

DISTRICT OF COLUMBIA COURT OF APPEALS

A.C. v. N.W.

160 A.3d 509 (D.C. 2017) · Decided June 1, 2017

SUMMARY

The District of Columbia Court of Appeals reviewed the vacatur of a temporary custody order that had suspended the father’s visitation during a police investigation into alleged sexual abuse. The court held that the mother bore the burden of showing that the temporary order should continue and that the trial court was not required to accept the child therapist’s testimony uncritically. However, the court remanded the record because the trial court’s factual findings and reasoning were insufficient to permit meaningful appellate review.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Beckwith, Associate Judge; Beckwith; Easterly; Steadman
JURISDICTION	District of Columbia
DECIDED	June 1, 2017
DISPOSITION	remanded
PROCEDURAL POSTURE	Mother appealed the trial court's order vacating a temporary custody order that had suspended the father's custody and visitation; the father cross-appealed concerning the admission and use of the child's therapist's testimony.
STANDARD OF REVIEW	Custody decisions, including vacatur of the temporary custody order, are reviewed for manifest abuse of discretion; legal determinations are reviewed de novo; factual findings are reviewed for clear error. The appellate court reviews a trial court's consideration of expert testimony deferentially.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	A.C. v. N.W.

TOPICS

- child custody
- visitation
- family law procedure
- appellate procedure
- expert testimony

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the burden of proving a substantial and material change in circumstances and the child's best interests rested on N.W. as the movant seeking vacatur of the temporary custody order.
2. Whether evidence of an alleged intrafamily offense, without a judicial finding by a preponderance of the evidence that the offense occurred, triggered the statutory presumption against joint custody.
3. Whether the trial court improperly disregarded or was required to credit the child's therapist's uncontradicted expert testimony.
4. Whether the trial court made findings of fact and explained its reasoning sufficiently to permit meaningful appellate review.
5. Whether the Safe Shores confidentiality statute barred the voluntary disclosure of the therapist's testimony.
6. Whether the appellate stay should remain in effect and whether the trial court prematurely denied the mother's motion for a permanent custody award.

HOLDINGS

1. Because the temporary custody order merely suspended the preexisting custody award and was not itself an award of custody, N.W.'s motion to vacate was not a motion to modify an award of custody. A.C., who sought to continue the temporary order as a permanent custody arrangement, bore the burden of proving a substantial and material change in circumstances and that the proposed arrangement was in the child's best interests.
2. Evidence that a parent allegedly committed an intrafamily offense does not trigger the statutory presumption against joint custody unless a judicial officer finds by a preponderance of the evidence that the offense occurred.
3. The trial court was not required to credit the child's therapist's uncontradicted testimony in its entirety and could give it little weight when the record provided a factual basis for doing so.
4. The trial court's findings were insufficient because a summary of the evidence, without explaining which evidence was credited or how the evidence supported the conclusion that A.C. had not met her burden, did not permit meaningful appellate review.
5. D.C. Code § 4-1301.52(a)(4), which provides that specified Safe Shores information is not subject to disclosure, does not bar voluntary disclosure of that information by an authorized party.
6. The appellate court retained jurisdiction to remand the record for supplemental findings and exercised its authority under the All Writs Act to vacate the existing stay. The trial court could issue a new stay if warranted by current circumstances, and its denial of the mother's motion for a permanent custody award was premature and had to be vacated.

KEY QUOTATIONS

“Notwithstanding that the trial court was not required to set forth express reasoning on the best-interest-of-the-child factors, the trial court was required to make findings of fact and explicate its reasoning in sufficient detail to permit “meaningful appellate review.”” (520-521)

“We cannot ignore the fact that no factfinder has ever found that N.W. harmed A.C.W. and that the factfinder who extensively considered the abuse allegations, Judge Rigsby, presumably determined that N.W. did not harm A.C.W., given that he vacated the temporary-custody order and ruled that A.C. “ha[d] not met her burden.”” (523-524)

FACTUAL BACKGROUND

A.C. and N.W. were the divorced parents of A.C.W. and shared legal and physical custody under a 2012 consent order, with the child residing primarily with A.C. After A.C. alleged that N.W. had sexually abused the child, the trial court temporarily suspended N.W.'s custody and visitation pending a police investigation. The investigation ended without criminal charges, and after an evidentiary hearing involving the investigating detective, the child's therapist, and both parents, the trial court vacated the temporary order but required supervised visitation.

