

SUPREME COURT OF NORTH DAKOTA

Vormestrand v. Craig

2026 ND 69 · No. No. 20250278 · Decided March 26, 2026

SUMMARY

The North Dakota Supreme Court affirmed an amended judgment awarding Dwayne Vormestrand primary residential responsibility for the parties’ minor child and an order denying Khilyn Craig’s motion for a new trial or reconsideration. The court held that, although the district court misinterpreted the domestic-violence best-interests factor, the error was harmless because the court did not find credible evidence of domestic violence. The court also rejected Craig’s claims concerning other best-interests factors, her self-represented status, use of notes while testifying, the automatic modification provision, and surprise arising from her relocation to Texas.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Lisa Fair McEvers, Chief Justice; Jerod E. Tufte; Jon J. Jensen; Douglas A. Bahr; Mark A. Friesen
JURISDICTION	Supreme Court of North Dakota
DECIDED	March 26, 2026
DOCKET	No. 20250278
DISPOSITION	affirmed
PROCEDURAL POSTURE	Khilyn Craig appealed from an amended judgment awarding Dwayne Vormestrand primary residential responsibility for their minor child and from an order denying her motion for a new trial or, alternatively, reconsideration.
STANDARD OF REVIEW	A district court's decision on a motion for a new trial is reviewed for abuse of discretion. An abuse of discretion occurs when the court acts arbitrarily, unconscionably, or unreasonably, when its decision is not the product of a rational mental process leading to a reasoned determination, or when it misapplies or misinterprets the law. The burden is on the party seeking relief to affirmatively establish abuse of discretion. Findings concerning residential responsibility are reviewed under the clearly erroneous standard, and the evidence is viewed in the light most favorable to the trial court's findings; the appellate court does not reweigh evidence or reassess credibility.

PRECEDENTIAL VALUE	Published and precedential North Dakota Supreme Court opinion.
PARTIES	Khilyn Craig v. Dwayne Vormestrand

TOPICS

child custody relocation motion for new trial appellate procedure evidence

PRACTICE AREAS

family law appellate procedure evidence civil procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion in denying Craig's motion for a new trial based on insufficient evidence or a decision against the law under N.D.R.Civ.P. 59(b)(6), particularly concerning best-interests factors (j) and (e).
2. Whether the district court abused its discretion in denying a new trial based on alleged irregularities in the proceedings, including requiring Craig to testify without notes and declining to provide special assistance to her as a self-represented litigant and alleged domestic-violence survivor.
3. Whether the district court was required to decide the validity of the automatic modification provision before determining residential responsibility.
4. Whether Craig was entitled to a new trial based on accident or surprise under N.D.R.Civ.P. 59(b)(3) because the court considered her relocation while related motions were pending.
5. Whether Craig's unbriefed arguments for reconsideration under N.D.R.Civ.P. 60(b) were waived.

HOLDINGS

1. A motion for a new trial under N.D.R.Civ.P. 59(b)(6) is committed to the district court's sound discretion, and the appellate court reviews the denial only for abuse of discretion.
2. Even when evidence of domestic violence is insufficient to trigger the rebuttable presumption against awarding residential responsibility to the perpetrating parent, credible evidence of domestic violence must still be considered as a best-interests factor.
3. The district court did not abuse its discretion in finding that factor (e), concerning each parent's willingness and ability to facilitate the child's relationship with the other parent, favored Vormestrand.
4. A district court does not abuse its discretion by requiring a witness to testify from memory without notes when the witness does not establish a need to use the notes to refresh recollection.
5. Self-represented litigants are held to the same procedural rules as represented litigants and are not entitled to relaxed judicial standards, special treatment, or greater judicial assistance.
6. When a dispositive motion fully resolves all pending claims, the district court need not address other pending motions rendered moot by that final disposition, regardless of when those motions were filed.

7. A party is not entitled to a new trial for accident or surprise when the party knew the relevant motions were pending and the challenged ruling was based on evidence and circumstances foreseeable from the proceedings.
8. Arguments under N.D.R.Civ.P. 60(b) that are not presented on appeal are waived.

