental health records. He also claimed he did not receive notice of expenses, which the court found "disingenuous." *Id*. The family court was also unpersuaded by Spencer's claims that he had already paid bills where he provided no proof of payment. Spencer consistently refuses to pay and contests expenses. The court found Spencer could pay and received notice of his obligations.

On this basis, the family court awarded Catherine a judgment against Spencer in the amount of $19,211.45 with statutory interest of six percent per year. *Id.* at 702. The court also ordered Spencer to pay $922.50 to the children's therapists within thirty days. *Id.* The court also ordered the parties to communicate, schedule appointments for the children, and exchange bills through the app AppClose.

Regarding the children's schools, the court found

[3] These are activities the children participated in prior to the divorce. Following this Court's opinion, the family court excluded the fees for any activity the children joined after the divorce to which Spencer did not agree.

J.S. will begin high school in the fall of 2022. The parties have not reached any agreement as to what school the child will attend. [Catherine] would like for J.S. to attend St. Xavier, a local Catholic high school. When she first presented the idea to [Spencer], [Spencer] agreed that J.S. should have, "the same [educational] opportunities" that the parties' older children had. (Both attended Catholic school from Kindergarten through High School.) [Catherine] sent a follow-up email to [Spencer] to discuss payment, and [Spencer] replied that he "never agreed" for J.S. to attend St. Xavier.

Additionally, [Catherine] and her current husband plan to move and will no longer live in the St. Raphael parish. This will significantly increase G.S.'s cost of attendance at the parish school. [Catherine] would like for G.S. to transfer to a private school closer to her new home. [Catherine] testified that G.S. has learning delays and shows signs of Asperger's Syndrome. She does not believe that St. Raphael provides sufficient accommodations. [Catherine] wants G.S. to attend The Collegiate School. She believes that the cost will be comparable to the non-parishioner rate at St. Raphael, after financial aid.

[Spencer] does not want G.S. to attend Jefferson County Public Schools, but he does not want him to attend Collegiate either. When pressed for alternatives, he suggested that [Catherine] relocate to a neighboring county, which may have more suitable public schools.

. . .

The parties have a long-standing practice of providing private religious education to their children. At the time of their divorce, D.S. had graduated from a parochial school, A.S. was attending Mercy Academy, and J.S. and G.S. were attending St. Raphael. The parties' agreement requires them to split the cost of tuition at the schools where the children were then enrolled. However, it does not address J.S. and G.S.'s

> high school education. The parties could have negotiated for a provision that neither would be obligated to pay for private high school, that they would split the cost equally, or that they would revisit the issue in the future. Because there was no explicit agreement one way or the other, the [c]ourt will look to the parties' past practice.
>
> Considering the parties' long-standing practice to provide private education to all four of their children, and considering [Spencer's] ongoing objection to the local public schools, the [c]ourt finds that the parties have an implicit agreement to send the younger children to private high school. Therefore, [Catherine's] motion for J.S. to attend St. Xavier high school is granted. The parties shall divide the cost of tuition, books, uniforms, and mandatory fees equally. . . .
>
> [Catherine's] motion for G.S. to transfer to The Collegiate School, which is closer to her new home and which provides more suitable learning accommodations for G.S., is also granted. The parties shall divide the cost of G.S.'s attendance at Collegiate to the extent that it does not exceed the non-parishioner rate at St. Raphael. [Catherine] shall be liable for any costs in excess of that amount.

Id. at 703-05. Spencer filed his first appeal from this order.

Relevant to the second appeal, Catherine moved for sole custody of the children on September 19, 2022. Spencer moved for visitation and removal of the children's guardian *ad litem* ("GAL"). The family court scheduled a hearing on the motions.

In its February 20, 2023 order, the family court acknowledged it had yet to make a decision regarding custody and timesharing. The court considered

the factors in KRS[4] 403.270(2), made detailed findings of fact, found Catherine had overcome the presumption for joint custody and equal timesharing, and found Catherine's sole custody of the children was in their best interests. As to visitation, the family court found, based on evidence in the record, unsupervised visits with Spencer "would seriously endanger the children's mental, emotional, or moral health." R. at 986. The court granted Spencer calls, texts, and video chats with the children. The court also ordered the parties to continue using the AppClose.

