

SUPREME COURT OF ALASKA

Elliott v. Settje

27 P.3d 317 (Alaska 2001) · No. S-9688 · Decided July 27, 2001

SUMMARY

The Alaska Supreme Court reviewed a superior court order awarding joint physical custody of a two-year-old child and establishing a schedule with custody exchanges every two to three days. The court held that the trial court did not abuse its discretion in awarding joint physical custody, weighing the statutory best-interests factors, or declining to follow the guardian ad litem's recommendation for primary physical custody. The court affirmed the judgment.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Carpeneti, Justice; Fabe, Chief Justice; Matthews, Justice; Eastaugh, Justice; Bryner, Justice
JURISDICTION	Alaska
DECIDED	July 27, 2001
DOCKET	S-9688
DISPOSITION	affirmed
PROCEDURAL POSTURE	Elliott appealed the superior court's order awarding the parties joint physical custody of their two-year-old daughter under a schedule requiring custody exchanges every two to three days.
STANDARD OF REVIEW	Child-custody determinations are reviewed for abuse of discretion. Abuse of discretion is established when the trial court considers improper factors, fails to consider statutorily mandated factors, or improperly weighs the factors.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential.
PARTIES	Trene Elliott v. Ronald L. Settje

TOPICS

- child custody
- family law procedure
- appellate procedure
- standard of review
- parental rights

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the superior court abused its discretion by awarding joint physical custody rather than primary physical custody to Elliott.
2. Whether the superior court improperly failed to give controlling or special weight to the stability-and-continuity custody factor.
3. Whether the superior court improperly disregarded or gave insufficient weight to the guardian ad litem's report and testimony.
4. Whether the superior court abused its discretion by imposing a joint-physical-custody schedule requiring custody exchanges every two to three days.

HOLDINGS

1. The superior court did not abuse its discretion in awarding joint physical custody because it considered the statutory best-interests factors, found them fairly equally balanced, and reasonably determined that both parents were fit and able to foster strong relationships with the child.
2. The stability-and-continuity factor does not automatically receive special weight when the other custody factors are closely balanced, and it does not create a presumptive preference for the primary caregiver.
3. The superior court was not required to follow the guardian ad litem's recommendation and did not abuse its discretion because its reasons and custody order were not clearly erroneous and were consistent with the GAL's report and trial testimony.
4. When shared custody is in the child's best interests, AS 25.20.060(c) authorizes and requires a schedule assuring frequent and continuing contact with each parent to the maximum extent possible; the schedule here was not an abuse of discretion.

KEY QUOTATIONS

"Thus, if the trial court concludes that shared custody is in the child's best interests, a custody schedule with 'frequent and continuing contact with each parent to the maximum extent possible' is required." (323)

"In the end, cooperation between Elliott and Settje in raising Kessa will undoubtedly have a far more profound effect on Kessa's development than the details of the custody schedule." (324)

FACTUAL BACKGROUND

Trene Elliott and Ronald Settje were unmarried parents of Kessa, born February 5, 1999. Both parents worked for the City of Ketchikan, and the superior court found both to be excellent parents capable of fostering an open and loving relationship between Kessa and the other parent. After interim supervised and unsupervised visitation orders, the court awarded joint physical custody, gradually moving to equal custody and limiting Kessa's separation from either parent to no more than seventy-two hours.

PROCEDURAL HISTORY

Settje filed a paternity and shared-custody action in the superior court. After paternity was established, the court entered interim visitation orders, appointed a guardian ad litem, and, following trial, awarded joint physical custody under a schedule designed to maintain frequent contact with both parents. Elliott did not challenge the superior court's factual findings but argued that the custody award and schedule constituted an abuse of discretion.

DISPOSITION

affirmed

CASES CITED

- Jenkins v. Handel, 10 P.3d 586, 589 (Alaska 2000)
- Valentino v. Cote, 3 P.3d 337, 339 (Alaska 2000)
- B.B. v. D.D., 18 P.3d 1210, 1212 (Alaska 2001)
- Platz v. Aramburo, 17 P.3d 65, 68 (Alaska 2001)
- McQuade v. McQuade, 901 P.2d 421, 424 n. 9, 426 (Alaska 1995)
- Gratrix v. Gratrix, 652 P.2d 76, 80 (Alaska 1982)
- Craig v. McBride, 639 P.2d 303, 305, 308 (Alaska 1982)
- Evans v. Evans, 869 P.2d 478, 479, 482-83 (Alaska 1994)
- Vachon v. Pugliese, 931 P.2d 371, 374, 377-80 (Alaska 1996)
- I.J.D. v. D.R.D., 961 P.2d 425, 430 (Alaska 1998)
- McDanold v. McDanold, 718 P.2d 467, 470 n. 4 (Alaska 1986)
- Hakas v. Bergenthal, 843 P.2d 642, 644 n. 3 (Alaska 1992)
- Rooney v. Rooney, 914 P.2d 212, 219 (Alaska 1996)
- Lone Wolf v. Lone Wolf, 741 P.2d 1187, 1189 (Alaska 1987)
- Ulsher v. Ulsher, 867 P.2d 819, 823 n. 6 (Alaska 1994)