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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-0531-MR

ERIN TURNER — APPELLANT

v.

APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE JAMES G. ADAMS, JR., SPECIAL JUDGE
ACTION NO. 18-CI-00317

JONATHAN YOUNG — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; ACREE AND CALDWELL, JUDGES.

CALDWELL, JUDGE: Erin Turner appeals from the Calloway Family Court's denial of her motions to modify timesharing and to hold Jonathan Young in contempt. We affirm.

FACTS

In 2017, the Hardin Family Court entered a decree dissolving the marriage of Jonathan Young ("Jonathan") and Erin Young, now Turner ("Erin"). The parties were awarded joint custody of their children, born in 2012 and 2013.

Jonathan was designated the primary residential parent and timesharing was according to local guidelines.

Both parties and their children had moved away from Hardin County by a year or so after the divorce. Erin moved to Lawrenceburg near her mother and other relatives. Jonathan and the children moved to Murray near his parents and other relatives. Erin filed a motion to modify timesharing, and the case was transferred to Calloway Family Court ("the family court"). Erin requested that she become the children's primary residential parent.

Following an evidentiary hearing, the family court denied Erin's request to be the primary residential parent in an order entered in May 2019. However, due to the almost 250-mile distance between the parties' homes, the family court found a more specific timesharing schedule was necessary. It adopted Schedule C of the local Guidelines for Custody and Visitation for Long Distance situations.[1]

In the summer of 2022, Erin filed a new motion to modify timesharing, requesting that she be designated the primary residential parent with the children to move to Lawrenceburg. She alleged that Jonathan acted in ways

[1] As the parties shared joint custody of their children with Jonathan as the primary residential parent, Erin technically had timesharing rather than visitation with her children. However, the terms visitation and timesharing are often used interchangeably. *Pennington v. Marcum*, 266 S.W.3d 759, 764-65 (Ky. 2008).

making co-parenting difficult and was not complying with family court orders. She also expressed concern with the way he disciplined the children, including using corporal punishment. The motion was scheduled for an evidentiary hearing in December 2022.

In late October 2022, Erin filed a verified motion for Jonathan to show cause why he should not be held in contempt for his refusal to allow her to have the children for the weekend beginning on Friday, October 14th. She asserted Jonathan had violated certain provisions of the timesharing schedule adopted in the family court's May 2019 order.

The family court heard evidence from both parties regarding the timesharing modification and contempt motions at the scheduled December 2022 hearing. At the end of the hearing, the family court indicated it would allow both parties to file post-hearing memoranda within thirty days. However, the family court entered an order in early January 2023 resolving the timesharing and contempt motions before the thirty-day filing deadline had passed. Erin filed a timely motion to alter, amend, or vacate.

In April 2023, the family court entered an amended order resolving the timesharing modification and contempt motions. The family court found it was not in the children's best interest to move to Lawrenceburg, so it denied Erin's request to become the primary residential parent. The family court also ruled

timesharing would continue to occur under the schedule adopted by court order in May 2019 except for making the parties' exchange time an hour later. The family court also found that Jonathan was not in contempt concerning visitation matters, stating there was "a genuine misunderstanding between the parties."

Erin filed a timely appeal from this order. Erin contends that the family court erred in not holding Jonathan in contempt for failing to let her exercise her weekend visitation in mid-October 2022. She also argues that the family court erred in denying her motion to modify timesharing.

We will discuss further facts as needed to resolve the issues on appeal.

ANALYSIS

Appeal is From a Final and Appealable Order

Though not discussed by the parties, we first address whether the appeal is from a final and appealable order as this affects whether we have jurisdiction. *See Energy and Environment Cabinet v. Concerned Citizens of Estill Cnty., Inc.*, 576 S.W.3d 173, 176 (Ky. App. 2019) (Court of Appeals lacked jurisdiction over and therefore dismissed appeal from interlocutory order not made final and appealable by CR[2] 54.02 recitations); *Wright v. Ecolab, Inc.*, 461 S.W.3d 753, 758 (Ky. 2015) (subject to few exceptions, appellate courts lack jurisdiction over and must therefore dismiss appeals from interlocutory orders).

[2] Kentucky Rules of Civil Procedure.

