

505 So.2d 556, 12 Fla. L. Weekly 950
(Cite as: 505 So.2d 556)



District Court of Appeal of Florida,
Third District.


Louis BRAGASSA, Appellant,
v.
Brenda BRAGASSA, Appellee.
No. 86-1713.

April 7, 1987.
Rehearing Denied May 12, 1987.

Father moved for change in custody. The Circuit Court, Dade County, Robert P. Kaye, J., overruled master's findings and sustained mother's exceptions to master's report. The father appealed. The District Court of Appeal held that substantial evidence supported master's findings that father had shown substantial change of circumstances and that best interests of children would be served by granting custody to him, and thus, trial court should not have substituted its judgment for that of master.

Reversed.

West Headnotes

[1] Child Custody 76D 553

76D Child Custody
76DIX Modification
76DIX(B) Grounds and Factors
76Dk553 k. Welfare of Child and Material Change in Circumstances. Most Cited Cases
(Formerly 134k303(2))

A party seeking modification of child custody arrangement has burden of proving that there has been a substantial and material change in circumstances since dissolution of marriage and that change of custody would be in best interests of children.

[2] Child Custody 76D 637

76D Child Custody
76DIX Modification
76DIX(C) Proceedings

76DIX(C)2 Evidence

76Dk636 Weight and Sufficiency

76Dk637 k. In General. Most Cited

Cases

(Formerly 134k303(7))

Substantial evidence supported magistrate's findings that father had shown a substantial change of circumstances and that best interests of children would be served by granting custody to him, and thus, trial court should not have substituted its judgment for that of the master.

[3] Child Custody 76D 568


76D Child Custody

76DIX Modification

76DIX(B) Grounds and Factors

76Dk568 k. Parent or Custodian's Relocation of Home. Most Cited Cases
(Formerly 134k303(2))

Fact that mother did not have to receive written permission from father before moving within state with children did not mean that the move could not have constituted a substantial change of circumstances, for purposes of determining whether father was entitled to have custody transferred to him.

[4] Evidence 157 571(1)

157 Evidence

157XII Opinion Evidence


157XII(F) Effect of Opinion Evidence

157k569 Testimony of Experts

157k571 Nature of Subject

157k571(1) k. In General. Most Cited Cases

Master was within his authority in using psychologist's testimony as basis for finding that change of custody from mother to father would be in best interests of children.

[5] Reference 327 99(1)

327 Reference

327III Report and Findings

327k99 Operation and Effect

327k99(1) k. In General. Most Cited Cases

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Once trial court decides to appoint master to hear testimony and make findings of fact, it loses prerogative of substituting its judgment for that of master's.

*557 Maro & Johnstone and James V. Johnstone, Coral Gables, for appellant.

Jeffrey C. Roth, Coral Gables, for appellee.

Before NESBITT, BASKIN and JORGENSEN, JJ.

PER CURIAM.

Brenda and Louis Bragassa were divorced in 1984. Under the parties' settlement agreement, which was incorporated into the final judgment, the wife received primary custody of the parties' two minor children. The husband received extremely liberal visitation privileges. The agreement required Louis's written permission before Brenda could move the children out of the state. Approximately six weeks after the final judgment, Brenda moved with the two children to northern Florida. Louis then moved for a change in custody. The trial court referred the matter to a General Master who heard extensive testimony from thirteen witnesses, including both parties and a court-appointed psychologist. The master found that Louis had shown a substantial change of circumstances and also had shown that the best interests of the children would be served by granting custody to him. The trial court overruled the master's findings and sustained Brenda's exceptions to the master's report. We find that the trial court improperly substituted its judgment for that of the master and reverse.

[1] A party seeking modification of a child custody arrangement has the burden of proving (1) that there has been a substantial and material change in circumstances since the dissolution of the marriage, and (2) that a change of custody would be in the best interests of the children. *Perkins v. McKay*, 460 So.2d 531, 532 (Fla. 2d DCA 1984); *Adams v. Adams*, 385 So.2d 688, 689 (Fla. 3d DCA 1980).

*558 [2][3] From all the evidence adduced at the hearing, the master could find that there was a substantial change in circumstances. The master could properly consider the fact that the children went from a position of living in the same city with their father, who had been granted extremely liberal visitation privileges, to a position of living hundreds of miles away, with little opportunity for visitation. The fact

that Brenda did not have to receive written permission from Louis before moving within the state does not mean that such a move could not constitute a substantial change of circumstances.

[4] In finding that a change in custody would be in the best interests of the children, the master relied upon the testimony of a court-appointed psychologist, Dr. Elenewski. After examining the children, both alone and with each parent, Dr. Elenewski concluded that it would be in the best interests of the children for Louis to be primarily in charge of their care. Dr. Elenewski also testified that the children were more psychologically bonded to Louis than to Brenda. The master was within his authority in using the psychologist's testimony as his basis for finding that the change of custody would be in the best interests of the children.

[5] Once a trial court decides to appoint a master to hear testimony and make findings of fact, it loses the prerogative of substituting its judgment for that of the master's. *Matos v. Matos*, 421 So.2d 180, 184 (Fla. 2d DCA 1982). The court is thereafter bound by the master's factual findings if they are supported by competent evidence. *Dent v. Dent*, 438 So.2d 903, 904 (Fla. 4th DCA 1983), *rev. dismissed*, 461 So.2d 114 (Fla.1984). The master's findings cannot be overturned by the trial court unless the findings are clearly erroneous. *Fodor v. Fodor*, 379 So.2d 466, 468 (Fla. 4th DCA 1980).

The master's findings were supported by competent evidence and were not clearly erroneous. The trial court erred, therefore, in substituting its own judgment for that of the master's.

Reversed.

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