

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

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