The court also ordered the children to continue receiving therapy and for the parties to pay their proportionate shares of the expenses. The court ordered Spencer to reengage in individual therapy and to reinitiate reunification therapy with Jewish Family and Career Services at Spencer's expense.

The family court denied Spencer's motion to remove the children's GAL from the case. He claimed removal was necessary because the GAL was not advocating for him. The family court found the GAL had "represented the children competently and professionally for more than 4 years. The [c]ourt heard no reason to remove her as their attorney[.]" *Id*. at 987. The court found Spencer in contempt for failure to pay the GAL's fees and ordered Spencer to pay her $1,668.50 within ten days.

Spencer filed his second appeal.

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[4] Kentucky Revised Statutes.

STANDARD OF REVIEW

In child custody matters, we review the family court's findings of fact for clear error. *Maxwell v. Maxwell*, 382 S.W.3d 892, 895 (Ky. App. 2012) (citation omitted). Factual findings are not clearly erroneous if they are supported by substantial evidence in the record. *Id*. (citation omitted). It is the "exclusive province" of the family court to judge the credibility of witnesses and weigh evidence presented by the parties. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (footnote omitted). Where a court's findings are supported by substantial evidence, our review is "limited to whether the facts support the legal conclusions made by the finder of fact." *Maxwell*, 382 S.W.3d at 895 (citation omitted). We must decide whether the family court correctly applied the law and whether it abused its discretion. *Id*. (citation omitted). "Abuse of discretion implies arbitrary and capricious action that results in an unreasonable and unfair decision." *Id*. (citation omitted).

ANALYSIS

In the first appeal, Spencer argues: (1) the family court erred by ordering him to pay half of the children's agreed upon extracurricular activity expenses, medical expenses, counseling costs, and mandatory educational fees; (2) the court impermissibly deviated from the MSA by granting Catherine's motion on the children's schools and ordering him to pay half the expense; (3) the family

court improperly ordered him to pay half the expenses for the children's agreed upon extracurricular expenses; (4) the court erred by requiring the parties to communicate through AppClose; and (5) the court violated his due process rights by entering a common law judgment against him. In the second appeal, Spencer argues: (1) the family court erred by awarding Catherine sole custody of the children and (2) the court should have discontinued the services of the children's GAL upon his motion. In both appeals, Spencer (1) contests the family court's orders for the children to continue attending therapy and for him to pay half the costs; and (2) argues the court has deprived him of his custodial rights and/or alienated him from his children.

First, Spencer claims he should not have to pay for the expenses listed in the April 27, 2022 order for several reasons, including: (a) the list was not sufficiently itemized, (b) the expenses were not sufficiently proven, (c) he was not given notice of the bills, and (d) he previously paid some of the expenses. The record refutes these claims. The order sufficiently specifies each of the expenses owed by Spencer. A review of the record shows Catherine proved these expenses through testimony and documentation. Spencer broadly claims both that he was not given notice of the expenses and that he paid some of them. However, he does not specify which expenses to which these arguments refer. The family court was unconvinced by his testimony, and we will not disturb the court's weighing of the

evidence or judgment of the credibility of witnesses. *See Moore*, 110 S.W.3d at 354 (footnotes omitted). As noted by the family court, it is Spencer's "burden to provide proof of payment for his financial obligations." R. at 703. He failed to do so.

Spencer next argues the family court impermissibly deviated from the parties' MSA by ordering J.S. to attend St. Xavier High School, G.S. to transfer to The Collegiate School, and for Spencer to pay half of the associated mandatory expenses.[5] He admits that he does not wish for the children to attend public school. He raises no specific objections to the two schools chosen by Catherine.[6]

An MSA is enforceable like any other contract between parties. *Nelson v. Ecklar*, 588 S.W.3d 872, 878 (Ky. App. 2019) (citation omitted). Contrary to Spencer's argument, it is the role of the family court to interpret the intentions of the parties from the contract itself. *Id*. (citation omitted). Under the principles of contract law, terms may also be implied, meaning they are not written or oral, but implied in fact from the parties' actions. *Hammond v. Heritage Communications, Inc.*, 756 S.W.2d 152, 154 (Ky. App. 1988). Such terms may be

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[5] Under the order, Spencer is required only to pay half of G.S.'s tuition at The Collegiate School up to the non-parishioner rate for St. Raphael School. In the MSA, the parties agreed G.S. would attend St. Raphael and Spencer would pay half of his tuition. Despite G.S.'s transfer, Spencer's financial obligation remains unchanged.

