

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Willis and Bray  
Argued at Richmond, Virginia

LORETTA ROBERTS

v. Record No. 0303-95-3  
PHILIP NATHANIEL WILLIAMS

MEMORANDUM OPINION\* BY  
JUDGE JERE M. H. WILLIS, JR.  
FEBRUARY 13, 1996

FROM THE CIRCUIT COURT OF ROCKINGHAM COUNTY  
Porter R. Graves, Jr., Judge

R. Bruce Wiles, for appellant.

No brief or argument for appellee.

Loretta Roberts appeals the judgment of the trial court awarding custody of Tajon S. Williams to his biological father, Philip Nathaniel Williams. Ms. Roberts contends that the trial court erred (1) in concluding that Williams had not voluntarily relinquished custody of Tajon and (2) in finding that Tajon's best interests were served by awarding custody to Williams. We find no error and affirm the judgment of the trial court.

When addressing matters concerning a child . . . the paramount consideration of a trial court is the child's best interests. On review, "[a] trial court is presumed to have thoroughly weighed all the evidence, considered the statutory requirements, and made its determination based on the child's best interests." Furthermore, the evidence is viewed in the light most favorable to the prevailing party below and its evidence is afforded all reasonable inferences fairly deducible therefrom. "In matters of a child's welfare, trial courts are vested with broad discretion in making the decisions necessary to guard and to foster a child's best interests." The trial court's judgment, "when based on evidence heard ore tenus, will not be

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\*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

disturbed on appeal unless plainly wrong or without evidence to support it."

Logan v. Fairfax County, 13 Va App. 123, 128, 409 S.E.2d 460, 463 (1991) (citations omitted).

"In custody disputes between a natural parent and a non-parent, the law presumes the best interest of the child will be served when in the custody of the natural parent." Mason v. Moon, 9 Va. App. 217, 220, 385 S.E.2d 242, 244 (1989). "To overcome the strong presumption favoring a parent, the non-parent must adduce by clear and convincing evidence that . . . the parents voluntarily relinquished custody." Id. "A voluntary relinquishment occurs when a parent willingly agrees or consents to having their child placed in the custody of a nonparent." Id. at 222, 385 S.E.2d at 245.

Ms. Roberts bore the burden of proving by clear and convincing evidence that Williams voluntarily relinquished custody of Tajon. The trial court found the evidence insufficient to prove a voluntary relinquishment. We cannot say this determination was plainly wrong.

In May, 1991, Tajon's biological mother took him and left Williams. She placed Tajon with her first cousin, Ms. Roberts, while she stayed in a shelter. On May 31, 1991, Ms. Roberts was awarded temporary custody of Tajon by the juvenile and domestic relations court with the consent of the biological mother, but without notice to Williams. Williams first learned of this order in December, 1991. In April, 1992, he sought custody. An order

entered May 15, 1992, allowed Ms. Roberts to retain temporary custody of Tajon, but Williams specifically reserved his parental rights.

In December, 1992, and again in September, 1993, Williams sought custody of Tajon. He was awarded custody in November, 1993. These circumstances clearly show the efforts that Williams made to gain custody of his son and support the trial court's ruling that Ms. Roberts failed to prove by clear and convincing evidence that Williams voluntarily relinquished custody of Tajon.

Ms. Roberts next contends that the trial court erred in finding that Tajon's best interests were served by awarding his custody to Williams. The trial court based its ruling on the statutory factors of Code § 20-124.3, the best interests of the child standard. Credible evidence supports the trial court's finding. The evidence disclosed that Williams can provide a stable and loving environment in which to raise Tajon, Williams and Tajon have a good relationship and enjoy spending time together, Williams and his wife have established jobs and can provide financially for Tajon, and Williams' wife supports his desire to have custody of Tajon.

"This case fits within the established rule that 'the parent prevails unless the non-parent bears the burden of proving, by clear and convincing evidence, both that the parent is unfit and that the best interest of the child will be promoted by granting custody to the non-parent.'" Elder v. Evans, 16 Va. App. 60, 67,

427 S.E.2d 745, 749 (1993). "[A] fit parent with a suitable home has a right to the custody of his child superior to the rights of others." Id. The evidence in this case clearly supports the trial court's finding that Tajon's best interests are served by his being in Williams' custody.

The judgment of the trial court is affirmed.

Affirmed.