

NEBRASKA SUPREME COURT

State on behalf of Daphnie F. v. Christina C.

310 Neb. 638 (2021) · No. No. S-21-043 · Decided December 23, 2021

SUMMARY

The Nebraska Supreme Court reversed and remanded a district court order denying Christina C.’s application to modify custody of her daughter, who was in the custody of paternal grandparents standing in loco parentis. The court held that the district court failed to apply the required parental-preference framework, including determining whether the biological parent was unfit or had forfeited parental rights and whether exceptional circumstances demonstrated serious or likely harm to the child.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	December 23, 2021
DOCKET	No. S-21-043
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Christina C. appealed the Washington County District Court's denial of her application to modify custody of her daughter, who was in the custody of her paternal grandparents, Mary and Tim Soppe, who stood in loco parentis.
STANDARD OF REVIEW	Modification of a judgment or decree relating to child custody, visitation, or support is reviewed de novo on the record and affirmed absent an abuse of discretion. An abuse of discretion occurs when the trial court relies on untenable or unreasonable reasons or acts clearly against justice, conscience, reason, or evidence.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; binding precedent in Nebraska.
PARTIES	Christina C. v. State of Nebraska on behalf of Daphnie F., Mary Soppe, Tim Soppe

TOPICS

child custody parental rights family law procedure standard of review appellate procedure

PRACTICE AREAS

family law child custody parental rights appellate procedure

QUESTIONS PRESENTED

1. Whether the district court applied the correct parental-preference framework when a natural parent sought custody modification from third parties standing in loco parentis.
2. Whether the district court abused its discretion by denying Christina's application to modify custody without determining her fitness or forfeiture of parental rights and, if she was fit and had not forfeited those rights, whether exceptional circumstances justified overcoming parental preference.
3. Whether the in loco parentis relationship is relevant to determining both material change in circumstances and the child's best interests in a custody-modification proceeding.

HOLDINGS

1. The parental-preference principle applies when a natural or adoptive parent seeks to modify custody from a person standing in loco parentis.
2. The district court abused its discretion because it did not determine whether Christina was fit or had forfeited her parental rights and, if she was fit and had not forfeited those rights, whether exceptional circumstances involving serious physical or psychological harm or a substantial likelihood of such harm rebutted parental preference.
3. When a trial court reaches the modification issue, whether the in loco parentis relationship has changed is relevant to determining both whether there has been a material change in circumstances and whether modification is in the child's best interests.

KEY QUOTATIONS

“for exceptional circumstances to rebut the parental preference principle, there must be proof of serious physical or psychological harm or substantial likelihood of such harm.” (645)

“When a trial court reaches the issue of modification, whether the in loco parentis relationship has changed is relevant to determining both whether there has been a material change in circumstances and whether modification is in the child’s best interests.” (645)

FACTUAL BACKGROUND

Daphnie was born in 2014 and lived primarily with Christina in Colorado until 2016, when she was removed from parental custody during the Colorado child-welfare proceedings and placed with her paternal grandparents, the Soppes, in Nebraska. A Colorado order entered in 2017 awarded the Soppes permanent legal and physical custody. Christina later sought custody modification, presenting evidence concerning her history of substance use, treatment, probation, employment, parenting time, and recovery; the Soppes presented evidence concerning

continued concerns about substance use and Daphnie's adjustment. The district court found that the Soppes stood in loco parentis and that remaining with them was in Daphnie's best interests, but it did not determine whether Christina was fit, had forfeited her parental rights, or whether exceptional circumstances involving serious harm or a substantial likelihood of harm rebutted parental preference.

PROCEDURAL HISTORY

A Colorado custody order awarded permanent legal and physical custody of Daphnie to the Soppes. After Nebraska assumed jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, Christina sought modification of custody in the Washington County District Court. Following an evidentiary hearing, the district court denied modification, finding that the Soppes' custody remained in Daphnie's best interests, and denied Christina's motion for new trial. The Nebraska Supreme Court reversed and remanded because the district court failed to apply the parental-preference framework required by *State on behalf of Tina K. v. Adam B. and Windham v. Kroll*.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must reconsider the custody-modification application under the framework in *State on behalf of Tina K. v. Adam B. and Windham v. Kroll*, including determining whether Christina is fit or has forfeited her parental rights and, if she is fit and has not forfeited those rights, whether exceptional circumstances establish serious physical or psychological harm or a substantial likelihood of such harm sufficient to overcome parental preference. The district court may, in its discretion, allow expansion of the existing record.

CASES CITED

- *State on behalf of Tina K. v. Adam B.*, 307 Neb. 1, 948 N.W.2d 182 (2020)
- *Windham v. Kroll*, 307 Neb. 947, 951 N.W.2d 744 (2020)
- *Windham v. Griffin*, 295 Neb. 279, 887 N.W.2d 710 (2016)