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.”

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.”

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**Petersen v. Rogers (1994)**

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

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

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."

"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

  - Substance abuse, failure to recognize child's developmental problems, left child with grandmother
  - 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. Dwinnell* (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