

SUPREME COURT OF WYOMING

Kes, f/k/a Ket v. Cat

2005 WY 29 (Wyo. 2005) · No. No. 04-39 · Decided March 10, 2005

SUMMARY

The Wyoming Supreme Court reviewed a custody modification awarding custody to the father after the parents' circumstances and the child's living arrangements changed. The court upheld the finding of a material change in circumstances but held that the district court violated the mother's due process rights by conducting an in camera interview with the child over her objection without adequate procedural safeguards. The custody order was reversed and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Voigt, Justice; Hill, C.J.; Golden, J.; Kite, J.; Voigt, J.; Stebner, D.J. (Ret.)
JURISDICTION	Wyoming
DECIDED	March 10, 2005
DOCKET	No. 04-39
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Mother appealed an order modifying the parties' divorce decree and awarding custody of their child to Father.
STANDARD OF REVIEW	Custody decisions are reviewed for abuse of discretion and violation of a legal principle. The appellate court evaluates the sufficiency of the evidence, affords the prevailing party every favorable inference, and does not sustain findings unsupported by, contrary to, or against the great weight of the evidence.
PRECEDENTIAL VALUE	published opinion; precedential
PARTIES	Kes, f/k/a Ket v. Cat

TOPICS

- child custody
- family law procedure
- procedural due process
- due process
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Father proved a material change in circumstances affecting the child's welfare sufficient to support modification of custody.
2. Whether the district court abused its discretion by changing custody based in part on a private, in camera interview with the child conducted over Mother's objection and without procedures protecting Mother's due process rights.

HOLDINGS

1. A party seeking modification of custody must show a material change in circumstances affecting the child's welfare and that modification is in the child's best interests; proof that the child was harmed is not required. The changes in the child's living circumstances, together with the parents' circumstances, constituted a material change affecting the child's welfare.
2. When a parent objects to a private interview between the child and the judge in a custody proceeding, the court may not conduct the interview without a procedure that protects the parent's due process rights. The district court abused its discretion by conducting the interview over Mother's objection without safeguarding her ability to know, examine, explain, or rebut the evidence obtained.
3. If a parent objects to a private interview, the parties or court must use an alternative procedure that protects due process and minimizes stress to the child. If the parties cannot agree, the court may interview the child in chambers with counsel present and must ensure that the record reflects the child's competency, stated preference, and the weight assigned to that preference.

KEY QUOTATIONS

"No showing of harm to the child is required." (§ 11)

"We hold that if one or both parents object to a private interview between the child and judge in a custody proceeding, no such interview should take place." (§ 20)

"The decision to change custody, however, was an abuse of discretion because the district court relied upon an improper in camera interview with the Child in determining the Child's custody preference." (§ 22)

FACTUAL BACKGROUND

The parties' only child was initially placed in Mother's custody after the parties divorced. Mother's psychological problems led to temporary custody with Father, followed by a temporary return of custody to Mother while Father served on active military duty. After Father returned, the district court interviewed the child privately over Mother's objection, relied in part on the child's preference to remain with Father, and modified custody in Father's favor.

PROCEDURAL HISTORY

The parties divorced in 2000, with Mother initially receiving custody. After Mother experienced psychological problems, the parties agreed to temporary custody with Father; custody later returned to Mother during Father's active military service, subject to conditions. Following Father's return, the district court held a custody hearing, conducted an in camera interview with the child over Mother's objection, and awarded custody to Father. The Wyoming Supreme Court affirmed the finding of changed circumstances but reversed the custody modification and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court's finding of a material change in circumstances is affirmed, but the order changing custody to Father is reversed. The case is remanded for further proceedings consistent with the opinion and procedures protecting Mother's due process rights.

CASES CITED

- Scherer v. Scherer, 931 P.2d 251, 254 (Wyo. 1997)
- Rowan v. Rowan, 786 P.2d 886, 890 (Wyo. 1990)
- Gurney v. Gurney, 899 P.2d 52, 55 (Wyo. 1995)
- Fink v. Fink, 685 P.2d 34, 36 (Wyo. 1984)
- Pinther v. Pinther, 888 P.2d 1250, 1252, 1255 (Wyo. 1995)
- Dowdy v. Dowdy, 864 P.2d 439, 440 (Wyo. 1993)
- Triggs v. Triggs, 920 P.2d 653, 657 (Wyo. 1996)
- Cranston v. Cranston, 879 P.2d 345, 351 (Wyo. 1994)
- Jones v. Jones, 858 P.2d 289, 291 (Wyo. 1993)
- Vanasse v. Ramsay, 847 P.2d 993, 996 (Wyo. 1993)
- Reavis v. Reavis, 955 P.2d 428, 431 (Wyo. 1998)
- Clark v. Alexander, 953 P.2d 145, 150 (Wyo. 1998)
- Wilcox-Elliot v. Wilcox, 924 P.2d 419, 421 (Wyo. 1996)
- JRS v. GMS, 2004 WY 60, ¶ 10, 90 P.3d 718, 723 (Wyo. 2004)
- Thompson v. Thompson, 824 P.2d 557, 559 (Wyo. 1992)
- Jackson v. Jackson, 2004 WY 99, 96 P.3d 21 (Wyo. 2004)
- Douglas v. Sheffner, 79 Wyo. 172, 331 P.2d 840, 844-45 (1958)
- Michael v. Hertzler, 900 P.2d 1144, 1147 (Wyo. 1995)
- Matter of SAJ, 942 P.2d 407, 410 (Wyo. 1997)
- In Interest of BLM, 902 P.2d 1288, 1291 (Wyo. 1995)
- Love v. Love, 851 P.2d 1283, 1291 (Wyo. 1993)
- Billingsley v. State, 2003 WY 61, ¶¶ 10-11, 69 P.3d 390, 395 (Wyo. 2003)

