

**In the Matter of the MARRIAGE OF Louann Marie AUSTIN, Appellee,
and
Timothy Ray AUSTIN, Appellant.
No. 91,222.
Court of Appeals of Kansas
April 2, 2004**

Editorial Note:

This case does not have precedential value under Kansas supreme court rule 7.04 (f) and may only be cited as persuasive authority on a material issue not addressed by a published Kansas appellate court decision.

Appeal from Sedgwick District Court; David Kaufman, judge. Opinion filed April 2, 2004. Affirmed.

F.C." Rick" Davis, II, of Davis & Jack, L.L.C., of Wichita, for appellant.

Susan Ellis, of Bonwell, Foster, Borniger & Ellis, of Wichita, for appellee.

Before RULON, C.J., GREENE, J., and ROGG, S.J.

MEMORANDUM OPINION

PER CURIAM.

Respondent Timothy Ray Austin appeals the district court's order granting petitioner Louann Marie Austin primary residential custody of the parties' three children and allowing petitioner to move with the children to the Topeka area. Respondent argues the court abused its discretion in approving the move and rejecting his request for shared custody. Specifically, respondent claims the court failed to consider the wishes of the children.

"When the custody issue lies only between the parents, the paramount consideration of the court is the welfare and best interests of the child. The trial court is in the best position to make the inquiry and determination, and in the absence of abuse of sound judicial discretion, its judgment will not be disturbed on appeal. [Citations omitted.]" *In re Marriage of Whipp*, 265 Kan. 500, 506, 962 P.2d 1058 (1998). Discretion is abused when no reasonable person would take the view adopted by the trial court. *Smith v. Printup*, 262 Kan. 587, 592, 938 P.2d 1261 (1997).

K.S.A.2003 Supp. 60-1610(a)(3) provides that the court shall determine custody or residency in accordance with the best interests of the child. K.S.A.2003 Supp. 60-1610(a)(3)(B) provides a nonexclusive list of factors the court is to consider in making custody determinations.

After reading the record on appeal as well as the briefs of both parties, we conclude the district court did consider all relevant factors in making its decision. The testimony indicates both parties care about their children and want what is best for them. However, the court found that it would be in the best interest of the children if petitioner remained their primary caregiver. Given petitioner's circumstances and her desire to move to the Topeka area to be closer to her family and a support structure for the children, the court decided to permit petitioner's move.

We understand the respondent's parenting plan for shared custody would require the petitioner to remain in Wichita where she had little if any support from anyone other than respondent. We further understand that respondent did not request that he be given primary residential custody.

We disagree with respondent's assertion the district court failed to take the children's wishes into account. The court heard testimony from both parties as to what views any of the children had concerning

moving to Topeka. The court's decision was made based on all of the evidence presented and there is no requirement that the court specifically mention each statutory factor.

Affirmed.