

SUPREME COURT OF KENTUCKY

Moore v. Asente

110 S.W.3d 336 (Ky. 2003) · No. 2000-SC-1127-DG, 2001-SC-0325-DG · Decided June 12, 2003

SUMMARY

The Supreme Court of Kentucky considers a custody dispute arising from the breakdown of a proposed interstate private adoption. The court holds that the birth parents' adoption consents were invalid because they were misinformed about the consents' legal effect, but that the prospective adoptive parents nevertheless had standing to seek custody. Because the birth parents waived their superior custody rights by placing the child for adoption and allowing the prospective adoptive parents to retain physical custody, the court remands for a custody determination based on the child's best interests.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Keller; Justice Graves; Justice Wintersheimer
JURISDICTION	Kentucky
DECIDED	June 12, 2003
DOCKET	2000-SC-1127-DG, 2001-SC-0325-DG
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Kentucky Supreme Court granted discretionary review of the Court of Appeals' decision in a custody dispute arising from a failed interstate private adoption, including the Court of Appeals' rulings that the adoption consents were valid, that the custody action should be dismissed, and that the Kenton Circuit Court had jurisdiction. The Asentes cross-appealed the jurisdictional analysis and the trial court's determination that they lacked standing to seek custody.
STANDARD OF REVIEW	Findings of fact are reviewed for clear error and must be upheld if supported by substantial evidence, with due regard for the trial court's opportunity to assess witness credibility. Legal conclusions are reviewed independently.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Regina Moore, Jerry Dorning, Richard Asente, Cheryl Asente v. Richard Asente, Cheryl Asente, Justin Lee Moore, Regina Moore,

TOPICS

adoption child custody standing subject matter jurisdiction interstate disputes

PRACTICE AREAS

family law adoption child custody interstate disputes appellate procedure

QUESTIONS PRESENTED

1. Whether Kentucky retained jurisdiction over the custody dispute under the Interstate Compact on the Placement of Children and the Uniform Child Custody Jurisdiction Act.
2. Whether the birth parents' adoption consents were valid and enforceable when they were misinformed about the legal effect and revocability of the consents.
3. Whether the Asentes had standing under KRS 403.420(4)(b) to seek custody despite the invalidity of the adoption consents.
4. Whether custody should be determined under an unfitness standard or the best-interest-of-the-child standard after the birth parents waived their superior custodial rights.

HOLDINGS

1. Kentucky retained jurisdiction over the custody proceeding. The ICPC does not govern jurisdictional conflicts in this case, and the UCCJA authorized Kentucky jurisdiction because Kentucky was the child's home state within six months before commencement and Ohio had previously declined to exercise jurisdiction in favor of Kentucky.
2. The trial court's finding that Moore and Dorning did not knowingly give voluntary and informed adoption consents was supported by substantial evidence and was not clearly erroneous. The consents were therefore invalid and unenforceable.
3. The Asentes had standing to pursue custody because Justin was in their physical custody, rather than the physical custody of a parent, when the custody proceeding commenced.
4. The birth parents waived their superior custodial rights by voluntarily placing Justin with the Asentes for adoption, signing adoption consents and a voluntary termination petition, and delaying nearly six months before seeking judicial return. Custody must therefore be determined under the best-interest-of-the-child standard rather than an unfitness standard.

KEY QUOTATIONS

“We hold, however, that simple physical possession, standing alone, is insufficient to confer standing to contest child custody upon a nonparent.” (358-359)

“In determining whether parents have relinquished “physical custody” in a manner that confers standing upon a nonparent, Kentucky trial courts—like other courts that have addressed this issue—should consider,

among other factors:” (359)

“We therefore hold that, upon remand, the trial court shall determine custody in accordance with Justin's present best interest.” (362)

FACTUAL BACKGROUND

Regina Moore and Jerry Dorning, Kentucky residents, twice agreed to have their son Justin adopted by Richard and Cheryl Asente, Ohio residents. They signed adoption-consent documents and placed Justin with the Asentes after Kentucky and Ohio approved the interstate placement. Moore and Dorning later changed their minds, but their attorney had advised them that they could revoke the consents until the termination-of-parental-rights hearing. After the Asentes declined to return Justin, the birth parents filed a custody action nearly six months after placement.

PROCEDURAL HISTORY

Moore and Dorning placed Justin with the Asentes for purposes of adoption, signed adoption consents, and later sought the child's return after learning that their attorney had misinformed them about when the consents could be revoked. The Kenton Circuit Court found the consents invalid, awarded immediate entitlement to the birth parents, held that the Asentes lacked standing, and applied an unfitness standard. The Court of Appeals held the consents valid and directed dismissal of the custody action. The Kentucky Supreme Court affirmed Kentucky's jurisdiction, reversed the Court of Appeals on consent validity, vacated the order denying the Asentes standing, and remanded for a best-interests custody hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Kenton Circuit Court must conduct a custody hearing and adjudicate the rival custody claims of Moore and Dorning and the Asentes under the best-interest-of-the-child standard. The Supreme Court affirmed Kentucky's jurisdiction, reversed the Court of Appeals' direction to dismiss the custody action, and vacated the trial court's order denying the Asentes standing and directing return of the child.

CASES CITED

- In re Adoption of Asente, 90 Ohio St. 3d 91, 734 N.E.2d 1224 (2000)
- In the Matter of the Adoption of Jarrett, 230 A.D.2d 513, 660 N.Y.S.2d 916 (N.Y. App. Div. 1997)
- Williams v. Phelps, 961 S.W.2d 40 (Ky. App. 1998)
- Henderson v. Henderson, 174 Mont. 1, 568 P.2d 177 (1977)
- Girard v. Williams, 291 Mont. 49, 966 P.2d 1155 (1998)
- In re A.W.J., 316 Ill. App. 3d 91, 736 N.E.2d 716 (2000)
- Webb v. Charles, 125 Ariz. 558, 611 P.2d 562 (1980)
- Boatwright v. Walker, 715 S.W.2d 237 (Ky. App. 1986)

- Van Wey v. Van Wey, 656 S.W.2d 731 (Ky. 1983)
- Greathouse v. Shreve, 891 S.W.2d 387 (Ky. 1995)
- Fitch v. Burns, 782 S.W.2d 618 (Ky. 1989)
- Davis v. Collinsworth, 771 S.W.2d 329 (Ky. 1989)
- Quisenberry v. Quisenberry, 785 S.W.2d 485 (Ky. 1990)
- McNames v. Corum, 683 S.W.2d 246 (Ky. 1984)
- Day v. Day, 937 S.W.2d 717 (Ky. 1997)

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