# IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

#### COMPLETE TITLE OF CASE

BENJAMIN ROYCE CLAYTON, JR.,

Appellant,

v.

GERI ANN SARRATT,

Respondent.

#### **DOCKET NUMBER WD**75177

### MISSOURI COURT OF APPEALS WESTERN DISTRICT

**DATE:** January 2, 2013

#### **APPEAL FROM**

The Circuit Court of Clay County, Missouri The Honorable K. Elizabeth Davis, Judge

#### **JUDGES**

Division Two: Hardwick, P.J., and Smart and Mitchell, JJ.

CONCURRING.

#### **ATTORNEYS**

Dana M. Outlaw Lee's Summit, MO

Attorney for Appellant,

Brian J. Klopfenstein Kearney, MO

Attorney for Respondent,

Kelly J. Ruark Liberty, MO

Guardian ad litem.



## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

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Appellant,	)	
	)	<b>OPINION FILED:</b>
	)	<b>January 2, 2013</b>
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despondent.	)	
	N, JR., Appellant, Respondent.	Appellant, ) ) ) ) ) ) )

WD75177 Clay County

**Before Division Two Judges:** Lisa White Hardwick, Presiding Judge, and James M.

Smart, Jr., and Karen King Mitchell, Judges

Benjamin Royce Clayton, Jr., appeals the judgment of the Circuit Court of Clay County modifying child custody and child support. He argues that the trial court erred in modifying the parenting time schedule and the child's residential designation for educational and mailing purposes, and in improperly shifting the burden of proof. Finding no error, we affirm.

#### AFFIRMED.

#### **Division Two holds:**

- (1) A child's residential designation for educational and mailing purposes and the parenting time schedule are sub-issues of the custodial arrangement.
- (2) To modify the residential designation and the parenting time schedule, the moving party must demonstrate a change in circumstances and that the modification is in the best interests of the child. The change in circumstances, however, need not be substantial because the modification does not affect the custodial arrangement as the parties did not seek to modify the joint physical and legal custody arrangement.
- (3) Where both parties have pleaded and presented evidence that there was a change in circumstances warranting modification, one party cannot complain on appeal that

- there was no change in circumstances. Therefore, the only cognizable argument on appeal is whether the modification was in the best interests of the child.
- (4) The trial court discussed all of the relevant best interest factors in its findings and appellant failed to demonstrate that the trial court erred in finding that the modified parenting time schedule and change in residential designation was in the child's best interests.
- (5) The parties are bound by the same burden of proof in that they both filed motions seeking a modification to the parenting time schedule. Moreover, the trial court did not improperly shift the burden of proof to appellant in its finding that: "Since [Father] did not believe it was a significant problem for the child to change schools once, during his early elementary school education, the Court assumes he cannot now argue that it would be a significant problem for him to do so again. Moreover, [Father] did not make this argument at trial."

Opinion by: Karen King Mitchell, Judge

January 2, 2013

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