

SUPREME COURT OF FLORIDA

Wade v. Hirschman

903 So. 2d 928 (Fla. 2005) · No. SC04-1012 · Decided May 26, 2005

SUMMARY

The Supreme Court of Florida held that the substantial change test applies to modifications of all custody agreements, including rotating custody arrangements, unless the final judgment provides otherwise. The court rejected the Fifth District's rule allowing modification based solely on proof that a rotating custody plan had failed and a new best-interests determination. It quashed the Fifth District's decision and approved the trial court's modification designating the father as the primary residential parent.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Bell, J.; Pariente, C.J.; Wells, J.; Anstead, J.; Lewis, J.; Quince, J.; Cantero, J.
JURISDICTION	Florida
DECIDED	May 26, 2005
DOCKET	SC04-1012
DISPOSITION	quashed
PROCEDURAL POSTURE	Petition for review of a Fifth District Court of Appeal decision involving modification of a rotating custody agreement; review was granted based on express and direct conflict with Cooper v. Gress.
STANDARD OF REVIEW	The legal question concerning the applicable modification standard was reviewed de novo. The trial court's custody-modification order was reviewed for abuse of discretion, with a presumption of correctness; factual findings were evaluated for competent, substantial evidence.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Florida resolving an express and direct conflict among district courts of appeal.
PARTIES	Carolyn R. Wade, f/k/a Carolyn R. Hirschman v. Michael D. Hirschman

TOPICS

child custody

family law procedure

appellate jurisdiction

standard of review

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PRACTICE AREAS

family law

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QUESTIONS PRESENTED

1. What legal standard governs modification of a final custody decree providing for rotating custody?
2. Does the substantial change test apply equally to a final custody decree incorporating a stipulated rotating-custody agreement and to a custody order entered after an adversarial hearing?
3. Did competent, substantial evidence and the best interests of the child support the trial court's modification of rotating custody and designation of the father as primary residential parent?
4. Is proof that a custody change would be detrimental to the child an additional element of the substantial change test?

HOLDINGS

1. Unless the final judgment provides otherwise, the two-part substantial change test applies to modification of all custody agreements, including rotating-custody agreements.
2. The substantial change test applies identically to modification of a final decree adopting a stipulated rotating-custody agreement and to modification of a custody order entered after an adversarial hearing.
3. Proof that continuing the existing custody arrangement would be detrimental to the child is not an independent element of Florida's substantial change test.
4. The trial court did not abuse its discretion in modifying the rotating-custody agreement, awarding shared parental responsibility, and designating the father as primary residential parent.

KEY QUOTATIONS

"We conclude that unless otherwise provided in the final judgment, the two-part substantial change test used in Cooper applies to modification of all custody agreements." (932)

"Requiring proof of detriment is inconsistent with this Court's prior holdings and is not an element of the substantial change test necessary to modify a child custody award." (934)

"In other words, a party seeking to modify a final decree adopting an agreement to rotate custody must satisfy the identical substantial change test that applies in cases involving the modification of custody orders after an adversarial hearing on the issue of custody." (934)

FACTUAL BACKGROUND

The parties were divorced in October 2000, and their later court-approved agreement provided for shared parental responsibility and split rotating custody without designating a primary residential parent. The mother refused to sign the mediated agreement, allegedly failed to comply with the parenting plan, refused to cooperate

with parenting coordinators, changed the child's school and therapist unilaterally, and was found in contempt concerning visitation. After an evidentiary hearing, the trial court found substantial and material changes in circumstances and concluded that rotating custody was no longer in the child's best interest.

PROCEDURAL HISTORY

The parties' divorce decree and subsequent mediated agreement established shared parental responsibility with split rotating custody. After the mother allegedly failed to comply with the arrangement and disrupted the parenting-coordinator process, both parties sought modification. The trial court found substantial and material changes in circumstances, determined that the rotating arrangement was no longer in the child's best interest, and designated the father as primary residential parent. The Fifth District announced a more lenient standard for modifying failed rotating-custody plans, and the Florida Supreme Court quashed that decision and directed affirmance of the trial court's order.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The Fifth District Court of Appeal was directed to enter an order affirming the trial court's custody-modification order.

CASES CITED

- Wade v. Hirschman, 872 So. 2d 952 (Fla. 5th DCA 2004)
- Cooper v. Gress, 854 So. 2d 262 (Fla. 1st DCA 2003)
- Blanton v. City of Pinellas Park, 887 So. 2d 1224, 1226-27 (Fla. 2004)
- Belford v. Belford, 159 Fla. 547, 32 So. 2d 312, 314 (1947)
- In re Gregory, 313 So. 2d 735, 738 (Fla. 1975)
- Frazier v. Frazier, 109 Fla. 164, 147 So. 464, 466-67 (1933)
- Bennett v. Bennett, 73 So. 2d 274, 278 (Fla. 1954)
- Voorhies v. Voorhies, 705 So. 2d 1064, 1065 (Fla. 1st DCA 1998)
- Perez v. Perez, 767 So. 2d 513, 516-17, 521 (Fla. 3d DCA 2000)
- Gibbs v. Gibbs, 686 So. 2d 639, 641, 645 (Fla. 2d DCA 1996)
- Metcalfe v. Metcalfe, 655 So. 2d 1251, 1253 (Fla. 3d DCA 1995)
- Newsom v. Newsom, 759 So. 2d 718, 719 (Fla. 2d DCA 2000)
- Zediker v. Zediker, 444 So. 2d 1034 (Fla. 1st DCA 1984)
- Mooney v. Mooney, 729 So. 2d 1015, 1016 (Fla. 1st DCA 1999)
- Greene v. Suhor, 783 So. 2d 290, 290-91 (Fla. 5th DCA 2001)
- Johnson v. Adair, 884 So. 2d 1169, 1173 (Fla. 2d DCA 2004)
- Leng-Gross v. Gross, 898 So. 2d 241 (Fla. 4th DCA 2005)

