

[Cite as *Meyer v. Anderson*, 2002-Ohio-2782.]

IN THE COURT OF APPEALS FOR MIAMI COUNTY, OHIO

JEFF MEYER:

Plaintiff-Appellee : C.A. CASE NO. 01CA53
Civ.App.-Probate/Juv.
vs. : T.C. CASE NO. 95-02373

DONA ANDERSON (RAUSER) :
Defendant-Appellant :

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O P I N I O N

Rendered on the 7th day of June, 2002.

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Mel Kemmer, 18 East Water Street, Troy, Ohio 45373, Atty.
Reg. No. 0020705; and
Joseph P. Moore, 410 Corporate Center Drive, Vandalia, Ohio
45377, Atty. Reg. No. 0014362
Attorneys for Plaintiff-Appellee

James R. Kirkland, 111 West First Street, Suite 518, Dayton,
Ohio 45402, Atty. Reg. No. 0009731
Attorney for Defendant-Appellant

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GRADY, J.

{¶1} This is an appeal from an order of the juvenile
court terminating a shared parenting order and conferring
the status of residential parent on the child's father.

{¶2} The child, Brandon Meyer, was born to Dona
Anderson on April 4, 1991. Jeff J. Meyer was determined to
be the father. The parties then were residents of
California. A California court entered a shared parenting
order.

{¶3} In subsequent years the parties married other persons and relocated. Dona* moved to Maryland. Jeff moved to Ohio. The California shared parenting order was registered in Miami County. Pursuant to later modifications of its terms, Brandon lived during the school year with Dona in Hempstead, Maryland, and during summers with Jeff, who now resides in Akron, Ohio.

{¶4} In 2000, Jeff moved to modify the shared parenting order. He asked the court to reverse the parties' positions by allowing Brandon to live with him during the school year and with Dona during the summer months. Dona opposed the request, and filed her own motion asking the court to restrict Brandon's summer visitation with Jeff.

{¶5} The motions were referred to a magistrate, who appointed a guardian *ad litem* for Brandon. Hearings were conducted on both motions. The guardian *ad litem* filed a report.

{¶6} The magistrate entered a decision on August 6, 2001. The decision contains forty-four findings of fact. Based on those findings, the magistrate terminated the shared parenting order *sua sponte*. The magistrate also designated Jeff as Brandon's residential parent, awarding Dona eight weeks of summer visitation.

{¶7} Dona filed objections to the magistrate's decision. The trial court overruled the objections and

*For purposes of clarity and economy, the parties will be identified by their first names.

adopted the magistrate's decision as its own order. Dona filed a timely notice of appeal.

FIRST ASSIGNMENT OF ERROR

{¶8} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT TERMINATED THE EXISTING SHARED PARENTING PLAN ON ITS OWN MOTION."

{¶9} The jurisdiction of the court of common pleas and its divisions is determined by legislative enactment. Article IV, Section 4(B), Ohio Constitution.

{¶10} The jurisdiction of the juvenile court is provided in R.C. 2151.23. Per paragraph (E) of that section, the juvenile court may determine custody of children when that issue is not otherwise granted to a domestic relations court. Per paragraph (F)(1), "the juvenile court shall exercise its jurisdiction in accordance with section(s) 3109.04 . . . of the Revised Code." That section provides for allocation of parental rights by domestic relations courts.

{¶11} R.C. 3109.04(G) allows either parent to file a motion or pleading with the court requesting the court to grant shared parental rights and responsibilities for their child. Pursuant to that section, the parent or parents must present a shared parenting plan, the terms of which

{¶12} "shall include provisions covering all factors that are relevant to the care of the children, including, but not limited to, provisions covering factors such as

physical living arrangements, child support obligations, provision for the children's medical and dental care, school placement, and the parent with which the children will be physically located during legal holidays, school holidays, and other days of special importance."

{¶13} *Id.*

{¶14} The domestic relations court may terminate a shared parenting order upon the motion of either parent "or whenever it determines that shared parenting is not in the best interest of the child(ren)." R.C. 3109.04(E)(2)(c). If the court terminates a shared parenting order, it is required by R.C. 3109.04(E)(1) to then proceed to allocate parental rights and responsibilities according to the standards applicable to paragraphs (A), (B), and (C) of that section.

{¶15} Notwithstanding the exhaustive list of "factors" which the General Assembly has mandated the court must consider, the domestic relations and juvenile courts possess broad discretion in determining the child's "best interest" with respect to both establishment and termination of a shared parenting order. Therefore, the court's orders will not be reversed on appeal absent an abuse of discretion.

{¶16} "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. In reviewing an abuse of discretion claim, an appellate court

should be guided by a presumption that the trial court's findings were correct. *Miller v. Miller* (1988), 37 Ohio St. 3d 71.

{¶17} R.C. 3109.04(B)(1) requires the court "to take into account that which would be in the best interest of the children" when allocating parental rights and responsibilities. The standards for determining those best interests are set out in R.C. 3109.04(F)(1)(a)-(j). In addition to those, the court must consider the factors in R.C. 3109.04(F)(2)(a)-(e) "[i]n determining whether shared parenting is in the best interest of the child(ren)." Those factors are:

{¶18} "(a) The ability of the parents to cooperate and make decisions jointly, with respect to the children;

{¶19} "(b) The ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent;

{¶20} "(c) Any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent;

{¶21} "(d) The geographic proximity of the parents to each other, as the proximity relates to the practical considerations of shared parenting;

{¶22} "(e) The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem."

