

SUPREME COURT OF NORTH DAKOTA

Serr v. Serr

758 N.W.2d 739 (N.D. 2008) · No. No. 20080188 · Decided December 16, 2008

SUMMARY

The Supreme Court of North Dakota held that the parties' custody arrangement did not provide equal physical custody exactly fifty percent of the time under the child support guidelines. The court reversed the child support decision and remanded for entry of judgment establishing Amanda Serr's child support obligation at \$168 per month effective March 1, 2007.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Sandstrom, Justice; Gerald W. VandeWalle, C.J.; Daniel J. Crothers; Mary Muehlen Maring; Carol Ronning Kapsner
JURISDICTION	North Dakota
DECIDED	December 16, 2008
DOCKET	No. 20080188
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Cody Serr appealed an amended judgment entered after remand that calculated child support under the child-support-guidelines provision for equal physical custody.
STANDARD OF REVIEW	Whether the district court properly applied N.D. Admin. Code § 75-02-04.1-08.2 is a question of law reviewed de novo. Child-support determinations also involve clearly erroneous review of factual findings and abuse-of-discretion review in limited areas.
PRECEDENTIAL VALUE	published opinion
PARTIES	Cody G. Serr v. Amanda M. Serr

TOPICS

- child support
- family law procedure
- appellate procedure
- statutory interpretation
- standard of review

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether the custody judgment awarded each parent equal physical custody exactly fifty percent of the time for purposes of N.D. Admin. Code § 75-02-04.1-08.2.
2. Whether the extended-visitation adjustment under N.D. Admin. Code § 75-02-04.1-08.1 applied to Amanda Serr's custody schedule.

HOLDINGS

1. The equal-physical-custody offset provision applies only when the actual judgment awards each parent physical custody exactly fifty percent of the time. The judgment here did not do so, and the district court erred by applying that provision.
2. The extended-visitation adjustment under N.D. Admin. Code § 75-02-04.1-08.1 did not apply because Amanda's custody did not exceed 60 of 90 consecutive nights or an annual total of 164 nights.

KEY QUOTATIONS

“In situations where the court order provides for equal physical custody, the court order controls the child support, regardless of the actual custodial arrangement exercised by the parties.” (¶ 12)

“Under the actual language in the judgment entered after remand, we conclude the court erred in applying the “equal physical custody” provision for establishing the parties' child support obligations.” (¶ 13)

FACTUAL BACKGROUND

The parties shared custody of their child under a judgment giving Amanda custody from Thursday afternoon through Sunday afternoon and Cody custody during the remaining period, with holidays divided and a first-refusal childcare provision. Although the district court found that the parties intended to spend equal amounts of time with the child, the judgment did not expressly award each parent custody exactly fifty percent of the time. The district court nevertheless applied the equal-physical-custody child-support offset provision.

PROCEDURAL HISTORY

Amanda Serr filed for divorce and sought custody and child support. The district court entered a custody and child-support judgment applying the equal-physical-custody offset provision. In the prior appeal, the North Dakota Supreme Court affirmed the custody decision but reversed the child-support decision and remanded. On remand, the district court again applied the equal-physical-custody provision and set Cody Serr's obligation at \$372 per month. Cody appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the district court's child-support decision and enter judgment establishing Amanda Serr's child-support obligation at \$168 per month effective March 1, 2007.

CASES CITED

- Serr v. Serr, 2008 ND 56, ¶¶ 16-23, 746 N.W.2d 416
- Boumont v. Boumont, 2005 ND 20, ¶¶ 9-10, 691 N.W.2d 278

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