

AK Supreme Court Update 2012

Family Law Section

March 5, 2013

McLaren v. McLaren

268 P.3d 323

- Divorce – Property
- Trial court intended to award each spouse approximately half of marital estate. Wife appeals
- Issues on Appeal
 - Characterization
 - Valuation
 - Equitable distribution
- Key Points – Court’s duty to pro se litigant
 - “Requiring the superior court to inform pro se litigants of all the relevant substantive law would put a trial judge in the precarious position of acting as attorney for an unrepresented party, which is exactly what we sought to avoid in Forshee. This is especially true in the present case, where the record shows that even if Teresa did not learn through her own independent research that assets acquired during premarital cohabitation may be included in marital estate, the proceedings alone provided her with ample notice.” (334)
 - “The court did not have a duty to help Teresa obtain her credit records from Darren. We held in Kaiser v. Sakata that when a pro se litigant does not make a good faith effort to obtain discovery or to inform the court of her difficulties in obtaining discovery a trial court is not obligated to assist her in request or moving to compel discovery.” (336)
- Supreme court affirmed trial court’s findings

McLaren v. McLaren

- Justice Christen dissented in part
 - Dissents from portion of court's decision that affirms characterization of Wife's premarital retirement benefit
 - Superior court did not make specific findings as to why Wife's separate property acquired during cohabitation was characterized as marital
 - "We applied this rule to property acquired by one spouse during a period of pre-marital cohabitation in *Murray v. Murray*, where we determined that the superior court must 'assess whether equities require invasion of separate assets under AS 25.24.160(a)(4); and if so ... enter explicit findings to that effect.' The case law is faithful to the plain language of AS 25.24.160(a)(4), which only permits a superior court to invade the property of either spouse acquired before the marriage when the balancing of the equities between the parties requires it." (343)

Wilson v. Wilson

271 P.3d 1098

- Jurisdictional issues
 - Wife left husband in OH and moved to AK with son
 - Wife filed in AK and Husband filed in OH. Parties later agreed that OH had jurisdiction for child custody and property issues
 - Superior court dismissed AK case and Wife appeals – arguing not granting a divorce was in error regardless of litigation in OH
- The superior court found that retaining jurisdiction in AK created a bifurcation across state lines and court not inclined to do so absent good cause.
- Supreme Court found that superior court has authority to stay or dismiss action when the party has an adequate reasonable alternative forum to obtain divorce decree and obtaining a decree in AK may significantly impact child custody/ property division in alternative forum.
 - In this matter the date of divorce was significant due to the parties having at least one deferred compensation account.
 - Wife did not demonstrate on obstacles in obtaining divorce decree in OH and the court's dismissal here did not affect her ability to obtain a decree in OH
- Superior Court's dismissal of action not an abuse of discretion

Hunter v. Conwell

276 P.3d 413

- Modification of Custody
- Factual/ Procedural background
 - Parties were never married but lived together for six years and two children together
 - When the parties separate they lived in separate communities. Father filed complaint for custody and obtained default award of primary physical sole legal custody
 - Two years later mother filed motion to modify based upon allegations of verbal abuses, problematic telephonic visitation, Father's job caused him to be away from home for extended periods, and that Father was "neglecting property parental guidance. Superior Court denied motion due to lack of substantial change in circumstances but instituted schedule telephonic visitation.
 - Mother filed motion to reconsider which included new evidence of issues with telephonic visitation. Superior Court denied motion to reconsider and denied request for custody investigation. Mother appealed.
 - Supreme Court rejected arguments regarding initial custody determination as time barred. Supreme Court reversed superior court's denial of motion for modification and remand for hearing.
 - Supreme court directed that if the allegations were proven at evidentiary hearing a substantial change would have occurred.
- Hearing on Remand
 - Mother did not substantiate allegations of verbal abuse, court was not convinced children had significant behavioral issues and Father demonstrated he was not out of town for significant periods of time.
 - Superior did not find a substantial change had occurred in light of telephonic visitation, yet. Superior court stated that if the situation did not improve over the next year this issue would constitute substantial change in circumstances.