The April 2023 order resolving the timesharing modification and contempt motions and other matters did not state that it was final or that there was no just reason for delay. However, this order appeared to resolve all pending motions and to adjudicate all the parties' rights in the action, so we conclude the appeal is from a final and appealable order. *See* CR 54.01; CR 54.02. And Kentucky precedent specifically recognizes that orders modifying final orders about timesharing are inherently final and appealable. *Turner v. Turner*, 672 S.W.3d 43, 50 (Ky. App. 2023); *Anderson v. Johnson*, 350 S.W.3d 453, 455-56 (Ky. 2011).

Furthermore, this Court has implicitly recognized that one may appeal from the denial of a motion to hold another party in contempt. *See Smith v. City of Loyall*, 702 S.W.2d 838, 839 (Ky. App. 1986) (affirming denial of contempt motion; not dismissing appeal as from a non-appealable order). *But see Cabinet for Health and Family Services v. R.C.*, 661 S.W.3d 305 (Ky. App. 2023), in which we stated: "We are not in a position to review portions of the contempt orders that did not result in a finding of contempt or the imposition of sanctions" and declined to review family court's critical remarks about certain individuals who worked for the Cabinet but were not formally found in contempt themselves. *Id*. at 318. However, the appeal in *R.C.* was from an order granting a motion to hold the Cabinet in contempt; apparently no similar motion was filed to hold individuals

working for the Cabinet in contempt. *See id*. at 310. Therefore, *R.C.* did not involve an appeal from a denial of a contempt motion. So, we do not perceive *R.C.* as disturbing *City of Loyall*'s implicit recognition that an order denying a contempt motion is appealable.

Issues Raised on Appeal Were Preserved So Standard of Review Not Affected

Erin's appellant brief does not explicitly state if and how each issue raised was "preserved" for appeal at the beginning of her argument. *See* RAP[3] 32(A)(4) (requiring that appellant brief "shall contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner."). However, despite the lack of mention of any form of the word *preserve* in her brief, Erin provides specific page references to her timesharing modification and contempt motions in the written record – thus, indicating how her arguments for modifying timesharing and for a contempt finding against Jonathan were raised to the family court and therefore preserved for our review. *See MV Transp., Inc. v. Allgeier*, 433 S.W.3d 324, 331 (Ky. 2014) ("[T]he critical point in preservation of an issue remains: was the question fairly brought to the attention of the trial court."). Furthermore, the family court ruled on both motions before the appeal was filed. *See Ten Broeck*

[3] Kentucky Rules of Appellate Procedure.

Dupont, Inc. v. Brooks, 283 S.W.3d 705, 734 (Ky. 2009) (appellate courts lack authority to review issues not raised to or ruled on by trial courts).

Nonetheless, we advise counsel to provide explicit statements regarding if and how issues were "preserved" for appeal at the beginning of the argument portion of appellate briefs in the future. Failure to include proper preservation statements in appellant briefs can result in sanctions or even affect the standard of review. *See* RAP 31(H)(1) (briefs can be stricken for substantial failure to comply with appellate briefing rules); *Oakley v. Oakley*, 391 S.W.3d 377, 380 (Ky. App. 2012) (Whether preservation statement is provided "has a bearing on whether we employ the recognized standard of review, or in the case of an unpreserved error, whether palpable error review is being requested and may be granted.").[4]

Though we implore counsel to strictly comply with appellate briefing rules in the future,[5] we are satisfied that the issues on appeal were preserved for

[4] *Oakley* was decided prior to the Rules of Appellate Procedure taking effect on January 1, 2023. However, then-effective CR 76.12(4)(c)(v) contained a similar preservation statement requirement to that in RAP 32(A)(4). And the effect lack of preservation has on the standard of review has not changed. *See* CR 61.02 ("A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.").

[5] *See* KENTUCKY COURT OF APPEALS, *Basic Appellate Practice Handbook* https://www.kycourts.gov/Courts/Court-of-Appeals/Documents/P56BasicAppellatePracticeHandbook.pdf (last visited May 20, 2024).

review, so the standard of review is not affected. Nor do we elect to impose any sanctions for this or any other apparent deficiencies.

