

NOT DESIGNATED FOR PUBLICATION

TIFFANY N. STOCKSTILL * **NO. 2002-CA-2314**
VERSUS * **COURT OF APPEAL**
ERIC R. GRAFFEO * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 94-188, DIVISION "D"
HONORABLE KIRK A. VAUGHN, JUDGE
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Chief Judge William H. Byrnes III
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(Court composed of Chief Judge William H. Byrnes III, Judge Max N. Tobias Jr., and Judge Leon A. Cannizzaro Jr.)

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AFFIRMED

STATEMENT OF THE CASE

Tiffany F. Stockstill, the mother of the minor child, Allison Marie Graffeo, appeals from a judgment of the district court modifying a previous judgment granting the parents joint custody and setting forth custodial time for each parent.

Joint custody was awarded November 15, 2001, with Ms. Stockstill being named the primary domiciliary parent. The father, Eric R. Graffeo, was awarded custodial time on alternating weekends and one night per week. On January 30, 2002, he filed a “Rule for Injunctive Relief to Modify Visitation and to Decrease Child Support”, and the rule was heard March 8, 2002 with testimony from both parties. A March 13, 2002 judgment modified Mr. Graffeo’s overnight custodial time from alternating weekends to equivalent overnight custodial time that would coincide with his days off of work. The judgment also mandated that he notify Ms. Stockstill each Sunday of his work schedule so that the parties could coordinate which weekend evening he would have custodial time with the child and which week nights the child would stay with him.

On June 7, 2002, the appellee filed a “Rule for Contempt, for Attorney’s Fees and Costs, to Change Custody and Other Related Matters”, alleging in part that Ms. Stockstill had disobeyed court orders, that it would be in the best interest of the child for Mr. Graffeo to be named the primary domiciliary parent, or in the alternative that the parties be awarded joint custody with each parent having equal time with the child. Ms. Stockstill answered claiming that Mr. Graffeo had failed on numerous occasions to inform her of his work schedule. On June 28, 2002, the trial judge modified the custody arrangement so that each parent would have full custody of the child during alternating weeks. The opposite parent was awarded Wednesday evening custodial time from 5:00 p.m. to 9:00 p.m. The written judgment was signed July 16, 2002.

ASSIGNMENTS OF ERROR: The trial court erred in modifying the previous judgment of custody when Mr. Graffeo neither pleaded nor proved that the continuation of the previous custodial arrangement was so deleterious to their child as to justify its modification or that there had been a material change in circumstances since entry of the previous custody decree.

The most recent judgment in this matter provides that it modifies

custody; however, it merely modifies Mr. Graffeo's visitation time. Ms. Stockstill remains the primary domiciliary parent, and the parents still enjoy joint custody.

The trial court is afforded great discretion in arranging rules concerning visitation, and its findings will not be disturbed absent an abuse of discretion. Zatzkis v. Zatzkis, 632 So.2d 307 (La. App. 4 Cir. 1993). The record supports a finding that the prior schedule of custodial time simply was not working out between the parties due to shifts in Mr. Graffeo's work schedule. The testimony of the parents at the latest hearing shows that they were arguing continually over Mr. Graffeo's duty to call on Sundays to arrange the week's fluctuating schedule. The present schedule of custodial time seems reasonable and stable. It certainly appears to be in the best interest of the child, which we note the trial court was in the best position to assess. Furthermore, the trial court heard argument in this case no less than three times within a matter of months. The court was well aware of the relationship of the parents and the attendant facts. The record shows that there is great acrimony between the parents. Mr. Graffeo presented clear and convincing evidence that he desires to spend time with the child, and that Ms. Stockstill was making it as difficult as possible for him to do so. The trial court did not err under the best interest of the child standard.

CONCLUSION AND DECREE

For the foregoing reasons, we affirm the judgment of the district court and assess the costs of this appeal against Tiffany F. Stockstill, the appellant.

AFFIRMED