

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000281-ME

GREGORY WALLACE SCOTT

APPELLANT

v. APPEAL FROM BRECKINRIDGE CIRCUIT COURT
HONORABLE BRUCE T. BUTLER, JUDGE
ACTION NO. 15-CI-00006

TARA DOWELL SCOTT

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, STUMBO, AND VANMETER, JUDGES.

CLAYTON, JUDGE: Gregory (“Greg”) Wallace Scott appeals the February 11, 2016 order of the Breckinridge Circuit Court adopting the recommendations of the Domestic Relations Commissioner (“DRC”). In particular, the trial court denied Greg’s objections to the recommendation concerning parenting time. After careful consideration, we affirm the decision of the trial court.

Tara Dowell Scott petitioned for a dissolution of marriage on January 12, 2015. The parties were married on December 17, 2005. They are the parents of two minor children; one born in 2010 and the other in 2012. Tara works for the Breckinridge Board of Education as a second grade teacher, and Greg is employed by Domtar Paper Company.

The trial court entered temporary orders granting them joint custody, naming Tara as primary residential custodian, and delineating Greg's parenting time. Greg's parenting time consisted of every other week beginning at 6:00 p.m. on Tuesday and ending at 6:00 p.m. on Thursday; and every other Monday beginning at 5:00 p.m. and ending at 8:00 p.m. Greg was also ordered to pay temporary child support.

A decree of dissolution was entered on August 24, 2015, incorporating the parties' property settlement agreement, which encompassed restoration of non-marital property, division of marital debt and property, and a determination regarding maintenance. On November 13, 2015, a hearing was held before the DRC on the remaining issues of child custody, designation of primary residential custodian, parenting time, child support, and assignment of tax deductions for the children.

At the hearing, Greg requested that the parties have joint custody, that parenting time be "shared," that is, equal, and that he pay a reduced child support amount based on his proposed parenting time. In contrast, Tara asked that the parties have joint custody, that she be designated as primary residential custodian,

and that Greg's parenting time follow the visitation schedule proffered by the local rules of the Breckinridge Circuit Court, which is part of the 46th Judicial Circuit.

Following a hearing, the DRC entered a recommended order, which declared that the parties have joint custody, that Tara be designated as the primary residential custodian, that Greg's parenting time be set in accord with the visitation guidelines of the 46th Judicial Circuit, and that Greg pay child support in the amount of \$927.51, which was determined according to the child support guidelines. Under the standard visitation guidelines, Greg would have the children every other weekend beginning on Fridays at 6:00 p.m. and ending on Sunday at 6:00 p.m. and one overnight every week.

On December 21, 2015, Greg objected to the recommendations of the DRC concerning parenting time. He argued that the parenting time should be shared rather than based on the trial court's standard visitation schedule. After permitting the parties to give oral arguments, the trial court took the matter under submission. Ultimately, the trial judge denied Greg's objections and adopted the DRC's report. Greg now appeals this order.

An appellate court will only reverse a trial court's decision regarding visitation if the decision constitutes a manifest abuse of discretion or was clearly erroneous in light of the facts and circumstances of the case. *Drury v. Drury*, 32 S.W.3d 521, 525 (Ky. App. 2000). The test is not whether we would have decided the issue differently, but whether the findings of the trial court were clearly

erroneous or an abuse of discretion. *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982).

“The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000). Abuse of discretion implies arbitrary and capricious action that results in an unreasonable and unfair decision. *Sherfey v. Sherfey*, 74 S.W.3d 777, 783 (Ky. App. 2002), *overruled on other grounds by Benet v. Commonwealth*, 253 S.W.3d 528 (Ky. 2008). And we review the legal conclusions of the trial court under a *de novo* standard. *Brewick v. Brewick*, 121 S.W.3d 524, 526 (Ky. App. 2003). With these standards in mind, we address the issue herein.

