

OHIO COURT OF APPEALS, TENTH DISTRICT

Wyss v. Wyss, 3 Ohio App. 3d 412

445 N.E.2d 1153 (Ohio Ct. App. 1982) · Decided April 1, 1982

SUMMARY

The Ohio Court of Appeals reversed a custody modification awarding custody of two children to their father. The court held that the evidence did not establish the statutory requirement that the mother's current environment significantly endangered the children's physical health or mental, moral, or emotional development, emphasizing that a potentially better environment was insufficient. The court also held that the challenge to the temporary ex parte custody order was moot after merger into the final judgment.

CASE DETAILS

COURT	Ohio Court of Appeals, Tenth District
WRITING FOR THE COURT	Moyer; Norris; Reilly
JURISDICTION	Ohio
DECIDED	April 1, 1982
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Julia D. Wyss appealed a domestic-relations judgment modifying custody of the parties' two minor children from her to William M. Wyss.
STANDARD OF REVIEW	The custody-modification judgment was reviewed under the statutory requirements of R.C. 3109.04 and the manifest-weight-of-the-evidence standard.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Julia D. Wyss v. William M. Wyss

TOPICS

- child custody
- family law procedure
- statutory interpretation
- mootness
- appellate procedure

PRACTICE AREAS

- family law
- child custody
- appellate procedure
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the trial court's modification of custody was against the manifest weight of the evidence.
2. Whether the trial court's conclusions supporting the custody modification were legally insufficient.
3. Whether the post-decree ex parte temporary-custody order was legally authorized.
4. Whether the trial court committed prejudicial error by considering affidavits that were not admitted into evidence.

HOLDINGS

1. The challenge to the ex parte temporary-possession order was moot because the temporary order merged into the trial court's final custody judgment.
2. A custody modification requires proof of changed circumstances, or circumstances unknown to the court when the prior decree was entered, together with one of the statutory conditions, including that the custodial parent's environment significantly endangers the child's physical health or mental, moral, or emotional development and that the benefits of changing custody outweigh the resulting harm.
3. A custodial parent's past living arrangement or misconduct cannot justify a custody change as a penalty when the conduct has ceased and is not shown to have materially and adversely affected the child.
4. The custody modification was against the manifest weight of the evidence and contrary to law because the record did not establish that Julia's present environment significantly endangered the children's physical health or mental, moral, or emotional development.

KEY QUOTATIONS

"It is not sufficient for the moving party to merely show that he can provide a better environment than the environment provided by the parent with custody." (at 414)

"Change of custody cannot properly be used as a penalty for past misconduct where the misconduct is not continuing and not shown to materially adversely affect the child." (at 414)

"The changed conditions, we stress, must be substantiated, continuing, and have a materially adverse effect upon the child." (at 416)

"It is reasonable to conclude that they were perhaps in a better environment than they would have been if they had been with their mother. However, we reemphasize that that is not the test." (at 416)

FACTUAL BACKGROUND

Julia initially had custody of the parties' two children following the August 1980 dissolution of the marriage. After the decree, Julia and the children temporarily moved among several Ohio locations while she sought housing, and the children experienced some disruption in residence and schooling. By the custody hearing, Julia had married Rosser, was living with him and the children in a clean, adequately sized townhouse, and was employed as a waitress. The trial court nevertheless changed custody to William based primarily on the children's instability and Julia's prior relationship and living arrangement with Rosser.

PROCEDURAL HISTORY

The parties' marriage was dissolved in August 1980, with Julia awarded custody. William later moved to modify custody, and the trial court entered an ex parte temporary-possession order before a referee hearing. After overruling Julia's objections to the referee's report, the trial court adopted the recommendation and awarded custody to William, subject to the children initially remaining with William's parents. The appellate court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the trial court for further proceedings consistent with the appellate decision and in accordance with law.

CASES CITED

- Young v. Young (Mar. 22, 1979), Franklin App. No. 78AP-677, unreported
- Stellfox v. Stellfox (July 24, 1979), Franklin App. No. 79AP-69, unreported
- Wedren v. Wedren (Aug. 27, 1974), Franklin App. No. 74AP-103, unreported
- Stout v. Stout (Nov. 20, 1980), Franklin App. No. 80AP-385, unreported
- Whaley v. Whaley, 61 Ohio App. 2d 111, 15 O.O. 3d 136 (1978)