

SUPREME COURT OF THE STATE OF DELAWARE

Drake v. Orlando

No. 461, 2016 (Del. Apr. 19, 2017) · No. No. 461, 2016 · Decided April 19, 2017

SUMMARY

The Delaware Supreme Court affirmed a Family Court order granting the parents joint legal custody, awarding the mother primary placement, and permitting her to relocate with the children to Arizona. The Court held that the Family Court properly applied the child-best-interests factors and that the father's failure to provide a custody-hearing transcript prevented review of his factual challenges.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Per curiam; Valihura, Justice; Vaughn, Justice; Seitz, Justice
JURISDICTION	Delaware
DECIDED	April 19, 2017
DOCKET	No. 461, 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	Steven Drake appealed a Family Court order awarding the parties joint legal custody, granting Catherine J. Orlando primary placement of their two minor children, awarding Drake visitation, and permitting Orlando to relocate with the children to Arizona.
STANDARD OF REVIEW	The Supreme Court reviews both the law and the facts; conclusions of law are reviewed de novo, factual findings are reviewed for clear error, and supported inferences and deductions of the Family Court will not be supplanted. The custody ruling was also reviewed for error or abuse of discretion.
PRECEDENTIAL VALUE	Published Delaware Supreme Court order; no standard reporter citation appears in the source.
PARTIES	Steven Drake v. Catherine J. Orlando

TOPICS

- child custody
- relocation
- appellate procedure
- standard of review
- domestic violence

PRACTICE AREAS

family law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the Family Court failed to consider evidence concerning alleged domestic violence, drug use, treatment of the children with non-prescribed medication, and the Mother's employment history.
2. Whether the Family Court properly applied the statutory best-interests-of-the-child factors in awarding joint legal custody, primary placement to the Mother, and permission to relocate to Arizona.
3. Whether the Father's failure to provide a transcript of the custody hearing prevented appellate review of his factual challenges.

HOLDINGS

1. An appellant challenging factual findings in a Family Court custody decision must provide an adequate record, including the necessary hearing transcript; without the transcript, the Supreme Court lacked an adequate basis to evaluate the Father's claims that the Family Court failed to consider particular evidence.
2. The Family Court did not err or abuse its discretion in awarding the parties joint legal custody, granting the Mother primary placement, and permitting her to relocate with the minor children to Arizona.

KEY QUOTATIONS

"In the absence of a transcript of the custody hearing, this Court lacks an adequate basis for evaluating the Father's claims that the Family Court failed to consider certain evidence." (¶ 8)

"We therefore affirm the Family Court's decision that it was in the minor sons' best interests for the parents to have joint legal custody with the Mother having primary placement of the minor sons in Arizona." (¶ 9)

FACTUAL BACKGROUND

The parties are the parents of two minor sons and an older son. They initially agreed to joint legal custody and shared placement under an interim consent order, but the Mother later sought permission to relocate outside Delaware for pharmacist employment. After hearings involving the parties, the children, the older son, and teachers, the Family Court awarded joint custody, gave the Mother primary placement, allowed relocation to Arizona, and granted the Father visitation.

PROCEDURAL HISTORY

The parties filed cross-petitions for custody and were subject to cross protection-from-abuse orders. After custody and rule-to-show-cause hearings, the Family Court entered its August 23, 2016 order awarding joint custody, primary placement to the Mother, and permission to relocate to Arizona. Drake appealed, but did not provide a transcript of the custody hearing.

DISPOSITION

affirmed

CASES CITED

- Mundy v. Devon, 906 A.2d 750, 752 (Del. 2006)
- Wife (J.F.V.) v. Husband (O.W.V., Jr.), 402 A.2d 1202, 1204 (Del. 1979)
- Trioche v. State, 525 A.2d 151, 154 (Del. 1987)
- Mahan v. Mahan, 2007 WL 1850905, at *1 (Del. June 28, 2007)
- Burton v. Burton, 2005 WL 1950214, at *1 (Del. July 19, 2005)

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