

STATE OF LOUISIANA

COURT OF APPEAL


FIRST CIRCUIT

2005 CA 0507

DEBRA LEIGH DALGO JANNEY

VS.

TODD TRUITT JANNEY

 MCDONALD, J., CONCURRING:

AUG 02 2006

I agree with the result reached in this case because I do not think it was an abuse of the trial court's discretion to find that the custody agreement stipulated by the parties constituted shared custody within the meaning of and subject to La. R. S. 9:315.9.

I concur in the opinion because I have serious reservations about some of the principles articulated in Westcott, and relied upon by the majority in reaching their decision in this case. Specifically, I do not think the amount of participation by a parent in their child's activities, homework, etc. is a relevant factor in a determination of whether a finding of shared custody, with its concomitant legal consequences, is appropriate. I am also not convinced that a stipulation by the parents that the child sharing arrangement to which they have agreed is "shared custody" within the meaning of the law, thereby binding the courts, irrespective of the amount of time each parent has physical custody of the child/children.

Shared custody by definition requires physical custody of the child for an approximately equal amount of time. What constitutes an approximately equal amount of time may be determined by the courts

when called upon to do so. However, I do not think interpretation of the law allows the courts to decree a physical custody sharing arrangement approximately equal when it clearly is not. The legislative intent in establishing an order of “shared custody” utilizing different child support guidelines was to take into consideration the duplication of expenses that may occur under circumstances where the child/children are with each parent an approximately equal amount of time. These are financial considerations and the relevant inquiries by the courts should be focused on the expenses involved. Helping a child with its homework is a parental duty, not entitled to compensation/renumeration by the courts. For these reasons, I concur.