

Supreme Court of Kentucky

2023-SC-0093-D
(2022-CA-1433)

KRISTIAN G. LITTLE (NOW
CHILDERS)

MOVANT

V.

MADISON CIRCUIT COURT
14-CI-50017

JAMIE A. LITTLE

RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is
denied.

ENTERED: June 7, 2023.


CHIEF JUSTICE

Commonwealth of Kentucky

Court of Appeals

NO. 2022-CA-1433-MR

KRISTIAN G. LITTLE (NOW CHILDERS)

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE KIMBERLY BLAIR WALSON, JUDGE
ACTION NO. 14-CI-50017

JAMIE A. LITTLE

APPELLEE

ORDER
DISMISSING

** * * * *

BEFORE: CALDWELL, COMBS, AND ECKERLE, JUDGES.

This action is before the Court on an order directing Appellant to show cause why the above-styled appeal should not be dismissed as untimely.

Appellant filed a notice of appeal on December 5, 2022, seeking to appeal the findings of fact, conclusions of law, and order entered by the Madison Circuit Court on September 30, 2022. Also included with the notice of appeal was a November 16, 2022, order denying Appellant's CR¹ 59.05 motion to alter,

¹ Kentucky Rules of Civil Procedure.

amend, or vacate the September 30, 2022, order. The November 16, 2022, order noted that Appellant's CR 59.05 motion was untimely, and overruled said motion. Because of this, the Court issued its show cause order.

RAP² 3(A)(1) provides, "the notice of appeal required by RAP 2 shall be filed with the clerk of the court from which the appeal is taken no later than 30 days from the date of notation of service of the judgment or order appealed from." A timely CR 59.05 motion will toll the time for filing a notice of appeal; however, an untimely motion will not. RAP 3(E)(2); *see also Marrs Electric Co., Inc. v. Rubloff Bashford, LLC*, 190 S.W.3d 363, 366 (Ky. App. 2006). Failure to timely file a notice of appeal is a jurisdictional defect that shall result in dismissal. *See* RAP 2(A)(3); RAP 10(A); and *City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990).

To be considered timely, "[a] motion to alter or amend a judgment, or to vacate a judgment and enter a new one, shall be served not later than 10 days after entry of the final judgment." Thus, Appellant's CR 59.05 motion should have been served no later than October 10, 2022. The limited record indicates the motion was filed October 12, 2022. While the Court has not been provided with a copy of the motion to confirm service, the circuit court's November 16, 2022,

² Kentucky Rules of Appellate Procedure.

order finds the motion was not served within the ten-day requirement. Appellant does not dispute this.

Instead, Appellant argues that her failure to timely file the CR 59.05 motion and the notice of appeal was due to excusable neglect. However, any request for an extension to file the notice of appeal based on excusable neglect should have been made to the circuit court. RAP 3(D) provides:

Extension of Time for Appeal and Other Remedies.

Upon a showing of excusable neglect based on a failure of a party to learn of the entry of the judgment or an order which affects the running of the time for taking an appeal, the trial court may extend the time for appeal, not exceeding 10 days from the expiration of the original time. This is in addition to any other remedies that may be available, including but not limited to, relief available pursuant to CR 60.02, and any relief recognized by case law or other rule.

It does not appear Appellant requested or was granted any such relief from the circuit court.

Appellant appears to be under the mistaken impression that the appeal is timely because the circuit court did not rule on the CR 59.05 motion until it was denied on November 17, 2022.

Our case law is clear, however, that there is no appeal from the *denial* of a CR 59.05 motion. The denial does not alter the judgment. Accordingly, the appeal is from the underlying judgment, not the denial of the CR 59.05 motion. When a trial court *denies* a CR 59.05 motion, and a party erroneously designates that order in his or her notice of appeal, we utilize a substantial

compliance analysis and consider “the appeal properly taken from the final *judgment that was the subject of the CR 59.05 motion.*”

Ford v. Ford, 578 S.W.3d 356, 366 (Ky. App. 2019).

Because the CR 59.05 motion was untimely and Appellant did not otherwise request relief from the circuit court based on excusable neglect, Appellant’s notice of appeal should have been filed October 31, 2022, thirty days after entry of the September 30, 2022, order. *See* RAP 3(A)(1) and CR 6.01. It was not filed until December 5, 2022.

Having reviewed the record and being otherwise sufficiently advised; the Court FINDS Appellant has FAILED TO SHOW SUFFICIENT CAUSE. IT IS ORDERED that the above-styled appeal be, and is hereby, DISMISSED.

ENTERED: 01/24/2023


JUDGE, COURT OF APPEALS

TIME	ENTERED	A.M./P.M.
	SEP 30 2022	
MADISON FAMILY COURT DAVID FERNANDEZ, CLERK		

**COMMONWEALTH OF KENTUCKY
MADISON CIRCUIT COURT
FAMILY COURT DIVISION IV
CASE NO. 14-CI-50017**

G.C.J.L.
IN RE THE CUSTODY OF: ~~GARY GROSS, LIT~~ ^{XXXXX} ~~FILE~~, a minor child
~~XXXXXXXX~~

JAMIE A. LITTLE

PETITIONER

AND FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

KRISTIAN G. LITTLE (NOW CHILDERS)

RESPONDENT

* * * * *

This matter having come on for final hearing on July 14, 2022; both parties having been present with counsel and the Guardian ad Litem having been present on behalf of the parties' minor child; and the Court having heard oral testimony, considered exhibits, and heard arguments of counsel, hereby enters the following Findings of Fact, Conclusions of Law and Custody Order:

FINDINGS OF FACT

1. The Petitioner, Jamie Little, (hereinafter referred to as "Jamie"), is 47 years of age, having been born on August 4, 1975. He currently resides at 4550 Long Fork Road, Virgie, Kentucky. He lives with the parties' minor child at issue, ^{G.C.J.L.} ~~XXXXX~~ as well as his older son, Caleb.

