

SUPREME COURT OF NORTH DAKOTA

In the Interest of J.J.G., M.K.G. and O.J.G., minor children

2022 ND 236 · No. 20220159 · Decided December 22, 2022

SUMMARY

The North Dakota Supreme Court affirmed orders denying a mother's petition to terminate the father's parental rights and her motion for a new trial. The court held that the district court's finding that the father had not abandoned the children was not clearly erroneous and that the court had discretion to deny termination. The court also concluded that denial of the new-trial motion was not an abuse of discretion.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Gerald W. VandeWalle, Justice; Jon J. Jensen, Chief Justice; Daniel J. Crothers, Justice; Lisa Fair McEvers, Justice; Jerod E. Tufte, Justice
JURISDICTION	North Dakota
DECIDED	December 22, 2022
DOCKET	20220159
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from orders denying her petition to terminate the father's parental rights and denying her motion for a new trial.
STANDARD OF REVIEW	Whether abandonment occurred is a question of fact reviewed for clear error. The denial of a motion for a new trial is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	T.K. v. D.D.G.

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- motion for new trial
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court clearly erred in finding that D.D.G. had not abandoned the children and in denying the petition to terminate his parental rights.
2. Whether the district court abused its discretion by denying T.K.'s motion for a new trial based on alleged insufficient evidence and newly discovered evidence.

HOLDINGS

1. The district court did not clearly err in finding that T.K. failed to prove abandonment by clear and convincing evidence.
2. Even if clear and convincing evidence of abandonment existed, the district court had discretion to deny termination, and T.K. did not establish that denial would seriously affect the children's welfare.
3. The district court did not abuse its discretion by denying T.K.'s motion for a new trial.

KEY QUOTATIONS

“A party seeking termination of parental rights must prove all of the elements by clear and convincing evidence.” (¶ 8)

“If a petitioner proves the statutory elements by clear and convincing evidence, then the court has discretion under N.D.C.C. § 27-20.3-20 to decide whether to terminate parental rights.” (¶ 9)

“A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, it misinterprets or misapplies the law, or its decision is not the product of a rational mental process leading to a reasoned determination.” (¶ 16)

FACTUAL BACKGROUND

T.K. and D.D.G. are the parents of three children. T.K. alleged that D.D.G. had little contact with the two younger children, limited visits with the oldest child, provided no financial support, and had a history of drug use and abusive conduct. D.D.G. testified that he loved and cared for the children, wanted a relationship with them, and stayed away because T.K. asked him not to contact her and because he believed contact would cause additional conflict.

PROCEDURAL HISTORY

T.K. petitioned the McKenzie County District Court to terminate D.D.G.'s parental rights based on alleged abandonment. After an evidentiary hearing, the district court denied the petition, finding no clear and convincing evidence of abandonment. The court also denied T.K.'s N.D.R.Civ.P. 59 motion for a new trial, and the North Dakota Supreme Court affirmed both orders.

DISPOSITION

affirmed

CASES CITED

- In re C.A.R., 2020 ND 209, ¶ 7, 950 N.W.2d 186
- In re Adoption of I.R.R., 2013 ND 211, ¶ 11, 839 N.W.2d 846
- B.L.L. v. W.D.C., 2008 ND 107, ¶ 6, 750 N.W.2d 466
- In re R.M.B., 402 N.W.2d 912, 915 (N.D. 1987)
- In re C.A.R., 2020 ND 209, ¶¶ 8-9, 950 N.W.2d 186
- In re C.D.G.E., 2017 ND 13, ¶¶ 4, 10, 889 N.W.2d 863
- In re D.R., 525 N.W.2d 672, 674 (N.D. 1994)
- Lessard v. Johnson, 2019 ND 301, ¶ 7, 936 N.W.2d 528