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ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-16-1051

		Opinion Delivered: January 24, 2018
KELLIE GLISSON	APPELLANT	APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT [NO. 26DR-15-740]
V.		
STEVEN H. GLISSON, JR.	APPELLEE	HONORABLE LYNN WILLIAMS, JUDGE
		AFFIRMED IN PART; REVERSED AND REMANDED IN PART

BART F. VIRDEN, Judge

Kellie Glisson appeals from the Garland County Circuit Court's order awarding joint custody to both parties, with primary custody to Kellie and visitation to Steven. She argues that the circuit court erred in classifying the custody awarded as joint custody and asks this court to clarify the decree by awarding her primary custody with visitation to Steven.[1] Alternatively, Kellie argues that if this court affirms the circuit court's award of

[1]Kellie correctly points out that the issue is not merely semantic—the designation of the type of custody has future relevance when a party seeks to relocate with the child without the permission of the other party. *See Singletary v. Singletary*, 2013 Ark. 506, 431 S.W.3d 234. Relocation is not an issue in the instant case; however, her point about the importance of the designation of custody is well taken.

joint custody, then the circuit court erred because the evidence does not show that joint custody is in the best interest of the children. Kellie also challenges the circuit court's award of child support. We affirm the circuit court's finding of joint custody, and we reverse and remand to the circuit court the issue of child support.

I. *Factual History*

On December 16, 2015, Kellie Glisson filed an amended complaint for divorce in the Garland County Circuit Court after sixteen years of marriage to Steven Glisson. The Glissons have two minor children, a daughter, H.G. (born 09/27/04), and a son, H.A.G. (born 03/31/07). In her complaint, Kellie asserted that the circuit court should award her primary custody of the children. Steven responded and requested joint custody. The parties submitted an agreed order on most of the issues relating to the divorce; however, custody and spousal support were to be settled by the circuit court.

At the hearing on the remaining matters, the court heard conflicting testimony from the witnesses regarding the parental fitness of the parties. Bruce Dodson, the Glisson's marriage counselor since the "early 2000s," offered the following testimony at the hearing. In approximately sixteen years of counseling, Kellie had never stated that Steven was a bad father or complained that he was violent. At times during counseling, Steven had become angry and frustrated and had abruptly left the session. Steven had used inappropriate, harsh language during some sessions, and during the summer the year before, marital counseling had become unproductive. Steven continued counseling on his own after the parties separated, and Dodson had not witnessed any angry outbursts from

Steven in six months. During their counseling sessions and specifically around the time he confronted Kellie about her possible infidelity, Steven had reported having suicidal thoughts, but he had assured Dodson that he would not harm himself. Dodson considered Steven to be a good father and businessman, and he believed that Steven was not a danger to anyone.

Both Kellie and Steven testified extensively about some of the same incidents that occurred during their marriage. Kellie testified that their son, H.A.G., has sensory-processing disorder (SPD), and she described the difficulties H.A.G. experiences due to his SPD, such as feeling overwhelmed, being unable to focus, experiencing confusion, and having difficulty transitioning from one environment to another. Kellie explained that she had learned techniques to deal with H.A.G.'s sensory-processing issues, that H.A.G. is in occupational therapy for SPD, and that therapy had been very helpful. Kellie testified that Steven had not read the articles on SPD that she had given him and that Steven had dismissed H.A.G.'s SPD as out-of-control behavior. Kellie described an incident at a wedding in which H.A.G. became "loud and agitated" when Kellie, Steven, and H.A.G. were trying to enter the reception hall. She asserted that Steven forced H.A.G. to go inside and sit down and that H.A.G. had hidden under the table for a few minutes, which had angered Steven. Kellie convinced Steven to let H.A.G. sit under the table for a few minutes, and that after that H.A.G. was able to rejoin the reception.

Steven described the incident with H.A.G. at the wedding reception differently. He explained that H.A.G. climbed under the table and "Kellie just sat there and you know,

thought that she should let H.A.G. act out and cause a scene." Steven testified that he and H.A.G. went outside and walked around for a while, got some food and, then came back in. Steven denied Kellie's assertion that he had been angry about the situation. Steven explained that he knew H.A.G. had been diagnosed with SPD and that he had to have patience with his son.

Kellie described H.G.'s allergy to corn and explained that it was important to avoid exposing H.G. to the allergen. She testified that she and Steven both prepared lunches for H.G., and she did not describe any negative incidents relating to Steven's handling of H.G.'s corn allergy.

Kellie testified that during their marriage she had handled most of the children's day-to-day activities. She opined that Steven did better with the kids on holidays and during the summer when there was no schedule to observe. Kellie asserted that Steven did not attend H.G.'s basketball games or school events and that Steven was a "fun dad, but there are boundaries and limitations to what he can provide as far as the emotional, physical and development state of our children."

By contrast, Steven testified that throughout their marriage he had routinely made breakfast, lunch, and dinner for the kids and Kellie, and that he, along with Kellie, had been responsible for the dishes and laundry. Steven testified that he helps the children with their homework and that he takes H.G. to basketball practice and attends her games. According to Steven, since the separation, Kellie had been "too wrapped up in herself" and

that until recently Kellie had been out of town every weekend and had often relied on him for childcare while she traveled.

