

SUPREME COURT OF ALASKA

Hunter v. Conwell

276 P.3d 413 (Alaska 2012) · No. No. S-13915 · Decided April 13, 2012

SUMMARY

The Alaska Supreme Court affirmed the denial of Bobbie Ann Hunter's motion to modify child custody. The court held that the alleged verbal abuse, behavioral issues, work-related travel, and interference with telephonic visitation did not, individually or collectively, establish a substantial change in circumstances warranting custody modification. The court emphasized that telephonic visitation remains important and could support future reconsideration if the problems continued.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Stowers, Justice; Carpeneti, Chief Justice; Fabe, Justice; Winfree, Justice
JURISDICTION	Alaska
DECIDED	April 13, 2012
DOCKET	No. S-13915
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hunter appealed the superior court's denial, after an evidentiary hearing on remand, of her motion to modify child custody.
STANDARD OF REVIEW	Child custody decisions and determinations whether a prima facie showing of a substantial change in circumstances warrants an evidentiary hearing are reviewed for abuse of discretion; underlying factual findings are reviewed for clear error. The court gives particular deference to factual findings based primarily on oral testimony.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential.
PARTIES	Bobbie Ann Hunter v. Shaun T. Conwell

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the superior court abused its discretion by finding that the evidence did not establish a substantial change in circumstances sufficient to modify custody.
2. Whether alleged interference with telephonic visitation constituted a substantial change in circumstances requiring custody modification.
3. Whether the superior court properly declined to conduct a best-interests analysis after finding no substantial change in circumstances.

HOLDINGS

1. The superior court did not abuse its discretion in finding that the alleged verbal abuse was unsubstantiated, that the children's behavioral issues were not significant or were limited to transition periods, and that Conwell's work did not require significant absences from the children. These circumstances, individually and in the aggregate, did not establish a substantial change in circumstances.
2. The superior court did not abuse its discretion in finding that the problems with telephonic visitation, although serious and ongoing, did not yet constitute a substantial change in circumstances sufficient to modify custody.
3. No best-interests analysis was required because Hunter failed to establish the threshold substantial change in circumstances necessary to proceed to that second step of custody modification.

KEY QUOTATIONS

“Actions by a custodial parent which substantially interfere with the noncustodial parent's visitation rights are sufficient to constitute a change in circumstances.” (421)

“Where geographic separation makes frequent in-person visitation impossible, telephonic visitation is crucial.” (422)

FACTUAL BACKGROUND

Hunter and Conwell, who were never married, have two sons and lived in separate communities after their relationship ended. Conwell received sole legal and primary physical custody in a 2006 default judgment, while Hunter received visitation. Hunter alleged that circumstances had changed because of possible verbal abuse by Conwell's girlfriend, the children's behavioral problems, Conwell's work-related travel, and interference with scheduled telephone visitation. After an evidentiary hearing, the superior court found the abuse, behavioral, and travel allegations unsubstantiated or insufficient, and found that the telephone-contact problems did not yet constitute a substantial change in circumstances.

PROCEDURAL HISTORY

Conwell obtained sole legal and primary physical custody in a 2006 default judgment. Hunter later moved to modify custody, alleging verbal abuse, inadequate care, Conwell's work-related absences, behavioral problems,

and interference with telephonic visitation. The superior court initially denied the motion without a hearing, but the Alaska Supreme Court reversed and remanded in *Hunter I* for an evidentiary hearing. After the hearing, the superior court found no substantial change in circumstances, denied modification, and stated that continued interference with telephonic visitation could support a future modification. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- *Hunter v. Conwell*, 219 P.3d 191, 192, 196-98 (Alaska 2009)
- *Wee v. Eggener*, 225 P.3d 1120, 1124 (Alaska 2010)
- *Millette v. Millette*, 177 P.3d 258, 261 (Alaska 2008)
- *Jaymot v. Skillings-Donat*, 216 P.3d 534, 538-39 (Alaska 2009)
- *Odom v. Odom*, 141 P.3d 324, 330 (Alaska 2006)
- *Hamilton v. Hamilton*, 42 P.3d 1107, 1111 (Alaska 2002)
- *McLane v. Paul*, 189 P.3d 1039, 1042 (Alaska 2008)
- *Barrett v. Alguire*, 35 P.3d 1, 5 (Alaska 2001)
- *Dingeman v. Dingeman*, 865 P.2d 94, 96 (Alaska 1993)
- *Ebertz v. Ebertz*, 113 P.3d 643, 646-47 (Alaska 2005)
- *Kelly v. Joseph*, 46 P.3d 1014, 1017-18 (Alaska 2002)
- *Nichols v. Mandelin*, 790 P.2d 1367, 1372 (Alaska 1990)
- *Silvan v. Alcina*, 105 P.3d 117, 121 (Alaska 2005)