

SUPREME COURT OF WYOMING

Kimberly D. Lopez v. Orlando V. Lopez

2005 WY 88 (Wyo. 2005) · No. No. 04-232 · Decided August 8, 2005

SUMMARY

The Supreme Court of Wyoming affirmed a divorce decree awarding primary custody of the parties' two children to the father. The court held that the mother failed to provide a sufficient appellate record to demonstrate an abuse of discretion and declined to reweigh the evidence. The court concluded that the district court properly considered the statutory best-interests factors and that the custody decision was not punitive.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Burke, Justice; Hill, C.J.; Golden, J.; Kite, J.; Voigt, J.; Burke, J.
JURISDICTION	Wyoming
DECIDED	August 8, 2005
DOCKET	No. 04-232
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed the divorce decree's award of primary custody of the parties' two children to Father, asserting that the district court abused its discretion.
STANDARD OF REVIEW	Custody determinations are reviewed for abuse of discretion. The reviewing court evaluates whether the decision is supported by the evidence and violates any legal principle, affords the prevailing party every favorable inference, and will not reweigh the evidence or substitute its judgment for that of the trial court. When the appellant provides no authenticated transcript or statement of the evidence, the appellate court accepts the trial court's supported findings and assumes the evidence was sufficient to sustain them.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kimberly D. Lopez v. Orlando V. Lopez

TOPICS

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion by awarding Father primary custody of the parties' children.
2. Whether the custody award impermissibly punished Mother for cohabiting with her boyfriend shortly after the parties separated.

HOLDINGS

1. The district court did not abuse its discretion in awarding Father primary custody because it identified and applied the statutory best-interests factors, made detailed factual findings, and reached a decision supported by the record presented for review.
2. The custody award was not punishment for Mother's cohabitation; the district court's concern was directed to the potential effect on the children of moving the boyfriend into the home shortly after the parents separated.

KEY QUOTATIONS

“Custody matters are committed to the sound discretion of the trial court. The welfare and needs of the children are to be given paramount importance.” (116 P.3d at 1100)

“Even if we were inclined to agree with Mother's position, we cannot retry this case on appeal or substitute our judgment for that of the district court.” (116 P.3d at 1103)

FACTUAL BACKGROUND

Kimberly and Orlando Lopez were married in 1993 and had two children, an eleven-year-old daughter and a five-year-old son. Both parents sought primary custody in the divorce proceedings. The district court found both parents fit and capable but awarded primary custody to Orlando, relying on his stronger ability to meet the children's emotional and intellectual needs, Kimberly's hectic work demands and alcohol-related conduct, and the children's existing ties to California, where Orlando and the children's grandparents lived.

PROCEDURAL HISTORY

Father initiated the divorce action and Mother counterclaimed; both sought primary custody. After trial, the district court issued a decision letter awarding primary custody to Father and entered a conforming divorce decree on September 28, 2004. Mother appealed, and the Wyoming Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Donnelly v. Donnelly, 2004 WY 72, ¶ 19, 92 P.3d 298, ¶ 19 (Wyo. 2004)
- Beeman v. Beeman, 2005 WY 45, ¶ 10, 109 P.3d 548, ¶ 10 (Wyo. 2005)
- Burt v. Burt, 2002 WY 127, ¶ 7, 53 P.3d 101, ¶ 7 (Wyo. 2002)
- Curless v. Curless, 708 P.2d 426, 430 (Wyo. 1985)
- Drake v. McCulloh, 2002 WY 50, ¶ 18, 43 P.3d 578, ¶ 18 (Wyo. 2002)
- Love v. Love, 851 P.2d 1283, 1286 (Wyo. 1993)

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