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BOOK 10974 PG 841

IN THE SECOND CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE

Lisa W Smith

DONNA FARR)
)
Plaintiff,)
)
vs.) No. 96D-2568
)
THOMAS FARR)
)
Defendant.)

Final ORDER of Divorce

This case was heard on several days, August 28, 29 and September 8, 1997. Thereafter the court took the matter under advisement. Prior to the trial there had been at least two hearings and two pre-trial conferences. The two minor sons had been referred to Vanderbilt Child and Psychiatric Services and were evaluated by Dr. Joe LaBarbera.

After hearing all the witnesses, parties, and in chambers discuss with the two minor children, and considering all the exhibits, the court finds the following:

1. **DIVORCE:** The divorce will be granted on the grounds of inappropriate marital conduct to Donna Farr. Both parties have the same degree of education, but Mr. Farr simply did not effectively use his education to maintain employment commensurate with his education or experience nor fulfill the traditional role of "at home parent. " During the years, particularly while in Nashville, Mr. Farr attempted a number of employment options, including gambling, real estate, Domino's Pizza driver, Equinox salesman, Star Wars entrepreneur and finally Mapco assistant manager. To date none of these ventures have been successful.

In addition he had some rather irregular and inappropriate behavior with babysitters, evidencing his lack of respect for boundaries. He and Ms. Farr had considerably different parenting styles. The problem was that Mr. Farr would not support Ms. Farr when she attempted to set limits. Thus, Ms. Farr was forced to be the sole disciplinarian, while Mr. Farr was the primary playmate of the children.

Mr. Farr also had difficulty setting his own limits. He shunned all work that was remotely difficult or took a lot of energy. He only went for the quick-fix, such as gambling or Star Wars figures or the sales route when it offered no real benefits. He offered excuses since 1991, but none

seem valid. At this point, he will have to apply himself at his present job if he wants to begin to approach his earning potential. During the past three years he made few contributions to the family. Perhaps under less criticism and scrutiny from his wife, he will be able to find his true potential.

2. **RESIDENCE:** Ms. Farr should be awarded the residence at 4944 Darlington Drive, Nashville, Tennessee. Mr. Farr's interest in the house will be divested out of him and vested in Ms. Farr. The divorce decree may be filed in the Register of Deeds Office to evidence her ownership.

The parties agree that the value of the house is $140,300. The combined mortgages are $124,409, which leaves an equity amount of $15,891. If we assume a house sale with a 6% sales commission, but with an uncertainty of sale, we subtract a 3% sales commission, then the equity would be $11,682. Mr. Farr will be awarded his equity interest of $5841.00.

3. **FURNITURE AND PERSONAL PROPERTY:** The furniture will be divided per the list prepared by Mr. Farr. The additional decisions were announced in court on the last day of trial.

4. **AUTOMOBILES:** The vehicles which are currently in the possession of each party, 1996 Mercury in Ms. Farr's possession and the 1988 Eagle in Mr. Farr's possession will be awarded to each party. Disregarding the testimony of the "stolen car" theory, the difference in equity is $1700. Mr. Farr will be awarded equity in the amount of $850.

5. **BANK ACCOUNTS:** The parties will keep their respective bank accounts. The difference is negligible. Any savings accounts or other accounts in the party's name will be awarded to that party.

6. **STOCKS:** Mr. Farr will be awarded the Walmart stock in the amount of $775.

7. **THRIFT SAVINGS PLAN:** Ms. Farr has a Thrift savings Plan in the amount of $15,789.00. Although Mr. Farr did not roll over his previous savings plan while in Washington, D.C., his explanation is satisfactory. His contributions to the marriage are sufficient at the time the moneys were originally placed into the plan to give him rights to one-half of the equity in the plan or $7894.50.

8. **METHODIST PENSION PLAN:** Ms. Farr has earned $19,468 in the pension plan while she was in Nashville. Mr. Farr did little to contribute to the family resources while the parties were in Nashville, and thus Ms. Farr will be awarded the entire amount.

9. **VENDING MACHINES:** The vending machines are awarded to Mr. Farr. The value of the machines are $1400.

10. **EQUINOX AND STAR WARS FIGURES :** The values of these products are $2320 which are awarded to Mr. Farr.

