

SUPREME COURT OF NEBRASKA

State on behalf of Ryley G. v. Ryan G.

306 Neb. 63 (2020) · No. S-19-892 · Decided June 5, 2020

SUMMARY

The Nebraska Supreme Court reviewed a custodial parent’s request to relocate a child from Nebraska in connection with the custodial parent’s remarriage and spouse’s military employment. The court held that the proposed move had a legitimate purpose and was in the child’s best interests, but concluded that the district court improperly granted open-ended permission for future relocations. The judgment was affirmed as modified to permit relocation only to the specified military base near Washington, D.C.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Miller-Lerman, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	June 5, 2020
DOCKET	S-19-892
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ryan G., the noncustodial parent, appealed from a district court order modifying a filiation judgment and permitting the custodial parent to remove the child from Nebraska without specifying a destination or limiting further relocation.
STANDARD OF REVIEW	In a filiation proceeding, child-custody determinations are reviewed de novo on the record to determine whether the trial court abused its discretion. The appellate court gives weight to the fact that the trial court heard and observed the witnesses when the evidence is conflicting.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Ryan G. v. State of Nebraska on behalf of Ryley G., Rashell K.

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QUESTIONS PRESENTED

1. Whether Rashell established a legitimate reason to remove Ryley from Nebraska.
2. Whether relocation to Fort Belvoir near Washington, D.C., was in Ryley's best interests.
3. Whether the district court improperly granted Rashell an open-ended authority to relocate Ryley to any future location selected by her or her spouse.
4. Whether the relocation constituted a material change in circumstances requiring a transfer of custody to Ryan.

HOLDINGS

1. A custodial parent's desire to live with a new spouse at the location of the spouse's military employment, together with the spouse's continuing military career and the desire to form and maintain a new family unit, constitutes a legitimate reason to remove the child to another jurisdiction.
2. The district court did not abuse its discretion in finding that relocation to Fort Belvoir was in Ryley's best interests.
3. A court may not delegate to a custodial parent the authority to move a child to another state beyond the specifically approved destination without obtaining permission in a new proceeding.
4. Removal of a child from the state, without more, does not constitute a material change in circumstances warranting a change of custody, although removal combined with other evidence may do so.

KEY QUOTATIONS

"A court cannot delegate to a custodial parent, who has obtained permission only for removal of a child from Nebraska to one state, the authority to move the child to yet another state without permission." (78-79)

"Removal of a child from the state, without more, does not amount to a change of circumstances warranting a change of custody." (80)

FACTUAL BACKGROUND

Rashell K. had legal and physical custody of Ryley G., subject to Ryan G.'s substantial parenting time. Rashell sought to relocate with Ryley after marrying Joshua Chubb, whose National Guard service required a one-year deployment to a military base near Washington, D.C., followed by likely employment in Missouri or Alabama. Ryley had strong ties to Lincoln, Nebraska, including extended family, friends, school, activities, and an active relationship with Ryan, but Rashell had historically handled most of Ryley's educational, medical, and day-to-day care. The district court found a legitimate reason for the move and that relocation to Fort Belvoir was in Ryley's best interests, but its final order did not limit the relocation destination or later moves.

PROCEDURAL HISTORY

The State initiated a filiation proceeding in 2009, resulting in a child-support judgment against Ryan G. In 2016, the district court awarded Rashell K. legal and physical custody subject to Ryan's parenting time. After Rashell sought permission to relocate with the child because of her new husband's military deployment and anticipated employment, the district court approved the move and dismissed Ryan's cross-petition for custody, but entered an open-ended final order permitting Rashell to determine the child's primary residence. The Nebraska Supreme Court affirmed the relocation and custody determinations but modified the order to permit relocation only to Fort Belvoir, Virginia, near Washington, D.C.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

No remand was ordered. Any further move beyond Fort Belvoir must be sought in a new proceeding.

CASES CITED

- State on behalf of Kaaden S. v. Jeffery T., 303 Neb. 933, 932 N.W.2d 692 (2019)
- Steffy v. Steffy, 287 Neb. 529, 843 N.W.2d 655 (2014)
- Farnsworth v. Farnsworth, 257 Neb. 242, 597 N.W.2d 592 (1999)
- Daniels v. Maldonado-Morin, 288 Neb. 240, 847 N.W.2d 79 (2014)
- McLaughlin v. McLaughlin, 264 Neb. 232, 647 N.W.2d 577 (2002)
- Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969)
- Edelman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974)
- Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)
- Vogel v. Vogel, 262 Neb. 1030, 637 N.W.2d 611 (2002)
- Maranville v. Dworak, 17 Neb. Ct. App. 245, 758 N.W.2d 70 (2008)
- VanSkiver v. VanSkiver, 303 Neb. 664, 930 N.W.2d 569 (2019)
- Ensrud v. Ensrud, 230 Neb. 720, 433 N.W.2d 192 (1988)
- Deacon v. Deacon, 207 Neb. 193, 297 N.W.2d 757 (1980)
- Lautenschlager v. Lautenschlager, 201 Neb. 741, 272 N.W.2d 40 (1978)
- Tremain v. Tremain, 264 Neb. 328, 646 N.W.2d 661 (2002)
- Gibilisco v. Gibilisco, 263 Neb. 27, 637 N.W.2d 898 (2002)

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