

A Parent's Constitutional Right to Custody



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U.S. Constitution

- "Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody and control of their children."
 - *Troxel v. Granville*, 530 US 57 (2000)

Nothing new ...

- This parental interest "is perhaps the oldest of the fundamental liberty interests" recognized by the U.S. Supreme Court
 - *Troxel v. Granville*



Petersen v. Rogers (1994)

- "Absent a finding that parents are unfit or have neglected the welfare of their children, the constitutionally-protected paramount right of parents to custody, care and control of their children must prevail."

Petersen v. Rogers (1994)

- "Parents with lawful custody of a child have the prerogative of determining with whom their children associate."



Price v. Howard (1997)

- When parents enjoy constitutionally-protected status, "application of the 'best interest of the child standard' in a custody dispute with a non-parent would offend the Due Process Clause."

Price v. Howard (1997)

- "A parent's due process interest in the companionship, custody, care and control of a child is not absolute."

Price v. Howard

- Parent's protected interest "is a counterpart of the parental responsibilities the parent has assumed and is based on a presumption that he or she will act in the best interest of the child."



Price v. Howard

- "Therefore, the parent may no longer enjoy a paramount status if his or her conduct is inconsistent with this presumption or if he or she fails to shoulder the responsibilities that are attendant to raising a child."



Price v. Howard

- "Unfitness, neglect, and abandonment clearly constitute conduct inconsistent with the protected status a parent may enjoy. Other types of conduct, which must be viewed on a case-by-case basis, can also rise to this level so as to be inconsistent with the protected status of natural parents."



Unfitness



- *Raynor v. Odom* (1996)
 - Substance abuse, failure to recognize child's developmental problems, left child with grandmother
- *Sharp v. Sharp* (1996)
 - Risk of harm to child when in mother's care, physical and emotional instability of mother, no financial support of child
- *Davis v. McMillian* (2002)
 - Determination of unfitness in earlier proceeding

Inconsistent Conduct

- "any past circumstance or conduct which could impact either the present or the future of the child is relevant."
 - *Speagle v. Seitz*, 354 NC 525(2001)
- Conclusion must be supported by clear and convincing evidence
 - *Adams v. Tessener*, 354 NC 57 (2001)





Inconsistent Conduct

- *Price v. Howard*
 - Voluntary, non-temporary relinquishment of physical custody
- Compare
 - *Penland v. Harris* (no waiver)
 - *Ellison v. Ramos* (enough in pleading)
 - *Grindstaff v. Byers* (enough in pleading)
 - *Perdue v. Fuqua* (not enough in pleading)



Inconsistent Conduct

- *Boseman v. Jarrell* (NC 2010)
 - Creation of parent-like relationship; permanently ceding portion of exclusive authority to another
- Compare
 - *Mason v. Dwinell* (mom intended to waive)
 - *Estroff v. Chatterjee* (mom did not intend to waive)



Inconsistent Conduct

- *Adams v. Tessener*
 - Dad didn't act quickly enough
- *Speagle v. Seitz*
 - Mom's previous "lifestyle and romantic involvements resulted in neglect and separation from minor child"



Inconsistent Conduct



- *Owenby v. Young*
 - DWI convictions not enough
- *McDuffie v. Mitchell*
 - Allegations of "estrangement" and limited visitation not enough


