

SUPREME COURT OF NORTH DAKOTA

Votava v. Votava

2015 ND 171 (2015) · No. 20140460 · Decided July 1, 2015

SUMMARY

The North Dakota Supreme Court affirmed the denial of a contempt request against a parent alleged to have interfered with scheduled parenting time. The court held that the district court did not abuse its discretion in finding no willful and inexcusable violation of the parenting order. However, it reversed the modification of parenting time because the modification was made without a motion, adequate notice, or a fair opportunity to be heard.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Lisa Fair McEvers, Justice; Lisa Fair McEvers; Daniel J. Crothers; Dale V. Sandstrom; Carol Ronning Kapsner; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	July 1, 2015
DOCKET	20140460
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Andrew Votava appealed from a district court order denying his request to hold Kelly Votava in contempt and modifying his parenting time.
STANDARD OF REVIEW	The decision whether to hold a person in contempt is reviewed for clear abuse of discretion. A district court abuses its discretion when it acts arbitrarily, unreasonably, or unconscionably, or misinterprets or misapplies the law.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Andrew Charles Votava v. Kelly Marie Votava

TOPICS

- visitation
- contempt
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

family law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by refusing to hold Kelly Votava in contempt for alleged violations of the parenting-time order.
2. Whether the district court could modify Andrew Votava's parenting time during a contempt proceeding without a motion to modify, adequate notice, and a fair opportunity to be heard.

HOLDINGS

1. The district court did not abuse its discretion in refusing to hold Kelly Votava in contempt because the record supported the finding that she did not intentionally or willfully violate the parenting-time order.
2. The district court exceeded the scope of the contempt motion by modifying Andrew Votava's parenting time without a motion to modify, adequate notice, or a fair opportunity to be heard.

KEY QUOTATIONS

“to comport with due process, a fair hearing requires reasonable notice or opportunity to know of the claims of opposing parties, along with the opportunity to rebut those claims.” (¶ 14)

“We conclude the district court exceeded the scope of the contempt motion by modifying Andrew Votava’s parenting time.” (¶ 16)

FACTUAL BACKGROUND

Andrew and Kelly Votava were divorced in 2009, and Andrew was awarded regular weekend, weekday, holiday, and summer parenting time with the parties' two children. Andrew alleged Kelly denied several scheduled visits and sought an order to show cause and contempt sanctions. At the contempt hearing, the children testified they did not want to spend time with Andrew, while Kelly testified that she encouraged visitation but the children refused. The district court denied contempt but eliminated or substantially conditioned Andrew's ordered parenting time.

PROCEDURAL HISTORY

The parties were divorced in 2009, with Kelly Votava receiving primary residential responsibility and Andrew Votava receiving parenting time. After Andrew sought contempt sanctions based on alleged denials of scheduled parenting time, the district court held a contempt hearing, denied the contempt request, and modified Andrew's parenting time without a motion to modify or notice that modification was under consideration. Andrew appealed, and the North Dakota Supreme Court affirmed the contempt ruling but reversed the parenting-time modification.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The portion of the district court's order modifying Andrew Votava's parenting time was reversed. The contempt ruling was affirmed. The opinion does not state additional specific remand instructions.

CASES CITED

- Rath v. Rath, 2014 ND 171, ¶¶ 6, 10, 13-15, 852 N.W.2d 377
- Lind v. Lind, 2014 ND 70, ¶¶ 12, 14, 844 N.W.2d 907
- Hoverson v. Hoverson, 2015 ND 38, ¶ 12, 859 N.W.2d 390
- Prchal v. Prchal, 2011 ND 62, ¶ 11, 795 N.W.2d 693
- Harris v. Harris, 2010 ND 45, ¶ 10, 779 N.W.2d 642
- Loll v. Loll, 1997 ND 51, ¶¶ 15-16, 561 N.W.2d 625
- Milligan v. Milligan, 149 So. 3d 623, 628 (Ala. Civ. App. 2014)