

SUPREME COURT OF ALASKA

Walter A. Fernau v. Elizabeth A.F. Rowdon

Fernau v. Rowdon, 42 P.3d 1047 (Alaska 2002) · No. S-9142 · Decided March 1, 2002

SUMMARY

The Alaska Supreme Court affirmed awards of child support, rehabilitative alimony, and attorney's fees in a divorce proceeding involving hybrid physical custody and a substantial disparity in the parties' earning capacities. The court held that the trial court properly relied on historical income, applied a variance under Alaska Civil Rule 90.3(c), and awarded rehabilitative alimony to support the wife's pursuit of a teaching credential. The court found certain income-calculation errors harmless under the circumstances.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Carpeneti, Justice; Fabe, Chief Justice; Matthews, Justice; Eastaugh, Justice; Bryner, Justice
JURISDICTION	Alaska
DECIDED	March 1, 2002
DOCKET	S-9142
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a divorce judgment awarding increased child support, rehabilitative alimony, and partial attorney's fees.
STANDARD OF REVIEW	Child-support awards and rehabilitative-alimony awards are reviewed for abuse of discretion; the method of calculating child support is reviewed de novo; factual findings regarding net income are reviewed for clear error; and attorney-fee awards in divorce actions are reviewed for abuse of discretion and will not be reversed unless arbitrary, capricious, or manifestly unreasonable.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential.
PARTIES	Walter A. Fernau v. Elizabeth A.F. Rowdon

TOPICS

- child support
- spousal support
- divorce
- family law procedure
- family law

PRACTICE AREAS

family law

child support

spousal support

divorce

QUESTIONS PRESENTED

1. Whether the superior court clearly erred in determining the parties' income and earning capacities for child-support purposes.
2. Whether alimony received from the party obligated to pay it must be included in the recipient's income under Alaska Civil Rule 90.3.
3. Whether the superior court properly varied the hybrid-custody child-support amount under Alaska Civil Rule 90.3(c).
4. Whether the superior court abused its discretion by awarding rehabilitative alimony.
5. Whether the superior court abused its discretion by awarding Rowdon partial attorney's fees.

HOLDINGS

1. The superior court did not clearly err by relying on Fernau's historical earnings and finding that he remained in the highest income category for child-support purposes; the temporary reduction in his income while establishing a practice did not require using the lower projected income.
2. Alimony paid by a party to the child-support order should not be included in the recipient's income for purposes of calculating child support. Rental income or proceeds from the Fairbanks property should have been included, but both errors were harmless because they approximately offset one another and the award was ultimately varied under Rule 90.3(c).
3. The superior court properly varied the hybrid-custody child-support award under Alaska Civil Rule 90.3(c) because the hybrid custody arrangement, the additional after-school time with Rowdon, the disparity in earning capacity, and Rowdon's need to pursue education while caring for three children constituted unusual circumstances making a variance just and proper.
4. The superior court did not abuse its discretion by awarding time-limited rehabilitative alimony conditioned on Rowdon's enrollment in a teacher-certification program.
5. The superior court did not abuse its discretion by awarding Rowdon partial attorney's fees because the parties were not in comparable economic situations and the property division did not place them on an equal economic footing.

KEY QUOTATIONS

“But we believe that alimony received from a person who is a party to the order should not be counted as income.” (42 P.3d at 1054)

“The nature of this hybrid custody situation, including the additional time the children were to spend with their mother, as well as the disparity in earning potential, and Elizabeth's need to pursue a career opportunity while caring for three children, make this an unusual case in which variance is just and proper.” (42 P.3d at 1057)

“Rehabilitative alimony is appropriate “when the recipient spouse intends to apply the alimony toward job training designed to lead to employment.”” (42 P.3d at 1058)

“Attorney’s fees in divorce cases are ‘based on the relative economic situations and earning powers of the parties,’ rather than prevailing party status.” (42 P.3d at 1060)

FACTUAL BACKGROUND

The parties married in 1985 and had three children. Fernau was a physician who historically earned more than \$100,000 annually, while Rowdon largely stayed home to care for the children and had minimal earnings and incomplete education. The parties agreed to a hybrid custody arrangement, with one child primarily residing with Rowdon and the other two sharing custody, while Rowdon pursued teacher certification to become self-sufficient. The superior court awarded increased child support, time-limited rehabilitative alimony, and partial attorney's fees because of the parties' substantial disparity in earning capacity and economic circumstances.

PROCEDURAL HISTORY

After Elizabeth Rowdon filed for divorce, the parties resolved custody by agreement and proceeded to trial on property division, child support, and alimony before the superior court. The superior court awarded Rowdon an unequal share of the marital property, child support calculated under the hybrid-custody method and varied under Alaska Civil Rule 90.3(c), rehabilitative alimony, and partial attorney's fees. Fernau appealed the child-support, alimony, and attorney-fee awards.

DISPOSITION

affirmed

CASES CITED

- Turinsky v. Long, 910 P.2d 590, 595-98 (Alaska 1996)
- Patch v. Patch, 760 P.2d 526, 530 (Alaska 1988)
- Curley v. Curley, 588 P.2d 289, 291 (Alaska 1979)
- Pattee v. Pattee, 744 P.2d 658, 659, 662 (Alaska 1987)
- Doyle v. Doyle, 815 P.2d 366, 373 (Alaska 1991)
- Duffney v. Duffney, 625 N.W.2d 839, 843 (Minn. App. 2001)
- Hammer v. Hammer, 991 P.2d 195, 198-99 (Alaska 1999)
- Brown v. Brown, 914 P.2d 206, 209 (Alaska 1996)
- Jones v. Jones, 835 P.2d 1173, 1178-79 (Alaska 1992)
- Tybus v. Holland, 989 P.2d 1281, 1287-88 (Alaska 1999)
- Edelman v. Edelman, 3 P.3d 348, 358 (Alaska 2000)
- Davila v. Davila, 876 P.2d 1089, 1094 (Alaska 1994)
- Virgin v. Virgin, 990 P.2d 1040, 1043 (Alaska 1999)
- Myers v. Myers, 927 P.2d 326, 328 (Alaska 1996)

- Nicholson v. Wolfe, 974 P.2d 417, 426-27 (Alaska 1999)
- Sanders v. Barth, 12 P.3d 766, 768 (Alaska 2000)
- Davila v. Davila, 908 P.2d 1027, 1035 (Alaska 1995)
- Adamson v. Univ. of Alaska, 819 P.2d 886, 889 n. 3 (Alaska 1991)
- Spott v. Spott, 17 P.3d 52, 55 (Alaska 2001)
- Guin v. Ha, 591 P.2d 1281, 1284 n. 6 (Alaska 1979)
- Routh v. Andreassen, 19 P.3d 593, 595 (Alaska 2001)
- Nicholson v. Wolfe, 974 P.2d 417, 426 (Alaska 1999)
- Sloane v. Sloane, 18 P.3d 60, 64 (Alaska 2001)
- Zeman v. Lufthansa, 699 P.2d 1274, 1280 (Alaska 1985)
- Nass v. Seaton, 904 P.2d 412, 416 n. 7 (Alaska 1995)