We Urge Counsel to Refer to Time of Day Rather than Referring to How Many Minutes Elapsed in Hearing in Future References to Videorecordings

To their credit, Erin and Jonathan provided specific references to portions of the hearing videorecording in their appellate briefs. *See* RAP 31(E)(4); RAP 32(A)(3)-(4). However, they did so in a manner making our efforts to locate testimony or oral arguments in the record more difficult – *i.e.*, referring to how many minutes had elapsed since the beginning of the hearing when an issue was discussed. We prefer that parties instead refer to the time of day expressed in hours, minutes and perhaps seconds as indicated by RAP 31(E)(4):

> Each reference in a brief to a segment of the designated official recording shall set forth the letters "VR" and the month, day, year, hour, and minute (or second if necessary) at which the reference begins as recorded. For example: VR 10/27/20 at 10:24:05 or VR 10/27/20 at 4:10-16.

Based on our review of the videorecording, the evidentiary hearing began at slightly after 1:30 P.M. and lasted slightly over two hours. While the parties correctly note the date of the hearing, their briefs bizarrely refer to times such as 48:00, 50:00 and even 113:40 and 114:34 which apparently refer to the number of minutes elapsing since the hearing began. *See, e.g.*, Appellant brief, p. 7; Appellee brief, p. 5. While we presume the parties' counsel misunderstood RAP

31(E)(4) and we do not elect to impose sanctions, counsel is advised to provide references to the specific time of day in which issues were discussed in recorded hearings in the future. For example, if a hearing began at 1:30 P.M. and an argument was made twenty minutes after the hearing began, the desired reference would be to 1:50 P.M. (the time of day) rather than to 20:00 (how many minutes had elapsed since the hearing began).

Nonetheless, any deficiencies in the parties' briefs are not so substantial as to motivate us to strike the briefs, *see* RAP 31(H)(1), or to impose other sanctions – especially as we are not aware of prior instances of the parties' counsel failing to comply with appellate briefing rules. Next, we review the merits of Erin's arguments on appeal under applicable standards of review.

We Review Family Court's Denial of Contempt Motion for Abuse of Discretion, but Its Underlying Factual Findings for Clear Error

First, we address Erin's argument that the family court erred in declining to hold Jonathan in contempt. A family court's ruling on a contempt motion is reviewed for abuse of discretion. *Meyers v. Petrie*, 233 S.W.3d 212, 215 (Ky. App. 2007) (courts have wide discretion to use contempt powers to enforce their orders and their contempt decisions will only be disturbed if court abused its discretion); *City of Loyall*, 702 S.W.2d at 839 (affirming denial of contempt motion given evidence that opposing parties purged themselves of contempt by complying with a court order, albeit belatedly, as trial court's "discretionary power necessarily

includes the power to refrain from imposing sanctions and fines in the face of compliance" and denial of motion was therefore within its discretion).

Although the family court's ruling on the contempt motion is reviewed for abuse of discretion, underlying factual findings are reviewed for clear error. *See Commonwealth, Cabinet for Health and Family Services v. Ivy*, 353 S.W.3d 324, 332 (Ky. 2011) ("We review the trial court's exercise of its contempt powers for abuse of discretion, but we apply the clear error standard to the underlying findings of fact.") (citations omitted). Reviewing for clear error means that factual findings will not be disturbed unless they are not supported by substantial evidence. *Turner*, 672 S.W.3d at 51.

No Reversible Error in Family Court's Denial of Contempt Motion

In her brief Erin contends that the family court erred in denying her motion to hold Jonathan in contempt for failing to allow her to "exercise her weekend visitation in October of 2022." In her contempt motion, Erin asserted that she was supposed to exercise her "October weekend visitation" during the weekend beginning on October 14, 2022. She alleged that Jonathan refused to bring the children to an exchange point because he believed he should have the children for the weekend and that Erin was not entitled to "receive weekend visitation during the month of October in the years that she exercises fall break."