2. The Respondent, Kristian Childers, (hereinafter referred to as "Krissy") is 36 years of age, having been born on December 14, 1985. She resides at 605 Walthour Rd, Savannah, Georgia and has resided there since 2014. She currently shares a four-bedroom residence with her husband, Benton Oliver, and her two children from a prior relationship, Michael Keyegan Abney age 17, and Delilah Abney, age 14.

3. Krissy works for a construction company and does customer service from her home. Her office hours are 8:00 a.m. to 5:00 p.m. and she has ^{G.C.J.L.} ~~custody~~ with her while she works. She must be available after hours to run errands on occasion as well. Her current husband is employed as an assistant director of public works for the town of Thunderbolt.

4. The party's minor child, ^{G.C.J.L.} ~~XXXXXXXXXXXX~~ (hereinafter referred to as ^{G.C.J.L.} ~~XXXXXXXXXXXX~~) is 7 years of age, having been born on June 12, 2015.

5. The parties were married on April 19, 2013, and the marriage ended by Decree of Dissolution dated May 2, 2016. Since the Decree was entered, the parties have had multiple post-decree matters addressed in Madison Family Court.

6. This matter was brought before the Court on October 18, 2021, (via Zoom) by Petitioner's Motion to Modify Custody, Timesharing, and Child Support. Petitioner's motions alleged Respondent had criminal charges pending in Georgia for public intoxication and disorderly conduct. Respondent failed to appear in Court via zoom during the motion docket although she had appeared in that manner on more than one occasion previously. The Court entered an Order on October 20, 2021, awarding Petitioner temporary custody of ^{G.C.J.L.} ~~XXXX~~ and appointing L.B. Lominac as Guardian ad Litem for the child. The Court also abated Petitioner's child support obligation temporarily.

7. Respondent filed an *ex parte* Emergency Motion to Set Aside Order Entered on October 20, 2021. She asserted she did not receive notice of the motion in the mail until the day of the hearing *and* that she had attempted to register her divorce case in June *pro se* but did not perfect the registration. Petitioner filed a response to same. This Court denied Respondent's *ex parte* request but set the matter for the November 1st motion docket. During that appearance, the parties agreed to mediation and the matter was set for a review on December 13, 2021. At the

review, Krissy's counsel notified the Court she had now correctly filed her foreign decree in Georgia. The matter was set for a final hearing on May 19, 2022 and a final Case Management Conference was scheduled for March 14, 2022 to confirm the matter was ready to be heard. (A scheduling issue arose resulting in the final hearing being continued to July 14th.)

KRISSY'S TESTIMONY

8. Jamie's counsel called Krissy as the first witness. She provided a great deal of her perception of the parties' history. Krissy has been married four times and her name has previously been Abney and Keel. She was married to Jamie but did not change her name to Little. Krissy testified she and Jamie started a relationship in 2012. They were married in 2013 and divorced in 2016. They resided together in Kentucky for a time, but she relocated out of state in 2014. Krissy testified she and Jamie were separated at the time ~~XXXXX~~ ^{G.C.J.L.} was conceived but were continuing to have sexual relations after their separation. Jamie initiated the separation by changing the locks on the home. Krissy testified she and Jamie agreed to continue working on their marriage. Krissy acknowledged Jamie was the party who initiated the divorce proceedings, but they attempted reconciliation on multiple occasions. When asked why she would attempt to reconcile with someone doing these things to her son, Krissy testified Jamie promised to get help. Krissy said a therapist diagnosed her with trauma from abuse caused by her toxic relationship with Jamie. Krissy testified she was subject to domestic violence from Jamie that resulted in her seeking refuge at a domestic violence shelter. Krissy testified Jamie was very controlling, gave her an allowance, would not allow her to work outside the home or have any friends, and chased her in the car trying to retrieve money from her. Krissy also stated she saw Jamie throw her son against a wall and threaten to feed him to dogs off the balcony. Krissy admitted she filed Emergency Protective Orders against her first and second husbands but never filed one against Jamie.

9. ~~XXXXX~~ ^{G.C.J.L.} was born in 2015 and lived with Krissy. When ~~XXXXX~~ ^{G.C.J.L.} was born, Jamie asked for opportunities for him and his other children to visit ~~XXXXX~~ ^{G.C.J.L.}. Krissy said they agreed to visits every other weekend and would meet in Ashville, North Carolina. Jamie was residing in Richmond, Kentucky at that time. Krissy reported she was breastfeeding and would meet Jamie when he visited ~~XXXXX~~ ^{G.C.J.L.} to breastfeed the child. When the child turned two years of age, Jamie's visits became alternate weekends. Jamie relocated to South Carolina for a brief period but returned to Kentucky soon after. Krissy stated Jamie has had three homes since ~~XXXXX~~ ^{G.C.J.L.} was born. Krissy testified she would help with the driving when Jamie wanted to see ~~XXXXX~~ ^{G.C.J.L.} after moving back to Kentucky. Krissy does not recall refusing any visits Jamie requested with ~~XXXXX~~ ^{G.C.J.L.}.

10. ~~XXXXX~~ ^{G.C.J.L.} received occupational and speech therapy through Babies Can't Wait due to developmental delays. ~~XXXXX~~ ^{G.C.J.L.} did the program on a weekly basis from birth to age three, but Jamie was not involved in this program. Krissy acknowledged Jamie took ~~XXXXX~~ ^{G.C.J.L.} to the doctor one time around age two or three when he had a staph infection on his hand. Krissy stated Jamie went to one doctor's appointment with her, but the doctor asked him to leave for mentally berating her. Krissy introduced certified records from Babies Can't Wait that span from 2015 to 2018. Krissy testified Jamie had no participation in ~~XXXXX~~ ^{G.C.J.L.}'s mental, medical, dental, vision health when the child was primarily with her.

