

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JENNIFER EDKIN,

Appellant,

v.

Case No. 5D19-2590

JAKOB A. EDKIN,

Appellee.

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Opinion filed March 20, 2020

Appeal from the Circuit Court for Orange
County, Diana M. Tennis, Judge.

Jane Kreuzler-Walsh, and Stephanie L. Serafin,
and Rebecca Mercier Vargas, of Kreuzler-
Walsh, Vargas & Serafin, P.A., West Palm
Beach, for Appellant.

No Appearance for Appellee.

HARRIS, J.

Jennifer Edkin appeals the final judgment of dissolution of marriage that provided for rotating custody of the parties' minor child, who was six years old at the time the judgment was entered. The judgment below required the minor child to attend school in Orlando each fall semester, relocate to her father's home in Oklahoma each year on December 31st to attend school for the second half of the school year, and relocate back to Florida to start the next school year. Summers and other holidays are equally split. The

mother argues that it was error for the trial court to order rotating custody when neither party requested such arrangement in the pleadings or at any time during the trial. We agree and reverse.

The father initiated the proceedings below by filing his petition for dissolution of marriage. In his pleading, the father only requested reasonable timesharing with his child, and he sought permission to relocate to the state of Oklahoma without the minor child. Even in his pretrial statement, the father continued to request only that he be awarded reasonable timesharing, and he agreed to be responsible for the transportation to and from Oklahoma. Nonetheless, the court ordered a split, rotating custody on the basis that it would help the parents learn to communicate better with one another.

We find that it was error to order rotating custody where neither party requested rotating custody in the pleadings or at any time during trial. See Flemming v. Flemming, 742 So. 2d 843, 844 (Fla. 1st DCA 1999) (holding trial court abused its discretion in ordering rotating custody where issue was not raised by pleadings, contravened parties' agreement, and was not tried by implied consent). The trial court's actions violated the mother's due process rights because she was never given notice that the issue of rotating custody would be considered, nor was she given an opportunity to address that issue. See Moore v. Wilson, 16 So. 3d 222, 224 (Fla. 5th DCA 2009). We reverse and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.

EVANDER, C.J. and LAMBERT, J., concur.