11. **DEBTS:** All debts in Mr. Farr's name including the MBNA Mastercard, Chase Mastercard, Discover, First USA Visa, Advanta National Bank, GE Capital Visa will remain the responsibility of Mr. Farr. He shall hold Ms. Farr harmless on these debts. All debts in Ms. Farr's Name including the Visa, Discover, St Paul tuition, loan from sister, American Home Shield Insurance will remain the responsibility of Ms. Farr. She shall hold Mr. Farr harmless on these debts.

12. **ALIMONY:** No alimony will be awarded. While Mr. Farr earns presently less than Ms. Farr, the parties have been separated for a long time. Mr. Farr has not yet attained a job that is commensurate with his education and experience. Prior to the separation he was employed as a driver for Domino's Pizza. During the course of this divorce he has tried several other positions, but no full-time job, until the week before the final hearing, even after he and Ms. Farr separated. Therefore, the court finds that he is voluntarily underemployed. Even if arguably, he was the at home parent, the children are old enough for the parties to have worked out other arrangements for the children after school. The proof showed that he simply was either not diligent at his work or he simply could not interest himself in any substantive work since 1991. Thus he is not entitled to any spousal support.

13. **RECONCILIATION OF MARITAL ASSETS:** Mr. Farr is awarded the stock in the amount of $775, one-half of the thrift account of $7894.50, the vending machines of $1400, the Equinox product of $2320 for a total of $12,389.50. Ms. Farr is awarded the house equity of $11682.00, the car equity of $1700 and one-half of the thrift account in the total amount of $21276.50. To equalize the difference so that both parties are awarded 50% of the assets, excluding the pension plan, Mr. Farr will be awarded an additional $4443.50 of the thrift account.

14. **ATTORNEYS FEES:** This case has been hotly contested for the majority of the time it has been filed, since September 1996. The plaintiffs attorney has expended some $9000 of attorneys fees and the defendant's attorney has expended some $7600 in fees. There is no pool of money in this case, unfortunately. The only sum of money is the thrift savings account and the Walmart stocks. As the court stated during the hearing, these parents should have separated long ago, as they have such a different view of life and parenting skills. The court finds that they have determined to spend their funds to engage in this contested divorce. They will thus be responsible for their own attorney's fees.

15. **PARENTING PLAN INCLUDING RESIDENTIAL PLACEMENT AND SUPPORT FOR THE CHILDREN:**

See attached.

16. **COSTS:** All costs not originally covered in the filing fee will be paid by Mr. Farr, with the exception of all subpoena costs requested by Ms. Farr.

ENTERED THIS THE 22nd DAY OF SEPTEMBER, 1997.

JUDGE MARIETTA M. SHIPLEY

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Memorandum Opinion has been faxed to and mailed to counsel of record:

Mary Frances Lyle
First American Center 20th Flr.
315 Deaderick St.
Nashville, TN 37238-2075
244-5432
Fax 244-7957

and

Marlene Eskind Moses
One Church Street Building Ste. 500
Nashville, TN 37201
242-2521
Fax 726-4812

This the 22nd day of September, 1997.

Clerk

BOOK 10974 PG 845

IN THE SECOND CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

DONNA FARR,	)	**Case No. 96D-2568**
MOTHER	)	
	)	PARENTING PLAN
and	)	[ ] Proposed (**PPP**)
	)	[ ] Temporary (**PPT**)
THOMAS FARR,	)	[X] Final Order (**PP**)
	)	
FATHER	)	

PARENTING PLAN

This parenting plan is signed by the court pursuant to a Memorandum Opinion dated September 22, 1997.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. GENERAL INFORMATION

This parenting plan applies to the following children:

Name	Birth date
ANDREW THOMAS FARR	MAY 26, 1983
ADAM ROBERT FARR	FEBRUARY 4, 1986

II. RESIDENTIAL SCHEDULE

These provisions set forth where the children shall reside each day of the year and what contact the children shall have with each parent.

2.1 SCHOOL SCHEDULE.

Upon enrollment in school, the child, **ADAM FARR**, shall reside with the mother and the child, **ANDREW FARR** shall reside with the father, except for the following days and times when the child(ren) will reside with or be with the other parent:

From: Friday after school to Monday morning

[X] every week
[ ] every other week
[ ] the first and third week of the month.
[ ] the second and fourth week of the month
[ ] other: Both boys will reside together with one parent during a weekend.

and from:_____ to _____
(Day/Time) (Day/Time)

[ ] every week
[ ] every other week
[ ] the first and third week of the month.
[ ] the second and fourth week of the month
[ ] other: SEE *

* If Ms. Farr is out of town on any weekend, she shall first inform Mr. Farr as to whether he wishes to keep Adams or both children on that weekend. Otherwise, she is responsible for their care on her weekends.

