

SUPREME COURT OF GEORGIA

Haskell v. Haskell, 286 Ga. 112

686 S.E.2d 102 (2009) · No. S09F1100 · Decided November 2, 2009

SUMMARY

The Supreme Court of Georgia affirmed a divorce judgment awarding primary physical custody of the parties' child to the husband after the wife's relocation to Pennsylvania. The court held that the trial court properly applied the best-interests-of-the-child standard, considered relevant custody factors, and did not clearly abuse its discretion in weighing the evidence.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley, Presiding Justice
JURISDICTION	Georgia
DECIDED	November 2, 2009
DOCKET	S09F1100
DISPOSITION	affirmed
PROCEDURAL POSTURE	Wife sought discretionary appellate review of a final divorce decree awarding primary physical custody of the parties' child to Husband; the Supreme Court of Georgia granted the discretionary appeal under its Pilot Project in divorce cases.
STANDARD OF REVIEW	A custody award between two fit parents will not be disturbed unless the evidence shows that the trial court clearly abused its discretion; where any evidence supports the decision, the appellate court will not find an abuse of discretion.
PRECEDENTIAL VALUE	Published decision of the Supreme Court of Georgia; binding precedent in Georgia.
PARTIES	Angela Haskell v. Brian Haskell

TOPICS

- child custody
- relocation
- standard of review
- preservation of error
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by awarding primary physical custody to Husband based on erroneous factual findings or a misapplication of *Bodne v. Bodne*.
2. Whether the trial court improperly refused to consider evidence concerning Husband's adultery and the child's relationship with maternal grandparents near Wife.
3. Whether Wife preserved for appellate review her claims concerning the trial court's treatment of the adultery and maternal-grandparent evidence.

HOLDINGS

1. The trial court did not abuse its discretion in awarding primary physical custody to Husband because ample evidence supported the award and the court properly applied the best-interests-of-the-child standard without a presumption against relocation.
2. Wife could not obtain appellate relief on these evidentiary claims because the trial court made no ruling excluding the adultery evidence, Wife voluntarily abandoned the line of questioning, and the court considered or addressed related evidence and the maternal grandparents' proximity.

KEY QUOTATIONS

“In considering a wide range of factors, the trial court here correctly avoided any presumption against relocation and adhered to the public policy requirement set forth in OCGA § 19-9-3 that the primary consideration of the trial court in deciding custody matters must be directed to the best interests of the child involved, that all other rights are secondary, and that any determination of the best interests of the child must be made on a case-by-case basis.” (686 S.E.2d at 104)

“Where[, as here,] the trial court has exercised its discretion and awarded custody of children to one fit parent over the other fit parent, this Court will not interfere with that decision unless the evidence shows the trial court clearly abused its discretion.” (686 S.E.2d at 103)

FACTUAL BACKGROUND

Angela and Brian Haskell married in 2001 and had one child in 2004. When the child was three, Wife filed for divorce and was awarded temporary primary physical custody; she later moved to Philadelphia. Following a final hearing, the trial court awarded joint legal custody and primary physical custody to Husband, relying on the child's relationship with his father, continuity of care, use of the same speech therapist, stability, and adjustment to relocation.

PROCEDURAL HISTORY

Wife filed a divorce action and initially received temporary primary physical custody. After Wife moved to Philadelphia, the trial court held a final hearing and entered a divorce decree awarding joint legal custody and primary physical custody to Husband. Wife applied for a discretionary appeal, which the Supreme Court of Georgia granted, and the court affirmed.

DISPOSITION

affirmed

CASES CITED

- Bodne v. Bodne, 277 Ga. 445, 588 S.E.2d 728 (2003)
- Welch v. Welch, 277 Ga. 808, 809, 596 S.E.2d 134 (2004)
- Urquhart v. Urquhart, 272 Ga. 548, 549(1), 533 S.E.2d 80 (2000)
- Hammond v. Hammond, 282 Ga. 456, 457(1), 651 S.E.2d 95 (2007)
- Messaadi v. Messaadi, 282 Ga. 126, 129(3), 646 S.E.2d 230 (2007)
- Facey v. Facey, 281 Ga. 367, 368-369(1), 638 S.E.2d 273 (2006)
- Mooney v. Mooney, 245 Ga. App. 780, 784, 538 S.E.2d 864 (2000)
- Dial v. Dial, 279 Ga. 767, 768, 621 S.E.2d 461 (2005)

OPINION

CARLEY, J.

686 S.E.2d 102 (2009) HASKELL v. HASKELL. No. S09F1100. Supreme Court of Georgia. November 2, 2009. *103 Callner, Portnoy & Strawser, Kathy L. Portnoy, Charla E. Strawser, Atlanta, for appellant. Miriam A. Arnold-Johnson, Divida Gude, Decatur, for appellee. CARLEY, Presiding Justice. Angela Haskell (Wife) and Brian Haskell (Husband) were married in 2001, and their only child was born in 2004.

