

SUPREME COURT OF NORTH DAKOTA

In the Interest of the Guardianship of D.M.H.

2023 ND 148 · No. No. 20230028 · Decided August 2, 2023

SUMMARY

The North Dakota Supreme Court affirmed an order reappointing the paternal grandparents as guardians of D.M.H. and adopting a prior parental visitation schedule. The court held that the juvenile court did not clearly err because the schedule had been lawfully established, used for four years, and the appellant identified no law requiring its amendment or evidence that a different schedule would benefit the child.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Daniel J. Crothers, Justice; Jon J. Jensen, Chief Justice; Daniel J. Crothers; Lisa Fair McEvers; Jerod E. Tufte; Douglas A. Bahr
JURISDICTION	North Dakota
DECIDED	August 2, 2023
DOCKET	No. 20230028
DISPOSITION	affirmed
PROCEDURAL POSTURE	S.L.S., the biological mother of D.M.H., appealed a juvenile court order reappointing J.H.T. and L.H.T. as guardians and adopting a prior visitation schedule as the current schedule.
STANDARD OF REVIEW	A juvenile court's decision on visitation or parenting time is a finding of fact reviewed under the clearly erroneous standard. A finding is clearly erroneous if it is induced by an erroneous view of the law, unsupported by evidence, or leaves the reviewing court with a definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	S.L.S. v. J.H.T., L.H.T.

TOPICS

- guardianships
- visitation
- standard of review
- appellate procedure

PRACTICE AREAS

guardianships

family law

QUESTIONS PRESENTED

1. Whether the juvenile court erred by adopting the prior visitation schedule as the current visitation schedule after reappointing the guardians.

HOLDINGS

1. The juvenile court did not err by adopting the prior visitation schedule because S.L.S. identified no statute or case requiring that a visitation schedule be updated or changed at a particular time, identified no law prohibiting adoption of a prior schedule, and did not argue or present evidence that a different schedule would benefit D.M.H.

KEY QUOTATIONS

““A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support the finding, or if, on the entire record, we are left with a definite and firm conviction a mistake has been made.”” (¶ 5)

“Absent such a law and absent any argument a different visitation schedule would be beneficial to D.M.H., the court did not err by adopting the prior visitation schedule.” (¶ 7)

FACTUAL BACKGROUND

D.M.H. was removed from S.L.S.'s care in 2014, and his paternal grandparents, J.H.T. and L.H.T., became his guardians in 2018. After a prior appeal, the juvenile court created a visitation schedule in 2019, including telephone calls twice weekly and provisions for supervised and later unsupervised in-person visits. The schedule was used for approximately four years, but S.L.S. lived in Iowa and had no in-person contact with D.M.H. since 2014. At the later hearing, she complained generally about missed telephone visits but did not propose specific amendments or present evidence supporting a change.

PROCEDURAL HISTORY

D.M.H. was removed from S.L.S.'s care in 2014, and J.H.T. and L.H.T. were appointed guardians in 2018. The North Dakota Supreme Court previously reversed and remanded because the juvenile court had not established a parental visitation schedule. On remand, the juvenile court established a schedule in 2019. Following a 2022 review hearing and additional hearing requested by S.L.S., the juvenile court removed a guardians' discretion provision and adopted the prior schedule. S.L.S. timely appealed, and the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Interest of D.M.H., 2019 ND 88, 924 N.W.2d 789
- In re Guardianship of B.K.J., 2015 ND 191, ¶ 4, 867 N.W.2d 345
- Eberle v. Eberle, 2010 ND 107, ¶¶ 16, 24, 783 N.W.2d 254

OPINION

Interest of D.M.H. 2023 ND 148

PER CURIAM.

