

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 CU 0325

MICHELLE BOUDREAU

VERSUS

JACQUES N. LEBLANC

Judgment Rendered: June 8, 2007.

On Appeal from the
32nd Judicial District Court,
In and for the Parish of Terrebonne,
State of Louisiana
Trial Court No. 147,688

Honorable David Arceneaux, Judge Presiding

Jerri Smitko
Houma, LA

Attorney for Plaintiff/Appellant,
Jacques N. LeBlanc

Paul Lapeyrouse
Chauvin, LA

Attorney for Defendant/Appellee,
Michelle Boudreaux

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

McDonald, J. dissents and assigns reasons.

CARTER, C. J.

After ending their relationship, Michelle Boudreaux and Jacques LeBlanc requested that the trial court order a custodial arrangement for their twin seven-year-old boys. The parties stipulated to joint custody. After a hearing at which both parties testified, the trial court found it to be in the best interest of the children for Boudreaux to be domiciliary parent and for LeBlanc to exercise physical custody every other weekend and every Sunday evening. The trial court entered a judgment to that effect, including provisions that the summer be divided evenly and for holidays to be divided.¹ LeBlanc now appeals contending the trial court erred in failing to award the parties equal physical custody of the children.²

The paramount consideration in any determination of child custody is the best interest of the children. Each child custody case must be viewed in light of its own particular set of facts and circumstances. The trial court is vested with vast discretion in matters of child custody and visitation, and its determination is entitled to great weight and will not be disturbed on appeal unless a clear showing of abuse of its discretion is made. **Stephens v. Stephens**, 02-0402 (La. App. 1 Cir. 6/21/02), 822 So.2d 770, 774.

A fifty-fifty shared physical custody arrangement can only be implemented when it is both feasible and in the best interest of the children. **Stephens**, 822 So.2d at 778. Here, the trial court determined that the arrangement it implemented, with primary physical custody awarded to the mother, as opposed to a fifty-fifty arrangement is in these children's best

¹ The trial court's judgment also makes awards regarding incidental matters including insurance coverage and the right to claim the federal income tax deduction.

² Both parties petitioned the trial court for a custodial order. LeBlanc's petition requested an order for the parties to equally share custody on a 7/7 basis.

interests. The record before us does not reveal that the trial court clearly abused its discretion in implementing the custody arrangement set forth in the judgment. Accordingly, it will not be disturbed on appeal.

Considering the foregoing, the judgment appealed from is affirmed in accordance with URCA Rule 2-16.1.B. Costs of this appeal are assessed to Jacques LeBlanc.

AFFIRMED.

MICHELLE BOUDREAU

STATE OF LOUISIANA

COURT OF APPEAL


VS.

FIRST CIRCUIT

JACQUES LEBLANC

2007 CU 0325

McDONALD, J. DISSENTS:



I do not agree with the majority opinion because I believe the trial court committed legal error. LeBlanc asserts, and I agree, that the primary consideration in a determination of custody is the best interest of the children. *Evans v. Lungrin*, 97-0541, 97-0577 (La. 2/6/98), 708 So.2d 731, 740. Further, that each child custody case must be viewed in light of its own particular set of facts and circumstances, and that the trial court is vested with vast discretion in matters of child custody and visitation, and its determination is entitled to great weight and will not be disturbed on appeal unless a clear showing of abuse of its discretion is made. *Stephens v. Stephens*, 2002-0402 (La. App. 1st Cir. 6/21/02), 822 So.2d 770, 774.

LeBlanc contends, however, that the trial court decision in this case was based on the belief that the children benefit from the consistency of living in one home, without due regard for the legal mandate that equal sharing be ordered when it is feasible and in the best interest of the children. My review of the record confirms this contention. It is not correct, as asserted by Boudreaux, “that there is no statutory preference for equal time custody and that there is a jurisprudential preference for minor children to live with one parent (usually the mother) and visit the other.”

The legislature has mandated that in a proceeding in which joint custody is decreed, the court shall render a joint custody implementation order that allocates the time periods during which each parent shall have physical custody of the child(ren) so that the child(ren) is(are) assured of

frequent and continuing contact with both parents. La. R.S. 9:335 A (1), (2)(a). The statute further provides that to the extent it is feasible and in the best interest of the child(ren), physical custody should be shared equally. La. R.S. 9:335A. (2)(b). The physical custody award in the judgment of the trial court in this matter, awarding custody of the minor children to their father only four days and nights, and two additional nights of the month for nine months of the year fails to conform to this law.

After careful review of the record, I find no facts that support a finding that it is not feasible or not in the best interest of the children that physical custody be shared equally. The facts contained in this record support equal sharing. There are no facts that support a decision that one parent rather than the other is able to provide a more suitable home environment or possesses superior parenting skills. The parents are not separated by distances that prohibit an easy exchange of the children between the respective households, and the children will be able to remain in the same school. Boudreaux's work schedule is 10 hours a day, four days a week. This requires her to leave home in the morning at around 6:00 in order to arrive timely at work, which is approximately 45 miles away. The boys are brought to a baby sitter for breakfast and the baby sitter sees them off to school. Leblanc's work schedule allows him to care for the boys in the morning and put them directly on the school bus.

The basis for the trial court's custody award was its belief that "there are some things that children should be able to take for granted," and that it is important that after school, supper, and homework be done in a "particular single place." One can argue that the trial court decision was based on a belief that the custody order was in the best interest of the children.

However, the judge did not articulate this as a legal basis for his decision. More importantly, there is absolutely no evidentiary basis for the decision.

The law expresses a legislative preference for equal sharing when feasible and absent any detriment to the children. I believe that a decision by a trial court that substantially deviates from an equal sharing custody plan requires an evidentiary basis that supports a determination that it is not feasible or not in the best interests of the children.

Custody awards are particularly fact-sensitive, and the trial court is best able to observe the demeanor of the witnesses and weigh the evidence with due regard for any intangibles, difficult for a record to disclose, that may contribute to its decision. However, in this case the trial court made no factual findings that support its decision to deviate so substantially from an equal physical custody sharing order. Indeed, the trial court found both parents to be exemplary people and equally dedicated to the best interest of their children.

I note that the trial court emphasized that this order only set out the time periods of physical custody that were minimally required, and expressed its belief that the parents would do what was in the best interest of the children, which suggests a recognition that more frequent contact by the boys with their father is in their best interest. However, under the facts disclosed by the record, I am not confident that their boys' father will be allowed to have more frequent custody than the order imposes.

It is clear that Boudreaux and LeBlanc's ability to agree on issues concerning the children is deteriorating. Boudreaux has prohibited the boys from being picked up from the baby-sitter by their father, which the trial court found to be unreasonable; I agree. Further, on a weekend when she had plans to go out of town with a friend, Boudreaux left the children with

her parents rather than their father. Of course there is no way of knowing whether their father declined to care for them that weekend. However, in light of Boudreaux's testimony that LeBlanc was consistently there for the children, would drop "whatever he was doing," and never turned down an opportunity to be with them, I find it unlikely. I do not in any way suggest that this action of Boudreaux's was in derogation of her duty as a parent. But it does bolster my concern that Boudreaux may not extend the boys' visitation with their father beyond that ordered by the court.

Based on my finding that equal sharing of physical custody is feasible, and absent any evidence that it is not in the children's best interest, I believe the award of physical custody in the judgment appealed is legal error and must be reversed.