

SUPREME COURT OF NORTH DAKOTA

In the Interest of Payton R. Spicer

2006 ND 79 · No. 20050366 · Decided April 19, 2006

SUMMARY

The Supreme Court of North Dakota affirmed an amended judgment addressing contempt, parental relocation, and modification of a visitation schedule. The court held that the district court adequately explained its decision not to find the custodial parent in contempt, did not clearly err in finding that the noncustodial parent consented to the child's relocation to Michigan, and did not clearly err in modifying visitation. The court also denied the request for appellate attorney's fees and costs.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of North Dakota                                                                                                                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Mary Muehlen Maring; Daniel J. Crothers; Carol Ronning Kapsner; Gerald W. VandeWalle, C.J.; Dale V. Sandstrom                                                                                                                                                                                                                                    |
| JURISDICTION          | North Dakota                                                                                                                                                                                                                                                                                                                                     |
| DECIDED               | April 19, 2006                                                                                                                                                                                                                                                                                                                                   |
| DOCKET                | 20050366                                                                                                                                                                                                                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Nathan Spicer appealed from an amended judgment that denied his request to hold Amanda Collette in contempt, found that he consented to Collette's relocation with the child to Michigan, and modified the visitation schedule.                                                                                                                  |
| STANDARD OF REVIEW    | Whether contempt has occurred is reviewed for abuse of discretion; factual findings concerning consent to relocation and modification of visitation are reviewed under the clearly erroneous standard. A district court abuses its discretion when it acts arbitrarily, unreasonably, or unconscionably, or misinterprets or misapplies the law. |
| PRECEDENTIAL VALUE    | Published North Dakota Supreme Court opinion                                                                                                                                                                                                                                                                                                     |
| PARTIES               | Nathan M. Spicer v. Payton R. Spicer, Amanda R. Collette, Grand Forks County Social Service Board, Assignee for Amanda R. Collette                                                                                                                                                                                                               |

TOPICS

relocation

visitation

child custody

family law procedure

appellate procedure

## PRACTICE AREAS

Family law

Appellate procedure

## QUESTIONS PRESENTED

1. Whether the district court adequately addressed Spicer's contempt motion and whether its finding that Collette was not in contempt constituted an abuse of discretion.
2. Whether the district court clearly erred in finding that Spicer consented to Collette's relocation with the child to Michigan.
3. Whether the district court clearly erred in modifying the visitation schedule after the relocation.
4. Whether Collette was entitled to attorney's fees and costs on appeal under N.D.R.App.P. 38.

## HOLDINGS

1. The district court adequately explained its decision and did not abuse its discretion in finding Collette was not in contempt for failing to comply with the prior visitation judgment.
2. The district court did not clearly err in finding that Spicer consented to Collette's relocation with the child to Michigan.
3. The district court did not clearly err in modifying the visitation schedule following the child's relocation to Michigan.
4. Collette was not entitled to attorney's fees and costs because Spicer's appeal was not frivolous or taken in bad faith.

## KEY QUOTATIONS

*"Civil contempt requires a willful and inexcusable intent to violate a court order."* (§ 11)

*"A district court's finding is clearly erroneous "only if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, although there is some evidence to support it, on the entire evidence, we are left with a definite and firm conviction that a mistake has been made.""* (§ 14)

*"Therefore, some reduction in visitation may occur, but the goal is to provide sufficient visitation to allow the non-custodial parent and child to preserve and foster their relationship."* (§ 18)

## FACTUAL BACKGROUND

The parties had one child, born in 2001, and agreed that Amanda Collette would be the custodial parent while Nathan Spicer would have reasonable visitation. After Collette was accepted into a physician's assistant program in Michigan, Spicer agreed to the move subject to a visitation arrangement, but the parties did not put their oral agreement in writing. Disputes later arose over visitation, including Collette's failure to return the child pursuant to an April ex parte order. The district court found no contempt, found that Spicer consented to the relocation, and adopted a modified visitation schedule designed to preserve Spicer's relationship with the child.

## PROCEDURAL HISTORY

The parties initially agreed that Collette would have custody and Spicer would have reasonable visitation, and the district court incorporated that agreement into a judgment. Later amended judgments established child support and a visitation schedule. After Collette moved or planned to move to Michigan, disputes arose concerning visitation; the district court denied contempt relief, found Spicer consented to the relocation, and modified visitation. The Supreme Court of North Dakota affirmed and denied Collette's request for appellate attorney's fees and costs.

## DISPOSITION

affirmed

## CASES CITED

- State v. Bergstrom, 2006 ND 45, ¶ 15, 710 N.W.2d 407
- VND, LLC v. Leever Foods, Inc., 2003 ND 198, ¶ 27, 672 N.W.2d 445
- Huntress v. Griffey, 2002 ND 160, ¶ 8, 652 N.W.2d 351
- BeauLac v. BeauLac, 2002 ND 126, ¶ 10, 649 N.W.2d 210
- Flattum-Riemers v. Flattum-Riemers, 1999 ND 146, ¶ 5, 598 N.W.2d 499
- Montgomery v. Montgomery, 2003 ND 135, ¶ 18, 667 N.W.2d 611
- Stout v. Stout, 1997 ND 61, ¶ 7, 560 N.W.2d 903
- Bertsch v. Bertsch, 2006 ND 31, ¶ 5, 710 N.W.2d 113
- Goff v. Goff, 1999 ND 95, ¶ 17, 593 N.W.2d 768
- Hawkinson v. Hawkinson, 1999 ND 58, ¶ 9, 591 N.W.2d 144
- Healy v. Healy, 397 N.W.2d 71, 76 (N.D. 1986)