

SUPREME COURT OF NORTH DAKOTA

Danni Jane Lynch, f/k/a Danni Jane Sweeney v. David James Sweeney

2007 ND 81 (N.D. 2007) · No. No. 20060104 · Decided June 7, 2007

SUMMARY

The Supreme Court of North Dakota affirmed a district court’s award of \$5,000 in attorney fees to a noncustodial parent in a child visitation dispute. The court held that although attorney fees were mandatory under N.D.C.C. § 14-09-24 for willful and persistent denial of visitation, the district court did not abuse its discretion in limiting the award because the request was insufficiently itemized and included fees for other issues.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	VandeWalle, Chief Justice; Gerald W. VandeWalle, Chief Justice; Carol Ronning Kapsner, Justice; Mary Muehlen Maring, Justice; Daniel J. Crothers, Justice
JURISDICTION	North Dakota
DECIDED	June 7, 2007
DOCKET	No. 20060104
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court judgment awarding the noncustodial parent \$5,000 in attorney fees under N.D.C.C. § 14-09-24 following prior appellate remands concerning willful and persistent denial of visitation.
STANDARD OF REVIEW	Whether N.D.C.C. § 14-09-24 was triggered is reviewed for clear error. The amount and reasonableness of an attorney-fee award are reviewed for clear abuse of discretion.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	David James Sweeney v. Danni Jane Lynch, f/k/a Danni Jane Sweeney

TOPICS

- visitation
- child custody
- family law procedure
- remedies
- standard of review

PRACTICE AREAS

family law

attorney fees

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by awarding \$5,000 rather than the \$49,470.45 in attorney fees requested by the noncustodial parent.
2. Whether a noncustodial parent seeking mandatory fees under N.D.C.C. § 14-09-24 must provide evidence identifying the fees attributable to litigating the custodial parent's willful and persistent denial of visitation.

HOLDINGS

1. When a court finds a custodial parent engaged in willful and persistent denial of visitation rights, N.D.C.C. § 14-09-24 requires an award of reasonable costs and attorney fees to the noncustodial parent.
2. A district court's determination of the amount and reasonableness of attorney fees will not be reversed absent a clear abuse of discretion.
3. A party seeking statutory attorney fees must provide sufficiently precise evidence identifying the fees attributable to the conduct for which fees are recoverable; the court is not required to search through undifferentiated billing records to make that allocation.

KEY QUOTATIONS

“If the court finds the custodial parent engaged in willful and persistent denial of visitation the court must award the noncustodial parent reasonable costs and attorney fees.” (¶ 9)

“An award of attorney fees must generally be supported by evidence upon which the court can determine the requested fees are reasonable and legitimate.” (¶ 12)

FACTUAL BACKGROUND

Lynch and Sweeney divorced after having one child, with Lynch receiving custody and Sweeney receiving visitation. The parties repeatedly experienced difficulty implementing visitation, and Lynch later sought restrictions while Sweeney sought enforcement and a change of custody. In earlier proceedings, the district court found no credible evidence of abuse and found that Lynch had engaged in a continuing course of conduct that minimized, limited, and obstructed Sweeney's relationship with the child. After the Supreme Court determined that attorney fees were mandatory under N.D.C.C. § 14-09-24, Sweeney sought \$49,470.45 for litigation expenses, but the district court awarded \$5,000 because he did not identify which fees related specifically to the denial of visitation.

PROCEDURAL HISTORY

After the parties' visitation dispute generated prior district court proceedings and cross-appeals, the Supreme Court reversed and remanded for findings concerning whether N.D.C.C. § 14-09-24 was triggered. On a second appeal, the Court held the triggering conditions had been met and directed the district court to award reasonable

costs and attorney fees. On the resulting remand, the district court awarded Sweeney \$5,000 rather than the \$49,470.45 requested. Sweeney appealed, and the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Sweeney v. Sweeney, 2002 ND 206, 654 N.W.2d 407
- Sweeney v. Sweeney, 2005 ND 47, 693 N.W.2d 29
- CybrCollect, Inc. v. North Dakota Department of Financial Institutions, 2005 ND 146, 703 N.W.2d 285
- Gratech Co., Ltd. v. Wold Engineering, P.C., 2007 ND 46, 729 N.W.2d 326
- City of Bismarck v. Thom, 261 N.W.2d 640 (N.D. 1977)
- Gissel v. Kenmare Township, 512 N.W.2d 470 (N.D. 1994)
- Whitmire v. Whitmire, 1999 ND 56, 591 N.W.2d 126
- Peterson v. Zerr, 477 N.W.2d 230 (N.D. 1991)
- T.F. James Co. v. Vakoch, 2001 ND 112, 628 N.W.2d 298
- Holzer v. Jochim, 557 N.W.2d 57 (N.D. 1996)