

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000951-ME

EDDIE RAY REYNOLDS

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT
HONORABLE DAVID D. FLATT, JUDGE
ACTION NO. 18-CI-00050

JULIE MARLANA GEE

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: JONES, KRAMER, AND MAZE, JUDGES.

MAZE, JUDGE: Eddie Ray Reynolds appeals Carter Circuit Court's order awarding the parties joint custody of their children but naming Appellee, Julie Marlana Gee, the primary residential custodian. After careful review, we affirm.

Reynolds and Gee were in a relationship for over fifteen years. In 2004, they began living together in Carter County, Kentucky. Although the parties

never married, they have three daughters together. Throughout their relationship, Gee was employed as licensed practical nurse. In late 2014, Reynolds left his job with the City of Olive Hill to pursue a career as a licensed helicopter pilot.

Reynolds lived in Tennessee and North Carolina to complete his pilot training while Gee remained in Kentucky with the children. Reynolds subsequently obtained his helicopter license and returned to Kentucky but was unable to find steady employment as a helicopter pilot.

Reynolds and Gee's relationship eventually deteriorated, and Gee filed a petition seeking custody of their children in February 2018. The parties agreed to a temporary visitation schedule in which the children resided with Gee on weekdays and resided with Reynolds on weekends. The trial court subsequently held a hearing on matters involving custody and timesharing. Both parties testified, and the trial court interviewed the two oldest children. Gee testified that she had been the children's primary caregiver their entire life and was still employed as a nurse. However, Reynolds had not been able to find steady employment after returning to Kentucky. Gee also testified that she had placed the children in counseling because they began acting out after spending their weekends solely with Reynolds. Gee also alleged that Reynolds refused to take the two oldest daughters to their scheduled soccer games when it interfered with his prior plans for the children.

Reynolds testified that he believed he was the better parent because he could instill “morals” in the children. Reynolds did not elaborate on this testimony besides criticizing how Gee permitted the oldest daughter to dress. Reynolds did not dispute Gee’s testimony regarding his employment history or the children’s difficulty adjusting to the temporary visitation agreement. After the hearing, the trial court entered a written order granting joint custody and naming Gee as the primary residential custodian. Reynolds received visitation every Tuesday and every other weekend. The trial court found such an order to be in the children’s best interest because Gee had been the primary caregiver for most of the children’s lives, Gee had been consistently employed, and the children had struggled to adjust to the temporary visitation arrangement. This appeal follows.

“When reviewing a decision in a child custody case, the test is whether the findings of fact of the trial court were clearly erroneous or the decision constitutes an abuse of discretion.” *Burton v. Burton*, 355 S.W.3d 489, 493 (Ky. App. 2011). Findings of fact are not clearly erroneous when supported by substantial evidence, that is “evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men.” *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Goodyear Tire*

and Rubber Co. v. Thompson, 11 S.W.3d 575, 581 (Ky. 2000).

A trial court shall award custody based on the best interest of the child. KRS¹ 403.270(2). The non-residential custodian shall receive reasonable visitation. KRS 403.320(1); *Drury v. Drury*, 32 S.W.3d 521, 524 (Ky. App. 2000). What constitutes “reasonable visitation” depends on the circumstances of the parents and the child, and the trial court has considerable discretion in determining which living arrangements serve a child’s best interest. *Hudson v. Cole*, 463 S.W.3d 346, 351 (Ky. App. 2015).

Reynolds argues that Gee failed to show the temporary visitation arrangement was detrimental to the children. He also contends the trial court’s custody order was based on the parties’ relationship with each other rather than their actions as parents. We do not believe Reynolds’s arguments accurately reflect the evidence or the trial court’s order. There was testimony the children began acting out after the temporary visitation scheduled was implemented, which also led to Reynolds interfering with the children’s extracurricular activities. The trial court’s best-interests determination also reflected the uncontroverted evidence that Gee was the children’s primary provider and the only parent with steady employment. Based on the circumstances, the trial court’s decision to name Gee the primary residential custodian with Reynolds receiving liberal visitation was not

¹ Kentucky Revised Statutes.

an abuse of discretion.

Accordingly, the order of the Carter Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

MaLenda S. Haynes
Grayson, Kentucky

BRIEF FOR APPELLEE:

W. Jeffrey Scott
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