11. ~~XXXXX~~ ^{G.C.J.L.} attended preschool at age three and four at the YMCA. He then attended Marsh Point for preschool and kindergarten public school. Krissy stated Jamie came to ~~XXXXX~~ ^{G.C.J.L.} preschool graduation and a Thanksgiving event. ~~XXXXX~~ ^{G.C.J.L.} went to Marsh Point until October of 2020, when he obtained a spot at the Tybee Island Academy. Tybee Island Academy is a charter-type school, and Krissy testified ~~XXXXX~~ ^{G.C.J.L.} loved attending that school. Krissy provided records from

in her four-bedroom home. She previously had custody of a friend's child, Isabelle, that lived with them in the residence, she allowed a friend to stay in her home a couple of weeks and her son's friend stayed in her home for about a month. In addition, she allowed her husband's co-worker, Eric Tyson, to rent a room from them for several months, but asserted her older son stayed with his dad when Eric Tyson was in the home and that ~~Crosby~~ and ~~Dejah~~ had their own rooms during this time. Krissy insisted ~~Crosby~~ always had a room but at times stayed in a toddler bed in her room.

16. In Krissy's home, ~~Crosby~~'s bedtime routine begins at 7:00 p.m. They read a bedtime story and say prayers. She said she had no problems with the child at bedtime, and he had never expressed his fear of the dark to her. Krissy denied the light in ~~Crosby~~'s room failed to work and that instead of an overhead light there were only wires hanging from the ceiling.

17. Krissy married her current husband, Benton Oliver, on August 11, 2019. They do not share any children together and her husband has no children. Krissy acknowledged ~~Crosby~~ is a well-behaved child, but she has difficulty with him during transitions between the parties' homes. Krissy handles most discipline. Krissy denies her husband has ever yelled at ~~Crosby~~ and maintains the two have a good relationship. The family utilizes a "restart" if ~~Crosby~~ wakes up in a bad mood by requiring him to return to his room. This "restart" has involved Krissy holding the door closed on a least one occasion. Krissy denied Crosby was ever locked in his room. Krissy denied Crosby's doorknob was turned around so it could be locked from the hallway. ~~Crosby~~ denied attaching rope from ~~Crosby~~'s door to the opposite wall to keep the door closed but admitted to holding the door closed. Krissy denied Crosby ever caused damage to his bedroom door.

18. Krissy admitted she still drinks alcohol but denies having an alcohol problem. At

the time of the hearing, she reported her last drink was a glass of champagne for her husband's birthday on May 29th. Her typical drink is a bloody Mary with bourbon. She typically drinks in the tub after a hard day at work or in social settings such as barbeques, birthdays, and holidays. She denied ever being drunk while breastfeeding or being too drunk to function while her children were present. She testified she has never been arrested for alcohol use.

19. Krissy's initial testimony about the April 10, 2021 incident was much different than her responses after the video footage was reviewed by the Court. She initially described the incident as simply being taken to the hospital because she mixed medications. Krissy is prescribed phentermine and Claritin. The day of the incident, she testified she accidentally took a dose of a generic Sudafed belonging to her husband instead of her Claritin. Krissy said she grabbed the medication from the box of Claritin and believes her husband accidentally put the Sudafed in the Claritin box by mistake. Krissy asserted the medical record from her doctor provided in her pleadings was incorrect when it stated she continued to take the mistaken medication. Krissy testified she did not take any medication following the April 10th arrest. Krissy felt foggy and nauseous following the incident.

1. On April 10, 2021, Krissy attended her sister-in-law's birthday party. The festivities began with breakfast at Collett's Quarter. Thereafter, they made flower arrangements then went to the plant district, which included the J.W. Marriott. Her mother-in-law and aunt-in-law were there, but she brought no one with her and knew none of the other attendants. (Krissy provided photos from the date of the incident, to include photos of her at the flower shop posted to Facebook and photos of her daughter, ~~Xoxo~~ ^{G.C.J.L.}, and their cousin while they were with her husband.) She believed they arrived at the plant district between noon and 1:00 p.m. She walked down some stairs with her aunt-in-law, but after being informed those were service stairs and they

could not be there, they went outside for her aunt-in-law to smoke a cigarette. At that time, she started feeling horrible and fuzzy. She had drunk a bloody Mary and a glass of champagne. Once she started feeling bad, she was unsure what happened. She insisted none of her children were with her. She was aware the official report stated she was arrested and charged with obstruction, disorderly conduct, and public drunkenness. Said charges were dismissed in lieu of pre-trial diversion. The Court did not require any alcohol program. She remembered talking to her husband when she started feeling bad. The police arrived after she spoke to her husband, but that initial interaction is foggy to her. The police told her she threw a phone. She remembered talking to the police, but no one could hear her, and she was unsure as to why she was arrested. Krissy insisted her husband brought her daughter to the event and adamantly denied her daughter was with her. She testified her husband was there before the police arrived.

20. Krissy testified she did not remember much over the next several days. She went to the doctor a few days after because she felt horrible and nauseous. When asked if she went for back pain, she confirmed same. She realized the "medication mix up" when she took her medication to her doctor's appointment. She believes she had a concussion from the incident. Krissy testified she started taking the medication daily *two days to a week* leading up to the birthday party. Krissy disputes the accuracy of the dictation in the medical record she provided in her pleadings stating she took the medication *the day prior to the incident and continued for three (3) days after*. She believes it was a miscommunication and she is not sure why the doctor incorrectly noted it. She could not hold down anything because she was so sick.

21. Krissy testified none of her children were in her care when she was arrested. Body camera footage showing Krissy's daughter was present upon police approach proves otherwise. The footage displayed Krissy kicking and screaming, resisting the police, and even urinating on

one of the officers. In total, there was 3 hours, 44 minutes, and 5 seconds of footage from multiple body cameras. Krissy authenticated the video by confirming it was her on the video on the day at issue and acknowledging the footage was accurate. She became overwhelmed with emotion when the footage was played and requested permission to leave the Courtroom during the presentation.

22. After returning to the courtroom, Krissy admitted she had downplayed her behavior that day. It was alleged ~~XXXX~~ G.C.J.L. as well other children were present in the vehicle when the incident occurred; however, they are not seen in the body camera footage and Krissy denies they witnessed the incident. Krissy testified she behaved unlike she had ever behaved before. She said things she did not think she was saying, and she was combative with the officers and her husband. Krissy admitted she was defiant and belligerent. When asked if she had sought treatment after the arrest, Krissy testified she had engaged in therapy. Krissy testified she had never had an issue with alcohol prior to her arrest, and she has not exhibited behavior like that before or since. Krissy admitted she became angry during the interaction with the police, but asserts she is never an angry person. Based upon her knowledge of the body camera footage, Krissy testified the incident lasted approximately 1.5 hours and involved seven or eight officers. Child protective services was not contacted. Krissy admitted she minimized the events pertaining to her arrest and that it was inappropriate for her daughter to be present to witness the events that resulted in her arrest.

