

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CU 1362

CYNTHIA DENISE BROWN AND  
SHERYL WALKER

VERSUS

FELISHA TAYLOR

Judgment rendered December 21, 2011.

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Appealed from the  
21st Judicial District Court  
in and for the Parish of Tangipahoa, Louisiana  
Trial Court No. 2011-0000091  
Honorable Brenda Bedsole Ricks, Judge

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**BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.**

*T.B.W.  
J.W.*

*McClelland, J. concurs.*

**PETTIGREW, J.**

In this child custody matter, the biological mother seeks review of the trial court's judgment granting joint custody of her minor child to the child's grandmothers. For the reasons that follow, we affirm.

According to the record, the minor child, Fredrick<sup>1</sup> McGary, Jr. (DOB 10/20/03), had been in the care and custody of Cynthia Denise Brown, his maternal grandmother, and Sheryl Walker, his paternal grandmother, since October 2005. In January 2011, Fredrick's grandmothers filed a motion for temporary *ex parte* award of custody of Fredrick, naming Fredrick's mother, Felisha Taylor Mack, as a defendant and arguing that immediate and irreparable harm would occur to the minor child if they were not granted temporary joint custody pending a hearing and judgment in their favor granting them joint custody. Fredrick's grandmothers further alleged that Fredrick's father, Fredrick McGary, was currently incarcerated but consented to the award of custody.<sup>2</sup> An order granting Fredrick's grandmothers temporary joint custody was signed by the trial court on January 11, 2011, and the matter was set for hearing. In response to the motion, Felisha filed an exception raising the objections of no cause of action and nonjoinder of party. Felisha also requested that Cynthia Denise Brown be held in contempt for perjury.

All of the matters proceeded to a hearing before the trial court on March 31, 2011. The trial court heard arguments on Felisha's exceptions, after which they were denied. Subsequently, the trial court heard testimony from several witnesses as to the merits of the custody issue. Following the presentation of the evidence, the trial court rendered judgment awarding joint custody of Fredrick to his grandmothers, subject to reasonable visitation in favor of Felisha. A judgment in accordance with the trial court's findings was signed on April 26, 2011. This appeal by Felisha followed.

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<sup>1</sup> We note that the minor child is referred to as both "Fredrick" and "Frederick" throughout the record.

<sup>2</sup> Felisha was the only named defendant in the motion for custody. The only "appearance" in these proceedings by Fredrick's father is in the form of a "Verification" signed by him on February 23, 2011, wherein he attests that he is in fact Fredrick's father and that all of the allegations contained in the motion for custody are true and correct.

Louisiana Civil Code Article 133 is specific to an "[a]ward of custody to person other than a parent," which is the circumstance before us in this case. The language in Article 133 presumes a dispute where some person is trying to protect a child from substantial harm. Pursuant to Article 133, a nonparent is only entitled to custody upon a showing that "an award of joint custody or of sole custody to either parent would result in substantial harm to the child." **In re Melancon**, 2010-1463, pp. 4-5 (La. App. 1 Cir. 12/22/10), 62 So.3d 759, 763-764.

Every child custody case must be viewed in light of its own particular set of facts and circumstances. **Elliott v. Elliott**, 2010-0755, p. 6 (La. App. 1 Cir. 9/10/10), 49 So.3d 407, 411, writ denied, 2010-2260 (La. 10/27/10), 48 So.3d 1088. The primary consideration and prevailing inquiry is whether the custody arrangement is in the best interest of the child. **McCormic v. Rider**, 2009-2584, pp. 3-4 (La. 2/12/10), 27 So.3d 277, 279. The court is to consider all relevant factors in determining the best interest of the child. La. Civ. Code art. 134. **Bonnecarrere v. Bonnecarrere**, 2011-0061, p. 8 (La. App. 1 Cir. 7/1/11), 69 So.3d 1225, 1232. As provided by Article 134, the factors considered *may* include:

- (1) The love, affection, and other emotional ties between each party and the child.
- (2) The capacity and disposition of each party to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child.
- (3) The capacity and disposition of each party to provide the child with food, clothing, medical care, and other material needs.
- (4) The length of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment.
- (5) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (6) The moral fitness of each party, insofar as it affects the welfare of the child.
- (7) The mental and physical health of each party.
- (8) The home, school, and community history of the child.

(9) The reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference.

(10) The willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party.

(11) The distance between the respective residences of the parties.

(12) The responsibility for the care and rearing of the child previously exercised by each party.

However, the factors listed in Article 134 are not exclusive. **Harang v. Ponder**, 2009-2182, p. 11 (La. App. 1 Cir. 3/26/10), 36 So.3d 954, 963, writ denied, 2010-0926 (La. 5/19/10), 36 So.3d 219. The determination of the trial court in child custody matters is entitled to great weight, and its discretion will not be disturbed on review in the absence of a clear showing of abuse. **Gray v. Gray**, 2011-548, p. 20 (La. 7/1/11), 65 So.3d 1247, 1259.

In reviewing this matter, we find the trial court very closely and carefully considered all of the evidence presented. We conclude that the evidence in the record supports a finding that substantial harm would come to Fredrick if custody was granted to Felisha and that it was in the best interest of Fredrick that his grandmothers be awarded joint custody, subject to reasonable visitation in favor of Felisha. Accordingly, we find no abuse of the trial court's great discretion in its judgment. Therefore, we affirm the trial court's April 26, 2011 judgment in accordance with Uniform Rules-- Courts of Appeal, Rule 2-16.1B and assess all costs associated with this appeal against Felisha Taylor Mack.

**AFFIRMED.**