

SUPREME COURT OF NORTH DAKOTA

Frueh v. Frueh

745 N.W.2d 362 (N.D. 2008) · No. No. 20070254 · Decided February 21, 2008

SUMMARY

The Supreme Court of North Dakota held that Darin Frueh presented sufficient competent evidence to establish a prima facie case for modification of child custody. The court reversed the denial of an evidentiary hearing and remanded, concluding that conflicting affidavits could not be weighed at the prima facie stage.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Sandstrom, Justice; Gerald W. Vande Walle, C.J.; Maring, Justice; Kapsner, Justice; Daniel J. Crothers, Justice
JURISDICTION	North Dakota
DECIDED	February 21, 2008
DOCKET	No. 20070254
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an amended district court order denying an evidentiary hearing on the father's motion to modify child custody.
STANDARD OF REVIEW	The majority stated that denial of an evidentiary hearing on a change-of-custody motion is reviewed for abuse of discretion, including whether the district court misinterpreted or misapplied the law. Justice Kapsner concurred in the result but maintained that whether a prima facie case has been established is a question of law rather than discretion.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Darin G. Frueh v. Melissa A. Frueh, n/k/a Melissa Hoheisel

TOPICS

- child custody
- family law procedure
- appellate procedure
- standard of review
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Frueh presented sufficient competent evidence to establish a prima facie case for modification of custody under N.D.C.C. § 14-09-06.6(4).
2. Whether the district court improperly weighed conflicting affidavits rather than determining whether the moving papers established a prima facie case warranting an evidentiary hearing.
3. What standard of review applies to the denial of an evidentiary hearing on a motion to modify custody.

HOLDINGS

1. Frueh presented sufficient competent evidence to establish a prima facie case warranting an evidentiary hearing on his motion for change of custody.
2. A district court may not weigh conflicting allegations in affidavits when deciding whether a prima facie case for custody modification has been established.
3. The majority applied an abuse-of-discretion standard to review the denial of an evidentiary hearing on a change-of-custody motion.

KEY QUOTATIONS

“We hold Frueh has presented sufficient evidence to establish a prima facie case for modification of custody; therefore, we reverse and remand for an evidentiary hearing on his motion.” (745 N.W.2d at 363, ¶ 1)

“If a prima facie case is established, the court shall set a date for an evidentiary hearing.” (745 N.W.2d at 364, ¶ 5)

“A court may not weigh conflicting allegations in considering whether a movant has established a prima facie case; such weighing of the evidence is done at an evidentiary hearing.” (745 N.W.2d at 366, ¶ 13)

FACTUAL BACKGROUND

Darin Frueh and Melissa Frueh were divorced in January 2004, and Melissa, later known as Melissa Hoheisel, received custody of their minor child. In June 2007, Frueh sought a custody change, alleging that the twelve-year-old child wanted to live with him and that Hoheisel's husband had physically abused the child. The child submitted an affidavit and handwritten letter supporting those allegations. Hoheisel denied abuse, submitted a social-services report indicating no risk factors for abuse or neglect, and asserted that Frueh's farming operation would leave him unable to adequately supervise the child.

PROCEDURAL HISTORY

The parties were divorced in January 2004, with Melissa Hoheisel receiving custody and Darin Frueh receiving visitation. In June 2007, Frueh moved to modify custody, submitting affidavits concerning the child's preference to live with him and alleged abuse by Hoheisel's husband. The district court found no prima facie case under N.D.C.C. § 14-09-06.6(4) and denied an evidentiary hearing. The North Dakota Supreme Court reversed and remanded for an evidentiary hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must conduct an evidentiary hearing on Frueh's motion for change of custody.

CASES CITED

- Lagro v. Lagro, 2005 ND 151, ¶¶ 14, 16-18, 703 N.W.2d 322
- Tank v. Tank, 2004 ND 15, ¶ 12, 673 N.W.2d 622
- Roberson v. Roberson, 2004 ND 203, ¶ 6, 688 N.W.2d 380
- Bertsch v. Bertsch, 2007 ND 168, ¶ 10, 740 N.W.2d 388
- Gietzen v. Gietzen, 1998 ND 70, ¶ 10, 575 N.W.2d 924
- Kelly v. Kelly, 2002 ND 37, ¶ 19, 640 N.W.2d 38
- Dietz v. Dietz, 2007 ND 84, ¶ 13, 733 N.W.2d 225
- Barstad v. Barstad, 499 N.W.2d 584, 587-89 (N.D. 1993)
- Gould v. Miller, 488 N.W.2d 42, 44 (N.D. 1992)
- Volz v. Peterson, 2003 ND 139, ¶ 6, 667 N.W.2d 637
- Mock v. Mock, 2004 ND 14, ¶ 7, 673 N.W.2d 635
- Dalin v. Dalin, 512 N.W.2d 685 (N.D. 1994)
- Krizan v. Krizan, 1998 ND 186, ¶ 9, 585 N.W.2d 576
- Mertz v. Mertz, 439 N.W.2d 94, 96-97 n. 2 (N.D. 1989)