IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:	)	
	)	DIVISION ONE
SUZANNE E. NEVAN,	)	
	)	No. 64322-3-I
Appellant,	)	
	)	
and	)	
	)	UNPUBLISHED OPINION
DANIEL M. CASEY,	)	
	)	
Respondent.	)	FILED: July 19, 2010
	)	

Dwyer, C.J. – Daniel Casey appeals the trial court's order establishing a parenting plan for the son he shares with Suzanne Nevan. Because Casey does not demonstrate that the trial court failed to properly consider the appropriate factors or otherwise abused its discretion, we affirm.

FACTS

Daniel Casey and Suzanne Nevan are the parents of Joseph Nevan-Casey, born June 15, 2002. Nevan has two other children from a previous marriage. Casey has a daughter from a previous marriage. Casey and Nevan married and began living together on January 24, 2004 and separated August 3, 2008. The parties agreed on a temporary residential schedule for Joseph pending trial. At trial on September 16, 2009, Casey and Nevan each sought to provide Joseph's primary residence.

Nevan represented herself at trial. She testified that she was "Joe's primary parent," that she was currently unemployed, that she had historically focused on raising her children rather than a career, and that she believed "it would be emotionally detrimental for Joe to be away from his mother." Nevan described Casey as a good father but claimed that he "struggles with communication skills." She also expressed concern about Casey's work schedule and his decision to leave his daughter and Joseph "unsupervised in front of the computer" in Casey's office in the basement of the retirement home where he works. Nevan did not call any other witnesses.

Casey also represented himself and testified on his own behalf. Casey testified that he taught Joseph to ride a bicycle, attended his sporting events, read to him, helped him with his homework, and spent time playing with Joseph and his friends. Casey also testified about the strong bond between his daughter and Joseph and admitted that he left the two of them in his office unsupervised while he attended meetings. Casey described his work schedule as flexible enough to allow him to go in late or come home early on the days the children were with him or to work from home if a child was sick. Casey testified that while they were living together, he cooked as many family meals as Nevan and he was responsible for the laundry. Casey described a number of incidents to demonstrate Nevan's strange moods and temper. Casey claimed that Joseph "has a problem separating from [Nevan] when it comes time to switch from one parent to the other" because he's "not sure of his relationship with his mom"

based on "the way [Nevan] reacts." Casey testified that he had been fully involved in Joseph's life since the marriage and believed that Joseph had a greater attachment to him than to Nevan. Casey did not call other witnesses.

The trial court determined that Joseph should reside primarily with Nevan and accepted her proposed residential schedule for the parenting plan. The trial court also included the following paragraph:

> 3.13 Other
> During scheduled residential time, respondent shall not take the child to his work for more than one hour per day. In the event that his services are required at work for more than an hour, respondent is obligated to obtain child care by a responsible individual 15 years old or older.

Casey filed a motion for reconsideration arguing that the trial court used an outdated version of RCW 26.09.187(3) and improperly applied a presumption in favor of the primary caregiver. In an order denying reconsideration, the trial court listed the following findings:

> The Court issued findings and a decree after hearing testimony. The Court applied the standards of RCW 26.09.187(3). And although the Court's up to date copy of the statute was in chambers, an older copy that contained language that has been deleted by the Legislature was inadvertently quoted by the Court in the courtroom. Respondent is correct in pointing out that a portion of the statute quoted is no longer a factor. The Court, however, did not rely on that portion of the statute which Respondent believes it did. The Court considered RCW 26.09.187(3)(i) and RCW 26.09.187(3)(ii) with greater weight given to RCW 26.09.187(3)(i).
>
> The parties had been operating under an informal agreement regarding the residential time for the child, without any court orders, from the time of separation through trial. The Petitioner's proposed parenting plan mirrored that with the exception of requesting additional time to the Respondent.
>
> The Court pointed out to the parties that neither party offered evidence of an evaluation, investigation or parenting recommendations from a guardian ad litem, therapist, parenting

> evaluator, psychologist or mental health expert showing which parent should be primary custodian. The parties only offered self serving statements. In light of the status quo parenting plan (which was by agreement) the mother's demonstrated showing that she has taken greater responsibility in performing parenting functions relating to the daily needs of the child and the court's determination regarding the relative strength, nature and stability of the child's relationship with each parent which the Court found to be strong for both parents but more favorably for the mother. The [Court] reconfirms [its] findings and decree.

Casey appeals.

ANALYSIS

We review a trial court's ruling dealing with the placement of a child for abuse of discretion. In re Marriage of Kovacs, 121 Wn.2d 795, 801, 854 P.2d 629 (1993). A court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). A decision is manifestly unreasonable "if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." Littlefield, 133 Wn.2d at 47. We do not review the trial court's credibility determinations or weigh conflicting evidence. In re Marriage of Rich, 80 Wn. App. 252, 259, 907 P.2d 1234 (1996).

