

NORTH DAKOTA SUPREME COURT

Berger v. Hernandez

686 N.W.2d 107 (N.D. 2004) · Decided August 31, 2004

SUMMARY

The North Dakota Supreme Court affirmed a corrected amended judgment requiring an incarcerated father to reimburse the North Dakota Department of Human Services for child support and pay at least \$168 per month. The court held that income may be imputed to an incarcerated child-support obligor and that North Dakota’s child-support guidelines create a rebuttable, not irrebuttable, presumption of the correct support amount.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Neumann, Justice; Gerald W. Vande Walle, C.J.; Mary Muehlen Maring, J.; Dale V. Sandstrom, J.; Carol Ronning Kapsner, J.; Neumann, J.
JURISDICTION	North Dakota
DECIDED	August 31, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hernandez appealed a second amended judgment imposing a child-support reimbursement obligation and monthly payment obligation.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Mario Hernandez v. Grand Forks Regional Child Support Unit, North Dakota Department of Human Services

TOPICS

- child support
- family law procedure
- statutory interpretation
- supremacy clause
- appellate procedure

PRACTICE AREAS

- family law
- child support
- statutory interpretation
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether North Dakota's child-support statutes and administrative guidelines authorize imputing income to an incarcerated child-support obligor.

2. Whether imputed income and the guideline calculation created an unconstitutional or federally preempted irrebuttable minimum child-support obligation.
3. Whether Hernandez rebutted the presumption that the guideline amount was the correct amount of child support.

HOLDINGS

1. North Dakota law authorizes imputation of income to an incarcerated child-support obligor who has no other income, and incarceration does not by itself excuse the obligor from child-support obligations.
2. The North Dakota child-support guidelines do not create an irrebuttable minimum payment; the guideline amount is presumptively correct but may be rebutted by a showing that applying the guidelines would be unjust or inappropriate.
3. Hernandez failed to rebut the presumption that the guideline amount was the correct amount of child support because he presented no evidence concerning his ability to pay or other resources.

KEY QUOTATIONS

“An obligor’s ability to pay child support is not solely determinable from actual income.” (686 N.W.2d at 108)

“Hernandez did not meet his burden to overcome the presumption that the child support guideline amount was the correct amount of child support.” (686 N.W.2d at 110)

FACTUAL BACKGROUND

Hernandez was the father of a child born in 1991, and the child was frequently cared for in foster homes. Hernandez's parental rights were terminated on May 29, 2002. The Child Support Unit sought reimbursement for support provided from November 2000 through April 2003 and a monthly payment of at least \$168, based on imputed minimum-wage income while Hernandez was incarcerated. Hernandez's affidavit opposing the motion did not address his ability to pay or provide evidence rebutting the guideline amount.

PROCEDURAL HISTORY

The Grand Forks Regional Child Support Unit moved to amend an amended judgment to require Hernandez to reimburse the North Dakota Department of Human Services for support provided for his child and to pay at least \$168 per month. The trial court granted the motion, recognizing imputed minimum-wage income and limiting the reimbursement period to the period before termination of Hernandez's parental rights. Hernandez appealed. While the appeal was pending, the judgment was corrected with his consent to reduce the reimbursement amount from \$5,040 to \$3,192.

DISPOSITION

affirmed

CASES CITED

- Nelson v. Nelson, 547 N.W.2d 741, 744-45 (N.D. 1996)
- Surerus v. Matuska, 548 N.W.2d 384, 389 (N.D. 1996)
- St. Claire v. St. Claire, 2004 ND 39, ¶ 9, 675 N.W.2d 175
- Ramsey County Soc. Serv. Bd. v. Kamara, 2002 ND 192, ¶ 9, 653 N.W.2d 693
- In re Marriage of Rottscheit, 262 Wis. 2d 292, 664 N.W.2d 525, 533-35 (Wis. 2003)
- Interest of M.M., 980 S.W.2d 699 (Tex. App. 1998)
- Reyes, 946 S.W.2d at 630
- In re Marriage of Gilbert, 88 Wash. App. 362, 945 P.2d 238, 241-42, 244 (1997)
- Rose ex rel. Clancy v. Moody, 83 N.Y.2d 65, 607 N.Y.S.2d 906, 629 N.E.2d 378, 380 (1993)

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