23. Krissy stated Jamie first contacted her in June of 2021 about the arrest. Krissy stated Crosby did not witness what happened to her on the date of her arrest because he was in her husband's truck the entire time. At the conclusion of the incident, Krissy testified she recalled being placed into her husband's vehicle with her daughter, ~~Crosby~~ G.C.J.L., and their cousin. Krissy

testified she was in a lot of pain the rest of the day and was unaware of what was going on around her. She said the police reports filed did not contain any of the children's names.

28 She indicates she has been depressed since the incident that resulted in Crosby being removed primarily from her care. Krissy acknowledged she is currently prescribed Prozac. She was diagnosed as a child with attention deficit disorder and may have had a mental health assessment at that time. Other than that, she has not had any mental health or alcohol assessments. For her family history, Krissy believes her aunt draws a "crazy check" and when asked if her mother was diagnosed with bipolar disorder, she states it was rumor only. Krissy does not know where her mother lives, but her last known address is in Pike County, Kentucky. Krissy does not believe her mother is good for her or her family. Krissy does not have her mother in her life because she does not want to run errands for her mother and she believes she needs to focus on raising her own children and not helping her mother raise her children. Krissy's father resides in Tennessee, and she maintains a relationship with him.

29. Krissy moved to Georgia in 2014 because she likes the beach. Before moving to Georgia, she lived in Kentucky, went to high school at Shelby Valley in Kentucky, and attended college in Louisville.

30. Krissy testified she regularly took ~~Crosby~~ to the dentist when he was in her care and, during that time, he had no cavities to her knowledge. The normal dental hygiene at her home consisted of brushing morning/night and flossing. Krissy was made aware Jamie took ~~Crosby~~ to the dentist in February 2022. Krissy knew Jamie took ~~Crosby~~ to a second dentist in May 2022 and that dentist wanted to do surgery to correct ~~Crosby~~'s dental issues. Krissy testified she was invited to attend the dental visit. She was aware he had cavities but although she does not know when the cavities formed, she believed they developed from not flossing. Jamie texted her about dental care

G.C.J.L.
~~XXXX~~
for Crosby, but she was shown no treatment plan from the dentist in Kentucky. Krissy admitted Crosby complained about his tooth hurting when eating a candy bar some time prior to the scheduled surgery. Krissy believes Jamie gave ~~XXXX~~ Motrin for the toothache. Krissy denied observing the dark color where the cavity formed in Crosby's mouth before Jamie sent it a picture of to her. She was made aware of the date of the surgery and came to the appointment. The child's pediatrician cleared ~~XXXX~~ for surgery the day prior; however, the surgery was cancelled the day of based upon Krissy's interaction with the professionals. Krissy insisted the child had an infection in his throat and, although he had been on an antibiotic for ten days, she did not feel it was strong enough to resolve his throat issues. Krissy denied surgery was cancelled due to her complaints but instead insisted it was because Crosby was sick. Krissy took Crosby to the doctor immediately following the cancelled surgery and admitted he tested negative for strep. Krissy's provided several additional objections to the surgery scheduled in Kentucky, such as the surgery would cause Crosby's teeth to shift and possibly require braces or headgear, and she was opposed to the sedation that would be utilized. Krissy could not recall filing a motion about the surgery in Kentucky. Nevertheless, Krissy scheduled an appointment with a new dentist at Dogwood Pediatrics and Crosby's tooth was extracted during his summer visit with Krissy in Georgia. She does not feel Crosby was harmed by delaying the tooth extraction and she adamantly denied she created this dynamic because she wants to remain in charge.

31. Krissy testified she asked for the day after Mother's Day this year for a visit, but Jamie would not allow same. Krissy denied attempting to pick up Crosby from school without Jamie's knowledge. Jamie has two car rider tags for Crosby's school but will not give one of them to her. Jamie offered to let her borrow one of the tags, but Krissy felt she was entitled to have one

of them. Krissy explained her need for a car rider tag to include picking up the child in the event of an emergency. Without the rider tag, Krissy must enter the school building to retrieve the child.

32. Krissy denied leaving beer for Santa during Christmas 2021 stating they left root beer. Krissy denied keeping beer in her home or that ~~Crosby~~ ^{G.C.J.L.} has ever drunk beer. Krissy testified ~~Crosby~~ ^{G.C.J.L.} was allowed to sleep with her in her bed during Christmas because it was a special occasion and her husband slept on the couch.

33. Krissy feels she consistently tried to co-parent ~~Crosby~~ ^{G.C.J.L.} but feels that same effort is not reciprocated by Jamie. Krissy acknowledged Jamie only received two weeks in the summer ^{G.C.J.L.} when ~~Crosby~~ lived primarily with her and admitted she would not be happy receiving only two weeks in the summer. Krissy denied making plans on dates Jamie requested during the summer to make it difficult for him. Krissy blamed the short duration of summer timesharing Jamie had ^{G.C.J.L.} with ~~Crosby~~ on the child's age, and still feels he was not ready for more than two weeks of summer timesharing. Krissy contends she drove to Kentucky for the Christmas visit to make it easier for Jamie and would visit family and friends in the area at that time. Krissy testified she asked Jamie for the entire summer with ~~Crosby~~ ^{G.C.J.L.} this year but was denied same.

34. Krissy talks to ~~Crosby~~ ^{G.C.J.L.} every day. When asked if she gave that same courtesy to Jamie, Krissy testified she allowed ~~Crosby~~ ^{G.C.J.L.} to communicate with him as often as she could and had scheduled chats on Tuesday and Thursday. She never denied ~~Crosby~~ ^{G.C.J.L.} if he asked to call his dad or if Jamie called outside of the Tuesday and Thursday time. Krissy testified she never tried to hinder Crosby's relationship with Jamie.

