

SUPREME COURT OF THE STATE OF DELAWARE

Butler v. Evans

No. 601, 2015 · No. No. 601, 2015 · Decided May 17, 2016

SUMMARY

The Delaware Supreme Court affirmed a Family Court order denying Jack Butler, Jr.’s rule to show cause petition against Jessica Lynn Evans. The Court held that the record supported the finding that Evans did not willfully violate the visitation Consent Order and that contempt sanctions were therefore unwarranted.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of Delaware                                                                                                                                                                                                                                                                                                                                                                                           |
| WRITING FOR THE COURT | Leo E. Strine, Jr., Chief Justice; Henry duPont Ridgely Holland, Justice; Karen L. Valihura, Justice                                                                                                                                                                                                                                                                                                                             |
| JURISDICTION          | Delaware                                                                                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED               | May 17, 2016                                                                                                                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | No. 601, 2015                                                                                                                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Jack Butler appealed the Family Court's order affirming the denial of his rule to show cause petition and entering the Commissioner's order as the final order of the court.                                                                                                                                                                                                                                                     |
| STANDARD OF REVIEW    | The Family Court must conduct de novo review of a Commissioner's order upon a timely request for review. The Delaware Supreme Court reviews the Family Court's order as to the facts, law, inferences, and deductions; when the law was correctly applied, the standard is abuse of discretion. The Supreme Court does not substitute its judgment for the factfinder when factual determinations depend on witness credibility. |
| PRECEDENTIAL VALUE    | Delaware Supreme Court order; no reporter citation appears in the source.                                                                                                                                                                                                                                                                                                                                                        |
| PARTIES               | Jack Butler, Jr. v. Jessica Lynn Evans                                                                                                                                                                                                                                                                                                                                                                                           |

TOPICS

visitation

contempt

standard of review

appellate procedure

family law procedure

## PRACTICE AREAS

family law

appellate procedure

civil procedure

## QUESTIONS PRESENTED

1. Whether Evans's admitted deviations from the visitation terms constituted a willful violation warranting contempt sanctions.
2. Whether the Family Court erred or abused its discretion by affirming the Commissioner's denial of Butler's rule to show cause petition.

## HOLDINGS

1. The Family Court properly found that Evans did not willfully violate the consent order, so contempt sanctions were not warranted.
2. The Family Court did not err or abuse its discretion in affirming the denial of Butler's rule to show cause petition and accepting the Commissioner's order as the final order.

## KEY QUOTATIONS

*“The Family Court properly concluded that there was support in the record for the Commissioner’s determination that Evans did not willfully violate the Consent Order.” ((8))*

## FACTUAL BACKGROUND

The parties are parents of a child born in 2011 and had a consent order permitting Evans weekend visitation at her sister's residence in Conowingo, Maryland. Butler alleged that Evans violated the order by exercising visitation at another Conowingo residence and returning the child ninety minutes late. Evans testified that her sister was out of town and that the alternate location was necessary, and that car trouble caused the late return. The Commissioner found no intentional or malicious violation and found reasonable cause for both deviations.

## PROCEDURAL HISTORY

After a hearing on cross-petitions for protection from abuse, the Family Court entered a consent order governing Evans's visitation. Butler later filed a rule to show cause petition alleging that Evans violated the visitation-location and return-time provisions. A Family Court Commissioner denied the petition, finding no intentional or malicious violation and reasonable cause for the deviations. The Family Court reviewed the record de novo, affirmed the Commissioner, and Butler appealed to the Delaware Supreme Court.

## DISPOSITION

affirmed

## CASES CITED

- Kraft v. Mason, 2010 WL 5341918 (Del. Dec. 20, 2010)
- Solis v. Tea, 468 A.2d 1276, 1279 (Del. 1983)
- King v. Booker, 2015 WL 4985367 (Del. Aug. 20, 2015)
- Jones v. Lang, 591 A.2d 185, 186 (Del. 1991)
- Wheatley v. Wheatley, 1996 WL 145975 (Del. Mar. 21, 1996)
- Wife (J.F.V.) v. Husband (O.W.V., Jr.), 402 A.2d 1202, 1204 (Del. 1979)

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