Hunter v. Conwell

- Based upon the record as a whole Superior Court did not abuse its discretion
 - Supreme court reasoned that the issue of telephonic visitation was close but that the superior court's decision was neither clearly erroneous nor an abuse of discretion.
 - Supreme Court referenced another matter in its ruling where telephonic communication was “woefully inadequate”, and the court upheld a superior court's ruling this resulted in a change of circumstances.
 - Supreme court stressed the issue of telephonic visitation is a serious issue in this matter
 - Supreme Court directed Mother to ask the superior court to revisit the issue if telephonic visitation was not occurring as ordered

Heather W. v. Rudy R.

274 P.3d 478

- Custody Modification
 - 50/50 shared custody schedule
 - Father argued recent legal troubles and instability in mother's life resulted in changed circumstances warranting a modification of custody in child's best interests. Superior court granted motion. Mother appeals arguing evidence does not show changed circumstances affected child.
 - Superior Court did not abuse discretion finding changed circumstances and did not assign disproportionate consideration to statutory facts.
 - Unresolved Domestic Violence issue results in remand for determination of whether Father has history of domestic violence, triggering statutory presumption

Villars v. Villars

277 P.3d 763

- Dissolution
 - Parties entered into settlement agreement dividing marital portion husband's military retirement 50/50. Parties dispute if Wife was to receive benefits when Husband retired or when Husband turned 60.
 - Husband retired twelve years earlier than anticipated
- Superior Court did not err in ruling settlement agreement was clear that the parties intended to divide marital portion of husband's military retirement 50/50 when husband retired.
 - Settlement agreement was not ambiguous
 - Benefits from retirement to age 60 are not husband's separate property
- Supreme Court affirmed superior court's order in its entirety.

Berry v. Berry

277 P.3d 771

- Divorce & Custody – Father appeals alleging violation of due process rights and judicial bias. Father also appeals award of attorney fees.
- Due Process Issues
 - Father argues a violation of due process under 14th Amendment. Supreme Court states the due process is opportunity to be heard and right to adequate represent one's interests. "This is satisfied if statutory procedures provide an opportunity to be heard in court at a meaningful time and in a meaningful matter."
- Judicial Bias
 - Party must show the judge formed an opinion from extrajudicial sources. Father provided no evidence that bias occurred and nothing in the record suggests bias by the superior court. Allegations are without merit
- Attorneys Fees
 - Purposes of awarding fees is to level playing field in divorce proceedings. Trial court may increase award if party acted in bad faith or vexatiously. However the court is required to perform two step process
 - 1. Determine appropriate fee award under general rule
 - 2. Then court may increase fee award to account for a party's misconduct.
 - Failure to follow two step process is an abuse of discretion.
 - Reversed attorney fees award and remanded for further proceedings in light of reversal.

Gorton v. Mann

281 P.3d 81

- Child Support – Deduction for child support paid for children from prior marriage
 - Father shared physical custody of two children from prior marriage.
 - Father received shared physical custody of minor child in question in this matter. Custody schedule resulted in 36%/64 % for child support purposes.
 - Mother argued that Father was only able to deduct the amount of child support he actually paid for two older children, not 27% of his income.
 - Superior Court held that Father was only entitled to deduct the amount actually paid for child support. Father filed motion to reconsider, which was denied and now appeals.
- Father argues on appeal that he should not only receive a deduction for child support paid, 90.3(a)(1)(C), but also under 90.3(a)(1)(D) because of the shared custody schedule for his two older children.
 - Supreme Court disagreed with Father’s argument reasoning that 90.3(a)(1)(D) assumes that the child from prior relationship is living with father full time, which would result in no child support being owed. The rule does not contemplate a parent to apply both deductions.
- Father also argues that he is entitled to a 27% deduction to account for direct support he provides when two older children are in his care. This percentage would reflect a combination of the two subsections and total the amount authorized in 90.3(a)(1)(D).
 - The Supreme Court reasoned that a shared custody calculation takes into account the shared expenses for the minor children. Father’s child support “is reduced in consideration of the expenses he incurs while caring for children.”
 - Allowing Father’s deduction at 27% would artificially inflate his deduction for child care by not taking into the other parents contribution to the children’s support.
- Superior Court was correct in only allowing Father to deduct for child support actually paid.

