

SUPREME COURT OF ARKANSAS

Bonnie Weiss Medlin v. Tim Weiss, 356 Ark. 588

158 S.W.3d 140 (2004) · No. No. 03-1043 · Decided April 8, 2004

SUMMARY

The Arkansas Supreme Court addressed a dispute over visitation between a child and her paternal half-sisters during the father's scheduled visitation periods. The court held that the father, as a fit parent, could decide whether the child spent that time with her half-sisters, but reversed the separate sibling-visitation award under Ark. Code Ann. § 9-13-102 and remanded for amendment of the trial court's order. The court declined to decide the statute's facial constitutionality.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Betty C. Dickey; Annabelle Clinton Imber; Hannah
JURISDICTION	Arkansas
DECIDED	April 8, 2004
DOCKET	No. 03-1043
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Bonnie Weiss Medlin appealed a Polk County Circuit Court order granting her daughter's half-sisters visitation rights under Arkansas's sibling-visitation statute and clarifying the father's existing visitation period.
STANDARD OF REVIEW	Chancery cases are reviewed de novo on the record; factual findings are not reversed unless clearly erroneous.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Bonnie Weiss Medlin v. Tim Weiss

TOPICS

- visitation
- parental rights
- family law procedure
- procedural due process
- appellate procedure

PRACTICE AREAS

- family law
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court properly allowed Tim Weiss to exercise his full visitation period and make parenting decisions concerning Raegan during that period, even when he was not physically present.
2. Whether the circuit court could award Raegan's half-sisters independent visitation rights under Arkansas Code section 9-13-102 over the objection of Bonnie Medlin, a fit custodial parent.
3. Whether Arkansas Code section 9-13-102 was unconstitutional as written or as applied.

HOLDINGS

1. A fit noncustodial parent may exercise the full visitation period established by the divorce decree and may decide what is in the child's best interest during that period, including whether the child visits with the parent's other daughters, without being physically present every hour.
2. The circuit court erred by awarding the half-sisters independent visitation rights under section 9-13-102; the order had to be reversed and remanded so that the court could preserve Tim's parental visitation rights without creating a separate statutory visitation entitlement for the half-sisters.
3. The court declined to decide whether section 9-13-102 was unconstitutional on its face or as applied.

KEY QUOTATIONS

“Tim Weiss, during those visitation periods, has the right, as a fit parent, to decide what is in the child's best interest, including visitation between and among his daughters, in his own home, without his being physically present.” (143)

“The fact that the trial court clouded the issue of parental visitation rights by ordering concurrent sibling visitation rights under Ark.Code Ann. § 9-13-102 requires that this case be reversed and remanded for the trial court to amend its order consistent with this court's decision.” (143)

FACTUAL BACKGROUND

Bonnie and Tim Weiss divorced in 1999, with Bonnie receiving custody of their daughter Raegan and Tim receiving alternate-weekend visitation from Friday evening through Sunday evening. Tim later remarried his first wife, Ronda, and had two daughters, Jesaca and Jamee, who are Raegan's half-sisters. Because Tim's work sometimes required him to leave during Sunday afternoon visitation, Bonnie demanded Raegan's early return and objected to Raegan visiting the half-sisters outside Bonnie's home. The circuit court granted the half-sisters visitation during Tim's scheduled period under Arkansas Code section 9-13-102.

PROCEDURAL HISTORY

After Bonnie sought child support and Tim alleged interference with his visitation, Ronda Weiss intervened on behalf of Jesaca and Jamee Weiss and sought sibling visitation with Raegan. The circuit court denied Bonnie's motion to dismiss, granted intervention, rejected the constitutional challenge, and awarded sibling visitation concurrent with Tim's scheduled visitation. The Arkansas Supreme Court affirmed the clarification of Tim's parental visitation rights but reversed and remanded the statutory sibling-visitation award.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court was directed to amend its order consistent with the decision by preserving Tim Weiss's parental visitation schedule and removing the independent sibling-visitation rights awarded under Ark. Code Ann. § 9-13-102.

CASES CITED

- Linder v. Linder, 348 Ark. 322, 72 S.W.3d 841 (2002)
- Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)
- Seagrave v. Price, 349 Ark. 433, 79 S.W.3d 339 (2002)
- In re Custody of Nunn, 103 Wash. App. 871, 14 P.3d 175 (2000)
- Herbst v. Swan, 102 Cal. App. 4th 813, 125 Cal. Rptr. 2d 836 (2002)
- McGovern v. McGovern, 201 Ariz. 172, 33 P.3d 506 (Ariz. Ct. App. 2001)
- State Department of Social and Rehabilitation Services v. Paillet, 270 Kan. 646, 16 P.3d 962 (Kan. 2001)
- Roby v. Adams, 68 S.W.3d 822 (Tex. Ct. App. 2002)
- Wickham v. Byrne, 199 Ill. 2d 309, 769 N.E.2d 1 (2002)
- Neal v. Lee, 2000 OK 90, 14 P.3d 547 (Okla. 2000)
- Hawk v. Hawk, 855 S.W.2d 573 (Tenn. 1993)
- Roth v. Weston, 259 Conn. 202, 789 A.2d 431 (2002)
- Lake View School District No. 25 v. Huckabee, 351 Ark. 31, 91 S.W.3d 472 (2002)
- Huffman v. Fisher, 337 Ark. 58, 987 S.W.2d 269 (1999)