

SUPREME COURT OF NEW HAMPSHIRE

In re Rossino

153 N.H. 282 (2006) · Decided February 24, 2006

SUMMARY

The New Hampshire Supreme Court held that Noddin v. Noddin did not apply to impute income where the respondent's reduced financial condition occurred before the divorce filing and no child-support order existed. The court remanded for consideration of whether the respondent voluntarily became unemployed or underemployed under RSA 458-C:2, IV(a), and vacated the sole-legal-custody award for reconsideration of the impact of the petitioner's repeated legal actions on the respondent's involvement with the children.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, C.J.; Dalianis, J.; Duggan, J.; Galway, J.
JURISDICTION	New Hampshire
DECIDED	February 24, 2006
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The respondent appealed an order of the Superior Court approving a divorce decree, challenging the imputation of income under Noddin v. Noddin and the denial of joint legal custody.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Joseph A. Rossino v. Lucille Rossino

TOPICS

- family law procedure
- divorce
- child support
- child custody
- appellate procedure

PRACTICE AREAS

- family law
- divorce
- child support
- child custody
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Superior Court properly applied Noddin v. Noddin to impute the respondent's former police-department earnings when his employment loss occurred before the divorce was filed and no child-support order yet existed.

2. Whether the Superior Court properly denied joint legal custody without adequately considering the effect of the petitioner's repeated legal actions and resulting contact restrictions on the respondent's involvement with the children.

HOLDINGS

1. Noddin does not apply when a party's reduced financial condition allegedly caused by wrongdoing occurs before the filing of the divorce and before any child-support order exists. The Superior Court therefore erred by imputing income based on Noddin.
2. The Superior Court must determine whether RSA 458-C:2, IV(a) applies and, if so, whether the respondent voluntarily became unemployed or underemployed under that statute for purposes of calculating child support.
3. The Superior Court's award of sole legal custody was legally erroneous because its decision apparently failed to consider how the petitioner's repeated legal actions and resulting bail restrictions affected the respondent's ability to maintain contact and involvement with the children.

KEY QUOTATIONS

“Noddin does not apply where the reduced financial condition occasioned by a party’s alleged wrongdoing occurred before the filing for divorce.” (153 N.H. at 283)

“The court’s determination on the award of legal custody apparently did not take into account the actions of the petitioner as set forth above, and thus was legally erroneous.” (153 N.H. at 284)

FACTUAL BACKGROUND

Joseph and Lucille Rossino married in 1994 and had three children. In 2003, while the parties were still married, Joseph involuntarily resigned from his police-officer position after allegations that he had engaged in sexual relations with another woman, and Lucille then filed for divorce. During the divorce process, Lucille initiated several domestic-violence, stalking, criminal, and felony-related proceedings against Joseph; the matters were dismissed or the charges were dropped, and bail conditions restricted Joseph's contact with Lucille. The Superior Court nevertheless imputed Joseph's former earnings to him and awarded Lucille sole legal custody.

PROCEDURAL HISTORY

After a two-day hearing in the divorce proceeding, the Superior Court attributed \$66,992 in prior police-department earnings to the respondent for child-support purposes and awarded sole legal custody to the petitioner. The Supreme Court of New Hampshire reversed the income-imputation ruling, vacated the legal-custody award, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Superior Court must determine whether N.H. Rev. Stat. Ann. § 458-C:2, IV(a) applies and, if so, whether the respondent voluntarily became unemployed or underemployed for child-support purposes. It must also reconsider legal custody, including the impact of the petitioner's repeated lawsuits and related restrictions on the respondent's ability to maintain contact and involvement with the children.

CASES CITED

- Noddin v. Noddin, 123 N.H. 73 (1983)

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