

SUPREME COURT OF OHIO

Fisher v. Hasenjager

116 Ohio St. 3d 53 (Ohio 2007) · Decided October 25, 2007

SUMMARY

The Ohio Supreme Court held that modifying the designation of a child's residential parent and legal custodian in a shared-parenting decree requires a finding of a change in circumstances and a determination that the modification is in the child's best interest under Ohio Revised Code section 3109.04(E)(1)(a). The court rejected applying the more lenient best-interest-only standard for modifying the terms of a shared-parenting plan under section 3109.04(E)(2)(b), reversed the judgment, and remanded the case.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Lundberg Stratton, J.; O'Connor, J.; O'Donnell, J.; Blackmon, J.; Pfeifer, J.; Lanzinger, J.
JURISDICTION	Ohio
DECIDED	October 25, 2007
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Supreme Court of Ohio accepted a certified conflict from the Third District Court of Appeals concerning the statutory standard for changing the designation of a residential parent and legal custodian under a shared-parenting decree.
STANDARD OF REVIEW	The opinion addresses the statutory standards governing modification of a shared-parenting decree rather than articulating a separate appellate standard of review.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; binding statewide precedent.
PARTIES	Fisher v. Hasenjager

TOPICS

- child custody
- statutory interpretation
- appellate procedure
- family law procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether changing the designation of a child's residential parent and legal custodian under a court-approved shared-parenting decree is a modification of parental rights and responsibilities governed by R.C. 3109.04(E)(1)(a), or merely a modification of the terms of a shared-parenting plan governed by R.C. 3109.04(E)(2)(b).
2. Whether such a change may be ordered solely upon a finding that the modification is in the child's best interest, without a finding that a change in circumstances has occurred.

HOLDINGS

1. A modification of the designation of the residential parent and legal custodian is a modification of parental rights and responsibilities in the prior decree, not merely a modification of a term of the shared-parenting plan.
2. A modification of the designation of residential parent and legal custodian requires a determination that a change in circumstances has occurred and a finding that the modification is in the best interest of the child, pursuant to R.C. 3109.04(E)(1)(a).

KEY QUOTATIONS

“In conclusion, we hold that a modification of the designation of residential parent and legal custodian of a child requires a determination that a “change in circumstances” has occurred, as well as a finding that the modification is in the best interest of the child, pursuant to R.C. 3109.04(E)(1)(a).” (at 61, ¶ 37)

“A plan is not used by a court to designate the residential parent or legal custodian; that designation is made by the court in an order or decree.” (at 59, ¶ 31)

FACTUAL BACKGROUND

The parties shared custody of their daughter under a 2003 court-approved shared-parenting arrangement that allocated parental rights and responsibilities equally and included a detailed visitation schedule. In 2005, both parties moved to become the child's sole residential parent and legal custodian. After a hearing concerning problems with the parties and the parenting arrangement, the trial court found that terminating shared parenting was in the child's best interest and designated Hasenjager as residential parent and legal custodian.

PROCEDURAL HISTORY

The parties entered a shared-parenting arrangement in 2003. In 2005, both sought designation as the child's sole residential parent and legal custodian. The trial court terminated the shared-parenting arrangement and designated Hasenjager as residential parent and legal custodian without expressly finding a change in circumstances. The Third District treated the ruling as a modification rather than a termination and held that the designation could be changed under R.C. 3109.04(E)(2)(b) based solely on the child's best interest, creating a conflict with decisions from the Twelfth District. The Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded for further proceedings consistent with the Supreme Court's holding that changing the designation of residential parent and legal custodian requires compliance with R.C. 3109.04(E)(1)(a).

CASES CITED

- Schoettle v. Bering (Apr. 22, 1996), Brown App. No. CA9507-011, 1996 WL 189027
- Fisher v. Campbell (June 23, 1997), Butler App. No. CA96-11-248, 1997 WL 349013
- Fisher v. Hasenjager, 168 Ohio App.3d 321, 2006-Ohio-4190, 859 N.E.2d 1022
- State ex rel. Watkins v. Eighth Dist. Court of Appeals, 82 Ohio St.3d 532, 535, 696 N.E.2d 1079 (1998)
- Braatz v. Braatz, 85 Ohio St.3d 40, 43-44, 706 N.E.2d 1218 (1999)
- In re Gibson, 61 Ohio St.3d 168, 171, 573 N.E.2d 1074 (1991)
- State v. Moaning, 76 Ohio St.3d 126, 128, 666 N.E.2d 1115 (1996)
- Wooster Republican Printing Co. v. Wooster, 56 Ohio St.2d 126, 132, 10 O.O.3d 312, 383 N.E.2d 124 (1978)
- Davis v. Flickinger, 77 Ohio St.3d 415, 418, 674 N.E.2d 1159 (1997)
- Wyss v. Wyss, 3 Ohio App.3d 412, 416, 3 OBR 479, 445 N.E.2d 1153 (1982)
- In re Brayden James, 113 Ohio St.3d 420, 2007-Ohio-2335, 866 N.E.2d 467, ¶¶ 26, 28