

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 24, 2014 Session

IN RE BLAKLYN M.

**Appeal from the Juvenile Court for Sumner County
No. 2013JV505 Barry R. Brown, Judge**

No. M2014-00503-COA-R3-JV - Filed February 24, 2015

Father who filed petition to establish visitation with his child appeals the award of parenting time, contending that the parenting plan does not maximize his participation in the child's life. Finding that the evidence preponderates against the parenting schedule ordered by the Court, we reverse the judgment and remand for the adoption of a plan that increases Father's residential parenting time.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Reversed;
Case Remanded**

RICHARD H. DINKINS, J., delivered the opinion of the court, in which ANDY D. BENNETT and W. NEAL MCBRAYER, JJ., joined.

Amanda Raye Thornton, Nashville, Tennessee, for the appellant, Roy M.

Thomas Jay Martin, Gallatin, Tennessee, for the appellee, Krissy G.

OPINION

This appeal arises out of a Petition filed on July 17, 2013, in the Sumner County Juvenile Court by Roy M. ("Father") seeking visitation with his child, Blaklyn M., born in March 2013. On September 5 the court entered a Temporary Agreed Order, *inter alia*, declaring Father to be the biological father of Blaklyn, granting him parenting time from 12:00 noon until 6:00 p.m. on Saturdays and such additional parenting time as might be agreed upon pending further order of the court, and appointing CASA to investigate and make a report to the court.

The case was heard on January 29, 2014, at which time Father, Mother, and a representative of CASA testified. The court ruled from the bench, awarding Father parenting time as follows: from 10:00 a.m. until 6:00 p.m. on alternate Saturdays and Sundays beginning February 8 for four visitation periods; from Saturday at 10:00 a.m. to Sunday at 6:00 p.m. on alternate weekends for four visitation periods; every other weekend from 6:00 p.m. Friday to 6:00 p.m. Sunday; each Tuesday from 4:00 p.m. to 7:00 p.m. beginning February 11. The court also directed that parenting time during major holidays would be alternated and that Father would have one week of parenting time during the summer of 2014, two weeks during the summer of 2015 and three weeks in 2016. The ruling was memorialized in the final order entered on February 14, 2014.

Father appeals, contending that the parenting schedule does not provide him the maximum amount of parenting time and that the record “supports a more balanced parenting schedule.”

DISCUSSION

Custody determinations, residential schedules, and parenting responsibility decisions are within the broad discretion of the trial judge; accordingly, we review those decisions under an abuse of discretion standard. *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001) (citing *Suttles v. Suttles*, 748 S.W.2d 427, 429 (Tenn. 1988)). An abuse of discretion occurs when the trial court “applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.” *Id.* We review the trial court’s factual findings *de novo* upon the record, accompanied by a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). When the trial court does not make specific findings of fact, we review the record to determine where the preponderance of the evidence lies. *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997).

Tenn. Code Ann. §§ 36-6-106 and 36-6-404, respectively, set forth factors that a court is to take into account in making a custody arrangement involving a minor child and in designing a permanent parenting plan in a suit for divorce or legal separation. Tenn. Code Ann. §36-6-106(a) mandates that any such determination be made in the best interest of the child and provides:

In taking into account the child’s best interest, the court shall order a custody arrangement that permits both parents to enjoy the maximum participation in

the life of the child consistent with the factors set forth in this subsection (a)^[1], the location of the residences of the parents, the child's need for stability and all other relevant factors.

Tenn. Code Ann. § 36-6-404(b) requires that a final decree incorporate a permanent parenting plan, defined in § 36-6-402(3) as “a written plan for the parenting and best interests of the child, including the allocation of parental responsibilities and the establishment of a residential schedule, as well as an award of child support consistent with chapter 5 of this title.” With respect to the crafting of parenting plans, § 36-6-404(b) requires that each plan include a residential schedule which, *inter alia*, “encourage[s] each parent to maintain a loving, stable and nurturing relationship with the child.”²

The trial court did not make specific findings of fact or state the statutory factors upon which it relied in setting the parenting time schedule; in its oral ruling, also memorialized in the final order, the court stated only:

Let me tell you why I am doing this, sir. You got to - - you go to work at six o'clock. I hate when a child has to get up at 4:30 or whatever or - - whatever and get over there, and you don't have any time with the baby.

The absence of findings by the court impedes our review of the order. The court did not express any reservations or concerns other than that quoted; of significance to this court is the court's observation that “both parties are honest, caring and loving people. The Court finds that both parties are good people that should be able to work between themselves. Further, the Court acknowledges that the Father is a good man and a good father and the Mother is a good lady and a good mother.”

In the absence of such findings, we have reviewed the testimony of the parents as well as the representative from CASA and conclude that the evidence preponderates against the parenting time schedule adopted by the court. The reason given by the court is, standing

¹ At the time the court entered the order under review §36-6-106(a) included a list of ten specific factors to be considered by the court. By Ch. 617 Pub. Acts of 2014, effective July 1, 2014, §36-6-106(a) was amended by replacing the ten factors with a new list of fifteen factors.

² At the time the court entered the order under review, the statute also set forth a list of sixteen factors to be considered in setting the residential schedule. By Ch. 617 Pub. Acts of 2014, §36-6-404(b) was amended by replacing the list of sixteen factors with language directing the court to consider the fifteen factors at §36-6-106(a) when determining the residential schedule and designating the primary residential parent.

alone, insufficient justification to limit Father’s parenting time, particularly at times when Father is not at work. In addition, we fail to see any justification for limiting Father’s continuous parenting time during the summer months in the manner ordered.

We therefore reverse the residential parenting schedule and remand the case for the court to adopt a schedule that affords Father more parenting time, considering that Tenn. Code Ann. § 36-6-106(a) “favors a parenting schedule that gives each parent the maximum amount of time in accordance with the child’s best interests.” *Strickland v. Strickland*, No. M2012-00603-COA-R3-CV, 2012 WL 6697296 at *14 (Tenn. Ct. App. Dec. 21, 2012).³

RICHARD H. DINKINS, JUDGE

³ We note also that Ch. 617 Pub. Acts of 2014 added the following to §36-6-106 as subsection (a)(14): “Each parent’s employment schedule, and the court may make accommodations consistent with those schedules.”