

SUPREME COURT OF NORTH DAKOTA

Maynard v. McNett

2006 ND 36 · No. No. 20050090 · Decided February 8, 2006

SUMMARY

The Supreme Court of North Dakota reversed an order permitting a parent with joint legal and joint physical custody to relocate with the parties’ child from North Dakota to Missouri. The court held that, before granting relocation, the district court must first determine under the custody-modification standard whether the child’s best interests require a change in primary custody to the relocating parent. Because no motion to change custody had been filed, the relocation order was improper.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Sandstrom, Justice; Dale V. Sandstrom; Daniel J. Crothers; Laurie A. Fontaine, D.J.
JURISDICTION	North Dakota
DECIDED	February 8, 2006
DOCKET	No. 20050090
DISPOSITION	reversed
PROCEDURAL POSTURE	Jeffery Maynard appealed an order granting Christa McNett permission to relocate with the parties' child from Fargo, North Dakota, to Branson, Missouri. The judicial referee granted the relocation motion, and the district court affirmed after de novo review.
STANDARD OF REVIEW	Interpretation of a judgment is a question of law reviewed without deference. A trial court's best-interests determination in a relocation matter is a finding of fact reviewed under the clearly erroneous standard. 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 was made.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jeffery J. Maynard v. Christa M. McNett, formerly known as Christa M. Maynard

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the divorce judgment created joint legal and joint physical custody even though the child spent more days with McNett.
2. Whether a parent with joint legal and joint physical custody may obtain permission to relocate with the child without first seeking a change in primary custody.
3. Whether the district court properly applied the relocation standards under N.D.C.C. § 14-09-07.

HOLDINGS

1. The parties' stipulated divorce judgment established joint legal and joint physical custody, and both parents were custodial parents with parental rights; the fact that the child spent more nights with McNett did not convert the arrangement into sole custody.
2. A parent with joint legal and joint physical custody may not be granted permission to relocate with the child unless the district court first determines that the child's best interests require a change in primary custody to the relocating parent.
3. The district court erred by treating McNett as the sole custodial parent and applying the primary-custodian relocation analysis without first deciding primary custody. Because no motion to change custody had been filed, the relocation motion could not properly be granted.

KEY QUOTATIONS

"We hold that a parent with joint legal and physical custody may not be granted permission to move with the parties' child, unless the district court first determines the best interests of the child require a change in primary custody to that parent." (¶ 21)

"A parent with joint custody who wishes to relocate with the child must make two motions: one for a change of custody, governed by N.D.C.C. § 14-09-06.2, and one to relocate with the child, governed by N.D.C.C. § 14-09-07." (¶ 21)

"There was no motion to change custody and therefore the motion to relocate could not have been properly granted. We reverse." (¶ 27)

FACTUAL BACKGROUND

Maynard and McNett were divorced in 1999 and stipulated to joint legal and joint physical custody of their daughter, born in 1996. The child spent approximately twelve nights per month with Maynard and the remainder with McNett. McNett sought to move with the child from Fargo to Branson to accept a position managing a women's fitness franchise supported by her mother. The district court found the move was in the child's best interests, but it treated McNett as the sole or primary custodial parent for purposes of the relocation motion.

PROCEDURAL HISTORY

The parties' divorce judgment incorporated their stipulation for joint legal and joint physical custody. McNett later moved to relocate with the child. A judicial referee granted the motion, and the district court adopted the referee's findings after de novo review. Maynard's motion to amend was denied, and his appeal followed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order granting relocation was reversed. The opinion states that a parent in a true joint-custody arrangement must first seek a change of custody and that no relocation may be granted without the required primary-custody determination.

CASES CITED

- State ex rel. Melling v. Ness, 1999 ND 73, ¶ 7, 592 N.W.2d 565
- Negaard v. Negaard, 2002 ND 70, ¶ 7, 642 N.W.2d 916
- Dickson v. Dickson, 2001 ND 157, ¶ 7, 634 N.W.2d 76
- Tibor v. Tibor, 1999 ND 150, ¶¶ 7-9, 598 N.W.2d 480
- Anderson v. Anderson, 522 N.W.2d 476, 478-79 (N.D. 1994)
- Oppegard-Gessler v. Gessler, 2004 ND 141, ¶ 12, 681 N.W.2d 762
- Stout v. Stout, 1997 ND 61, ¶¶ 7, 34, 54 & n.7, 560 N.W.2d 903
- Hawkinson v. Hawkinson, 1999 ND 58, ¶¶ 9, 11-12, 591 N.W.2d 144
- Benson v. Benson, 495 N.W.2d 72, 75 n.3 (N.D. 1993)
- McDonough v. Murphy, 539 N.W.2d 313, 316-17 (N.D. 1995)
- Voit v. Voit, 721 A.2d 317, 319, 326-27 (N.J. Super. Ct. Ch. Div. 1998)
- Brown v. Brown, 621 N.W.2d 70, 75, 77-80 (Neb. 2000)
- Ayers v. Ayers, 508 N.W.2d 515, 518, 520-21 (Minn. 1993)
- Potter v. Potter, 119 P.3d 1246, 1248-50 (Nev. 2005)
- Chen v. Heller, 759 A.2d 873, 885 (N.J. Super. Ct. App. Div. 2000)
- Murnane v. Murnane, 552 A.2d 194, 198 (N.J. Super. Ct. App. Div. 1989)
- Goff v. Goff, 1999 ND 95, ¶¶ 13-14, 18, 593 N.W.2d 768
- Newell v. Rammage, 7 S.W.3d 517, 523-24 (Mo. Ct. App. 1999)
- Dickie v. Farmers Union Oil Co., 2000 ND 111, ¶ 13, 611 N.W.2d 168
- Otter Tail Power Co. v. Von Bank, 72 N.D. 497, 8 N.W.2d 599, 607 (1942)
- Olson v. Olson, 2000 ND 120, ¶ 6, 611 N.W.2d 892
- Paulson v. Bauske, 1998 ND 17, ¶ 15, 574 N.W.2d 801
- Hanson v. Hanson, 1997 ND 151, ¶ 8, 567 N.W.2d 216

- Silbaugh v. Silbaugh, 543 N.W.2d 639, 641 (Minn. 1996)

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