On appeal, Greg argues that the decision to stipulate his parenting time in accord with the standard visitation schedule of the 46th Judicial Circuit is not supported by substantial evidence and clearly erroneous. He maintains that it would be in the best interest of the children to alternate between parents every four days, with his four days being the days that he is not working. Furthermore, Greg contends that the current schedule does not provide him reasonable parenting time with his children, and thus, is not in their best interest and an abuse of discretion. In response, Tara maintains that the order was not an abuse of discretion nor were its findings clearly erroneous. Rather, the trial court’s decision was supported by substantial evidence.

The only issue in this appeal concerns the trial court's adoption of the DRC's recommendation regarding Greg's parenting time, and its impact on child support. To begin, we note that Greg and Tara were awarded joint custody. Joint custody envisions shared decision-making and extensive parental involvement in a child's rearing, which enhances the best interest of the child. *Squires v. Squires*, 854 S.W.2d 765, 769 (Ky. 1993). And as stated in *Aton v. Aton*, 911 S.W.2d 612 (Ky. App. 1995), "[w]ith joint custody, a visitation schedule should be crafted to allow both parents as much involvement in their children's lives as is possible **under the circumstances.**" (Emphasis added.)

The circumstances in this case, which were noted in the DRC's report, are as follows: A review of the parties' work schedules shows that Tara works Monday through Friday with weekends, school holidays, and the summer off. Greg's schedule is less traditional and analogous to shift work. He works for four days and is off four days. The schedule rotates through eight-calendar weeks.

In addition, the children have resided primarily with their mother in her home since the parties separated in January 2015. They attend preschool and are doing well. They regularly attend church with their mother. Additionally, when the parents separated, in early 2015, the children were upset about spending overnights with Greg. The DRC also noted that Tara has been the primary caretaker for the children. In addition, the DRC commented that Greg was a loving father but had not cared for the children as much as Tara.

The DRC then entered legal conclusions and held that as authorized by Kentucky Revised Statutes (KRS) 403.270(2) to determine custody the best interests of the children were taken into account and both parents were given equal consideration. The DRC then recommended joint custody with Tara as the primary residential custodian and Greg to have visitation according to the standard guidelines in the local rules. Acknowledging that the parties did not agree as to the division of parenting time, the DRC observed that Greg had a complicated work schedule and that Tara was the children's primary caretaker.

In essence, the DRC found that it was not in the children's best interest to live and commute between Tara and Greg's home every four days. It was her belief that the children should have more continuity in their residential living arrangements. The trial court agreed, and we do not believe that this decision is an abuse of discretion. This decision is based on the children's lives, which revolve around school and do not rotate on a four-day basis. Keeping in mind that a decision about parenting time does not focus on a parent's schedule, in this case shift work, but instead focuses primarily on the children's schedule and life.

As is the case here, when parties do not agree about parenting time, the trial court has considerable discretion to determine the living arrangements that best serve the interests of the children. *Drury*, 32 S.W.3d at 525. Moreover, joint custody does not require an equal division of residential custody of the children. *Squires*, 854 S.W.2d at 769. Greg seems to believe that the trial court merely

defaulted to the standard visitation schedule. That is not our understanding. Rather, the trial court indicated that given complicated work schedules, it is challenging to fashion parenting time.

It is undisputed that both Greg and Tara are good, loving, and devoted parents. To allocate residential custody and parenting time between two such parents is always difficult. Here, we are satisfied that the DRC considered the facts and circumstances of Greg and Tara's situation, and most importantly, the best interests of the children, in deciding to substantially follow the standard visitation schedule. Moreover, although Greg's desire for additional visitation is understandable, we conclude that the trial court did not abuse its discretion in adopting the DRC's recommendation and denying Greg's objections. In particular, the DRC articulated that it was not in the children's best interest to live and commute between Greg and Tara's home every four days because the children need more continuity in their residential living arrangement. The trial court's agreement with this argument was well within its discretion.

Here, we believe that the trial court, after review of the record, had substantial evidence to adopt the recommendations of the DRC and did not abuse its discretion in so doing. Accordingly, the order of the Breckinridge Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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