[6] Spencer has refused to reach an agreement with Catherine regarding the children's education without first receiving visitation. Custody and visitation are addressed elsewhere in our decision and need not be addressed here.

"implied from the circumstances or conduct of the parties." *Dorton v. Ashland Oil & Refin. Co.*, 197 S.W.2d 274, 275-76 (Ky. 1946); *see also West v. Kinsella*, No. 2012-CA-001515-ME, 2013 WL 3234269, *2 (Ky. App. Jun. 28, 2013).

Generally, a court may not require parties to pay for private education without extraordinary circumstances, but parties may agree to such a deviation from the guidelines. *See* KRS 403.211(3)(b); *see also Pursley v. Pursley*, 144 S.W.3d 820, 826 (Ky. 2004). It is fundamental to the Kentucky child support guidelines that children's standard of living should change as little as possible when their parents' divorce. *See Gossett v. Gossett*, 32 S.W.3d 109, 112 (Ky. App. 2000) (footnote omitted).

Here, the parties have a long-standing agreement to provide their children with private, religious education. *See West*, 2013 WL 3234269, *2. This is the standard of living established by the parties during the marriage and that which they have maintained since their divorce. Spencer does not wish to send the children to public school. He is able to continue to pay for private education. These circumstances are sufficient to create an implied contract between the parties. We find no error in the family court's decision.

Spencer next contests the family court's order that he pay half the expenses for the children's extracurricular activities to which the parties agreed. Spencer raised this issue in his prior appeal and this Court affirmed the family

court's order for Spencer to pay half the expenses for extracurricular activities "in existence at the time of the settlement agreement." *Stone*, 2021 WL 406310, *5 (citation omitted). On remand, the family court ordered Spencer to pay half the expenses for the children's piano lessons, basketball, and baseball. R. at 700. In a footnote, the court explicitly lists the activities, including archery, swimming, and chess club, to which Spencer has refused to agree and for which he cannot be required to share the cost.

Under the law of the case doctrine, "issues decided in earlier appeals should not be revisited in subsequent ones." *Armstrong v. Estate of Elmore*, 647 S.W.3d 214, 217 (Ky. 2022) (citations omitted). "[I]t would be intolerable if matters once litigated and determined finally could be relitigated between the same parties, for otherwise litigation would be interminable and a judgment supposed to finally settle the rights of the parties would be only a starting point for new litigation." *Brooks v. Lexington-Fayette Urban County Housing Authority*, 244 S.W.3d 747, 751 (Ky. App. 2007) (citation omitted). Here, this Court previously decided the issue of which extracurricular activities were "agreed upon" by the parties. We will not revisit it.

Spencer contests the family court's order for the parties to communicate through AppClose because he is concerned the "app can release privileged information to the [c]ourt without his consent[.]" Appellant's Brief in

No. 2022-CA-0534-MR, at 20. This argument is based in speculation. Spencer neither cites to authority nor does he cite to any evidence in the record supporting this argument. RAP[7] 32(A)(4). We will not grant relief based solely on an appellant's conclusory statements. *Jones v. Livesay*, 551 S.W.3d 47, 52 (Ky. App. 2018).

Spencer claims his due process rights were violated by the court's entry of the common law judgment against him. Again, this argument is made up of nothing more than conclusory statements without citation to any supportive authority. *Id*. Spencer claims the judgment should not have been entered because he was not first given an opportunity to contest it. This is directly refuted by the record. The family court heard from both parties on the extraordinary expenses and was unconvinced by Spencer's testimony. This is within the family court's authority, and we will not disturb its judgment of his credibility. *Moore*, 110 S.W.3d at 354 (footnote omitted). We find no error.

