

LEXSEE 763 SO.2D 1055

**THOMAS P. WALCZAK, Appellant, v. MYA M. WALCZAK,
Appellee.**

CASE NO. 98-2303

COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

763 So. 2d 1055; 1999 Fla. App. LEXIS 7921; 24 Fla. L. Weekly D 1390

June 16, 1999, Opinion Filed

PRIOR HISTORY: [**1] Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Stephen A. Rapp, Judge; L.T. Case No. CD-97-1149-FB.

DISPOSITION: AFFIRMED.

COUNSEL: Matthew S. Nugent, West Palm Beach, for appellant.

No brief filed for appellee.

JUDGES: SHAHOOD, J., STONE, C.J., and STEVENSON, J., concur.

OPINION BY: SHAHOOD

OPINION

[*1056] SHAHOOD, J.

Appellant, former husband, Thomas Walczak, raises two issues in his appeal of the Final Judgment of Dissolution of Marriage entered in this case. He first argues that the trial

court erred in failing to establish a visitation schedule for him, and second, argues that the court erred by imposing preconditions to any overnight visitation. We affirm as to both issues, writing only to discuss the second issue raised.

The "tender years" doctrine has been abrogated by *section 61.13(2)(b)1, Florida Statutes* and in this district by opinion in *Kuutti v. Kuutti*, 645 So. 2d 80 (Fla. 4th DCA 1994)(en banc). Some of the trial court's comments lead us to believe that his decision to impose limitations on overnight visitation was based partially on the "tender years" doctrine. This was [**2] error. Nevertheless, we affirm the trial court's ruling because there is other evidence in the record to support his conclusions.

AFFIRMED.

STONE, C.J., and STEVENSON, J., concur.