

SUPREME COURT OF GEORGIA

Vaughn v. Davis

290 Ga. 351 (Ga. 2012) · Decided January 9, 2012

SUMMARY

The Georgia Supreme Court held that, absent express notice to the parties, a trial court may not rely on evidence presented at a temporary hearing when making a final custody determination. Because the trial court relied on such evidence without advance notice, the court reversed the final custody order and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Melton, Justice
JURISDICTION	Georgia
DECIDED	January 9, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Wife appealed the denial of her motion for new trial following a final custody and child-support order that awarded Husband primary physical custody and visitation to Wife.
PRECEDENTIAL VALUE	precedential
PARTIES	Michelle Vaughn v. David Davis

TOPICS

- child custody
- evidence
- family law procedure
- appellate procedure
- motion for new trial

PRACTICE AREAS

- family law
- civil procedure
- evidence
- appellate procedure

QUESTIONS PRESENTED

- Whether a trial court may rely on evidence presented at a temporary custody hearing in making a final custody determination without expressly notifying the parties in advance.

HOLDINGS

1. Absent express notice to the parties, it is error for a trial court to rely on evidence from a temporary hearing when making its final custody determination.

KEY QUOTATIONS

“Accordingly, we now hold that, absent express notice to the parties, it is error for a trial court to rely on evidence from the temporary hearing in making its final custody determination.” (290 Ga. at 352)

FACTUAL BACKGROUND

Wife and Husband were divorced in 2004 and initially shared legal and physical custody of Victoria, their child together, and Thomas, Wife's child. After disputes concerning medical-expense reimbursement, Wife filed a pro se motion to change custody and obtain child support. Following a temporary hearing at which both parties appeared pro se, the trial court awarded Husband primary physical custody and ordered Wife to pay child support, offset by amounts Husband owed for medical expenses. After a later final hearing, the trial court entered a permanent custody order again favoring Husband, apparently relying on evidence from the temporary hearing without giving advance notice that it would do so.

PROCEDURAL HISTORY

The parties were divorced in 2004 with joint legal and physical custody arrangements. After Wife filed a motion to modify custody and seek child support, the trial court held a temporary hearing and later a final hearing, entered a final order awarding Husband primary physical custody, and denied Wife's motion for new trial. The Supreme Court of Georgia reversed and remanded because the trial court relied on evidence from the temporary hearing without expressly notifying the parties.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The final custody order was reversed, and the case was remanded for further proceedings.

CASES CITED

- Pace v. Pace, 287 Ga. 899, 901 (700 S.E.2d 571) (2010)
- Alford v. Alford, 190 Ga. 562, 564 (9 S.E.2d 895) (1940)