

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 CU 2399

MAMTA PANI RAO

VERSUS

MAHESWAR RAO

Judgment Rendered: March 27, 2009.

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On Appeal from the
Family Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 141,912

Honorable Pamela J. Baker, Judge Presiding

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BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.



CARTER, C. J.

In this child custody action, the trial court judgment awarded joint custody of the minor children (ages 13 and 8) to the parents with Maheswar Rao (the father) being designated the domiciliary parent, resulting in a change in the domiciliary custody of the children. Mamta Pani Rao (the mother) appealed, arguing that the trial court erred in modifying custody by designating the father as domiciliary parent.¹

Every child custody case must be reviewed within its own peculiar set of facts and circumstances. **R.J. v. M.J.**, 03-2676 (La. App. 1 Cir. 5/14/04), 880 So.2d 20, 23. The trial court is in the best position to ascertain the best interest of the children given each unique set of circumstances. Accordingly, the trial court's determination of custody is entitled to great weight and will not be reversed on appeal unless an abuse of discretion is clearly shown. **Id.** Furthermore, as in most custody cases, the trial court's determination herein was based heavily on factual findings and it is well settled that the trial court's factual determinations cannot be set aside in the absence of manifest error or unless those findings are clearly wrong. **Elliott v. Elliott**, 05-0181 (La. App. 1 Cir. 5/11/05), 916 So.2d 221, 226-227, writ denied, 05-1547 (La. 7/12/05), 905 So.2d 293.

In its detailed and thorough written reasons for judgment, the trial court discussed the relevant facts of this contentious custody litigation, the applicable law, and the pertinent factors forming the basis of its judgment. The trial court carefully weighed and balanced the factors for determining the best interest of the children as set forth in LSA-C.C. arts. 131, 132, and

¹ The trial court judgment also terminated the mother's spousal support and child support; however, the mother does not raise the support issues in this appeal.

134, as well as the jurisprudential requirements imposed in actions to change custody decisions rendered in considered decrees as mandated by **Bergeron v. Bergeron**, 492 So.2d 1193, 1200 (La. 1986) .

The trial court determined that it was in the children's best interest to have both parents share joint custody, but that the father should be designated the domiciliary parent in this delicate situation where one of the children had become alienated from the father. The trial court had the benefit of observing the demeanor of the parents and the children and it carefully weighed the credibility of all of the evidence.² The trial court then determined that the father had met the heavy burden of proving that a material change in circumstances had occurred that was so deleterious as to justify a modification of the domiciliary parent status, without changing joint custody. The trial court further determined that the advantages of modifying the domiciliary custody of the children greatly outweighed the harm that the change would most likely cause, with the goal of keeping the alienation from worsening. After a thorough review of the record and relevant jurisprudence, we cannot find that the trial court abused its discretion or was manifestly erroneous in its decision that it was in the best interest of the children to designate the father as the domiciliary parent.

² We find no merit to the mother's argument that the trial court erroneously admitted the court-appointed expert's opinion and gave weight to that expert opinion as a basis for modifying the domiciliary custody. We especially note that both parties stipulated that the expert was to perform a custody evaluation to be introduced into evidence at trial. Neither the expert's expertise, nor the methodology he used in performing the evaluation, were ever contested. It is the role of the trial court to make credibility determinations and it may accept in whole or in part the expert's opinion. **Bellard v. American Cent. Ins. Co.**, 07-1335 (La. 4/18/08), 980 So.2d 654, 673. The admission of evidence, expert or otherwise, is subject to the trial court's discretion. **Franklin v. Franklin**, 05-1814 (La. App. 1 Cir. 12/22/05), 928 So.2d 90, 93, writ denied, 06-0206 (La. 2/17/06), 924 So.2d 1021.

DECREE

We accordingly affirm the trial court judgment by summary disposition, in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.2A(5), (6), (7), and (8). All costs of this appeal are assessed to the mother, plaintiff-appellant, Mamta Pani Rao.

AFFIRMED.