

SUPREME COURT OF OHIO

Kelm v. Kelm

92 Ohio St. 3d 223 (Ohio 2001) · Decided July 5, 2001

SUMMARY

The Ohio Supreme Court held that disputes concerning child custody and parental visitation cannot be resolved through arbitration because the courts have exclusive authority to protect the best interests of children. The court further held that the parties' agreement to arbitrate was void and unenforceable, and that the appellee had not waived her challenge to the agreement. Res judicata also did not bar the challenge because custody and visitation orders remain subject to future modification.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Francis E. Sweeney, Sr., J.; Moyer, C.J.; Douglas, J.; Pfeifer, J.; Resnick, J.; Cook, J.; Sweeney, J.; Lundberg Stratton, J.
JURISDICTION	Ohio
DECIDED	July 5, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	After the trial court denied the appellant's motion to stay proceedings and compel arbitration of a child-custody and visitation dispute, the Tenth District Court of Appeals affirmed. The Supreme Court of Ohio accepted a discretionary appeal.
STANDARD OF REVIEW	De novo review of the legal enforceability of the arbitration agreement and the applicability of waiver and res judicata.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Ohio
PARTIES	Russell A. Kelm v. Amy K. Kelm

TOPICS

- child custody
- visitation
- arbitration
- res judicata
- family law procedure

PRACTICE AREAS

- family law
- arbitration
- civil procedure

QUESTIONS PRESENTED

1. Whether child-custody and parental-visitation disputes may be resolved through arbitration.
2. Whether the appellee waived her right to challenge the arbitration provision by agreeing to the shared-parenting plan and consenting to its incorporation into the divorce decree.
3. Whether res judicata barred the appellee's challenge because she could have challenged the arbitration provision in the original divorce action.

HOLDINGS

1. In a domestic-relations case, matters of child custody and parental visitation are not subject to arbitration; the authority to resolve those disputes rests exclusively with the courts, and any contrary agreement is void and unenforceable.
2. The appellee did not waive her right to challenge the arbitration provision by agreeing to the shared-parenting plan or consenting to its incorporation into the divorce decree.
3. Res judicata did not bar the appellee's challenge to the arbitration provision because custody and visitation orders remain subject to future modification, making strict application of claim preclusion impractical in this context.

KEY QUOTATIONS

“For the reasons that follow, we hold that these matters cannot be resolved through arbitration. Only the courts are empowered to resolve disputes relating to child custody and visitation.” (92 Ohio St. 3d at 224)

“For the foregoing reasons, we hold that in a domestic relations case, matters of child custody and parental visitation are not subject to arbitration. The authority to resolve disputes over custody and visitation rests exclusively with the courts. Any agreement to the contrary is void and unenforceable.” (92 Ohio St. 3d at 227)

FACTUAL BACKGROUND

The parties' divorce decree incorporated a shared-parenting plan providing that future disputes concerning child custody or visitation would be submitted to arbitration. When Amy Kelm later sought to modify or terminate the plan, Russell Kelm moved to stay the proceeding and compel arbitration. The dispute concerned whether the arbitration provision could bind the domestic-relations court and whether the appellee's prior agreement barred her challenge.

PROCEDURAL HISTORY

The parties' 1993 divorce decree incorporated a shared-parenting plan requiring arbitration of future custody and visitation disputes. In 1999, the appellee moved to modify or terminate the plan, and the appellant moved to stay the proceedings and compel arbitration. The domestic-relations trial court denied the motion, the Tenth District affirmed, and the Supreme Court of Ohio affirmed the appellate judgment.

DISPOSITION

affirmed

CASES CITED

- Kelm v. Kelm, 68 Ohio St. 3d 26, 623 N.E.2d 39 (1993)
- Pulfer v. Pulfer, 110 Ohio App. 3d 90, 673 N.E.2d 656 (1996)
- Masters v. Masters, 201 Conn. 50, 513 A.2d 104 (1986)
- Nestel v. Nestel, 38 A.D.2d 942, 331 N.Y.S.2d 241 (1972)
- Dick v. Dick, 210 Mich. App. 576, 534 N.W.2d 185 (1995)
- Kovacs v. Kovacs, 98 Md. App. 289, 633 A.2d 425 (1993)
- Miller v. Miller, 423 Pa. Super. 162, 620 A.2d 1161 (1993)
- Crutchley v. Crutchley, 306 N.C. 518, 293 S.E.2d 793 (1982)
- Glauber v. Glauber, 192 A.D.2d 94, 600 N.Y.S.2d 740 (1993)
- Agur v. Agur, 32 A.D.2d 16, 298 N.Y.S.2d 772 (1969)
- Schaefer v. Allstate Insurance Co., 63 Ohio St. 3d 708, 590 N.E.2d 1242 (1992)
- Sanitary Commercial Services, Inc. v. Shank, 57 Ohio St. 3d 178, 566 N.E.2d 1215 (1991)
- Knapp v. Knapp, 24 Ohio St. 3d 141, 493 N.E.2d 1353 (1986)
- Grava v. Parkman Township, 73 Ohio St. 3d 379, 653 N.E.2d 226 (1995)
- National Amusements, Inc. v. Springdale, 53 Ohio St. 3d 60, 558 N.E.2d 1178 (1990)
- Childers v. Childers, 717 So. 2d 1279 (Miss. 1998)
- Lipscomb v. Lipscomb, 660 So. 2d 986 (Ala. 1994)
- People ex rel. Farina v. Sensor, 299 Ill. App. 3d 333, 701 N.E.2d 1147 (1998)