

COURT OF APPEALS OF MARYLAND

Conover v. Conover, 450 Md. 51

146 A.3d 433 (2016) · No. No. 79, September Term, 2015 · Decided July 7, 2016

SUMMARY

The Maryland Court of Appeals held that de facto parents have standing to contest custody or visitation. It ruled that de facto parents need not first establish parental unfitness or exceptional circumstances before a court applies the best-interests-of-the-child standard, overruling Janice M. v. Margaret K. The court reversed the Court of Special Appeals and remanded the case.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Adkins, J.; Barbera, C.J.; Battaglia, J.; Greene, J.; McDonald, J.; Watts, J.; Raker, J.; Irma S. Raker, J. (Retired, Specially Assigned)
JURISDICTION	Maryland
DECIDED	July 7, 2016
DOCKET	No. 79, September Term, 2015
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Michelle Conover sought visitation with a child born to her former same-sex spouse before the parties married. The Circuit Court for Washington County held that Michelle lacked standing because she was neither a legal parent nor a qualifying third party who could overcome the biological mother's parental rights. The Court of Special Appeals affirmed, and the Court of Appeals of Maryland granted certiorari.
STANDARD OF REVIEW	De novo review applied because recognition of de facto parenthood and the interpretation and application of Maryland case law presented legal questions.
PRECEDENTIAL VALUE	Published, precedential opinion of the Court of Appeals of Maryland
PARTIES	Michelle L. Conover v. Brittany D. Conover

TOPICS

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QUESTIONS PRESENTED

1. Whether Maryland should recognize the doctrine of de facto parenthood.
2. Whether a de facto parent has standing to contest custody or visitation without first proving parental unfitness or exceptional circumstances.
3. Whether Michelle qualified as a legal parent under Estates and Trusts § 1-208(b).

HOLDINGS

1. Maryland recognizes de facto parenthood as a viable means of establishing standing to contest custody or visitation. The court overruled *Janice M. v. Margaret K.* to the extent it rejected de facto-parent status.
2. A person who qualifies as a de facto parent has standing to contest custody or visitation and need not independently show parental unfitness or exceptional circumstances before the trial court applies the best-interests-of-the-child standard.
3. A person seeking de facto-parent status must prove: (1) the biological or adoptive parent consented to and fostered the parent-like relationship; (2) the petitioner and child lived together in the same household; (3) the petitioner assumed significant parental responsibilities without expectation of financial compensation; and (4) the petitioner occupied a parental role long enough to establish a bonded, dependent relationship that is parental in nature.

KEY QUOTATIONS

“We hold that de facto parents have standing to contest custody or visitation and need not show parental unfitness or exceptional circumstances before a trial court can apply a best interests of the child analysis.”
(450 Md. at 75-76)

“The de facto parent doctrine does not contravene the principle that legal parents have a fundamental right to direct and govern the care, custody, and control of their children because a legal parent does not have a right to voluntarily cultivate their child’s parental-type relationship with a third party and then seek to extinguish it.” (450 Md. at 74)

FACTUAL BACKGROUND

Michelle and Brittany began a relationship in 2002, agreed that Brittany would conceive a child through artificial insemination, and had a son in 2010. They married in the District of Columbia after the child's birth, and Michelle participated in the child's life as a parent, including overnight and weekend care. After the parties separated, Brittany terminated Michelle's access to the child. Evidence showed that Brittany had fostered Michelle's parental relationship, the child sometimes called Michelle “Dada” or “Daddy,” and the parties had discussed joint custody.

PROCEDURAL HISTORY

Brittany filed for absolute divorce and denied that the parties shared children. Michelle answered and counterclaimed, seeking visitation with Jaxon. After an evidentiary hearing, the circuit court denied relief for lack of standing, relying on *Janice M. v. Margaret K.* The Court of Special Appeals affirmed. The Court of Appeals reversed and remanded for determination under the newly adopted de facto-parent test.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Special Appeals was directed to remand the case to the Circuit Court for Washington County to determine, under the *H.S.H.-K.* factors, whether Michelle should be considered a de facto parent and to conduct further proceedings consistent with the opinion.

CASES CITED

- *Janice M. v. Margaret K.*, 404 Md. 661, 948 A.2d 73 (2008)
- *In re Custody of H.S.H.-K.*, 193 Wis. 2d 649, 533 N.W.2d 419 (1995)
- *V.C. v. M.J.B.*, 163 N.J. 200, 748 A.2d 539 (2000)
- *McDermott v. Dougherty*, 385 Md. 320, 869 A.2d 751 (2005)
- *Koshko v. Haining*, 398 Md. 404, 921 A.2d 171 (2007)
- *S.F. v. M.D.*, 132 Md. App. 99, 751 A.2d 9 (2000)
- *Troxel v. Granville*, 530 U.S. 57 (2000)
- *Monroe v. Monroe*, 329 Md. 758 (1993)
- *Ross v. Hoffman*, 280 Md. 172, 372 A.2d 582 (1977)
- *Taylor v. Taylor*, 306 Md. 290, 508 A.2d 964 (1986)
- *DRD Pool Serv., Inc. v. Freed*, 416 Md. 46, 5 A.3d 45 (2010)
- *Boblitz v. Boblitz*, 296 Md. 242, 462 A.2d 506 (1983)
- *Conaway v. Deane*, 401 Md. 219 (2007)