

SUPREME COURT OF NORTH DAKOTA

Klebe v. Klebe

Klebe, 2026 ND 49 (N.D. 2026) · No. No. 20250362 · Decided February 19, 2026

SUMMARY

The North Dakota Supreme Court affirmed an amended judgment modifying child support. The court held that the district court could determine child support based on earning capacity rather than earnings history and summarily affirmed that issue. Although the court concluded that the wrong judge ruled on the appellant’s demand for a change of judge, it found the procedural error harmless because the demand was untimely as a matter of law.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Per Curiam; Lisa Fair McEvers, C.J.; Daniel J. Crothers; Jerod E. Tufte; Jon J. Jensen; Douglas A. Bahr
JURISDICTION	Supreme Court of North Dakota
DECIDED	February 19, 2026
DOCKET	No. 20250362
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an amended judgment modifying child support and denying a demand for a change of judge.
STANDARD OF REVIEW	The court summarily affirmed the child-support issue under N.D.R.App.P. 35.1(a)(7). The procedural error concerning the demand for a change of judge was reviewed for harmless error under N.D.R.Civ.P. 61.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Dean Klebe n/k/a Finley Jada Klebe v. Jessica Joy Anne Klebe a/k/a Jessica Joy Anne Rollman-Jefferson

TOPICS

- child support
- family law procedure
- appellate procedure
- harmless error
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court could determine the child-support obligation based on earning capacity rather than earnings history.
2. Whether the district court erred by ruling on a demand for a change of judge when the demand should have been decided by the presiding judge of the judicial district.
3. Whether the error in having the wrong judge rule on the demand for a change of judge affected the appellant's substantial rights.

HOLDINGS

1. A district court may determine a child-support obligation on the basis of earning capacity rather than earnings history.
2. The presiding judge of the judicial district, rather than the judge sought to be disqualified, must determine the validity and timeliness of a demand for a change of judge.
3. The procedural error was harmless because the demand was untimely as a matter of law and therefore did not affect substantial rights.

KEY QUOTATIONS

“A district court may determine the child support obligation on the basis of earning capacity rather than earnings history.” (¶ 2)

“Because the demand was untimely, no substantial rights were affected by the wrong judge’s ruling on it.” (¶ 4)

FACTUAL BACKGROUND

The appellant sought modification of child support, and the district court determined the child-support obligation based on earning capacity rather than earnings history. The appellant filed a demand for a change of judge on May 8, 2025, twenty-four days after filing the motion to modify child support. The judge who was the subject of the demand ruled on it, rather than the presiding judge of the judicial district.

PROCEDURAL HISTORY

The District Court of Cass County, East Central Judicial District, entered an amended judgment modifying child support. The district court also denied the appellant's demand for a new judge. The appellant appealed, and the North Dakota Supreme Court affirmed, summarily affirming the child-support issue and concluding that the procedural error concerning the demand for a change of judge was harmless.

DISPOSITION

affirmed

CASES CITED

- Anderson v. Foss, 2024 ND 154, ¶¶ 9-11, 10 N.W.2d 570
- Wald v. Hovey, 2022 ND 15, ¶ 16, 969 N.W.2d 163

OPINION

Klebe v. Klebe 2026 ND 49

PER CURIAM.

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

2026 ND 49 Dean Klebe n/k/a Finley Jada Klebe, Plaintiff and Appellant v. Jessica Joy Anne Klebe a/k/a Jessica Joy Anne Rollman-Jefferson, Defendant and Appellee No. 20250362 Appeal from the District Court of Cass County, East Central Judicial District, the Honorable Stephanie R. Hayden, Judge. AFFIRMED. Per Curiam. Finley J. Klebe, self-represented, Moorhead, Minnesota, plaintiff and appellant; on brief. Ashley Heitkamp, Fargo, North Dakota, for defendant and appellee; on brief. Klebe v. Klebe No. 20250362 Per Curiam. [¶1] Finley Klebe appeals from an amended judgment modifying child support. Klebe argues that the district court erred by determining the child support obligation on the basis of Klebe's earning capacity, rather than earnings history. Klebe also argues that the court erred when it denied a demand for a new judge. [¶2] A district court may determine the child support obligation on the basis of earning capacity rather than earnings history. Anderson v. Foss, 2024 ND 154, ¶¶ 9-11, 10 N.W.3d 570. Consequently, we summarily affirm regarding this issue under N.D.R.App.P. 35.1(a)(7). [¶3] The district court erred procedurally in ruling on Klebe's demand for a change of judge. The presiding judge of the judicial district must determine the demand's timeliness, not the judge sought to be disqualified. N.D.C.C. § 29-15- 21(6). Here, the judge who was the subject of the demand ruled on it. That was error. [¶4] On this record, we conclude this error was harmless. Rule 61, N.D.R.Civ.P., requires disregarding errors that do not affect substantial rights. Klebe filed the demand on May 8, 2025, twenty-four days after filing the motion to modify child support. Even assuming the statutory demand period started as late as the filing of the motion, which appears contrary to N.D.C.C. § 29-15-21(2), see Wald v. Hovey, 2022 ND 15, ¶ 16, 969 N.W.2d 163, the demand was well past the 10-day limit and untimely as a matter of law. Because the demand was untimely, no substantial rights were affected by the wrong judge's ruling on it. [¶5] We affirm the amended judgment. [¶6] Lisa Fair McEvers, C.J. Daniel J. Crothers Jerod E. Tufte 1 Jon J. Jensen Douglas A. Bahr 2