

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CU 0872

KYLE J. FLINT

VERSUS

KRISTIN L. LAWTON (now CUMMINGS)

Judgment Rendered: October 29, 2010

**Appealed from the
20th Judicial District Court
In and for the Parish of East Feliciana
State of Louisiana
Case No. 35047**

The Honorable William G. Carmichael, Judge Presiding

**C. Jerome D'Aquila
New Roads, Louisiana**

**Counsel for Plaintiff/Appellant
Kyle J. Flint**

**Charles E. Griffin, II
St. Francisville, Louisiana**

**Counsel for Defendant/Appellee
Kristin L. Lawton (now Cummings)**

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

GAIDRY, J.

In this custody case, a father appeals a trial court judgment awarding joint custody to the parties and setting a physical custody schedule. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Kristen Lawton Cummings and Kyle Flint, who were never married to one another, have one child, Micah Flint, born October 11, 2002. Kristen and Kyle have a contentious relationship and have been to court many times in Micah's lifetime to litigate custody matters.

On July 19, 2007, the trial court rendered judgment granting Kyle and Kristen joint custody of Micah. The court declined to designate a domiciliary parent because of the parties' inability to communicate effectively with each other regarding issues concerning the child. The judgment provided that the parties would alternate physical custody of Micah on a weekly basis.

On December 19, 2007, Kristen filed a petition for a change of custody on the basis of Kyle's continued drug use and his absence from the state due to his participation in a six-month drug rehabilitation program. On January 23, 2008, the trial court continued the hearing on the change of custody due to Kyle's absence from the state and, pending further orders of the court, rendered judgment granting sole custody of Micah to Kristen. Kyle's parents were granted visitation with Micah every other weekend from 4:00 p.m. on Friday until 4:00 p.m. on Sunday.

On June 13, 2008, Kyle filed a rule for change of custody, asserting that he had returned to the state and was sober, and seeking joint custody of Micah, co-domiciliary parent status, and equal sharing of the physical

custody of Micah. The hearing on this request was continued without date at Kyle's request.

On May 21, 2009, Kyle filed a pleading entitled "Rule to Re-Establish Visitation." Kyle alleged that he was drug-free and "entitled to have his custody and visitation re-instated." Kyle proposed a custody plan in which the parties would have joint custody, with Kristen being the domiciliary parent, and with the parties alternating physical custody on a weekly basis.

A hearing was held on the matter, after which the trial court rendered judgment on February 19, 2010, awarding joint custody of Micah to Kyle and Kristen, naming Kristen the domiciliary parent, establishing a joint custody implementation plan, and providing that Kyle's exercise of physical custody must be supervised by his parents. According to the judgment, Kyle would have physical custody of Micah, subject to his parents' supervision, every other weekend from Friday afternoon to Sunday afternoon during the school year and every other week from Friday afternoon until the following Friday afternoon during the summer. The judgment also provided for the parties to have equal time with Micah during holidays.

Kyle appealed from this judgment, arguing that the trial court erred in requiring that his exercise of physical custody of Micah be supervised by his parents and in setting a joint custody plan which did not assure him of frequent and continuing contact with Micah.

DISCUSSION

Every child custody case is to be viewed on its own peculiar set of facts and the relationships involved, with the paramount goal of reaching a decision which is in the best interest of the child. *Martello v. Martello*, 06-0594, p. 5 (La.App. 1 Cir. 3/23/07), 960 So.2d 186, 191. The trial court is vested with broad discretion in deciding child custody cases. Because of the

trial court's better opportunity to evaluate witnesses, and taking into account the proper allocation of trial and appellate court functions, great deference is accorded to the decision of the trial court. A trial court's determination regarding child custody will not be disturbed absent a clear abuse of discretion. *Id.*, 06-0594 at p. 5, 960 So.2d at 191-92.

In his first assignment of error, Kyle alleges that the trial court's refusal to grant him week-long physical custody periods during the school year deprives him of "frequent and continuing contact" with Micah, as required by La. R.S. 9:335. Louisiana Revised Statutes 9:335(A)(2)(b) provides that in a joint custody situation, to the extent that it is feasible and in the best interest of the child, physical custody of the child should be shared equally. Louisiana Revised Statutes 9:335(B)(2) provides that the child will primarily reside with the domiciliary parent, but the other parent shall have physical custody during periods which will assure him of frequent and continuing contact with the child. So long as the child is assured of frequent and continuing contact with both parents, the primary goal of joint custody is met; given the trial court's mandate and great discretion for considering the best interest of the child, joint custody does not mean a 50-50 sharing of time on the strength of feasibility alone. *Stephens v. Stephens*, 02-0402, pp.7-8 (La.App. 1 Cir. 6/21/02), 822 So.2d 770, 777.

The trial court obviously concluded that it was not in Micah's best interest for Kyle to have week-long physical custody periods during the school year. Considering Kyle's past problems and his absence from his child's life for an extended period of time, we cannot say that the court abused its discretion in so concluding. Although not an equal sharing of time, under the specific facts of this case, the physical custody schedule

established by the court assures Kyle of frequent and continuing contact with Micah.

In Kyle's next assignment of error, he argues that the court erred in providing that his parents must supervise his physical custody periods. However, at the hearing on Kyle's motion to reestablish visitation, Kyle testified that he did not object to the court ordering that his parents supervise his visitation. Kyle cites no authority in his brief for his assertion that it was error for the court to order that his physical custody periods be supervised. Under the circumstances, we find no abuse of discretion in this order of the court. This assignment of error is without merit.

DECREE

The February 19, 2010 trial court judgment is affirmed. Costs of this appeal are to be borne by Kyle Flint.

AFFIRMED.