

SUPREME COURT OF ALASKA

Bernard Veselsky v. Patricia Veselsky

Veselsky v. Veselsky, 113 P.3d 629 (Alaska 2005) · No. S-11560 · Decided June 3, 2005

SUMMARY

The Supreme Court of Alaska affirmed a divorce judgment addressing relocation-related custody, classification and division of marital property, and allocation of visitation and uncovered medical expenses. The court held that the superior court did not abuse its discretion in permitting the mother to retain primary physical custody if she moved to Minnesota, treating her student loan as marital debt, awarding her a slightly larger share of the marital property, and assigning the father a greater share of travel and medical expenses.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Fabe, Justice; Bryner, Chief Justice; Matthews, Justice; Eastaugh, Justice; Carpeneti, Justice
JURISDICTION	Alaska
DECIDED	June 3, 2005
DOCKET	S-11560
DISPOSITION	affirmed
PROCEDURAL POSTURE	Bernard Veselsky appealed the superior court's divorce decree and related custody, marital-property, visitation-expense, and uncovered-medical-expense orders.
STANDARD OF REVIEW	Child-custody determinations are reviewed for clear error in the controlling factual findings or abuse of discretion. Marital-property classification is reviewed for abuse of discretion, except that legal classification questions are reviewed independently. Equitable property allocation is reviewed for abuse of discretion and will not be reversed unless clearly unjust.
PRECEDENTIAL VALUE	Published precedential opinion of the Alaska Supreme Court
PARTIES	Bernard Veselsky v. Patricia Veselsky

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the superior court properly awarded Patricia primary physical custody if she relocated with the children to Minnesota.
2. Whether Patricia's reasons for relocating were legitimate and whether the superior court properly evaluated the move under the children's best interests.
3. Whether the superior court properly evaluated the statutory custody factors, including the children's needs, parental capabilities, stability and continuity, ability to foster the other parent's relationship, domestic violence, and substance abuse.
4. Whether Patricia's student loan incurred during the marriage was properly classified as marital debt.
5. Whether the unequal 55%/45% division of marital property was clearly unjust.
6. Whether the superior court properly allocated 75% of visitation expenses and uncovered medical expenses to Bernard while Patricia pursued her graduate degree.

HOLDINGS

1. When a parent plans to move away from Alaska, the court must assume that the move will occur, determine whether the move has a legitimate purpose, and decide what custody arrangement is in the children's best interests under AS 25.24.150(c). The superior court did not abuse its discretion in awarding Patricia primary physical custody if she moved to Minnesota.
2. An erroneous factual statement in a custody decision is harmless when it is highly improbable that the trial court would have reached a different custody determination absent the error.
3. A debt incurred during the marriage is presumed to be marital absent evidence that the parties intended it to be separate. Patricia's student loan was therefore properly treated as marital debt.
4. Although equal division of marital property is presumed most equitable, the trial court may deviate from equality based on the statutory factors, and a modest unequal division is permissible unless clearly unjust. The 55%/45% division favoring Patricia was not clearly unjust.
5. The court may allocate a greater share of uncovered medical expenses and necessary visitation travel expenses to one parent when the other parent's limited financial resources provide good cause or make the allocation just and proper. The assignment of 75% of those expenses to Bernard was permissible.

KEY QUOTATIONS

“But under our reasoning in Moeller-Prokosch I, the proper inquiry is not whether the move itself is in the best interests of the children, but what custody arrangement is in their best interests assuming the move will take place.” (633-634)

“Although an equal division of property is presumed to be the most equitable, the trial court has broad discretion to deviate from absolute equality.” (637)

FACTUAL BACKGROUND

Bernard and Patricia Veselsky married in 1996 and had three children. After separating, Patricia sought primary physical custody and permission to relocate with the children to Minnesota to attend a social-work graduate program and live near her extended family; Bernard sought shared custody if Patricia remained in Alaska and primary custody if she moved. The superior court awarded Patricia primary physical custody contingent on the move, divided marital property 55% to Patricia and 45% to Bernard, treated Patricia's student loan as marital debt, and allocated a greater share of visitation and uncovered medical expenses to Bernard while Patricia pursued her degree.

PROCEDURAL HISTORY

After a divorce trial before Standing Master David S. Landry, the master recommended that Patricia receive primary physical custody, a 55% share of the marital property, and specified allocations of visitation and uncovered medical expenses. The superior court adopted the master's report with modifications and entered a divorce decree. Bernard appealed, and the Alaska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Jenkins v. Handel, 10 P.3d 586, 589 (Alaska 2000)
- Moeller-Prokosch v. Prokosch (Moeller-Prokosch III), 99 P.3d 531, 534 (Alaska 2004)
- Hamilton v. Hamilton, 42 P.3d 1107, 1111 (Alaska 2002)
- Cox v. Cox, 882 P.2d 909, 913 (Alaska 1994)
- Doyle v. Doyle, 815 P.2d 366, 368 (Alaska 1991)
- Moeller-Prokosch v. Prokosch (Moeller-Prokosch I), 27 P.3d 314, 316-17 (Alaska 2001)
- Moeller-Prokosch v. Prokosch (Moeller-Prokosch II), 53 P.3d 152, 156 (Alaska 2002)
- House v. House, 779 P.2d 1204, 1208 (Alaska 1989)
- Vachon v. Pugliese, 931 P.2d 371, 379 (Alaska 1996)
- Evans v. Evans, 869 P.2d 478, 481 (Alaska 1994)
- McQuade v. McQuade, 901 P.2d 421, 426 (Alaska 1995)
- Craig v. McBride, 639 P.2d 303, 308 (Alaska 1982) (Rabinowitz, C.J., concurring)
- Rooney v. Rooney, 914 P.2d 212, 217 (Alaska 1996)
- Meier v. Cloud, 34 P.3d 1274, 1279 (Alaska 2001)
- Coffland v. Coffland, 4 P.3d 317, 321-22 (Alaska 2000)
- McDougall v. Lumpkin, 11 P.3d 990, 994 (Alaska 2000)

- *Ulsher v. Ulsher*, 867 P.2d 819, 822 (Alaska 1994)
- *Olmstead v. Ziegler*, 42 P.3d 1102, 1105-06 (Alaska 2002)
- *Adamson v. University of Alaska*, 819 P.2d 886, 889 n. 3 (Alaska 1991)

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