

SUPREME JUDICIAL COURT OF MAINE

Conlogue v. Conlogue, 2006 ME 12

890 A.2d 691 (Me. 2006) · Decided February 9, 2006

SUMMARY

The Maine Supreme Judicial Court held that applying Maine's Grandparents Visitation Act to grant grandparents standing solely because one parent had died violated the surviving parent's substantive due process rights. The court affirmed dismissal of the visitation petition but vacated the award of attorney fees and costs because the grandparents had not received an adequate opportunity to contest that award.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Dana, J.; Saufley, C.J.; Clifford, J.; Alexander, J.; Calkins, J.; Levy, J.
JURISDICTION	Maine
DECIDED	February 9, 2006
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The grandparents appealed from a District Court judgment dismissing their petition for court-ordered grandparent visitation and awarding the surviving parent attorney fees and costs.
STANDARD OF REVIEW	Constitutionality of the statute as applied was reviewed as a legal issue; the award of attorney fees was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Judicial Court of Maine.
PARTIES	Herschel Conlogue, Jane Conlogue v. Patricia Conlogue

TOPICS

- grandparent rights
- visitation
- substantive due process
- strict scrutiny
- appellate procedure

PRACTICE AREAS

- family law
- constitutional law
- appellate procedure
- remedies

QUESTIONS PRESENTED

1. Whether 19-A M.R.S. § 1803(1)(A), as applied to permit grandparents to litigate visitation solely because one parent has died, violates the surviving parent's federal substantive due process rights.
2. Whether the District Court abused its discretion by awarding Patricia Conlogue attorney fees and costs without providing the grandparents an adequate opportunity to submit financial information or receive a hearing.

HOLDINGS

1. As applied to permit the deceased parent's family to litigate visitation over the objection of a custodial surviving parent solely because the other parent has died, 19-A M.R.S. § 1803(1)(A) violates the surviving parent's substantive due process rights.
2. The District Court's award of attorney fees and costs was vacated because the circumstances reflected a misunderstanding about the grandparents' opportunity to oppose the motion and submit financial information; the matter was remanded for reconsideration and a hearing.

KEY QUOTATIONS

“forcing parents to defend against a claim for grandparent visitation is itself an infringement of their fundamental right to make decisions concerning the custody and control of their children.” (697)

“Such an infringement is subject to strict scrutiny, and must be narrowly tailored to serve a compelling state interest.” (697)

“We do not see, however, how the fact of a parental death standing alone can be an urgent reason for a court's interference in family life over the objections of a custodial parent like Patricia Conlogue.” (698)

“Because protecting the best interest of a child is not itself a compelling state interest.” (699)

FACTUAL BACKGROUND

Kevin and Patricia Conlogue were married and had a daughter born in 2000. Kevin died in 2003. In June 2004, Kevin's parents petitioned for court-ordered visitation with their granddaughter under the statutory provision granting grandparents standing when a child's parent has died. Patricia opposed the petition and sought dismissal, costs, and attorney fees.

PROCEDURAL HISTORY

Herschel and Jane Conlogue petitioned the District Court under Maine's Grandparents Visitation Act after their son, Kevin, died. Patricia Conlogue moved to dismiss on constitutional grounds and sought costs and attorney fees. The District Court dismissed the petition and awarded Patricia \$1,000 in attorney fees without holding an additional hearing or obtaining financial information from the grandparents. The Supreme Judicial Court affirmed the dismissal, vacated the fee award, and remanded for reconsideration.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The District Court must reconsider the award of costs and attorney fees, including fees incurred in the appeal, allow the parties to submit additional affidavits, and provide a hearing as required by 19-A M.R.S. § 105(1). The judgment dismissing the visitation petition remains affirmed.

CASES CITED

- United States v. Salerno, 481 U.S. 739, 745 (1987)
- In re Heather C., 2000 ME 99, 751 A.2d 448
- Carroll F. Look Constr. Co. v. Town of Beals, 2002 ME 128, 802 A.2d 994
- Botting v. Department of Behavioral & Developmental Services, 2003 ME 152, 838 A.2d 1168
- Troxel v. Granville, 530 U.S. 57 (2000)
- Rideout v. Riendeau, 2000 ME 198, 761 A.2d 291
- Santosky v. Kramer, 455 U.S. 745 (1982)
- In re Scott S., 2001 ME 114, 775 A.2d 1144
- Reno v. Flores, 507 U.S. 292 (1993)
- Harold v. Collier, 107 Ohio St. 3d 44, 836 N.E.2d 1165 (2005)
- Blixt v. Blixt, 437 Mass. 649, 774 N.E.2d 1052 (2002)
- Roth v. Weston, 259 Conn. 202, 789 A.2d 431 (2002)
- Robichaud v. Pariseau, 2003 ME 54, 820 A.2d 1212
- Kyle O. v. Donald R., 85 Cal. App. 4th 848, 102 Cal. Rptr. 2d 476 (2000)
- Daniels v. Daniels, 381 N.J. Super. 286, 885 A.2d 524 (2005)
- Wilde v. Wilde, 341 N.J. Super. 381, 775 A.2d 535 (2001)
- Dargie v. Dargie, 2001 ME 127, 778 A.2d 353
- McCain Foods, Inc. v. Gervais, 657 A.2d 782 (Me. 1995)