{¶23} The court is further mandated to consider the

factors in R.C. 3113.215(B)(3) when determining whether shared parenting is in the child's best interest. Those factors pertain to child support. They are not involved here because no child support was ordered.

{¶24} The general R.C. 3109.04(F)(1)(a)-(j) "best interest" factors applicable to every custody determination relate primarily to the health and well-being of the child and the parents. The R.C. 3109.04(F)(2)(a)-(e) factors set out above relate more specifically to the capacity of the parents to carry out a shared parenting plan.

{¶25} "Shared parenting" is the product of efforts to avoid the pain of loss inherent in the sole custody alternative, for both the parents and their child. It purports to continue, as nearly as possible, the joint parent and child relationships which exist in a marriage. Successful shared parenting requires at least two things. One is a strong commitment to cooperate. The other is a capacity to engage in the cooperation required. The R.C. 3109.04(F)(2) factors measure both components.

{¶26} The magistrate's findings of fact were extensive. They portray little, if any, basis to find that shared parenting is not in Brandon's best interest on the general factors that R.C. 3104.04(F)(1) sets out. However, they do portray a basis to find that, on the R.C. 3109.04(F)(2) factors that relate to shared parenting in particular, continuation in this instance is not in Brandon's best interest.

{¶27} Shared parenting was first ordered in 1994.

Brandon was then three years old, and the parents were both in California. Jeff is now in Ohio. Dona resides in Maryland. Their respective family commitments have drawn them apart to a point that, according to the magistrate's finding, they have little or no contact or communication with respect to Brandon's needs.

{¶28} Brandon is now eleven years of age. His life and interests are far more complex and varied than they were when shared parenting was first ordered. They will grow even more so as he passes through his teenage years. Brandon's needs then will require a degree of stability and continuity that, at least as it has developed here, shared parenting does not provide.

{¶29} Acknowledging these matters, the guardian *ad litem* recommended termination of the shared parenting decree and that Jeff be designated Brandon's residential parent, granting Dona eight weeks of summer vacation and alternative holiday visitation.

{¶30} Both Jeff and Dona are loving parents to Brandon. It is a credit to them and to their love of their child that neither has attempted to disparage the character of the other or Brandon's treatment by the other. Exemplary as they are, however, those matters are outweighed by Brandon's developing needs and the changes in the lives of all three that the passage of time has worked.

{¶31} This case is one like many others, wherein the emotions and circumstances that caused parents to establish shared parenting when their child was an infant have been superseded by the child's growth and development as well as by changes in the parents' own lives. Those new matters now frame the "best interest" inquiry. Applying them here, we cannot find that the juvenile court abused its discretion when it terminated the shared parenting order.

{¶32} The first assignment of error is overruled.

SECOND ASSIGNMENT OF ERROR

{¶33} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DETERMINED THAT IT IS IN THE BEST INTERESTS OF THE CHILD TO DESIGNATE APPELLEE RESIDENTIAL PARENT WITH VISITATION RIGHTS ONLY TO APPELLANT."

{¶34} When a domestic relations court terminates a shared parenting order it must proceed to then allocate parental rights and responsibilities pursuant to R.C. 3109.04(A), (B) and (C). The court here did that, designating Jeff as Brandon's residential parent and granting summer visitation rights to Dona. Dona argues that the court abused its discretion in so doing.

{¶35} The court was required to determine Brandon's best interest in allocating parental rights and responsibilities. Again, in making that determination the court was required to consider the factors in R.C. 3109.04(F)(1)(a)-(j).

{¶36} Dona argues that the court misapplied the factor

in R.C. 3109.04(F)(1)(d), which involves “[t]he child’s adjustment to the child’s home, school, and community.” Dona argues that Brandon has adjusted well to living with her in Maryland, and that a change of schools or school districts that his move to Ohio would involve would be detrimental to Brandon’s well being. She also suggests that any competing advantages the magistrate found in Brandon’s living with Jeff relate to Jeff’s superior financial status and condition, which the court may not consider. See R.C. 3109.04(F)(3).

{¶37} While the magistrate found that Brandon would have his own room at Jeff’s home and he is required to share a room at Dona’s, that is not a significant element of the magistrate’s decision. The most significant seems to be that, as between two loving parents, Brandon apparently wishes to spend more time with Jeff than with Dona. That choice was presumably made with an understanding that a move would take him from his friends and to a new school. The choice does not appear to be the product of any particular animus toward Dona or the life he enjoys with her. Instead, it is a simple desire to be a part of his father’s home and family. The court is charged to consider the child’s preferences expressed in an interview in chambers. R.C. 3109.04(F)(1)b). Brandon expressed his preference to the guardian *ad litem* the court appointed, who reported them to the court. We believe that the court could not then have ignored them.

{¶38} After a careful review of the magistrate's extensive and well-reasoned findings and conclusions, we find that the trial court did not abuse its discretion when it overruled Dona's objections and adopted the magistrate's decision as its own order, designating Jeff the residential parent. The second assignment of error is overruled.

Conclusion

{¶39} Having overruled both assignments of error presented, we will affirm the judgment from which this appeal was taken.

WOLFF, P.J. and BROGAN, J., concur.

Copies provided by the court to:

Mel Kemmer, Esq.
Joseph P. Moore, Esq.
James R. Kirkland, Esq.
Hon. Lynnita K.C. Wagner