In her contempt motion and in her appellant brief, Erin pointed to provisions in the timesharing schedule adopted by the family court in May 2019 regarding monthly weekend visitation or timesharing. Erin is referred to as the NRP (non-residential parent) and Jonathan as the RP (residential parent) in this provision. Section 2 of the timesharing schedule is entitled Monthly Visitation and states in pertinent part:

> During the months of March, April, August and October, the NRP [Erin] is to have one weekend visitation commencing the second Friday in the month at 6:00 p.m. and ending on the following Sunday at 6:00 p.m. with the exception that the RP [Jonathan] shall receive the child's/children's fall break in odd-numbered years and the child's/children's spring break in even-numbered years (see Sections 3 and 4 below).

(The second Friday of the month of October fell on the 14th in 2022).

Section 4 entitled Fall Break states that the non-residential parent (Erin) has the children for all of fall break in even-numbered years and that the residential parent (Jonathan) has the children for all of fall break in odd-numbered years. (2022 was an even year.) The fall break provision in Section 4 also states: "In the event the NRP's [Erin's] monthly visitation, as set forth in Section 2 above, is interrupted by the RP's [Jonathan's] exercising the fall break visitation, the NRP shall be entitled to make up the monthly visitation the following weekend."

Despite the provision requiring that the non-residential parent (Erin) gets to make up a weekend if her monthly weekend visitation is interrupted by the

residential parent (Jonathan) having the children for fall break, Erin pointed out in her contempt motion that the order with the timesharing schedule "does not state that when the nonresidential parent exercises fall break, they lose their weekend visitation." Erin argues she was therefore entitled to have the children both for their fall break in 2022 and for weekend visitation during the second weekend of October 2022 – which started on Friday, October 14 that year. And she points to Jonathan's admission in his testimony that he did not permit Erin to have the children for the weekend beginning Friday October 14th, 2022.

Jonathan stated in his testimony that he did not think Erin should have the children that weekend because she had already had them for fall break and allowing her to have the children that weekend would mean she had the children for four consecutive weekends. When confronted with Sections 2 and 4 from the timesharing schedule's provisions about fall break and monthly weekend visitation on cross-examination, Jonathan stated he was confused about the provisions.

The family court declined to hold Jonathan in contempt, finding there was a misunderstanding between the parties. Erin contends the family court's findings are insufficient because it did not identify what the misunderstanding was or tell the parties how to act going forward. However, given Jonathan's testimony that he was confused about the provisions in the timesharing schedule about October weekend visitation and fall break, the family court was clearly referring to

a misunderstanding about the application of these provisions. And the family court provided sufficient instructions about future timesharing in ruling that the previously adopted timesharing schedule would still apply except for a slight change in the exchange time. In sum, the family court's findings were sufficiently specific.

Erin also argues the family court abused its discretion in not finding Jonathan in contempt due to his admitting he did not allow her to have timesharing over the mid-October 2022 weekend and not offering a valid excuse, in her estimation. But regardless of any admission that Jonathan failed to comply with provisions in the timesharing schedule adopted by court order or any perception of Erin's that Jonathan failed to offer a valid excuse, contempt is not simply failing to follow court orders especially if the failure to comply is not intentional.

Instead, contempt is defined as the willful disobedience of a court's orders or open disrespect for the court's rules and orders. *See, e.g.*, *Cabinet for Health and Family v. J.M.G.*, 475 S.W.3d 600, 610 (Ky. 2015).

The family court found that Jonathan was not in contempt, stating the parties had a misunderstanding – presumably about the content of the court's orders about timesharing. Jonathan's testimony that he was confused about the timesharing provisions is substantial evidence supporting the family court's finding of a misunderstanding rather than a willful lack of compliance with its orders. And

regardless of any conflicting evidence or whether we would make the same finding, we must defer to the family court's weighing of the evidence and determinations of witness credibility. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). In short, we cannot disturb the family court's factual finding that Jonathan misunderstood timesharing schedule provisions rather than willfully refused to comply with court orders because it is not clearly erroneous.

Furthermore, as the finding that Jonathan misunderstood the court's orders rather than willfully disobeying them is not clearly erroneous, we discern no abuse of discretion in the family court's declining to find Jonathan in contempt and not imposing sanctions. *See, e.g.*, *J.M.G.*, 475 S.W.3d 600 (defining contempt as the willful disobedience of court orders); *Petrie*, 233 S.W.3d at 215 (family court abuses its discretion when its decision is "arbitrary, unreasonable, unfair, or unsupported by sound legal principles"). A decision not to find a party in contempt because the party misunderstood rather than willfully disobeyed court orders is not contrary to sound legal principles or arbitrary, unreasonable or unfair. There was no abuse of discretion in the family court's denying the contempt motion.