We will now consider Spencer's arguments in his second appeal. He first claims the family court's order awarding Catherine sole custody of the parties' minor children does not contain sufficient findings of fact. Where a case is tried before a judge and without a jury, "the court shall find the facts specifically and

[7] Kentucky Rules of Appellate Procedure.

state separately its conclusions of law thereon and render an appropriate judgment[.]" CR[8] 52.01.

> To review the judge's decision on appeal, it is important to know what facts the judge relied on in order to determine whether he has made a mistake of fact, or to even determine if he is right at law, but for the wrong facts. If a judge must choose between facts, it is clearly relevant which facts supported his opinion.

Anderson v. Johnson, 350 S.W.3d 453, 455 (Ky. 2011). For these reasons, CR 52.01 requires family courts to reduce their factual findings to written orders. *Smith v. McCoy*, 635 S.W.3d 811, 814 (Ky. 2021) (citation omitted).

Here, the family court weighed evidence presented by the parties and made the following detailed findings:

> [Catherine] has been the children's exclusive caregiver since 2017. She also makes all decisions regarding their upbringing, including their education, activities, medical and mental health treatment, with almost no input from [Spencer]. [Catherine] has made extensive efforts to encourage [Spencer's] involvement, to no avail. As [Spencer] stated, he "doesn't understand the expectation." When [Catherine] calendars the children's events, sends him pictures, or sends him links to watch their activities, he accuses her of "harassing" him.
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> The children are reluctant to maintain any relationship with [Spencer], who has a well-documented history of violent and explosive behavior. They have witnessed his outbursts, and they do not trust him.

[8] Kentucky Rules of Civil Procedure.

> The children suffer from significant mental health issues, likely related to family conflict, including depression and anxiety. Two of the three children have expressed suicidal ideations, and one has required a trip to the emergency room. Despite input from numerous highly-qualified mental health professionals, [Spencer] refuses to acknowledge the children's emotional and mental health needs. He refuses to cooperate with their therapists. He refuses to contribute to their counseling expenses.
>
> [Spencer] is voluntarily absent from the children's lives, by virtue of refusing to participate meaningfully in reunification counseling. He shows no concern for the children's personal interests, including their school classes and extracurricular activities.
>
> [Catherine] has overcome the statutory presumption that joint custody and equal parenting time is in the children's best interest. She is the only appropriate parent the children have. [Spencer] exhibits severe parenting and co-parenting deficits, and he has made no effort to improve in the 4 years since the parties' divorce. [Spencer] has no relationship with the children, and the children are reluctant to re-engage with him.

R. at 984-85. These findings are supported by the record and sufficient under CR 52.01. They also support the family court's award of sole custody under KRS 403.270(2). We find no error.[9]

Next, Spencer argues the children's GAL should have been removed from the case. He contests the GAL's fees. First, he claims the GAL should not

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[9] Without citation to authority or the record, Spencer vaguely alleges the family court's findings regarding his history of domestic violence and the custodial evaluation are erroneous. The family court found this evidence credible and weighed it accordingly. *See Moore*, 110 S.W.3d at 354 (footnote omitted). This was not an abuse of discretion.

be paid more than $500.00 under KRS 625.041(2). This statute applies only to actions for voluntary termination of parental rights and has no applicability to dissolution or child custody actions. Second, he claims the court "shall not approve multiple payments" for the GAL under FCRPP[10] 38. This rule applies only to counsel appointed in actions initiated under KRS Chapters 199, 620, and 625, which are actions for adoption, termination of parental rights, and dependency, neglect, and abuse. FCRPP 35(1). Neither the statute nor the rule cited by Spencer are applicable here. Instead, the family court properly appointed the GAL and apportioned her fees between the parties according to FCRPP 6(2).