RCW 26.09.187(3) requires a court establishing the residential schedule in a parenting plan to consider the following seven factors:

> (i) The relative strength, nature, and stability of the child's relationship with each parent;

> (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
>
> (iii) Each parent's past and potential for future performance of parenting functions as defined in RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
>
> (iv) The emotional needs and developmental level of the child;
>
> (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
>
> (vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and
>
> (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

The statute also provides, "Factor (i) shall be given the greatest weight."

Casey first contends that the trial court improperly applied a presumption in favor of the primary caregiver by relying on a previous version of RCW 26.09.187(3)(i). See Kovacs, 121 Wn.2d at 809 (chapter 26.09 RCW rejects any presumption in favor of the primary caregiver). He appears to contend that the statute no longer allows a trial court to consider whether a parent has taken greater responsibility for a child.

In 2007, the Legislature moved the phrase "including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child" from RCW 26.09.187(3)(i) to RCW 26.09.187(3)(iii). Compare Laws of 1989, ch. 375, § 10, with Laws of 2007, ch. 496, § 603. Although this language is no longer part of the factor that is to be "given the greatest weight," it is clearly still a factor to be considered.

Nothing in the record supports Casey's claim that the trial court

overlooked the strength, nature and stability of the parties' relationship with Joseph or presumed that Joseph should reside with his primary caregiver. The trial court acknowledged that both parents had a strong relationship with Joseph, but concluded that Nevan's relationship with Joseph was stronger. The only evidence presented at trial relevant to this factor was self serving testimony by each party describing his or her own beliefs and criticizing the other's parenting and communication skills. The trial court did not abuse its discretion by determining that Nevan's claims regarding the relative strength of her relationship with Joseph were more credible than Casey's claims to the contrary.

Casey next contends that the trial court violated RCW 29.09.191(5) by considering the residential schedule to which the parties agreed during their separation prior to trial. RCW 29.09.191(5) provides: "In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan." RCW 26.09.004(4) provides: "'Temporary parenting plan' means a plan for parenting of the child pending final resolution of any action for dissolution of marriage or domestic partnership, declaration of invalidity, or legal separation which is incorporated in a temporary order."

It is undisputed that the parties did not seek or obtain a temporary order incorporating a temporary parenting plan prior to trial. Instead, the parties agreed to a schedule in which Joseph resided primarily with Nevan and spent Monday evening, Wednesday overnight, and every other weekend with Casey. Casey does not contend that he did not enter this agreement knowingly and

voluntarily. And nothing in the record indicates that the trial court drew any presumption from the parties' agreement. Rather, the trial court properly considered the agreement as one of the necessary factors under RCW 26.09.187(3)(ii). Casey fails to demonstrate any abuse of discretion.

Casey next claims that the trial court erred by failing to enter findings explaining how its decision to adopt Nevan's proposed residential schedule and restrict Joseph's time at Casey's workplace under paragraph 3.13 serves Joseph's best interests and fosters his relationship with each parent as required by RCW 26.09.002.[1] But RCW 26.09.002 does not require any specific findings of fact. Where evidence regarding the statutory factors is before the court and its oral opinion and written findings reflect consideration of the statutory factors, specific findings are not required on each factor. In re Marriage of Croley, 91 Wn.2d 288, 291-92, 588 P.2d 738 (1978).

Here, our review of the record reveals that the trial court heard Nevan's concern and Casey's admission that Casey had a practice of leaving Joseph

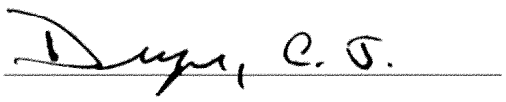
[1] RCW 26.09.002 provides the following policy statement:

> Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

unsupervised in his office at work, specifically considered each of the factors listed in RCW 26.09.187(3), and determined that Nevan's proposed residential schedule and paragraph 3.13 were in Joseph's best interests. Casey fails to demonstrate any abuse of discretion in the trial court's failure to enter written findings to more explicitly address the specific language of RCW 26.09.002.

Finally, Casey complains that the trial court failed to consider the parties' specific agreement that Joseph would be with his father at a minimum for all the time that Casey had his daughter with him. The record does not support this claim. Casey testified that he and Nevan told the children "that every effort was going to be made to keep the children in as much contact as possible." Nevan testified that she proposed Joseph's weekend time with Casey to begin Friday afternoon and end Monday morning to allow Joseph to have time alone with Casey as well as time with Casey's daughter, who spends time with Casey from Saturday afternoon to Monday evening. Under these circumstances, Casey fails to demonstrate that the trial court's decision to follow Nevan's proposal was outside the range of acceptable choices.

Affirmed.



We concur:

Cox, J.

Becker, J.