

SUPREME COURT OF UTAH

Rogers v. Andrews

24 Utah 2d 27 (1970) · Decided February 17, 1970

SUMMARY

The Utah Supreme Court reviewed cross-appeals from a modified divorce decree concerning custody and support of two minor children. The court affirmed the trial court's custody arrangement and found the father's cross-appeal meritless.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Henriod
JURISDICTION	Utah
DECIDED	February 17, 1970
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal and cross-appeal from a judgment modifying a divorce decree to alter custody, visitation, and support obligations.
STANDARD OF REVIEW	The court reviewed whether the trial court's custody modification was justified and supported by the evidence.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Andrews (defendant) v. Rogers (plaintiff)

TOPICS

- child custody
- visitation
- family law procedure
- appellate procedure
- dissolution of marriage

PRACTICE AREAS

- Family law
- Child custody
- Appellate procedure

QUESTIONS PRESENTED

- Whether the trial court's modification of the divorce decree changing primary custody from the mother to the father was supported by the evidence.
- Whether the trial court erred in limiting the mother's visitation and terminating the father's support obligation.

HOLDINGS

1. The trial court's modification awarding primary custody to the father was justified and supported by the believable evidence before it.
2. The modified decree's limited visitation arrangement for the mother and termination of support payments were affirmed.

FACTUAL BACKGROUND

The parties' two sons were approximately 10 and 12 years old when the latest custody dispute arose. After years of mutual accusations and conflict, the father retained the children beyond the time allowed by the decree and had them communicate that they no longer wished to live with their mother; the mother responded by having the children taken into police custody pending resolution of the dispute. The trial court found both parents fit and proper custodians but changed custody to the father, granted the mother limited weekly visitation, and stopped support payments.

PROCEDURAL HISTORY

The parties were divorced in 1960, with custody of their two sons awarded to the mother subject to the father's visitation rights. Following renewed disputes and competing petitions, the trial court modified the decree by awarding the father primary custody, allowing the mother approximately 27 hours of visitation each week, and discontinuing support payments. Both parties appealed, and the Utah Supreme Court affirmed the judgment and found the father's cross-appeal without merit.

DISPOSITION

affirmed

OPINION

HENRIOD, J.

HENRIOD, Justice: Appeal from a judgment modifying a divorce decree. Affirmed, with no costs awarded. In 1960 the parties hereto were divorced. The custody of two minor sons, then aged about 3 and 1, respectively, was awarded to the defendant mother, subject to right of visitation in plaintiff. Since that time plaintiff has married another woman who had children by a previous marriage and defendant has married another man who brought with him children of a previous marriage.

The parties to date, have filed about as many petitions against each other as they have children and stepchildren in the aggregate. The charges have been as numerous and as confused. Needless to say the plaintiff has suggested that his ex-wife may have been something less than a good mother, and defendant as affectionately has ventured the guess that her ex-mate didn't live right.

The exchange of verbal and printed brickbats suggests a case that is par for the course, with a bit of hatred acting as caddy. The younger boy became 10 and the elder 12, at the time of this most recent skirmish. Through a process of traded accusations, they became the victims or beneficiaries of a modified decree. Mother was to have the children for all the school months,, and father during all of the summer vacation months.

This gave the boys the exciting and adventurous opportunity twice a year to renew their acquaintance with, affection or distaste for a new assortment of stepbrothers and stepsisters. It also presented father with the opportunity of gathering sufficient candy and condiments to' sustain the boys on fishing trips and picnic-safaris and provide a possible release from his stint as stepfather, to say nothing of the mother's enjoyment of an uncomfortable hot spell with the other contingent of stepchildren.

From the record, which requires no detailed abstracting here, since it reflects, a situation of little more than denial and counter-denial, it appears that this is one-of those frequent cases where possibly bewildered or frustrated children apparently are employed as human bullets for the ignoble purpose of allowing a couple of irreconcilable matrimonial combatants to> pierce not only their own souls, but those of *29their own offspring, — a by-product of another possible mutual abhorrence for one another, and of their unwitting and possibly fatuous payment of homage to delinquency.

It appears that the father indulged such irreverent fervor in this case by delivering his sons, after keeping them overtime decreewise, for the purpose of serving their mother with the embarrassing ultimatum that they no longer wished to live with her, — all of which, from the record, one might suspect was accomplished in an aura of coached paternalism. She, on the other hand, may have overreached the bounds of maternal filial affection by having her sons taken into custody by the police and restrained pending the outcome of the encounter between herself and him whose love apparently had been filched by another member of her sex.

Anyway, the judicial referee counted at the knockdowns and declared the bout a sort of Munchausian draw by decreeing, with a despairing wink of the eye, that albeit both contestants were fit and proper persons to have the custody of the boys, the father was to have full custody of the boys save for a rather miserable 27 hours from 6:00 p. m. on Saturday to 9:00 p. m. on Sunday of each week, — an arrangement that defendant did not like because it subjected the boys to the terrible influence of their father six-sevenths of the time,— and stopped the support money,- — and which the father didn't like because it would interfere with his membership in a weekend'.

Isaac Walton Association. Because of the displeasure of both the-parties arising out of the modified decree-entered by the court, both appealed. The-father's pleadings and brief attributed to-the trial court the wisdom of Solomon in switching custody to him, but gave the same-judge a rather nominal I. Q. rating when he broke up the picnics and fishing trips.

Three other people, not the litigants here,, took the real beating in this case, — the two-boys and the harassed judge in his alleged robed and wise unwisdom. We believe the-trial court, on what he had before him, proved to be a competent physician in attempting to heal the marital malignancy extant here, and that the believable evidence justified and supported both his-amputations and plastic surgery.

The trial court's judgment is affirmed and plaintiff's cross-appeal adjudged to be-without merit. TUCKETT and ELLETT, JJ., concur.