Third District Court of Appeal

State of Florida

Opinion filed October 21, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D26-0386
Lower Tribunal No. 24-14163-FC-04

Stanley Conway,
Appellant,

vs.

Nina Lee Wallin,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Christine Bandin, Judge.

Stanley Conway, in proper person.

ABRAMOWITZ and ASSOCIATES, and Evan L. Abramowitz and Lily C. Glickstein, for appellee.

Before SCALES, C.J., and GORDO and REBULL, JJ.

PER CURIAM.

Conway raises several arguments on appeal.[1] We write only to address his argument that the trial court abused its discretion in conditioning his temporary timesharing with the parties' three children "only to the extent that the eldest child is willing to participate." We reverse for the trial court to enter a timesharing schedule based on the trial court's determination of each minor child's best interest.

The statutory basis for a court's authority to issue temporary time-sharing plan stems from § 61.13(2)(c), Florida Statutes:[2] "The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child." Florida courts have consistently held that this statute entrusts all time-sharing determinations to the court alone, and it is error to commit that decision to any other individual, including the wishes of a child. See Hershberger v. Hershberger, 390 So. 3d 747, 748 (Fla. 5th DCA 2024) ("Florida law is clear

[1] We have jurisdiction under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iii)b, which grants jurisdiction to this Court to review orders on temporary parenting plans that determine "the rights or obligations of a party regarding child custody or time-sharing under a parenting plan."

[2] Although "nothing in chapters 61, 741, or 742 of the Florida Statutes expressly provides for a temporary time-sharing schedule or parenting plan," "the circuit court still has the authority to render a temporary order in this space . . . because these proceedings are in equity . . . The circuit court in such proceedings has the inherent power to provide relief if the law does not clearly provide a remedy." Miller v. Gordon, 365 So. 3d 1247, 1250 (Fla. 1st DCA 2023) (citation modified).

that the delegation of judicial authority to decide time-sharing to any person is error, whether that person is an arbitrator, another parent, a child, or an expert."); Clark v. Clark, 35 So. 3d 989, 990 n.1 (Fla. 5th DCA 2010) ("[T]he trial court held: 'If the minor child desires to spend more time with the Petitioner/Former Wife, then he shall be allowed to do so. If the minor child desires to spend less time with the Petitioner/Former Wife, then he shall be allowed to do so.' Such an order improperly places decisions with regard to visitation in the hands of the child.").

The trial court erred by conditioning Conway's court-ordered time for all three children "only to the extent that the eldest child is willing to participate"—making one minor child, not the court, the decision maker over whether any court ordered time-sharing happens with all three minor children at all. See Hershberger, 390 So. 3d at 748. The defect is compounded because the order also requires all three children to attend together—the eldest child's veto therefore operates as a refusal for not only his own contact but that of his younger siblings as well. Conditioning the two younger children's time-sharing on the eldest child's consent is an abdication of the court's non delegable duty to determine each child's time-sharing based on their individual best interests. Kiswani v. Hafza, 403 So. 3d 416, 418 (Fla. 5th DCA 2025) (finding that a trial court cannot reserve authority to make the

final decision on time-sharing until after the former wife met the recommendations of various medical professionals and "erred by leaving the decision of if, when, and how Former Wife and the minor child would visit with each other in the hands of the child's therapist").

Reversed and remanded for proceedings consistent with this opinion.