STATE OF MICHIGAN

COURT OF APPEALS

SHARON DENA GRIDER, Plaintiff-Appellee,	UNPUBLISHED January 4, 2000
v	No. 213973 Kent Circuit Court
JOHN A. POTTER, Defendant-Appellant.	LC No. 96-011921 DM

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this domestic relations action, defendant appeals by right from the judgment of divorce. Defendant claims that the trial court abused its discretion by rejecting a proposed settlement agreement read into the record in open court on February 9, 1998, and in refusing to grant him overnight parenting time on Sundays. We disagree and affirm the judgment of divorce entered in this case.

I.

Defendant argues that absent fraud, duress, or mutual mistake, the parties' agreement placed on the record on February 9, 1998 that child support would be based on the child support guidelines, which defendant contends included application of the shared economic responsibility formula, could not be set aside by the trial court. Defendant's argument is unpersuasive.

First, we note that the record reflects that the parties ultimately reached an agreement on the matter of child support which was embodied in the proposed final judgment of divorce.[1] Defendant lodged no objection to that child support provision agreed upon by the parties, which was accepted and entered by the trial court as part of the final judgment. Therefore, defendant has not preserved this issue for appellate review. *Kline v Kline*, 92 Mich App 62, 73; 284 NW2d 488 (1979). See also *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 684; 591 NW2d 438 (1998) [party waives appellate review of alleged error to which the aggrieved party contributed by plan or negligence].

Nevertheless, even when reviewed on the merits, defendant's claim fails. It is true that, in the absence of fraud, duress, or mutual mistake, trial courts are generally bound by *property settlements* agreed to by parties to a divorce action where the settlement is orally placed on the record and consented to by the parties, even though not yet formally entered as part of the divorce judgment by the trial court. *Keyser v Keyser,* 182 Mich App 268, 269-270; 451 NW2d 587 (1990). However, a trial court is not bound by the parties' stipulations or agreements regarding matters of custody or support of the children, and the court is free to exercise its discretion to decide such matters based on the best interest of the children. See *Bowman v Coleman,* 356 Mich 390, 392-393; 97 NW2d 118 (1959); *Lombardo v Lombardo,* 202 Mich App 151, 160; 507 NW2d 788 (1993); *Jones v Jones,* 132 Mich App 497, 500-502; 347 NW2d 756 (1984); *Kline, supra* at 72; *Puzzuoli v Puzzuoli,* 3 Mich App 594, 598; 143 NW2d 162 (1966). Therefore, the court was free to reject the parties' February 9, 1998 proposed settlement. Conversely, the court was not precluded from accepting the parties' new agreement regarding child support and incorporating it into the final judgment in this case. See *Koron v Melendy,* 207 Mich App 188, 191; 523 NW2d 870 (1994). As the party appealing the support provision, defendant had the burden of showing that the court abused its discretion in this regard. *Thompson v Merritt (Amended Opinion),* 192 Mich App 412 Mich App 412, 416; 481 NW2d 735 (1991). Defendant has not met this burden.

II.

Defendant next contends that the trial court abused its discretion in refusing to grant defendant overnight parenting time on Sundays where the court used an "across-the-board" policy not to allow overnight visitation preceding a school day. We again disagree.

We first note that, contrary to defendant's assertion that the trial court failed to make any findings of fact regarding defendant's request for overnight visitation with the children on Sundays, the court did specifically address this topic. In declining defendant's request for overnight visitation on Sundays, the court stated that it would be in the best interest of the young children to spend Sunday nights in the custodial household to promote structure and routine in their lives and to reacclimate them to the schedule for the week.

Second, the record reveals that the court did not fail to exercise its discretion in this case by applying an across-the-board policy not to allow overnight visitation preceding a school day. The phrase "across-the-board policy" connotes that no exceptions exist. See *Random House Webster's College Dictionary* (1991), p 13. The instant trial court, however, indicated that there are some exceptions to its general belief that children should remain in the same household the night before a school day. The court utilized such an exception by allowing defendant to have an overnight visitation preceding a school day once each week on alternating Tuesdays and Thursdays. Therefore, the court did not impose an "across-the-board policy" to deny overnight visitation on school nights.

The controlling factor in determining visitation rights is the best interests of the children. *Deal v Deal,* 197 Mich App 739, 742; 496 NW2d 403 (1993). Our review of this matter convinces us that the trial court appropriately considered the best interests of the children and did

not abuse its discretion in ordering that defendant's visitation on Sundays preceding a school day end at 6:00 p.m.

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Jane E. Markey

[1] The transcript of the August 4, 1998 trial reflects that defendant specifically testified that except as to the issue of Sunday night visitation, he and plaintiff had reached "full settlement of all issues," that the judgment of divorce had been prepared accordingly, and that defendant had reviewed the judgment of divorce and found it to be acceptable, with the sole issue regarding Sunday night visitation yet to be decided by the trial court.