

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

FILED
July 15, 1999
Cecil Crowson, Jr.
Appellate Court
Clerk

FRANCIS KEITH FARRIS,) C/A NO. 03A01-9807-CH-00231
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Plaintiff-Appellant,)
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v.) APPEAL AS OF RIGHT FROM THE
) McMINN COUNTY CHANCERY COURT
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)
RHONDA GAIL WATSON,)
) HONORABLE EARL H. HENLEY,
Defendant-Appellee.) CHANCELLOR

For Appellant

D. MITCHELL BRYANT
Cleveland, Tennessee

For Appellee

RANDY G. ROGERS
Cleveland, Tennessee

OPINION

AFFIRMED, AS MODIFIED
REMANDED

Susano, J.

In this post-divorce proceeding, the trial court, acting on the parties' competing petitions, modified an earlier custody order. The decree now before us leaves the appellee, Rhonda Gail Watson, formerly Farris ("Mother"), as the sole custodian of the parties' minor child, Blake Farris, age 12; but orders that "each party shall have the child...for a period of one week, said weeks to be alternated." Francis Keith Farris ("Father") appeals, contending that the evidence preponderates against the trial court's decision not to award him sole custody of Blake. Father also complains that the trial court erred in not modifying his \$90-per-week child support obligation.

Our review of this non-jury case is *de novo* upon the record of the proceedings below; however, that record comes to us with a presumption that the trial judge's factual findings are correct. Rule 13(d), T.R.A.P. We must honor this presumption unless we find that the evidence preponderates against those findings. *Id.*; **Hass v. Knighton**, 676 S.W.2d 554, 555 (Tenn. 1984).

Our *de novo* review is subject to the well-established principle that the trial judge is in the best position to assess the credibility of the witnesses; accordingly, such credibility determinations are entitled to great weight on appeal. **Massengale v. Massengale**, 915 S.W.2d 818, 819 (Tenn.App. 1995); **Bowman v. Bowman**, 836 S.W.2d 563, 566 (Tenn.App. 1991).

A trial court has broad discretion regarding a custody determination. **Brumit v. Brumit**, 948 S.W.2d 739, 740 (Tenn.App.

1997). We will not disturb such a determination unless the record reflects an abuse of that discretion. **Id.**

There are "[n]o hard and fast rules...for determining which custody and visitation arrangement will best serve a child's needs." **Gaskill v. Gaskill**, 936 S.W.2d 626, 630 (Tenn.App. 1996). A custody determination is "factually driven" and "requires the courts to carefully weigh numerous considerations." **Id.** The overriding consideration is the best interest of the child. **Id.** See also T.C.A. § 36-6-106 (Supp. 1998).

The trial court found that both parties had applied pressure on their child in an attempt to win his sole legal and physical custody. The court pointed out that the child had, at different times, written contradictory statements with respect to the identity of the parent with whom he wanted to live. The court stated that

the child has come in here, and depending upon who he is with, unfortunately, he has given statements against the other one...

The trial court went on to observe that "there's been more interference in this case than any I've had."

The court below was especially concerned about the child's grades in school -- particularly his failing grade in mathematics. Significantly, the child's grades had improved since November, 1997, when the trial court first decreed the

every-other-week arrangement on a temporary basis. In making that judgment, the trial court was influenced, at least in part, by the report of Adolphus H. Pelley, a licensed professional counselor, to whom the parties and their child had been referred by the court following a hearing on March 4, 1997. Dr. Pelley's report and recommendation, in part, are as follows:

I recommend that the custody not be changed. Although joint custody may not be an option, the loosest of arrangements be made wherein the father has as much involvement and say in the upbringing of the child be adhered to. Communications between the biological mother and biological father related to healthcare and academic issues be continuous. Blake will benefit from another visitation arrangement. My recommendation is as follows: Blake will alternate weeks with each parent.

The parties live six miles apart. While there is continuing animosity between them, the trial court found that each was genuinely concerned about the child's welfare. The trial court felt that both parents were in a position to nurture and care for their son.

Considering Dr. Pelley's report and recommendation, the genuine interest of both of the parents in the child's welfare, and the improvement in the child's grades since the every-other-week arrangement was first put into effect, we cannot say that the evidence preponderates against the trial court's decision in this case. See Rule 13(d), T.R.A.P.

Father's first issue is found adverse to him.

Father also argues that the trial court erred in requiring him to pay the same amount of child support as had been ordered by the court when he had standard visitation. He correctly points out that there was no evidence of his current wages.

In this case, the parties focused on the child's legal and physical custody, essentially to the exclusion of the associated economic issues. The only evidence regarding Father's wages was testimony that he had received a recent increase in pay. There was no testimony regarding his present net wages and no attempt to compare his present wages with the wages being earned by him when the \$90-per-week award was made.

We believe it is appropriate to remand this case so the trial court can receive evidence regarding the parties' wages and their respective obligations for the support of their child. See T.C.A. § 27-3-128. See also Tenn.Comp.R. & Regs., ch. 1240-2-4-.02(6). In the interest of justice, the trial court is directed to make any new child support arrangement prospective in nature only.

The judgment of the trial court, as modified, is affirmed. This case is remanded for such additional proceedings as may be necessary, consistent with this opinion. Costs on appeal are taxed one-half to each of the parties.

Charles D. Susano, Jr., J.

CONCUR:

Herschel P. Franks, J.

H. David Cate, Sp.J.