

SUPREME COURT OF DELAWARE

Mundy v. Devon

906 A.2d 750 (Del. 2006) · No. No. 174, 2005 · Decided April 6, 2006

SUMMARY

The Delaware Supreme Court reviewed a Family Court decision concerning a petition to modify an alternating annual primary-placement arrangement for a minor child whose parents lived in different states. The Supreme Court held that certain non-statutory shared-placement factors were discretionary and that the Family Court had not clearly erred in evaluating expert testimony, but remanded because it was unclear whether the court had considered the full range of residential-placement options.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Holland, Justice; Steele, Chief Justice; Berger, Justice; Jacobs, Justice; Ridgely, Justice
JURISDICTION	Delaware
DECIDED	April 6, 2006
DOCKET	No. 174, 2005
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a final judgment of the Delaware Family Court denying the father's petition to modify a custody consent order.
STANDARD OF REVIEW	The Supreme Court reviews Family Court custody decisions as to both facts and law, including the inferences and deductions made by the trial judge. Legal rulings are reviewed de novo; factual findings are reviewed for clear error; and the judgment is affirmed when the underlying inferences and deductions are supported by the record and result from an orderly and logical deductive process.
PRECEDENTIAL VALUE	Published, precedential Delaware Supreme Court opinion
PARTIES	George S. Mundy v. Mary J. Devon

TOPICS

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

PRACTICE AREAS

family law

child custody

appellate procedure

QUESTIONS PRESENTED

1. Whether six non-statutory factors governing shared placement were mandatory and required consideration by the Family Court.
2. Whether the Family Court clearly erred by characterizing portions of the psychologists' testimony as speculative and by weighing that testimony as it did.
3. Whether the Family Court erred by considering only continuation of the existing annual alternating-placement arrangement and primary placement with the father, rather than the full range of residential-placement options.

HOLDINGS

1. The six non-statutory factors were neither mandatory nor dispositive. A Family Court judge has discretion to consider additional factors, provided that the judge considers all statutory factors required by Delaware Code title 13, section 722.
2. The Family Court did not clearly err in characterizing and weighing the psychologists' testimony, and the father's challenge to that factual assessment failed.
3. The Family Court was required to consider all residential-placement options relevant to the child's best interests, not merely continuation of the existing annual alternating-placement arrangement or primary placement with the father.
4. Annual alternating primary placement is distinct from shared placement, which generally involves alternating weekly, monthly, or similar short-term periods; the six non-statutory shared-placement factors were not applicable on the facts presented.

KEY QUOTATIONS

“Our review of the applicable statutes and the Family Court's jurisprudence reflects that those six non-statutory factors are neither mandatory nor dispositive.” (753)

“Alternating primary placement must be distinguished from shared placement.” (754)

“Therefore, the Father's petition to modify custody was denied.” (755-756)

“This matter is remanded to the Family Court for further proceedings in accordance with this opinion. Jurisdiction is retained.” (756)

FACTUAL BACKGROUND

George Mundy and Mary Devon shared joint custody of their minor child, with primary placement alternating annually on a school-year basis; the father lived in Delaware and the mother lived in Michigan. The father sought modification so that he would have primary placement every school year, while the child preferred primary placement with the mother and the mother supported continuing annual alternation. The Family Court

continued the existing arrangement after considering the statutory best-interest factors and evaluating psychological testimony.

PROCEDURAL HISTORY

The parties had stipulated to joint custody with primary placement alternating annually on a school-year basis. The father petitioned the Family Court to modify the arrangement and award him primary placement. The Family Court denied the petition and continued the existing arrangement. The Delaware Supreme Court held that the Family Court did not clearly err in evaluating the expert testimony but reversed and remanded because the record did not establish that the Family Court had considered all residential-placement options.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Family Court must report whether it considered all residential-placement options. If it did not, it must consider all available options and report its factual findings and legal conclusions regarding which residential-placement arrangement is in the child's best interests. The Family Court was directed to file its report in the Supreme Court within sixty days. The Supreme Court retained jurisdiction.

