

Summary of SC94488, *Paul L. Pasternak v. Denise M. Pasternak*

Appeal from the St. Francois County circuit court, Judge Shawn Ragan McCarver
Argued and submitted February 25, 2015; opinion issued August 18, 2015

Attorneys: The father was represented by Christina L. Kime, an attorney in Piedmont, (573) 223-7115; and the mother was represented by Lawrence G. Gillespie of Gillespie, Hetlage & Coughlin LLC in Clayton, (314) 863-5444.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A mother sought to modify a judgment dissolving her marriage that had granted the parents joint legal and joint physical custody of their two children. The father appeals the circuit court's judgment (1) approving the mother's relocation to a different town and (2) modifying custody of the children from joint legal custody in favor of both parents to sole legal custody in favor of the mother. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the circuit court's judgment. The circuit court's determination as to both issues was supported by substantial evidence. Relocation is in the children's best interests for a wide variety of reasons, and the mother's request to relocate was made in good faith. Substantial evidence also supported a change from joint to sole legal custody given the parents' contentious relationship, which made it difficult for them to function, communicate or make joint decisions regarding the children. The fact that the father produced contrary evidence does not undercut the circuit court's determination that substantial evidence supported the judgment.

Facts: In 2011, a father and mother of two sons dissolved their marriage. The dissolution judgment granted both parents joint legal and physical custody of the children. The children's primary residence was with the mother, who attended to their day-to-day needs. The father was the "activities" parent, being highly involved in the children's recreational and extracurricular activities, especially during the summer. After the dissolution, the parents experienced serious difficulties exercising their joint legal and physical custody of the children. For example, the parents disagreed about whether one of the children should be on prescription medication. They also engaged in near-constant arguments and other inappropriate behavior, sometimes in front of the children. Because of these disagreements, the mother moved to modify the dissolution judgment, requesting that she be given sole legal and physical custody. While the motion was pending, the mother resigned from her job after learning her contract would not be renewed. She found a new job 56 miles away from the father's home. Because her new job had a significantly lower salary than her old salary, the mother could not afford housing in the town in which the father lived and could not afford gas to commute from the father's town to the town where her new job was located. The mother gave the father notice that she would be relocating. The father filed a petition to prohibit relocation and a counter-motion to modify, requesting sole legal and physical custody. The circuit court approved the mother's proposed relocation, finding that the mother's proposal was made in good faith and that relocation was in the best interests of the children. The circuit court also modified legal custody of the children from joint legal custody to sole legal custody in favor of the mother. The father appeals.

AFFIRMED.

Court en banc holds: (1) An argument that a judgment is not supported by substantial evidence is distinct from an argument that the judgment is against the weight of the evidence and must be raised in a separate point. The father claims that the judgment approving relocation and changing sole legal custody to the mother was not supported by substantial evidence. The reviewing court, therefore, looks only to the evidence supporting the judgment to determine whether it was substantial; the existence of contrary evidence rejected by the trial court is not relevant to the substantial evidence inquiry.

(2) Substantial evidence supported the circuit court's approval of the mother's relocation. Substantial evidence supporting the finding that the relocation was sought in good faith included evidence that the mother lost her teaching job and found a new teaching job that would require her to move about 56 miles away, that she had identified a good school for the children in the new area, and that the children were familiar with that area and would have a support network there as the mother's family lived nearby. Substantial evidence also supported the circuit court's finding that relocation was in the children's best interests. The circuit court undertook a detailed, multifaceted inquiry examining a variety of factors to conclude that relocation was in the children's best interests. In particular, relocation would allow the children to distance themselves from the parents' toxic relationship. Furthermore, it can be in a child's best interests to relocate with a parent to a different community when the circuit court determines it is in the child's best interests to continue to live with that particular parent even though that parent's circumstances require the parent to move.

(3) Substantial evidence supported a change from joint to sole legal custody in the mother based on the evidence that the parents' relationship was so contentious that they could not function effectively, communicate, or make joint decisions regarding the children, and that the father's negative conduct had a deleterious impact on the children.