* In order for Andrew Farr to primarily remain at the residence of Thomas Farr, the following criteria must be met:

1. Andrew must maintain all grades in any six weeks at 85 or higher. Failure to meet that grade in any one six week period will result in an immediate change in the residential schedule for the remainder of the semester.

2. Andrew will be at home every night at 10:00 p.m., Monday through Thursday, during the school week so that his mother may call him, as his father may be at work.

3. Andrew may have no more than one tardy every six weeks or there will be an immediate change in residence.

2.2 SCHEDULE FOR WINTER VACATION.

The child(ren) shall reside with the [X] mother [ ] father during winter vacation, except for the following days and times when the child(ren) will reside with or be with the father.

1997 - December 26 through the end of school vacation and in alternate years

2.3 SCHEDULE FOR SPRING VACATION.

The child(ren) shall reside with the [ ] mother [X] father during spring vacation in the alternate years beginning 1998.

2.4 SUMMER SCHEDULE.

Upon completion of the school year, the child(ren) shall reside with the [ ] mother [X] father, except for the following days and times when the child(ren) will reside with or be with the other parent:

[ ] Same as school year schedule.
[X] Five weeks during summer, starting June 1.

During the above summer schedule, the mother shall have time with the children as follows:

Two weekends from Friday evening until Sunday evening, if she wishes

2.5 VACATION WITH PARENTS.

[ ] Does not apply.

[ ] The schedule for vacation with parents is as follows: _____

_____

_____

2.6 SCHEDULE FOR HOLIDAYS.

The residential schedule for the child(ren) for the holidays listed below is as follows:

	With Mother (Specify Year Odd/Even/Every)	With Father (Specify Year Odd/Even/Every)
New Year's Day	1999	1998
Martin Luther King Day	1998	1999
Presidents' Day	1999	1998
Easter	1999	1998
Passover		
Memorial Day	1998	1999
July 4th	1999	1998
Labor Day	1998	1999
Veterans' Day	1998	1997
Thanksgiving Day & Friday after	1998 - even	1997
Christmas Eve	1997 - odd	1998
Christmas Day	1997	1998
Hanukkah		

[X] For purposes of this parenting plan, a holiday shall begin and end as follows (set forth times):

Unless the parent has the child at their residence already, the holiday begins at 6:00 p.m. the night before and ends at 8:00 p.m. the day of the holiday.

[ ] Other:

2.7 SCHEDULE FOR SPECIAL OCCASIONS.

The residential schedule for the child(ren) for the following special occasions (i.e., birthdays) is as follows:

	With Mother (Specify Year Odd/Even/Every)	With Father (Specify Year Odd/Even/Every)
Mother's Day	Every year	
Father's Day		Every Year
Mother's Birthday	Every Year	
Father's Birthday		Every Year
Child's Birthday	1998	1999

2.8 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

[X] Does not apply.

[ ] For purposes of this parenting plan the following days shall have priority over the residential schedule:

Mother & Father Days
Birthdays as listed above

2.9 RESTRICTIONS.

[X] Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

2.10 TRANSPORTATION ARRANGEMENTS.

Transportation arragngments for the child(ren), other than costs, between parents shall be as follows:

Father shall pick up children at beginning of visitation. Mother shall pick up children at end of visitation

2.11 DESIGNATION OF CUSTODIAN.

The child, Adam, in this parenting plan is scheduled to reside the majority of the time with the mother. The child, Andrew, in this Parenting Plan is scheduled to reside the majority of the time with the father. This parent is designated the custodian of the child(ren) solely for puposes of all other state and federal statutes which require a designaiton or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

2.12 OTHER: _____

III. CHILD SUPPORT

3.1 FINANCIAL SUPPORT.

The [ ] mother [X] father will pay child support, in accordance with the Tennessee Child Support Guidelines, in the amount of $379.00 per month. This is based on an earning capacity of $27,500 per year.* The mother will pay child support in accordance with the Tennessee Child Support Guidelines in the amount of $590.00 per month, based on a salary of $46,000 per year. The net Ms. Farr will pay to Mr. Farr is $211.00 per month.

*In the event that Andrew's residence changes, then Mr. Farr will pay child support in the amount of $577.00 per month.

