

SUPREME COURT OF NORTH DAKOTA

Schurmann v. Schurmann

2016 ND 69 (2016) · No. 20150206 · Decided March 15, 2016

SUMMARY

The North Dakota Supreme Court affirmed the modification of the parties’ parenting-time arrangement, holding that domestic-violence evidence did not create a visitation presumption under the current statute and that the district court’s findings were not clearly erroneous. The court reversed and remanded the child-support determination because the district court relied on income information it had found unreliable and failed to properly apply the child-support guidelines. The court permitted additional evidence on remand for recalculation of support.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Sandstrom, Justice; Dale V. Sandstrom; Daniel J. Crothers; Lisa Fair McEvers; Carol Ronning Kapsner; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	March 15, 2016
DOCKET	20150206
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Patricia Heidt appealed a district court order modifying parenting time and reducing Ralf Schurmann's child-support obligation after the court found a material change in circumstances.
STANDARD OF REVIEW	Parenting-time decisions are findings of fact reviewed for clear error. Child-support determinations involve de novo review of legal questions, clear-error review of factual findings, and abuse-of-discretion review in limited areas.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Patricia Lynn Schurmann, n/k/a Patricia Lynn Heidt v. Ralf Stefan Schurmann

TOPICS

- child support
- child custody
- domestic violence
- statutory interpretation
- standard of review

PRACTICE AREAS

family law

child custody

child support

domestic violence

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court properly modified Schurmann's parenting time despite evidence of his prior domestic violence.
2. Whether the district court was required to give controlling weight to recommendations made by a child psychologist when the original parenting arrangement was stipulated.
3. Whether the district court properly calculated and reduced child support when it found Schurmann's income information unreliable and included a gift as in-kind income.

HOLDINGS

1. After primary residential responsibility has initially been awarded, parenting-time modifications are governed by N.D.C.C. § 14-05-22(2), not by the domestic-violence presumption applicable to an initial award of residential responsibility under N.D.C.C. § 14-09-06.2(1)(j). A parenting-time restriction requires a preponderance-of-the-evidence showing that unrestricted parenting time is likely to endanger the child's physical or emotional health.
2. A move by a parent, remarriage, impracticality of the existing parenting plan, and conflict or lack of agreement concerning the plan may constitute a material change in circumstances warranting modification of parenting time when modification is in the children's best interests.
3. A district court is not required to rely on recommendations made by a child psychologist at the time of the parties' original stipulation when no expert testimony established that the recommendations remain pertinent after material circumstances have changed.
4. A district court errs as a matter of law when it reduces child support based on income information it has found to be inaccurate, incomplete, or evasive. An obligor who fails to provide reliable income information does not satisfy the burden required to obtain a modification, and income must be imputed under the applicable guidelines.

KEY QUOTATIONS

“Any prior opinions that fail to recognize this amendment no longer apply in the context of parenting time.”
(¶ 11)

“To hold otherwise would give Schurmann the benefit of using incomplete, inaccurate, and evasive information to reduce a child support amount to which he himself had originally stipulated.” (¶ 20)

FACTUAL BACKGROUND

The parties have three children and were divorced in 2013 under a stipulated arrangement that gave Heidt primary residential responsibility, gave Schurmann limited parenting time, and required Schurmann to pay \$1,600 per month in child support. After the divorce, Schurmann remained in Arizona, Heidt and the children moved from Grand Forks to Grafton, and both parties remarried. The district court found that these changes and

the impracticality of the existing parenting schedule justified increased parenting time, but it reduced child support using tax-return information that it also found incomplete, inaccurate, and evasive.

PROCEDURAL HISTORY

The parties divorced in January 2013 pursuant to a stipulated parenting and support arrangement. In January 2015, Schurmann moved to modify parenting time and child support, alleging that the existing plan was impractical and that circumstances had materially changed. The district court increased his parenting time and reduced his monthly child support from \$1,600 to \$1,144. Heidt appealed; the North Dakota Supreme Court affirmed the parenting-time modification but reversed and remanded the child-support determination.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Recalculate child support in compliance with the child-support guidelines; the district court may take additional evidence. The parenting-time order remains affirmed.

CASES CITED

- Capes v. Capes, 2015 ND 254, 870 N.W.2d 448
- Simburger v. Simburger, 2005 ND 139, 701 N.W.2d 880
- Wigginton v. Wigginton, 2005 ND 31, 692 N.W.2d 108
- Berg v. Berg, 2000 ND 36, 606 N.W.2d 895
- Paulson v. Paulson, 2005 ND 72, 694 N.W.2d 681
- Jensen v. Jensen, 2013 ND 144, 835 N.W.2d 819
- Glass v. Glass, 2011 ND 145, 800 N.W.2d 691
- Hoverson v. Hoverson, 2015 ND 38, 859 N.W.2d 390
- Buchholz v. Buchholz, 1999 ND 36, 590 N.W.2d 215
- Oien v. Oien, 2005 ND 205, 706 N.W.2d 81
- Verhey v. McKenzie, 2009 ND 35, 763 N.W.2d 113
- Machart v. Machart, 2009 ND 208, 776 N.W.2d 795
- Torgerson v. Torgerson, 2003 ND 150, 669 N.W.2d 98
- Devine v. Hennessee, 2014 ND 122, 848 N.W.2d 679
- Cook v. Eggers, 1999 ND 97, 593 N.W.2d 781
- State ex rel. K.B. v. Bauer, 2009 ND 45, 763 N.W.2d 462