

SUPREME COURT OF MONTANA

In re Marriage of Guffin

232 P.3d 888, 356 Mont. 218 (2010) · No. DA 09-0444 · Decided May 4, 2010

SUMMARY

The Supreme Court of Montana reviewed the modification of a parenting plan after Amber Guffin relocated from eastern Montana to Kalispell. The court held that the district court improperly penalized Guffin for exercising her right to travel and improperly invoked a presumption against her based solely on the relocation. The court reversed and remanded for consideration focused on the children's best interests under the applicable Montana statutes.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Patricia O. Cotter; Mike McGrath; W. William Leaphart; Michael E. Wheat; James C. Nelson; Brian Morris; Jim Rice
JURISDICTION	Montana
DECIDED	May 4, 2010
DOCKET	DA 09-0444
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Amber Guffin appealed the District Court's post-remand order adopting an Amended Final Parenting Plan that designated Thomas Plaisted-Harman as the primary residential custodial parent.
STANDARD OF REVIEW	Findings supporting modification of a parenting plan are reviewed for clear error; conclusions of law are reviewed for correctness; and the decision is reversed for a clearly demonstrated abuse of discretion. An abuse of discretion exists when the court acts arbitrarily without conscientious judgment, exceeds the bounds of reason, or causes substantial injustice.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Amber Guffin, f/k/a Amber Plaisted-Harman v. Thomas Plaisted-Harman

TOPICS

relocation

child custody

family law procedure

appellate procedure

constitutional law

PRACTICE AREAS

Family law

child custody

relocation

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QUESTIONS PRESENTED

1. Whether the District Court clearly abused its discretion by modifying the parenting plan and designating Thomas as the primary residential custodial parent.
2. Whether a parent's relocation that significantly affects the children's contact with the other parent may, without a finding of willful and consistent interference with contact, trigger the statutory presumption that the relocating parent is not acting in the children's best interests.
3. Whether Amber's failure to strictly comply with the relocation-notice requirements affected the ultimate determination of the children's best interests.

HOLDINGS

1. A parent's relocation that significantly affects the child's contact with the other parent may be considered in deciding whether to modify a parenting plan, but it cannot alone trigger the presumption that the relocating parent is acting against the child's best interests. The presumption applies only when the court also finds conduct satisfying § 40-4-219(1)(d), including a willful and consistent attempt to frustrate or deny the other parent's contact.
2. The District Court clearly abused its discretion by focusing on Amber's decision to relocate, its timing, and her failure to comply strictly with the notice statute rather than determining the parenting arrangement that served the children's best interests.
3. Amber's failure to strictly comply with the notice requirements of Montana Code § 40-4-217 did not bear on the fundamental determination of what parenting plan served the children's best interests under the circumstances presented.

KEY QUOTATIONS

“In those cases in which a parent relocates and a parenting plan is modified pursuant to § 40-4-219(1)(e), MCA, the guiding principle remains the best interest of the child.” (¶ 30)

“As the District Court did not find that Amber “willfully and consistently” attempted to frustrate or deny Thomas contact with her children in deciding to move, (see § 40-4-219(1)(d)(ii), MCA), it could not as a matter of law invoke the presumption that she was acting against the children's best interests under § 40-4-219(3), MCA, based solely on her decision to move.” (¶ 30)

“However, unless a district court finds that Amber's decision to move exemplifies a “willful and consistent” attempt to frustrate or deny Thomas contact with the children, her decision to move cannot be held against her, nor can it be considered as being against the best interests of the children.” (¶ 33)

FACTUAL BACKGROUND

Amber and Thomas were divorced under an agreed parenting plan that made Amber the primary residential parent and provided Thomas regular visitation. After the dissolution, Amber moved from the Terry area to Kalispell, approximately 700 miles from Thomas, where she had family and a boyfriend. The District Court found both parents fit but transferred primary residential custody to Thomas, relying heavily on Amber's unilateral relocation, the timing of her decision, and her failure to provide statutory written notice before Thomas filed his modification motion.

PROCEDURAL HISTORY

The parties' original parenting plan designated Amber as the primary residential parent. After Amber relocated from eastern Montana to Kalispell, Thomas sought modification, and the District Court awarded him primary residential custody. The Montana Supreme Court previously reversed because the District Court had penalized Amber for exercising her constitutional right to travel and remanded for reconsideration. On remand, the District Court again designated Thomas as primary residential custodian, prompting this appeal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The District Court must reconsider the parenting plan by focusing solely on the children's best interests under §§ 40-4-212 and -219 and the purposes and objectives of a parenting plan. The court may consider Amber's relocation among the statutory factors, but may not hold the relocation against her or treat it as contrary to the children's best interests absent a finding that she willfully and consistently attempted to frustrate or deny Thomas's contact with the children.

CASES CITED

- In re Marriage of Guffin, 2009 MT 169, 350 Mont. 489, 209 P.3d 225
- In re Marriage of Robison, 2002 MT 207, 311 Mont. 246, 53 P.3d 1279
- In re Marriage of Oehlke, 2002 MT 79, 309 Mont. 254, 46 P.3d 49
- In re S.P., C.P., H.M., J.M., K.M., and Y.M., Youths in Need of Care, 241 Mont. 190, 786 P.2d 642 (1990)
- State v. Baker, 2004 MT 393, 325 Mont. 229, 104 P.3d 491
- In re Marriage of Ciesluk, 113 P.3d 135 (Colo. 2005)
- In the Matter of the Marriage of Fedorov, 228 Or. App. 50, 206 P.3d 1124 (2009)