

SUPREME COURT OF NORTH DAKOTA

Lawrence v. Delkamp

2008 ND 111 · No. 20070131 · Decided June 5, 2008

SUMMARY

The Supreme Court of North Dakota affirmed a district court order denying Lawrence's contempt motion, awarding Delkamp the child tax exemption, and ending Lawrence's responsibility for half of the child's uncovered medical expenses. The court held that the district court did not abuse its discretion by refusing to permit Delkamp to testify telephonically because appropriate safeguards for identity verification and administration of an oath were not in place. A specially concurring opinion discussed the apparent unfairness of allowing Delkamp to cross-examine Lawrence by telephone while denying Lawrence the opportunity to cross-examine her, and a dissent would have reversed for a fundamentally fair proceeding.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Carol Ronning Maring; Carol Ronning Kapsner; Gerald W. VandeWalle; Daniel J. Crothers; Dale V. Sandstrom
JURISDICTION	North Dakota
DECIDED	June 5, 2008
DOCKET	20070131
DISPOSITION	affirmed
PROCEDURAL POSTURE	Lawrence appealed a district court order denying his contempt motion, allocating the child's tax exemption to Delkamp, and relieving Lawrence of responsibility for fifty percent of the child's uncovered medical expenses. He challenged the district court's refusal to permit Delkamp to testify telephonically so that he could cross-examine her.
STANDARD OF REVIEW	Evidentiary rulings, including the admission or exclusion of evidence, are reviewed for abuse of discretion. Abuse of discretion occurs when the trial court acts arbitrarily, unconscionably, or unreasonably, or when its decision is not based on a rational mental process.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	John Daniel Lawrence, aka Dan Lawrence v. Tina Lucille Delkamp

TOPICS

family law procedure

child support

evidence

appellate procedure

standard of review

PRACTICE AREAS

family law

evidence

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by refusing to allow Delkamp to testify telephonically during the contempt hearing.
2. Whether Delkamp's statements while cross-examining Lawrence required that Lawrence be permitted to call and cross-examine her as a witness.

HOLDINGS

1. N.D.R.Civ.P. 43(a) permits, but does not require, a district court to allow testimony by contemporaneous transmission. Such testimony requires good cause shown in compelling and unexpected circumstances and appropriate safeguards.
2. The district court did not abuse its discretion by refusing to allow Lawrence to call Delkamp as a telephonic witness under the circumstances presented.

KEY QUOTATIONS

“Under N.D.R.Civ.P. 43(a), a district court may allow witnesses to testify telephonically. However, the admissibility of telephonic testimony is conditioned on good cause in compelling circumstances and the availability of appropriate safeguards.” (¶ 17)

FACTUAL BACKGROUND

The parties litigated contempt issues concerning payment of their child's eyeglass expenses and the provision of tax forms. Delkamp, who lived in Missouri, was permitted to appear by telephone to avoid the expense of traveling to North Dakota, but she was not placed under oath or otherwise formally called as a witness. After Lawrence testified, his counsel sought to call Delkamp telephonically so Lawrence could cross-examine her; the court denied the request because no suitable person was present with Delkamp to verify her identity and administer an oath.

PROCEDURAL HISTORY

This was Lawrence's fifth appeal in the parties' child custody and support litigation. In the prior appeal, the North Dakota Supreme Court reversed and remanded several orders and directed the district court to hold a hearing on the parties' contempt motions. After the remand hearing, the district court entered its March 9, 2007, order, and Lawrence appealed. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Lawrence v. Delkamp, 2006 ND 257, 725 N.W.2d 211
- Lawrence v. Delkamp, 2003 ND 53, 658 N.W.2d 758
- Lawrence v. Delkamp, 2000 ND 214, 620 N.W.2d 151
- Lawrence v. Delkamp, 1998 ND 178, 584 N.W.2d 515
- State v. Friedt, 2007 ND 108, ¶ 8, 735 N.W.2d 848
- Guardianship/Conservatorship of Van Sickle, 2005 ND 69, ¶ 15, 694 N.W.2d 212
- Gust v. Gust, 345 N.W.2d 42, 44-45 (N.D. 1984)
- J.P. v. Stark County Social Services Bd., 2007 ND 140, ¶ 16, 737 N.W.2d 627
- Tice v. Mandel, 76 N.W.2d 124, 137 (N.D. 1956)
- Gregg v. Gregg, 776 P.2d 1041 (Alaska 1989)
- Sandbeck v. Rockwell, 524 N.W.2d 846, 852-53 (N.D. 1994)
- State v. One Black 1989 Cadillac, 522 N.W.2d 457, 463 (N.D. 1994)
- State v. \$33,000 U.S. Currency, 2008 ND 96