

SUPREME COURT OF NORTH DAKOTA

Matthew Adam Thomas v. SummerLee Candy Thomas

Thomas, 2019 ND 299 (N.D. 2019) · No. 20190094 · Decided December 12, 2019

SUMMARY

The North Dakota Supreme Court reviewed a divorce judgment granting the parties joint residential responsibility for their children. The court affirmed in part and remanded while retaining jurisdiction, instructing the district court to make specific findings regarding the domestic-violence presumption under N.D.C.C. § 14-09-06.2(1)(j) and the treatment of the parties’ stipulated parenting plan.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Lisa K. Fair McEvers; Daniel J. Crothers; Jerod E. Tufte; Jon J. Jensen; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	December 12, 2019
DOCKET	20190094
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Matthew Thomas appealed from a divorce judgment awarding the parties joint residential responsibility of their children, challenging the district court's application of the child-custody best-interest factors, its treatment of domestic violence, and its handling of a stipulated parenting plan.
STANDARD OF REVIEW	Child-custody decisions are findings of fact reviewed for clear error. A finding is clearly erroneous if it is induced by an erroneous view of the law, unsupported by evidence, or leaves the appellate court with a definite and firm conviction that a mistake was made. The appellate court does not reweigh evidence, reassess credibility, retry the custody case, or substitute its judgment for that of the district court.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Matthew Adam Thomas v. SummerLee Candy Thomas, State of North Dakota, Statutory Real Party in Interest

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the district court's findings under child-custody best-interest factors (a) and (c) were clearly erroneous.
2. Whether the district court adequately determined whether the evidence of domestic violence triggered the rebuttable presumption under N.D.C.C. § 14-09-06.2(1)(j), including the statutory pattern-of-domestic-violence alternative.
3. Whether the district court was required to include the entire stipulated parenting agreement or make findings explaining why omitted provisions were not in the children's best interests.

HOLDINGS

1. The district court's findings under N.D.C.C. § 14-09-06.2(1)(a) and (c) were not clearly erroneous.
2. The district court's findings were insufficient to determine whether the evidence triggered the rebuttable presumption against awarding residential responsibility to a perpetrator of domestic violence under N.D.C.C. § 14-09-06.2(1)(j). The district court was required to determine whether the multiple slapping incidents constituted a pattern of domestic violence within a reasonable time proximate to the proceeding and, if so, whether the presumption was rebutted.
3. A district court is not bound to accept a stipulation concerning child custody and care, but if it declines to adopt all or part of the stipulation, it must make findings explaining that the rejected provisions are not in the children's best interests.

KEY QUOTATIONS

“Under the clearly erroneous standard of review, we do not reweigh the evidence or reassess the credibility of witnesses, and we will not retry a custody case or substitute our judgment for a district court’s initial custody decision merely because we might have reached a different result.” (¶ 3)

“We remand with instructions for the court to address whether the facts presented triggered the presumption based on a pattern of domestic violence under N.D.C.C. § 14-09-06.2(1)(j), and if so, whether the presumption has been rebutted.” (¶ 11)

“The court is not bound to accept the stipulation, but if it does not, it must make findings that the stipulation is not in the best interests of the children.” (¶ 14)

FACTUAL BACKGROUND

Matthew and SummerLee Thomas married in 2008 and have two children, born in 2008 and 2009. During the divorce proceedings, evidence concerned one child's online communications with an adult male and an incident in which SummerLee slapped Matthew multiple times in front of the children after learning he was leaving and

had been having an affair. The parties also entered into a stipulated parenting agreement, but the district court included only part of that agreement in the judgment without explaining why the omitted provisions were not adopted.

PROCEDURAL HISTORY

Matthew and SummerLee Thomas commenced divorce proceedings in 2018. After a February 2019 trial, the Cass County District Court entered findings, conclusions, and a judgment granting an absolute divorce, distributing assets, and awarding joint residential responsibility of the two children. The North Dakota Supreme Court affirmed in part and remanded while retaining jurisdiction for specific findings concerning the domestic-violence presumption and omitted portions of the stipulated parenting agreement.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must determine whether the evidence triggered the domestic-violence presumption based on a pattern of domestic violence within a reasonable time proximate to the proceeding and, if so, whether the presumption was rebutted. The court must also include the omitted portions of the stipulated parenting agreement or make findings explaining why those provisions are not in the children's best interests. The Supreme Court retained jurisdiction under N.D.R.App.P. 35(a)(3).

CASES CITED

- Dickson v. Dickson, 2018 ND 130, ¶ 7, 912 N.W.2d 321
- Cox v. Cox, 2000 ND 144, ¶ 10, 613 N.W.2d 516
- Dronen v. Dronen, 2009 ND 70, ¶ 7, 764 N.W.2d 675
- Frith v. N.D. Workforce Safety & Ins., 2014 ND 93, ¶ 25, 845 N.W.2d 892
- Gietzen v. Gabel, 2006 ND 153, ¶ 9, 718 N.W.2d 552
- Mowan v. Berg, 2015 ND 95, ¶ 9, 862 N.W.2d 523
- State v. Dockter, 2019 ND 203, ¶ 8, 932 N.W.2d 98
- Tiokasin v. Haas, 370 N.W.2d 559, 562 (N.D. 1985)
- Zeller v. Zeller, 2002 ND 35, ¶ 16, 640 N.W.2d 53

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