

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-000610-ME

JEFFERY HUNTER

APPELLANT

v. APPEAL FROM FLOYD CIRCUIT COURT
HONORABLE DWIGHT S. MARSHALL, JUDGE
ACTION NO. 11-CI-00137

CHANEL MUSIC

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MAZE, AND NICKELL, JUDGES.

DIXON, JUDGE: Jeffery Hunter (Father) appeals from a Floyd Circuit Court order granting him joint custody and time-sharing with his minor son (Son).

Finding no error, we affirm.

Son was born in August 2010. Chanel Music (Mother) and Father were never married, and she filed a petition for custody on February 9, 2011. The

parties entered into a temporary agreed order of visitation pursuant to the court's standard visitation schedule, which provided Father with visitation every other weekend.

The court held a final hearing and heard testimony from the parties, Sharon Townsend (paternal grandmother), and Pam Hall (maternal grandmother). Mother requested that the court maintain the status quo and continue time-sharing pursuant to the court's standard visitation schedule. Mother explained that she worked four twelve-hour shifts each week as a 911 dispatcher and that her grandmother, her father, or her stepmother provided childcare while she worked. Mother also advised the court that the standard visitation schedule had worked well for the parties, and she had accommodated Ms. Townsend's occasional requests for additional visitation.

Father requested joint custody and increased time-sharing with the child. Father acknowledged that his weekend time-sharing occurred at Ms. Townsend's home and that she primarily provided all of the child care for Son during the visitation. Father also visited with Son each Thursday evening at Ms. Hall's home. Father advised the court that, while Mother had accommodated requests for additional visitation, the parties had difficulty communicating.

On February 1, 2012, the court rendered an order reflecting its findings of fact and conclusions of law. The court concluded it was in Son's best interests for the parties to share joint custody, with Mother designated as the primary residential custodian. The order provided Father with time-sharing

pursuant to the court's standard visitation schedule, which included every other weekend, alternating holidays, and vacation time. The court subsequently overruled Father's motion to alter, amend, or vacate the order, and this appeal followed.

“A trial judge has a broad discretion in determining what is in the best interests of children when he makes a determination as to custody.” *Krug v. Krug*, 647 S.W.2d 790, 793 (Ky. 1983). On appellate review, “[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” CR 52.01; *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986).

Pursuant to KRS 403.270(5), the trial court may grant joint custody if it is in the child's best interest. In making a determination, the court must consider all relevant factors, including the statutory “best interests” factors: the wishes of the parents and child; the interpersonal relationships of the child with its parents, siblings, and others; the child's assimilation to home, school, and community; mental and physical health of the parties; and evidence of domestic violence. KRS 403.270(2)(a-f).

Father contends the court abused its discretion by following the standard visitation schedule and denying his request for additional time-sharing. Father cites *Drury v. Drury*, 32 S.W.3d 521, 524 (Ky. App. 2000), where this Court emphasized that a court must make “an individualized determination of reasonable visitation” in a joint custody situation.

In *Drury*, the Court went on to state:

We further emphasize that trial courts should not give undue weight to the terms of a ‘standard’ visitation order. Frequently, judicial circuits or trial courts prepare these documents to aid the trial court in drafting visitation orders. As in the present case, these documents contain ‘typical’ visitation schedules, as well as recitations of common conditions for managing visitation. However, the use of a standard visitation order should not supplant the trial court's obligation to make its own findings of fact as required by CR 52.01.

Id. at 524-25.

In the case at bar, the court specifically stated:

The Court has considered [Father's] request for additional visitation/timesharing at this time and overrules that request at this time. The Court bases its decision on the child's age, the distance between the parties and the current lack of communication. The Court is concerned that allowing additional visitation at this time would be disruptive to the child and would be counter productive.

The Court bases its current decision, in part, on [Mother's] current willingness to allow [Father] and his mother additional visitation time as requested as to accommodate the parties' schedules. The Court expects both parties to continue to be flexible in their approach to visitation.

Absent a change in circumstances, the Court would consider modification of the current schedule once the child gets older and starts school. At that time both the parties and the child will be more mature.

In *Drury*, the Court concluded:

[W]e do not hold that a trial court's use of a standardized visitation schedule is automatically grounds for reversal, even in a case involving an award of joint custody.

Rather, this Court will only reverse a trial court's determinations as to visitation if they constitute a manifest abuse of discretion, or were clearly erroneous in light of the facts and circumstances of the case.

Id. at 525.

Here, our review indicates the trial court made thorough findings of fact and explained its reasoning for denying Father's request. Son was only eighteen months old when the order was rendered, and the court noted that it considered the relevant factors outlined in KRS 403.270(2). Further, according to the court's findings, Mother and Mrs. Townsend both testified that the standard visitation schedule had been working well. Although Father contends the court should have weighed the evidence in favor of increasing his time-sharing, we are not persuaded that the findings made by the trial court were clearly erroneous. After considering all the evidence, the court exercised its broad discretion to conclude it was in Son's best interests to maintain the status quo with the parties' time-sharing.

Finally, Father alternatively argues that the Floyd/Knott/Magoffin Family Courts' Standard Visitation Schedule should be set aside as contrary to the Model Time-Sharing/Visitation Guidelines in the Kentucky Family Rules of Practice and Procedure. We find this contention to be without merit, as FCRPP 8(1) defers to the discretion of the trial court: "A parent shall be entitled to time-sharing/visitation as ordered by the court, which may be in accordance with the Model Time-Sharing/Visitation Guidelines"¹

¹ The Model Guidelines, set forth in Appendix A of the FCRPP, expressly state: "The following schedules are suggested as guidelines for the parents and the court in establishing time-sharing/visitation schedules. Each case will present unique facts or circumstances which shall be

For the reasons stated herein, we affirm the order of the Floyd Circuit Court.

ALL CONCUR.

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considered by the court in establishing a time-sharing/visitation schedule and the final schedule established by the court or agreed to by the parents may or may not be what these guidelines suggest.”