

SUPREME COURT OF WYOMING

Womack v. Swan

413 P.3d 127 (Wyo. 2018) · Decided March 13, 2018

SUMMARY

The Wyoming Supreme Court reviewed a district court's temporary and permanent modification of child custody, visitation, and child support provisions, as well as its contempt finding against the mother. The court held that the district court abused its discretion by issuing a sua sponte temporary custody order after a full evidentiary hearing, but that the temporary order did not render the final custody order void or violate due process. The court also reversed the contempt finding against the mother and remanded the mother's contempt motion against the father for further proceedings.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Fox, Justice; Burke, C.J.; Davis, Justice; Hill, Justice; Kautz, Justice
JURISDICTION	Wyoming
DECIDED	March 13, 2018
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Mother appealed from a district court order modifying custody, visitation, and child support and holding her in contempt for violating a temporary custody order.
STANDARD OF REVIEW	Issues of jurisdiction and statutory interpretation are reviewed de novo. Custody and visitation decisions are reviewed for abuse of discretion. The sufficiency of process in a custody-modification hearing is reviewed for abuse of discretion. Res judicata applicability is reviewed de novo. Civil contempt orders in domestic-relations cases are reviewed for serious procedural error, violation of law, or clear and grave abuse of discretion.
PRECEDENTIAL VALUE	published
PARTIES	Amy Womack v. Ryan Swan

TOPICS

- child custody
- family law procedure
- contempt
- due process
- res judicata

PRACTICE AREAS

family law

civil procedure

appellate procedure

constitutional law

remedies

QUESTIONS PRESENTED

1. Whether the district court improperly issued a sua sponte temporary custody order instead of a final order after a full evidentiary hearing.
2. Whether the temporary custody order was a final judgment that barred later adjudication under res judicata.
3. Whether the procedure used to enter the final custody-modification order violated Mother's due process rights.
4. Whether the district court could hold Mother in contempt without issuing a show-cause order as required by Wyo. Stat. Ann. § 20-2-204(b).
5. Whether the district court improperly considered Mother's alcohol use and alienating behavior in modifying custody and visitation.

HOLDINGS

1. Although a district court may possess inherent authority to enter temporary custody orders, using a sua sponte temporary order as a probationary custody arrangement for more than seven months after a full merits hearing was an abuse of discretion.
2. The temporary order did not preclude the subsequent final custody adjudication under res judicata.
3. The procedure did not violate Mother's due process rights because she received notice that custody could be modified and had a meaningful opportunity to prepare and be heard.
4. The district court abused its discretion and violated Mother's due process rights by holding her in contempt without issuing an order to show cause on Father's contempt motions.
5. The district court did not abuse its discretion by considering Mother's alcohol use and alienating behavior in determining the children's best interests and modifying custody and visitation.

KEY QUOTATIONS

“Blind hope that a joint custody agreement will succeed, or that forcing the responsibility of joint decision-making upon the warring parents will bring peace, is not acceptable.” (134)

“The transgression of § 20-2-204(b) was a serious procedural error that denied Mother her right to due process.” (138)

“While the district court abused its discretion by issuing an ongoing temporary order that improperly extended the pendency of the custody modification proceeding, it did not result in a final order barring further adjudication of the issues under the doctrine of res judicata or create a procedure that denied due process to Mother.” (140)

FACTUAL BACKGROUND

Mother and Father divorced after a five-year marriage, with Mother receiving primary custody of their two children. Father later sought primary custody, alleging that Mother was alienating the children from him and had an alcohol problem. After a full evidentiary hearing, the district court entered a sua sponte temporary custody order designed as a probationary co-parenting arrangement, which later became the basis for a second hearing and a final order granting Father primary custody. The district court also found Mother in contempt for consuming alcohol around the children and continuing alienating behavior, while failing to issue a show-cause order on Father's contempt motions.

PROCEDURAL HISTORY

The parties divorced in 2009 with Mother receiving primary custody. Father petitioned to modify custody in 2015. After a full evidentiary hearing, the district court sua sponte entered a temporary custody order, later held a second evidentiary hearing, entered a final order granting Father primary custody, and held Mother in contempt. The Wyoming Supreme Court affirmed the custody modification, reversed the contempt ruling against Mother, and remanded Mother's contempt motion against Father.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The contempt holding against Mother is reversed. Mother's contempt motion against Father is remanded to the district court for further proceedings consistent with the opinion. The custody modification is affirmed.

