

SUPREME COURT OF THE STATE OF ALASKA

Graham R. v. Jane S.

334 P.3d 688 (Alaska 2014) · No. S-15158 · Decided September 19, 2014

SUMMARY

The Alaska Supreme Court affirmed an order modifying custody of the parties' child from Graham R. to Jane S. The court held that the modification proceeding was not barred by res judicata or collateral estoppel, that Graham's substantial interference with Jane's visitation rights constituted a change in circumstances, and that modification was in the child's best interests. The court also concluded that any errors concerning hearsay statements about the child's preferences or evidence of Graham's prior convictions were harmless.

CASE DETAILS

COURT	Supreme Court of the State of Alaska
WRITING FOR THE COURT	Maassen, Justice; Fabe, Chief Justice; Winfree, Justice; Stowers, Justice; Bolger, Justice
JURISDICTION	Alaska
DECIDED	September 19, 2014
DOCKET	S-15158
DISPOSITION	affirmed
PROCEDURAL POSTURE	Graham appealed the superior court's order modifying child custody and awarding Jane sole legal and primary physical custody after an evidentiary hearing.
STANDARD OF REVIEW	Preclusion is reviewed de novo. Custody determinations and modifications are reviewed for abuse of discretion and clear error as to factual findings. Evidentiary rulings are reviewed for abuse of discretion, and reversal requires prejudicial effect on a party's substantial rights.
PRECEDENTIAL VALUE	published and precedential Alaska Supreme Court opinion
PARTIES	Graham R. v. Jane S.

TOPICS

- child custody
- family law procedure
- hearsay
- appellate procedure
- standard of review

PRACTICE AREAS

family law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether res judicata barred Jane's later motion to modify custody after the parties resolved an earlier domestic-violence protective-order proceeding.
2. Whether collateral estoppel barred relitigation of allegations concerning Graham's interference with Jane's visitation rights.
3. Whether Graham's interference with Jane's visitation rights constituted a substantial change in circumstances supporting custody modification.
4. Whether the superior court properly determined that awarding Jane sole legal and primary physical custody was in the child's best interests.
5. Whether the superior court committed reversible error by admitting or considering the child's hearsay statements concerning her custody preference.
6. Whether the admission of Graham's old criminal convictions was reversible evidentiary error.

HOLDINGS

1. Res judicata does not bar a motion to modify child custody because Alaska's custody-modification statute permits modification upon a substantial change in circumstances and a determination that modification is in the child's best interests.
2. Collateral estoppel did not bar Jane's custody-modification motion because domestic violence and custody were not actually litigated and necessarily decided in the protective-order proceeding.
3. A custodial parent's substantial interference with the noncustodial parent's visitation rights constitutes a substantial change in circumstances sufficient to support modification of custody.
4. The superior court did not abuse its discretion in determining that sole legal and primary physical custody should be awarded to Jane.
5. Any error in admitting the child's statements about her custody preference was harmless because the superior court expressly gave the evidence no weight and did not rely on it.
6. Any error in admitting evidence of Graham's 1996 and 1997 misdemeanor convictions was harmless.

KEY QUOTATIONS

“res judicata does not apply to custody modifications” (at 625)

“Collateral estoppel bars relitigation when issues of fact or law “were actually litigated and necessarily decided in [a] prior proceeding.”” (at 627)

“actions by a custodial parent which substantially interfere with the noncustodial parent’s visitation rights are sufficient to constitute a change in circumstances.” (at 688)

“We will not reweigh the evidence when the record provides clear support for the trial court’s ruling.” (at 690)

FACTUAL BACKGROUND

Graham and Jane are the parents of a child for whom Graham received sole legal and primary physical custody in 2006, while Jane received scheduled visitation. In 2012, while Graham was receiving heart treatment and surgery, Graham and his wife took the child from Cordova to Anchorage and then California without adequately informing Jane, causing her to miss multiple scheduled visits and preventing meaningful contact. After the child returned, Jane sought modification of custody, and the superior court found that Graham's conduct substantially interfered with her visitation rights and that custody modification was in the child's best interests.

PROCEDURAL HISTORY

A 2006 custody order awarded Graham sole legal and primary physical custody and granted Jane visitation. After Graham took the child to California for heart surgery and interfered with Jane's visitation, Jane obtained a protective order and later moved to modify custody. The superior court rejected Graham's res judicata and collateral-estoppel arguments, found changed circumstances, modified custody in Jane's favor, and the Alaska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- *Angleton v. Cox*, 238 P.3d 610, 614 (Alaska 2010)
- *Maness v. Daily*, 184 P.3d 1, 5 (Alaska 2008)
- *Alaska Wildlife Alliance v. State*, 74 P.3d 201, 205 (Alaska 2003)
- *Ronny M. v. Nanette H.*, 303 P.3d 392, 399 (Alaska 2013)
- *Hamilton v. Hamilton*, 42 P.3d 1107, 1111 (Alaska 2002)
- *Fardig v. Fardig*, 56 P.3d 9, 11 (Alaska 2002)
- *Siekawitch v. Siekawitch*, 956 P.2d 447, 449 (Alaska 1998)
- *Samaniego v. City of Kodiak*, 80 P.3d 216, 218 (Alaska 2003)
- *Buster v. Gale*, 866 P.2d 837, 841 n.9 (Alaska 1994)
- *Lum v. Koles*, 314 P.3d 546, 552 (Alaska 2013)
- *Kent V. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, 233 P.3d 597, 600 (Alaska 2010)
- *Plumber v. Univ. of Alaska Anchorage*, 936 P.2d 163, 166 (Alaska 1997)
- *McAlpine v. Pacarro*, 262 P.3d 622, 625-27 (Alaska 2011)
- *Lashbrook v. Lashbrook*, 957 P.2d 326, 327-30 (Alaska 1998)
- *Frackman v. Enzor*, 327 P.3d 878, 882 (Alaska 2014)
- *Campion v. State, Dep't of Cmty. & Reg'l Affairs, Hous. Assistance Div.*, 876 P.2d 1096, 1098 (Alaska 1994)

- *Americana Fabrics v. L & L Textiles*, 754 F.2d 1524, 1529 (9th Cir. 1985)
- *Morris v. Horn*, 219 P.3d 198, 201, 203, 209-10 (Alaska 2009)
- *Jaymont v. Skillings-Donat*, 216 P.3d 534, 543 (Alaska 2009)
- *Terry S. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, 168 P.3d 489, 493 (Alaska 2007)
- *Van Sickle v. McGraw*, 134 P.3d 338, 341 n.10 (Alaska 2006)
- *Kelly v. Joseph*, 46 P.3d 1014, 1016-19 (Alaska 2002)
- *Hermosillo v. Hermosillo*, 797 P.2d 1206, 1208-09 (Alaska 1990)
- *VinZant v. Elam*, 977 P.2d 84, 87 (Alaska 1999)
- *Pinneo v. Pinneo*, 835 P.2d 1233, 1238 (Alaska 1992)
- *Brandner v. Hudson*, 171 P.3d 83, 87 (Alaska 2007)
- *Alderman v. Iditarod Props., Inc.*, 104 P.3d 136, 142 (Alaska 2004)