Standard of Review for Denial of Requested Modification of Timesharing

We review the family court's ruling on the motion to modify timesharing for abuse of discretion. But we review its interpretation and

application of statutes *de novo* (without deference) and we review its underlying factual findings for clear error. *Turner*, 672 S.W.3d at 50-51.

Motions to modify timesharing are governed by KRS[6] 403.320. *Turner*, 672 S.W.3d at 52 (citing *Layman v. Bohanon*, 599 S.W.3d 423, 431 (Ky. 2020)). *Layman* also states: "[T]he recently added presumption of joint custody and equal parenting time in KRS 403.270 applies to custody determinations, but it does not apply to modifications of visitation or timesharing." *Id.* Instead, KRS 403.320(3) should be applied to rule on motions to modify timesharing. *Id.*

KRS 403.320(3) provides that a court may modify a visitation order if modification would be in the children's best interests.[7]

No Reversible Error in Family Court's Denial of Erin's Motion to Modify Timesharing so that She Would Become the Primary Residential Parent

Erin argues the family court erred in denying her motion to modify timesharing. We construe her argument to primarily pertain to the family court's denying her request to be the primary residential parent.[8] We confine our review

[6] Kentucky Revised Statutes.

[7] KRS 403.320(3) also states that a court may not restrict a parent's visitation rights "unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health." But Erin does not argue that her timesharing or visitation was restricted.

[8] Erin's appellant brief does not explicitly request relief in the form of specific timesharing schedule changes. And though she made requests for the family court to order or to clarify that all or some of her parenting time weekends should occur in Lawrenceburg rather than Murray, she does not argue this issue in her appellant brief.

to those issues argued in her brief and decline to express opinions on matters outside these issues raised on appeal.

Erin takes issue with the family court's determination that modification of timesharing to make her the primary residential parent was not in the children's best interest.[9] She claims that the family court's best interest findings are not supported by evidence and are unreasonable.

In her argument regarding timesharing, Erin alludes to testimony which she suggests would indicate that having Jonathan as the primary residential parent was not in the children's best interest. Specifically, she asserts Jonathan's testimony indicates he ignores text messages from Erin, thinks Erin should not allow their daughter to get a haircut when spending time with Erin, does not desire Erin's help or input with issues faced by the daughter, does not want to maximize Erin's time with the children, and does not think anything should be done to give her more time with the children. She also claims that Jonathan failed to take responsibility for failing to send sufficient medication for their son's seizure disorder with him for her parenting time. And in her view, Jonathan's testimony

[9] Erin argued to the family court that Jonathan's choice of disciplinary methods was one reason why modifying timesharing to make her the primary residential parent would be in the children's best interests. But Erin does not argue Jonathan's use of discipline as a factor affecting whether timesharing modification was in the children's best interests in her appellant brief.

indicates he is unable to cooperate with her to benefit the children and does not desire to facilitate a more meaningful relationship between Erin and the children.

However, Erin did not present testimony indicating that Jonathan failed to send sufficient medication with the child on multiple occasions but only on one occasion which the family court found to be the result of a misunderstanding. Also, despite admitting to not always immediately responding to each of Erin's text messages, Jonathan testified that he encouraged the children to have daily phone contact with Erin and to having them call her back soon when they were unable to take her call immediately due to their being in the middle of dinner, homework, or other activities. Certainly, the parties testified to different perceptions of ideal parental behavior at sporting events the children participated in or attended – with Erin desiring to sit with the children at sporting events occurring outside her designated parenting time and Jonathan expressing a preference for both parties to essentially leave the children and other parent alone during the other parent's parenting time.

Notwithstanding the parties' differing preferences on handling co-parenting matters, perhaps Erin has identified some behavior admitted to by Jonathan which not everyone would find ideal.