35. While Krissy admitted ~~Crosby~~ ^{G.C.J.L.} is doing well in school, she denied he is well adjusted to his current school and asserted the child prayed to come "home". ~~Crosby~~ ^{G.C.J.L.} has now

attended school in Kentucky for as long as he attended in Georgia, but Krissy asserted the child has anxiety about attending school in Kentucky.

36. Krissy receives a bonus from work if she posts online reviews or receives review for various things. Krissy denied these reviews indicate an issue with her drinking alcohol.

37. Jamie never picked up Crosby from school while ~~Crosby~~ was in Georgia. Krissy admitted Jamie assisted with some of ~~Crosby's~~ online learning but declined to do a week at a time to help her. ~~Crosby~~ was unenrolled at Tybee Island Academy when ~~Crosby~~ started living with Jamie. Krissy was not sure if Jamie had tried to keep ~~Crosby~~ at Tybee Island Academy because he may have been able to do online learning. Because ~~Crosby~~ was unenrolled, he would have to re-enter the lottery to gain acceptance back to Tybee Island Academy.

38. Krissy did not appear in October 2021 when the Court granted custody of ~~Crosby~~ to Jamie. She filed a motion requesting the Court reconsider and was denied. Following the Custody Order in October 2021, Krissy believed an agreement was made through counsel to retrieve ~~Crosby~~ the following morning. Krissy received communications from Jamie stating he intended to pick up ~~Crosby~~ that evening around 10:00 p.m. and would have police assist.

39. Krissy testified Jamie refuses to tell her who babysits ~~Crosby~~ and she is concerned about who is watching him.

40. Crosby has been enrolled in therapy with Mariah Fleming since January of 2020. Jamie chose the therapist and informed Krissy of whom he had selected and the date and time of Crosby's first appointment. Krissy first contacted the therapist in March of 2022. Jamie has been able to meet the therapist in person and it is Krissy's understanding ~~Crosby~~ is present. Krissy asserted Jamie excluded her from participating with ~~Crosby's~~ therapy in April when she had scheduled a therapy appointment and wished to take Crosby with her. Krissy denied she scheduled

G.C.J.L.

a therapy "parent" visit with Crosby's therapist and indicated she had made an appointment for G.C.J.L.

XXXX Crosby and her to attend together. Krissy kept the appointment with the therapist, but XXXX did not go because Jamie would not allow him to attend. Krissy did not know how the therapy visit she attended was labeled by the therapist. Krissy denied being provided the option of telehealth or enough notice to come to the appointment but admitted Jamie has since made it available for her to receive G.C.J.L. Crosby's therapy records and access to his online portal. Krissy has received two recent telehealth appointments but has not been able to sit down in a room with G.C.J.L. Crosby and his therapist.

41. Krissy testified she started taking Prozac about two months ago and is taking it as prescribed. Krissy believes she has no issues that would affect her ability to parent Crosby. G.C.J.L. XXXX

42. Krissy addressed her visits with Crosby. G.C.J.L. The parties were able to reach an agreement filed in the record for limited visits. On November 23, 2022, Krissy had an unsupervised visit with Crosby. G.C.J.L. Krissy had unsupervised time December 10th through the 12th which occurred at her father's home in Tennessee. Krissy had G.C.J.L. Crosby December 17th through the 26th and December 31st through January 2nd. She testified she had no further visits in January 2022 and no visits in February 2022 because Jamie would not allow it citing bad weather. Krissy visited Crosby March 11th through March 16th and April 11th through April 24th. Krissy had a visit with Crosby in May on the day of a dental procedure. Krissy testified Jamie refused to agree to any additional time until Krissy agreed to a summer visit schedule.

43. Krissy and her husband bought a Nintendo Switch for Crosby with online access. G.C.J.L. Krissy testified most of her virtual visits with Crosby involved him playing his Nintendo Switch wearing headphones. Krissy's household hooks up the Switch to the television so the family can use it to listen to music, among other things. . At her home, she monitors his use by not allowing

him to take it in his room, watching what he plays, playing games with him, and restricting use of
G.C.J.L.

his headphones. Krissy believes ~~XXXX~~ is addicted to the Switch. She compiled data gathered
from the Switch by downloading it from the app purporting to show ~~XXXX~~ played a lot of Switch.
G.C.J.L.

While in Krissy's care, the data could be for anyone using the Switch in Krissy's home. While in

Jamie's care, Krissy asserted the information was for ~~XXXX~~ only because it is her belief only
G.C.J.L.

~~XXXX~~ uses the Switch at Jamie's house.

44. Krissy testified a typical day for ~~XXXX~~ included breakfast, brushing his teeth,
G.C.J.L.
dressing for school, and traveling to the bus stop (sometimes by bike). After school activities
involved homework, sports, snacks, and a bedtime routine beginning at 7:00 p.m. On weekends
they would visit the farmer's market, ride bikes, go to the beach to see dolphins, have playdates
with friends and go to the library.

45. Krissy describes her husband and ~~XXXX~~'s relationship as good and added he was
G.C.J.L.
a father figure to ~~XXXX~~. Krissy testified she and her husband have been together since 2019 and
G.C.J.L.
he has been in ~~XXXX~~'s life since then. She acknowledged the Benton Oliver identified in a
newspaper article as having received a drug possession charge was indeed the same man to whom
she is married. The incident occurred prior to her marriage to Mr. Oliver and she denied knowing
of any other criminal or drug issues relating to him. G.C.J.L.

