

SUPREME COURT OF OKLAHOMA

S.W. v. Duncan

2001 OK 39 (Okla. 2001) · No. No. 94,358 · Decided May 8, 2001

SUMMARY

The Oklahoma Supreme Court held that an Oklahoma court retaining exclusive, continuing jurisdiction over an initial child-custody determination did not lose that jurisdiction upon the death of the custodial parent. It further held that a simultaneous Kansas custody proceeding was not conducted in substantial conformity with the Uniform Child Custody Jurisdiction and Enforcement Act, so the Oklahoma proceeding could continue. The court recast the petition in error as an application for extraordinary relief and declined to issue a writ of prohibition.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Summers, J.; Hargrave, C.J.; Hodges, J.; Lavender, J.; Kauger, J.; Boudreau, J.; Winchester, J.; Opala, J.; Watt, V.C.J.
JURISDICTION	Oklahoma
DECIDED	May 8, 2001
DOCKET	No. 94,358
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petitioners attempted to appeal a temporary custody and guardianship order by petition in error. The Supreme Court recast the petition in error as an application to assume original jurisdiction and a petition for writ of prohibition, assumed original jurisdiction only over challenges to the district court's authority and jurisdiction, and declined to issue the writ.
STANDARD OF REVIEW	Temporary orders are interlocutory and generally are not immediately appealable absent statutory authorization. Prohibition is not a substitute for appeal and ordinarily cannot be used to review the sufficiency or weight of evidence supporting a temporary custody determination when an adequate remedy by appeal exists. Jurisdictional authority was reviewed in the original jurisdiction proceeding.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; precedential

PARTIES

S.W., D.W., D.W. v. The Honorable Jacqueline Duncan, Judge of the District Court of Custer County

TOPICS

child custody

guardianships

interstate disputes

appellate jurisdiction

writ of certiorari

PRACTICE AREAS

family law

guardianship

appellate procedure

interstate child custody

QUESTIONS PRESENTED

1. Whether the Oklahoma Supreme Court had appellate jurisdiction over the temporary custody and guardianship order.
2. Whether the Oklahoma district court retained continuing child-custody jurisdiction after the death of the custodial parent.
3. Whether the Oklahoma custody proceeding was proper despite the earlier-filed Kansas proceeding.
4. Whether prohibition was an appropriate vehicle to review the sufficiency of the evidence supporting the district court's temporary custody and fitness findings.

HOLDINGS

1. The temporary custody and guardianship order was interlocutory and not immediately appealable because no statute making it appealable was identified.
2. The Supreme Court properly recast the petition in error as an application to assume original jurisdiction and a petition for writ of prohibition to address challenges to the district court's authority and jurisdiction.
3. Although the father acquired custody rights upon the death of the custodial mother, the Oklahoma district court that made the initial custody determination in the divorce proceeding retained exclusive, continuing jurisdiction to modify custody.
4. The Oklahoma modification proceeding was proper despite having been commenced after the Kansas proceeding because the Kansas court was not exercising modification jurisdiction in substantial conformity with the U.C.C.J.E.A.
5. The Court declined to review the sufficiency of the evidence supporting the temporary custody and fitness findings in the prohibition proceeding.

KEY QUOTATIONS

"However, because of a recent statutory enactment the Oklahoma District Court of Custer County was not divested of custody jurisdiction over this child upon the death of the mother." (24 P.3d at 852)

"But the death of one of the parties to a divorce is not one of the events specified in § 551-202 that would remove the continuing jurisdiction of the divorce court, or confer modification jurisdiction on a different

court.” (24 P.3d at 854)

FACTUAL BACKGROUND

The Oklahoma divorce decree awarded custody of the child to the mother and restricted the father's visitation. After the mother died, the father took the child from Oklahoma to Kansas and obtained an order appointing the paternal aunt and uncle as guardians. The maternal relatives then sought custody and guardianship in Oklahoma, where the district court found Oklahoma to be the child's home state, awarded temporary custody to the maternal grandmother, appointed the maternal relatives as co-guardians, and ordered the child's return from Kansas.

PROCEDURAL HISTORY

After the child's mother died, the father took the child from Oklahoma to Kansas, where a Kansas court appointed the paternal aunt and uncle as guardians. The maternal relatives then commenced a custody and guardianship proceeding in the Oklahoma District Court, which issued a temporary custody order appointing the maternal relatives as co-guardians and directing return of the child. The father and paternal relatives sought review, arguing that the Oklahoma court lacked jurisdiction because of the Kansas proceeding and that the evidence did not establish the father's unfitness.

DISPOSITION

writ_denied

CASES CITED

- Renbarger v. Renbarger, 1994 OK 140, 889 P.2d 1250
- Kantor v. Kantor, 1994 OK 132, 886 P.2d 480
- Elliott v. Elliott, 1954 OK 356, 279 P.2d 328
- LCR, Inc. v. Linwood Properties, 1996 OK 73, 918 P.2d 1388
- F.D.I.C. v. Tidwell, 1991 OK 119, 820 P.2d 1338
- In the Matter of B.C., 1988 OK 4, 749 P.2d 542
- Keating v. Johnson, 1996 OK 61, 918 P.2d 51
- Ellison v. Ellison, 1996 OK 64, 919 P.2d 1
- Holt v. District Court for the Twentieth Judicial District, 1981 OK 39, 626 P.2d 1336
- Dowell v. Powers, 1960 OK 246, 357 P.2d 954
- Bailey v. Bailey, 1994 OK 6, 867 P.2d 1267
- Turley v. Turley, 1981 OK 161, 638 P.2d 469
- Ingles v. Hodges, 562 P.2d 845 (Okla. 1977)
- Buxton v. Wilson, 1982 OK 138, 654 P.2d 1048
- Hood v. Adams, 1964 OK 217, 396 P.2d 483
- McDonald v. Wrigley, 1994 OK 25, 870 P.2d 777
- Beets v. Metropolitan Life Insurance Company, 1999 OK 15, 995 P.2d 1071

- Klutts v. Blackbird, 1946 OK 266, 174 P.2d 361
- Vanguard Underwriters Insurance Co. v. Amick, 1973 OK 86, 512 P.2d 807
- K.R. v. B.M.H., 1999 OK 40, 982 P.2d 521
- Kahre v. Kahre, 1995 OK 133, 916 P.2d 1355
- Johnson v. Johnson, 1983 OK 117, 674 P.2d 539
- Brown v. Fraser, 1970 OK 50, 467 P.2d 464
- Watchorn Basin Association v. Oklahoma Gas & Electric Co., 1974 OK 27, 525 P.2d 1357

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