

SUPREME COURT OF THE STATE OF IDAHO

Nancy J. Shepherd v. John M. Shepherd

161 Idaho 14 (2016) · No. 42938 · Decided September 29, 2016

SUMMARY

The Idaho Supreme Court affirmed the district court’s decision upholding a magistrate court order that reduced but did not terminate John Shepherd’s visitation with a child who was not his biological child. The court held that any error in applying Idaho non-parent custody law did not deprive the courts of subject matter jurisdiction, and that Nancy Shepherd lacked standing to assert the biological father’s due process rights. The court also declined to consider an indispensable-party argument raised for the first time in the reply brief and awarded attorney fees and costs to John Shepherd.

CASE DETAILS

COURT	Supreme Court of the State of Idaho
WRITING FOR THE COURT	Horton, Justice; J. Jones, Chief Justice; Eismann, Justice; Burdick, Justice; W. Jones, Justice
JURISDICTION	Idaho
DECIDED	September 29, 2016
DOCKET	42938
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nancy Shepherd appealed from the Idaho district court's decision affirming the magistrate court's partial denial of her motion to modify a divorce decree. She sought to set aside or terminate John Shepherd's visitation and custody rights concerning the child.
STANDARD OF REVIEW	The Supreme Court directly reviews the district court's decision when the district court acts in its intermediate appellate capacity. It reviews the magistrate record for substantial and competent evidence supporting factual findings and whether the conclusions of law follow from those findings, but is procedurally bound to affirm or reverse the district court's decision when the district court affirmed the magistrate court. Legal and constitutional issues are reviewed freely.
PRECEDENTIAL VALUE	Published Idaho Supreme Court opinion
PARTIES	Nancy J. Shepherd v. John M. Shepherd

TOPICS

family law procedure dissolution of marriage child custody subject matter jurisdiction
appellate procedure

PRACTICE AREAS

family law appellate procedure civil procedure constitutional law remedies

QUESTIONS PRESENTED

1. Whether the divorce decree and subsequent custody and visitation orders were void for lack of subject matter jurisdiction because Idaho law allegedly provided no legal basis for awarding a non-parent visitation or custody rights.
2. Whether Nancy had standing to challenge the custody and visitation orders as violations of the biological father's due process rights.
3. Whether the argument that the biological father was an indispensable party was properly before the Court.
4. Whether Nancy's vague challenge to the continuation of John's visitation presented a reviewable assignment of error.
5. Whether John was entitled to attorney fees and costs on appeal.

HOLDINGS

1. An alleged misapplication of Idaho custody law does not deprive a court of subject matter jurisdiction or render its judgment void. Idaho courts have jurisdiction in divorce proceedings, including continuing jurisdiction over custody and visitation questions involving minor children.
2. Nancy lacked standing to assert that Ralph's due process rights were violated because Ralph was not given notice and an opportunity to be heard.
3. The Court declined to consider Nancy's indispensable-party argument because she raised it for the first time in her reply brief, failed to support it with authority, and did not explain the legal significance of the alleged defect.
4. Nancy's general and unsupported challenge to the continuation of John's visitation was too vague and indefinite to be considered.
5. John was entitled to attorney fees and costs because Nancy's appeal was pursued frivolously, unreasonably, and without foundation.

KEY QUOTATIONS

"A judgment that incorrectly interprets a rule of law does not divest the court of jurisdiction over the subject matter or over the parties." (4)

"Jurisdiction is the power to decide erroneously as well as correctly." (5)

“We hold that Nancy is without standing to assert a claim that Ralph’s due process rights were violated as a basis for invalidating the custody provisions of the divorce decree.” (6)

FACTUAL BACKGROUND

Nancy and John Shepherd married in 2001, and a child, R.R.B., was born in 2005. John was not the child's biological father, but Nancy, John, and the child lived together as a family for the first three years of the child's life. In 2009, Nancy and John divorced and stipulated that John had an important relationship with the child and should have visitation; the biological father, Ralph Bartholdt, was not a party to the divorce. In later modification proceedings, the magistrate court found a substantial, permanent, and material change in circumstances warranting reduced visitation but declined to terminate John's visitation entirely.

PROCEDURAL HISTORY

Nancy and John stipulated to John's visitation with the child in their 2009 divorce. After the child's biological father, Ralph Bartholdt, was not made a party to the divorce or later modification proceedings, Nancy moved to set aside John's custody and visitation provisions and sought to terminate his visitation. The magistrate court reduced but did not terminate John's visitation, and the district court affirmed. The Idaho Supreme Court affirmed the district court and awarded John attorney fees and costs on appeal.

DISPOSITION

affirmed

CASES CITED

- In re Estate of Peterson, 157 Idaho 827, 340 P.3d 1143 (2014)
- Idaho Department of Health & Welfare v. McCormick, 153 Idaho 468, 283 P.3d 785 (2012)
- Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)
- Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981)
- Pelayo v. Pelayo, 154 Idaho 855, 303 P.3d 214 (2013)
- State Department of Health & Welfare v. Slane, 155 Idaho 274, 311 P.3d 286 (2013)
- State v. Doe, 148 Idaho 919, 231 P.3d 1016 (2010)
- Jim & Maryann Plane Family Trust v. Skinner, 157 Idaho 927, 342 P.3d 639 (2015)
- McGrew v. McGrew, 139 Idaho 551, 82 P.3d 833 (2003)
- Gordon v. Gordon, 118 Idaho 804, 800 P.2d 1018 (1990)
- State, Department of Health & Welfare v. Housel, 140 Idaho 96, 90 P.3d 321 (2004)
- Dey v. Cunningham, 93 Idaho 684, 471 P.2d 71 (1970)
- Bartosz v. Jones, 146 Idaho 449, 197 P.3d 310 (2008)
- Stockwell v. Stockwell, 116 Idaho 297, 775 P.2d 611 (1989)
- In re Jerome County Board of Commissioners, 153 Idaho 298, 281 P.3d 1076 (2012)
- Taylor v. Maile, 146 Idaho 705, 201 P.3d 1282 (2009)

- Singleton v. Wulff, 428 U.S. 106 (1976)
- Department of Labor v. Triplett, 494 U.S. 715 (1990)
- Powers v. Ohio, 499 U.S. 400 (1991)
- Suitts v. Nix, 141 Idaho 706, 117 P.3d 120 (2005)
- Myers v. Workmen's Auto Insurance Co., 140 Idaho 495, 95 P.3d 977 (2004)
- Akers v. Mortensen, 160 Idaho 286, 371 P.3d 340 (2016)
- Bach v. Bagley, 148 Idaho 784, 229 P.3d 1146 (2010)
- Hoffer v. Shappard, Docket No. 42087
- Snider v. Arnold, 153 Idaho 641, 289 P.3d 43 (2012)
- City of Boise v. Ada County, 147 Idaho 794, 215 P.3d 514 (2009)
- Nelson v. Nelson, 144 Idaho 710, 170 P.3d 375 (2007)

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