

SUPREME COURT OF NORTH DAKOTA

Krueger v. Krueger

2013 ND 245 · No. 20130129 · Decided December 19, 2013

SUMMARY

The North Dakota Supreme Court affirmed orders finding Albert Krueger in contempt for failing to pay court-ordered spousal support and denying his motion to modify or eliminate the support obligation. The court held that he failed to establish a material change in circumstances and that the contempt finding was supported by evidence that he had sufficient income but directed it elsewhere. The court also upheld the admission of medical letters in the bench proceeding, subject to the weight given to potentially hearsay evidence.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Mary Muehlen Maring; Daniel J. Crothers; Dale V. Sandstrom; Carol Ronning Kapsner; Gerald W. VandeWalle
JURISDICTION	North Dakota
DECIDED	December 19, 2013
DOCKET	20130129
DISPOSITION	affirmed
PROCEDURAL POSTURE	Albert Krueger appealed orders denying his motion to modify or terminate his spousal-support obligation and finding him in contempt for failing to pay court-ordered support.
STANDARD OF REVIEW	A finding concerning whether a material change in circumstances warrants modification of spousal support is reviewed under the clearly erroneous standard. A contempt decision is reviewed for abuse of discretion. Evidentiary rulings are also reviewed for abuse of discretion. In a nonjury case, admission of allegedly inadmissible evidence is rarely reversible error unless the competent evidence is insufficient to support the judgment or the incompetent evidence induced an essential finding.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Albert Krueger v. Shirley Krueger

TOPICS

spousal support

family law

hearsay

standard of review

appellate procedure

PRACTICE AREAS

family law

appellate procedure

evidence

remedies

QUESTIONS PRESENTED

1. Whether the district court erred in refusing to modify or terminate Albert Krueger's spousal-support obligation.
2. Whether the district court abused its discretion by finding Albert Krueger in contempt for willfully failing to pay court-ordered spousal support.
3. Whether the district court abused its discretion by admitting medical professionals' letters containing alleged hearsay concerning Albert's work limitations.

HOLDINGS

1. A party seeking modification of an existing spousal-support award must prove a material change in the parties' financial circumstances that warrants modification; the district court's finding that no such material change occurred was not clearly erroneous.
2. The district court did not abuse its discretion in finding Albert in contempt because the evidence supported a finding that he had sufficient income to pay support and willfully redirected that income elsewhere.
3. The district court did not abuse its discretion by admitting the medical letters into evidence while limiting the weight given to their hearsay contents.

KEY QUOTATIONS

“The party seeking modification of spousal support bears the burden of proving there has been a material change in the financial circumstances of the parties warranting a change in the amount of support.” (§ 6)

“An inability to comply with an order is a defense to contempt proceedings, but the alleged contemnor has the burden to prove the defense.” (§ 18)

“introduction of allegedly inadmissible evidence in a non-jury case is rarely reversible error” (§ 23)

FACTUAL BACKGROUND

Albert and Shirley Krueger were divorced in 2007, and the divorce judgment required Albert to pay Shirley \$1,500 per month in spousal support for ten years and \$1,000 per month thereafter until her death or remarriage. Albert stopped making payments during portions of 2011 and 2012, asserting that reduced income, farming losses, health problems, and an intended retirement made him unable to pay. The district court found that Albert's tax-accounting business generated sufficient income, that he owned income-producing property, and that he had redirected available income to other purposes rather than paying support.

PROCEDURAL HISTORY

The parties divorced in 2007, and the district court awarded Shirley Krueger permanent spousal support. After Albert failed to make required payments, Shirley sought contempt sanctions, while Albert moved to modify or terminate support. Following an evidentiary hearing, the district court found Albert in contempt, determined he owed \$29,250 in arrearages, ordered continued monthly support and arrearage payments, awarded Shirley attorney's fees, and denied Albert's modification motion. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Krueger v. Krueger, 2008 ND 90, ¶¶ 6-12, 748 N.W.2d 671
- Schulte v. Kramer, 2012 ND 163, ¶¶ 10, 15, 820 N.W.2d 318
- Berg v. Berg, 2000 ND 37, ¶ 10, 606 N.W.2d 903
- Flattum-Riemers v. Flattum-Riemers, 1999 ND 146, ¶ 5, 598 N.W.2d 499
- Harger v. Harger, 2002 ND 76, ¶ 14, 644 N.W.2d 182
- Millang v. Hahn, 1998 ND 152, ¶ 7, 582 N.W.2d 665
- Sall v. Sall, 2011 ND 202, ¶ 7, 804 N.W.2d 378
- Prchal v. Prchal, 2011 ND 62, ¶ 5, 795 N.W.2d 693
- Woodward v. Woodward, 2009 ND 214, ¶ 6, 776 N.W.2d 567
- Glasser v. Glasser, 2006 ND 238, ¶ 12, 724 N.W.2d 144
- In re J.S.L., 2009 ND 43, ¶¶ 18, 25, 763 N.W.2d 783
- State v. Schmidkunz, 2006 ND 192, ¶ 15, 721 N.W.2d 387