46. Krissy testified joint custody was still in ~~XXXX~~'s best interest, but she wants
G.C.J.L.
~~XXXX~~ to reside with her in Georgia and for Jamie to resume his previous visitation schedule. She
believes she has always tried to co-parent well with Jamie, but they need to work on their
communication. She believes a program should be used to help improve their communication.
Krissy would like the parties to rotate holidays and she believes Jamie should have more time in
the summer than he had previously. When asked what visits should look like regardless of who

had the child primarily, Krissy indicated the entire summer and spring break should go to the nonresidential parent but then corrected her statement to add she did not want to concede every spring break and fall break. Krissy said the parties should alternate ~~Crosby's~~ ^{G.C.J.L.} birthday each year. Krissy opined she doubts Jamie would drive to Savannah every month. Krissy testified she would be willing to come to Kentucky every other week for as long as she could, but then added she did have other children and was not sure how long she could afford travel expenses. Krissy believes timeshare should be as equal as possible. She denies believing Jamie is an inferior parent but asserts the child prays to be returned to her. She is also concerned about the lack of contact ~~Crosby~~ ^{G.C.J.L.} would have with ~~Daddy~~ ^{D.G.G.A. G.C.J.L.} if ~~Crosby~~ continued living with Jamie since it would supposedly place the children on opposite timesharing schedules from one another.

JAMIE'S TESTIMONY

47. Jamie resides in Virgie, Kentucky with Crosby and his 17-year-old son. He also has a 23-year-old daughter who is married and residing with her family. Jamie's first wife passed away and his older two children do not have a living mother now. Jamie insists he does not desire to prevent ~~Crosby~~ ^{G.C.J.L.} from having his mother in his life, but he deserves a mother who is sober and stable.

48. Jamie testified he had concerns regarding Krissy's sobriety for some time. Jamie believed Krissy had been drinking when he dropped off ~~Crosby~~ ^{G.C.J.L.} after a visitation period around September of 2017. Jamie also testified about Krissy's drinking at ~~Crosby's~~ ^{G.C.J.L.} birthday party in the summer of 2020. There were approximately eight kids and twenty adults on the beach and the adults were drinking. Krissy offered Jamie alcohol and he declined. Jamie was afraid to complain about the drinking for fear he would not be invited to ~~Crosby's~~ ^{G.C.J.L.} future events. Jamie admitted he did not know if Krissy put ~~Crosby~~ ^{G.C.J.L.} in danger during those times. Jamie testified there was other

instances of concern regarding Krissy's sobriety than the two mentioned. Jamie had no proof Krissy had substance issues until the summer of 2021. Jamie testified he was taking ~~XXXX~~ G.C.J.L. ~~XXXX~~ to Pigeon Forge for a trip. They passed a police car with the lights flashing. Jamie stated ~~XXXX~~ G.C.J.L. ~~XXXX~~ communicated that one time his mom got sick, and the police took her to the police station for a shot. Upon hearing this, Jamie started doing online records research and discovered the arrest on the Chatham County website. Jamie sent a text to Krissy asking about the comments ~~XXXX~~ G.C.J.L. ~~XXXX~~ made. Krissy responded to his text on June 21, 2021, and said she became very sick from asthma medication and was taken to the hospital, not the police department. Jamie requested the police report from Krissy's arrest, but it took until October for him to obtain same. Thereafter, he initiated these proceedings.

G.C.J.L.

49. Jamie testified summer visits with ~~XXXX~~ were difficult when he resided primarily with Krissy. Beginning in the spring of each year, Jamie would make multiple offers for summer schedules, but Krissy would deny those requests if he did not agree to exactly what she wanted. Jamie disagreed with Krissy's assertion of her willingness to co-parent with him when she had the child primarily in her care.

G.C.J.L.

50. Jamie admitted he debated on agreeing to visits between ~~XXXX~~ and Krissy in January but did eventually agree to a visit in January and again in February. Jamie's grandmother became sick with Covid and was put into ICU around February 24th which he asserts prevented one of the agreed upon visits.

51. Jamie believes the school only provides two car rider tags per student. Jamie insisted he needed both tags because he has two vehicles to pick up the child. On one occasion he offered a tag to Krissy to use for pick up, but she refused same. Jamie testified the school later contacted him because Krissy came to retrieve ~~XXXX~~ G.C.J.L. ~~XXXX~~ and attempted to check him out at 2:40 p.m.

G.C.J.L.

Jamie informed the school ~~Crosby~~ should not be checked out early as he had offered a car rider tag to Krissy. Jamie testified he felt like Krissy was trying to go behind his back that entire week in April 2022. Krissy texted him she had a therapy appointment for ~~Crosby~~ ^{G.C.J.L.} on Thursday and requested to pick up the child from school early. Jamie called the therapist's office and was informed Crosby did not have an appointment, but Krissy had a parent review on Friday that Crosby did not need to attend. Jamie stated this created trust issues, and he denied further visits during the school week. Jamie testified he attempted to work out a summer visitation schedule for 2022, but Krissy was unwilling to work with him at all. Jamie testified Krissy wanted Crosby for the entire summer. Jamie stated it was important for him to have Crosby for Memorial Day; however, Krissy did not agree. Krissy had Crosby for summer visits from June 3rd to June 18th and June 27th to July 10th.

52. Jamie asserts he is forthcoming with information. He notifies Krissy if he needs to utilize a babysitter, he sends a photo of report cards immediately upon receipt, he notifies Krissy of medical appointments once scheduled, etc. He does not believe he received the same courtesy from Krissy and insisted he had no knowledge of Crosby's involvement in the Babies Can't Wait program until hearing Krissy's testimony in open Court. Jamie admitted he has provided insurance for Crosby for the last seven years. He acknowledged receipt of an Explanation of Benefits but admitted he did not look at it to see the Babies Can't Wait program.

53. Jamie asserts he does not have unfettered contact with the child when he is in Krissy's care. He is frequently told Crosby is asleep so there would be no communication. Jamie stated that sometimes Crosby will call him at 10:00 or 11:00 p.m. at night and it was clear he had just awakened. Jamie said Krissy would tell him she was too busy and he should leave her alone

via text on many occasions. He denies preventing Krissy from speaking with Crosby while in Jamie's care.

54. Jamie denied ever being violent towards Krissy. He denied having criminal charges for violence related to Krissy.

55. Jamie testified he does not know Krissy's husband well and has only interacted with him a couple of times. Jamie stated the only issue he has with her husband is his interjections in the video calls Crosby has with Jamie.

