

SUPREME COURT OF KENTUCKY

Julie A. Couch (now Riggs) v. David Michael Couch

146 S.W.3d 923 (Ky. 2004) · No. 2003-SC-0839-DG · Decided October 21, 2004

SUMMARY

The Supreme Court of Kentucky held that when a trial court relies on a child's in camera interview in deciding custody, the interview must be recorded and disclosed to the parties so they have an opportunity to rebut the statements and use the evidence on appeal. The court reversed the Court of Appeals and ordered that the taped interviews be unsealed, remanding for further consideration of the custody appeal.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Kentucky                                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Justice Graves                                                                                                                                                                                                                                                                                                 |
| JURISDICTION          | Kentucky                                                                                                                                                                                                                                                                                                       |
| DECIDED               | October 21, 2004                                                                                                                                                                                                                                                                                               |
| DOCKET                | 2003-SC-0839-DG                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Appeal from a custody-modification decision in which the trial court adopted a Domestic Relations Commissioner's recommendation based primarily on sealed in camera interviews with the child; the Court of Appeals denied access to the interviews and abated the merits appeal pending discretionary review. |
| STANDARD OF REVIEW    | The opinion reviews whether the trial court's procedure for conducting and sealing the child's in camera interview complied with KRS 403.290(1) and constitutional due process requirements.                                                                                                                   |
| PRECEDENTIAL VALUE    | Published Kentucky Supreme Court opinion; binding precedent in Kentucky.                                                                                                                                                                                                                                       |
| PARTIES               | Julie A. Couch (now Riggs) v. David Michael Couch                                                                                                                                                                                                                                                              |

TOPICS

- child custody
- family law procedure
- due process
- appellate procedure
- constitutional law

## PRACTICE AREAS

Family law

constitutional law

civil procedure

appellate procedure

## QUESTIONS PRESENTED

1. Whether a trial court may conduct an in camera interview of a child in a custody proceeding without the parties or counsel present and seal the interview from the parties.
2. Whether parties must be given access to the recorded contents of a child's in camera interview when the trial court relies on the interview in deciding custody.

## HOLDINGS

1. Although a trial court has discretion to conduct an in camera interview of a child outside the presence of the parties and counsel, it must make a record of the interview and disclose its contents to the parties when the interview is used or relied upon in deciding custody.
2. The appellant was substantially prejudiced because she could not rebut the child's statements before the trial court or use the evidence in pursuing the appeal; the interviews therefore had to be unsealed.

## KEY QUOTATIONS

*"In striking the appropriate balance between the interests of children and the procedural rights of parents, we hold that while it is certainly within the discretion of the trial court to conduct an in camera interview in the absence of the parties and counsel, a record of such interview must be made so that the parties are afforded the subsequent opportunity to determine and contradict the accuracy of statements and facts given during the interview."* (925-926)

*"The parties are entitled to know what evidence is used or relied upon by the trial court, and have the right generally to present rebutting evidence or to cross-examine, unless such right is waived."* (925)

## FACTUAL BACKGROUND

Julie and David Couch were divorced in 1992, with joint custody of their son and Julie having physical custody. David later moved to Alabama and sought modification of custody, relying on affidavits asserting that the child's best interests favored living with him. After the Domestic Relations Commissioner conducted a sealed in camera interview with the child and relied heavily on it in recommending a custody transfer, the trial court adopted the recommendation without providing Julie access to the recording for rebuttal or appeal.

## PROCEDURAL HISTORY

The parties were divorced in the Hardin Circuit Court in 1992 under a decree incorporating a joint-custody agreement. In 2002, the appellee moved to modify custody, and after hearings the Domestic Relations Commissioner recommended transferring primary physical custody to him. The commissioner conducted a second in camera interview with the child, sealed the recording, and relied heavily on it; the trial court adopted the recommendation and denied the appellant access to the recording. The Court of Appeals denied motions to unseal the interviews and abated the merits appeal. The Kentucky Supreme Court reversed the Court of Appeals and remanded for further consideration of the custody appeal after ordering the interviews unsealed.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The taped interviews before the Domestic Relations Commissioner must be unsealed, and the case is remanded to the Kentucky Court of Appeals for further consideration of the merits of the appellant's custody appeal in accordance with the opinion.

## CASES CITED

- Holt v. Chenault, 722 S.W.2d 897 (Ky. 1987)
- Schwartz v. Schwartz, 382 S.W.2d 851 (Ky. 1964)