2011

Renee Spall-Goldsmith v. William Leroy Goldsmith : Brief of Appellee

Utah Court of Appeals

Olivia D. Uitto; Attorney for Petitioner/Appellee.
Vernon C. Jolley; Attorney for Respondent/Appellant.

IN THE COURT OF APPEALS

STATE OF UTAH

Renee Spall-Goldsmith	
Petitioner/Appellee,	Appellate Case No. 20110628
vs.	District Court Case No. 084300172
WILLARD LEROY GOLDSMITH	Trial Judge: Stephen L. Henriod
	[Judge's Decisions Appealed from:
Respondent/Appellant	Honorable Robert Adkins]

Appeal from the Judgment and Findings of Fact and Conclusions of Law on Bifurcated Decree of Divorce entered June 20, 2009 by the Honorable Robert Adkins

BRIEF OF APPELLEE

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LIST OF PARTIES

1. Renee Spall-Goldsmith, Petitioner/Appellee
2. Willard Leroy Goldsmith IV, Respondent/Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

JURISDICTIONAL STATEMENT

Jurisdiction in the Utah Court of Appeals is proper under Utah Code Ann. 78A-4-103(2)(h) given that the appeal is from a final judgment from the District Court of Utah before the Honorable Stephen L. Henriod. Judge Henriod's ruling was read onto the record. After Judge Henriod's retirement, the parties brought a dispute before the Honorable Judge Robert Adkins for interpretation. Appellant appeals Judge Adkins interpretation.

STATUTORY PROVISIONS

Utah Code Ann. Sec. 78B-12-102(14) states: "Joint physical custody means the child stays with each parent overnight for more than 30% of the year and both parents contribute to the expenses of the child in addition to paying child support."

STATEMENT OF THE CASE

Appellee contends that the trial court was correct in basing child support on the sole custody worksheet because the parties do not meet both elements within the definition of joint physical custody. Appellant contends that because he meets one element of the definition, child support should be based upon joint physical custody worksheet.

STATEMENT OF THE FACTS

After a one day trial before the Honorable Stephen L. Henroid on July 8, 2010, the court awarded sole physical custody to the Appellee, and granted

extended parent time to the Appellant. The Court further ordered that there would be no obligation for the Appellant to pay for any expenses of the minor child beyond child support, excluding work related child care and medical expenses. Furthermore, the Court ordered Appellant to receive a credit for any previously paid extracurricular activities towards his child support obligation. Appellant's attorney was order to prepare the Findings of Fact and Conclusions of Law and the Decree of Divorce. Judge Henriod retired before the dispute over which child support worksheet should be used, and therefore, Judge Adkins ruled after considering the arguments of counsel to base the child support on the sole physical worksheet. Appellant appeals this ruling.

SUMMARY OF THE ARGUMENT

The definition of joint physical custody is based upon two elements: the number of overnights with each parent, and how the parents share the expenses of the child beyond the ordered child support amount. Appellant meets the first part of the definition, however, the second element was directly argued and ruled upon at trial. It was ordered that Appellant did not have to pay for expenses beyond child support. In fact, Appellant would receive a credit towards child support for any extracurricular activities he paid for. This ruling is in direct conflict with the second element of the definition. Given the trial court's ruling in regards to the payment of extracurricular activities, Appellant can't meet the second element of

the definition and therefore the parties do not have a joint physical custody arrangement. The trial court's ruling should be affirmed and the child support should be based upon the sole physical worksheet.

ARGUMENT

The trial court was correct and within its power to deviate from the joint physical custody worksheet given that the Court did not order the Appellant to contribute to the expenses of the child beyond the normal child support obligation. Appellant erroneously relies upon only half of the definition of joint physical custody, and ignores the second part of the definition. Also, the Court was clear in its ruling that the second part of the definition, the payment of additional expenses, was not to be ordered. Therefore, the Court was clear that joint physical custody was not ordered by the Court and therefore, the joint physical custody worksheet should not be used in calculating child support.