However, a determination that a particular timesharing arrangement is in the children's best interest does not necessarily mean that there is no room for

improvement or that the primary residential parent has acted ideally in every situation. Instead, the family court must weigh the children's best interests despite even fit parents' being human and therefore being imperfect and making mistakes. Often, a family court must weigh the strengths and weaknesses of loving, fit yet imperfect parents when determining what timesharing arrangement would be in the children's best interests.

In determining whether modification of timesharing is in the children's best interests, the family court should consider all relevant factors including those listed in KRS 403.270(2). *Anderson*, 350 S.W.3d at 455. The factors listed in KRS 403.270(2) include: the wishes of the parents and the children, the children's interactions and relationships with their parents and siblings and others significantly affecting their best interests, the children's adjustment and proximity to their home and school and community, the motivations of the adults involved in the proceedings, the mental and physical health of all involved individuals, and the "likelihood a party will allow the child frequent, meaningful, and continuing contact with the other parent[.]"[10]

The family court made findings on all relevant factors listed in KRS 403.270(2). In her appellant brief, Erin finds fault with its findings regarding KRS

[10] KRS 403.270(2) also lists other factors relating to domestic violence or *de facto* custodians which the family court found not to apply to the facts here. Neither party disputes the lack of application of factors relating to domestic violence or *de facto* custodians in their briefs.

403.270(2)(f) and (k) – *i.e.*, its findings about mental and physical health and its findings about the likelihood each party would allow the other parent to have a meaningful relationship and frequent contact with the other parent.

First, she challenges the family court's finding that: "No testimony as to the mental and physical health of the parties has been given, and this factor favors neither party." She points out there was testimony about one child having seizures and about Jonathan failing to send sufficient medicine with the child when the child went to spend time with Erin. However, we presume the family court was referring to Jonathan and Erin as the parties[11] and not to the children. And Erin does not cite to any evidence in the record pertaining to Jonathan's or her physical or mental health besides the fact that they had attended counseling for a time, which the family court noted after finding a lack of testimony about the parties' mental or physical health.

Despite this finding of a lack of testimony about the parties' (meaning the parents') physical or mental health, the family court did not specifically discuss the children's physical or mental health in the portion of its findings of fact explicitly discussing the factors described in KRS 403.270(2). *See* KRS 403.270(2)(f) (identifying as a relevant factor for determining the children's best

[11] *See* KRS 403.270(2)(k) (referring to the likelihood a "party" will allow the "other parent" to have frequent contact and a meaningful relationship with the child and children). Jonathan and Erin are the only parties to the action noted in court records; the children are not listed as parties.

interest: "[t]he mental and physical health of all individuals involved"). However, the family court discussed testimony about one child's medical treatment in other factual findings – including the parties' disputes about who could be with the child in the hospital, taking precautions to prevent getting an injured area wet, and the respective distances from the parties' homes to well-known hospitals.

The family court also noted that Erin wished for the children to be evaluated at a counseling center, but Jonathan did not wish for the children to attend any further counseling. It also stated Erin did not present any evidence as to why the children should have further counseling. Jonathan states in his brief that the counselor who saw the family did not recommend further mental health treatment for the children, but he provides no citation of evidence about this in the record.

Despite the family court not specifically discussing evidence about the children's mental or physical health in its explicit discussion of KRS 403.270(2) factors in its findings of fact, it showed its awareness about one child's physical health issues and the fact the children had previously attended counseling in other factual findings. And the argument portion of Erin's brief does not cite to any evidence in the record, other than her own testimony about her perceptions why either child might need additional support or counseling, that either child had any mental or physical health issues for which they could not receive proper care or

treatment if they continued to reside primarily with Jonathan.[12] Therefore, we discern no clear error or abuse of discretion in the family court's determination that no mental or physical health concerns favored either party's being the primary residential parent. Next, we address Erin's challenge to the family court's findings about the likelihood that either party would facilitate the other parent's having frequent contact and a meaningful relationship with the children.

