

NORTH DAKOTA SUPREME COURT

Albrecht v. Neustel

790 N.W.2d 476 (N.D. 2010) · Decided November 9, 2010

SUMMARY

The North Dakota Supreme Court reviewed a judgment changing primary residential responsibility for a child from Paulette Albrecht to Shawn Neustel. The court held that the district court did not clearly err in finding a material change in circumstances, but its findings were insufficient to permit meaningful appellate review of whether the change was necessary to serve the child’s best interests. The judgment was affirmed in part, reversed in part, and remanded for additional findings of fact.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Maring, Justice; Gerald W. Vande Walle, C.J.; Carol Ronning Kapsner, J.; Daniel J. Crothers, J.; Maring, J.; Sandstrom, J.
JURISDICTION	North Dakota
DECIDED	November 9, 2010
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Albrecht appealed a judgment granting Neustel's motion to change primary residential responsibility for their daughter from Albrecht to Neustel.
STANDARD OF REVIEW	The district court's decision whether to modify primary residential responsibility is a finding of fact reviewed for clear error. A finding is clearly erroneous if there is no evidence to support it, it is induced by an erroneous view of the law, or the appellate court is left with a definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Published precedential opinion of the North Dakota Supreme Court.
PARTIES	Paulette Gussiaas, now known as Paulette Albrecht v. Shawn R. Neustel

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court clearly erred in finding a material change in circumstances sufficient to permit modification of primary residential responsibility.
2. Whether the district court made sufficiently specific findings that changing primary residential responsibility was necessary to serve the child's best interests.

HOLDINGS

1. The district court's finding that a material change in circumstances had occurred was not clearly erroneous.
2. The district court's findings were insufficient to permit meaningful appellate review of whether changing primary residential responsibility was necessary to serve the child's best interests.

KEY QUOTATIONS

“The court may modify the primary residential responsibility after the two-year period following the date of entry of an order establishing primary residential responsibility if the court finds.” (¶ 5)

“the district court is required to make such findings of fact and conclusions of law that are sufficient to enable the appellate court to understand the factual determinations made by the district court and the basis for its conclusions of law.” (¶ 13)

“A district court's recitation or summary of evidence presented at trial does not satisfy the requirement that findings of fact must be stated with specificity.” (¶ 14)

“The best interests factors ... be considered against the backdrop of the stability of the children's relationship with the parent with primary residential responsibility.” (¶ 16)

FACTUAL BACKGROUND

Albrecht and Neustel, who were never married, have a daughter born in 2002. A 2005 paternity judgment awarded Albrecht primary residential responsibility. After the parties separated, Albrecht had several relationships and moved several times; in summer 2009, she moved with the children from Carrington to Mandan. Neustel then sought a change in primary residential responsibility, citing the move, changes in Albrecht's household, and alleged effects on the child.

PROCEDURAL HISTORY

A 2005 paternity judgment awarded Albrecht primary residential responsibility and granted Neustel parenting time and child-support obligations. After Albrecht moved from Carrington to Mandan, Neustel moved to modify primary residential responsibility. Following a hearing, the district court found a material change in circumstances and awarded primary residential responsibility to Neustel. The North Dakota Supreme Court affirmed the material-change finding, reversed the modification ruling in part, and remanded for additional findings of fact.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for preparation of additional findings of fact in accordance with applicable law concerning whether changing primary residential responsibility is necessary to serve the child's best interests.

CASES CITED

- Lechler v. Lechler, 2010 ND 158, ¶ 9, 786 N.W.2d 733
- Frueh v. Frueh, 2009 ND 155, ¶ 8, 771 N.W.2d 593
- Siewert v. Siewert, 2008 ND 221, ¶¶ 17, 19, 758 N.W.2d 691
- Machart v. Machart, 2009 ND 208, ¶ 11, 776 N.W.2d 795
- Dunn v. Dunn, 2009 ND 193, ¶ 6, 775 N.W.2d 486
- Stanhope v. Phillips-Stanhope, 2008 ND 61, ¶ 6, 747 N.W.2d 79
- In re Thompson, 2003 ND 61, ¶ 7, 659 N.W.2d 864
- Haugrose v. Anderson, 2009 ND 81, ¶¶ 7, 9, 765 N.W.2d 677
- Fleck v. Fleck, 2010 ND 24, ¶ 6, 778 N.W.2d 572
- Dietz v. Dietz, 2007 ND 84, ¶ 13, 733 N.W.2d 225
- Gietzen v. Gietzen, 1998 ND 70, ¶ 10, 575 N.W.2d 924
- Hanson v. Hanson, 1997 ND 151, ¶ 5, 567 N.W.2d 216
- Van Dyke v. Van Dyke, 538 N.W.2d 197, 201 (N.D. 1995)
- Gould v. Miller, 488 N.W.2d 42, 44 (N.D. 1992)
- Dufner v. Trottier, 2010 ND 31, ¶ 12, 778 N.W.2d 586
- Kelly v. Kelly, 2002 ND 37, ¶¶ 15, 44, 640 N.W.2d 38
- Manning v. Manning, 2006 ND 67, ¶ 28, 711 N.W.2d 149
- Lovin v. Lovin, 1997 ND 55, ¶ 17, 561 N.W.2d 612
- Hagel v. Hagel, 512 N.W.2d 465, 467 (N.D. 1994)
- Rothberg v. Rothberg, 2006 ND 65, ¶ 14, 711 N.W.2d 219
- Gonzalez v. Gonzalez, 2005 ND 131, ¶ 10, 700 N.W.2d 711
- Smith Enters., Inc. v. In-Touch Phone Cards, Inc., 2004 ND 169, ¶ 14, 685 N.W.2d 741
- State v. Schmitt, 2001 ND 57, ¶ 12, 623 N.W.2d 409
- In re T.J.K., 1999 ND 152, ¶ 13, 598 N.W.2d 781
- Wolt v. Wolt, 2010 ND 26, ¶ 25, 778 N.W.2d 786
- Boeckel v. Boeckel, 2010 ND 130, ¶ 16, 785 N.W.2d 213
- Cox v. Cox, 2000 ND 144, ¶ 17, 613 N.W.2d 516

