

SUPREME COURT OF ALASKA

Heustess v. Kelley-Heustess

158 P.3d 827 (Alaska 2007) · No. S-12126 · Decided May 25, 2007

SUMMARY

The Alaska Supreme Court vacated and remanded a divorce judgment concerning property division, child support, and attorney's fees. The court held that the marital house was improperly treated as only partially transmuted and valued at separation, and that awarding premarital child support without adequate notice violated due process.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                       |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Alaska                                                                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Matthews, Justice; Fabe, Chief Justice; Eastaugh, Justice; Bryner, Justice; Carpeneti, Justice                                                                                                                                                                                                                        |
| JURISDICTION          | Alaska                                                                                                                                                                                                                                                                                                                |
| DECIDED               | May 25, 2007                                                                                                                                                                                                                                                                                                          |
| DOCKET                | S-12126                                                                                                                                                                                                                                                                                                               |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | Appeal from a divorce judgment involving equitable distribution of property, child support, and attorney's fees.                                                                                                                                                                                                      |
| STANDARD OF REVIEW    | Equitable allocation of property is reviewed for abuse of discretion and will not be reversed unless clearly unjust. Legal determinations relevant to property division and child support are reviewed under an independent-judgment standard, and factual determinations are reviewed deferentially for clear error. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                        |
| PARTIES               | Allen W. Heustess v. Bonnie J. Kelley-Heustess                                                                                                                                                                                                                                                                        |

TOPICS

- dissolution of marriage
- equitable distribution
- child support
- due process
- appellate procedure

PRACTICE AREAS

- family law
- equitable distribution
- child support
- appellate procedure
- constitutional law

## QUESTIONS PRESENTED

1. Whether the superior court properly treated only part of the Chugiak house as marital property.
2. Whether the Chugiak house should have been valued as of the parties' separation or as close as practicable to the time of trial.
3. Whether the superior court properly divided the marital estate unequally without considering rental income and while relying on alleged deception in the refinancing.
4. Whether the superior court clearly erred in valuing the parties' furnishings, the Chevy Blazer, account balances, and personal-injury settlement funds.
5. Whether the award of premarital child support violated Allen's due-process rights because the claim was raised too late for him to prepare a defense.
6. Whether the attorney's-fee award was properly based on relative economic circumstances and vexatious conduct.

## HOLDINGS

1. When real estate is transmuted into marital property, the entire property is converted from separate to marital in character; the superior court erred by treating only one-third of the house as marital property.
2. Marital property ordinarily should be valued as close as practicable to the date of trial, rather than automatically as of the parties' separation.
3. On remand, the superior court must consider whether to credit post-separation mortgage payments made from separate property and whether to offset those credits by the value of the occupying spouse's post-separation use of the residence.
4. The superior court must reconsider whether an unequal property division is justified after considering rental income and without treating the refinancing transaction as financial misconduct detrimental to Allen.
5. The superior court erred by treating the Chevy Blazer as having a negative value after its loan had been paid off and by failing to trace the marital contribution to the replacement vehicle.
6. An award of child support for the period before the parties' marriage violated Allen's due-process rights because he lacked sufficiently early and specific notice and an opportunity to present a defense.
7. The attorney's-fee award had to be vacated because the superior court did not first determine the fee justified by the parties' relative economic circumstances, separately identify fees attributable to misconduct, or identify the amount of increased costs caused by the misconduct.

## KEY QUOTATIONS

*“We have repeatedly indicated that transmutation of real estate converts the entire property from separate to marital in character.”* (at 831)

*“A valuation date should be chosen which will provide the most current and accurate information possible and which avoids inequitable results.”* (at 832)

*“Due process requires that a party be provided with notice and an opportunity for a hearing on issues of consequence.” (at 835)*

*“When “making an increased fee award, the court must first determine what fee award would be appropriate under the general rule, and only then increase the award to account for a party's misconduct.” (at 836)*

## FACTUAL BACKGROUND

Bonnie Kelley purchased a Chugiak house before marrying Allen Heustess, and Allen later moved into the home, contributed his earnings and efforts, and used it as the marital residence. The parties married in 1999, refinanced the house in 2002, added Allen to the title and loan, and separated shortly afterward. The superior court treated only one-third of the home's value as marital property and valued it as of separation rather than trial; it also ordered premarital child-support arrearages based on a request first raised during rebuttal testimony.

## PROCEDURAL HISTORY

The Alaska superior court divided the marital estate, awarded child-support arrearages from the parties' separation, ordered calculation of premarital child-support arrearages, and awarded attorney's fees. Allen Heustess appealed. The Alaska Supreme Court vacated the property division, the premarital child-support award, and the attorney's-fee award, and remanded for further proceedings.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Vacate and reconsider the property division using the entire Chugiak house as marital property and valuing it as close as practicable to trial. Consider credits for post-separation mortgage payments and offsets for post-separation occupancy, account for Bonnie's rental income, reconsider any unequal division without relying on refinancing deception, trace the marital contribution to the replacement vehicle, and address whether an equitable division can be accomplished by transferring property or by a cash payment without hardship. Vacate the premarital child-support arrearage award and provide Allen an opportunity to present defenses. Vacate the attorney's-fee award and consider fresh fee requests after the property division, applying the required two-step analysis. The superior court may conduct supplemental evidentiary proceedings if appropriate.

## CASES CITED

- Green v. Green, 29 P.3d 854, 857 (Alaska 2001)
- Caldwell v. State, Department of Revenue, Child Support Enforcement Division, 105 P.3d 570, 573 (Alaska 2005)
- Schmitz v. Schmitz, 88 P.3d 1116, 1122 (Alaska 2004)
- Miller v. Miller, 105 P.3d 1136, 1141 (Alaska 2005)
- Lundquist v. Lundquist, 923 P.2d 42, 48 (Alaska 1996)
- Compton v. Compton, 902 P.2d 805, 812 (Alaska 1995)

- Abood v. Abood, 119 P.3d 980, 988 (Alaska 2005)
- Ogard v. Ogard, 808 P.2d 815, 819-820 (Alaska 1991)
- Korn v. Korn, 46 P.3d 1021, 1023-1024 (Alaska 2002)
- Rodriguez v. Rodriguez, 908 P.2d 1007, 1013 (Alaska 1995)
- Carr v. Carr, 152 P.3d 450, 454 (Alaska 2007)
- Ramsey v. Ramsey, 834 P.2d 807, 809 (Alaska 1992)
- Fortson v. Fortson, 131 P.3d 451, 456 (Alaska 2006)
- Hunt v. Hunt, 698 P.2d 1168, 1171 (Alaska 1985)
- Jones v. Jones, 942 P.2d 1133, 1139 (Alaska 1997)
- Carvalho v. Carvalho, 838 P.2d 259, 262-263 (Alaska 1992)
- Walker v. Walker, 960 P.2d 620, 621-622 (Alaska 1998)
- Crutchfield v. State, 627 P.2d 196, 199 (Alaska 1980)
- Aguchak v. Montgomery Ward Co., 520 P.2d 1352, 1356 (Alaska 1974)
- Lone Wolf v. Lone Wolf, 741 P.2d 1187, 1192 (Alaska 1987)
- Kowalski v. Kowalski, 806 P.2d 1368, 1373 (Alaska 1991)
- Cox v. Cox, 931 P.2d 1041, 1045 (Alaska 1997)