

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-363

MARCH TERM, 2003

Joy Karnes	}	APPEALED FROM:
	}	
	}	Chittenden Family Court
	}	
v.	}	
	}	DOCKET NO. 579-7-00Cndm
	}	
Thomas Karnes	}	Trial Judge: David Jenkins
	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

In this divorce action, husband Thomas Karnes (Thomas) appeals from the court's final divorce order. He argues that the trial court erred by: (1) failing to unbundle legal rights and responsibilities sufficient to afford the children the opportunity for maximum continuing physical and emotional contact with both parents; (2) failing to award him sufficient parent-child contact; and (3) awarding him an unfair share of the marital assets. Wife Joy Karnes (Joy) cross-appeals, arguing that the trial court erred in unilaterally modifying its final order to increase Thomas's summer contact with the children from four weeks to "not less than six weeks." We vacate the court's modification of the summer contact award and affirm the remainder of the order.

The parties were married in October 1991 and had two children together, one born in 1993 and the second in 1995. The parties met while Joy was in law school. Joy is now a licensed attorney and the principal of O' Cieran & Middlebrook, Inc. (OCM), a U.C.C. filing company that services the ski industry and others in filing U.C.C. liens. Thomas is a credit manager for Rossignol Ski Company. Both work full-time. Joy is thirty-seven years old and Thomas is fifty-two years old.

Joy filed for divorce in July 2000. While the divorce was pending, the parties entered into a stipulated agreement to share legal and physical parental rights and responsibilities over their minor children. Under this agreement, Thomas had regular parent-child contact every other weekend and on Tuesday and Wednesday nights on alternating weeks.

In July 2002, the court granted the parties a divorce. The court awarded sole legal and physical responsibilities to Joy but ordered her to inform, confer, and consult with Thomas concerning non-emergency medical and educational decisions relating to the children. The court awarded Thomas contact with the children every other weekend and on alternate Tuesday nights. In its initial order, the court also awarded Thomas four weeks with the children during the summer.

The court distributed the marital property as follows. Joy received the marital residence with net equity of \$55,000, she retained ownership of OCM and her law practice, which the court found had a combined income value between \$135,000 and \$150,000, and she received her jewelry worth \$20,000. Thomas received his car worth \$13,500, a one-half interest in an inherited parcel of land in Maine worth \$5,000, his 401(k), worth \$21,357.26, a \$25,000 property settlement from Joy payable over four years at 10% interest, and stock worth approximately \$731. The court also divided the parties' debts. It ordered Thomas to repay a \$25,000 loan he had taken out for a business investment and a post-separation loan of \$14,000 that had been secured with the Pontiac GTO. The court ordered Joy to repay her student

loans of \$39,000, an undocumented debt to her mother of approximately \$19,000, and the \$25,000 property settlement to Thomas. The trial court concluded that the property interests and liabilities, as awarded, were " about equal."

After judgment was entered on July 16, 2002, Joy filed a motion to amend, asking the court, among other things, to require Thomas to notify her by May 1st as to which four weeks of summer vacation he intended to have the children. Thomas objected and requested that he have until June 1st to notify Joy of his summer plans. The court issued an entry order on July 31, 2002, which clarified several other issues but did not address the summer contact issue. Thomas then filed a motion to amend asking the court to revise its valuation of his vehicle. The court issued a second entry order granting Thomas' s request and requesting that the parties work out their visitation/contact issues. If not, the court explained, it would " further define visitation/contact." After the parties informed the court that they could not reach an agreement, the court issued a Supplemental/Amendment to Judgment Order as to Parental Contact. In its order, the court resolved two other outstanding visitation issues and stated that Thomas' s summer contact with the children would be " not less than six weeks."

