

SUPREME COURT OF ARKANSAS

Nina Lea Alphin (Surber) v. David Paul Alphin

364 Ark. 332 (2005) (Ark. 2005) · No. No. 05-285 · Decided December 8, 2005

SUMMARY

The Supreme Court of Arkansas affirmed an order modifying custody of the parties' daughter from Nina Alphin Surber to David Paul Alphin. The court held that evidence of Nina's frequent moves, lack of a regular schedule, and Paul's more stable home supported a material change in circumstances and that custody modification was in the child's best interest. Justice Dickey dissented, concluding that the evidence did not establish a sufficient changed circumstance and that the trial court applied a double standard regarding the parents' relationships.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Tom Glaze; Betty C. Dickey
JURISDICTION	Arkansas
DECIDED	December 8, 2005
DOCKET	No. 05-285
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nina Alphin appealed a circuit-court order modifying the parties' custody decree and awarding custody of their daughter to David Alphin. The Arkansas Court of Appeals affirmed, and the Supreme Court of Arkansas granted Nina's petition for review.
STANDARD OF REVIEW	On review of a court-of-appeals decision, the Supreme Court reviews the appeal as though it had originally been filed in that court. In this equity-based custody matter, the evidence is reviewed de novo, but the trial court's findings are not reversed unless clearly erroneous or clearly against the preponderance of the evidence. The appellate court gives substantial deference to the trial court's ability to evaluate witness credibility, with especially strong deference in child-custody cases.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Nina Lea Alphin (Surber) v. David Paul Alphin

TOPICS

child custody family law procedure appellate procedure standard of review

PRACTICE AREAS

family law child custody appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence established a material change in circumstances sufficient to permit modification of the existing custody decree.
2. Whether the custody modification was in Megan's best interest.
3. Whether the appellate court could affirm the custody transfer based on evidence supporting the correct result even though the trial court emphasized an improper or insufficient reason.

HOLDINGS

1. A custody award may be modified only upon proof of changed conditions demonstrating that modification is in the child's best interest, or facts affecting the child's best interest that were not presented to or known by the court when the original custody order was entered. The party seeking modification bears the burden of proving a material change in circumstances.
2. The evidence was sufficient to establish a material change in circumstances and support the conclusion that transferring custody from Nina to David was in Megan's best interest.
3. An appellate court may affirm when the trial court reached the right result even if it announced the wrong reason, provided the record independently supports the disposition.

KEY QUOTATIONS

“Arkansas law is well settled that the primary consideration in child-custody cases is the welfare and best interest of the children; all other considerations are secondary.” (165)

“A judicial award of custody should not be modified unless it is shown that there are changed conditions that demonstrate that a modification of the decree is in the best interest of the child” (165)

“Given the facts of the case, we affirm the trial court's order changing custody of Megan from Nina to Paul.” (167)

FACTUAL BACKGROUND

Nina and David divorced in 1999, and the decree awarded joint custody with primary physical custody of their daughter, Megan, to Nina. After the decree, Nina moved repeatedly, lived with romantic partners before marrying Todd Surber, and had work and household schedules that sometimes left no parent available at Megan's bedtime. David remained in the same home, remarried, and established a household with regular routines and additional children. The circuit court found a substantial change in circumstances and concluded that Megan's best interests required transferring custody to David.

PROCEDURAL HISTORY

The parties' 1999 divorce decree awarded joint custody with primary physical custody to Nina and visitation to David. In 2003, David petitioned to modify custody, alleging a substantial change in circumstances. After a hearing, the circuit court transferred custody to David. The court of appeals affirmed, and the Supreme Court of Arkansas affirmed the custody modification after granting review.

DISPOSITION

affirmed

CASES CITED

- Alphin v. Alphin, 363 Ark. 566, 215 S.W.3d 586 (2005)
- Jones v. Billingsley, 363 Ark. 96, 211 S.W.3d 508 (2005)
- Lewellyn v. Lewellyn, 351 Ark. 346, 93 S.W.3d 681 (2002)
- Hamilton v. Barrett, 337 Ark. 460, 989 S.W.2d 520 (1999)
- Jones v. Jones, 326 Ark. 481, 931 S.W.2d 767 (1996)
- Hunt v. Perry, 357 Ark. 224, 162 S.W.3d 891 (2004)
- Noland v. Noland, 330 Ark. 660, 956 S.W.2d 173 (1997)
- Digby v. Digby, 263 Ark. 813, 567 S.W.2d 290 (1978)
- Campbell v. Campbell, 336 Ark. 379, 985 S.W.2d 724 (1999)
- Lloyd v. Butts, 343 Ark. 620, 37 S.W.3d 603 (2001)
- Word v. Remick, 75 Ark. App. 390, 58 S.W.3d 422 (2001)
- Taylor v. Taylor, 353 Ark. 69, 110 S.W.3d 731 (2003)
- Taylor v. Taylor, 345 Ark. 300, 47 S.W.3d 222 (2001)
- Stamps v. Rawlins, 297 Ark. 370, 761 S.W.2d 933 (1988)
- Norman v. Norman, 347 Ark. 682, 66 S.W.3d 635 (2002)
- Walker v. Torres, 83 Ark. App. 135, 118 S.W.3d 148 (2003)