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StreetLaw Case Study
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FAMILY LAW

Does the Boyfriend of a Divorced Woman have Rights to Visit her Children even after her Death?

Harrington v. Daum, 18 P.3d 456 (Or.App. 2001).

FACTS

In November 1995 Ms. Daum divorced her husband Randi Daum and was awarded custody of her 2 sons. The boy's father, Randi was awarded visitation.

In December 1995 Ms. Daum met and began dating Bruce Harrington. By February 1996, they saw each other several times a week. The children were present during these visits. The boys, their mother, and her boyfriend had dinner together almost every evening and spent weekends at Bruce's apartment from the summer of 1996 until August 1997. Bruce turned part of his living room into a play area for the kids, he picked them up from day care, and he took them to church outings for men and boys.

In August 1997 Ms. Daum was killed in an automobile accident. Mr. Daum was awarded custody of the boys. He allowed Bruce to see the boys several times but later denied visitation because he thought Bruce was undermining Mr. Daum's parental authority.

Bruce sued and asked the court to allow him visitation rights under ORS 109.119.

ISSUE

Does Oregon allow visitation rights to the boyfriend of a divorced woman's children even after her death?

HOLDING

Oregon Court of Appeals concluded that the Trial Court erred in awarding visitation rights to Bruce Harrington.

EVENTS AT TRIAL

The trial court found that a parent-child relationship existed between Bruce Harrington and the 2 boys, and that there was an ongoing personal relationship. The court ordered visitation, established a schedule. The court set out conditions to avoid the problems Mr. Daum perceived. (The trial lasted 3 days)

AFTER TRIAL

The father, Mr. Daum appealed the trial court's decision.

ARGUMENTS

The father, Mr. Daum argued that the boyfriend, Bruce did not meet the requirements of the Oregon statute because the statute requires "a relationship that exists or did exist in whole or part...in which relationship a **person having physical custody of a child or residing in the same household** as the child supplied...food, clothing, shelter...provided the child with necessary care, education and discipline."

Ms. Daum had custody of the boys. The boys never "resided" with the boyfriend, Bruce because Ms. Daum had a separate residence. Therefore they were never part of the "same household".

The boyfriend, Bruce argued that the statute says "in-part" and that the boys did live with him "in part" during the weekend visits.

Mr. Daum also argued that the Constitution of the United States (Due Process of the 14th Amendment) gives him the right to object and prohibit the court from granting visitation to the boyfriend.

WHO WON

The father, Mr. Duam won.

EXPALINING THE DECISION

The Appellate Court relied on the US Supreme Court decision, *Troxel v. Granville*. They concluded that under *Troxel*, the parent has the right to make decisions concerning the child's upbringing and that this is a supervening right. This means that the court must give "significant weight to a fit custodial parent's decisions". Because there was no evidence in the record that Mr. Daum was un-fit, his decision to limit Bruce's visitations has to be respected by the court.

APPLICATION

1. Was the court's decision "in the best interest of the children"?
2. How much weight should have been given to the father's wishes?
3. What so you think about the boyfriend's wish to keep in contact w/ the kids?
4. Do you think he should have sued to get visitation?
5. What reaction/feelings might you have if you were these children?
6. This case was a boyfriend but what if it had been the grand-parent's fighting to get visitation?
7. How is that different?
8. Do you think it should matter that Ms. Daum and the boyfriend didn't "share the same household"?
9. What kind of message does it send knowing that if they had moved in together (and remained unmarried), Bruce might have won the case?