KEY QUOTATIONS

“Evidence of domestic violence insufficient to trigger the rebuttable presumption is nonetheless relevant, “must still be considered as one of the factors in deciding primary residential responsibility, and when credible evidence of domestic violence exists[,] it dominates the hierarchy of factors to be considered when determining the best interests of the child.”” (¶ 15)

“Self-represented litigants are held to the same procedural rules as litigants represented by counsel.” (¶ 28)

“When a dispositive motion fully resolves all pending claims, the district court need not address other pending motions that are rendered moot by that final disposition, regardless of when those motions were filed.” (¶ 31)

FACTUAL BACKGROUND

In 2022, Craig and Vormestrand stipulated to equal residential responsibility and parenting time for their minor child, with a judgment provision contemplating Craig's primary residential responsibility and possible relocation when the child reached school age. The parties repeatedly failed to comply with parenting-time provisions, and both later sought modifications concerning residential responsibility and related issues. Craig relocated with the child to Texas in July 2024 while the motions to relocate and modify residential responsibility remained pending. After a December 2024 hearing, the district court awarded Vormestrand primary residential responsibility, relying in part on Craig's relocation, withholding of the child, limitations on contact, and failure to provide information about the child's residence and services.

PROCEDURAL HISTORY

The parties initially stipulated to equal residential responsibility, subject to an automatic modification provision concerning the child's school age and Craig's possible relocation. After both parties filed motions concerning residential responsibility, relocation, parenting time, travel, child support, and enforcement, Craig relocated to Texas before the district court ruled. Following a December 2024 evidentiary hearing, the district court entered an amended judgment awarding Vormestrand primary residential responsibility and later denied Craig's Rule 59 motion and alternative motion for reconsideration. The Supreme Court of North Dakota affirmed both the amended judgment and the order denying posttrial relief.

DISPOSITION

affirmed

CASES CITED

- Zander v. Morsette, 2024 ND 80, ¶ 7, 6 N.W.3d 623

- *Rentz v. BNSF Ry. Co.*, 2020 ND 254, ¶ 12, 952 N.W.2d 47
- *Grinaker v. Grinaker*, 553 N.W.2d 204, 207 (N.D. 1996)
- *Wanttaja v. Wanttaja*, 2016 ND 14, ¶ 11, 873 N.W.2d 911
- *Travelers Cas. Ins. Co. v. Williams Co. Constr.*, 2014 ND 160, ¶ 22, 851 N.W.2d 164
- *Rummel v. Rummel*, 234 N.W.2d 848, 852-53 (N.D. 1975)
- *Korynta v. Korynta*, 2006 ND 17, ¶ 7, 708 N.W.2d 895
- *Dieterle v. Dieterle*, 2013 ND 71, ¶ 6, 830 N.W.2d 571
- *Norberg v. Norberg*, 2014 ND 90, ¶ 10, 845 N.W.2d 348
- *Topolski v. Topolski*, 2014 ND 68, ¶ 16, 844 N.W.2d 875
- *Law v. Whittet*, 2014 ND 69, ¶ 17, 844 N.W.2d 885
- *Carlson v. Carlson*, 2020 ND 36, ¶ 10, 938 N.W.2d 413
- *Grasser v. Grasser*, 2018 ND 85, ¶ 23, 909 N.W.2d 99
- *Zuraff v. Reiger*, 2018 ND 143, ¶ 23, 911 N.W.2d 887
- *Gould v. Miller*, 488 N.W.2d 42, 44 (N.D. 1992)
- *Cendak Agri-Serv., Inc. v. Hausman*, 275 N.W.2d 326, 329 (N.D. 1979)
- *Hoge v. Hoge*, 281 N.W.2d 557, 562 (N.D. 1979)
- *Cmtty. Homes of Bismarck, Inc. v. Main*, 2011 ND 27, ¶ 11, 794 N.W.2d 204
- *Harfield v. Tate*, 2004 ND 45, ¶ 18, 675 N.W.2d 155
- *Desert Partners IV, L.P. v. Benson*, 2014 ND 192, ¶ 14, 855 N.W.2d 608
- *Rosendahl v. Rosendahl*, 470 N.W.2d 230, 231 (N.D. 1991)
- *State v. Hilgers*, 2004 ND 160, ¶ 19, 685 N.W.2d 109
- *Hildebrand v. Stolz*, 2016 ND 225, ¶ 7, 888 N.W.2d 197
- *State v. Falos*, 431 N.W.2d 154, 155 (N.D. 1988)
- *Bravera Bank v. Craft*, 2023 ND 214, ¶ 13, 997 N.W.2d 829
- *Avery v. Boysen*, 2020 ND 131, ¶ 12, 945 N.W.2d 314
- *Motter v. Traill Rural Water Dist.*, 2017 ND 267, ¶¶ 4, 7, 903 N.W.2d 725