FILED

IN THE OFFICE OF THE

CLERK OF SUPREME COURT

AUGUST 2, 2023

STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

2023 ND 148 In the Interest of the Guardianship of D.M.H., a child J.H.T. and L.H.T, Petitioners and Appellees v. D.M.H., a child; J.D.H., father; Devon Abler, Lay Guardian ad Litem, Respondents and S.L.S., Respondent and Appellant No. 20230028 Appeal from the Juvenile Court of Grand Forks County, Northeast Central Judicial District, the Honorable M. Jason McCarthy, Judge. AFFIRMED. Opinion of the Court by Crothers, Justice. Kiara C. Kraus-Parr, Grand Forks, ND, for respondent and appellant. J.H.T. (appeared), Grand Forks, ND, petitioner and appellee. L.H.T., Grand Forks, ND, petitioner and appellee. Interest of D.M.H. No. 20230028 Crothers, Justice. [¶1] S.L.S., biological mother of D.M.H., appeals from an order reappointing J.H.T. and L.H.T. as D.M.H.'s guardians and adopting a prior visitation schedule as the current visitation schedule. S.L.S. argues the court erred by adopting the prior visitation schedule. We affirm. I [¶2] D.M.H. was born on April 24, 2007. In 2014, D.M.H. was removed from S.L.S.'s care. On August 7, 2018, J.H.T. and L.H.T., D.M.H.'s paternal grandparents, were appointed as his guardians. S.L.S. appealed the order, arguing the juvenile court erred by not establishing a parental visitation schedule. This Court reversed and remanded to establish a visitation schedule. Interest of D.M.H., 2019 ND 88, 924 N.W.2d 789. On remand, the juvenile court created a visitation schedule and incorporated it into the August 7, 2018 order. [¶3] Under N.D.C.C. § 27-20.1-17, on June 17, 2022, the juvenile court held a review hearing, it reappointed J.H.T. and L.H.T. as D.M.H.'s guardians, and gave them discretion regarding parent visitation. S.L.S. requested and received a hearing, where she argued, based on Interest of D.M.H., it was improper for the court to give the guardians discretion over parental visitation. Therefore, she argued a visitation schedule must be established. S.L.S. asked for an additional hearing to propose a visitation schedule. At that hearing, S.L.S. generally complained about some missed telephone visitations, but did not propose amendments to the visitation schedule or provide any evidence supporting changing the visitation schedule. The court reappointed J.H.T. and L.H.T. as D.M.H.'s legal guardians, removed the

discretion statement and adopted the prior visitation schedule. S.L.S. timely appealed the order. 1 II [¶4] S.L.S. argues the juvenile court erred by adopting the prior visitation schedule. [¶5] We apply the clearly erroneous standard under N.D.R.Civ.P. 52(a) when reviewing findings of fact in a guardianship proceeding and the abuse of discretion standard when reviewing the selection of a guardian. *In re Guardianship of B.K.J.*, 2015 ND 191, ¶ 4, 867 N.W.2d 345. Here we are asked to review only the visitation schedule. “[A juvenile] court’s decision on visitation or parenting time is a finding of fact reviewed under the clearly erroneous standard of review.” *Eberle v. Eberle*, 2010 ND 107, ¶ 24, 783 N.W.2d 254. “A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support the finding, or if, on the entire record, we are left with a definite and firm conviction a mistake has been made.” *Id.* at ¶ 16. [¶6] On July 10, 2019, the juvenile court created a visitation schedule. The order states “[S.L.S. and D.M.H.] shall have telephone calls with each other twice per week on Wednesday and Saturday afternoons or evenings.” The order also provided for six consecutive months of supervised in-person visits for S.L.S. and D.M.H. with in-person visits transitioning to non-supervised and lengthier visits. The court explicitly stated the visitation schedule would not be amended except by court order. The visitation schedule was created under applicable law and supported by evidence. The guardians, S.L.S., and D.M.H. have used the schedule for the last four years. S.L.S. lives in Iowa, and her only contact with D.M.H. during the guardianship has been by telephone. She has not seen D.M.H. in person since 2014. [¶7] Before the district court and on appeal, S.L.S. has not cited any statute or case requiring that a visitation schedule be updated or changed at a specific time. Nor has she cited us to any law prohibiting a juvenile court from adopting a prior visitation schedule. Absent such a law and absent any argument a different visitation schedule would be beneficial to D.M.H., the court did not err by adopting the prior visitation schedule. 2

III

[¶8] We affirm the juvenile court’s order adopting the prior visitation schedule. [¶9] Jon J. Jensen, C.J. Daniel J. Crothers Lisa Fair McEvers Jerod E. Tufte Douglas A. Bahr 3