

SUPREME COURT OF ALASKA

Misyura v. Misyura

242 P.3d 1037 (Alaska 2010) · No. S-13579 · Decided November 19, 2010

SUMMARY

The Alaska Supreme Court affirmed the award of sole legal and physical custody to the mother based on the father's history of domestic violence under AS 25.24.150(g). The court held that the trial court did not clearly err in finding a history of domestic violence and that the custody presumption applied. It reversed and remanded the visitation order because the trial court improperly delegated to the mother the authority to require the father to complete a batterer intervention program as a condition of visitation.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Christen, Justice; Fabe, Justice; Winfree, Justice; Stowers, Justice
JURISDICTION	Alaska
DECIDED	November 19, 2010
DOCKET	S-13579
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Sergey Misyura appealed the superior court's divorce-related custody and visitation orders. The Alaska Supreme Court affirmed the award of sole legal and physical custody to Lyudmila, but reversed and remanded the visitation order because the superior court improperly delegated to Lyudmila the authority to impose an intervention-program condition.
STANDARD OF REVIEW	Custody determinations are reviewed for abuse of discretion, and the superior court's controlling factual findings are reviewed for clear error. The appellate court gives particular deference to factual findings based primarily on oral testimony because the trial court evaluates witness credibility and weighs conflicting evidence.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential
PARTIES	Sergey Misyura v. Lyudmila Misyura

TOPICS

child custody

visitation

domestic violence

family law procedure

appellate procedure

PRACTICE AREAS

family law

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QUESTIONS PRESENTED

1. Whether the superior court clearly erred in finding that Sergey had a history of domestic violence sufficient to trigger the custody presumption under AS 25.24.150(g) and (h).
2. Whether the superior court should have applied collateral estoppel to prevent relitigation of domestic-violence incidents previously addressed in a protective-order proceeding.
3. Whether the superior court improperly delegated to Lyudmila the authority to require Sergey to attend a batterers' intervention program as a condition of unsupervised visitation.
4. Whether Sergey was improperly denied overnight visitation.

HOLDINGS

1. The court did not decide whether the superior court abused its discretion by permitting relitigation because, even assuming error, any error was harmless; the superior court independently found at least two instances of domestic violence sufficient to trigger the statutory presumption.
2. The superior court did not clearly err in finding that Sergey had a history of perpetrating domestic violence, and it properly applied AS 25.24.150(g)'s rebuttable presumption against awarding him legal or physical custody.
3. The superior court may not delegate to a custodial parent the authority to decide whether to impose a batterers' intervention program as a prerequisite to the noncustodial parent's visitation. That decision must be made by the court.
4. The court did not reach the overnight-visitation issue because it reversed and remanded the visitation order on the separate delegation error.

KEY QUOTATIONS

“The trial court's finding that Sergey had a history of domestic violence within the meaning of AS 25.24.150(h) was not clearly erroneous, and Sergey did not rebut the presumption against an award of custody by completing an intervention program for batterers.” (242 P.3d at 1041)

“It is for the judge, not the parties, to decide whether an intervention program for batterers should be imposed upon a non-custodial parent's visitation.” (242 P.3d at 1042)

“We affirm the trial court's custody order, but reverse and remand its visitation order.” (242 P.3d at 1042)

FACTUAL BACKGROUND

Sergey and Lyudmila were married in 1994 and had three children. During the marriage and after separation, Lyudmila testified to repeated domestic violence, including choking, pushing her while she was pregnant, forced

sexual intercourse, and an incident in which Sergey nearly forced her car off the road. The superior court found that Sergey had a history of domestic violence, awarded Lyudmila sole legal and physical custody under AS 25.24.150(g), and allowed Sergey unsupervised visitation subject to conditions that Lyudmila could impose at her discretion.

PROCEDURAL HISTORY

During the parties' divorce proceedings, the superior court awarded Sergey temporary custody, later awarded Lyudmila temporary custody with liberal visitation, and ultimately awarded Lyudmila sole legal and physical custody after finding that Sergey had a history of domestic violence. The court permitted unsupervised visitation at Lyudmila's discretion and allowed her to require Sergey to attend an intervention program for batterers as a prerequisite to unsupervised visits. Sergey appealed the custody and visitation rulings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The visitation order was reversed and remanded for the superior court to decide, rather than delegate to Lyudmila, whether to require a batterers' intervention program or impose other conditions on Sergey's visitation. The custody award was affirmed.

CASES CITED

- Thomas v. Thomas, 171 P.3d 98, 102 (Alaska 2007)
- Elton H. v. Naomi R., 119 P.3d 969, 973-74 (Alaska 2005)
- Jenkins v. Handel, 10 P.3d 586, 589 (Alaska 2000)
- Dingeman v. Dingeman, 865 P.2d 94, 96 (Alaska 1993)
- Ebertz v. Ebertz, 113 P.3d 643, 646 (Alaska 2005)
- In re Adoption of A.F.M., 15 P.3d 258, 262 (Alaska 2001)
- Borg-Warner Corp. v. Avco Corp. (Lycoming Div.), 850 P.2d 628, 635 (Alaska 1993)
- Chemetron Corp. v. Bus. Funds, Inc., 682 F.2d 1149, 1191 (5th Cir. 1982)
- Matanuska Elec. Ass'n v. Chugach Elec. Ass'n, Inc., 152 P.3d 460, 468 (Alaska 2007)
- State of Alaska, Child Support Enforcement Div. v. Bromley, 987 P.2d 183, 192 (Alaska 1999)
- Engebret v. Moore, 567 P.2d 305, 307 (Alaska 1977)
- Michele M. v. Richard R., 177 P.3d 830, 837 (Alaska 2008)
- Puddicombe v. Dreka, 167 P.3d 73, 77 (Alaska 2007)