When the child was three years old, Wife brought this divorce action and was awarded temporary primary physical custody. In May 2008, she moved to Philadelphia, Pennsylvania. After a final hearing in September 2008, the trial court entered a final divorce decree providing for joint legal custody and awarding primary physical custody to Husband.

The 30-page final judgment contains extensive findings of fact, analysis, and conclusions of law on the issue of custody. The trial court applied the factors set forth in OCGA § 19-9-3(a)(3) and referred to this Court's decision in Bodne v. Bodne, 277 Ga. 445, 588 S.E.2d 728 (2003). "Considering the Bodne factors and all other relevant factors, including OCGA § 19-9-3, and based upon the specific facts and circumstances of this case," the trial court concluded "that the best interests of the child are served by awarding primary physical custody to [Husband] and secondary custody ('visitation') to [Wife]."

Wife applied for a discretionary appeal, which we granted pursuant to our Pilot Project in divorce cases. 1. Wife contends that the trial court's award of primary physical custody to Husband is based on erroneous findings of fact and a misapplication of Bodne, and does not serve the best interests of the child. Where[, as here,] the trial court has exercised its discretion and awarded

custody of children to one fit parent over the other fit parent, this Court will not interfere with that decision unless the evidence shows the trial court clearly abused its discretion.

[Cit.] Where there is any evidence to support the decision of the trial court, this Court cannot say there was an abuse of discretion. [Cit.] *104 *Welch v. Welch*, 277 Ga. 808, 809, 596 S.E.2d 134 (2004). "[I]t is the duty of the trial judge to resolve the conflicts in the evidence...." [Cit.] *Urquhart v. Urquhart*, 272 Ga. 548, 549(1), 533 S.E.2d 80 (2000).

In considering a wide range of factors, the trial court here correctly avoided any presumption against relocation and adhered to the public policy requirement set forth in OCGA § 19-9-3 that the primary consideration of the trial court in deciding custody matters must be directed to the best interests of the child involved, that all other rights are secondary, and that any determination of the best interests of the child must be made on a case-by-case basis....

[W]e conclude that the order of the trial court reflects that when making its custodial determination based on the best interests of the children standard, it appropriately considered the myriad factors that had an impact on the child[] as established by the evidence adduced before it. *Bodne v. Bodne*, supra at 446-447, 588 S.E.2d 728. Ample evidence, including the child's close relationship with his father, continued use of the same speech therapist, and other evidence related to stability, continuity, and the child's adjustment to relocation, "support[s] the trial court's award of custody to Husband.

Accordingly, we cannot say the trial court abused its discretion in making the award." *Welch v. Welch*, supra. See also *Hammond v. Hammond*, 282 Ga. 456, 457(1), 651 S.E.2d 95 (2007). 2. Wife also contends that the trial court erroneously refused to consider evidence relevant to the issue of custody, including Husband's adultery and the child's close relationship with his maternal grandparents, who live near Wife.

The trial court made no ruling either excluding or refusing to consider evidence of adultery, but rather indicated only that placing such evidence in the record could later harm the child. "[T]his Court is empaneled to review rulings by lower courts and will not address issues not ruled upon below. (Cits.)" [Cit.] *Messaadi v. Messaadi*, 282 Ga. 126, 129(3), 646 S.E.2d 230 (2007).

Moreover, Wife's counsel voluntarily chose to "back off" the subject and move forward, and was allowed to consult with Wife, apparently to confirm the decision with her. Thereafter, counsel made no further attempt to introduce evidence of adultery prior to the parties' separation. "[A] party cannot ignore during trial that which he or she thinks to be error, take a chance on a favorable outcome, and complain later.

[Cits.]" *Facey v. Facey*, 281 Ga. 367, 368-369(1), 638 S.E.2d 273 (2006). Furthermore, Wife was later allowed to cross-examine Husband about his relationship with his girlfriend, and the trial court made specific findings with regard to that relationship. Wife also cannot complain of a

statement by the trial court, with which her counsel agreed, as to the relevance of certain of her questioning with respect to the maternal grandparents.

Wife's attorney then argued that those grandparents had assisted the family financially, and the trial court stated that he would not give any weight to that fact. The trial court was permitted to discount any evidence of financial assistance by the maternal grandparents, as the parties' incomes are substantial and "a grandparent's previous voluntary support for a grandchild provides no basis for an obligation to provide child support in the future, absent an agreement to do so."

Mooney v. Mooney, 245 Ga.App. 780, 784, 538 S.E.2d 864 (2000). See also Dial v. Dial, 279 Ga. 767, 768, 621 S.E.2d 461 (2005). Moreover, the trial court expressly acknowledged and balanced the benefit of having the maternal grandparents in close proximity. Judgment affirmed. All the Justices concur.