

SUPREME COURT OF NORTH DAKOTA

Maureen Ann Woodward v. George Woodward

776 N.W.2d 567 (N.D. 2009) · No. Nos. 20080343, 20090053 · Decided December 18, 2009

SUMMARY

The Supreme Court of North Dakota affirmed orders denying Maureen Ann Woodward's requests to modify visitation, granting George Woodward compensatory visitation, ordering parental alienation and psychological evaluations, and holding her in contempt for withholding court-ordered visitation. The court held that the contempt finding was supported by the evidence, the referee's factual findings were not clearly erroneous, and the evaluation order was not an abuse of discretion. The court declined to consider an argument raised for the first time on appeal and denied the request for attorney fees because the appeal was not frivolous.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Crothers, J.; Gerald W. Vande Walle, C.J.; Dale V. Sandstrom, J.; Gerald H. Rustad, D.J.; Mary Muehlen Maring, J.
JURISDICTION	North Dakota
DECIDED	December 18, 2009
DOCKET	Nos. 20080343, 20090053
DISPOSITION	affirmed
PROCEDURAL POSTURE	Maureen Ann Woodward appealed two orders entered in post-divorce proceedings that denied her motion to modify and limit visitation, granted George Woodward compensatory visitation, ordered parental-alienation and psychological evaluations, and held her in contempt for violating visitation provisions.
STANDARD OF REVIEW	Contempt determinations and orders for parental-alienation or psychological evaluations are reviewed for abuse of discretion. Findings of fact are reviewed under the clearly erroneous standard. An issue not raised or considered in the district court generally cannot be raised for the first time on appeal.
PRECEDENTIAL VALUE	published opinion
PARTIES	Maureen Ann Woodward v. George Woodward

TOPICS

visitation

child custody

family law procedure

appellate procedure

preservation of error

PRACTICE AREAS

family law

family law procedure

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the findings supporting contempt were supported by the evidence and whether the contempt orders constituted an abuse of discretion.
2. Whether the finding that Maureen's conduct undermined the relationship between George and the children was clearly erroneous.
3. Whether the challenge to the legal standard governing visitation with George's new wife was preserved for appellate review.
4. Whether the order requiring Maureen to undergo parental-alienation and psychological evaluations was an abuse of discretion.
5. Whether George was entitled to attorney fees under North Dakota Rule of Appellate Procedure 38 for defending a frivolous appeal.

HOLDINGS

1. The district court did not abuse its discretion by holding Maureen in contempt for willfully withholding court-ordered visitation.
2. The finding that Maureen nurtured the children's insecurities and fears and thereby undermined their relationship with George was not clearly erroneous.
3. The Supreme Court declined to address Maureen's argument that the best-interests standard, rather than an endangerment standard, governed visitation because the issue was not raised or considered in the district court.
4. The referee did not abuse her discretion by ordering Maureen to undergo parental-alienation and psychological evaluations.
5. George's request for costs and attorney fees under North Dakota Rule of Appellate Procedure 38 was denied because, although the appeal lacked merit, it was not frivolous.

KEY QUOTATIONS

“A district court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner, if its decision is not the product of a rational mental process leading to a reasoned determination, or if it misinterprets or misapplies the law.” (¶ 6)

“The orders are affirmed.” (¶ 17)

FACTUAL BACKGROUND

The parties divorced in 2006 after a marriage that produced three children, with Maureen Ann Woodward receiving physical custody and George Woodward receiving reasonable visitation. In 2008, Maureen discontinued visitation, asserting that the children feared George's new wife, and sought to limit visitation to periods when the new wife was absent. The courts found that Maureen had withheld court-ordered visitation, reinforced the children's negative feelings toward George's wife, and undermined the relationship between George and the children.

PROCEDURAL HISTORY

After the parties' 2006 divorce, Maureen Ann Woodward was awarded physical custody and George Woodward was awarded reasonable visitation. A judicial referee denied Maureen's request to restrict visitation, granted George's contempt and compensatory-visitiation requests, ordered evaluations, and awarded attorney fees; the district court adopted the referee's findings and order. After Maureen continued to deny visitation, the district court again found her in contempt and ordered counseling and a purge by compliance with the amended divorce judgment. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Glasser v. Glasser, 2006 ND 238, ¶ 12, 724 N.W.2d 144
- Montgomery v. Montgomery, 2003 ND 135, ¶ 18, 667 N.W.2d 611
- Graner v. Graner, 2007 ND 139, ¶¶ 7, 32, 738 N.W.2d 9
- Vicknair v. Phelps Dodge Indus., Inc., 2009 ND 113, ¶ 6, 767 N.W.2d 171
- In re J.K., 2009 ND 46, ¶ 14, 763 N.W.2d 507
- Interest of R.P., 2008 ND 39, ¶ 7, 745 N.W.2d 642
- Aasmundstad v. State, 2008 ND 206, ¶ 16, 763 N.W.2d 748
- Rutherford v. BNSF Ry. Co., 2009 ND 88, ¶ 13, 765 N.W.2d 705
- John T. Jones Constr. Co. v. City of Grand Forks, 2003 ND 109, ¶ 18, 665 N.W.2d 698
- Hendrickson v. Hendrickson, 2000 ND 1, ¶ 22, 603 N.W.2d 896
- Interest of N.C.C., 2000 ND 129, ¶ 3, 612 N.W.2d 561
- Millang v. Hahn, 1998 ND 152, ¶ 12, 582 N.W.2d 665
- Ludwig v. Burchill, 481 N.W.2d 464, 465 (N.D. 1992)
- Loll v. Loll, 1997 ND 51, ¶ 21, 561 N.W.2d 625
- Interest of T.T., 2004 ND 138, ¶ 17, 681 N.W.2d 779

OPINION

CROTHERS, J.