Appellant correctly relies upon Utah Code Annotated Sec. 78B-12-102(14), however, Appellant only focus on the first part of the definition. The legislature has defined joint physical custody to depend upon two elements:

1. the child stays with each parent overnight for more than 30% of the year, and
2. both parents contribute to the expenses of the child in addition to paying child support.

Utah Code Ann. 78B-12-102(14). There is no dispute that the first element is satisfied based upon the parent time schedule ordered by Judge Henriod. However, the legislature is clear in that two requirements must be met in order for a custody arrangement to be deemed joint physical custody, and therefore proper use of the joint physical custody worksheet can be used. In the present case, Appellant cannot satisfy the second element.

Clearly in his ruling, Judge Henriod excuses the Appellant from paying any expenses of the child beyond his child support obligation. "Any past payments for things like football or golf that Respondent may have paid may be counted towards child support." R178-185, at Paragraph 21; see also Appellant's Addendum 3: Findings of Fact and Conclusions of Law, paragraph 21. In addition, the Court also stated "Football and golf are wonderful activities and are in the best-interests of the child. Neither parent is ordered to pay for those activity[sic]. Good parents will share these expenses. But there is no court Order to pay these expenses." R178-185, paragraph 7; see also Appellant's Addendum 3: Findings of Fact and Conclusions of Law, paragraph 7, page 2. Given that the minor child's extracurricular activities and the payment of these expenses was an issue in the trial court and the judge specifically dealt with these expenses in the Findings of Fact and Conclusions of Law, this ruling is also indicative of how the parties are to pay for expenses of the child. The Court was clear: outside of child support, there

is no order that Appellant needs to pay these expenses, and furthermore, any of these expenses Appellant paid above and beyond child support, he shall receive a credit or an offset.

Furthermore, besides child support, the legislature has stated that only two other expenses are parents ordered to pay: work related child care expenses and medical expenses. This Court has stated that "[t]his convinces us that had the legislature intended that parents be ordered to pay additional categories of expenses, such as school fees or extracurricular activities, in excess of child support, it would have enacted legislation to that effect. Thus, child-rearing expenses not statutorily distinguished from regular child support should be considered "part and parcel of the child support award." See *Brooks*, 881 P.2d at 959 n.3., *Davis v. Davis*, 2011 UT App 311, ¶17. Therefore, in the present case, the child support award is to incorporate extracurricular activities, and therefore, the Appellant is considered to have paid for these activities with his child support payments. He does not pay of expenses of the child beyond child support, and therefore cannot meet the definition of joint physical custody. Had the Court ordered that Appellant was to share in the extracurricular activities expenses, or had Appellant's reimbursement for these activities been denied, then Appellant could meet both elements of the definition. However, given the Court's orders, the

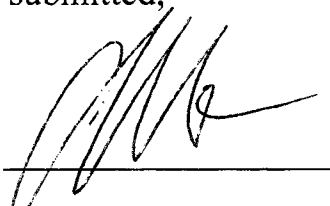
Appellant cannot meet the definition and therefore, use of the sole physical custody child support worksheet would be appropriate and in line with the Court's ruling.

CONCLUSION

Appellant does not meet the definition of joint physical custody and therefore, the sole physical custody worksheet should be used to calculate child support. The trial court's ruling should be affirmed.

Dated: February 23, 2012

Respectfully submitted,



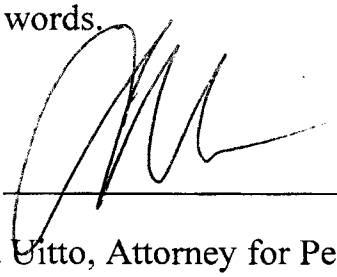
By: _____

Olivia Uitto, Attorney for Petitioner/Appellee

CERTIFICATE OF COMPLIANCE

It is hereby certified that the word counter in Microsoft Word, which this document was prepared with, is 1,376 words.

Dated: February 23, 2012



By: _____

Olivia Uitto, Attorney for Petitioner/Appellee

CERTIFICATE OF SERVICE

I, Olivia D. Uitto, hereby caused a true and correct copy of the foregoing to be delivered to the following via first class mail, this 24 day of ~~January~~ February, 2012

Vernon Jolley
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