

DISTRICT OF COLUMBIA COURT OF APPEALS

Cassaundra Wilkins v. Eugene Ferguson

928 A.2d 655 (D.C. 2007) · No. Nos. 05-FM-1555, 05-FM-1556 · Decided July 19, 2007

SUMMARY

The District of Columbia Court of Appeals reviewed a trial court order granting a father unsupervised visitation with his child after prior findings of intrafamily offenses and allegations of inappropriate touching. The court reversed, holding that the record did not support the trial court’s factual findings and that the court failed to make the statutory findings required before awarding visitation to a person previously found to have committed an intrafamily offense.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                      |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | District of Columbia Court of Appeals                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | Reid, Associate Judge; Kramer, Associate Judge; Nebeker, Senior Judge                                                                                                                                                                                                |
| JURISDICTION          | District of Columbia                                                                                                                                                                                                                                                 |
| DECIDED               | July 19, 2007                                                                                                                                                                                                                                                        |
| DOCKET                | Nos. 05-FM-1555, 05-FM-1556                                                                                                                                                                                                                                          |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | Wilkins appealed from the trial court's December 15, 2005 order modifying visitation to permit Ferguson unsupervised daytime visits with the parties' daughter. The appeals from the divorce and custody case and the civil protection order case were consolidated. |
| STANDARD OF REVIEW    | Legal determinations are reviewed de novo; factual findings are reviewed for clear error; and visitation decisions are reviewed for abuse of discretion. The exercise of discretion must rest on correct legal principles and a firm factual foundation.             |
| PRECEDENTIAL VALUE    | Published precedential opinion of the District of Columbia Court of Appeals                                                                                                                                                                                          |
| PARTIES               | Cassaundra Wilkins v. Eugene Ferguson                                                                                                                                                                                                                                |

TOPICS

- visitation
- child custody
- domestic violence
- statutory interpretation
- appellate procedure

## PRACTICE AREAS

family law

child custody

visitation

domestic violence

appellate procedure

## QUESTIONS PRESENTED

1. Whether the trial court properly modified visitation after finding a substantial and material change in circumstances.
2. Whether D.C. Code § 16-914(a-1) required the previously adjudicated intrafamily offender to prove that visitation would not endanger the child or significantly impair her emotional development.
3. Whether the trial court adequately considered the statutory best-interest factors, including the child's and parents' mental and physical health and evidence of intrafamily offenses.
4. Whether the trial court's order permitting unsupervised visitation was supported by correct legal principles and sufficient record evidence.

## HOLDINGS

1. Once a party seeking modification proves by a preponderance of the evidence that there has been a substantial and material change in circumstances and that modification is in the child's best interest, a prior finding that the other parent committed an intrafamily offense remains relevant and shifts the burden to that parent to prove that visitation will not endanger the child or significantly impair the child's emotional development.
2. Before awarding visitation to a parent previously found to have committed an intrafamily offense, the trial court must find that the child and custodial parent can be adequately protected from harm and that the offending parent has satisfied the statutory burden concerning danger and emotional impairment.
3. The trial court could not authorize unsupervised visitation when no health professional recommended it and the record contained no qualified expert evidence that unsupervised visitation was appropriate.
4. A trial court deciding whether to award or modify visitation must explicitly consider the statutory best-interest factors, including the mental and physical health of the individuals involved and evidence of an intrafamily offense.

## KEY QUOTATIONS

*“Simply put, the Council has decreed that a history of domestic abuse will always be relevant at every custody or visitation proceeding in which the abuser is involved.” (670)*

*“In short, regardless of the weight given to the testimony of the health professionals, not one of them recommended unsupervised visitation; hence, there is no record evidence from any health professional stating that unsupervised visitation is appropriate.” (671)*

## FACTUAL BACKGROUND

Ferguson and Wilkins were divorced in 2002, with joint legal custody, primary physical custody in Wilkins, and visitation for Ferguson. The trial court found that Ferguson had abused Wilkins and had inappropriately touched the parties' daughter, A.F., leading to protection orders and suspension or supervision of visitation. Despite

multiple mental-health professionals' concerns and the absence of any professional recommendation for unsupervised visits, the trial court later authorized unsupervised daytime visitation based on its finding of a substantial and material change in circumstances.

## PROCEDURAL HISTORY

The trial court had previously found that Ferguson committed physical, verbal, and psychological abuse against Wilkins and had inappropriately touched the child. After later proceedings, the court found insufficient evidence of a new inappropriate touching incident but found a substantial and material change in circumstances, and allowed unsupervised daytime visitation. A newly assigned trial judge stayed that order and restricted visitation to supervised visits pending appeal. The Court of Appeals reversed the December 15, 2005 order.

## DISPOSITION

reversed

## CASES CITED

- In re A.C.G., 894 A.2d 436, 439 (D.C. 2006)
- In re J.D.W., 711 A.2d 826, 830 (D.C. 1998)
- In re N.D., 909 A.2d 165, 169 (D.C. 2006)
- In re L.L., 653 A.2d 873, 880 (D.C. 1995)
- Murphy v. McCloud, 650 A.2d 202, 210 (D.C. 1994)
- Link v. District of Columbia, 650 A.2d 929, 934 (D.C. 1994)
- In re T.L., 859 A.2d 1087, 1090 (D.C. 2004)
- In re Ko. W., 774 A.2d 296, 303 (D.C. 2001)
- Lewis v. Lewis, 637 A.2d 70, 72 (D.C. 1994)
- Hamel v. Hamel, 489 A.2d 471, 475 (D.C. 1985)
- In re S.L.E., 677 A.2d 514, 519 (D.C. 1996)
- In re S.C.M., 653 A.2d 398, 405-406 & n.12 (D.C. 1995)
- In re D.M., 771 A.2d 360, 366 (D.C. 2001)
- In re M.D., 602 A.2d 109, 114 (D.C. 1992)
- Cass v. District of Columbia, 829 A.2d 480, 482 (D.C. 2003)
- District of Columbia v. Gallagher, 734 A.2d 1087, 1091 (D.C. 1999)
- Peoples Drug Stores, Inc. v. District of Columbia, 470 A.2d 751, 754 (D.C. 1983)
- Prost v. Greene, 652 A.2d 621, 629, 632 (D.C. 1995)
- Rock Creek Plaza-Woodner Ltd. P'ship v. District of Columbia, 466 A.2d 857, 859 (D.C. 1983)