

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002454-MR

MIKE V. GLADDEN

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 98-CI-00057

KIMBERLY GLADDEN

APPELLEE

OPINION
REVERSING AND
REMANDING

** ** * * * * *

BEFORE: BARBER, DYCHE AND TACKETT, JUDGES.

BARBER, JUDGE: Appellant Mike Gladden and Appellee Kimberly Gladden are the parents of a son, age, eight years old. The parties separated when the child was three and continued to live in the same city. The parties agreed on joint custody of the minor child at the time of the dissolution of marriage.

Although the child resided in the mother's home, the custody arrangement provided for visitation with Mike Gladden several afternoons a week, and every other weekend, alternate holidays, and four weeks during the summer. The record shows that Mike

consistently exercised his visitation rights. Testimony at the hearing showed that the child was thriving on the visitation schedule, and that Mike was very involved in the child's schooling, helped him with homework, and performed regular parental duties for the child.

Two years later, Kimberly Gladden moved with the minor child to another city. Mike Gladden requested modification of the visitation agreement to permit him to see the child for an additional overnight a month, with the father delivering him to school the following morning in place of the previous several afternoons a week. The short period of time allotted to Mike for afternoon visits was unduly burdensome to Mike due to his distance from Kimberly's new home. Under Mike's proposed visitation schedule, he would see his son three weekends a month, and an afternoon or overnight a week. Kimberly Gladden objected to Mike's proposed modification, and requested that the court reduce Mike's visitation to two weekend visits a month, and one afternoon a week without a school night overnight, arguing that the child starting school was a substantial change in circumstances warranting a revision of the custody and visitation schedule. The trial court accepted Kimberly Gladden's proposed visitation schedule, which allowed Mike only two weekends per month, one afternoon a week without any overnight stay, and shortened his summer visitation with the child.

Kentucky law permits modification of a visitation agreement where modification serves the best interest of the

child. KRS 403.320(3). Modification may take place where there is a change in circumstance affecting the previous visitation schedule or the best interest of the child. Dull v. George, Ky. App., 982 S.W.2d 227, 229 (1998). A parent's visitation should not be restricted unless the visitation causes harm to the child. Kulas v. Kulas, Ky. App., 898 S.W.2d 529, 530 (1995). Parents should be allowed equal time with the child unless such a division of time is not in the best interest of the child. Jacobson v. Edelstein, Ky. App., 959 S.W.2d 781, 783 (1998). Mike Gladden argues that the parenting schedule he proposed was in the best interest of the child. The record shows that the changes to the visitation schedule proposed by Kimberly would substantially reduce the time Mike could spend with his son. Kimberly Gladden argued that she did not like the visitation schedule which had been in place since the dissolution, and that the child needed more time to "relax" in her home rather than spending that time with his father. There is no testimony in the record showing that more time with his mother, and less with his father is in the best interest of the child.

No evidence was presented showing that the child was upset or was not thriving under the visitation schedule already in place, or that the father's proposed change in the schedule to accommodate his inability to spend two afternoons a week with the child would be unreasonable. The trial court made no findings of fact in support of the modification of the visitation schedule. Where the parents have joint custody of a minor child, the trial court must make "an individualized

determination of reasonable visitation" Drury v. Drury, Ky. App., 32 S.W.3d 521, 524 (2000). Findings of fact must support any modification to the custody award. Bingham v. Bingham, Ky., 628 S.W.2d 628 (1982). No findings of fact support the reduction in visitation time made by the trial court.

In the present case the determination was made without findings of fact that reduced the time the father is able to spend with his son. The mother's argument that the child needed more time in her home is without support in the record, and not based on the proven best interest of the child. In light of the fact that the child appears to have an excellent relationship with both parents, reduction of the visitation time to the father is unsupported by any evidence. We reverse and remand this action to the trial court for a determination as to a visitation schedule that does not reduce time spent with the non-residential parent.

ALL CONCUR.

BRIEF FOR APPELLANT:

Julie Shadoan
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

Martha Blair Harrison
Bowling Green, Kentucky