



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**ROBERT J. NICAISE, JR. v. APARNA SUNDARAM
CV-18-0089**

PARTIES:

Petitioner: Aparna Sundaram (“Mother”).
Respondent: Robert J. Nicaise, Jr. (“Father”).

FACTS:

Mother and Father, both doctors, are unmarried with one child, born in September 2010 (“Child”). Father’s medical license was revoked in 2012, after which he became a full-time parent while Mother continued to work and earn the majority of the couple’s income. Father suspected Child was developmentally delayed, but Mother disagreed. In August 2014, school district assessments indicated that Child would qualify for special-education services. Immediately thereafter, Mother and Father filed competing actions in Family Court to establish paternity, legal decision-making, parenting time, and child support. The Family Court entered temporary orders, awarding the parents temporary joint decision-making. A year later, because of Father’s own mental health issues, the Family Court awarded Mother sole legal decision-making for medical and dental issues.

On September 30, 2016 and November 15, 2016, the Family Court held evidentiary hearings regarding Father and Mother’s claims. Because Mother and Father engaged in constant and bitter conflict, the Family Court determined that they could not work together. Mother had failed to secure necessary dental treatment for Child’s tooth decay, had facilitated only limited sessions of behavioral health therapy, and did not timely vaccinate Child. Father had acted inappropriately as well, threatening multiple providers, investigating the personal life of Mother’s former counsel, filing a complaint (ultimately dismissed) against Mother with her professional licensing board, and filing so many specious motions that the Superior Court declared him a vexatious litigant. Nevertheless, both parents loved Child, who interacted positively with each parent.

On November 22, 2016, the Family Court entered an order on legal decision-making. It began by noting the difficulty of finding an ideal solution:

A joint legal decision-making arrangement is logistically possible. Nonetheless, this case presents serious and weighty problems, because the parties are virtually unable to co-parent. Nonetheless, awarding sole legal decision-making to either parent portends a likelihood that the other parent will be alienated and cut off from the child. At the same time, awarding joint legal decision-making with final legal decision-making to one or the other parent may also result in unilateral decisions

by the final decision-maker to the detriment of the other parent. The Court is faced with a “Hobson’s Choice” of having to choose one of two or more equally objectionable alternatives, neither or none of which may be in the child’s best interests.

The Family Court therefore awarded joint legal decision-making to the two parents but with specific terms awarding final decision-making on medical issues to Father:

IT IS THEREFORE ORDERED awarding Mother and Father Joint legal decision-making authority regarding [Child] . . . “[J]oint legal decision-making” means both parents share decision-making and neither parent’s rights nor responsibilities are superior except with respect to specified decisions set forth herein.

...

If [Mother and Father] cannot agree after making a good faith effort to reach an agreement, Father shall have the ability to make the final decision as to medical, mental health, dental, and therapy issues.

Mother appealed the award of final decision-making authority on medical decisions to Father. The Court of Appeals issued an opinion holding that decrees awarding joint legal decision making to one parent with final decision-making authority on certain issues must be interpreted as awarding sole legal decision-making on those issues. The Arizona Supreme Court granted Mother’s Petition for Review.

ISSUES:

A. “Whether the Appellate Court Denied Mother, And Countless Other Family Court Litigants, Due Process When It Determined *Sua Sponte* For the First Time on Appeal That Joint Legal Decision-Making with Final Legal Decision-Making in Favor of One Parent Means Sole Legal Decision-Making for That Parent?”

B. “Whether the Appellate Erred by Not Remanding This Matter to The Trial Court When It Held for The First Time in Arizona That Final Legal Decision-Making Really Means Sole Legal Decision-Making?”

C. “Whether the Appellate Court’s New Award to Father of Sole Legal Decision-Making Directly Conflicts with The Trial Court’s Finding That Sole Legal Decision-Making Was Not in The Minor Child’s Best Interests?”

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