

SUPREME COURT OF NORTH DAKOTA

A.M.W. v. North Dakota Department of Human Services

786 N.W.2d 727 (N.D. 2010) · Decided August 17, 2010

SUMMARY

The North Dakota Supreme Court affirmed an order denying petitions to terminate a father’s parental rights and for a stepparent adoption. The court held that the district court’s finding that abandonment was not established by clear and convincing evidence was not clearly erroneous, given conflicting evidence concerning visitation, communication, support payments, and the father’s intent.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Kapsner, Justice; Gerald W. Vande Walle, C.J.; Mary Muehlen Maring, J.; Daniel J. Crothers, J.; Dale V. Sandstrom, J.; Kapsner, J.
JURISDICTION	North Dakota
DECIDED	August 17, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	A.W. and L.W. appealed a district court order denying their petitions to terminate M.F.'s parental rights and for L.W.'s adoption of the child.
STANDARD OF REVIEW	Whether a child has been abandoned is a question of fact reviewed for clear error. A finding is clearly erroneous if it is induced by an erroneous view of the law, unsupported by evidence, or leaves the appellate court with a definite and firm conviction that a mistake has been made. The appellate court does not reweigh evidence or reverse merely because it might view the evidence differently.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	A.W., L.W. v. North Dakota Department of Human Services

TOPICS

- termination of parental rights
- adoption
- family law procedure
- standard of review
- appellate procedure

PRACTICE AREAS

- family law
- adoption
- termination of parental rights
- appellate procedure

QUESTIONS PRESENTED

1. Whether the district court clearly erred in finding that A.W. and L.W. failed to prove by clear and convincing evidence that M.F. had abandoned the child.
2. Whether the district court clearly erred in denying the petition to terminate M.F.'s parental rights and the related petition for adoption.

HOLDINGS

1. The district court did not clearly err in finding that the evidence did not clearly and convincingly establish M.F.'s abandonment of the child.
2. A party seeking termination of the parent-child relationship in an adoption proceeding must prove the grounds for termination by clear and convincing evidence, and the district court's factual determination concerning abandonment is reviewed for clear error.

KEY QUOTATIONS

“A party seeking termination of the parent-child relationship in the context of an adoption proceeding must prove the elements necessary to support termination by clear and convincing evidence.” (¶ 6)

“A district court’s choice between two permissible views of the evidence is not clearly erroneous, and we will not reverse the district court’s decision simply because we may view the evidence differently.” (¶ 7)

“While we may have found differently regarding whether M.F. had abandoned the child under these facts and circumstances, there is evidence in the record to support the court’s findings, that there was not clear and convincing evidence M.F. intended to abandon his child and that he had attempted to pay at least some support.” (¶ 17)

FACTUAL BACKGROUND

A.W. and M.F., who were never married, had a child born in 2006. After A.W. married L.W., the couple sought termination of M.F.'s parental rights and L.W.'s adoption of the child, alleging that M.F. had failed to communicate with and support the child. M.F.'s visitation had become subject to supervision and arrangements through the Family Safety Center; although his contact and child-support payments were sporadic, the evidence also showed some calls and payments, efforts toward sobriety and employment, and testimony that he did not intend to abandon the child.

PROCEDURAL HISTORY

A.W., the child's mother, and L.W., her husband, petitioned the district court to terminate M.F.'s parental rights and permit L.W. to adopt the child. After a November 24, 2009 hearing, the district court found the evidence did not clearly and convincingly establish abandonment and denied both petitions. A.W. and L.W. appealed, and the North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Adoption of H.R.W., 2004 ND 216, ¶ 4, 689 N.W.2d 403
- In re Adoption of H.G.C., 2009 ND 19, ¶¶ 10, 12, 761 N.W.2d 565
- B.L.L. v. W.D.C., 2008 ND 107, ¶ 5, 750 N.W.2d 466
- Hogan v. Hogan, 2003 ND 105, ¶ 6, 665 N.W.2d 672
- In re Adoption of S.R.F., 2004 ND 150, ¶¶ 7-8, 10-11, 683 N.W.2d 913
- In re Adoption of J.W.M., 532 N.W.2d 372, 374-75 (N.D. 1995)
- In re Adoption of Lily T., 2010 ME 58, ¶ 21, 997 A.2d 722

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