

SUPREME COURT OF ALASKA

Vince B. v. Sarah B.

425 P.3d 55 (Alaska 2018) · No. S-16616 · Decided July 27, 2018

SUMMARY

The Alaska Supreme Court affirmed a long-term domestic violence protective order issued against Vince B. for stalking his former wife, Sarah B. The court held that the superior court did not abuse its discretion or violate due process by addressing the proposed testimony of the parties’ ten-year-old son, and that neither ripeness nor res judicata barred consideration of prior conduct. The court also upheld the finding that Vince’s conduct constituted second-degree stalking under Alaska law.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Winfree, Justice; Stowers, Chief Justice; Maassen, Justice; Bolger, Justice; Carney, Justice
JURISDICTION	Alaska
DECIDED	July 27, 2018
DOCKET	S-16616
DISPOSITION	affirmed
PROCEDURAL POSTURE	Vince appealed the superior court's issuance of a long-term domestic violence protective order finding that he committed second-degree stalking.
STANDARD OF REVIEW	The grant or denial of a protective order and the decision whether to permit a child to testify are reviewed for abuse of discretion; due process and statutory interpretation are reviewed as questions of law under independent judgment; res judicata and ripeness are reviewed de novo; and factual findings underlying a domestic violence protective order are reviewed for clear error.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Vince B. v. Sarah B.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the superior court abused its discretion or violated procedural due process by accepting the substance of a ten-year-old child's proposed testimony without requiring the child to testify in open court.
2. Whether the superior court's warning in the first protective-order proceeding that future misconduct could support a stalking finding violated ripeness principles.
3. Whether res judicata barred the superior court from considering conduct underlying the previously denied protective-order petition when deciding whether later conduct formed a stalking course of conduct.
4. Whether the superior court clearly erred or failed to make adequate findings in concluding that Vince knowingly engaged in repeated nonconsensual contacts that recklessly placed Sarah in fear of physical injury.

HOLDINGS

1. The superior court did not abuse its discretion or violate due process by sparing the child from testifying and considering the substance of the testimony Vince represented the child would give.
2. The superior court's warning that future misconduct could support a stalking protective order was a warning rather than a ruling and therefore did not violate the doctrine of ripeness.
3. Res judicata did not bar the superior court from considering conduct presented in the earlier protective-order proceeding when determining whether later conduct formed a stalking course of conduct.
4. The superior court did not clearly err in finding that Vince engaged in a course of conduct involving repeated nonconsensual contacts that recklessly placed Sarah in fear of physical injury, and its findings adequately supported the protective order.

KEY QUOTATIONS

“To prohibit a court from considering past behavior in the context of new alarming acts would defeat the statute’s mandate that courts consider the full history of nonconsensual contacts in ascertaining whether stalking occurred.” (16)

“The statute for stalking in the second degree mandates otherwise, requiring the court to look at a pattern of behavior.” (19)

FACTUAL BACKGROUND

Vince and Sarah B., who had divorced and shared custody of their two sons, had a prolonged and hostile relationship involving frequent profane communications and conflict concerning Sarah's boyfriend. After an earlier incident involving physical contact at a school event and repeated appearances near Sarah, Vince continued sending aggressive messages and followed Sarah to her boyfriend's residence after a child-exchange. Sarah became fearful and sought a second domestic violence protective order, which the superior court granted after considering the incidents collectively as a course of conduct.

PROCEDURAL HISTORY

Sarah filed an initial domestic violence protective-order petition in April 2016, which the superior court denied after finding that Vince's conduct did not yet constitute harassment, assault, or stalking. After additional hostile communications and an incident in which Vince followed Sarah to her boyfriend's residence, Sarah filed a second petition. The superior court granted a long-term protective order after finding by a preponderance of the evidence that Vince engaged in a course of conduct constituting second-degree stalking. The Alaska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Cooper v. Cooper, 144 P.3d 451, 454 (Alaska 2006)
- Helen S.K. v. Samuel M.K., 288 P.3d 463, 475 (Alaska 2012)
- McMaster v. State, 512 P.2d 879, 881 (Alaska 1973)
- Sawyer v. State, 244 P.3d 1130, 1135-36 (Alaska App. 2011)
- D.M. v. State, Division of Family & Youth Services, 995 P.2d 205, 207, 212 (Alaska 2000)
- Odum v. University of Alaska, Anchorage, 845 P.2d 432, 454 (Alaska 1993)
- Patrawke v. Liebes, 285 P.3d 268, 271 n.7 (Alaska 2012)
- RBG Bush Planes, LLC v. Kirk, 340 P.3d 1056, 1060 (Alaska 2015)
- State v. American Civil Liberties Union of Alaska, 204 P.3d 364, 368 (Alaska 2009)
- Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976)
- Ogden v. Ogden, 39 P.3d 513, 518 (Alaska 2001)
- Jacko v. State, Pebble Ltd. Partnership, 353 P.3d 337, 340 (Alaska 2015)
- Brause v. State, Department of Health & Social Services, 21 P.3d 357, 359 (Alaska 2001)
- McAlpine v. Pacarro, 262 P.3d 622, 625, 627 (Alaska 2011)
- Angleton v. Cox, 238 P.3d 610, 614 (Alaska 2010)
- McComas v. Kim, 105 P.3d 1130, 1132, 1135-36 (Alaska 2005)
- Fardig v. Fardig, 56 P.3d 9, 11-12 (Alaska 2002)
- Petersen v. State, 930 P.2d 414, 431 (Alaska App. 1996)

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