

SUPREME COURT OF MISSOURI

Speer v. Colon

155 S.W.3d 60 (Mo. banc 2005) · No. SC 86321 · Decided February 15, 2005

SUMMARY

The Missouri Supreme Court reversed and remanded a child-custody modification judgment because the trial court failed to make the written findings required by Missouri Revised Statutes section 452.375.6. The court also directed the trial court to state the custody arrangement using the statutory categories, noting that Missouri law does not authorize an order granting "primary physical custody."

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Ronnie L. White, Chief Justice
JURISDICTION	Missouri
DECIDED	February 15, 2005
DOCKET	SC 86321
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a circuit court judgment modifying child custody and child support and overruling Speer's contempt motion.
STANDARD OF REVIEW	A custody-modification judgment is affirmed if supported by substantial evidence, is not against the weight of the evidence, and does not erroneously declare or apply the law. Although custody determinations receive greater deference than other types of cases, credible evidence must support the custody award.
PRECEDENTIAL VALUE	Published en banc opinion of the Supreme Court of Missouri.
PARTIES	Brian Speer v. Neysa Colon, formerly known as Neysa Rosario

TOPICS

- child custody
- family law procedure
- child support
- appellate procedure
- standard of review

PRACTICE AREAS

- family law
- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether the trial court's custody-modification judgment complied with Missouri Revised Statutes section 452.375.6 by making written findings detailing the specific relevant best-interest factors supporting the custody arrangement.
2. Whether the trial court could enter an order granting 'primary physical custody' under Missouri's statutory custody scheme.
3. Whether the appellate court should address Speer's challenge to the trial court's contempt ruling.

HOLDINGS

1. When the parties have not agreed to the custodial arrangement, the trial court must include written findings based on the public-policy provision and relevant best-interest factors in section 452.375, detailing the specific relevant factors that make the chosen arrangement in the child's best interest. The trial court's judgment failed to comply with that requirement.
2. Missouri's statutory custody scheme does not permit an order granting 'primary physical custody'; the custody finding must conform to the statutory categories in section 452.375.1.
3. The court did not reach the contempt issue because the parties would have an opportunity to revisit the contempt motion on remand.

KEY QUOTATIONS

“because the parties had not agreed to [the] custodial arrangement, the trial court was required to include in its judgment a written finding based on the public policy in section 452.375.4 and the factors listed in section 452.375.2(1) to (8) detailing the specific relevant factors that made the chosen arrangement in the best interest of the [child].” (61)

“The trial court's judgment is not in compliance with section 452.375.6, because it failed to make the required written findings detailing the specific relevant factors that supported its judgment.” (62)

FACTUAL BACKGROUND

Brian Speer and Neysa Colon dissolved their marriage in 1996 and shared joint legal and joint physical custody of their child, J.A.S., with Colon having primary care and custody. In 2001, Speer sought primary physical custody and termination of support, alleging that Colon had physically abused J.A.S.; he also sought contempt relief based on alleged interference with visitation and failure to produce the child for a psychological evaluation. The trial court's 2003 modification judgment awarded joint legal custody, designated Colon as having primary physical custody, granted Speer liberal and specific visitation, increased child support, and overruled the contempt motion.

PROCEDURAL HISTORY

The parties' marriage was dissolved in 1996, and the trial court awarded joint legal and joint physical custody, with Colon having primary care and custody. Speer later sought primary physical custody, termination of support, and contempt relief. On May 7, 2003, the trial court modified the arrangement by awarding joint legal custody, designating Colon as having primary physical custody, granting Speer liberal and specific visitation,

and increasing his child support obligation. Speer appealed, challenging the sufficiency of the custody and support findings and the failure to rule on his contempt motion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must make the required written findings in compliance with section 452.375.6, take whatever other action is appropriate, and enter its custody finding in conformity with section 452.375.1. The parties may also revisit the contempt motion.

CASES CITED

- Kubley v. Brooks, 141 S.W.3d 21, 25 (Mo. banc 2004)
- Lueckenotte v. Lueckenotte, 34 S.W.3d 387, 397 (Mo. banc 2001)
- Spradling v. Spradling, 959 S.W.2d 908, 911 (Mo. App. 1998)
- Cunningham v. Cunningham, 143 S.W.3d 647, 650 (Mo. App. 2004)
- Gross v. Helm, 98 S.W.3d 85, 88 (Mo. App. 2003)
- Morse v. Morse, 80 S.W.3d 898, 903-904 (Mo. App. 2002)
- Sleater v. Sleater, 42 S.W.3d 821, 823-824 (Mo. App. 2001)