The family court stated the KRS 403.270(2)(k) factor regarding the likelihood of either party's facilitating the children's contact and a meaningful relationship with the other parent was in neither party's favor. The family court also specifically found that Jonathan had honored court orders to make sure the children stayed in contact with their mother even while on vacation. It also found that Jonathan: "[T]ravels several hours to meet the Petitioner [Erin] with the children and he does not interfere with the Petitioner's time with the children when they are both present at a sporting event on the Petitioner's weekend." The family

[12] Erin alluded to her own testimony about Jonathan not communicating with her about the children's medical issues or appointments, especially not in a timely manner in her view, in her statement of facts. She also alluded to her testimony that Jonathan failed to list her as the children's mother on medical, insurance, or school forms in her statement of facts. The family court's written order did not substantively discuss this testimony or whether the family court found this testimony credible. Such alleged failure to communicate about the children's medical issues or failing to list the other parent on important forms is certainly concerning if true. Nonetheless, we discern no reversible error in the family court's denial of Erin's motion to modify timesharing so that Erin would be the primary residential parent in light of the totality of the circumstances and for the reasons discussed in the body of this Opinion.

court also noted Erin's testimony that she would allow Jonathan to have meaningful contact with the children if their roles were reversed.

In addition to these factual findings explicitly stated to relate to KRS 403.270(2)(k), the family court's other findings of fact noted conflicts in the testimony about whether Jonathan permitted Erin to sit with the children at sporting events which did not occur during her weekend visitation. The family court noted Erin testified Jonathan did not allow the children to sit with her at sporting events occurring outside her designated parenting time. It also noted Jonathan's testimony he did not interfere with her time with the children on her weekends when he attended the children's sporting events, and that Jonathan valued his weekend time with the children and did not want to lose that time simply because Erin showed up at an event. It also noted Jonathan denied interfering with Erin's sitting with the children at sporting events in his testimony. The family court also noted Erin's admitting on cross-examination that her photographing Jonathan, his wife and the children at sporting events was probably not helping to facilitate a better relationship.

As the family court did not find this factor to be in either party's favor, we perceive its factual findings as noting conflicts in the evidence about this factor but ultimately being neutral as to which parent would be more likely to facilitate the children having frequent contact and a meaningful relationship with

the other parent. But even assuming *arguendo* that the family court should have found this factor to be in Erin's favor, this is only one of several factors relevant to determining the children's best interest.

In addition to discussing the likelihood of either parent encouraging the children to have a meaningful relationship with the other parent and the evidence relating to the mental or physical health of the parties and their children, the family court also made findings about the children's relationships with family and friends, the parties' motivations and the children's adjustment and continuing proximity to their home, school, and community. *See* KRS 403.270(2)(c)-(e). And unfortunately for Erin, the family court found that these three factors favored Jonathan's continuing to be the primary residential parent.

Specifically, the family court found the children had lived in Murray with their father for most of their lives and had other family members, friends, and teammates in Murray, as well as a school and church which were familiar to them. And the family court found that both parents were motivated by their love for the children. But it also found that Erin "has shown a questionable motivation in this matter through her text messages which attempt to create a record of noncompliance by the Respondent [Jonathan], photographing Respondent and family at events for the children, and a regular schedule of litigation with Respondent." And it found that Jonathan demonstrated a motivation to provide a

stable life for the children with consistent care and as "evidenced by the children's grades and their numerous activities."

Concerning the children's adjustment and proximity to home and school and community, the family court found the children were doing well in school, were involved in church and extracurricular activities and "have an established home and community in Murray."

The family court found the three factors set forth in KRS 403.270(c)-(e) to be in Jonathan's favor. It also made findings on other relevant KRS 403.270(2) factors without finding these factors in either party's favor. It applied the correct law, and we discern no misapplication of the law. Furthermore, its underlying factual findings on these relevant factors are supported by substantial evidence. And regardless of whether we would make the same decision, the family court did not abuse its discretion in making the decision to decline to change which parent would serve as the primary residential parent. Thus, we must affirm the family court's decision. *See generally Coffman v. Rankin*, 260 S.W.3d 767, 770 (Ky. 2008).

Further issues or arguments raised in the parties briefs have been determined to lack merit or relevancy to our resolving this appeal.

CONCLUSION

For the reasons stated herein, we AFFIRM the judgment of the Calloway Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Caleb M. Nelson
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BRIEF FOR APPELLEE:

Sarah Coursey Jones
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