Kellie described several instances in which Steven had threatened suicide. Kellie recounted that during an argument, Steven had threatened to kill himself and had held a gun to his chin, and Kellie attributed Steven's behavior in part to his going off of his anxiety medication. Kellie also recalled that Steven had gotten upset and had left the house and stayed at a picnic area in the woods for about twenty-four hours.

Steven testified that during their marriage he had been depressed over his belief that Kellie had been having multiple affairs; he had put a gun to his head and considered taking his life, but he no longer felt this way, and he wanted to be here for his children. Steven testified that he had tried several antidepressants and anxiety medications over the years. Steven explained that he had gone off of them, but that he did feel that he needed them. As for the incident when he stayed in the woods for twenty-four hours, Steven testified that he left the house and stayed in the pavilion near the woods to pray and fast, which he considered normal behavior.

Both Kellie and Steven described a business trip to Galveston together. Both Kellie and Steven agreed that their intent had been to revisit a place they had enjoyed previously in an effort to revive their marriage. Kellie recounts that, while driving, they experienced technical trouble with the truck and trailer. She testified that Steven went into a rage over the issues with the vehicle and became very negative for the rest of the trip. When they arrived in Galveston late in the evening, the restaurant he had wanted to go to had closed,

which further angered him. The Glissons went to a different restaurant, but Kellie explained that Steven was still angry, and he flipped over a chair. They went back to the hotel, where they argued, and Steven was so agitated that he could not sleep. Steven then left the hotel and stood on a bridge, which he did again the next night.

Steven's account differs from Kellie's. He recounts that while they were driving in heavy rain, the lights went out on the trailer, which caused them to arrive late to Galveston. He explained that he had been frustrated because things had not gone as planned. When they returned to the hotel, they argued about Steven's negativity and his belief that Kellie was having an affair. Steven was upset and could not sleep so he decided to take a walk and ended up on a fishing bridge. Steven explained that there had been other people on the bridge with him and that the police had instructed everyone to leave the bridge for traffic safety reasons. Steven denied any implication that he had been suicidal when he left the hotel.

Kellie and Steven also provided testimony regarding their parental fitness. Both parents testified that they are capable of handling the day-to-day aspects of the children's lives, and both parents produced witnesses who testified that each party is a fit parent. The attorney ad litem recommended joint custody and formulated the visitation schedule that was later adopted by the court.

The circuit court entered the divorce decree on August 26, 2016. The decree sets forth that the parents share joint custody of their minor children and that Kellie has primary custody. The decree specifies that during the school year, the children are with

Steven every other Thursday through Monday. Steven is also allotted an additional overnight visit on the opposite Tuesday beginning after school and returning the children to school on Wednesday morning. Holidays and summer vacation are split evenly between the parents and rotated yearly. The parties are ordered to cooperate, be civil toward each other, foster love, respect, and communication between the children and the other parent, communicate with each other about the children's activities and all medical issues, keep each other informed of any address or contact information changes, and in no way interfere with the other parent obtaining necessary information about the children. In the order, the circuit court reduced Steven's child support obligation to $349 per month "based on the additional time he keeps the children."

Kellie filed a timely notice of appeal.

II. *Points on Appeal*

A. Joint Custody

For her first point on appeal, Kellie argues that the circuit court erred in designating the custody arrangement in the decree as "joint custody" because "the parties do not have an 'approximate or reasonable equal division of time with the child' and therefore this is not joint custody." On this point we affirm.

We perform a de novo review of child-custody matters, but we will not reverse the circuit court's findings unless they are clearly erroneous. *Taylor v. Taylor*, 353 Ark. 69, 110 S.W.3d 731 (2003). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake

has been made. *Smith v. Parker*, 67 Ark. App. 221, 998 S.W.2d 1 (1999). We recognize and give special deference to the superior position of the circuit court to evaluate the witnesses, their testimony, and the child's best interest. It has often been said that we know of no case in which the superior position, ability, and opportunity of the circuit court to observe the parties carry as great a weight as when the interests of minor children are involved. *Carver v. May*, 81 Ark. App. 292, 101 S.W.3d 256 (2003).

Our legislature has determined that it is the public policy of our state to favor joint custody. *See* Ark. Code Ann. § 9-13-101(a)(1)(A)(iii) (Repl. 2015). For the purposes of the statute, "joint custody" means "the approximate and reasonable equal division of time with the child by both parents individually as agreed to by the parents or as ordered by the court." Ark. Code Ann. § 9-13-101(a)(5). Recently, in *Cooper v. Kalkwarf*, 2017 Ark. 331, at 15, 532 S.W.3d 58, 67, our supreme court emphasized that the legislature intended that joint custody may exist when the division of time is only approximately equal, holding that "the joint-custody arrangement does not necessarily involve a precise '50/50' division of time."[2]

In *Cooper*, as in the instant case, the decree set forth that the parties shared joint custody with primary custody in the mother, and our supreme court held that this language was ambiguous on its face. *Id.*, at 11. The Arkansas Supreme Court held that the decree

[2]*Cooper* is distinguishable from the instant case in that the primary issue in *Cooper* is whether a parent may relocate with the child without the consent of the other parent; however, the threshold issue for the court to resolve is the type of custody the parents share.

awarded the father nearly equal time with the child, that "it is unclear from the language in the decree whether the parties had 'joint custody,'" and that "the circuit court was correct in reviewing the parties' subsequent statements and conduct."

