

The following overview represents supervised visitation or exchange and domestic violence cases published in the last three years. This overview contains dated information, may not be all-inclusive, and is intended for educational and research purposes only. Although we try to maintain this overview on a regular basis, it is the responsibility of each party receiving this information to verify the cases for accuracy and currency. If you need legal research on an issue involving supervised visitation or exchange and domestic violence or you know of a published case that should be included in this section, please contact Michele Robinson at (800) 527-3223.

### **Case Law on Supervised Visitation or Exchange Issues in Cases Involving Domestic Violence**

*Morris v. Horn*, 219 P. 3d 198 (Alaska 2009): At issue was whether a prior protective order established one incident of domestic violence conclusively. Under Alaska law, a rebuttable presumption that a parent who has committed domestic violence may not be awarded custody is triggered by one serious domestic violence incident or two or more incidents; this presumption also triggers limits on visitation, including supervised visitation. The court held that a prior restraining order does not establish conclusively an act of domestic violence. Therefore, the trial court erred in ordering supervised visitation.

*Parks v. Parks*, 214 P.3d 295 (Alaska 2009): The mother was awarded physical custody of the child, and the father was awarded supervised visitation based on past domestic violence. At issue was that the order allowed for the supervised visitation to change automatically to unsupervised visitation after the father completed a batterer intervention program; however, the father was not required to prove he had completed the program. The court held that it was not in the child's best interest to have unsupervised visitation with the father without requiring the father to prove compliance with the treatment program.

*Saville v. Ude*, 776 N.W. 2d 31 (North Dakota 2009): The mother received a protection order against father for domestic violence. The order limited father's visitation to supervised visits at a visitation center. While the father was incarcerated for an assault he committed in violation of the order, the mother petitioned for and received an extension of the order. The father appealed both the extension and the effect the extension had on his visitation rights. The court held that even though the protection order placed greater restrictions on the father's visitation (supervised rather than unsupervised) than the original divorce decree, the "same violent and turbulent relationship ... that justified extending the protection order prevented the district court from reconciling" the visitation terms to that of the divorce decree.

*Childbert v. Soler*, 77 A.D. 3d 1405 (New York 2010): The appellate court held that even where there is no evidence of a parent directing his anger toward the child, that parent's inability to control his anger may mean that it is in the child's best interest for visitation to be supervised.

*Misyura v. Misyura*, 242 P.3d 1037 (Alaska 2010): After finding the father had a history of committing domestic violence, the trial court awarded the mother sole physical and legal custody. The trial court found that unsupervised visits were in the best interest of the children, but ordered that the mother could arrange supervised visits or require the father to attend a batterer intervention program at her discretion if she felt it necessary to protect the children. The court held this order to be invalid because the trial court could not delegate this authority to the mother.

*Wee v. Eggener*, 225 P. 3d 1120 (Alaska 2010): The trial court found that the father had a history of committing domestic violence, but did not address the statutory presumption against custody in such cases. The appellate court found that when a parent has a “history of domestic violence, [the court] generally can grant the perpetrating parent only supervised visitation.” However, in this case, the trial court found that the father did not pose a threat to the child and granted the father unsupervised visitation. The appellate court affirmed.

*Wolt v. Wolt*, 778 N.W. 2s 786 (North Dakota 2010): The court found the father had engaged in behavior designed to alienate the children from the mother. Although state law creates a rebuttable presumption that a parent who has committed domestic violence may not be awarded custody, the presumption was not triggered in this case. Rather, the court found that visitation may be restricted if it is likely to endanger the child physically or emotionally. Therefore, the court restricted the father to supervised visitation and limited telephone contact.