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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002595-MR

ANTHONY ESTELL TAYLOR — APPELLANT

v.

APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 97-CI-00410

ANGELA MARIE DELL
(NOW GOLLAR) — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: DYCHE, GUIDUGLI, AND KNOPF, JUDGES.

KNOPF, JUDGE: Anthony Taylor appeals from an order of the Shelby Circuit Court, entered September 20, 2000, awarding custody of his then six-year-old son, Matthew, to Angela Gollar (formerly Angela Dell), Matthew's mother and the appellee herein. Anthony contends that the trial court applied the wrong standard in determining that an award of joint custody was not in Matthew's best interest. He also contends that the trial court awarded him insufficient visitation, inexplicably reducing the visitation he had been awarded during the pendency of this action. Because we

are not persuaded that the trial court erred in the ways Anthony alleges or otherwise abused its discretion, we affirm.

Matthew was born to Angela and Anthony in August 1994, after the couple had been dating for the better part of two years. Matthew was Angela's third child, Angela having had a daughter during both of two prior marriages, and he was Anthony's second child, Anthony having a son from a prior marriage. The couple made marriage plans, but during the year following Matthew's birth changed their minds. There was a final parting, apparently, in late 1995 or early 1996. Angela married her present husband in the fall of the latter year, at about which point, apparently, Anthony lost contact with Matthew until October 1997 when he filed the current action seeking an award of joint custody. In November 1997, the trial court entered a temporary order granting Anthony visitation with Matthew from Thursday afternoon until Sunday evening every other week and from Thursday afternoon until Saturday morning during the alternate weeks.

After other issues had been resolved, a trial commissioner heard the custody case in May 2000. He recommended that Angela be awarded sole custody of Matthew and that Anthony have visitation no less than on alternate weekends from 5:30 p.m. Friday to 5:30 p.m. Sunday and from 5:30 p.m. to 9:00 p.m. on Thursdays following weekend visits, the guideline visitation schedule employed in Shelby County. Anthony filed exceptions to these recommendations, but in its September 20, 2000, order noted above, the trial court overruled his exceptions and adopted the

commissioner's report in its entirety. It is from that order that Anthony has appealed.

As Anthony correctly notes, the parties to a custody dispute under KRS 403.270 are entitled to a thorough and thoughtful assessment of their situations and to a resolution responsive to the particular facts in their case. The trial court's primary concern is to "determine custody in accordance with the best interest of the child."[1] The court is accorded broad discretion to make that determination, but in doing so it must give equal consideration to both parents, must be mindful of numerous factors bearing on the child's interest, and must at least consider an award of joint custody.[2] There is no statutory presumption favoring either sole or joint custody, but our Supreme Court has cautioned against conditioning joint custody on an unrealistic level of parental cooperation. Custody disputes are often heated, of course, the Court has noted, but a former couple's hostile relationship in the immediate aftermath of the divorce or separation is not necessarily an accurate indicator of what the relationship will become.[3] Anthony contends that the commissioner and trial court inappropriately regarded parental cooperation as a condition precedent to joint custody and thus did not give him the full benefit of joint custody's statutory recognition. We disagree.

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[1]KRS 403.270 (2).

[2]KRS 403.270(2) and (5).

[3]Squires v. Squires, Ky., 854 S.W.2d 765 (1993).

True enough, among the commissioner's conclusions is the statement that "[f]or the Court to find that joint custody is appropriate, it must conclude that the parties are capable of good faith cooperation in making decisions effecting the upbringing of their child." We do not understand this statement, as Anthony does, as meaning that the parties must be presently cooperating, but rather that they must seem reasonably likely to move beyond their immediate pain and anger and to focus meaningfully and realistically on the needs and well being of their child. Such a requirement strikes us as utterly consistent with the statute and with our Supreme Court's interpretation of it. Nor can we fault the trial court's conclusion in this case that the requirement was not met. At the time of the hearing, in May 2000, more than four years after their parting, Anthony and Angela were still at loggerheads over simple details of visitation, and they betrayed a deep and abiding disagreement about how Matthew was to be educated. We agree with the trial court that joint custody in these circumstances would simply be a recipe for continued conflict and would not be in Matthew's best interest.

Nor can we fault the award of sole custody to Angela rather than to Anthony. Although Anthony seems to have done a fine job raising his older son and would doubtless be a suitable custodian, the court properly gave substantial weight to the fact that Matthew's life would be less disrupted by allowing him to continue along the course he had been pursuing--a course not at all shown to be detrimental to him. In this way, his

reattachment to Anthony can occur as a new part of his normal life, rather than necessitating the overthrow of that life.

Anthony also contends that the trial court should have continued the temporary visitation regime, under which he had visitation with Matthew from Thursday to Saturday or from Thursday to Sunday every week. He complains that the court did not adequately explain why his visitation should be reduced to every other weekend and every other Thursday evening. Under KRS 403.320, a noncustodial parent is entitled to reasonable visitation unless the court finds substantial reason to preclude it. Here, too, the parties are entitled to an individual assessment of their situations. In particular the court must take care not to allow the convenience of a standard visitation schedule to displace such an individual assessment.[4]

The court's order in this case established Anthony's minimum visitation right, but left the actual details of the visitation regime to the parties' agreement. The parties live far enough apart--either Bardstown and Shelbyville or Louisville and Shelbyville--to make transportation a significant factor. Matthew's starting to school makes a relatively stable school-week schedule more important than it was before his involvement in school. It also gives a premium to the weekends, Matthew's only consecutive free days. These considerations, all of which were noted in the trial court's findings, amply justify the court's order. Under a continuation of the temporary regime, Matthew's school week would have been interrupted every Thursday,

[4]Drury v. Drury, Ky. App., 32 S.W.3d 521 (2000).

his time in transit to and from school would have been significantly increased, and Angela would have had no opportunity to be with Matthew for an entire weekend. Under the new regime, these problems are lessened or avoided, while Anthony is still afforded sufficient time with Matthew to forge a loving relationship. It may be hoped, furthermore, that with time the parties will become better able to agree on mutually satisfactory adjustments.

In sum, we believe the trial court's custody and visitation orders were well within its proper discretion. Accordingly, we affirm the September 20, 2000, order of the Shelby Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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