56. Jamie testified he went to Savannah, not Krissy's house, to retrieve Crosby in October of 2021. Krissy would not answer his calls, so he contacted the police who escorted him to her residence. Jamie testified that upon arrival at Krissy's residence, her husband told the police Jamie was not allowed on his property. Jamie denied having made an agreement with Krissy to pick up the child the following morning but instead asserts he did not receive the child until the following morning based on Krissy's demands.

57. Jamie testified Crosby is doing well living with him and describes him as an adaptable child. He plays football, baseball, and basketball. Jamie believes Crosby and his older son get along well for the most part but have some brotherly disagreements. Jamie admitted he was aware Krissy had complaints about his older son's interactions with Crosby. Jamie attributes the relationship to a typical little brother, big brother relationship. He stated his older son jokingly threatened to throw Crosby off the balcony, but Jamie was present and there was no malice involved with the exchange. He denies his older son threw a cat off a balcony at his home and says he not even have a cat. Jamie stated that both Crosby and his older son were shooting each other with Nerf guns, and Jamie was supervising them. Jamie struggles with the issue of "letting brothers be brothers" and how it may look in a court proceeding. Jamie testified he has never left

Crosby in the care of his older son because the parties previously agreed none of their children would provide care for Crosby. Jamie has no issue with his children caring for Crosby other than honoring the prior agreement he made with Krissy.

58. Jamie did not have any testing from when Crosby began school at Valley Elementary in Kentucky because MAP testing had already occurred. Jamie stated he had nothing bad to say about the Tybee Academy School. Jamie testified he did not inquire about Crosby continuing at Tybee virtually. He believed it was more important to him to attend school in Kentucky because Jamie knew the school personnel and was better able to assist his transition. Jamie testified about Crosby's school records from this last school year in Kentucky. For the word list, Crosby was expected to know 240 out of 300 and he achieved 289 out of 300. For his star reading assessment, he was expected to be at a 1.7 but he achieved a 2.8. For his oral reading fluency, he was expected to do 60 words per minute, and he was achieving 91 words per minute. For his MAP spring reading results, he was expected to have a 171.4 or greater and he achieved a 180. For his MSP spring math results, he was expected to have a 176.4 and he achieved a 182. Crosby was above the expected level for everything tested. Jamie testified that Crosby had was marked tardy three times, which included one day of being sick and one day of busting his lip. The third tardy showing unexcused was when he had the dental appointment on May 20, 2022. Jamie stated he has only checked him out of school if someone from the school contacted him or he had a doctor or dental appointment.

59. Jamie testified about the cancelled dental surgery issue. In Kentucky, Crosby's pediatrician is Dr. Bailey and his dentist is Dr. Josh. Crosby started complaining in December, 2021 of a tooth hurting, and Jamie was trying to resolve problems with insurance coverage so he could take him to the dentist. He was able to get an appointment at Signature Smiles for February

22, 2022, but they could not X-ray the teeth. The child had extensive dental problems. They used a UV light and indicated he had at least eight cavities and it would be best to do it all in one setting. Jamie has no doubt Krissy made Crosby brush his teeth, but when Crosby began living with Jamie, the child was used to spending ten seconds brushing. Jamie testified Dr. Josh intended to attempt to, among other things, place crowns on three teeth. The dental procedure was scheduled for July 27th but at the July 11th pre-op appointment, Dr. Josh planned to do an alternative treatment plan due to the other tooth being extracted already. Jamie believes Krissy behaved in a manner that caused the surgery to be cancelled.

60. Jamie notified Krissy on January 10, 2022, that Anchored Hope would be providing therapy for Crosby. Jamie made the initial intake with Crosby's therapist and has been the sole transporter of Crosby to the therapist. Jamie told the therapist Krissy's mother had a history of mental health issues. Jamie was not aware if he had informed the therapist about Krissy's alcohol use, but if the record reflected it, he would not refute it. Jamie informed the therapist Krissy had no scheduled visitation at that time. Jamie acknowledged Crosby misses Krissy and he further stated it would not be surprising if the child made a similar statement to the therapist. Jamie objects to Krissy checking Crosby out of school to attend HER therapy session. Jamie testified Crosby is at the therapy office when he speaks to the therapist, but he is not in the room with him. Jamie denied doing anything to hinder Krissy's access to the therapist.

61. Jamie agreed he and Krissy struggle with communication with one another. He wishes they were the type of family that posed for holiday pictures together, to include mom, dad, stepdad, and siblings, but they are not there at this time.

62. Jamie believes Krissy uses the "rose and thorn" to influence Crosby; for example, if Crosby would say his thorn was school, Krissy would reply she was sorry "he did like attending the school in Kentucky".

63. Jamie testified his home was investigated once by Child Protective Services based upon allegations his older son made regarding Krissy's treatment of him. Jamie stated Child Protective Services closed the case because he filed for divorce from Krissy.

64. Jamie did not inform Krissy of the last-minute meeting Crosby had with his Guardian ad Litem, but he was aware Crosby informed Krissy about same when talking to her on the phone.

65. Jamie believes it is in the child's best interest for him to have sole custody but is willing to provide Krissy access to any records pertaining to the child. He is willing to utilize a liberal timesharing schedule.

GUARDIAN AD LITEM'S POSITION

66. The Guardian ad Litem believed it was important for the Court to observe the video taken on the day of Krissy's arrest, particularly because the facts were so hotly debated. The GAL emphasized Krissy's initial representation of what occurred at the time of her arrest did not seem to align with the information provided through the body camera footage.

67. The GAL described Crosby as a very likeable kid. Crosby has an older brother at each home. The GAL acknowledged the little brother/big brother dynamic occurs at both homes but felt confident both parties handle those interactions appropriately. Crosby and Delilah are closer in age and the GAL believes they have a closer relationship.

68. Crosby misses the parent with whom he is not residing when he is in the other parent's home. Crosby is close with both sides of his family. Crosby likes both schools he attended

most recently and has friends at both schools. The GAL believes Crosby is adaptable, well adjusted, and resilient. Crosby benefits from counseling, and it is good for Crosby to have someone with whom to talk. The GAL believes both parents have instilled dental care to Crosby, and he does not believe any medical neglect is present here. The GAL believes Krissy was very actively involved in her child's education. While the GAL was horrified by the facts surrounding Krissy's arrest, he felt the bigger issue was her failure to disclose and attempted "cover up". The GAL is unaware of any negative events that have occurred during Crosby's visits with Krissy but believes she still has some hostility towards Jamie.

