IN THE TULALIP TRIBAL COURT OF APPEALS
TULALIP INDIAN RESERVATION
TULALIP, WASHINGTON

JESSE RUDE Appellant **v.** **EMRY ORR** Appellee	**APPEAL NO. TUL-CV-AP-2022-0646** **OPINION**

Before: *Jane M. Smith, C.J.; Matthew L.M. Fletcher, J; and Eric Nielsen, J.*

Appearances: Adam T Strand, for Appellant/Father; Emry Orr, Pro Se.

Flecther, J.:

This appeal arises from an order by the trial court involving modifications to a parenting plan between Emry Orr and Jesse Rude. The parties had reached agreement on several modifications to the parenting plan, leaving to the trial court to determine which parent should be the "school parent" and which parent should be the "summer parent." Applying the "best interests of the child" standard required by Tulalip law, the trial court determined that Ms. Orr should be the school parent and Mr. Rude should be the summer parent. Mr. Rude appeals. We affirm.[1]

Factual and Procedural Background

The factual background is largely uncontested and straightforward. Ms. Orr and Mr. Rude are the divorced parents of children subject to the jurisdiction of Tulalip courts. The parents reached agreement on a parenting plan after their divorce in 2019. In June 2022, Ms. Orr petitioned the trial court for an order modifying the parenting plan in anticipation of her relocation to Oregon. Later that summer, the parents reached a mediated, partial settlement in which the parties agreed to a modification of the parenting plan. The partial settlement presumed that Ms. Orr would move to Oregon and Mr. Rude would remain at Tulalip. The parties asked the court to determine which parent would be the "school parent," with custody during the school (subject to certain exceptions), and which parent would be the "summer parent," with custody during the summer. On August 3, 2022, the trial court held a hearing on the above remaining issues. On August 11, the trial court approved a modification of the parenting plan as agreed to by the parties. The trial court further determined that it was in the best interest of the children for Ms. Orr to be the school parent and

[1] We thank Cheyenne Rivera, a recent graduate of the University of Michigan Law School, for her assistance in crafting a bench brief on this appeal.

for Mr. Rude to be the summer parent. The trial court entered written findings of fact and conclusions of law.

Mr. Rude appeals.

Standard of Review

Under Tulalip Tribal Code 2.20.090(1) we review the trial court' factual finding under the clearly erroneous standard. Where the trial court's decision is discretionary, this Court cannot reverse that decision unless the trial court abused its discretion. Tulalip Tribal Code 2.20.090(8); *see also Davis v. Tulalip Tribes*, 5 NICS App. 11, 14 (Tulalip Tribal Ct. App. 1997) (citations omitted). A trial court's conclusions of law are reviewed de novo. Tulalip Tribal Code 2.20.090(4).

Discussion

The trial court's approval of the partial, mediated settlement and its later determination of which parent should be the school parent and which parent should be the summer parent is supported by the facts and the law and is hereby affirmed.

Mr. Rude's sole argument on appeal is that the mediation never should have occurred, necessitating the vacatur of the parenting plan modification approved by the trial court on August 11, 2022. We disagree.

Tulalip law at the time of the trial court proceedings stated in relevant part:

> (1) Except as otherwise provided in this code, the Court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the Court at the time of the prior decree or plan, that a change has occurred in the circumstances of the child or his or her custodian and that the modification is necessary to serve the best interests of the child. . . . In applying these standards, the Court shall retain the residential schedule established by the decree or parenting plan unless . . .
>
> (a) The custodian agrees to the modification . . . . [Tulalip Child Custody Code § 4.20.420(1)(a).[2]]

This provision establishes a presumption that Tulalip courts should not modify a parenting order absent specific circumstances. One circumstance is when a "custodian" agrees. "Custodian" is broadly defined as "any person who has physical custody of a child under Tribal law or custom, or under State law, or to whom temporary physical care, custody, and control has been transferred by the child's parent, and who is providing food, shelter, and supervision to the child." Former Tulalip Tribal Code 4.20.020(6). Under the initial parenting plan both Mr. Rude and Ms. Orr were granted joint physical custody of the children. Both Mr. Rude and Ms. Orr agreed to a modification

[2] On September 30, 2022, the Tulalip Tribal Court made amendments to Section 4.20 of the children's code, which governs co-parenting. *See* Tulalip Tribes of Washington, Resolution 2022-432. New §§ 4.20.470 and 4.20.480 appear to streamline the process for modifying co-parenting orders. We apply the former code provisions, but note that our interpretation of the former code sections is consistent with the amended code provisions.

of the parenting plan and entered a partial, mediated settlement. The only disputed issues were which parent should be the school parent and which parent should be the summer parent and they agreed to ask the trial court to make that determination. Thus, the trial court had the authority to modify the parenting plan under former 4.20.420(1)(a).

Even so, Mr. Rude argues that the trial court violated former §§ 4.20.420, which governed modifications in general, and 4.20.430, which governed modifications of parenting plans due to the relocation of one parent.[3] Mr. Rudd and Ms. Orr were both custodians and they agreed to a modification of the parenting plan and entered a settlement regarding all parenting issues except for who would be the school parent and the summer parent with the understanding that Ms. Orr would relocate to Oregon. The Trial court concluded it was in the best interest of the children that Ms. Orr should be the school parent necessitating the children would relocate to Oregon to live with Ms. Orr during the school year. Although Mr. Rudd may not like that conclusion, because he agreed to modification of the parenting plan, agreed the court should determine the school/summer parent issue, and did so with the understanding that Ms. Orr was relocating to Oregon, his assertion the trial court did not have the authority to modify the parenting to provide the children live with Ms. Orr in Oregon during the school year fails.

We will not disturb the trial court's findings unless the court abused its discretion. *Davis v. Tulalip Tribes*, 5 NICS App. 11, 14 (Tulalip Tribal Ct. App. 1997) (citations omitted). "An abuse of discretion does not exist if the findings of the judge are supported by substantial evidence." *Id*. at 14 (citing *Hoopa Valley Indian Housing Authority v. Gerstner*, 3 NICS App. 250, 263 (Hoopa 1993).

As noted, the trial court entered detailed findings of fact and conclusions of law. It considered the relevant factors in former Tulalip Tribal Code 4.20.430(11) in concluding it was in the best interest of the children to live with Ms. Orr in Oregon during the school year. The findings are supported by substantial evidence and the findings support the court's conclusions of law.

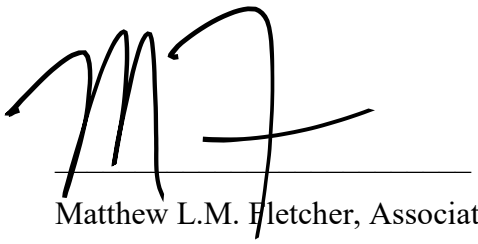
Conclusion

The court's modification of the parenting plan is affirmed.

For the Panel:

Eric Nielsen, Associate Justice
Jane M. Smith, Chief Justice

[3] Former Tulalip Tribal Code 4.20.420(1) establishes a procedure and standards for modifying a parenting plan in cases where a custodian objects and 4.20.430 establishes a procedure and standards for modifying a parenting plan where one parent is relocating and the other parent objects to the relocation or the modification.



Matthew L.M. Fletcher, Associate Judge