RENDERED: DECEMBER 20, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000168-ME

HEIDI PENDEGRIST — APPELLANT

v.

APPEAL FROM GARRARD CIRCUIT COURT
HONORABLE C. MICHAEL DIXON, JUDGE
ACTION NO. 11-CI-00303

STEVEN K. NEWSOME — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: LAMBERT, TAYLOR, AND VANMETER, JUDGES.

VANMETER, JUDGE: Heidi Pendegrist appeals from an order entered by the Garrard Circuit Court in a child custody proceeding. For the following reasons, we affirm.

Pendegrist and Steven Newsome share a daughter, who at the time of the trial court's order was nineteen months old. Presently, Pendegrist resides in

Garrard County and Newsome resides in Pikeville. Prior to the trial court's order, the two parents agreed to a timesharing arrangement. The child primarily resided with Pendegrist, while spending every other weekend with Newsome. However, Newsome sought equal timesharing between the two parents, and Pendegrist resisted. After a hearing on the issue, the trial court awarded joint custody and equal timesharing, or alternating weeks between parents. This appeal followed.

Child custody awards are reviewed for abuse of discretion. *Coffman v. Rankin*, 260 S.W.3d 767, 770 (Ky. 2008). "Thus, in reviewing the decision of the family court, the test is not whether the appellate court would have decided it differently, but whether the findings of the family court are clearly erroneous, whether it applied the correct law, or whether it abused its discretion." *Id*.

Custody determinations are made pursuant to KRS[1] 403.270. KRS 403.270(2) instructs: "The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent . . . ." The statute lists factors to be considered in determining the best interests of the child, which the trial court carefully evaluated. Pendegrist and Newsome do not dispute the award of joint custody. Instead, Pendegrist argues that the court's decision to award equal timesharing was an abuse of its discretion.

While the terms timesharing and visitation are often used interchangeably, visitation is only applicable in the context of sole custody. *Pennington v. Marcum*, 266 S.W.3d 759, 765 (Ky. 2008). With joint custody, both parents possess the

[1] Kentucky Revised Statutes.

rights and responsibilities associated with parenting, and are expected to participate equally in raising the child. *Id*. at 764. Because each parent is a legal custodian, only timesharing applies, not visitation. *Id*. at 765. A subset of joint custody, called shared custody, exists when both parents have legal custody, subject to some limitations laid out by agreement or court order. *Id*. at 764. Shared custody can often be distinguished from joint custody by inflexible timesharing. *Id*. This situation exists in the present case.

In *Drury v. Drury*, 32 S.W.3d 521, 524 (Ky. App. 2000), this court applied the "reasonable visitation" standard set forth in KRS 403.320(1) to evaluate timesharing orders in shared custody cases. "Reasonable visitation" is decided based upon the circumstances of each parent and child, with the best interests of the child in mind. *Id*. at 524-25. The trial court has considerable discretion in determining which living arrangements will best serve the interests of the child. *Id.* at 525. A timesharing schedule should ideally be designed to allow both parents as much involvement in their child's life as possible. *Id*. at 524.

Pendegrist argues that the trial court improperly applied a presumption in favor of equal timesharing. Pendegrist contends that this presumption constitutes a "local rule" which may not contradict a rule of the Kentucky Supreme Court pursuant to *Abernathy v. Nicholson*, 899 S.W.2d 85, 87 (Ky. 1995). We disagree. The record shows that the trial court did not apply a presumption in favor of equal timesharing, but rather concluded that equal timesharing was in the child's best interests. The wishes of the child's parents may be considered in determining the

best interests of the child per KRS 403.270(2)(a), but are not binding on the trial court. *Squires v. Squires*, 854 S.W.2d 765, 768 (Ky. 1993). Here, Newsome requested equal time with his daughter, and each parent offered a loving home, so the court's determination that equal timesharing was in the best interests of the child was not unreasonable. No burden was placed on the party opposing equal timesharing; rather, the court took it upon itself to evaluate whether the requested equal timesharing was in the child's best interests. Since the court fulfilled its duty per KRS 403.270, no abuse of discretion occurred.

Next, Pendegrist argues that her poor relationship with Newsome makes equal timesharing impractical. In *Squires*, the court discussed the importance of parental cooperation in child custody arrangements. The court noted that the likelihood of a successful joint custody arrangement increases when parents are cooperative, but cooperation is not a prerequisite to awarding joint custody. 854 S.W.2d at 768. In fact, joint custody may even have the effect of encouraging cooperation and communication among parents. *Id*. at 769. Here, the trial court addressed this issue, stating that the timesharing arrangement would hopefully lead to improved communication and cooperation between Pendegrist and Newsome. If cooperation does not improve, the court can modify the agreement in the future.

As for the distance between the two parents, the court acknowledged that this arrangement would not work once the child is school-aged. However, the child will not be of school age for approximately three years. Until she reaches that age, the court found the child's best interest is to split time equally between

her two loving parents. This court does not find this arrangement to be unreasonable.

Finally, Pendegrist raises an argument concerning child support. Since no final order has been issued by the Garrard Circuit Court on this matter, this court has no jurisdiction. "A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding . . . ." CR[2] 54.01. An order must be final in order to be appealable. *Am. Fid. & Cas. Co. v. Patterson*, 237 S.W.2d 57, 58 (Ky. 1951). The test for a final judgment is whether the order grants or denies the ultimate relief sought, or whether some further step is necessary to finally determine the rights of the parties. *Brumley v. Lewis*, 340 S.W.2d 599, 600 (Ky. 1960). In this case, the order issued by the trial court reserved ruling on the issue of child support, and stated that child support would be addressed by a separate, subsequent order. Thus, no final judgment as to child support has been issued.[3] This court therefore does not have jurisdiction over this issue, and we decline to address it.

In sum, we do not find that the trial court abused its discretion in awarding equal timesharing to Pendegrist and Newsome, or made an improper presumption in favor of equal timesharing. We decline to address the child support issue for lack of jurisdiction.

The order of the Garrard Circuit Court is affirmed.

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[2] Kentucky Rules of Civil Procedure.

[3] The trial court judge's statement in the hearing that child support would be done "Colorado style" does not constitute a final ruling or order.

ALL CONCUR.

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