

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 13, 2009 Session

RICHARD STEVEN LARUE v. LAURA MICHELLE LARUE

**Direct Appeal from the Chancery Court for Union County
No. 5416 Hon. Billy Joe White, Chancellor**

No. E2008-01492-COA-R3-CV - FILED JULY 7, 2009

D. MICHAEL SWINEY, J., concurring.

I concur in affirming the decision of the Trial Court. I agree that the Trial Court did consider the factors in Tenn. Code Ann. § 36-6-101 and § 36-6-404. However, except for the passage of time rendering the issue moot, I would have modified the decision of the Trial Court prohibiting the father from any overnight visitation with his children until they were one year of age.

It is clear the Trial Court's decision prohibiting this father from any overnight visitation with his children until they were one year old was based solely upon the "tender years doctrine." The Trial Court said exactly that when it stated "[b]ut these children are 8 months of age. They are of very tender years. I don't think overnight at this time is a particularly good idea." As pointed out by this Court in *Joiner v. Griffith*, No. M2003-00536-COA-R3-CV, 2004 WL 1334519 (Tenn. Ct. App. Oct. 11, 2004), the tender years doctrine was abolished in 1997. *Id.* at *2 n.6.

I agree that the Trial Court did make findings about, among other things, the character of the parents and the grandparents. However, I find nothing in the Trial Court's findings that even hints that allowing this father overnight visitation with his children before they reach the age of one would be anything other than beneficial to the children. Certainly, there is no definite evidence that permitting this father overnight visitation with his children before they reach the age of one "would jeopardize the [children], in either a physical or moral sense." *Eldridge v. Eldridge*, 42 S.W.3d. 82, 85 (Tenn. 2001).

Unfortunately, enough time has passed between the Trial Court's ruling and now that the children are now older than one year of age. As such, this issue is moot as the restriction on the father prohibiting his having any overnight visitation with his children until they reach the age of one year old has expired. As this issue is moot, I concur in affirming the Trial Court's decision.

D. MICHAEL SWINEY, JUDGE