

SUPREME COURT OF ILLINOIS

In re Marriage of Coulter

2012 IL 113474 (Ill. 2012) · No. 113474 · Decided September 20, 2012

SUMMARY

The Illinois Supreme Court held that an ex-husband's request for a preliminary injunction barring his ex-wife from relocating with their children to California was properly denied because the parties' joint parenting agreement, incorporated into the dissolution judgment, authorized the move after specified conditions were met. The court further held that the ex-husband could pursue custody modification based on changed circumstances under the Illinois Marriage and Dissolution of Marriage Act.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Garman; Kilbride; Freeman; Thomas; Karmeier; Burke; Theis
JURISDICTION	Illinois
DECIDED	September 20, 2012
DOCKET	113474
DISPOSITION	reversed
PROCEDURAL POSTURE	Interlocutory appeal from denial of preliminary injunction; appellate court reversed; Illinois Supreme Court allowed petition for leave to appeal.
STANDARD OF REVIEW	Abuse of discretion for the decision to grant or deny a preliminary injunction; de novo for interpretation of a joint parenting agreement as a contract.
PRECEDENTIAL VALUE	Published
PARTIES	Amy Eleanor Trinidad v. Robert Lee Coulter

TOPICS

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

PRACTICE AREAS

- family law
- remedies
- statutory interpretation
- appellate procedure

QUESTIONS PRESENTED

1. Whether a joint parenting agreement incorporated into a dissolution judgment can constitute the leave of court required by section 609(a) of the Illinois Marriage and Dissolution of Marriage Act for removal of children from Illinois.
2. Whether the circuit court abused its discretion in denying Lee's petition for a preliminary injunction to prevent Amy from relocating the children to California.

HOLDINGS

1. Yes. A JPA incorporated into the judgment of dissolution is enforceable as an order of the court and as a contract; where it expressly grants leave to remove children to a specified location upon satisfaction of stated conditions, and the parent complies with those conditions, the parent has the leave of court required by section 609(a) and need not file a separate removal petition.
2. No. Because the JPA, incorporated into the judgment, granted Amy leave to remove the children and Lee expressly waived his right to contest removal, Lee lacked the right to have the court determine the removal issue, and the preliminary injunction was properly denied.

KEY QUOTATIONS

“Each party agrees that so long as Lee is a resident of Illinois the children shall not be removed from the State of Illinois for a period of twenty-four (24) months subsequent to the entry of a Judgement herein. The parties further agree that in the event the Mother wishes to remove the children to the State of California, more particularly, Southern California or Orange County, she shall provide the Father with her notice of intent to do so. As stated hereinabove, no removal shall take place in the first twenty-four (24) months[;] however, during the next twelve (12) months, the parties agree to mediate and/or discuss a removal to Southern California and if the parties reach an agreement then the removal shall be allowed. If the parties do not reach an agreement between the twenty-fourth and thirty-sixth month after the entry of a Judgement herein then the Mother will be free to remove the children and herself to Southern California without any contest from the Father as to a removal. In the event the parties do not work out an agreement between the twenty-fourth and thirty-sixth month the mother is then allowed to remove the children, the Father shall still have the right to have the Court determine the parenting schedule even though he has no further right to contest the issue of removal. The provisions with respect to removal set forth hereinabove pertain only to the Mother's desire and/or intent to remove the children to Southern California. [If] [t]he Mother desires to remove the children to an out of state location other than Southern California then these provisions shall not apply and the Mother shall be subject to the statutory provisions of Section 609 of the [Illinois Marriage and Dissolution of Marriage Act].” (¶ 3)

“(a) The court may grant leave, before or after judgment, to any party having custody of any minor child or children to remove such child or children from Illinois whenever such approval is in the best interests of such child or children. The burden of proving that such removal is in the best interests of such child or children is on the party seeking the removal. 750 ILCS 5/609(a) (West 2010).” (¶ 12)

“clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment, that a change has occurred in the circumstances of the child or his custodian, or in the case of a joint custody arrangement that a change has

occurred in the circumstances of the child or either or both parties having custody, and that the modification is necessary to serve the best interest of the child. 750 ILCS 5/610(b) (West 2010).” (§ 35)

FACTUAL BACKGROUND

The parties divorced on May 8, 2008, and their joint parenting agreement (JPA) was incorporated into the judgment of dissolution. The JPA expressly allowed Amy to remove the children to Southern California after 24 months if she gave Lee notice, with a 12-month period for mediation or discussion, and provided that if no agreement was reached, Amy was free to remove the children without contest from Lee. On May 3, 2010, Amy gave notice of her intent to relocate; Lee did not respond or request mediation. On March 3, 2011, Lee filed an emergency petition to enjoin the removal and to modify custody, alleging changed circumstances. The circuit court denied the injunction, and the appellate court reversed.

PROCEDURAL HISTORY

Amy Trinidad sought to relocate to California with the parties' three children pursuant to a joint parenting agreement incorporated into the dissolution judgment. Lee Coulter filed an emergency petition for a preliminary injunction to bar the removal. The circuit court denied the injunction. The appellate court reversed and remanded, concluding Lee had demonstrated the elements for preliminary injunctive relief. The Illinois Supreme Court allowed Amy's petition for leave to appeal and stayed the appellate court's mandate.

DISPOSITION

reversed

CASES CITED

- Mohanty v. St. John Heart Clinic, S.C., 225 Ill. 2d 52, 62-63 (2006)
- Blum v. Koster, 235 Ill. 2d 21, 33 (2009)
- Troxel v. Granville, 530 U.S. 57, 69 (2000)
- Wickham v. Byrne, 199 Ill. 2d 309, 320 (2002)
- In re Marriage of Boehmer, 371 Ill. App. 3d 1154 (2007)
- Carver v. Sheriff of La Salle County, 203 Ill. 2d 497, 518 (2003)
- In re Guardianship of Babb, 162 Ill. 2d 153, 162 (1994)
- Rakowski v. Lucente, 104 Ill. 2d 317, 325 (1984)