

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

N.H. v. J.E.T.

66 So. 3d 1056 (Fla. Dist. Ct. App. 2011) · Decided August 3, 2011

SUMMARY

The Florida Second District Court of Appeal reviewed a final judgment establishing paternity and ordering shared parental responsibility with weekly rotating custody. The court found no abuse of discretion in denying a right of first refusal but remanded for correction of the mother's residential address in the parenting plan and custody-exchange provisions.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	LaRose, J.; Silberman, C.J.; Crenshaw, J.
JURISDICTION	Florida
DECIDED	August 3, 2011
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	N.H. appealed a final judgment establishing paternity and a parenting plan that provided for weekly rotating custody and identified an incorrect residential address for custody exchanges and the center of a fifty-mile relocation radius.
STANDARD OF REVIEW	Abuse of discretion for the trial court's custody and parenting-plan decisions; competent, substantial evidence supports the trial court's factual finding regarding the child's best interests.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	N.H. v. J.E.T.

TOPICS

child custody paternity family law procedure appellate procedure standard of review

PRACTICE AREAS

family law child custody paternity appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by adopting weekly rotating custody without giving N.H. a right of first refusal when the father's work schedule might affect his parenting time.
2. Whether the trial court erred in denying relief from judgment based on the incorrect residential address specified in the parenting plan.

HOLDINGS

1. The trial court did not abuse its discretion in adopting shared parental responsibility and a weekly rotating-custody parenting plan without providing N.H. a right of first refusal.
2. The trial court erred by designating N.H.'s former Winter Haven residence rather than her Lakeland residence in the parenting plan, and remand was necessary to correct the address.

KEY QUOTATIONS

"The child's best interests will be served by shared parental responsibility and the trial court's parenting plan." (66 So. 3d at 1056)

"Thus, we reverse and remand for the trial court to make the necessary correction to N.H.'s address." (66 So. 3d at 1056)

FACTUAL BACKGROUND

The trial court established paternity and adopted a parenting plan providing for weekly rotating custody between the mother, N.H., and the father, J.E.T. N.H. sought a right of first refusal if the father's work schedule affected his parenting time, but the plan permitted temporary modification only when both parents agreed in writing. The parenting plan also identified N.H.'s former Winter Haven residence as the custody-exchange location and the center of a fifty-mile relocation radius, although unrefuted evidence showed that her residence was in Lakeland.

PROCEDURAL HISTORY

The trial court entered a final judgment establishing paternity, finding shared parental responsibility to be in the child's best interest, and adopting a parenting plan with weekly rotating custody. N.H. challenged the absence of a right of first refusal if the father's work schedule interfered with his parenting time and sought relief from judgment based on the incorrect address in the parenting plan. The district court affirmed the judgment in all respects except the address issue and remanded for correction.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must correct N.H.'s address in the parenting plan.

CASES CITED

- Hudson-McCann v. McCann, 8 So. 3d 1228, 1229 (Fla. 5th DCA 2009)

OPINION

LAROSE, J.

LaROSE, Judge. N.H., the mother, appeals a final judgment establishing paternity. She argues that the trial court abused its discretion in ordering weekly rotating custody for her son with the father, J.E.T., without providing her a right of first refusal to have custody should the father encounter work schedule conflicts. She also argues that the trial court abused its discretion in denying her motion for relief from judgment where the judgment specified an incorrect residential address where the parties would exchange custody of the child.

That address also served as the center of the parents' fifty-mile radius within which each could move without further court order. We affirm the final judgment in all respects, except for concluding that remand is necessary to correct N.H.'s address.

The trial court, in its discretion, found shared parental responsibility to be in the child's best interest. See § 61.13(2)(b), (3), Fla. Stat. (2010). Competent, substantial evidence supports that finding. See *Hudson-McCann v. McCann*, 8 So.3d 1228, 1229 (Fla. 5th DCA 2009). N.H. argues that the trial court failed to give her a right of first refusal to custody in those instances where the father's work schedule might affect his time with the son.

We see no abuse of discretion by the trial court. The parenting plan allows for modification on a temporary basis when both parents agree in writing; when they do not agree, the parenting plan remains in effect. The child's best interests will be served by shared parental responsibility and the trial court's parenting plan. N.H. also argues that the trial court erred in designating her former Winter Haven residence in the parenting plan.

The unrefuted evidence before the trial court showed Lakeland as N.H.'s residence. Thus, we reverse and remand for the trial court to make the necessary correction to N.H.'s address. Affirmed in part, reversed in part, and remanded with directions. SILBERMAN, C.J., and CRENSHAW, J., Concur.