

MISSOURI COURT OF APPEALS

Goldey v. Goldey

735 S.W.2d 18 (Mo. App. 1987) · Decided June 2, 1987

SUMMARY

The court reverses a custody-modification judgment awarding custody to the father. It holds that the father's unverified amendment seeking custody did not satisfy Missouri's statutory verification requirement for a petition to modify custody, leaving the trial court without authority to adjudicate that request.

CASE DETAILS

|                       |                                                                                                                                                                                                    |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Missouri Court of Appeals                                                                                                                                                                          |
| WRITING FOR THE COURT | Pritchard, Judge; Lowenstein; Pritchard; Turnage                                                                                                                                                   |
| JURISDICTION          | Missouri                                                                                                                                                                                           |
| DECIDED               | June 2, 1987                                                                                                                                                                                       |
| DISPOSITION           | reversed                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | The mother appealed from a judgment denying or otherwise adjudicating her motion to modify a dissolution decree and awarding custody to the father based on an unverified amendment to his answer. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                     |
| PARTIES               | Goldey, mother v. Goldey, father                                                                                                                                                                   |

TOPICS

- child custody
- family law procedure
- subject matter jurisdiction
- appellate procedure

PRACTICE AREAS

- family law
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

- Whether the trial court had authority to adjudicate the father's request for custody when the request was made only through an unverified amendment to his answer.
- Whether the unverified amendment could be treated as amended to conform to the proof under Rule 55.33(b).

## HOLDINGS

1. A request to modify a child-custody decree must be made in a verified petition or motion alleging changed circumstances; an unverified amendment requesting custody was insufficient, so the trial court had no authority to adjudicate the father's custody request.
2. The unverified amendment could not be treated as amended to conform to the proof under Rule 55.33(b) because doing so would not cure the statutory verification requirement.

## KEY QUOTATIONS

*“This unverified amendment is sufficient to declare that the trial court was without jurisdiction to take up the father’s motion for custody because § 452.455, RSMo 1986, provides in plain terms that a petition to modify child custody decrees shall be verified.” (19)*

## FACTUAL BACKGROUND

The mother had custody of the children under a dissolution decree and filed a verified motion seeking permission to move them to another state for employment. The father’s verified answer denied a substantial change in circumstances and did not request custody, but the trial court later allowed him to add an unverified custody request by interlineation. The mother did not appear at the continued hearing, and the trial court awarded custody to the father after she had removed the children to Texas without court permission.

## PROCEDURAL HISTORY

The mother filed a verified motion seeking permission to remove the children to another state and modify the custody provision of the dissolution decree. The father initially filed a verified answer that denied a substantial change in circumstances but did not request custody. At the custody hearing, the trial court permitted him to amend his answer by interlineation to request custody; the amendment was not verified. After the mother failed to appear, the trial court awarded custody to the father. The Missouri Court of Appeals reversed, holding that the unverified amendment did not satisfy the statutory verification requirement and could not be treated as amended to conform to the proof.

## DISPOSITION

reversed

## CASES CITED

- In re Marriage of Dunn, 650 S.W.2d 638, 639[1, 2] (Mo. App. 1983)

## OPINION

PRITCHARD, J.

PRITCHARD, Judge. This proceeding began upon appellee mother’s verified motion, filed January 10, 1984, to modify a child custody provision in a dissolution decree wherein she asked

that she be permitted to remove the children to another state where she alleged she had the opportunity for employment.

The original decree granted custody to the mother, subject to the father's visitation rights, and his obligation to pay child support, which he testified had been kept current. In response to the mother's motion, the father filed a verified answer in which he denied that there had been a substantial change in circumstances necessitating any change in the court's prior decree, and prayed that the court "make a full and complete inquiry with regard to custody, visitation and support regarding the minor children".

A copy of the answer was mailed to the mother's attorney, Mr. Ken Dake, on January 26, 1984. On May 3, 1985, the motion to modify decree was noticed up for hearing by the father's attorney for June 13, 1985. On that date, Mr. Dake appeared for the mother, the court granted the father leave to amend his answer by interlineation: "and awarding the Respondent custody in the best interests of the children." The amendment was not further verified.

The mother's motion for continuance was granted. Following the continuance, appellant's counsel sent her a certified mail letter on June 27, 1985, the receipt for which was apparently signed by her, which asked her immediately to contact him about the case and advising her that she was in danger of \*19the children being given into the father's custody because she would not be in touch with counsel.

In any event, appellant did not show up for the hearing, and her attorney was unsuccessful in his attempts to contact her. Appellant removed the children to Texas without the permission of the court. It was, of course, appellant's duty to remain in contact with her attorney so as to be aware of the status of her motion to modify the child custody provision.

Respondent's verified answer did not ask for custody and did not state any factual grounds as to any change of circumstances, even the removal of the children from this state without permission. The unverified amendment by interlineation likewise did not allege any changed circumstances. This unverified amendment is sufficient to declare that the trial court was without jurisdiction to take up the father's motion for custody because § 452.455, RSMo 1986, provides in plain terms that a petition to modify child custody decrees shall be verified.

Cf. *In re Marriage of Dunn*, 650 S.W.2d 638, 639[1, 2] (Mo.App.1983), where a husband's appeal was dismissed for lack of jurisdiction because he did not verify his petition. Here, the amendment by interlineation being unverified, and being insufficient under the statute, the court had no authority to treat it as amended to conform to the proof under Rule 55.33(b).

There is nothing to prevent respondent father from filing a new motion to modify child custody provisions, on proper verification and allegations of changed circumstances from the original award. The judgment is reversed. All concur.