[] A wage assignment shall issue (by separate order to presented by counsel) to _____, the employer of _____, for the ongoing child support.

[ ] Other provisions for financial support: _____
_____
_____

3.2 TAX DEDUCTION.

The father will receive the tax deduction for the child, Adam. The mother will receive the tax deduction for Andrew every year. Each party shall provide to the other, by or before April 15 of every year, a copy of their respective W-2 form or a copy of the first page of their tax return.

[X] Other provisions regarding tax deduction:
This will happen upon his/her child support being current by January 15 of each year.

3.3 HEALTH INSURANCE.

[X] The [ ] mother [X] father will maintain medical/hospital insurance on the minor child(ren) and he/she shall provide proof of continuing coverage by February 15th of each year when it becomes available to him. In the meantime, he will reimburse her one-half for medical and dental insurance.

[X] Uncovered medicals, including deductibles, if any, will be
[ ] borne by the _____
[ ] divided equally by the parties.
[X] divided 40% from Mr. Farr and 60% from Ms. Farr

3.4 LIFE INSURANCE.

[X] The [ ] mother [X] father shall insure his/her own life in the minimum amount of $50,000, whole or term, which may not decrease in face amount during the minority of any child, to be in force by January 1, 1998. The policy shall name the minor children as primary beneficiaries of the coverage required by the Court. The choice of the secondary beneficiary(ies) is up to the policy owner(s).

[ ] Other provisions regarding life insurance: _____
_____

3.5 DENTAL/ORTHODONTIC CARE

[X] The [X] mother [ ] father will maintain dental/orthodontics care on the minor child(ren) which will be reimbursed by the father. Uncovered dental/orthodontic expenses will be divided 40% by the father and 60% by the mother.

[ ] Other provisions for dental/orthodontic care:
The parties will make separate arrangements with the orthodontist.

IV. DECISION MAKING

4.1 DAY TO DAY DECISIONS

Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent. Regardless of the allocation of decision making in this parenting plan, either parent may make emergency decisions affecting the health or safety of the children.

4.2 MAJOR DECISIONS.

Major decisions regarding each child shall be made as follows:

	ADAM	ANDREW	
Education decisions	[X] mother	[X] father	[ ] joint
Non-emergency health care	[X] mother	[X] father	[ ] joint
Religious upbringing	[X] mother	[X] father	[ ] joint
_____	[ ] mother	[ ] father	[ ] joint
_____	[ ] mother	[ ] father	[ ] joint
_____	[ ] mother	[ ] father	[ ] joint
_____	[ ] mother	[ ] father	[ ] joint
_____	[ ] mother	[ ] father	[ ] joint
_____	[ ] mother	[ ] father	[ ] joint

4.3 RESTRICTIONS IN DECISION MAKING.

[ ] Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above.

[ ] Sole decision making shall be ordered to the [X] mother and to the father for the following reasons:

Parents have shown they are unable to communicate with each other during the marriage and during the separation about their children. They have such widely differing parenting ideas, they cannot work well together. The mother appears to have the better parenting skills. Ms. Farr is able to set limits and enforce them. Adam seems to do well with his mother, although he wishes to spend a lot of time with his father. The transition times are difficult because of the widely varying parenting styles. Thus, at this point the boys will be together on the weekends, either at Ms. Farr's or Mr. Farr's residence. Adam appears to do well at school and should remain there this year if Ms. Farr can afford the tuition. Adam will be sent to counseling for his sadness and anxiety. Hopefully, the family will calm down when the divorce is over.

Andrew very clearly expressed a desire to live with his father, whom he sees as a person with whom he can have more fun. He is presently at odds with his mother, particularly during the past two months. Although the Court clearly believes Ms. Farr has the better parenting skills, the use of those skills may not be possible until Andrew understands his limits. Thus, the restrictions on his continued residence with his father should give both his father and him a reality check.

The schedules of these parents are also difficult. Given Andrew's prosperity for getting into problems after school, Mr. Farr will be home after school until 9:00 p.m. That allows Ms. Farr to stay at work until Adam is through with ball practice at 5:45 p.m. If Mr. Farr goes to work at 9:00 p.m., Andrew will be alone until 5:00 a.m. Ms. Farr can phone him at 10:00 p.m. every night to insure he is safe and at home.

There is clearly no perfect solution for this family. The Court full expects residential provisions to change during the time between now and age 18. Since the parents have so far not been able to talk to each other, there will be difficult transitions, but not impossible.

