

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001544-MR

RICHIE DAMRON

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE LARRY E. THOMPSON, JUDGE
ACTION NO. 95-CI-00061

JULIE ANN DAMRON, NOW MARSHALL

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, DYCHE, and JOHNSON, JUDGES.

DYCHE, JUDGE. The parties to this appeal were married on September 16, 1987; they separated December 26, 1994. Two children were born to the marriage, and it is the residence of those children which is the basis of this appeal.

The trial court entered Findings of Fact, Conclusions of Law, and a Supplemental Decree on September 5, 1996, which contained the following language:

The parties are awarded joint custody of Richard Damron and Bradley Damron but their primary residence will be with the Petitioner, the father, provided however that the father and the children are residing under the same roof for a substantial percentage of the time. Should such an arrangement cease, then the primary residence of the children will be vested with the Respondent.

On June 15, 2001, Julie Damron Marshall filed a verified motion to enforce the above-quoted portion of the supplemental decree, alleging in the motion that the two children had resided with their paternal grandparents during the 2000-2001 school year, and that the boys' father, Richie Damron, had spent no more than one weekend per month at his home with the boys.

The family court conducted hearings on the motion, and entered findings of fact, conclusions of law, and an order naming Julie as the primary physical custodian of the children. The court's findings included, "said children did not reside under the same roof as the Petitioner for a 'substantial percentage of the time.'" Richie now appeals. We affirm.

Richie makes one argument on appeal: That Julie cannot enforce her rights under the supplemental decree after such a length of time without showing that the change in physical custody is in the best interests of the children. He makes no argument that the finding that the children did not

spend the requisite amount of time with their father was in error.

As far as the argument that Julie has somehow relinquished or surrendered her rights under the supplemental decree due to the passage of time, we find no merit. The cases cited by Richie in support of this argument deal with a custody determination where the contestants are a parent or parents against non-parents. This relinquishment doctrine has no application in the present circumstances, and we are cited to no authority that the mere passage of time is sufficient to divest a parent of his/her rights under a valid decree.

As far as the "best interest" of the children, that was determined by the earlier order, and no appeal was taken from that finding. Nor has any evidence been introduced showing it to be incorrect.

The order of the Pike Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Lawrence R. Webster
Pikeville, Kentucky

BRIEF FOR APPELLEE:

John J. Davis, P.S.C.
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