CASES CITED

- Wife (J.F.V.) v. Husband (O.W.V., Jr.), 402 A.2d 1202, 1204 (Del. 1979)
- In re Heller, 669 A.2d 25, 29 (Del. 1995)
- Solis v. Tea, 468 A.2d 1276, 1279 (Del. 1983)
- Potter v. Branson, 877 A.2d 52, 2005 WL 1403823 (Del. June 13, 2005)
- In re Isabel P.D. and Henry A.D., 1996 WL 862344, *6 (Del. Fam. Ct. Dec. 20, 1996)
- Daniel S.C. v. Susan F.C., Del. Fam., File No. CN92-9125, Horgan, J. at 5 (May 19, 1993)
- G.J.G. v. L.K.M., 2003 WL 22476209, *7 (Del. Fam. Ct. July 10, 2003)
- V.S.K. v. D.M.K., 2003 WL 22269175, *5 (Del. Fam. Ct. June 20, 2003)
- In re A.L. and M.S.L., 2002 WL 1940037, *6 (Del. Fam. Ct. Jan. 31, 2002)
- G.T. v. J.W.T., 2000 WL 1663701, *5 (Del. Fam. Ct. July 24, 2000)
- Diane M.P. v. Ronald E.P., 2000 WL 1692944, *5 (Del. Fam. Ct. Jan. 28, 2000)
- In re Strizic, 263 Mont. 193, 867 P.2d 386 (1994)
- Jarvis v. Jarvis, 584 N.W.2d 84, 92 (N.D. 1998)
- Lamelas v. Granados, 730 So. 2d 387 (Fla. Dist. Ct. App. 2d Dist. 1999)
- In re Deem, 328 Ill. App. 3d 453, 262 Ill. Dec. 741, 766 N.E.2d 661 (2002)
- In re Muell, 408 N.W.2d 774 (Iowa Ct. App. 1987)
- In re Pergament, 28 Or. App. 459, 559 P.2d 942 (1977)
- Albrecht v. Albrecht, 974 S.W.2d 262 (Tex. App. 1998)

- Vinson v. Vinson, 263 Ala. 635, 83 So. 2d 215 (1955)
- McDonald v. McDonald, 197 Or. 275, 253 P.2d 249 (1953)
- Wheeler v. Wheeler, 37 Wash. 2d 159, 222 P.2d 400 (1950)
- Wing v. Wing, 12 Ark. App. 84, 671 S.W.2d 204 (1984)
- Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957)
- Gerscovich v. Gerscovich, 406 So. 2d 1150 (Fla. Dist. Ct. App. 1981)
- Clark v. Madden, 725 N.E.2d 100 (Ind. Ct. App. 2000)
- Palmer v. Palmer, 223 A.D.2d 944, 637 N.Y.S.2d 225 (N.Y. App. Div. 1996)
- Lapp v. Lapp, 293 N.W.2d 121 (N.D. 1980)
- Hubbell v. Hubbell, 176 Pa. Super. 186, 107 A.2d 388 (1954)
- Grant v. Grant, 39 Tenn. App. 539, 286 S.W.2d 349 (1954)
- Reynolds v. Reynolds, 45 Wash. 2d 394, 275 P.2d 421 (1954)
- Sheldon v. Sheldon, 423 A.2d 943 (Me. 1980)
- In re Pobst, 957 S.W.2d 769 (Mo. Ct. App. 1997)
- In re Murphy, 834 P.2d 1287 (Colo. Ct. App. 1992)
- In re Wall, 868 P.2d 387 (Colo. 1994)
- In re Riggert, 537 N.W.2d 789 (Iowa Ct. App. 1995)
- Boyer v. Poole, 815 A.2d 348, 2003 WL 141267 (Del. Jan. 17, 2003)

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