In the instant case, Kellie simply argues that the circuit court erred in referring to the custody arrangement as joint custody because the decree does not divide the parents' time with the children approximately equally. Kellie does not assert that parental conduct supports her argument that true joint custody does not exist; thus, we are limited to reviewing only whether the circuit court's division of time is approximately equal.

With that in mind, we look to the Glissons' divorce decree. The decree sets forth that during the school year Steven is allotted every other Thursday through Monday, plus an additional overnight visit on the opposite Tuesday (six out of every fourteen days), that in the summer each parent has the children every other week, and that holidays are shared on an alternating schedule. We hold that his arrangement falls within the range of "approximate and reasonable equal division of time with the child" as set forth in Ark. Code Ann. § 9-13-101(a)(1)(A)(iii). We find no error, and we affirm.

B. Appropriateness of Joint Custody

Alternatively, Kellie argues that if this court holds that she and Steven share true joint custody of their minor children, the circuit court erred because joint custody is not in the best interest of the children. Specifically, she argues that Steven is emotionally unstable and should not "have any form of custody of the children," though she asserts that the court should allow some visitation with Steven. Kellie also asserts that Steven is unable to

properly handle H.A.G.'s SPD and H.G.'s corn allergy. Kellie's argument is not well taken, and we affirm.

In support of her argument that joint custody is not in the children's best interest, Kellie asserts that Steven is emotionally unstable and refers to her testimony at the trial recounting Steven's emotional outbursts and erratic behavior. She argues that Steven suffers from depression and that he does not take medication that the physician prescribed.

Kellie also asserts that Steven is unable to properly manage their son's SPD, and she refers to her testimony regarding the wedding reception in support of her argument. Kellie also argues that H.G.'s corn allergy requires careful avoidance of corn; however, she does not explain how Steven is incapable of managing H.G.'s allergy or assert that he has not been able to manage it in the past.

Steven responds that the evidence supports the circuit court's decision to award joint custody. He refers to the marriage counselor's testimony that he is a good father and that in their sessions Kellie had never complained about Steven's parenting ability. Steven asserts that Kellie's testimony concerned isolated incidents that took place over a seventeen-year marriage and that his version of those events is quite different than Kellie's. Steven points out that, until recently, Kellie had left the children with him every weekend and that there had been no problems associated with his parenting ability during those weekends. Steven also cites the testimony of his and Kelley's mutual friends that Steven is a good father. Steven refers to the ad litem's recommendation that joint custody is in the

best interest of the children and that the court ordered the visitation schedule that the ad litem had formulated.

Kellie asks this court to reweigh the conflicting testimony given at trial and find differently than the circuit court regarding the appropriateness of joint custody; however, credibility determinations are left to the circuit court and we will not reweigh the evidence. *Newman v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 207, at 13, 489 S.W.3d 186, 194. On our de novo review, we hold that the circuit court did not clearly err in finding that joint custody is in the best interest of the children.

C. Child Support

Kellie argues that the circuit court erred when it failed to determine Steven's income in setting the amount of child support. We agree, and on this point we reverse and remand.

As a rule, when the amount of child support is at issue, we will not reverse the circuit court absent an abuse of discretion. *Hall v. Hall*, 2013 Ark. 330, 429 S.W.3d 219. Before a court can refer to the child-support chart, the payor's income must be determined. Ark. Sup. Ct. Admin. Order 10, Section III; *Office of Child Support Enf't v. Pittman*, 70 Ark. App. 487, 490–91, 20 S.W.3d 426, 428 (2000). Our court has previously held that it is reversible error for the circuit court to fail to determine the payor's income in setting the amount of child support. *See Ryburn v. Ryburn*, 2014 Ark. App. 108, at 11, 432 S.W.3d 102, 109 (circuit court erred by not including a determination of the father's income or a list of explanations for deviating from the child-support guidelines); *Blalock v. Blalock*, 2013 Ark.

App. 659, (reversed and remanded for further findings because the child-support order did not contain a determination of the payor's income or reference to the guidelines and did not recite whether the amount of child support deviated from the family-support chart).

In the present child-support order, the circuit court stated that the "child support obligation is hereby modified to the amount of $349.00 per month pursuant to Administrative Rule 10" and that the amount was "based on the additional time the Defendant keeps the children." The circuit court made no determination of income in its order; thus, we reverse and remand for the circuit court to do so.

Affirmed in part; reversed and remanded in part.

GLOVER and MURPHY, JJ., agree.

Worsham Law Firm, P.A., by: *Richard E. Worsham*, for appellant.

T. Clay Janske, for appellee.