

SUPREME COURT OF NEBRASKA

Maska v. Maska

274 Neb. 629 (2007) · No. S-07-187 · Decided December 7, 2007

SUMMARY

The Supreme Court of Nebraska reviewed a child-custody award in a dissolution proceeding involving two minor children. The court held that both parents were fit, that the district court properly considered the children's best interests, and that the custody arrangement giving Joel primary custody during the school year and Aurora primary custody during the summer was not an abuse of discretion. The judgment was affirmed.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Wright, J.; Heavican, C.J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	December 7, 2007
DOCKET	S-07-187
DISPOSITION	affirmed
PROCEDURAL POSTURE	Aurora appealed the Buffalo County District Court's decree dissolving the parties' marriage and awarding Joel primary physical custody of their two minor children during the school year, with Aurora having primary physical custody during the summer.
STANDARD OF REVIEW	Child custody determinations are reviewed de novo on the record, but the trial court's determination is normally affirmed absent an abuse of discretion. A judicial abuse of discretion requires a ruling that is clearly untenable and unfairly deprives a litigant of a substantial right and a just result.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Aurora Ramirez Maska v. Joel Dean Maska

TOPICS

- child custody
- family law procedure
- standard of review
- appellate procedure
- dissolution of marriage

PRACTICE AREAS

family law

child custody

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court adequately determined the parents' fitness and the children's best interests when awarding physical custody.
2. Whether Joel's alleged failure to promote and facilitate the children's relationship with Aurora required denying him primary physical custody.
3. Whether the district court improperly considered Aurora's national origin and limited English-language fluency in determining custody.

HOLDINGS

1. The district court sufficiently determined parental fitness and the children's best interests through its findings and adoption of the psychologist's recommendations; both parents were fit, and the custody award was supported by the children's best interests.
2. Promotion and facilitation of the children's relationship with the noncustodial parent is a factor that may be considered in determining custody, but it is neither the sole nor a completely determinative factor.
3. The district court did not abuse its discretion by allegedly considering Aurora's national origin or language because the decree did not state that either factor was used against her, and the custody recommendation adopted by the court was otherwise supported by the record.

KEY QUOTATIONS

“While the promotion and facilitation of a relationship with the noncustodial parent is a factor that may be considered, it is not the only factor nor is it a completely determinative factor.”

“Child custody determinations are matters initially entrusted to the discretion of the trial court, and although reviewed de novo on the record, the trial court's determination will normally be affirmed absent an abuse of discretion.”

FACTUAL BACKGROUND

Aurora and Joel Maska had two minor children and a history of a violent and abusive relationship, including allegations of physical and emotional abuse that led to temporary juvenile-court and DHHS involvement. Both parents completed counseling and parenting classes, and the juvenile proceedings were dismissed after the abuse allegations were found unfounded. A clinical psychologist testified that neither parent was unfit, but recommended that Joel have primary physical custody during the school year and Aurora have custody during the summer because Joel was the warmer and more supportive parent and frequent transfers between homes were not in the children's best interests.

PROCEDURAL HISTORY

The parties had previously undergone legal separation proceedings in which their property and debts were divided. During the dissolution proceedings, a juvenile petition alleging abuse was filed, and the children were placed in the legal custody of the Nebraska Department of Health and Human Services. The juvenile proceedings were later dismissed and DHHS custody terminated after the allegations were found unfounded. The district court entered a dissolution decree awarding custody according to a school-year and summer schedule, and Aurora appealed the custody determination to the Nebraska Supreme Court.

DISPOSITION

affirmed

CASES CITED

- Gress v. Gress, 271 Neb. 122, 710 N.W.2d 318 (2006)
- State on behalf of Pathammavong v. Pathammavong, 268 Neb. 1, 679 N.W.2d 749 (2004)
- Marcovitz v. Rogers, 267 Neb. 456, 675 N.W.2d 132 (2004)
- Smith v. Smith, 9 Neb. App. 975, 623 N.W.2d 705 (2001)
- Kay v. Ludwig, 12 Neb. App. 868, 686 N.W.2d 619 (2004)