

SUPREME COURT OF NORTH DAKOTA

Shaw v. Shaw

2002 ND 114 (N.D. 2002) · No. 20010268 · Decided July 11, 2002

SUMMARY

The North Dakota Supreme Court reviewed a divorce judgment involving child custody, property distribution, and child support. The court affirmed the custody determination and property distribution, but reversed the child support award because the trial court failed to apply the extended-visitation adjustment under the child support guidelines. The case was remanded for recalculation using the correct gross annual income and applicable guideline adjustment.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Mary Muehlen Maring, Justice; Mary Muehlen Maring; William A. Neumann; Dale V. Sandstrom; Carol Ronning Kapsner; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	July 11, 2002
DOCKET	20010268
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Nathan Shaw appealed from a divorce judgment of the District Court of Ward County challenging the custody determination, property distribution, and child support calculation.
STANDARD OF REVIEW	Custody and property distribution findings are reviewed under the clearly erroneous standard. Child support determinations involve de novo review of legal questions, clearly erroneous review of factual findings, and abuse-of-discretion review in limited areas.
PRECEDENTIAL VALUE	Published opinion; precedential under North Dakota law.
PARTIES	Nathan D. Shaw v. Corrina R. Shaw

TOPICS

- child support
- child custody
- equitable distribution
- dissolution of marriage
- statutory interpretation

PRACTICE AREAS

family law

child custody

child support

equitable distribution

QUESTIONS PRESENTED

1. Whether the district court's initial custody determination was clearly erroneous based on the best-interest factors, including stability, permanence of the custodial home, moral fitness, and alleged frustration of visitation.
2. Whether the district court's property distribution was clearly erroneous because it included a vehicle that Nathan claimed was owned by his mother.
3. Whether the child support award had to be adjusted under N.D. Admin. Code § 75-02-04.1-08.1 when the obligor parent was awarded custody, rather than visitation, for more than sixty of ninety consecutive nights.

HOLDINGS

1. The district court's custody determination was not clearly erroneous. The court could rely on the child's established home, school, and custodial environment and on the relative stability and permanence of the proposed custodial homes; it was not required to make a separate finding on every best-interest factor.
2. The district court's property distribution was not clearly erroneous, including its treatment of the 1986 Isuzu Trooper as marital property.
3. The child support award had to be recalculated under N.D. Admin. Code § 75-02-04.1-08.1 because the judgment awarded Nathan physical custody of the child for approximately three summer months, exceeding sixty of ninety consecutive nights. The guideline applies whether the decree characterizes the arrangement as custody or visitation.

KEY QUOTATIONS

“Essentially, factor d addresses past stability of environment, including a consideration of place or physical setting, as well as a consideration of the prior family unit and its lifestyle as part of that setting.” (¶ 7)

“It is clear from this Statement of Intent that N.D. Admin. Code § 75-02-04.1-08.1 was intended to apply regardless of whether the divorce decree orders “visitation” or “custody” for the obligor parent that exceeds 60 of 90 consecutive nights.” (¶ 19)

FACTUAL BACKGROUND

Corrina and Nathan Shaw married in 1993 and had one child, born in 1994. After Corrina filed for divorce, the district court awarded joint legal and physical custody, with Corrina having physical custody during the nine-month school year and Nathan having physical custody for approximately three summer months. The court awarded Corrina and Nathan nearly equal net values of marital property and ordered Nathan to pay \$362 per month in child support, without applying the extended-visitation adjustment required by the child support guidelines.

PROCEDURAL HISTORY

Corrina Shaw filed for divorce in May 2000. The district court entered judgment on August 22, 2001, awarding the parties joint legal and physical custody, allocating primary school-year physical custody to Corrina and summer physical custody to Nathan, ordering Nathan to pay \$362 per month in child support, and distributing the marital property. Nathan appealed on October 25, 2001. The Supreme Court of North Dakota affirmed the custody determination and property distribution, reversed the child support award, and remanded for recalculation.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Recalculate Nathan's child support obligation under N.D. Admin. Code § 75-02-04.1-08.1, applying the extended-visitation adjustment and using Nathan's correct gross annual income of \$23,400. The custody determination and property distribution remain affirmed.

CASES CITED

- Dufner v. Dufner, 2002 ND 47, 640 N.W.2d 694
- Stoppler v. Stoppler, 2001 ND 148, 633 N.W.2d 142
- Riehl v. Riehl, 1999 ND 107, 595 N.W.2d 10
- Heggen v. Heggen, 452 N.W.2d 96 (N.D. 1990)
- Kjelland v. Kjelland, 2000 ND 86, 609 N.W.2d 100
- Landsberger v. Landsberger, 364 N.W.2d 918 (N.D. 1985)
- Foreng v. Foreng, 509 N.W.2d 38 (N.D. 1993)
- Gleich v. Gleich, 2001 ND 185, 636 N.W.2d 418
- Logan v. Bush, 2000 ND 203, 621 N.W.2d 314