

SUPREME COURT OF THE STATE OF MONTANA

Howell v. Weivoda

2004 MT 287N (2004) · No. No. 04-243 · Decided October 19, 2004

SUMMARY

The Montana Supreme Court affirmed a Chouteau County District Court parenting plan awarding primary residential custody of the parties' child to the father in Washington. The court held that the record, including the absence of a hearing transcript, did not support reversal of the District Court's findings concerning the child's best interests, witness testimony, and relationship with a half-sibling. The court also declined to consider the guardian ad litem issue because it was raised for the first time on appeal.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Patricia O. Cotter; Patricia O. Cotter; Karla M. Gray; W. William Leaphart; James C. Nelson; Jim Rice
JURISDICTION	Montana
DECIDED	October 19, 2004
DOCKET	No. 04-243
DISPOSITION	affirmed
PROCEDURAL POSTURE	Shelley Weivoda appealed the Final Decree of Parenting entered by the Montana Twelfth Judicial District Court concerning the parties' minor child.
STANDARD OF REVIEW	An appellant bears the burden of demonstrating error by reference to the record. Without a transcript affirmatively showing the alleged error, the Supreme Court will not reconsider the district court's findings or grant relief based on matters not established in the record.
PRECEDENTIAL VALUE	Nonprecedential; noncitable memorandum opinion
PARTIES	Shelley Weivoda v. Jim Howell

TOPICS

- child custody
- family law procedure
- appellate procedure
- preservation of error
- evidence

PRACTICE AREAS

family law

appellate procedure

evidence

civil procedure

QUESTIONS PRESENTED

1. Whether the District Court erred by entering a final parenting plan when Weivoda had moved for an interim parenting plan.
2. Whether the District Court improperly admitted testimony from witnesses allegedly not disclosed before the hearing.
3. Whether the District Court considered the statutory best-interests factors under § 40-4-212, MCA.
4. Whether the District Court violated Weivoda's due process rights by entering a final decree and parenting plan.
5. Whether the District Court considered Joshua's relationship with his half-brother.
6. Whether the District Court erred by failing to appoint a guardian ad litem for Joshua.

HOLDINGS

1. An appellant cannot obtain appellate relief on alleged trial-court errors that are not affirmatively demonstrated by the record; without a transcript, the Court could not adequately review the disputes concerning whether the hearing was final or interim, the admission of testimony, or the claimed due process violation.
2. The District Court adequately considered the statutory best-interests factors and Joshua's relationship with his half-brother because it made specific findings and conclusions addressing those matters.
3. The guardian-ad-litem issue was not properly before the Supreme Court because Weivoda raised it for the first time on appeal.
4. Montana Rule of Civil Procedure 26(a)(3) does not impose the same pretrial disclosure requirements as Federal Rule of Civil Procedure 26(a)(3).

KEY QUOTATIONS

“The burden of showing error by reference to matters of record is upon the appellant, and unless the record that an appellant brings before this Court affirmatively shows the occurrence of the matters upon which the appellant relies for relief, those matters may not be urged upon this Court on appeal.” (¶ 21)

FACTUAL BACKGROUND

Jim Howell and Shelley Weivoda have one minor child, Joshua. Before the proceeding, Joshua had lived in Washington with Howell for more than six months after previously residing in Montana with Weivoda and his maternal aunt, Charlotte Weivoda. The District Court found Charlotte highly credible, determined that Howell had provided stable and continuous care, and concluded that Joshua's best interests favored continuing to live with Howell in Washington, while preserving contact with Weivoda and his half-brother.

PROCEDURAL HISTORY

The District Court exercised subject matter jurisdiction and entered a final parenting plan making Jim Howell the primary residential parent and providing Weivoda parenting time. Weivoda raised six issues on appeal, including the final nature of the decree, admission of allegedly undisclosed testimony, consideration of the child's best interests and relationship with his half-brother, due process, and appointment of a guardian ad litem. The Montana Supreme Court affirmed, concluding that the record did not establish reversible error and that the guardian-ad-litem issue was raised for the first time on appeal.

DISPOSITION

affirmed

CASES CITED

- Huffine v. Boylan, 239 Mont. 515, 517, 782 P.2d 77, 78 (1989)