On appeal, Thomas argues that the court erred in refusing to " unbundle" the legal rights and responsibilities for the children and award him decision making authority for educational and/or religious upbringing matters. We find this argument without merit. When parents cannot agree to joint custody, the trial court " must award primary (or sole) parental rights and responsibilities to one parent." Cabot v. Cabot, 166 Vt. 485, 493 (1997). While we have recognized that under certain circumstances a court may divide discrete legal responsibilities, see Shea v. Metcalf, 167 Vt. 494 (1998), the court is under no obligation to do so. The award must be based on the best interests of the child and the court must take all relevant evidence into consideration, including factors set forth statutorily. See 15 V.S.A. § 665(b); Gilbert v. Gilbert, 163 Vt. 549, 553 (1995). In this case, the court awarded Joy sole physical and legal parental rights and responsibilities over the minor children after concluding that it was in the children' s best interests to remain with their mother. The court made numerous factual findings that support this conclusion. Although Thomas testified that he wanted the court to award him decision making authority in the areas of education and religion, he conceded that he was not more qualified than Joy to exercise these legal rights and responsibilities. There is no evidence to suggest that " unbundling" legal rights and responsibilities would be in the children' s best interests. We therefore conclude that the court did not err in declining to do so. See Cabot, 166 Vt. at 495 (court has " broad discretion to craft parental rights and responsibilities orders that serve the best interests of children").

Thomas next argues that the court abused its discretion by awarding him a more restrictive parent-child contact schedule than had been in place prior to the parties' divorce. We disagree. Trial courts have broad discretion in determining what course of action is in a child' s best interests. Myott v. Myott, 149 Vt. 573, 578 (1988). The pattern of visitation adopted will not be reversed unless the court' s discretion " was exercised upon unfounded considerations or to an extent clearly unreasonable upon the facts presented." Cleverly v. Cleverly, 151 Vt. 351, 355-56 (1989) (citation omitted). Here, the court awarded Thomas contact with the children every other weekend, on Tuesday nights on alternating weeks, on alternating holidays, and for four weeks during the summer. This award was well within its discretion. The court found that Thomas lives in the Montpelier area, while the children live in Williston. Thus a weekday commute is required for the evenings that the children stay with Thomas. The court found that there was a great deal of bitterness between the parties. Joy asserted that the two night per week schedule previously in place was " too much for the children." She stated that the children were " stressed by the multiple transitions" and subjected to frequent arguments between the parties. In light of these and other factors, we cannot find that the court exercised its discretion in a " clearly unreasonable" way in setting Thomas' s visitation schedule.

Finally, Thomas argues that the trial court erred by awarding Joy a vastly disproportionate share of the marital estate. Thomas maintains that, although the court considered the statutory factors governing distribution of the marital estate, the court' s conclusions do not support its award. We disagree. Division of marital property is governed by 15 V.S.A. § 751, which grants the court authority to " equitably divide and assign the property" and sets out a number of factors that the court may consider in making its decision. See Cabot, 166 Vt. at 500. The trial court has broad discretion to consider the statutory factors and to fashion an appropriate order but it must provide a clear statement as to what was decided and why. Id. We have noted that the distribution of property is not an exact science and, therefore, all that is required is that the distribution be equitable. Lalumiere v. Lalumiere, 149 Vt. 469, 471 (1988). Here, the court explicitly stated its findings and the reasons behind them. We find no abuse of discretion in the court' s distribution of the marital assets.

In her cross-appeal, Joy maintains that the court erred by unilaterally modifying its final order to increase Thomas' s summer contact with the children from four weeks to six weeks. We agree. While the court has broad discretion to determine what course of action is in a child' s best interests, Myott, 149 Vt. at 578, we will reverse if the court' s discretion " was exercised upon unfounded considerations or to an extent clearly unreasonable upon the facts presented." Cleverly, 151 Vt. at 355-56. In this case, the court awarded Thomas four weeks with the children during the summer in its July 12, 2002 final judgment order. Both parties filed motions to amend the judgment but neither requested a change in the duration of the summer contact period. The parties' only post-judgment dispute involving the summer contact period was the date by which Thomas needed to notify Joy about his summer plans. On August 21, 2002, the court issued a " Supplemental/Amendment to Judgment Order as to Parental Contact," which resolved the notification dispute and stated that Thomas' s summer contact with the children would " be not less than six weeks which may be consecutive or not as [Thomas] determines." The court offered no findings to support the modification of its earlier award and we cannot determine the basis on which the court exercised its discretion. We therefore vacate the court' s modification of Thomas' s summer vacation award and remand this case for further proceedings to determine the length of this summer contact award.

Affirmed in part and vacated and remanded as to the modified summer vacation award.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice