

SUPREME COURT OF SOUTH DAKOTA

Stavig v. Stavig

2009 SD 89 (2009) · No. No. 25021 · Decided September 30, 2009

SUMMARY

The Supreme Court of South Dakota affirmed an order changing primary physical custody of the parties' child from the mother to the father. The court held that the trial court did not abuse its discretion in determining that the child's best interests supported the change and that the evidence did not establish a history of domestic abuse creating a statutory presumption against awarding custody to the father. The opinion also addressed the civil presumption rule and the evidentiary significance of protection orders and allegations of domestic abuse.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                  |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of South Dakota                                                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Per Curiam; Chief Justice Gilbertson; Justice Konenkamp; Justice Zinter; Justice Meierhenry; Justice Severson                                                                                                                                                                    |
| JURISDICTION          | South Dakota                                                                                                                                                                                                                                                                     |
| DECIDED               | September 30, 2009                                                                                                                                                                                                                                                               |
| DOCKET                | No. 25021                                                                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Jessica Stavig appealed an order modifying the parties' child-custody arrangement and transferring primary physical custody of their son from her to Troy Stavig.                                                                                                                |
| STANDARD OF REVIEW    | The ultimate custody decision is reviewed for abuse of discretion. Findings of fact are reviewed for clear error and will be overturned only when a complete review of the evidence leaves the appellate court with a definite and firm conviction that a mistake has been made. |
| PRECEDENTIAL VALUE    | Published opinion; precedential                                                                                                                                                                                                                                                  |
| PARTIES               | Jessica Stavig v. Troy Stavig                                                                                                                                                                                                                                                    |

TOPICS

- child custody
- domestic violence
- standard of review
- statutory interpretation
- appellate procedure

## PRACTICE AREAS

family law

child custody

domestic violence

appellate procedure

evidence

## QUESTIONS PRESENTED

1. Whether the circuit court erred by changing primary physical custody from Jessica Stavig to Troy Stavig.
2. Whether the evidence established a history of domestic abuse sufficient to trigger the rebuttable presumption against awarding custody to Troy under SDCL 25-4-45.5.
3. Whether the circuit court abused its discretion in finding that Troy's primary physical custody served Skyler's best interests.

## HOLDINGS

1. When a divorce judgment is based on the parties' agreement, a party seeking a subsequent custody modification need only show that the child's best interests and welfare require a change in custody; proof of a substantial change in circumstances is not necessary.
2. The evidence did not establish a history of domestic abuse under SDCL 25-4-45.5, and therefore the statutory rebuttable presumption that custody with the abusive parent is not in the child's best interest was not triggered.
3. The circuit court did not abuse its discretion in determining that Skyler's best interests supported Troy's primary physical custody.

## KEY QUOTATIONS

*"In interpreting what is sufficient to constitute a "history of domestic abuse" "[i]t is for the court to weigh the evidence of domestic abuse, its nature, severity, repetition, and to whom directed, not just to be a counter of numbers." (¶ 18)*

*"The trial court carefully considered all of the factors relevant to determining Skyler's best interests in this custody dispute, including those factors in SDCL 25-4-45.5." (¶ 20)*

## FACTUAL BACKGROUND

Troy and Jessica divorced in 2006 and agreed to joint legal custody, with Jessica having primary physical custody of their son, Skyler. Troy later sought a custody change, alleging safety concerns and interference with visitation, and the circuit court obtained a comprehensive custody evaluation. The evaluator recommended Troy as the preferred custodial parent, and the circuit court found both parents fit but concluded that Troy was somewhat better able to provide for Skyler's welfare. Jessica alleged a history of domestic abuse, but the court found no qualifying history under the governing statutes and determined that Skyler's best interests favored Troy's primary physical custody.

## PROCEDURAL HISTORY

After the parties divorced pursuant to an agreement providing joint legal custody and Jessica's primary physical custody, Troy moved for temporary and then primary custody. The circuit court ordered a custody evaluation, considered the parties' evidence concerning parenting abilities and alleged domestic abuse, and awarded Troy primary physical custody. The Supreme Court of South Dakota affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Hulm v. Hulm, 484 NW2d 303, 305 (SD 1992)
- Williams v. Williams, 425 NW2d 390, 393 (SD 1988)
- Pietrzak v. Schroeder, 2009 SD 1, ¶¶ 37-39, 759 NW2d 734, 743-744
- Fuerstenberg v. Fuerstenberg, 1999 SD 35, ¶ 22, 591 NW2d 798, 807
- Adrian v. McKinnie, 2002 SD 10, ¶ 10, 639 NW2d 529, 533
- Arneson v. Arneson, 2003 SD 125, ¶ 14, 670 NW2d 904, 910
- In re Estate of Dimond, 2008 SD 131, ¶¶ 7-9, 759 NW2d 534, 536-538
- In re Marriage of Forbes, 570 NW2d 757, 760 (Iowa 1997)
- Matter of Estate of Gibbs, 490 NW2d 504, 508 (SD 1992)