

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Bahl v. Bahl

220 So. 3d 1214 (Fla. 2d DCA 2016) · No. 2D16-2459 · Decided December 9, 2016

SUMMARY

The Florida Second District Court of Appeal reversed an ex parte order modifying temporary timesharing because the father was not given notice and an opportunity to be heard. The court held that the alleged parental alienation did not establish an emergency sufficient to bypass procedural protections, that the order relied on an unsworn guardian ad litem report, and that the trial court granted relief not requested by the mother.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Morris; Villanti; Black
JURISDICTION	Florida
DECIDED	December 9, 2016
DOCKET	2D16-2459
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The father appealed a nonfinal order modifying a temporary timesharing order in the parties' dissolution of marriage proceeding.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review; it reviewed the alleged legal and procedural errors in the nonfinal custody order.
PRECEDENTIAL VALUE	published
PARTIES	Christopher R. Bahl v. Rupa P. Bahl

TOPICS

- child custody
- visitation
- procedural due process
- appellate procedure
- family law procedure

PRACTICE AREAS

- family law
- constitutional law
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court violated the father's procedural due process rights by modifying temporary custody and visitation ex parte without notice and an opportunity to be heard.
2. Whether the allegations established an emergency sufficient to excuse notice and an opportunity to be heard, and whether the trial court was required to hold a prompt evidentiary hearing after entering the ex parte order.
3. Whether the trial court could grant emergency custody relief based solely on an unsworn guardian ad litem report without sworn facts or testimony.
4. Whether the father was entitled to an opportunity to rebut the guardian ad litem's report and cross-examine its preparer.
5. Whether the trial court erred by prohibiting telephone contact when the mother had requested only supervised visitation.

HOLDINGS

1. Before entering a temporary or modification order affecting a parent's custody or visitation rights, the trial court must provide the parent with notice and an opportunity to be heard unless a legally sufficient emergency justifies temporary ex parte relief.
2. Even if circumstances support an emergency ex parte custody order, the trial court must promptly schedule an evidentiary hearing to afford the affected parent an opportunity to be heard.
3. Emergency ex parte custody or timesharing relief must be supported by sworn evidence; an unsworn guardian ad litem report, standing alone, is insufficient.
4. A parent affected by a custody modification must be given an opportunity at a hearing to rebut the findings and conclusions in a guardian ad litem's report and to cross-examine the report's preparer.
5. A trial court commits reversible error in a child-custody modification proceeding by granting relief that the moving party did not request.

KEY QUOTATIONS

“These statutes required the trial court to give the father notice and an opportunity to be heard before entering an order affecting the custody of the child or the father's visitation.” (220 So. 3d at 1215)

“At the very least, even if the allegations supported an emergency, once the trial court granted the ex parte order, it erred in not scheduling a prompt evidentiary hearing to allow the father to be heard.” (220 So. 3d at 1216)

“Thus, the father should have been given an opportunity at a hearing to address the findings in the guardian ad litem's report.” (220 So. 3d at 1217)

FACTUAL BACKGROUND

The parties were involved in dissolution proceedings concerning their six-year-old son. They had entered into a temporary mediated agreement giving the father the majority of timesharing, and a guardian ad litem was appointed to investigate domestic-violence allegations and the child's best interests. After the guardian ad litem

filed an unsworn report, the trial court granted the mother's emergency motion ex parte, transferring primary timesharing to the mother, limiting the father to supervised visitation, and prohibiting phone contact.

PROCEDURAL HISTORY

The trial court adopted the parties' temporary mediated timesharing agreement and appointed a guardian ad litem. After receiving the guardian ad litem's report, the court granted the mother's emergency motion ex parte, substantially modifying timesharing and restricting the father's contact with the child. The trial court denied the father's motion to vacate, and the father appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The ex parte order was reversed and the case remanded for further proceedings. The trial court was required to hold an evidentiary hearing within twenty days, unless the parties agreed to a later date; the existing provisions were to remain in effect until that hearing.

CASES CITED

- Douglas v. Johnson, 65 So. 3d 605, 607 (Fla. 2d DCA 2011)
- Smith v. Crider, 932 So. 2d 393, 398-99 & n.4 (Fla. 2d DCA 2006)
- Loudermilk v. Loudermilk, 693 So. 2d 666, 668 (Fla. 2d DCA 1997)
- Crooks v. Crooks, 657 So. 2d 918, 919 (Fla. 4th DCA 1995)
- Leinenbach v. Leinenbach, 634 So. 2d 252, 253 (Fla. 2d DCA 1994)
- Miller v. Miller, 671 So. 2d 849, 851 (Fla. 5th DCA 1996)
- Clayman v. Clayman, 536 So. 2d 358, 359 (Fla. 3d DCA 1988)
- Abbott v. Abbott, 98 So. 3d 616, 617-18 (Fla. 2d DCA 2012)