

SUPREME COURT OF ARKANSAS

Orantes v. Orantes

381 S.W.3d 758 (Ark. 2011) · Decided April 14, 2011

SUMMARY

The Arkansas Supreme Court reviewed a circuit court order changing custody of a child from Jacquelin Perez Orantes to Daniel Orantes. The court held that the circumstances relied upon by the circuit court, including the parties’ immigration status and other changes known or existing at the time of the original custody agreement, did not establish a material change in circumstances. The court reversed and remanded for entry of an order consistent with its opinion.

CASE DETAILS

|                       |                                                                                                                                                                                               |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Arkansas                                                                                                                                                                     |
| WRITING FOR THE COURT | KAREN R. BAKER                                                                                                                                                                                |
| JURISDICTION          | Arkansas                                                                                                                                                                                      |
| DECIDED               | April 14, 2011                                                                                                                                                                                |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Jacquelin Perez Orantes appealed a Grant County Circuit Court order modifying custody and awarding custody of the parties' daughter to Daniel Orantes.                                        |
| STANDARD OF REVIEW    | Child-custody cases are reviewed de novo, but the appellate court reverses only when the circuit court's findings are clearly erroneous or clearly against the preponderance of the evidence. |
| PRECEDENTIAL VALUE    | Published Arkansas Supreme Court opinion; precedential.                                                                                                                                       |
| PARTIES               | Jacquelin Perez Orantes v. Daniel Orantes                                                                                                                                                     |

TOPICS

- child custody
- family law procedure
- immigration
- temporary protected status

PRACTICE AREAS

- family law
- child custody
- immigration
- constitutional law

QUESTIONS PRESENTED

1. Whether Daniel proved a material change in circumstances sufficient to modify the existing custody order.
2. Whether circumstances known to the parties when they entered into a custody agreement could later support a finding of material change when the agreement was incorporated into the divorce decree.
3. Whether the circuit court could modify custody based on the parties' immigration statuses, lack of a driver's license, remarriages, additional children, and differing household resources.

## HOLDINGS

1. A custody award may be modified only upon a showing of a material change in circumstances, and the party seeking modification bears the burden of proof.
2. Circumstances known by the parties when they entered into a custody agreement cannot later serve as the basis for finding a material change in circumstances when the agreement was approved by the court and incorporated into the final divorce decree.
3. Daniel failed to prove a material change in circumstances warranting a change of custody; the circuit court therefore clearly erred in transferring custody from Jacquelin to Daniel.
4. The reasons Daniel gave for entering into the original custody settlement did not establish fraud sufficient to avoid the settlement's effect.

## KEY QUOTATIONS

*“Circumstances known by the parties when they enter into a custody agreement cannot be the basis for finding that a material change in circumstances has occurred.”*

*“Because Daniel failed to prove a material change of circumstances, we hold that the circuit court clearly erred in changing custody of J.O. from Jacquelin to Daniel.”*

## FACTUAL BACKGROUND

Jacquelin and Daniel Orantes were divorced in 2005, and their separation and property-settlement agreement, incorporated into the decree, awarded Jacquelin sole custody of their daughter, J.O. In 2009, Daniel sought a custody change based principally on the parties' immigration statuses, Jacquelin's lack of a valid Arkansas driver's license, their remarriages and additional children, and differences in their household resources. The circuit court relied substantially on Jacquelin's allegedly unlawful immigration status and driving and awarded Daniel custody, although the evidence showed that Daniel had had little contact with J.O. for approximately one to two years.

## PROCEDURAL HISTORY

The parties' 2005 divorce decree awarded Jacquelin sole custody and Daniel visitation. In 2009, Daniel moved to modify custody, asserting material changes including the parties' immigration statuses, Jacquelin's lack of a valid driver's license, their remarriages, and their respective home circumstances. After a hearing, the circuit court found a material change in circumstances and immediately awarded Daniel custody. The Arkansas Supreme Court reversed and remanded.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Reverse the custody modification and remand for entry of an order consistent with the opinion.

## CASES CITED

- Stehle v. Zimmerebner, 375 Ark. 446, 291 S.W.3d 573 (2009)
- Lloyd v. Butts, 343 Ark. 620, 37 S.W.3d 603 (2001)
- Campbell v. Campbell, 336 Ark. 379, 985 S.W.2d 724 (1999)
- Stills v. Stills, 2010 Ark. 132, 361 S.W.3d 823
- Jones v. Jones, 326 Ark. 481, 931 S.W.2d 767 (1996)
- Hamilton v. Barrett, 337 Ark. 460, 989 S.W.2d 520 (1999)
- Brewer v. Brewer, 239 Ark. 614, 390 S.W.2d 630 (1965)
- Miller v. Miller, 208 Ark. 1058, 189 S.W.2d 371 (1945)
- Nutt v. Nutt, 214 Ark. 24, 214 S.W.2d 366 (1948)
- Jackson v. Jackson, 253 Ark. 1033, 490 S.W.2d 809 (1973)
- Burns v. Burns, 312 Ark. 61, 847 S.W.2d 23 (1993)
- Johnson v. Arledge, 258 Ark. 608, 527 S.W.2d 917 (1975)
- Malone v. Malone, 4 Ark. App. 366, 631 S.W.2d 318 (1982)

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