Spencer further claims the GAL acted improperly by requesting to continue the children's counseling, recommending a reunification counselor, and drafting an agreed order. A GAL "is a lawyer for the child" whose duties include "counseling the child and representing him or her in the course of proceedings by, among other things, engaging in discovery, in motion practice, and in presentation of the case at the final hearing." *Morgan v. Getter*, 441 S.W.3d 94, 119 (Ky. 2014). Filing motions and drafting proposed orders fall squarely within these duties. The family court found the GAL's representation of the children had been competent and professional. Spencer cites to nothing in the record which contradicts this conclusion. Therefore, there is no justification for her removal.

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[10] Family Court Rules of Procedure and Practice.

We will now address Spencer's arguments regarding the children's mental health treatment. He first claims the children's counseling should be discontinued because he does not believe they have received diagnoses which justify further treatment. He cites to KRS 600.020. This statute defines terms used in the Unified Juvenile Code, which has no applicability to this matter. Therefore, we are unpersuaded by his argument.

Spencer further argues he has not been given adequate information about the children's mental health treatment and, for this reason, should not be required to pay for its expense. However, he has been made aware on multiple occasions that the children have been diagnosed and are receiving treatment for depression and anxiety. Upon his request, the children's counselors provided him with detailed treatment plans for them. R. at 981. Despite clear documentation, Spencer continues to disbelieve these diagnoses. This disbelief should not impede the children's mental health treatment. All of Spencer's arguments that treatment should be discontinued and/or he should not be required to pay his share of the expenses are without merit.

Spencer finally claims the children's mental health treatment should be discontinued because he was not provided with a treatment plan under KRS 202A.0811 and/or KRS 202A.0817. These statutes pertain to district court proceedings for court-ordered assisted outpatient treatment. They have no

applicability to dissolution or child custody actions. Counseling is a tool at the family court's disposal to effectuate its purpose under KRS 23A.110. *N.B. v. C.H.*, 351 S.W.3d 214, 220 (Ky. App. 2011); *see also* FCRPP 6(2). "Whether to order counseling in a given case is a matter within the family court's sound discretion." *N.B.*, 351 S.W.3d at 220 (citation omitted). Here, the children have been diagnosed with serious and ongoing mental health conditions. Spencer has knowledge of these diagnoses and was given their treatment plans. The family court relied on the opinions of the children's therapists in ordering continued treatment. This is not an abuse of discretion.[11]

Going forward, as sole custodian of the children, Catherine may make decisions about the children's medical and mental health treatment without Spencer's involvement or consent. This does not relieve Spencer of his obligation to pay half the cost under the terms of the MSA.

Finally, Spencer claims the family court has "constructively removed" his parental rights in his first appeal and that the court has alienated him from the children in his second appeal. He argues he has been given "no remedy under the

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[11] Within this argument, Spencer contests the family court's order for him to reinitiate individual counseling on the same grounds. The family court order him to do so to "address his parenting deficits and to prepare for reunification counseling with the children." R. at 986. Spencer claims the family court made no findings as to his parenting skills, but his deficits are well-documented in the court's order on custody. The court did not abuse its discretion by ordering him to engage in therapy.

law or through any mechanism to see his children[.]" Appellant's Brief in No. 2022-CA-0534-MR at 22. This allegation is refuted by the record.

Spencer, like any parent, may file a motion to modify visitation at any time. KRS 403.320(3). Furthermore, the court has given him the opportunity to reestablish visitation. The parties agreed to participate in a custodial evaluation in their MSA. R. at 38; FCRPP 6(2)(a). The evaluator recommended Spencer participate in reunification therapy with the children prior to being granted unsupervised visitation. R. at 980. During therapy, he was angry, explosive, and threatened to place the children at "risk of harm." *Id*. at 981. He chose to discontinue reunification therapy twice. Spencer has chosen not to be involved in his children's lives for six years. He has again been ordered to participate in reunification therapy so that he may have a relationship with them. *Id*. at 986. Whether he participates is his choice. However, there has been no deprivation of his parental rights, constructive or otherwise, and the court has not alienated him from the children.

CONCLUSION

Based on the foregoing, the April 27, 2022, and February 20, 2023, orders of the Jefferson Circuit Court, Family Division, are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Spencer G. Stone, *pro se*
McLean, Virginia

BRIEFS FOR APPELLEE:

Sarah P. Harris
Louisville, Kentucky