69. The distance creates an issue in this case. The child has no distinct wishes regarding with whom he will reside. Neither parent is believed to restrict the other parent from contact and Crosby should be able to speak freely to both parents. The GAL does not believe Crosby should be uprooted and sent to Georgia to live with Krissy, but he should have as much time as possible with Krissy considering the distance. The GAL believes Krissy should be entitled access to Crosby's records if the court finds sole custody is best in this case. The GAL had been hopeful Krissy had engaged in some type of treatment through her diversion program; however, that did not occur. The Guardian asserts Crosby was there when Krissy was arrested even if he wasn't "right there." The Guardian believes communication through a parenting app would be wonderful and is also in support of Krissy's suggestion they attend parenting classes.

FINDINGS OF FACT

70. The Court believes both parents have been active in their child's life and are devoted parents. If the parties lived closer in proximity, the Court's ruling may look very different as far as timesharing is concerned.

71. The Court believes Krissy has struggled with not being in control and she was very aggressive when this case was initiated in October 2021.

72. The Court finds that Krissy minimizes and diminishes facts, specifically those related to her arrest and her alcohol use. Krissy has stated since the filing of the Petitioner's motion her alcohol use was not an issue. Alcohol use WAS an issue in this matter.

73. The Court finds the facts surrounding Krissy's arrest on April 10, 2021, to be simply awful. The controversial drug Phentermine should never be mixed with alcohol. The Court has concerns and cannot trust that anyone is able to control Krissy when he is under the influence. And although he was not able to control Krissy during the arrest, the Court was impressed by the composure and behavior of Krissy's husband during the body camera footage and is happy she is in a stable relationship with him.

74. The Court does not find the dictation provided in the medical records from Krissy's doctor to be a sufficient explanation for the behavior Krissy exhibited at the time of her arrest.

75. The Court finds per Krissy's own testimony, she has continued to drink alcohol after this incident. Krissy admitted she has not undergone an alcohol/substance abuse assessment to prove she has no issues with substances, nor has she completed any treatment programs.

76. The Court finds the child's dental issue was handled inappropriately by Krissy. Moving forward on a similar note, the Court would like the parties to inquire as to having sealant placed on Crosby's teeth to prevent further complicated dental procedures.

77. The Court has questions Krissy's own decision making, as well as her ability to make decisions in the child's best interests.

CONCLUSIONS OF LAW

1. Applying the relevant factors contained in KRS Chapter 403, it is in the best interests of the child, Gary Crosby Little, that custody be modified and the Petitioner, Jamie A. Little, be awarded sole custody.
2. Jurisdiction is proper in Kentucky under the UCCJEA.

ORDER

1. Custody is modified so that Petitioner is hereby granted permanent sole custody of the parties' son. The child shall attend school in Kentucky. Respondent shall have access to the child's records which shall include educational, medical, and otherwise.
2. The parties shall utilize an app called App Close to communicate about their son.
3. The parties shall take into consideration the child's school calendar and shall formulate a visitation schedule based upon the outline in this paragraph and considering the time the child is off from school. The intention is to alternate the visits that are not expressly identified as not being alternated.

(a) For the 2022-2023 school year, Petitioner shall have the following visitation schedule:

- (1) A three-day weekend beginning November 11, 2022;
- (2) Christmas break from the day school is out until December 26, 2022;
- (3) Memorial Day weekend each year;
- (4) Father's Day weekend each year; and
- (5) Remaining weeks of summer not expressly provided to Respondent herein.

(b) For the 2022-2023 school year, Respondent shall have the following school break and holiday visitation schedule:

(1) Labor Day weekend each year;

(2) A three-day weekend beginning October 7, 2022;

(3) Fall Break/Thanksgiving week.

(4) Christmas break from December 26, 2022, through January 3, 2023.

(5) Mother's Day weekend each year, provided she is willing to travel to Kentucky for the weekend;

(6) If Respondent has the second half of Christmas break, then she also gets the three-day weekend to include Martin Luther King, Jr. Day;

(7) President's day weekend;

(8) Spring break;

(9) Easter weekend, to include Good Friday; and

(10) Six (6) weeks of summer visitation with the child. For the 2022-2023 school year, Respondent will have six (6) weeks and Petitioner will have five (5) weeks as there are eleven (11) weeks of summer break at this time, which is subject to change. If the parties cannot decide on a summer schedule by spring break, then either may file a motion with the Court for further specification.

4. The parties are not required to notify one another every time they must hire a babysitter and the parties' other children can babysit, if appropriate.

5. Respondent is permitted to come to any games/events in which the child is involved and shall be allowed to have agreed upon visits outside of the visitation schedule herein with thirty (30) days' advanced notice being provided to Petitioner.

6. Petitioner shall be allowed to retain the first two car rider tags, but attempts shall be made to obtain a third car rider tag for the use of Respondent. Additionally, she shall be added

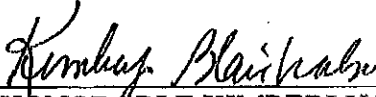
to the approved pickup list so she may be able to retrieve the child from school for agreed upon visits.

7. The parties shall establish and enforce boundaries related to the child's use of the Nintendo switch. His screen time should be limited to no more than two (2) hours on the weekend days. Two hours is excessive during a school day and the time should be broken up so that it is not all consecutive time.

8. The parties shall each pay one-half (50%) of the Guardian Ad Litem's fee within 60 days of entry of this Order.

9. This is a final and appealable Order and Judgment, there being no just cause for delay.

This 29th day of September, 2022.


HONORABLE KIMBERLY BLAIR WALSON
DIVISION IV

Distribute to:

Beverly Brewer, Esq.
Raven Turner, Esq.
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**Additional material
from this filing is
available in the
Clerk's Office.**