

SUPREME COURT OF TENNESSEE

Arthur Blair v. Marilyn Badenhope

Blair v. Badenhope · No. E1999-02748-SC-R11-CV · Decided May 3, 2002

SUMMARY

Justice Adolpho A. Birch, Jr. dissents from the Tennessee Supreme Court’s decision concerning a parent’s petition to regain custody from a non-parent after voluntarily surrendering custody. The dissent argues that a fit parent retains a constitutionally protected superior right to custody unless returning the child would pose a danger of substantial harm. It further concludes that Arthur Blair demonstrated changed circumstances and that custody should be transferred to him under either the substantial-harm or best-interests analysis.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Adolpho A. Birch, Jr.
JURISDICTION	Tennessee
DECIDED	May 3, 2002
DOCKET	E1999-02748-SC-R11-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Arthur Blair petitioned to modify an agreed custody order that had placed custody of his daughter with Marilyn Badenhope, a non-parent. The Tennessee Court of Appeals affirmed the trial court's refusal to transfer custody to Blair. Justice Birch dissented from the Tennessee Supreme Court majority's disposition.
STANDARD OF REVIEW	The dissent would require a parent seeking custody from a non-parent to demonstrate that the child would not face substantial harm from the transfer. It also disagreed with the majority's application of the material-change-in-circumstances standard and, alternatively, would find a material change and conclude that custody with Blair served the child's best interests.
PRECEDENTIAL VALUE	Published dissenting opinion; persuasive only as a dissent and not binding authority for its proposed disposition.
PARTIES	Arthur Blair v. Marilyn Badenhope

TOPICS

child custody parental rights family law due process appellate procedure

PRACTICE AREAS

family law constitutional law appellate procedure

QUESTIONS PRESENTED

1. Whether a fit biological parent who previously agreed to place custody with a non-parent may regain custody without being treated as having forfeited the superior parental right.
2. Whether a parent seeking to modify a custody order favoring a non-parent should prevail unless the non-parent proves substantial harm to the child from the transfer, or instead must satisfy the best-interests and material-change standards applied by the majority.
3. Whether the evidence established a genuine danger of substantial physical, emotional, or mental harm to Joy if custody were transferred to Blair.
4. Whether Blair's strengthened relationship with Joy, expressed desire to live with him, move to Tennessee, and changed residence constituted a material change in circumstances.

HOLDINGS

1. The dissent would hold that a fit biological parent retains a constitutionally protected superior right to custody despite a prior voluntary surrender of custody, unless the parent abandoned the child, expressly relinquished parental rights, or engaged in conduct that substantially harms the child.
2. The dissent would hold that a parent should regain custody from a non-parent when the parent demonstrates that the child will not face substantial harm from the transfer; substantial harm requires a genuine danger to the child's physical, emotional, or mental well-being and cannot rest on trivial, speculative, insignificant, or transitory concerns.
3. The dissent would find that the evidence did not establish substantial harm from placing Joy in Blair's custody.
4. Alternatively, the dissent would find a material change in circumstances and conclude that the best-interests factors favored transferring custody to Blair.

KEY QUOTATIONS

"The United States Supreme Court has recognized this right as part of the constitutional liberty interest guaranteed by the Fourteenth Amendment." (-1)

"Only the danger of substantial harm to the child justifies intrusion into the almost sacred and assuredly constitutionally protected relationship of parent and child." (-3)

"Before a finding of substantial harm is justified, I would hold that a genuine danger of injury to the physical, emotional, or mental well-being of the child must exist." (-6)

“I would reverse the judgment of the Court of Appeals and remand this cause to the trial court for entry of an order transferring custody to Arthur Blair unconditionally.” (-8)

FACTUAL BACKGROUND

Blair learned that he was the father of Joy, a motherless child with whom he initially had no relationship, and agreed that Badenhope could retain custody. He thereafter persistently developed a loving relationship with Joy, moved near her, obtained a home in her neighborhood, and supported her financially and emotionally. The trial court found Blair fit but concluded that transferring custody from Badenhope would cause substantial harm based principally on Badenhope's stable home, emotional bond with Joy, willingness to foster Blair's relationship with Joy, and an earlier relationship involving Blair's wife.

PROCEDURAL HISTORY

Custody was initially placed with Badenhope pursuant to an agreed order entered by a North Carolina court. Blair later sought custody in Tennessee after developing a strong relationship with his daughter and moving nearer to her. The Tennessee trial court found Blair fit but found substantial harm would result from changing custody and denied relief; the Court of Appeals affirmed. The dissent would have reversed and remanded for an order transferring custody to Blair.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The dissent would reverse the Court of Appeals and remand to the trial court for entry of an order transferring custody of Joy to Arthur Blair unconditionally.

CASES CITED

- Pierce v. Society of Sisters, 268 U.S. 510, 534-35, 45 S. Ct. 571, 573-74, 69 L. Ed. 1070 (1925)
- Prince v. Massachusetts, 321 U.S. 158, 166, 64 S. Ct. 438, 442, 88 L. Ed. 645 (1944)
- Hawk v. Hawk, 855 S.W.2d 573, 579 (Tenn. 1993)
- Lehr v. Robertson, 463 U.S. 248, 257-58, 103 S. Ct. 2985, 2991, 77 L. Ed. 2d 614 (1983)
- Petrosky v. Keene, 898 S.W.2d 726, 728 (Tenn. 1995)
- In re Knott, 197 S.W. 1097, 1098 (Tenn. 1917)
- In re Adoption of Female Child, 896 S.W.2d 546, 548 (Tenn. 1995)
- Troxel v. Granville, 530 U.S. 57, 68, 120 S. Ct. 2054, 2061, 147 L. Ed. 2d 49 (2000)
- Parham v. J.R., 442 U.S. 584, 602, 99 S. Ct. 2493, 2504, 61 L. Ed. 2d 101 (1979)
- Busa v. Busa, 589 A.2d 370, 371 (Conn. App. 1991)
- C.R.B. v. C.C., 959 P.2d 375 (Alaska 1998)
- Ex Parte McLendon, 455 So. 2d 863, 865 (Ala. 1984)

- In re Askew, 993 S.W.2d 1, 4 (Tenn. 1999)
- Stubblefield v. State ex rel. Fjelstad, 106 S.W.2d 558, 587 (Tenn. 1937)
- O'Daniel v. Messier, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995)
- Darlene S. v. Justino L., 533 N.Y.S.2d 179, 182 (N.Y. Fam. Ct. 1988)
- Blair v. Badenhope, 940 S.W.2d 575, 576 (Tenn. Ct. App. 1996)
- Sheppard v. Hood, 605 So. 2d 708, 712 (La. Ct. App. 1992)
- Venable v. Venable, 445 N.E.2d 1125, 1130 (Ohio Ct. App. 1981)

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