[ ] A limitation on the other parent's decision-making authority is mandated by TCA 36-6-108 (See paragraph 2.1).

[X] Both parents are opposed to mutual decision making.

[ ] One parent is opposed to mutual decision making, and such opposition is reasonably based on the following criteria:

(a) The existence of a limitation under TCA 36-6-108;

(b) The history of participation of each parent in decision making in each of the areas in TCA 36-6-106;

(c) Whether the parents have demonstrated ability and desire to cooperate with one another indecision making in each of the areas in TCA 36-6-106; and

(d) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

[ ] There are limiting factors in paragraph 2.2, but there are no restrictions on mutual decision making for the following reasons: _____

_____

V. DISPUTE RESOLUTION

[ ] Disputes between the parties, other than the child support disputes, shall be submitted to:

[X] Counseling will be done at the Oasis Center, 1221 16th Ave. South, Nashville, TN, 37212. The parties will contact Judy Freudenthal at 327-4455 for an initial appointment.

[X] Mediation prior to any other court proceeding.

[ ] Arbitration by _____.

The cost of this process shall be allocated between the parties as follows:

[X] 60% mother 40 % father.

[ ] based on each party's proportional share of income from the child support guidelines.

[ ] as determined in the dispute resolution process.

The counseling, mediation or arbitration process shall be commenced by notifying the other party by [ ] written request [X] certified mail.

In the dispute resolution process:

(a) Preference shall be given to carrying out this Parenting Plan.

(b) Unless an emergency exists, the parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support

(c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party.

(d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the other parent.

(e) The parties have the right of review from the dispute resolution process to the Circuit Court.

[ ] No dispute resolution process, except court action, shall be ordered, because

[ ] A limiting factor under TCA 36-6-108 applies or [ ] one parent is unable to afford the cost of the proposed dispute resolution process.

VI. STANDARD PARENTING ORDERS

Pursuant to *Tennessee Code Annotated*, §36-6-101(a) both parents are entitled to the following rights:

1. unimpeded telephone conversations with the child at least twice each week at reasonable times and for a reasonable duration;

2. sending mail to the child which the custodial parent will not open and will not censor;

3. receiving notice and relevant information as soon as practical (but not more than 24 hours) in the event of hospitalization, major illness, or death of the child;

4. receiving, directly from the school, copies of the child's report cards, attendance records, teacher's names, class schedules, standardized test scores, and other records which are customarily made available to parents. A written request must be made to the school with a current mailing address and payment must be made for the reasonable cost of duplicating and mailing these records;

5. receiving, directly from the child's physician and other health care providers, copies of the child's medical records. A written request must be made to the health care provider with a current mailing address and payment must be made for the reasonable cost of duplicating and mailing these records;

6. to be free of derogatory remarks made about the noncustodial parent and his or her family by the custodial parent to the child or in the child's presence.

Either parent may petition for a return to court, paying appropriate fees for mediation on any further parenting issues.

VII. OTHER PROVISIONS

[ ] There are no other provisions.

[ ] There are the following other provisions:

_____

VIII. DECLARATION FOR PROPOSED PARENTING PLAN

[ ] Does not apply.

[ ] (Only sign if this is a proposed parenting plan.) I declare under penalty of perjury under the laws of the State of Tennessee that this plan has been proposed in good faith and that the statements in Part II of this Plan are true and correct.

_____ _____

Mother Date and Place of Signature

_____ _____

Father Date and Place of Signature

IX. ORDER BY THE COURT

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under TCA 39-13-306. Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

If a parent fails to comply with a provision of this plan, the other parent's obligations under this plan are not affected.

ENTERED this the 22nd day of September, 1997.

Judge

BOOK 10974 PG 858

STATE OF TENNESSEE

I, RICHARD R. ROOKER, Clerk of the Circuit Court for Davidson County, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the Order heretofore entered in the SECOND Circuit Court for Davidson County, Tennessee, on the 22 day of SEPTEMBER , 19 97 , in the Case Number 96D2568 between FARR, DONNA ET.AL Plaintiff, and FARR, THOMAS W. Defendant, as same remains of record in Book 170C , Page 1666 of the Minutes of said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the 11 day of JUNE in the year one thousand nine hundred and ninety-eight and in the 222nd year of American Independence.

RICHARD R. ROOKER, Clerk,

By Jerry Campion
Deputy Clerk

SEAL

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