

SUPREME COURT OF GEORGIA

Scott v. Scott, 276 Ga. 372

578 S.E.2d 876 (2003) · No. S02A1909 · Decided March 27, 2003

SUMMARY

The Supreme Court of Georgia held that a divorce decree provision automatically transferring primary physical custody upon the custodial parent's relocation outside Cobb County was invalid. The court ruled that self-executing custody changes must give paramount consideration to the child's best interests at the time of the proposed change and repudiated contrary precedent approving automatic changes based on remarriage or relocation. The judgment was reversed, with direction to set aside the provision.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hunstein, Justice; Sears, Presiding Justice; Carley, Justice
JURISDICTION	Georgia
DECIDED	March 27, 2003
DOCKET	S02A1909
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Regina Scott sought discretionary appellate review of the trial court's denial of her motion challenging a self-executing custody-change provision in the parties' divorce decree.
STANDARD OF REVIEW	The validity of the self-executing custody provision was reviewed as a question of law under Georgia's custody statutes and public policy; custody determinations otherwise require trial-court discretion based on the child's best interests and fact-specific circumstances.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Regina Scott v. Charles Scott

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a divorce decree may provide for an automatic change of custody upon the custodial parent's relocation without a later judicial determination of the child's best interests.
2. Whether the relocation-triggered custody provision was permissible under *Weaver v. Jones and Pearce v. Pearce*.
3. Whether the trial court's finding in the original decree that relocation would be detrimental to the child made the self-executing provision valid.

HOLDINGS

1. A self-executing custody-change provision that automatically transfers custody upon relocation, without requiring a determination of the child's best interests at the time of the proposed change, violates Georgia public policy as expressed in OCGA § 19-9-3 and is invalid.
2. *Weaver* and *Pearce* do not authorize the provision because those cases involved self-executing changes designed to accommodate a child's statutory right to select a custodial parent, not automatic transfers triggered by relocation or remarriage that disregard the child's best interests.
3. An initial finding that relocation would detrimentally affect the child does not validate an automatic custody transfer because the child's best interests must be determined from the circumstances existing when custody modification is sought.

KEY QUOTATIONS

“While self-executing change of custody provisions are not expressly prohibited by statutory law, we hold that any such provision that fails to give paramount import to the child's best interests in a change of custody as between parents violates this State's public policy as expressed in OCGA § 19-9-3.” (276 Ga. at 379)

*“Therefore, we repudiate our holding in *Holder* and disapprove the opinion in *Carr*, supra, 207 Ga.App. at 611, relied upon by the trial court to impose the self-executing change of custody provision upon Ms. Scott in the instant appeal.”* (276 Ga. at 381)

FACTUAL BACKGROUND

Regina and Charles Scott were divorced in 2001. Their two-year-old daughter was placed in the parties' joint custody, with Regina receiving primary physical custody. The divorce decree declared that Regina's relocation outside Cobb County would constitute a material change detrimental to the child's welfare and would automatically transfer primary physical custody to Charles without further judicial scrutiny.

PROCEDURAL HISTORY

The Scotts were divorced in 2001, and the decree awarded joint custody with Regina Scott having primary physical custody. The decree provided that if Regina moved outside Cobb County, primary physical custody would automatically revert to Charles without further court action. The trial court denied Regina's motion to

invalidate the provision, and the Supreme Court of Georgia granted her application for discretionary appeal, reversed, vacated the decree provision, and directed the trial court to set it aside.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was directed to vacate the divorce decree insofar as necessary and set aside Paragraph 3, the self-executing relocation-triggered custody provision.

CASES CITED

- Weaver v. Jones, 260 Ga. 493, 396 S.E.2d 890 (1990)
- Pearce v. Pearce, 244 Ga. 69, 257 S.E.2d 904 (1979)
- Carr v. Carr, 207 Ga. App. 611, 429 S.E.2d 95 (1993)
- Holder v. Holder, 226 Ga. 254, 174 S.E.2d 408 (1970)
- Hunnicutt v. Sandison, 223 Ga. 301, 154 S.E.2d 587 (1967)
- Ofchus v. Isom, 239 Ga. App. 738, 521 S.E.2d 871 (1999)
- Mercer v. Foster, 210 Ga. 546, 81 S.E.2d 458 (1954)
- Parr v. Parr, 196 Ga. 805, 27 S.E.2d 687 (1943)
- Wilson v. Wilson, 241 Ga. 305, 245 S.E.2d 279 (1978)
- Handley v. Handley, 204 Ga. 57, 48 S.E.2d 827 (1948)
- Mallette v. Mallette, 220 Ga. 401, 139 S.E.2d 322 (1964)
- Danziger v. Shoob, 203 Ga. 623, 48 S.E.2d 92 (1948)
- Ormandy v. Odom, 217 Ga. App. 780, 459 S.E.2d 439 (1995)
- In the Interest of R.R., 222 Ga. App. 301, 474 S.E.2d 12 (1996)
- Clapper v. Harvey, 716 A.2d 1271 (Pa. Super. Ct. 1998)
- Jordan v. Jordan, 195 Ga. 771, 25 S.E.2d 500 (1943)
- Seaboard A.L. Ry. v. Brooks, 151 Ga. 625, 107 S.E. 878 (1921)
- Carr v. Carr, 263 Ga. 451, 435 S.E.2d 44 (1993)
- Tenney v. Tenney, 235 Ga. App. 128, 508 S.E.2d 487 (1998)
- Baldwin v. Baldwin, 265 Ga. 465, 458 S.E.2d 126 (1995)
- In the Interest of A.R.B., 209 Ga. App. 324, 433 S.E.2d 411 (1993)
- Worley v. Whiddon, 261 Ga. 218, 403 S.E.2d 799 (1991)
- Hagan v. McCook, 256 Ga. 712, 353 S.E.2d 197 (1987)
- Zeller v. Zeller, 640 N.W.2d 53 (N.D. 2002)
- deBeaumont v. Goodrich, 644 A.2d 843 (Vt. 1994)
- Hovater v. Hovater, 577 So. 2d 461 (Ala. Civ. App. 1990)

