

SUPREME COURT OF THE STATE OF DELAWARE

Mullens v. Kilborne

No. 370, 2017 · No. No. 370, 2017 · Decided May 21, 2018

SUMMARY

The Delaware Supreme Court reversed a Family Court order that vacated a prior custody judgment awarding primary residential placement to the father. The Court held that the father’s 1999 conviction for carrying a concealed deadly weapon was not a violent felony because the offense involved a non-firearm weapon, and remanded for consideration of his expert evaluation regarding the statutory presumption against custody for sex offenders.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Leo E. Strine, Chief Justice; Karen L. Valihura, Justice; James T. Vaughn, Jr., Justice
JURISDICTION	Delaware
DECIDED	May 21, 2018
DOCKET	No. 370, 2017
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Father appealed the Family Court's order vacating its prior custody judgment, awarding Mother sole custody, and limiting Father to supervised visitation.
PRECEDENTIAL VALUE	Published Delaware Supreme Court order; precedential status is not expressly stated in the source text.
PARTIES	Jonathan Mullens v. Tiffany Kilborne

TOPICS

- child custody
- statutory interpretation
- evidence
- appellate procedure
- family law procedure

PRACTICE AREAS

- family law
- appellate procedure
- statutory interpretation
- evidence

QUESTIONS PRESENTED

1. Whether Mullens's 1999 conviction for carrying a concealed deadly weapon was a violent felony under Delaware law when the conviction was for a class G felony rather than the firearm-related class D felony.
2. Whether the Family Court erred by refusing to consider Mullens's expert evaluation in determining whether he had overcome the presumption against custody under 13 Del. C. § 724A.
3. Whether the Family Court properly vacated its prior custody judgment and awarded Mother sole custody based on its erroneous classification of the 1999 conviction.

HOLDINGS

1. Only firearm offenses under 11 Del. C. § 1442 are designated as violent felonies under 11 Del. C. § 4201(c). Because Mullens's conviction was a class G felony and not the firearm-related class D felony, it was not a violent felony.
2. Because the Family Court incorrectly found that Mullens had been convicted of a violent felony, it erred by refusing to consider his expert evaluation as evidence relevant to rebutting the presumption against custody under 13 Del. C. § 724A.

KEY QUOTATIONS

“This Court has noted that the rebuttable presumption of Section 724A is a “true rule of evidence and its only effect is to shift the burden of producing evidence.”” (3)

“Only firearm offenses under 11 Del. C. § 1442 are designated as violent felonies by 11 Del. C. § 4201.” (4)

FACTUAL BACKGROUND

Jonathan Mullens and Tiffany Kilborne are the parents of a daughter born in 2007. Mullens is a registered Tier II sex offender based on a 1993 guilty plea and also had a 1999 conviction for carrying a concealed deadly weapon. The Family Court initially awarded Mullens primary residential placement after considering the child's best interests, but later concluded that the 1999 conviction was a violent felony that prevented him from rebutting the statutory presumption against custody and refused to consider his expert evaluation.

PROCEDURAL HISTORY

The parties initially agreed to joint custody with Father having primary residential placement. After Mother petitioned for modification, the Family Court entered a February 20, 2017 judgment continuing Father's primary residential placement while granting Mother visitation. The Family Court later reconsidered the matter sua sponte, vacated that judgment on August 16, 2017, awarded Mother sole custody, and restricted Father to supervised visitation. Father appealed, and the Delaware Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Family Court must reconsider the matter on a priority basis, including Father's expert evaluation, and conduct further proceedings consistent with the Delaware Supreme Court's order. Jurisdiction is not retained.

CASES CITED

- Division of Family Services v. O'Bryan, 164 A.3d 58, 63 (Del. 2017)

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