

SUPREME COURT OF VERMONT

DeSantis v. Pegues

190 Vt. 457 (2011) · No. 2010-178 · Decided October 7, 2011

SUMMARY

The Vermont Supreme Court reviewed a family court order denying a father's motion to reinstate parent-child contact after he voluntarily suspended visitation following allegations of sexual abuse. The court held that a finding of sexual abuse by a preponderance of the evidence could support review of a modification of contact, but could not support an order that effectively terminated all parent-child contact without clear and convincing evidence. The court reversed and remanded, while upholding the family court's use of the best-interests-of-the-child standard.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Skoglund, J.; Dooley, J.; Johnson, J.; Burgess, J.; Crawford, Superior Judge, specially assigned
JURISDICTION	Vermont
DECIDED	October 7, 2011
DOCKET	2010-178
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Father appealed the Washington Family Court's denial of his motion to reinstate parent-child contact after he had voluntarily suspended visitation following allegations of sexual abuse.
STANDARD OF REVIEW	Family-court factual findings are reviewed for clear error and in the light most favorable to the prevailing party; legal conclusions are upheld if supported by the findings. Decisions granting, modifying, or denying parent-child contact are reviewed for abuse of discretion and will not be reversed unless the discretion rested on unfounded considerations or was clearly unreasonable.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	John E. Pegues v. Ann Marie DeSantis

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QUESTIONS PRESENTED

1. Whether sufficient evidence supported the family court's factual finding that father sexually abused the child by a preponderance of the evidence.
2. Whether the family court's conditions on future contact effectively terminated father's parental rights without clear and convincing evidence.
3. Whether the family court properly applied the best-interests-of-the-child standard when considering father's motion to dissolve the voluntary suspension of parent-child contact.

HOLDINGS

1. The family court's finding that father sexually abused the child by a preponderance of the evidence was supported by the record and was not clearly erroneous.
2. A finding of sexual abuse by a preponderance of the evidence is insufficient to support an order that effectively terminates all parent-child contact; clear and convincing evidence is required before visitation may be entirely terminated.
3. The family court properly applied the best-interests-of-the-child standard when determining what level of renewed parent-child contact should be ordered.

KEY QUOTATIONS

"We hold that the court's finding of sexual abuse by a preponderance of the evidence was insufficient to support an order effectively terminating father's parental rights." (190 Vt. 457)

"as a matter of due process, a court must find evidence of sexual abuse by clear and convincing evidence in order to terminate all contact between a parent and child." (190 Vt. 467)

"On remand, the court is to consider parent-child contact for father upon such terms and under such conditions as the family court deems necessary and appropriate in the best interest of daughter." (190 Vt. 470-471)

FACTUAL BACKGROUND

The parties separated after marrying in 1991 and adopting their daughter in 1996. The family court found that father had engaged in inappropriate physical conduct with the child and found sexual abuse by a preponderance of the evidence, but not by clear and convincing evidence. Father voluntarily suspended contact during the abuse investigation, and the criminal charges against him were later dismissed. When he sought to dissolve the suspension, the family court denied contact unless he supported the child's therapy and worked collaboratively with her therapist.

PROCEDURAL HISTORY

The parties' visitation arrangement was modified over time, and father voluntarily suspended parent-child contact in 2006. After criminal sexual-assault charges were dismissed, father moved to dissolve the suspension. The family court retained jurisdiction, treated the matter as a motion to modify parent-child contact, found sexual abuse by a preponderance of the evidence, and denied visitation subject to conditions. The Vermont Supreme Court affirmed the finding that the abuse evidence satisfied the modification threshold and affirmed use of the best-interests standard, but reversed the order because the conditions effectively terminated all parent-child contact without clear and convincing evidence.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The family court must reconsider parent-child contact under terms and conditions it deems necessary and appropriate in the child's best interests. It may impose supervised or otherwise limited visitation, but may not structure visitation so that father's remaining parental rights are effectively denied without clear and convincing evidence.

CASES CITED

- Mullin v. Phelps, 162 Vt. 250, 647 A.2d 714 (1994)
- Siegel v. Misch, 2007 VT 116, 182 Vt. 623, 939 A.2d 1023 (mem.)
- Fournier v. Fournier, 169 Vt. 600, 738 A.2d 98 (1999) (mem.)
- Miller-Jenkins v. Miller-Jenkins, 2010 VT 98, 189 Vt. 518, 12 A.3d 768 (mem.)
- Highgate Assocs. v. Merryfield, 157 Vt. 313, 597 A.2d 1280 (1991)
- Gabriel v. Pritchard, 173 Vt. 452, 788 A.2d 1 (2001) (mem.)
- Lyddy v. Lyddy, 173 Vt. 493, 787 A.2d 506 (2001) (mem.)
- T.B.H. v. Meyer, 168 Vt. 149, 716 A.2d 31 (1998)
- State v. Cameron, 168 Vt. 421, 721 A.2d 493 (1998)
- In re Marriage of P.K.A., 725 S.W.2d 78 (Mo. Ct. App. 1987)
- Knutsen v. Cegalis, 2009 VT 110, 187 Vt. 99, 989 A.2d 1010
- Santosky v. Kramer, 455 U.S. 745 (1982)
- Armstrong v. Manzo, 380 U.S. 545 (1965)
- Hoversten v. Superior Court, 88 Cal. Rptr. 2d 197 (Ct. App. 1999)
- McAlister v. Shaver, 633 So. 2d 494 (Fla. Dist. Ct. App. 1994)
- Johnntonny v. Malliski, 588 N.E.2d 200 (Ohio Ct. App. 1991)
- State v. Berini, 167 Vt. 565, 701 A.2d 1055 (1997) (mem.)
- Mathews v. Eldridge, 424 U.S. 319 (1976)
- In re Smith, 169 Vt. 162, 730 A.2d 605 (1999)

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