

SUPREME COURT OF GEORGIA

Dellinger v. Dellinger, 278 Ga. 732

609 S.E.2d 331 (2004) · No. S04F1376 · Decided November 23, 2004

SUMMARY

The Supreme Court of Georgia held that a self-executing, material change in visitation based on a parent's relocation violates Georgia public policy unless the provision is supported by evidence concerning the parent's committed course of action, its effect on the children's best interests, and careful drafting tailored to that course of action. The court reversed and directed the trial court to strike the provision automatically reducing the mother's visitation if she moved more than 35 miles from Douglas County. The court affirmed the trial court's award of primary physical custody to the father, finding no clear abuse of discretion.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hunstein, Justice; Hunstein; Sears; Carley; Thompson
JURISDICTION	Georgia
DECIDED	November 23, 2004
DOCKET	S04F1376
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a final divorce decree challenging a self-executing change-of-visitation provision triggered by the custodial parent's move more than thirty-five miles from Douglas County.
STANDARD OF REVIEW	A custody award to one fit parent over another is reviewed for clear abuse of discretion. The validity of a self-executing material change in visitation is reviewed under the best-interests requirements announced in Scott v. Scott.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of Georgia.
PARTIES	Sonja Dellinger v. Terry Dellinger

TOPICS

- visitation
- relocation
- child custody
- family law procedure
- appellate procedure

PRACTICE AREAS

family law

child custody

visitation

appellate procedure

QUESTIONS PRESENTED

1. Whether a divorce decree may provide for an automatic, material reduction in visitation when the noncustodial parent moves more than thirty-five miles from the county without a best-interests determination at the time of the move.
2. Whether the trial court clearly abused its discretion by awarding primary physical custody to one fit parent over the other.

HOLDINGS

1. A self-executing material change in visitation violates Georgia public policy unless the evidence shows that a party has committed to a particular course of action to be implemented at a particular time, the court has heard evidence concerning the effect of that action on the child's best interests, and the provision is narrowly and carefully drafted to address those effects. The provision here was invalid because it created an open-ended automatic reduction in visitation without a best-interests determination at the time of the move and without a sufficient connection between the thirty-five-mile trigger and the children's best interests.
2. The trial court did not clearly abuse its discretion by awarding primary physical custody to Terry, one fit parent, rather than Sonja.

KEY QUOTATIONS

“In accordance with Scott, supra, we hold that self-executing material changes in visitation violate this State's public policy founded on the best interests of a child unless there is evidence before the court that one or both parties have committed to a given course of action that will be implemented at a given time; the court has heard evidence how that course of action will impact upon the best interests of the child or children involved; and the provision is carefully crafted to address the effects on the offspring of that given course of action.” (278 Ga. at 734)

“The provision thus improperly authorized an open-ended, automatic, material change in visitation without providing for a determination whether the visitation change is in the best interests of the parties' children and without connecting the triggering event to those best interests.” (278 Ga. at 736)

FACTUAL BACKGROUND

Sonja and Terry Dellinger had been married for nine years and had two children. After the parties moved to Georgia, Sonja sought custody and testified that she might return to Alabama, but her testimony regarding a move was conditioned on receiving primary physical custody. The trial court awarded Terry primary physical custody and created Plan A, which provided extensive visitation for Sonja, and Plan B, which automatically reduced her visitation and increased her child-support obligation if she moved more than thirty-five miles from Douglas County.

PROCEDURAL HISTORY

The trial court granted the parties a divorce, awarded them joint legal custody, gave primary physical custody to Terry Dellinger, and included two visitation plans. Plan B would automatically replace Plan A if Sonja Dellinger moved more than thirty-five miles from Douglas County. The Supreme Court of Georgia granted Sonja Dellinger's application to appeal under its pilot project, affirmed the custody award, but reversed and directed the trial court to strike the self-executing visitation provision.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The trial court was directed to strike the self-executing visitation provision from the divorce decree. The custody award was left undisturbed.

CASES CITED

- Wright v. Wright, 277 Ga. 133, 587 S.E.2d 600 (2003)
- Scott v. Scott, 276 Ga. 372, 578 S.E.2d 876 (2003)
- Atkins v. Zachary, 243 Ga. 453, 254 S.E.2d 837 (1979)
- Nodvin v. Nodvin, 235 Ga. 708, 221 S.E.2d 404 (1975)
- Powell v. Powell, 277 Ga. 878, 596 S.E.2d 616 (2004)
- Warehouse Home Furnishings Distrib. v. Davenport, 261 Ga. 853, 413 S.E.2d 195 (1992)
- Patel v. Patel, 276 Ga. 266, 577 S.E.2d 587 (2003)
- Woodruff v. Woodruff, 272 Ga. 485, 531 S.E.2d 714 (2000)
- Parker v. Parker, 242 Ga. 781, 251 S.E.2d 523 (1979)