PROCEDURAL HISTORY

The trial court initially entered an ex parte temporary order giving the mother sole temporary legal and physical custody and suspending the father's visitation while police investigated alleged sexual abuse. After the investigation ended without prosecution, the trial court held a four-day evidentiary hearing and vacated the temporary order while requiring supervised visitation. The mother appealed, and the father cross-appealed. The appellate court remanded the record for additional findings, ordered the stay pending appeal vacated, and ordered vacatur of the ruling denying the mother's motion for a permanent custody award.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court must supplement its findings of fact and explain its reasoning in sufficient detail to permit meaningful appellate review, including addressing the material issues concerning whether abuse occurred and whether resumption of visitation would traumatize the child. The record is to be returned to the appellate court for further consideration. The trial court must vacate the stay order currently in effect and vacate its ruling denying A.C.'s motion for a new permanent custody award, without prejudice to further proceedings based on current circumstances.

CASES CITED

- Khawam v. Wolfe, 84 A.3d 558, 570 (D.C. 2014)
- Estopina v. O'Brian, 68 A.3d 790, 793 (D.C. 2013)
- In re A.M., 589 A.2d 1252, 1257-1258 (D.C. 1991)
- Jordan v. Jordan, 14 A.3d 1136, 1146 (D.C. 2011)

- P.F. v. N.C., 953 A.2d 1107, 1112-1115 (D.C. 2008)
- In re M.L., 28 A.3d 520, 530 (D.C. 2011)
- Prost v. Greene, 652 A.2d 621, 629 (D.C. 1995)
- Rock Creek Plaza-Woodner Ltd. P'ship v. District of Columbia, 466 A.2d 857, 859 (D.C. 1983)
- Richbow v. District of Columbia, 600 A.2d 1063, 1066-1067 (D.C. 1991)
- Oliver v. United States, 711 A.2d 70, 73 (D.C. 1998)
- District of Columbia v. Wilson, 721 A.2d 591, 600 (D.C. 1998)
- In re Melton, 597 A.2d 892, 903 (D.C. 1991)
- Kennedy v. Louisiana, 554 U.S. 407, 443 (2008)
- In re Jam.J., 825 A.2d 902, 915 n.7 (D.C. 2003)
- Dumas v. Woods, 914 A.2d 676, 679 (D.C. 2007)
- Pimble v. Pimble, 521 A.2d 1173, 1175 (D.C. 1987)
- K.H. v. R.H., 935 A.2d 328, 335 (D.C. 2007)
- Lihlakha v. United States, 89 A.3d 479, 490 n.32 (D.C. 2014)
- Bell v. United States, 676 A.2d 37, 41 (D.C. 1996)
- Salvattera v. Ramirez, 105 A.3d 1003, 1005 (D.C. 2014)
- Barry v. Washington Post Co., 529 A.2d 319, 320-321 (D.C. 1987)
- Akassy v. William Penn Apartments Ltd. P'ship, 891 A.2d 291, 309 (D.C. 2006)
- Marsh v. Johnson, 263 F. Supp. 2d 49, 52 (D.D.C. 2003)
- Barber v. Bryant, 833 F.3d 510, 511 (5th Cir. 2016)
- Dayton Bd. of Educ. v. Brinkman, 439 U.S. 1358, 1359 (1978)
- Santosky v. Kramer, 455 U.S. 745, 753 (1982)
- In re Ko.W., 774 A.2d 296, 306 (D.C. 2001)
- Public Utils. Comm'n v. Capital Transit Co., 214 F.2d 242, 245 (D.C. Cir. 1954)
- Stebbins v. Stebbins, 673 A.2d 184, 190 (D.C. 1996)
- In re M.O.R., 851 A.2d 503, 508 n.3 (D.C. 2004)
- Ysla v. Lopez, 684 A.2d 775, 780 (D.C. 1996)
- Galindo v. United States, 630 A.2d 202, 210 (D.C. 1993)
- CHH Capital Hotel Partners, LP v. District of Columbia, 152 A.3d 591, 596 n.11 (D.C. 2017)
- Wagner v. Georgetown Univ. Med. Ctr., 768 A.2d 546, 563 (D.C. 2001)
- In re T.H.B., 670 A.2d 895, 902 (D.C. 1996)
- Gonzalez v. United States, 697 A.2d 819, 826 (D.C. 1997)
- Mindombe v. United States, 795 A.2d 39, 46 (D.C. 2002)