Day v. Williams

285 P.3d 256

- Divorce: Property Division
 - Wife appeals alleging court erred finding she was employable; equities of case don't support 50/50 division; superior court erred including marital funds spent prior to trial.
- Supreme Court vacates and remands property division. Supreme Court cannot determine basis for superior court's decision.
 - Supreme Court unable to determine how superior court came to conclusion that 50/50 division was just and equitable under facts and circumstances of case.
 - Superior Court did not make specific findings as to health insurance costs or expenses
- Error to distribute money spent prior to trial
 - Superior court may not find that Day wasted or dissipated funds and did not use them for normal living expenses. Findings may justify not awarding spousal support but don't warrant recapture of funds.
- Supreme Court remands court's order on reconsideration – Superior court must clarify whether it revalued duplex and consider whether Day can afford to maintain property
 - Superior Court's order not clear on how parties are to divide costs and proceeds of sale if Day cannot maintain property, or to achieve 50/50 division intended by court.
- Superior Court did not err in valuing business
 - Not possible to separate business from associated land and building
 - Record supports court's finding.
- Superior Court did not abuse discretion by awarding attorneys fees to Day
 - Court appropriately based ruling on relative earning powers of parties.

Patrawke v. Liebes

285 P.3d 268

- Joint Legal Custody – obtaining passport if one parent does not consent
- Father wished to obtain passport for daughter to travel internationally. Father filed motion with court. Superior Court denied Father's motion.
 - Daughter attends Japanese immersion school where international travel is encouraged
 - Superior court reasoned that international travel could wait until child has a passport, there was no immediate need require passport. "But it should be remembered that many children go through life perfectly satisfactorily without going to Canada."
- Father appeals. Supreme Court finds that Superior Court abused its discretion
 - Supreme court on appeal reasoned that AK legislature has provided little guidance for a legal test to apply when parents with joint legal custody are in dispute.
 - Even though father was not seeking a custody determination Supreme Court that Superior Court should have accounted for daughter's best interests in this situation.
 - The parties inability to cooperate should not have been the determining factor.
 - Mother failed to present compelling reason for not obtaining a passport, while Father presented opportunities to travel abroad, including exchange through school. Denying motion without any contrary reason harms child's best interests.
 - Issuance of passport in child's best interest.

Jack C. v. Tally C.

284 P.3d 13

- Custody
 - Mother received sole legal primary physical of three children. Superior Court directed father to seek modification in future if certain requirements were met.
 - One year later father filed modification seek joint legal and increased visitation. Based upon Master's report Superior maintained award of sole legal and primary physical to mother but increased father's visitation. Father appeals.
- Superior court did not commit clear or abuse discretion. Remanded for further explanation of summer visitation.
 - Father disagrees with the format of order not content. This does not provide a basis to challenge court's order. Father does not dispute findings themselves but the weight afforded to them.
 - Father argues court incorrectly weighed findings in best interests analysis and reached improper legal conclusions from evidence.
 - An adequate explanation of visitation during summer vacation was not in the record. Supreme court remanded for explanation on this issue alone.

Lewis v. Lewis

285 P.3d 273

- Settlement Conference
 - Parties placed settlement on record. Court recited terms and the parties agreed. Wife then submitted proposed findings to the court that differed. Husband objected. Court accepting findings over objection. Husband appeals.
 - The findings differed in regards to calculating equity in home
- Supreme Court analyzes settlement agreements under contract principles
- principles.
 - Whether a party intends to be bound by an agreement is a factual question determined by looking at " the surrounding facts and circumstances of each case, and is reviewed under the clearly erroneous standard."
 - We will find clear error only when we are "left with a definite and firm conviction that the trial court has made a mistake.
 - Supreme Court holds that the agreement recited by court is not controlling. Even parties intended to be bound by it this results in a division of more than 100% of the equity in the home. Since the parties could not have agreed to be bound by these terms there is no indication of a meeting of the minds.
 - Supreme Court vacated superior court's order and remanded for new property division.