

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA
CIVIL ACTION

E. B.,
Petitioner,

vs.
V. J.,
Respondent,

Case No. 0X DR XXXX N

ORDER DENYING MOTION FOR CONTEMPT

This matter having come before the court on 8/21/2012 on the father's motion for contempt filed 5/14/2012, it is ordered:

1. Findings

The parties have a minor child, RB, born 4/4/2007. The father asks the court to hold the mother in contempt because:

(1) the father has applied to enroll the child in kindergarten this year but the school board says the mother must sign off on using the father's address as the child's "home address" and the "school choice," but the mother will not agree to allow the father's address to be used as the child's school address and they cannot agree on the child's school;

(2) and the father says the child has spent 50.14% of the nights since the parties separated at his residence and more recently 64.66% of the nights at his home;

(3) the parties do not agree on the school the child should attend or his home address for school purposes.

In so many words, the father wants the court to order that his home is the child's residence for school purposes and that the father gets to decide on which school the child will attend. He wants the court to order that the mother is in contempt of the Final Judgment because she will not agree to his home as the child's home address for school purposes and she will not agree to the school that he wants the child to attend.

On 5/28/2009 the parties filed a marital settlement agreement, which was incorporated into the Final Judgment dated 8/31/2009. In their agreement they agreed: "*The parties have shared parental responsibility for all decisions affecting the health, education and welfare of their child.*"

2. Ruling

So be it. Their agreement is that they shall share all parenting decisions. "*Shared parental responsibility*" is one of the three alternatives for parental decision making after parents separate, the other two being "*sole parental responsibility*" to one parent and "*shared parental responsibility with ultimate responsibility to one parent if the parents do not agree on a decision.*"

The father is asking the court to change the parties' settlement agreement and order that he has either "*sole parental responsibility*" or "*shared parental responsibility with ultimate responsibility to one parent if the parents do not agree on a decision.*" But the court has no authority to change the parties' contract.

"Parental responsibility" means parenting decision-making, and the "parental responsibility order" does not specify where the child will be living from time to time during the year. The "time-sharing" order is the order that determines where the child will be living.

The father's argument - that because the child has been spending more nights with him than with the mother he has the power to make unilateral parenting decisions - is meaningless. The time-sharing schedule has nothing to do with the parental responsibility order. The child might live 100% of the time at his house, say because the mother's job requires her to go out of state or because she lost her job and her home or for any other reason, but the parties still agreed to "share parental responsibility," that is, all parenting decisions, so that is what they must do.

See F.S. §61.046(17) & (18) (2011):

"(17) "Shared parental responsibility" means a court-ordered relationship in which both parents retain full parental rights and responsibilities with respect to their child and in which *both parents confer with each other so that major decisions affecting the welfare of the child will be determined jointly.*

(18) "Sole parental responsibility" means a court-ordered relationship in which *one parent makes decisions regarding the minor child.*" (*Emphasis supplied.*)

Further, F.S. §61.13(2)(c)2.,a., provides:

"In ordering shared parental responsibility, the court may consider the expressed desires of the parents and *may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties* based on the best interests of the child. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family." (*Emphasis supplied.*)

So, the "parental responsibility" order is concerned with how parenting decisions will be made after parents separate, and the statute gives the court three choices in that order:

(1) unlimited shared parental responsibility between the parents;

(2) sole parental responsibility to one parent for all parenting decisions; or

(3) shared parental responsibility with ultimate responsibility over one or more aspects of the child's life to one parent or divided between the parents. See, e.g., *Watt v Watt*, 966 So.2d 455 (Fla. 4th DCA 2007); *Hancock v Hancock*, 915 So.2d 1277 (Fla. 4th DCA 2005); *Schneider v. Schneider*, 864 So.2d 1193 (Fla. 4th DCA 2004).

So, "to share" means "to confer ... so that major decisions ... will be determined jointly," and if shared parental responsibility is ordered then each parent has an equal say in major decisions concerning the child.

So, if shared parenting is ordered and the parents have a disagreement on a major decision, it is not for the court to say who is right or who is wrong. They each have equal control over parenting decisions. In such a situation, nothing happens, so long as a risk to the child's life or safety is not at stake. It is not for the court to decide the winner of the debate. The court in a Chapter 61 case has no power to overrule a jointly made parenting decision or to make a parenting decision when the parents ordered to share parenting are at an impasse.

The court in a Chapter 61 case cannot substitute its judgment for the parenting decision of either parent because the child has two fit and competent parents, absent any allegations and proof that one or both of the parents are unfit because of abuse, abandonment or neglect. Chapter 61 does not give the judge the authority to become a "super parent" empowered to make parenting decisions for the child or overrule a parenting decision or decide a parenting decision when parents ordered to share

parenting are at an impasse. *See, Martinez v. Martinez*, 573 So.2d 37 (Fla. 1st DCA 1990), in which the court said: “[§61.13(2)] contemplates that parents, not the courts, have the responsibility of determining where their children will attend school.” *Id.* at 41.

For the foregoing reasons, the father’s motion is denied. The mother is not in contempt of the Final Judgment. If the parties cannot agree on the requirements to enroll the child in school, then he will not be enrolled. Parents raise children, not judges, and if they fail to make joint decisions when they agreed to do so, then they and the child will deal with the consequences.

Done and ordered in Fort Myers, Lee County, Florida, this _____

R. Thomas Corbin, Circuit Judge

Copies provided to:
Parties, *pro se*