

SUPREME COURT OF NORTH DAKOTA

Martodam v. Martodam

2020 ND 70 (2020) · No. 20180432 · Decided March 19, 2020

SUMMARY

The North Dakota Supreme Court reviewed an amended divorce judgment awarding Crystal Martodam primary residential responsibility for the parties’ children and denying Jason Martodam’s motions for contempt and to amend the judgment. The court affirmed the residential-responsibility, evidentiary, parenting-investigator, counseling, child-support, and contempt rulings, but held that the district court erred by allowing the children to determine whether to exercise parenting time. The amended judgment was affirmed as modified to strike those provisions.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jerod E. Tufte, Justice; Jerod E. Tufte; Daniel J. Crothers; Lisa Fair McEvers; Gerald W. VandeWalle; Jon J. Jensen, Chief Justice
JURISDICTION	North Dakota
DECIDED	March 19, 2020
DOCKET	20180432
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jason Martodam appealed an amended divorce judgment awarding Crystal Martodam primary residential responsibility for their four children and a subsequent order denying his motions for contempt and to amend the amended judgment.
STANDARD OF REVIEW	Residential responsibility and parenting-time decisions are findings of fact reviewed for clear error. Evidentiary rulings are reviewed for abuse of discretion. Contempt decisions are reviewed for abuse of discretion. A finding is clearly erroneous if it is induced by an erroneous view of the law, unsupported by evidence, or leaves the reviewing court with a definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Jason James Martodam v. Crystal Beth Martodam

TOPICS

child custody visitation child support appellate procedure family law procedure

PRACTICE AREAS

family law family law procedure appellate procedure evidence child support

QUESTIONS PRESENTED

1. Whether the district court's interim order and related rulings could be reviewed on appeal from the final amended judgment and whether Jason established prejudice from any alleged errors concerning the interim order.
2. Whether the district court clearly erred in modifying residential responsibility and awarding Crystal primary residential responsibility.
3. Whether the district court abused its discretion in excluding evidence, declining to appoint a parenting investigator, or declining to order counseling.
4. Whether the district court erred by allowing the children to decide whether to exercise Jason's parenting time.
5. Whether the district court clearly erred in calculating Jason's child support obligation.
6. Whether the district court abused its discretion in denying Jason's motions for contempt and to amend the amended judgment.

HOLDINGS

1. Interlocutory orders generally merge into the final judgment and may be reviewed on appeal from that judgment, but Jason failed to establish prejudice from any alleged errors leading to entry of the interim order.
2. The district court did not clearly err in awarding Crystal primary residential responsibility for the children.
3. The district court did not abuse its discretion in excluding exhibits or in declining to appoint a parenting investigator or order counseling.
4. A district court may not make a parent's parenting time contingent on the children's unilateral decisions whether to attend; the parenting provisions that delegated control to the children were erroneous and had to be stricken.
5. The district court did not clearly err in using Jason's annual income of approximately \$28,800 to calculate child support.
6. The district court did not abuse its discretion in denying Jason's motions for contempt and to amend the amended judgment.

KEY QUOTATIONS

“Generally, interlocutory orders in an action are merged into the final judgment and may be reviewed on appeal of that judgment.” (¶ 7)

“A court must award primary residential responsibility in light of the child’s best interests, considering all the relevant best-interest factors under N.D.C.C. § 14-09-06.2(1).” (¶ 13)

“To include such language in the divorce decree was error.” (¶ 23)

“While there is nothing wrong with the children being heard regarding their wishes, our law proceeds on the assumption that they are nevertheless children and, thus, more interested in the desire of the moment than in considering the long range needs for the development of a healthy relationship with both parents where that is possible.” (¶ 23)

“Technical violations of a court order, however, do not necessitate a contempt finding.” (¶ 29)

FACTUAL BACKGROUND

Jason and Crystal Martodam divorced in 2015 under a stipulated agreement providing equal residential responsibility for their four minor children. In 2018, Crystal sought primary residential responsibility, and after an evidentiary hearing the district court found that the children had a deeper emotional bond with Crystal, that Jason was overly harsh and used excessive discipline, and that Crystal better supported the children's developmental needs. The court awarded Crystal primary residential responsibility, ordered Jason reasonable parenting time, and calculated child support using an annual income of approximately \$28,800. The judgment also made Jason's parenting time contingent on the children's decisions, including future decisions by the younger children when they reached age fourteen.

PROCEDURAL HISTORY

The parties divorced in 2015 pursuant to a stipulated marital termination agreement providing for equal residential responsibility. After Crystal moved to modify residential responsibility, the district court entered an interim order and, following an evidentiary hearing, amended the judgment to award Crystal primary residential responsibility and Jason reasonable parenting time. While the first appeal was pending, the case was remanded for consideration of Jason's motions for contempt and to amend the judgment; the district court denied those motions, and Jason filed a second appeal. The Supreme Court affirmed the amended judgment as modified and affirmed the subsequent order.

DISPOSITION

affirmed

CASES CITED

- Rhodenbaugh v. Rhodenbaugh, 2019 ND 109, ¶¶ 6, 11, 925 N.W.2d 742
- Tibbetts v. Dornheim, 2004 ND 129, ¶ 11, 681 N.W.2d 798
- Dickson v. Dickson, 2018 ND 130, ¶¶ 7, 14, 912 N.W.2d 321
- Maynard v. McNett, 2006 ND 36, ¶ 21, 710 N.W.2d 369

- Zuo v. Wang, 2019 ND 211, ¶¶ 7, 11, 932 N.W.2d 360
- Grasser v. Grasser, 2018 ND 85, ¶ 17, 909 N.W.2d 99
- Valeu v. Strube, 2018 ND 30, ¶ 8, 905 N.W.2d 728
- Green v. Swiers, 2018 ND 258, ¶ 14, 920 N.W.2d 471
- Bertsch v. Bertsch, 2006 ND 31, ¶ 5, 710 N.W.2d 113
- Vandal v. Leno, 2014 ND 45, ¶ 26, 843 N.W.2d 313
- State v. Gipp, 2013 ND 134, ¶ 5, 833 N.W.2d 541
- Prchal v. Prchal, 2011 ND 62, ¶ 27, 795 N.W.2d 693
- Sisk v. Sisk, 2006 ND 55, ¶ 11, 711 N.W.2d 203
- Barrett v. Barrett, 394 N.W.2d 274, 279 (Minn. Ct. App. 1986)
- In re Marriage of Kimbrell, 119 P.3d 684, 693 (Kan. Ct. App. 2005)
- Ellis v. Ellis, 840 So. 2d 806, 813 (Miss. Ct. App. 2003)
- Lind v. Lind, 2014 ND 70, ¶ 18, 844 N.W.2d 907
- Rath v. Rath, 2017 ND 128, ¶¶ 8-9, 895 N.W.2d 306
- Rath v. Rath, 2013 ND 243, ¶ 11, 840 N.W.2d 656