

SUPREME COURT OF NORTH CAROLINA

Routten v. Routten

No. 455A18 (N.C. June 5, 2020) · No. No. 455A18 · Decided June 5, 2020

SUMMARY

The Supreme Court of North Carolina held that, in a custody dispute between two biological parents, a trial court may deny one parent visitation based on a written finding that visitation is not in the children's best interests, without finding that the parent is unfit. The court also held that any delegation allowing the custodial parent to permit discretionary visitation was surplusage rather than reversible error, and it reversed the relevant portions of the Court of Appeals decision.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Morgan, Justice
JURISDICTION	North Carolina
DECIDED	June 5, 2020
DOCKET	No. 455A18
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed as of right to the Supreme Court of North Carolina based on a dissent in the Court of Appeals. The Supreme Court reviewed the Court of Appeals decision affirming the trial court's custody order.
STANDARD OF REVIEW	The Supreme Court reviewed the legal interpretation of N.C.G.S. § 50-13.5(i) and the legal validity of the custody and visitation provisions.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	John Tyler Routten v. Kelly Georgene Routten

TOPICS

- child custody
- visitation
- statutory interpretation
- appellate procedure
- due process

PRACTICE AREAS

- family law
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether a trial court may deny a parent reasonable visitation in a custody dispute between two parents based on a written finding that visitation is not in the child's best interests, without also finding that the parent is unfit.
2. Whether a trial court improperly delegated its authority over visitation by authorizing the custodial parent to permit visitation in his discretion.

HOLDINGS

1. Under N.C.G.S. § 50-13.5(i), a trial court may deny a parent reasonable visitation when it makes a written finding that the visitation is not in the child's best interests; it need not also find that the parent is unfit. In disputes between two parents, neither parent receives a constitutionally based custody presumption based solely on parental status.
2. The trial court's authorization for the custodial parent to permit some custodial time was not reversible error because the court had already lawfully denied the noncustodial parent's reasonable visitation under N.C.G.S. § 50-13.5(i). The authorization was surplusage and a humane accommodation rather than an improper delegation requiring reversal.

KEY QUOTATIONS

“The unequivocal and clear meaning of the statute identifies two different circumstances in which a parent can be denied visitation, and the disjunctive term “or” in N.C.G.S. § 50-13.5(i) establishes that either of the circumstances is sufficient to justify the trial judge’s decision to deny visitation.” (at 6-7)

“Furthermore, in light of statutory and case law, in a dispute between two parents with equal parental rights, the trial court must apply the “best interest of the child” standard to determine custody and visitation questions” (at 11)

FACTUAL BACKGROUND

John Tyler and Kelly Routten were married and had two children before separating in 2014. During the custody proceedings, the trial court ordered Kelly to obtain a neuropsychological evaluation, and she did not timely disclose that Duke Clinical Neuropsychology Service had evaluated her. The trial court awarded John sole legal and physical custody, found that visitation with Kelly was not in the children's best interests, denied Kelly visitation, and allowed John to permit custodial time in his discretion.

PROCEDURAL HISTORY

The Wake County District Court entered an amended permanent custody order awarding plaintiff sole legal and physical custody, denying defendant visitation, and permitting plaintiff to allow custodial time in his discretion. The Court of Appeals majority held that the trial court was required to find defendant unfit or acting inconsistently with her parental status before denying visitation and that the trial court improperly delegated its visitation authority. Plaintiff appealed to the Supreme Court based on the Court of Appeals dissent; defendant's separate filings seeking review were dismissed ex mero motu.

DISPOSITION

reversed

REMAND INSTRUCTIONS

None stated. The Court reversed the challenged portions of the Court of Appeals decision, including the portions that vacated the custody award and remanded for further proceedings.

CASES CITED

- Routten v. Routten, 262 N.C. App. 436, 822 S.E.2d 436 (2018)
- In re Civil Penalty, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989)
- Moore v. Moore, 160 N.C. App. 569, 587 S.E.2d 74 (2003)
- Burgess v. Your House of Raleigh, Inc., 326 N.C. 205, 209, 388 S.E.2d 134, 136 (1990)
- Carolina Power & Light Co. v. City of Asheville, 358 N.C. 512, 519, 597 S.E.2d 717, 722 (2004)
- Grassy Creek Neighborhood Alliance, Inc. v. City of Winston-Salem, 142 N.C. App. 290, 297-98, 542 S.E.2d 296, 301 (2001)
- Adams v. Tessener, 354 N.C. 57, 61, 550 S.E.2d 499, 502 (2001)
- Petersen v. Rogers, 337 N.C. 397, 400, 403-04, 445 S.E.2d 901, 903, 905 (1994)
- Owenby v. Young, 357 N.C. 142, 145, 579 S.E.2d 264, 266-67 (2003)
- Brewington v. Serrato, 77 N.C. App. 726, 733, 336 S.E.2d 444, 449 (1985)
- In re Stancil, 10 N.C. App. 545, 552, 179 S.E.2d 844, 849 (1971)

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