

SUPREME COURT OF LOUISIANA

Tracie F. v. Francisco D.

188 So. 3d 231 (La. 2016) · No. 2015-CJ-1812 · Decided March 15, 2016

SUMMARY

The Supreme Court of Louisiana considered the standard for modifying a stipulated joint-custody judgment that designated a maternal grandmother as domiciliary parent while granting joint custody to the biological father. The court held that the biological parent must prove both a material change in circumstances and that the proposed modification is in the child’s best interest. Although the father established a material change through his increased involvement in the child’s life, the court concluded that changing domiciliary status was not in the child’s best interest and affirmed the appellate court.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Louisiana                                                                                                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Weimer, J.; Crichton, J.; Hughes, J.; Knoll, J.                                                                                                                                                                                                                                                                                                       |
| JURISDICTION          | Louisiana                                                                                                                                                                                                                                                                                                                                             |
| DECIDED               | March 15, 2016                                                                                                                                                                                                                                                                                                                                        |
| DOCKET                | 2015-CJ-1812                                                                                                                                                                                                                                                                                                                                          |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Francisco sought review of the Louisiana Fifth Circuit Court of Appeal's decision reinstating a stipulated joint-custody arrangement designating the maternal grandmother as domiciliary parent. The Supreme Court granted certiorari, affirmed the appellate court's judgment, and rejected its reasoning concerning the applicable burden of proof. |
| STANDARD OF REVIEW    | When a prejudicial legal error skews the trial court's findings on a material issue and the record is sufficiently developed, the appellate court applies the correct law and determines the essential material facts de novo.                                                                                                                        |
| PRECEDENTIAL VALUE    | Published Louisiana Supreme Court opinion; binding precedent in Louisiana, subject to the partial overruling and limitations stated in the opinion.                                                                                                                                                                                                   |
| PARTIES               | Kathy B., the maternal grandmother v. Francisco D.                                                                                                                                                                                                                                                                                                    |

## TOPICS

child custody family law procedure appellate procedure statutory interpretation due process

## PRACTICE AREAS

family law child custody constitutional law statutory interpretation appellate procedure

## QUESTIONS PRESENTED

1. What burden of proof governs a biological parent's request to modify a stipulated joint-custody award when the biological parent retains joint custody but the non-parent is designated as domiciliary parent?
2. Whether Francisco proved a material change in circumstances and that the proposed custody modification was in the child's best interest.
3. Whether the district court committed reversible legal error by placing the burden on the non-parent domiciliary parent to prove that awarding custody to Francisco would cause substantial harm.
4. Whether the Supreme Court should address Tracie's arguments concerning visitation and remarks by the district court when she did not seek review of those issues.

## HOLDINGS

1. A biological parent with joint custody who seeks greater custodial rights under a stipulated custody award must prove both that a material change in circumstances occurred after the original custody award and that the proposed modification is in the child's best interest. The biological parent bears that burden.
2. Francisco proved a material change in circumstances because he transformed from a largely absent parent into one who was integrally involved in the child's life.
3. Francisco failed to prove that changing the stipulated custody arrangement and removing domiciliary status from Kathy was in the child's best interest.
4. The district court committed prejudicial legal error by placing the burden on Kathy to prove that custody with Francisco would result in substantial harm, but the Supreme Court could decide the custody issue de novo because the record was sufficiently developed.
5. *Cutts v. Cutts* is overruled to the extent it imposed no burden on a biological parent with no current custodial rights who sought to modify a stipulated custody arrangement.

## KEY QUOTATIONS

*“the overarching inquiry in an action to change custody is “the best interest of the child.”” (235)*

*“a biological parent with joint custody, who seeks modification of a stipulated custody award to obtain greater custodial rights, must prove: 1) there has been a material change in circumstances after the original custody award; and 2) the proposed modification is in the best interest of the child.” (235)*

*“Applying the correct standard of proof to the record evidence, we determine that the biological father established a material change in circumstances, but failed to prove that modification of the stipulated custody judgment was in the child’s best interest.” (251)*

## FACTUAL BACKGROUND

The child was born to Tracie F., who was unmarried, and Francisco D. initially had little involvement in the child's life. In 2013, after concerns about Tracie's conduct, Francisco and the child's maternal grandmother, Kathy B., stipulated to joint custody with Kathy designated as domiciliary parent; the child had already lived primarily with Kathy and her husband for several years. Francisco later sought sole custody or designation as domiciliary parent, presenting evidence that he had recently become substantially more involved in the child's life. The child had a long-standing, stable home and school environment with Kathy, who had handled much of the child's education, care, and financial needs.

## PROCEDURAL HISTORY

The district court initially awarded sole custody to Francisco after placing the burden on the maternal grandmother to prove that awarding custody to Francisco would cause substantial harm. The Fifth Circuit reversed that result and reinstated the stipulated judgment awarding joint custody to Francisco and the grandmother, with the grandmother as domiciliary parent, reasoning that Francisco had to establish rehabilitation and a material change in the grandmother's custodial environment. The Supreme Court held that the proper standard was material change in circumstances plus the child's best interest, applied that standard *de novo*, and affirmed the result because Francisco did not prove that changing domiciliary custody was in the child's best interest.

## DISPOSITION

affirmed

## CASES CITED

- Evans v. Lungrin, 708 So. 2d 731 (La. 1998)
- Bergeron v. Bergeron, 492 So. 2d 1193 (La. 1986)
- AEB v. JBE, 752 So. 2d 756 (La. 1999)
- Mulkey v. Mulkey, 118 So. 3d 357 (La. 2013)
- Cutts v. Cutts, 931 So. 2d 467 (La. App. 3 Cir. 2006)
- Jones v. Coleman, 18 So. 3d 153 (La. App. 2 Cir. 2009)
- Dalme v. Dalme, 21 So. 3d 477 (La. App. 3 Cir. 2009)
- In re Adoption of B.G.S., 556 So. 2d 545 (La. 1990)
- Santosky v. Kramer, 455 U.S. 745 (1982)
- Lassiter v. Department of Social Services, 452 U.S. 18 (1981)
- Hebert v. Blanchard, 702 So. 2d 1102 (La. App. 3 Cir. 1997)
- Hoskins v. Hoskins, 814 So. 2d 773 (La. App. 2 Cir. 2002)
- Lasha v. Olin Corp., 625 So. 2d 1002 (La. 1993)
- Mosing v. Domas, 830 So. 2d 967 (La. 2002)
- Matthews v. Consolidated Companies, Inc., 664 So. 2d 1191 (La. 1995)

- Roger v. Estate of Moulton, 513 So. 2d 1126 (La. 1987)
- City of DeQuincy v. Henry, 62 So. 3d 43 (La. 2011)
- In re Succession of Faget, 53 So. 3d 414 (La. 2010)
- State v. Jones, 351 So. 2d 1194 (La. 1977)
- Arabie v. CITGO Petroleum Corp., 89 So. 3d 307 (La. 2012)
- State, Department of Public Safety & Corrections v. Louisiana Riverboat Gaming Commission, 655 So. 2d 292 (La. 1995)
- Tracie F. v. Francisco D., 174 So. 3d 781 (La. App. 5 Cir. 2015)

---

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/louisiana-supreme-court-of-louisiana/2016/tracie-f-v-francisco-d-032ophg0>