

SUPREME COURT OF SOUTH DAKOTA

Shroyer v. Fanning

780 N.W.2d 467 (S.D. 2010) · No. No. 25351 · Decided March 3, 2010

SUMMARY

The South Dakota Supreme Court reviewed an eighteen-month protection order issued in favor of Lyn Shroyer and her daughter based on allegations of sexual abuse by Lance Fanning. The court held that the circuit court failed to make sufficient findings of fact and conclusions of law and failed to determine whether the child's hearsay statements satisfied the requirements of SDCL 19-16-39. The protection order was reversed and the matter remanded for a new hearing.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Meierhenry, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Zinter, Justice; Severson, Justice
JURISDICTION	South Dakota
DECIDED	March 3, 2010
DOCKET	No. 25351
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Fanning appealed a circuit court order granting Shroyer and the parties' daughter an eighteen-month protection order based on alleged domestic abuse.
STANDARD OF REVIEW	The grant or denial of a protection order is reviewed under the standard applicable to injunctions: factual findings are reviewed for clear error, and the decision to grant or deny the order is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential.
PARTIES	Lance James Fanning v. Lyn Marie Shroyer

TOPICS

- domestic violence
- family law procedure
- hearsay
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the circuit court committed reversible error by failing to make findings of fact and conclusions of law supporting the protection order.
2. Whether the circuit court violated SDCL 19-16-39 by admitting the child's out-of-court statements without determining whether they had sufficient indicia of reliability and without determining whether the required advance notice was provided.
3. Whether the circuit court's domestic-abuse finding was clearly erroneous and whether granting the protection order was an abuse of discretion.

HOLDINGS

1. A circuit court must enter findings of fact and conclusions of law with sufficient specificity to permit meaningful appellate review of a protection order. The circuit court's failure to make findings supporting its conclusion that domestic abuse occurred was reversible error.
2. Before admitting a child's out-of-court statements under SDCL 19-16-39, the circuit court must determine whether the statement has sufficient indicia of reliability and whether the proponent provided the required advance notice. The circuit court's failure to make those determinations, where the statements were prejudicial and formed the basis of the abuse allegations, was reversible error.

KEY QUOTATIONS

“We cannot meaningfully review the trial court decision without the trial court's reasons for ruling the way it did.” (470)

“Mere concern about an ongoing and inconclusive police investigation does not support a finding of abuse.” (471)

“Because the circuit court erroneously admitted O.S.F.'s hearsay statements, which were the basis of the abuse allegations, and did not otherwise make sufficient findings to support a protection order, the circuit court is reversed and the matter is remanded for a new hearing.” (472)

FACTUAL BACKGROUND

Fanning and Shroyer were never married but had a daughter, O.S.F., born in April 2005. After the parties ended their relationship, Shroyer had primary custody and Fanning had liberal visitation without a formal custody or visitation agreement. Shroyer petitioned for a protection order after O.S.F. allegedly made statements to her describing inappropriate sexual contact by Fanning. The circuit court admitted Shroyer's testimony about those statements, relied in part on ongoing police and child-protection investigations, and granted an eighteen-month protection order without making specific factual findings supporting domestic abuse.

PROCEDURAL HISTORY

Shroyer petitioned for a protection order alleging that Fanning sexually abused their daughter. After a hearing at which the circuit court admitted the daughter's alleged statements through Shroyer's testimony, the court granted an eighteen-month protection order. Fanning appealed, challenging the absence of findings of fact, the domestic-abuse finding, the protection order, and the admission of hearsay.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remanded for a new hearing. The circuit court must make findings of fact and conclusions of law sufficient to permit meaningful review and must properly determine whether the child's hearsay statements satisfy SDCL 19-16-39 before admitting them.

CASES CITED

- White v. Bain, 2008 SD 52, ¶ 8, 752 N.W.2d 203, 206
- Schaefer v. Liechti, 2006 SD 19, ¶ 8, 711 N.W.2d 257, 260
- Grode v. Grode, 1996 SD 15, ¶ 29, 543 N.W.2d 795, 803
- Goeden v. Daum, 2003 SD 91, ¶¶ 7-9, 668 N.W.2d 108, 110-11
- Judstra v. Donelan, 2006 SD 32, 712 N.W.2d 866
- People ex rel. D.A.J., 2008 SD 92, 757 N.W.2d 70
- In re J.B., 2008 SD 80, ¶ 9, 755 N.W.2d 496, 499
- State v. Shepard, 2009 SD 50, ¶ 16, 768 N.W.2d 162, 167