

04/04/2016 "See News Release 018 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

NO. 16-CJ-0526

DANIEL THOMAS MARKSBURY

VERSUS

JESSICA MARIE MARKSBURY

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,

FOURTH CIRCUIT, PARISH OF ORLEANS

CRICHTON, J., additionally concurs and assigns reasons:

I concur in the majority's decision to deny the rehearing application in this case for the reasons that follow.

Jessica Marksbury, the non-custodial party in this rule, moved the trial court to allow the parties' eleven-year-old daughter to travel to Mexico for the purpose of attending Jessica's wedding. Daniel Marksbury applied for writs with this Court on March 22, 2016, which fell within a week of the March 30, 2016 departure date, and shortly before a judicial holiday and Easter weekend. Given these circumstances, the majority of this Court felt that there was inadequate time for the consideration of an opposition, but noted that the opposition could be voiced within the expedited rehearing delay. After having considered the rehearing request, my view of this case remains unchanged.

Jessica Marksbury agreed to a consent judgment which designates Daniel Marksbury as the domiciliary parent. The domiciliary parent enjoys "authority to make all decisions affecting the child." La. R.S. 9:335(b)(3). *See also Hodges v. Hodges*, 15-0585 (La. 11/23/15), 181 So. 3d 700. Although La. R.S. 9:335(b)(3) also allows that "[a]ll major decisions made by the domiciliary parent concerning the child shall be subject to review by the court upon motion of the other parent," the same statute provides that "[i]t shall be presumed that all major decisions made

by the domiciliary parent are in the best interest of the child.” It is my view that the trial court failed to afford this presumption the weight it deserved. Furthermore, I also note that child custody proceedings involving the parties’ daughter have been long and contentious, and that Jessica Marksbury has been held in contempt of court twice.

In summary, it is my view that, under the circumstances presented in this troublesome and time-sensitive case, the district court abused its discretion in permitting this child to travel outside of the country. Accordingly, and after having carefully considered the materials submitted by both parties to this Court, I believe that the majority’s decisions to grant the writ and now deny the rehearing request are eminently correct.