

SUPREME COURT OF ALASKA

Justin L. Nelson v. Erica R. Nelson

263 P.3d 49 (Alaska 2011) · No. No. S-13928 · Decided October 28, 2011

SUMMARY

The Alaska Supreme Court held that an anticipated military relocation constituted a substantial change in circumstances warranting consideration of a custody modification. It vacated the superior court's order enforcing the parties' parenting agreement without an independent best-interests analysis and remanded for that analysis and allocation of custody-investigation costs. A partial dissent would have affirmed enforcement of the agreement.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Carpeneti, Chief Justice; Fabe, Justice; Winfree, Justice; Christen, Justice; Stowers, Justice
JURISDICTION	Alaska
DECIDED	October 28, 2011
DOCKET	No. S-13928
DISPOSITION	vacated
PROCEDURAL POSTURE	Justin Nelson appealed the Alaska superior court's denial of his motion to modify custody and its failure to allocate the costs of a custody investigator.
STANDARD OF REVIEW	The interpretation of a child-custody agreement incorporated into a divorce decree and whether the correct legal standard was applied are reviewed de novo.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential.
PARTIES	Justin L. Nelson v. Erica R. Nelson

TOPICS

- child custody
- relocation
- family law procedure
- military law

PRACTICE AREAS

- family law
- military law

QUESTIONS PRESENTED

1. Whether Justin's anticipated out-of-state military relocation constituted a substantial change in circumstances sufficient to satisfy the threshold for custody modification.
2. Whether the superior court was required to conduct an independent best-interests analysis before enforcing or modifying the parties' court-approved Parenting Agreement.
3. Whether the superior court was required to resolve allocation of the custody investigator's fees.

HOLDINGS

1. An anticipated out-of-state relocation may constitute a substantial change in circumstances as a matter of law, and Justin's anticipated relocation satisfied the threshold requirement for custody modification.
2. Before modifying custody or enforcing the Parenting Agreement in the face of changed circumstances, the superior court must independently conduct a best-interests analysis and consider each pertinent statutory factor, omitting a factor only if it determines that the factor has no bearing on the child's well-being.
3. The Parenting Agreement did not conclusively dictate the permanent post-relocation custody arrangement; at most, it established an interim status quo pending a final court-approved arrangement.
4. The superior court was required to resolve the parties' dispute over allocation of the custody investigator's costs.

KEY QUOTATIONS

“Nevertheless, the statute requires the superior court to consider each of the enumerated factors unless the court concludes, in light of the facts of a particular case, that certain factors have no bearing on the child's well-being.” (263 P.3d at 53)

“However, a custody agreement cannot be enforced in the face of changed circumstances, unless the court independently determines, at the time of enforcement, that its terms are consistent with the best interests of the child.” (263 P.3d at 54)

FACTUAL BACKGROUND

Justin and Erica Nelson divorced in 2008 after having two children while serving in the U.S. Air Force. Their court-approved Parenting Agreement provided for shared legal custody and alternating-week physical custody while they lived near Fairbanks, and contemplated that one parent might relocate. Justin later sought modification based on an anticipated military relocation, while Erica opposed modification and sought primary custody. The superior court denied modification without independently analyzing all pertinent statutory best-interests factors and did not allocate the custody investigator's fees.

PROCEDURAL HISTORY

The parties divorced in 2008, and the superior court incorporated their Parenting Agreement into the divorce decree. After Justin sought custody modification based on an anticipated military relocation, the superior court found no unanticipated change in circumstances and ordered that the children would reside primarily with Erica

if Justin moved during the school year. The Supreme Court of Alaska vacated the custody modification order and remanded for an independent best-interests analysis and allocation of the custody-investigation costs.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The superior court must conduct a full, independent best-interests inquiry, consider the pertinent statutory factors, determine the permanent custody arrangement, and resolve allocation of the custody investigator's fees.

CASES CITED

- Brown v. Brown, 983 P.2d 1264, 1267 (Alaska 1999)
- McQuade v. McQuade, 901 P.2d 421, 423-24 (Alaska 1995)
- Cox v. Cox, 882 P.2d 909, 913 (Alaska 1994)
- Melendrez v. Melendrez, 143 P.3d 957, 960-61, 963 (Alaska 2006)
- Barrett v. Alguire, 35 P.3d 1, 6 (Alaska 2001)
- Acevedo v. Liberty, 956 P.2d 455, 457 (Alaska 1998)
- Peterson v. Swarthout, 214 P.3d 332, 340-41 (Alaska 2009)
- Jenkins v. Handel, 10 P.3d 586, 589 (Alaska 2000)
- Gratrix v. Gratrix, 652 P.2d 76, 82-83 (Alaska 1982)
- Nichols v. Mandelin, 790 P.2d 1367, 1372 (Alaska 1990)
- King v. King, 477 P.2d 356, 359-60 (Alaska 1970)
- Eniero v. Brekke, 192 P.3d 147, 149-50 (Alaska 2008)
- Moeller-Prokosch v. Prokosch, 53 P.3d 152, 153, 155 (Alaska 2002)
- House v. House, 779 P.2d 1204, 1207-08 (Alaska 1989)
- Maxwell v. Maxwell, 37 P.3d 424, 426 (Alaska 2001)
- S.N.E. v. R.L.B., 699 P.2d 875, 878 (Alaska 1985)
- Craig v. McBride, 639 P.2d 303, 306 (Alaska 1982)
- McClain v. McClain, 716 P.2d 381, 385 (Alaska 1986)
- Crane v. Crane, 986 P.2d 881, 887-89 (Alaska 1999)
- Cedergreen v. Cedergreen, 811 P.2d 784, 786 n. 2 (Alaska 1991)
- Williams v. Barbee, 243 P.3d 995, 1000 (Alaska 2010)
- Ebertz v. Ebertz, 113 P.3d 643, 647 (Alaska 2005)
- J.L.P. v. V.L.A., 30 P.3d 590, 595 (Alaska 2001)
- Chesser-Witmer v. Chesser, 117 P.3d 711, 717 (Alaska 2005)
- McLane v. Paul, 189 P.3d 1039, 1043 (Alaska 2008)
- Morino v. Swayman, 970 P.2d 426, 428 (Alaska 1999)

- Garding v. Garding, 767 P.2d 183, 185 (Alaska 1989)

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