

MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY

J.T.P.,)	No. ED99788
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Charles County
vs.)	
)	
P.F.,)	Hon. William T. Lohmar, Jr.
)	
Respondent.)	FILED: May 27, 2014

J.T.P. (Father) and P.F. (Mother) appeal the trial court’s judgment modifying the custody schedule for their son, K.R.P. (Son). Mother has cognitive impairments resulting from a stroke prior to the couple’s relationship. The parties previously shared residential time equally. Father filed a motion to modify alleging that Mother was neglectful and uncooperative. The trial court found no change in circumstance required for modification under the custody statute (§452.410). But, relying on the visitation statute (§452.400), the court substantially modified the residential schedule such that Son resides with Father during the school year and Mother in the summers.

Father’s appeal challenges the trial court’s award of certain vacation and holiday periods as well as its assessment of all GAL fees to Father. Mother’s cross-appeal challenges the court’s order changing the residential custody schedule without a change in circumstances and against Son’s best interests.

REVERSED.

DIVISION ONE HOLDS: (1) The trial court erred by applying the visitation statute (§452.400). The significant change in the parties’ residential custody schedule is subject to the standards of §452.410.1, and those standards are not satisfied here. According to the trial court’s own findings, there had been no change in circumstances since the original custody decree. (2) Even had the trial court found a change in circumstances and thus properly reached the best interests issue, its finding that such a drastic change in the residential schedule was in Son’s best interest is not supported by the evidence and is against the weight of the evidence. The trial court’s sole justification for the upheaval in Son’s routine was to enable Father to help Son with his homework. Yet neither of the experts, nor the GAL, opined that Son’s academic support at Mother’s house (where she and Son lived with other adult family members) was deficient, or that Father’s support was superior, or that such a consideration supersedes other aspects of parenting. One expert cautioned against unnecessary changes in a child’s routine, and the GAL specifically opposed a change in the residential schedule and asserted that Son’s best interests would be served by maintaining the existing schedule.

Opinion by: Clifford H. Ahrens, Judge Roy L. Richter, P.J., concurs, and Glenn A. Norton, J., concurs.

Attorney for Appellant: Lawrence G. Gillespie

Attorney for Respondent: Jack J. Cavanagh

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
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