776 N.W.2d 567 (2009) 2009 ND 214 Maureen Ann WOODWARD, Plaintiff and Appellant v. George WOODWARD, Defendant and Appellee. Nos. 20080343, 20090053. Supreme Court of North Dakota. December 18, 2009. *569 William Kirschner, Fargo, N.D., for plaintiff and appellant; submitted on brief. Jerilynn Brantner Adams, Fargo, N.D., for defendant and appellee; submitted on brief.

CROTHERS, Justice. [¶ 1] Maureen Ann Woodward appeals from two orders denying her motion to modify and limit the visitation provisions of an amended divorce judgment, granting George Woodward compensatory visitation, ordering her to undergo a parental alienation and psychological evaluation and holding her in contempt for failing to comply with the visitation provisions of the divorce judgment.

We affirm the orders, concluding Maureen Ann Woodward failed to establish the district court's findings of fact are clearly erroneous or the court's actions were an abuse of discretion. I [¶ 2] George and Maureen Ann Woodward were married in 1986 and have three children from their marriage.

The parties divorced in 2006. Maureen Ann Woodward was awarded physical custody of the children, and George Woodward was awarded reasonable visitation. George Woodward remarried in 2007 and currently works as a physician in Grand Forks. Maureen Ann Woodward continues to reside in Fargo with the children, serves as their home school teacher and has not remarried. [¶ 3] In 2008, Maureen Ann Woodward discontinued visitation, claiming the children were afraid of George Woodward's new wife, and moved to amend the divorce judgment so that George Woodward could exercise limited visitation with the children only when his new wife was not present.

The judicial referee denied Maureen Ann Woodward's motion, granted George Woodward's responsive motion to hold her in contempt for withholding visitation, granted George Woodward compensatory visitation and ordered her to undergo a parental alienation and psychological evaluation.

The referee also ordered her to pay George Woodward's attorney fees. Upon request for review, the district court adopted the judicial referee's findings and order. [¶ 4] After Maureen Ann Woodward continued to deny George Woodward visitation with the children, he again moved to hold her in contempt, and she responded with a motion to suspend visitation.

The district court found her in contempt and ordered that the two remaining minor children attend counseling as needed to "transition" them for visitation. The court ordered that Maureen Ann Woodward could purge herself of contempt by complying with the visitation provisions of the amended divorce judgment. II [¶ 5] Maureen Ann Woodward argues the judicial referee and district court's *570 finding that she was in contempt should be reversed because it is not

supported by the evidence. [¶ 6] "Civil contempt requires a willful and inexcusable intent to violate a court order," and "a complainant must clearly and satisfactorily show that the alleged contempt has been committed." *Glasser v. Glasser*, 2006 ND 238, ¶ 12, 724 N.W.2d 144 (quoting *Montgomery v. Montgomery*, 2003 ND 135, ¶ 18, 667 N.W.2d 611); see also N.D.C.C. § 27-10-01.1(1)(c).

"A district court has broad discretion in deciding whether to hold a person in contempt, and a court's finding of contempt will not be reversed on appeal unless there is a clear abuse of discretion." *Graner v. Graner*, 2007 ND 139, ¶ 32, 738 N.W.2d 9. "A district court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner, if its decision is not the product of a rational mental process leading to a reasoned determination, or if it misinterprets or misapplies the law."

Vicknair v. Phelps Dodge Indus., Inc., 2009 ND 113, ¶ 6, 767 N.W.2d 171. [¶ 7] Maureen Ann Woodward admitted during an evidentiary hearing that she denied George Woodward's court-ordered extended visitation, weekend visitation, and holiday visitation after the July 4th weekend of 2008.

Although Maureen Ann Woodward claimed George Woodward's new wife was verbally abusive toward the children and the daughters were afraid of her, the judicial referee found Maureen Ann Woodward "failed to demonstrate that a visitation environment which may include [George Woodward's] current wife... endangers the children's physical or emotional health."

We conclude the judicial referee and the district court did not abuse their discretion in finding Maureen Ann Woodward in contempt. III [¶ 8] Maureen Ann Woodward argues the referee's finding that her actions had undermined the relationship between George Woodward and his children is clearly erroneous. [¶ 9] "A finding of fact is clearly erroneous if there is no evidence to support it, if the reviewing court is left with a definite and firm conviction that a mistake has been made, or if the finding is induced by an erroneous view of the law." *In re J.K.*, 2009 ND 46, ¶ 14, 763 N.W.2d 507 (quoting *Interest of R.P.*, 2008 ND 39, ¶ 7, 745 N.W.2d 642). [¶ 10] In an affidavit, George Woodward stated Maureen Ann Woodward "minimizes my role as a parent" and "is attempting to marginalize me by restricting my access to our children in person and on the telephone, and also by alienating them from me."

