

## *Nicaise v. Sundaram*

**Citation:** Nicaise v. Sundaram, No. CV-18-0089-PR, 2019 WL 237534 (Ariz. Jan. 17, 2019).

**Date Filed:** January 17, 2019

**Opinion's Author:** Justice Bolick

**Joined By:** Chief Justice Bales, Vice Chief Justice Brutinel, and Justices Pelander, Timmer, Gould, and Lopez joined.

*Practitioners: For quick reference, please see the "Issue" and "Holding" sections.*

**Facts:** In September 2010, a child was born to Aparna Sundaram (Mother) and Robert J. Nicaise Jr. (Father). During the first few years of the child's life, Nicaise and Sundaram disagreed over the child's possible development disorder and qualified autism diagnosis.<sup>1</sup> In September 2014, both parties filed competing actions (later consolidated) to establish paternity, legal decision making, parenting time, and child support.<sup>2</sup> Over the next two years, Nicaise and Sundaram continued to fight over custody of the child. In late 2016, the superior court held an evidentiary hearing concerning legal decision making. In its fifty-eight-page ruling, the court recounted the numerous allegations of domestic violence, child abuse, and medical neglect of the child.<sup>3</sup> The superior court found that it was in the child's best interests to award joint legal decision making to Nicaise and Sundaram.<sup>4</sup>

**Procedural History:** This case is before the Arizona Supreme Court. The superior court ordered that when parental decisions arise, "each parent shall give good faith consideration to the views of the other and put forth best efforts to reach a consensus decision. . . If they cannot agree after making a good faith effort to reach an agreement, [Nicaise] shall have the ability to make the final decision" over medical, mental health, dental, and therapy issues of the child.<sup>5</sup> Upon review however, the Arizona Court of Appeals determined that by giving Nicaise final legal decision-making authority over these issues, the superior court "effectively create[d] orders for sole legal decision-making, carved out from a general order for joint legal decision-making."<sup>6</sup> Construing section 25-401(2) of the Arizona Revised Statutes, the court of appeals found that "[a]n award of joint legal decision-making that gives final authority to one parent is, in reality, an award of sole legal decision-making."<sup>7</sup> Sundaram petitioned the Arizona Supreme Court for review of this ruling.

**Issue:** Does a family court's award of joint legal decision-making that gives one parent final legal decision-making authority over certain matters necessarily give that parent sole legal decision-making authority?

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<sup>1</sup> Nicaise v. Sundaram, 418 P.3d 1045, 1048 (Ariz. 2018).

<sup>2</sup> *Id.*

<sup>3</sup> Nicaise v. Sundaram, No. CV-18-0089-PR, 2019 WL 237534 at \*1 (Ariz. Jan. 17, 2019).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Nicaise v. Sundaram, 418 P.3d 1045, 1051 (Ariz. 2018).

<sup>7</sup> *Id.*

**Holding:** No, the court of appeals erred as a matter of law in equating final legal decision-making authority over certain matters as an award of sole legal decision-making authority.

**Disposition:** The first sentence of ¶ 1, the entirety of ¶¶ 17–19, the second and third sentences of ¶ 31, and the second sentence of ¶ 35 of the court of appeals’ opinion are vacated. The court also disapproves of any language in ¶¶ 20–25 that suggests that the superior court awarded sole legal decision-making authority to Nicaise.

**Rule:** Final legal decision-making and sole legal decision-making have different meanings in the context of section 25-401.

**Reasoning:**

- **Distinction between subsection (2) and subsection (6).** Section 25-401(2) provides that joint legal decision-making “means both parents share decision-making and *neither parents’ rights or responsibilities are superior except with respect to specified decisions* as set forth . . . in the final judgment or order.”<sup>8</sup> Section 25-401(6) defines sole legal decision-making as “one parent has the legal right and responsibility to make major decisions for the child.”<sup>9</sup> The Arizona Supreme Court summarized the court of appeals conclusions as “the family court is only authorized to order joint legal decision-making or sole legal decision-making; it cannot . . . order joint legal decision-making with one parent having final authority if they cannot agree to a decision.”<sup>10</sup> The Supreme Court however interprets section 25-401(2) as one parent’s joint legal decision-making authority is superior in some circumstances, but the parents retain joint legal-decision making authority; the other parent is not granted sole legal decision-making authority under section 25-401(6).<sup>11</sup> The court reasoned that the legislature placed subsection (2) and subsection (6) separately because they were meant to be distinct.<sup>12</sup> The court further reasoned that if subsection (2) were transformed into an award of sole legal decision-making, this would make subsection (6) “surplusage.”<sup>13</sup>
- **Distinction as a Practicality.** Additionally, the Court reasoned that joint legal decision-making with final decision-making authority and sole legal decision-making authority are different as a practical matter.<sup>14</sup> Awarding joint legal-decision making authority with final decision-making authority over certain matters to one parent creates shared legal decision-making with the possibility that one parent will exercise a superior right if there is no agreement reached. Comparatively, an award of sole legal decision-making creates unshared authority to only one parent.<sup>15</sup>

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<sup>8</sup> *Nicaise*, 2019 WL 237534, at \*2 (emphasis in original).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at \*3.

<sup>15</sup> *Id.*

- **Preservation of Authority for Other Parent.** Finally, the court reasoned that subsection (2) of section 25-401 preserves some legal authority for the parent who does not have final legal decision-making authority. The definition of “legal decision-making” under section 25-401(3) includes the “legal right” to make nonemergency legal decisions for the child.<sup>16</sup> The court found that a parent who does not have final legal decision-making authority under subsection (2) would still maintain the legal right to “establish a bank account for the child, take the child to a doctor, and exercise other nonemergency legal authority,” subject to consultation and the other parent’s approval.<sup>17</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*