CASES CITED

- Tracy v. Tracy, 2017 WY 17, ¶¶ 22-27, 33, 388 P.3d 1257, 1262-64 (Wyo. 2017)
- MF v. State, 2013 WY 104, ¶ 6, 308 P.3d 854, 857 (Wyo. 2013)
- Gjertsen v. Haar, 2015 WY 56, ¶ 11, 347 P.3d 1117, 1122 (Wyo. 2015)
- Ready v. Ready, 906 P.2d 382, 384 (Wyo. 1995)
- Dietz v. Bouldin, 136 S. Ct. 1885, 1891-93 (2016)
- Marquiss v. Marquiss, 837 P.2d 25, 33 n.5 (Wyo. 1992)
- Urbach v. Urbach, 52 Wyo. 207, 224-26, 73 P.2d 953, 960-61 (Wyo. 1937)
- Williams v. Williams, 2016 WY 21, ¶ 30, 368 P.3d 539, 549 (Wyo. 2016)
- Reavis v. Reavis, 955 P.2d 428, 434 (Wyo. 1998)
- Howard v. Howard, 124 N.H. 267, 469 A.2d 1318, 1322 (1983)
- Ellenberger v. Ellenberger, 63 N.C. App. 721, 306 S.E.2d 190, 191 (N.C. Ct. App. 1983)
- Castle v. Simmons, 120 Nev. 98, 86 P.3d 1042, 1047 (2004)
- Buttle v. Buttle, 2008 WY 135, ¶¶ 14, 42, 196 P.3d 174, 177-78, 184 (Wyo. 2008)
- Platt v. Platt, 2014 WY 142, ¶ 27, 337 P.3d 431, 439 (Wyo. 2014)
- Majors v. State, 2017 WY 39A, ¶ 7, 401 P.3d 889, 890 (Wyo. 2017)

- Gumpel v. Copperleaf Homeowners Ass'n, Inc., 2017 WY 46, ¶ 32 n.7, 393 P.3d 1279, 1291 n.7 (Wyo. 2017)
- ELA v. AAB, 2016 WY 98, ¶¶ 20-23, 382 P.3d 45, 50 (Wyo. 2016)
- Goss v. Goss, 780 P.2d 306, 310 (Wyo. 1989)
- Waterbury v. Waterbury, 2017 WY 11, ¶¶ 7, 9, 388 P.3d 532, 534-35 (Wyo. 2017)
- Stephens v. Lavitt, 2010 WY 129, ¶¶ 15, 18, 239 P.3d 634, 638-39 (Wyo. 2010)
- Walker v. Walker, 2013 WY 132, ¶ 39, 311 P.3d 170, 178 (Wyo. 2013)
- Roberts v. Locke, 2013 WY 73, ¶ 14, 304 P.3d 116, 120 (Wyo. 2013)
- Munoz v. Munoz, 2002 WY 4, ¶¶ 6, 11, 39 P.3d 390, 392-93 (Wyo. 2002)
- Olsen v. Olsen, 2013 WY 115, ¶ 33, 310 P.3d 888, 896 (Wyo. 2013)
- Ransom v. Ransom, 2017 WY 132, ¶ 9, 404 P.3d 1187, 1190 (Wyo. 2017)
- In re KRA, 2004 WY 18, ¶ 10, 85 P.3d 432, 436 (Wyo. 2004)
- Public Service Commission v. Lower Valley Power & Light, Inc., 608 P.2d 660, 661 (Wyo. 1980)
- Jensen v. Milatzo-Jensen, 2014 WY 165, ¶ 8, 340 P.3d 276, 278 (Wyo. 2014)
- Opitz v. Opitz, 2007 WY 207, ¶ 7, 173 P.3d 405, 407-08 (Wyo. 2007)
- Testerman v. Testerman, 2008 WY 112, ¶ 20, 193 P.3d 1141, 1146 (Wyo. 2008)
- Blakely v. Blakely, 2009 WY 127, ¶ 6, 218 P.3d 253, 254 (Wyo. 2009)
- JCLK v. ZHB, 2015 WY 95, ¶ 8, 353 P.3d 720, 721-22 (Wyo. 2015)
- Crofts v. State ex rel. Department of Game & Fish, 2016 WY 4, ¶ 24, 367 P.3d 619, 625 (Wyo. 2016)
- Kordus v. Montes, 2014 WY 146, ¶ 10, 337 P.3d 1138, 1141 (Wyo. 2014)
- Utley v. Lankford (In re Guardianship of Lankford), 2013 WY 65, ¶¶ 28-29, 301 P.3d 1092, 1101 (Wyo. 2013)
- Greenwood v. FAA, 28 F.3d 971, 978 (9th Cir. 1994)
- Horn v. Welch, 2002 WY 138, ¶¶ 17-18, 54 P.3d 754, 760 (Wyo. 2002)
- GGV v. JLR, 2005 WY 14, ¶ 12, 105 P.3d 474, 479 (Wyo. 2005)
- In re BD, 2010 WY 18, ¶ 5, 226 P.3d 272, 274 (Wyo. 2010)