

SUPREME COURT OF NORTH DAKOTA

Damron v. Damron

670 N.W.2d 871 (N.D. 2003) · No. 20030135 · Decided November 13, 2003

SUMMARY

The Supreme Court of North Dakota reversed an amended judgment transferring custody from Valerie Damron to Millard Shawn Damron. The court held that, under N.D.C.C. § 14-09-06.6(5)(b), a parent's homosexual household is not grounds for modifying custody within two years of a prior custody order absent evidence that the environment endangers or potentially endangers the children's physical or emotional health or impairs their emotional development. The court overruled Jacobson v. Jacobson to the extent it could be read to create a presumption of harm and declined to reach the constitutional claims.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Neumann, Justice; Gerald W. Vande Walle, Chief Justice; Mary Muehlen Maring, Justice; Carol Ronning Kapsner, Justice; Dale V. Sandstrom, Justice
JURISDICTION	North Dakota
DECIDED	November 13, 2003
DOCKET	20030135
DISPOSITION	reversed
PROCEDURAL POSTURE	Valerie Damron appealed from an amended judgment granting Shawn Damron's motion to modify custody of the parties' two minor children.
STANDARD OF REVIEW	A custody-modification decision is a finding of fact reviewed under the clearly erroneous standard. A finding is clearly erroneous if unsupported by evidence, if the reviewing court is left with a definite and firm conviction that a mistake was made, or if the finding was induced by an erroneous view of the law.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Valerie Damron v. Millard Shawn Damron

TOPICS

child custody

family law procedure

appellate procedure

standard of review

constitutional law

PRACTICE AREAS

family law

constitutional law

civil rights

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court clearly erred in modifying custody within two years of the prior custody order without evidence that the children's present environment endangered or potentially endangered their physical or emotional health or impaired their emotional development.
2. Whether *Jacobson v. Jacobson* could be read to create a presumption that a parent's same-sex relationship harms children and eliminates the moving parent's burden to prove actual or potential harm.
3. Whether the custody modification based on Valerie's sexual orientation violated the federal and state constitutions.

HOLDINGS

1. Under N.D.C.C. § 14-09-06.6(5)(b), a custodial parent's homosexual household is not grounds for modifying custody within two years of a prior custody order absent evidence that the environment endangers or potentially endangers the children's physical or emotional health or impairs their emotional development.
2. To the extent *Jacobson v. Jacobson* can be read as creating a presumption that children living in a lesbian household are harmed, it is overruled.
3. The court declined to address whether modifying custody based on sexual orientation violated the federal and state constitutions because reversal on statutory and evidentiary grounds resolved the appeal.

KEY QUOTATIONS

“Under N.D.C.C. § 14-09-06.6(5)(b), we hold a custodial parent's homosexual household is not grounds for modifying custody within two years of a prior custody order in the absence of evidence that environment endangers or potentially endangers the children's physical or emotional health or impairs their emotional development.” (¶ 12, 670 N.W.2d at 875)

“To the extent Jacobson can be read as creating such a presumption, it is overruled.” (¶ 9, 670 N.W.2d at 875)

FACTUAL BACKGROUND

After a ten-year marriage, Valerie and Shawn Damron divorced in September 2001 under a stipulated decree granting joint custody, with Valerie having primary physical custody and Shawn having liberal visitation. In 2002, Valerie began living with a female partner in a same-sex relationship in the home where she lived with the children. The trial court found Valerie was a fit parent but nevertheless transferred custody based on the relationship and the court's concern that it might harm the children's emotional health or development. The

record contained no evidence that the relationship had caused actual or potential harm; the children were doing well, and Shawn did not identify an adverse impact.

PROCEDURAL HISTORY

The parties were divorced in September 2001 under a stipulated decree providing joint custody and primary physical custody to Valerie. In September 2002, Shawn moved to modify custody under N.D.C.C. § 14-09-06.6(5)(b), alleging that Valerie's same-sex relationship justified a change. After an evidentiary hearing, the trial court transferred primary physical custody to Shawn; the North Dakota Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- Jacobson v. Jacobson, 314 N.W.2d 78 (N.D. 1981)
- Johnson v. Schlotman, 502 N.W.2d 831 (N.D. 1993)
- In re K.M.G., 2000 ND 50, ¶ 4, 607 N.W.2d 248
- Lovin v. Lovin, 1997 ND 55, ¶¶ 16, 18, 561 N.W.2d 612
- Alvarez v. Carlson, 524 N.W.2d 584, 589-90 (N.D. 1994)
- State ex rel. D.D. v. G.K., 2000 ND 101, ¶ 5, 611 N.W.2d 179
- Quarne v. Quarne, 1999 ND 188, ¶¶ 9, 12, 601 N.W.2d 256
- S.N.E. v. R.L.B., 699 P.2d 875, 878-79 (Alaska 1985)
- Jacoby v. Jacoby, 763 So. 2d 410, 413 (Fla. Dist. Ct. App. 2000)
- In re Marriage of R.S., 286 Ill. App. 3d 1046, 222 Ill. Dec. 498, 677 N.E.2d 1297, 1301-03 (1996)
- D.H. v. J.H., 418 N.E.2d 286, 293 (Ind. Ct. App. 1981)
- Hassenstab v. Hassenstab, 6 Neb. App. 13, 570 N.W.2d 368, 372-73 (1997)
- Inscoe v. Inscoe, 121 Ohio App. 3d 396, 700 N.E.2d 70, 82 (1997)
- Fox v. Fox, 904 P.2d 66, 69-70 (Okla. 1995)
- Stroman v. Williams, 291 S.C. 376, 353 S.E.2d 704, 705-06 (S.C. Ct. App. 1987)
- Van Driel v. Van Driel, 525 N.W.2d 37, 39-40 (S.D. 1994)
- Matter of Marriage of Cabalquinto, 100 Wash. 2d 325, 669 P.2d 886, 888 (Wash. 1983)
- In re Thompson, 2003 ND 61, ¶ 12, 659 N.W.2d 864
- Engh v. Engh, 2003 ND 5, ¶¶ 7-9, 655 N.W.2d 712
- O'Neill v. O'Neill, 2000 ND 200, ¶ 8, 619 N.W.2d 855
- Holtz v. Holtz, 1999 ND 105, ¶ 17, 595 N.W.2d 1
- Kaler v. Kraemer, 1999 ND 237, ¶ 22, 603 N.W.2d 698