He said, "Maureen [Ann Woodward] has not tried to encourage our children to get along with [his new wife], but rather has reinforced any negative thoughts and feelings related to [his new wife]." George Woodward claimed Maureen Ann Woodward has "loudly berate[d] me and [my new wife] in front of the children" by calling him "a 'blockhead' and 'idiot'" and by calling her "'mean' and 'Cruella de Ville.'" In her testimony, Maureen Ann Woodward admitted yelling at George Woodward in front of the children and others.

Although Maureen Ann Woodward claims it was George Woodward and his new wife who actually undermined the children's relationship with him, "[w]e do not reweigh the evidence, and we give due regard to the [trier of fact's] opportunity to judge the witnesses' credibility." *Aasmundstad v. State*, 2008 ND 206, ¶ 16, 763 N.W.2d 748.

We conclude the judicial referee's finding that Maureen Ann Woodward "has nurtured the children's insecurities and fears *571 and this has served to undermine the relationship between George [Woodward] and his children" is not clearly erroneous. IV [¶ 11] Maureen Ann Woodward argues the judicial referee applied the wrong legal standard for determining whether the children should be forced to visit with George Woodward's new wife.

The referee stated that she must grant visitation unless "visitation is likely to endanger the children's physical or emotional health." Maureen Ann Woodward contends the correct standard is whether circumstances exist indicating the best interests of the children would not be served by allowing visitation. [¶ 12] This issue does not appear in the "Notice of Appeal and Specifications of Error" to the district court.

The district court adopted the referee's decision. "[A]n issue... not raised or considered in the [district] court cannot be raised for the first time on appeal." See, e.g., *Rutherford v. BNSF Ry. Co.*, 2009 ND 88, ¶ 13, 765 N.W.2d 705 (quoting *John T. Jones Constr. Co. v. City of Grand Forks*, 2003 ND 109, ¶ 18, 665 N.W.2d 698).

We therefore decline to address this issue. V [¶ 13] Maureen Ann Woodward argues the judicial referee erred in ordering her to have a parental alienation and psychological evaluation. We review this issue under the abuse of discretion standard. See *Hendrickson v. Hendrickson*, 2000 ND 1, ¶ 22, 603 N.W.2d 896. [¶ 14] Contrary to Maureen Ann Woodward's argument, the referee did not order her to get the evaluations as punishment for contempt, but as a means of dealing with her frustration of visitation and her alienation of the children from their father.

It is evident from the referee's decision that she believes Maureen Ann Woodward and the children might benefit from an evaluation. In *Hendrickson*, this Court recognized a district court's authority to order counseling for a parent if it is in a child's best interests. 2000 ND 1, ¶ 22, 603 N.W.2d 896. A district court also has authority to order psychological evaluations for a parent if it is in a child's best interests.

See, e.g., N.D.R.Ct. 8.7(d)(1) and (5) (authorizing guardian ad litem, who advocates the best interests of the child, to request a court-ordered evaluation); *Interest of N.C.C.*, 2000 ND 129, ¶ 3, 612 N.W.2d 561 (in change of custody proceeding, district court ordered the parties to submit to psychological examinations); *Millang v. Hahn*, 1998 ND 152, ¶ 12, 582 N.W.2d 665 (in visitation dispute, district court ordered father to complete a psychological evaluation); *Ludwig v. Burchill*, 481 N.W.2d 464, 465 (N.D.1992) (in change of custody proceeding, district court ordered both

parties to submit to psychological evaluations). [¶ 15] Maureen Ann Woodward claims the referee's order is "insufficiently certain and impossible to perform," asserting there is no evidence a "parental alienation" evaluation actually exists.

The referee ordered the evaluation be conducted at Solutions in Moorhead, Minnesota. Parental alienation syndrome, a psychological condition, has been mentioned in this Court's case law since at least 1997. See *Loll v. Loll*, 1997 ND 51, ¶ 21, 561 N.W.2d 625; *Interest of T.T.*, 2004 ND 138, ¶ 17, 681 N.W.2d 779; see also *Graner*, 2007 ND 139, ¶ 7, 738 N.W.2d 9 (mentioning counselor specializing in parental alienation).

We conclude that Maureen Ann Woodward's argument is without merit and that the referee did not abuse her discretion. *572 VI [¶ 16] George Woodward seeks costs and attorney fees under N.D.R.App.P. 38 for defending a frivolous appeal.

Although the appeal is not meritorious, we conclude it is not frivolous and deny the request. VII [¶ 17] The orders are affirmed. [¶ 18] GERALD W. VANDE WALLE, C.J., DALE V. SANDSTROM, J., and GERALD H. RUSTAD, D.J., concur. MARY MUEHLEN MARING, J., concurs in the result. [¶ 19] The Honorable GERALD H. RUSTAD, D.J., sitting in place of KAPSNER, J., disqualified.