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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-1493-MR

BRITTANY GIBSON — APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE LUCAS M. JOYNER, JUDGE
ACTION NO. 22-CI-00486

TYLER GIBSON — APPELLEE

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; A. JONES AND KAREM, JUDGES.

THOMPSON, CHIEF JUDGE: Brittany Gibson appeals from an order of the Laurel Circuit Court, Family Court Division, which awarded Tyler Gibson equal timesharing of the parties' minor child. Appellant argues that the court erred in modifying timesharing. We believe the trial court made a legal error in this case; therefore, we must vacate the order on appeal and remand for the trial court to reconsider the timesharing issue.

FACTS AND PROCEDURAL HISTORY

Appellant and Appellee were married in 2016 and have a minor daughter together, age 11. The parties were divorced in 2019 and were awarded joint custody of the child. Appellant was named the primary residential parent of the child and Appellee was given timesharing every other weekend, as well as time during the summer and during holidays. The primary reason for the lack of equal parenting time was the fact that Appellant and the child resided in London, Kentucky, and Appellee lived in Somerset, Kentucky.

On February 10, 2025, Appellee filed a motion to modify the timesharing schedule. Appellee had recently moved to London, Kentucky and requested equal timesharing. Appellant opposed the modification motion and a hearing was held on October 28, 2025. At the hearing the following people testified: a friend of the court, Appellant, Appellee, and the child's therapist. The trial court ultimately granted the motion and the parties were given equal timesharing. This appeal followed.

STANDARD OF REVIEW

> [T]he family court has broad discretion in modifying timesharing. Accordingly, we will only reverse a circuit court's determinations as to visitation if they constitute a manifest abuse of discretion, or were clearly erroneous in light of the facts and circumstances of the case. Furthermore, [d]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.

Layman v. Bohanon, 599 S.W.3d 423, 431-32 (Ky. 2020) (internal quotation marks and citations omitted). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). Findings of fact are not clearly erroneous if they are supported by substantial evidence. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). "[S]ubstantial evidence is [e]vidence that a reasonable mind would accept as adequate to support a conclusion and evidence that, when taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men." *Id.* (internal quotation marks, footnotes, and citations omitted).

ANALYSIS

After reviewing the record and order on appeal, it is clear to us that the trial court made an error of law that requires we vacate the order on appeal and remand for additional proceedings. Kentucky Revised Statutes (KRS) 403.320 concerns parental timesharing, which is at issue in the case *sub judice*.[1] KRS 403.320(3) deals with the modification of timesharing. KRS 403.320(3) states that "[t]he court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not

[1] "The term visitation is often used interchangeably with timesharing." *Layman*, 599 S.W.3d at 429 (internal quotation marks and citations omitted).

restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health."

Other relevant statutes for our purposes are KRS 403.270 and KRS 403.340. KRS 403.270 is the statute that discusses initial custody determinations, and KRS 403.340 discusses custody modification. Both statutes state that, when considering issues of child custody, there shall be a rebuttable presumption that equal parenting time is in a child's best interests. KRS 403.270(2); KRS 403.340(5). KRS 403.320, the timesharing statute, does not mention this presumption.

In this case, although the trial court was tasked with modifying timesharing, the court considered the presumption found in the custody statutes. Indeed, the order expressly states: "KRS 403.270 presumes that equal parenting time is in the best interests of the child unless evidence rebuts that presumption. Neither party presented evidence significant to rebut the presumption." This consideration of the presumption was a legal error. In the *Layman v. Bohanon* case cited previously, the Kentucky Supreme Court was faced with a similar situation. In that case, the Court held, as a matter of first impression, that the statutory presumption in favor of equal parenting time does not apply to motions to modify existing timesharing arrangements. *Layman*, 599 S.W.3d at 431. Instead, trial

courts considering such motions must apply KRS 403.320, which permits modification when doing so serves the child's best interests. *Id.*

While the trial court considered the applicable best-interest factors, it did so through the lens of a presumption that does not apply. In other words, the trial court appears to have believed that it was required to order equal timesharing unless one of the parties presented sufficient evidence to rebut the presumption, which it concluded neither party had done. Without the presumption, however, the trial court was not constrained to order equal timesharing. Rather, it was free to fashion any reasonable timesharing arrangement consistent with the child's best interests. As our Supreme Court explained, "[t]here is no set formula for determining whether a modified timesharing arrangement is reasonable; rather, it is a matter that must be decided based upon the unique circumstances of each case." *Id.* at 432.

We cannot know whether the trial court would have ordered equal timesharing had it evaluated the evidence without applying the presumption. It is entirely possible that the trial court would have awarded Father additional parenting time, but something short of an equal division, or approached the modification more incrementally. An abuse of discretion includes a decision that is "unsupported by sound legal principles." *English*, 993 S.W.2d at 945. Here, the trial court's decision was expressly informed by an erroneous legal presumption.

CONCLUSION

Based on the foregoing, we vacate and remand. The trial court used a presumption that was not appropriate to the case at hand. On remand, the trial court shall consider Appellee's motion to modify timesharing under KRS 403.320, without application of the presumption in favor of equal parenting time.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Lisa L. Fugate Pineville, Kentucky	Brittany N. Riley London, Kentucky