

SUPREME COURT OF NEBRASKA

Krejci v. Krejci

304 Neb. 302 (2019) · No. No. S-18-908 · Decided October 18, 2019

SUMMARY

The Nebraska Supreme Court reviewed a civil contempt proceeding involving alleged interference with a paternal grandfather’s court-ordered grandparent visitation. The court affirmed the dismissal of the contempt complaint, finding no abuse of discretion in the determination that the mother’s failure to enforce visitation on the children’s deceased father’s birthday was not willful. The court reversed and vacated the modification of the visitation decree because the parties lacked adequate notice and an opportunity to be heard on modification.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	October 18, 2019
DOCKET	No. S-18-908
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The paternal grandfather appealed from a district court order dismissing his civil contempt and interference-with-visitation claims but modifying the grandparent-visitation decree. The mother attempted to cross-appeal, but her brief did not comply with Nebraska's cross-appeal requirements.
STANDARD OF REVIEW	In a civil contempt proceeding seeking remedial relief for an alleged violation of a court order, questions of law are reviewed de novo, factual findings are reviewed for clear error, and the determination whether a party is in contempt and the sanction imposed are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published
PARTIES	Mark S. Krejci v. Christina Krejci

TOPICS

grandparent rights

visitation

contempt

appellate procedure

procedural due process

PRACTICE AREAS

family law

appellate procedure

civil procedure

contempt

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion by finding that Christina Krejci was not in civil contempt for failing to enforce the May 19, 2018, grandparent-visitation visit.
2. Whether the district court improperly modified the grandparent-visitation decree without adequate notice and an opportunity for the parties to be heard on modification.
3. Whether Christina Krejci properly presented a cross-appeal under Nebraska appellate briefing rules.

HOLDINGS

1. An appellate court will not consider the merits of an appellee's purported cross-appeal when the cross-appeal section of the brief does not comply with Nebraska Court Rule of Appellate Practice § 2-109(D) (4), including the required separate title page and table of contents.
2. The district court did not abuse its discretion by finding that Christina was not in civil contempt because the evidence did not establish willful disobedience of the visitation decree by clear and convincing evidence.
3. The district court improperly modified the grandparent-visitation decree because the parties lacked reasonable notice that modification would be considered and lacked an opportunity to present evidence and be heard on that issue.
4. Grandparent visitation in Nebraska is controlled by statute, and modification is governed by the requirements of Neb. Rev. Stat. § 43-1802(3).

KEY QUOTATIONS

“Willful disobedience is an essential element of contempt; “willful” means the violation was committed intentionally, with knowledge that the act violated the court order.” (308)

“It is fundamental to due process that a person has reasonable notice and an opportunity to be heard appropriate to the nature of the proceeding and the character of the rights which might be affected by it.” (311)

FACTUAL BACKGROUND

Mark S. Krejci obtained a 2016 decree granting him grandparent visitation with his two grandchildren, including 17 consecutive summer days and periodic weekend visitation. On May 19, 2018, the children refused to visit because it was their deceased father's birthday, and Christina Krejci did not compel them to go. The district court found that Christina had not encouraged or instructed the children to refuse visitation and that the failure to visit was an isolated event. Nevertheless, the court modified the visitation decree by excluding the father's birthday and anniversary of his death and reducing summer visitation from 17 days to 8 days.

PROCEDURAL HISTORY

After the grandfather obtained a grandparent-visitation decree, one scheduled visit did not occur because the children did not want to visit on their deceased father's birthday. The grandfather filed a civil contempt proceeding, and the mother filed a complaint to modify visitation. Following a contempt hearing, the district court dismissed the contempt claim but modified the visitation decree in the same order, despite having dismissed the mother's modification complaint and not providing a separate modification hearing. The Nebraska Supreme Court affirmed the dismissal of the contempt claim, reversed the modification portion of the order, and vacated the modification.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The modification portion of the district court's July 2, 2018, order was reversed and vacated. The dismissal of the contempt complaint was affirmed. The opinion does not state additional remand instructions.

CASES CITED

- In re Estate of Graham, 301 Neb. 594, 919 N.W.2d 714 (2018)
- Martin v. Martin, 294 Neb. 106, 881 N.W.2d 174 (2016)
- Hossaini v. Vaelizadeh, 283 Neb. 369, 808 N.W.2d 867 (2012)
- Smeal Fire Apparatus Co. v. Kreikemeier, 279 Neb. 661, 782 N.W.2d 848 (2010)
- Hamit v. Hamit, 271 Neb. 659, 715 N.W.2d 512 (2006)
- Pier v. Bolles, 257 Neb. 120, 596 N.W.2d 1 (1999)
- Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)
- Moriarty v. Bradt, 177 N.J. 84, 827 A.2d 203 (2003), cert. denied, 540 U.S. 1177, 124 S. Ct. 1408, 158 L. Ed. 2d 78 (2004)
- Fetherkile v. Fetherkile, 299 Neb. 76, 907 N.W.2d 275 (2018)