

## SUMMARY STATEMENT

*Pottenger v. Charlton*

Docket No. 50107-2022

The Idaho Supreme Court vacated the magistrate court's judgment modifying child custody and support and remanded for further proceedings. Russell Pottenger and Audrey Charlton are the parents of two minor children. While the couple was together, the family lived in Riggins. After the couple split, Charlton moved to Boise. Pottenger subsequently filed a petition for paternity, custody, and child support seeking primary custody. The magistrate court ordered the parties to share joint legal and physical custody of the children, in which Pottenger had custody of the children from Monday at noon to Thursday drop off to preschool and Charlton had custody of the children every Thursday after preschool to Monday at noon. The magistrate court also ordered Pottenger to install code compliant windows in every room of his residence, except the utility room, within six months of the date of entry of the judgment.

Charlton later filed a motion to modify custody requesting primary physical custody based in part on Pottenger's failure to comply with the window installation provision of the original custody judgment. Pottenger's answer to the motion also requested primary physical custody.

The magistrate court granted Pottenger's request and gave Pottenger primary physical custody of the children after determining that changes in the parties' work schedules constituted a material, substantial, and permanent change in circumstances that warranted modification of the original custody judgment. It also determined that it was not in the best interests of the children to require them to travel six hours each week during the school year, have no weekends with their father during the school year, and only be with Pottenger for the first and last week of summer. The magistrate court ordered Charlton to have custody of the children on alternating weekends during the school year and ordered that each party would have custody of the children for one-half of the children's summer vacation. The magistrate court's modification order did not address the window installation provision from the original custody judgment.

Charlton appealed the magistrate court's modification order, and argued that the magistrate court abused its discretion in denying her request for primary custody by ignoring the fact that Pottenger failed to comply with the window installation provision in the original custody judgment.

The Idaho Supreme Court vacated the magistrate court's judgment after determining that the magistrate court erred when it failed to address Charlton's primary ground for modification—Pottenger's failure to comply with the window installation provision. The Court explained that the magistrate court needed to assess whether the failure to comply with the window installation provision constitutes a substantial and material change in circumstances that affects the best interests of the children. Because the magistrate court failed to do this, the Court vacated the magistrate court's judgment modifying custody and remanded for further proceedings.

\*\*\*This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.\*\*\*