

SUPREME COURT OF COLORADO

Spahmer v. Gullette

113 P.3d 158 (Colo. 2005) · No. 03SC751 · Decided June 6, 2005

SUMMARY

The Colorado Supreme Court held that, in an initial allocation of parental responsibilities, a trial court lacks statutory authority to order a parent to live in a specific location. The court must instead consider the parties' intended residences and allocate parenting responsibilities in the child's best interests. The court reversed and remanded because the trial court improperly ordered the mother to remain in Colorado.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	RICE, Justice
JURISDICTION	Colorado
DECIDED	June 6, 2005
DOCKET	03SC751
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for certiorari review of the Colorado Court of Appeals' decision affirming an initial allocation of parental responsibilities and an order requiring the mother to live in Colorado.
STANDARD OF REVIEW	The court reviewed statutory interpretation de novo and reviewed the allocation of parental responsibilities for abuse of discretion, asking whether the decision was manifestly unfair, arbitrary, or unreasonable.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Colorado, decided en banc.
PARTIES	Jennifer Spahmer v. Todd Gullette

TOPICS

- family law procedure
- child custody
- relocation
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- family law
- child custody
- statutory interpretation
- appellate procedure

QUESTIONS PRESENTED

1. Whether an initial proceeding to allocate parental responsibilities is governed by section 14-10-124(1.5), rather than the post-dissolution relocation-modification provisions of section 14-10-129(2)(c).
2. Whether section 14-10-124(1.5) authorizes a trial court to order a parent to live in a particular location in order to facilitate parenting time.
3. Whether the trial court abused its discretion by ordering the mother to remain in Colorado instead of allocating parental responsibilities based on the parties' intended residences.

HOLDINGS

1. An initial determination to allocate parental responsibilities is governed by section 14-10-124(1.5), not the relocation-modification provisions of section 14-10-129(2)(c). Temporary orders do not constitute the permanent initial allocation and do not convert the proceeding into a relocation modification proceeding.
2. Section 14-10-124(1.5) does not authorize a trial court to order a parent to live in a particular or specific location. The court may consider the physical proximity of the parties when allocating parenting time, but it may not dictate a parent's residence.
3. The trial court abused its discretion by ordering the mother to remain in Colorado. In an initial allocation proceeding, the court must accept the location in which each parent intends to live and allocate parental responsibilities, including parenting time, in accordance with the child's best interests.

KEY QUOTATIONS

“Rather, the court must accept the location in which each party intends to live, and allocate parental responsibilities accordingly in the best interests of the child.” (159)

“Nothing in the plain language of subsection 14-10-124(1.5)(a), however, authorizes a trial court to allocate parenting time by ordering a parent to live in a specific locale.” (162)

“Thus, in the initial determination of parental responsibilities, the plain language of subsection 14-10-124(1.5) indicates that a trial court must accept the location in which each party intends to live, and allocate parental responsibilities, including parenting time, accordingly.” (164)

FACTUAL BACKGROUND

Jennifer Spahmer and Todd Gullette were engaged and had a daughter, Jordan, in September 2001. After the parties separated, Spahmer sought to live in Arizona near her family and pursued permission to relocate there with Jordan, while Gullette remained in Colorado. The trial court determined that Jordan's best interests required the parents to maintain a parenting arrangement in Colorado and ordered Spahmer to live in Colorado or the Denver-Boulder area.

PROCEDURAL HISTORY

The father initiated an action for allocation of parental responsibilities and sought an order preventing the mother from taking the child from Colorado. After entering temporary orders, the trial court conducted an initial

allocation proceeding under section 14-10-124(1.5), granted joint decision-making authority, and ordered the mother to remain in Colorado. The Colorado Court of Appeals affirmed, treating the mother's request as a relocation issue. The Colorado Supreme Court granted certiorari, reversed, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court of appeals' holding was reversed, and the case was remanded with instructions to return it to the trial court for proceedings consistent with the opinion. The trial court was to allocate parenting time based on the mother's intended residence in Arizona and the father's intended residence in Colorado, while considering their physical proximity and the child's best interests.

CASES CITED

- In re Responsibility of J.N.G., 2003 WL 21940954 (Colo. App. 2003)
- People v. Riggs, 87 P.3d 109, 114 (Colo. 2004)
- In re Marriage of Fickling, 100 P.3d 571, 574-75 (Colo. App. 2004)
- In re Marriage of Lawson, 44 Colo. App. 105, 107-08, 608 P.2d 378, 380 (1980)
- United Airlines, Inc. v. Industrial Claim Appeals Office, 993 P.2d 1152, 1157 (Colo. 2000)
- People v. Yascavage, 101 P.3d 1090, 1093 (Colo. 2004)
- Cherry Hills Resort Development Co. v. City of Cherry Hills Village, 790 P.2d 827, 830 (Colo. 1990)
- In re Marriage of Ciesluk, 113 P.3d 135, 140 (Colo. 2005)
- Baures v. Lewis, 167 N.J. 91, 770 A.2d 214, 229 (2001)
- Ford v. Ford, 68 Conn. App. 173, 789 A.2d 1104, 1109 (2002)
- In re Marriage of Francis, 919 P.2d 776, 780-81 (Colo. 1996)
- Troxel v. Granville, 530 U.S. 57, 68-69 (2000)
- Reno v. Flores, 507 U.S. 292, 304 (1993)
- Scoggins v. Unigard Insurance Co., 869 P.2d 202, 205 (Colo. 1994)