

NOT DESIGNATED FOR PUBLICATION

No. 98,109

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

JENNIFER MALAN, f/k/a JENNIFER PACKARD,
Appellee,

and

SCOTT PACKARD,
Appellant.

MEMORANDUM OPINION

Appeal from Cherokee District Court; A.J. WACHTER, JR., judge. Opinion filed
October 19, 2007. Affirmed.

Edward J. Battitori, of Meek & Battitori, of Baxter Springs, for appellant.

Robert L. Farmer, of Nuss & Farmer, P.A., of Fort Scott, for appellee.

Before MARQUARDT, P.J., BUSER, J., and LARSON, S.J.

Per Curiam: Scott Packard appeals the trial court's child support and visitation orders.

We affirm.

Scott and Jennifer were married in 2002 and have one child. Jennifer filed for divorce in October 2005. The divorce decree was filed in February 2006; however, the issues relating to child custody were bifurcated and decided at a later date.

At the time the divorce decree was filed, Jennifer was living in Pittsburg and working in Carl Junction, Missouri, while Scott continued to reside in the family home in Chetopa. The two residences are located approximately 50 miles from each other. Prior to the final hearing on custody and visitation, the couple split their time with the child as follows: The first 2 weeks of the month, Jennifer dropped the child off at 5 p.m. at Scott's on Thursday and picked him up at 5 p.m. on Monday. The 3rd week of the month, Jennifer dropped the child off at 5 p.m. on Thursday and picked him up at noon on Sunday. The final week of the month, Jennifer dropped him off at 5 p.m. on Thursday and picked him up at 5 p.m. on Friday. Jennifer testified that this parenting schedule was supposed to be temporary.

At the hearing to settle child custody and visitation in late December 2006, Jennifer asked to be named primary residential parent, with Scott having visitation every other weekend and on alternating Wednesday nights. Scott wanted to keep things essentially the

way they were, although he agreed to be flexible on some of his visits so that Jennifer could have more quality weekend time with the child.

The trial court determined that both parents were capable and loving; however, it determined that the shared custody arrangement resulted in a lack of a permanent home and would create problems when the child started school. The trial court also noted that in Kansas, shared custody is generally disfavored. For those reasons, the trial court adopted Jennifer's parenting plan, with the addition of Scott having 8 consecutive weeks during the summer. The trial court also ordered Scott to maintain dental and health insurance coverage for the child. Scott timely appeals.

Scott contends that the shared custody schedule was not detrimental to the child. Scott believes the trial court had a duty to look at the facts of the case and determine the child's best interests. Scott also contends that the trial court used the child starting school in the future as a material change in circumstance for an immediate change in the parenting plan.

When the custody issue is between 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. In the absence of an abuse of sound judicial discretion, the trial court's judgment will not be disturbed on appeal. *In re Marriage of Rayman*, 273 Kan.

996, 999, 47 P.3d 413 (2002).

In Kansas a court may change a prior custody order upon a showing of a material change in circumstances. The prior custody order may be a parenting plan which was agreed to by the parents. *In re Marriage of Nelson*, 34 Kan. App. 2d 879, 887, 125 P.3d 1081 (2006). In this case, there is no prior custody order from the trial court. The only mention of visitation was Jennifer's testimony that the plan was temporary; Scott never denied this assertion.

An appellant has the duty to designate a record sufficient to establish the claimed error. Without an adequate record, the claim of alleged error fails. *State ex rel. Stovall v. Alivio*, 275 Kan. 169, 172, 61 P.3d 687 (2003). Given the lack of documentation, we have only Jennifer's uncontroverted testimony that the shared custody was a temporary plan. Jennifer need not prove a material change in circumstances to modify a temporary parenting plan. Rather, the plan entered by the trial court was essentially the first formal plan for this family. Given that fact, we must determine whether the order entered by the trial court was an abuse of discretion.

Our appellate courts have recognized that while trial courts have the power to decide custody between parents, it is generally agreed that shared custody should be avoided

whenever reasonably possible. It is thought that frequent shifting from one home environment to another could easily be detrimental to the emotional and physical well-being of any child. *In re A.F.*, 13 Kan. App. 2d 232, 237, 767 P.2d 846 (1989).

In the instant case, the temporary custody arrangement required the child to be in transit for approximately an hour during each frequent transfer between the parents. Jennifer had very little weekend time with the child, which meant that Scott had much more free time with the child. Scott admitted that he got more "quality" time with the child under the temporary schedule.

Further, Jennifer is a school teacher and generally keeps the same schedule as the child. She currently lives with her parents, so the child would not need a babysitter during the day. Scott is chief of security at the correctional facility in Labette Correctional Camp. His position requires him to be on call 1 week during the month. If he is called during that call week, he has to report to the facility. If Scott has the child and needs to go to work, the child stays with Scott's mother, who lives approximately 3 miles from Scott's home.

We have no doubt that both Jennifer and Scott are capable and loving parents. However, there is an advantage to the child having a primary home with stability. We do not believe that the trial court's final custody order was an abuse of discretion. The record on

appeal indicates that the trial court made its decision based on the best interests of the child.

When the trial court entered its custody and visitation order, it also required Scott to maintain health and dental insurance for the child, provided it is available through his work. Scott argues that the trial court erred when it ordered him to pay the child's health insurance. He claims that Jennifer had been paying it and neither party requested modification of that arrangement. Jennifer testified at the hearing that she was providing health insurance for the child. Scott testified that he was originally paying for the child's health insurance. This meant that for some period of time, both parents paid for health insurance.

Jennifer's child support worksheet shows that she was paying for the child's health insurance. There is no child support worksheet in the record on appeal from Scott. Without an adequate record on appeal regarding the health insurance, we are unable to evaluate this issue and, therefore, affirm the trial court's order. See *Alivio*, 275 Kan. at 172.

Affirmed.