

SUPREME COURT OF ALASKA

Laura B. v. Wade B.

424 P.3d 315 (Alaska 2018) · No. S-16889 · Decided July 6, 2018

SUMMARY

The Alaska Supreme Court held that a superior court violated a mother’s due process rights by modifying a contested custody arrangement without holding the promised second evidentiary hearing on the child’s best interests. The court vacated the order granting the father primary physical custody and remanded for an expedited evidentiary hearing.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Per Curiam; Chief Justice Stowers; Justice Winfree; Justice Maassen; Justice Bolger; Justice Carney
JURISDICTION	Alaska
DECIDED	July 6, 2018
DOCKET	S-16889
DISPOSITION	vacated
PROCEDURAL POSTURE	Laura B. appealed a superior court order modifying the parties' shared physical-custody arrangement and granting Wade B. primary physical custody without holding a second evidentiary hearing on the child's best interests.
STANDARD OF REVIEW	The adequacy of notice and hearing in child-custody proceedings presents a constitutional question reviewed de novo under the court's independent judgment.
PRECEDENTIAL VALUE	published
PARTIES	Laura B. v. Wade B.

TOPICS

- child custody
- procedural due process
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether the superior court violated Laura's procedural due process rights by modifying custody without holding the second evidentiary hearing it had promised.
2. Whether the initial hearing and subsequent custody investigation satisfied the hearing requirement for a material and substantial custody modification.

HOLDINGS

1. A court may not grant an opposed material and substantial custody modification without an evidentiary hearing that affords the nonmoving parent an opportunity to present evidence and argument on the child's best interests.
2. The initial hearing and custody investigation did not satisfy due process because Laura was not permitted to present evidence concerning the daughter's best interests or challenge the investigator's findings and credibility assessments before custody was modified.

KEY QUOTATIONS

“To comport with due process, custody should not be modified without an evidentiary hearing absent a specific exception to the hearing requirement.” (-3-)

“Finding a substantial change in circumstances is only the first step in a motion to modify custody; the second step is to determine the child’s best interests.” (-4-)

FACTUAL BACKGROUND

Laura and Wade had joint legal custody of their youngest daughter and shared physical custody on a week-on, week-off basis. Wade sought full legal and physical custody, asserting that the daughter wanted to live with him and that Laura left her home alone and afraid at night. After the superior court ordered a limited custody investigation, the investigator reported that the daughter wanted to live with Wade and was alone at night, and the court granted Wade primary physical custody without a second hearing on the daughter's best interests.

PROCEDURAL HISTORY

The parties had shared physical custody of their youngest daughter on a week-on, week-off basis. Wade moved for full legal and physical custody, and Laura opposed the motion, arguing that no substantial change in circumstances had been shown. After an initial hearing, the superior court ordered a limited custody investigation to resolve a factual dispute and stated that it would hold a second hearing if the investigator found that the daughter was left alone and afraid at night. After receiving the investigator's report, the court issued a supplemental custody order granting Wade primary physical custody without holding the promised second hearing. Laura appealed on due process grounds.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the third supplemental custody order and remand for an expedited evidentiary hearing to determine the daughter's custody based on her best interests.

CASES CITED

- Debra P. v. Laurence S., 309 P.3d 1258, 1260-61 (Alaska 2013)
- Lashbrook v. Lashbrook, 957 P.2d 326, 328 (Alaska 1998)
- Cushing v. Painter, 666 P.2d 1044, 1046 (Alaska 1983)
- Elliott v. Elliott, 129 P.3d 449, 451 (Alaska 2006)
- D.D. v. L.A.H., 27 P.3d 757, 758-60 (Alaska 2001)
- A.H. v. P.B., 2 P.3d 627, 628 (Alaska 2000)
- Walker v. Walker, 960 P.2d 620, 622 (Alaska 1998)
- Abby D. v. Sue Y., 378 P.3d 388, 394 (Alaska 2016)