

SUPREME COURT OF NORTH DAKOTA

Kerzmann v. Kerzmann

2021 ND 183 · No. 20210086 · Decided October 14, 2021

SUMMARY

The North Dakota Supreme Court held that Tonya Kerzmann established a prima facie case for modifying primary residential responsibility of the parties’ children. The court concluded that her affidavit and supporting documentation alleged facts supporting both a material change in circumstances and the necessity of modification in the children’s best interests. The court reversed the district court’s denial of an evidentiary hearing and remanded for further proceedings, declining to impose appellate sanctions.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jon J. Jensen, Chief Justice; Gerald W. VandeWalle; Daniel J. Crothers; Lisa Fair McEvers; Jerod E. Tufte
JURISDICTION	North Dakota
DECIDED	October 14, 2021
DOCKET	20210086
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Tonya Kerzmann appealed the district court's denial of her request for an evidentiary hearing on her motion to modify primary residential responsibility of the parties' children.
STANDARD OF REVIEW	Whether a moving party has established a prima facie case for modification of primary residential responsibility is a question of law reviewed de novo. The Supreme Court also exercises discretion in deciding whether to impose sanctions for noncompliance with appellate rules.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Tonya L. Kerzmann v. Jerry M. Kerzmann

TOPICS

- child custody
- family law procedure
- appellate procedure
- standard of review
- evidence

PRACTICE AREAS

Family law

Child custody

Appellate procedure

Evidence

QUESTIONS PRESENTED

1. Whether Tonya Kerzmann established a prima facie case of a material change in circumstances sufficient to require an evidentiary hearing on her motion to modify primary residential responsibility.
2. Whether Tonya Kerzmann established a prima facie case that modification was necessary to serve the children's best interests.
3. Whether appellate sanctions should be imposed for including allegedly irrelevant material in the appellant's appendix.

HOLDINGS

1. A party seeking modification of primary residential responsibility establishes a prima facie case of a material change in circumstances when the supporting affidavit, viewed as true at the hearing stage, provides competent first-hand information and documentation describing conduct that could support a modification if proven. Tonya Kerzmann met that threshold.
2. A moving party establishes a prima facie case that modification is necessary for the children's best interests when the affidavit, assumed true, implicates applicable best-interest factors and provides facts showing the children may be adversely affected. Tonya Kerzmann met that burden.
3. The court has discretion to impose sanctions for violations of appellate rules or court orders, but sanctions were unwarranted where the challenged appendix materials were part of the court record.

KEY QUOTATIONS

“A prima facie case is a bare minimum and requires facts which, if proved at an evidentiary hearing, would support a change of custody that could be affirmed if appealed.” (¶ 8)

“This is not the time for the district court to judge whether it would decide the best-interest factors in favor of the moving party.” (¶ 13)

FACTUAL BACKGROUND

Jerry and Tonya Kerzmann were divorced in 2016 and agreed that Jerry would have primary residential responsibility for their two children. Tonya's 2021 affidavit alleged that Jerry denied or interfered with parenting time, failed to facilitate her relationship with the children, failed to discuss medical care, restricted her access to school functions, and failed to follow through with recommended counseling and dental care. She supported the affidavit with documentation concerning a therapy appointment, school access, and text-message exchanges about parenting time.

PROCEDURAL HISTORY

The parties were divorced in 2016, with Jerry Kerzmann receiving primary residential responsibility. In February 2021, Tonya Kerzmann moved to modify the judgment and requested an evidentiary hearing under N.D.C.C. §

14-09-06.6(6). The district court denied the hearing, concluding she had not established a prima facie case of a material change in circumstances or that modification was necessary for the children's best interests. The North Dakota Supreme Court reversed and remanded for an evidentiary hearing and declined to impose appellate sanctions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must conduct an evidentiary hearing on Tonya Kerzmann's motion to modify primary residential responsibility.

CASES CITED

- Baker v. Baker, 2019 ND 225, ¶ 7, 932 N.W.2d 510
- Heidt v. Heidt, 2019 ND 45, ¶ 8, 923 N.W.2d 530
- Wolt v. Wolt, 2011 ND 170, ¶ 7, 803 N.W.2d 534
- Klundt v. Benjamin, 2021 ND 149, ¶ 6, 963 N.W.2d 278
- Johnshoy v. Johnshoy, 2021 ND 108, ¶ 5, 961 N.W.2d 282
- Schumacker v. Schumacker, 2011 ND 75, ¶ 8, 796 N.W.2d 636
- Forster v. Flaagan, 2016 ND 12, ¶ 11, 873 N.W.2d 904
- Hankey v. Hankey, 2015 ND 70, ¶ 12, 861 N.W.2d 479
- Schroeder v. Schroeder, 2014 ND 106, ¶ 7, 846 N.W.2d 716
- Solwey v. Solwey, 2016 ND 246, ¶ 20, 888 N.W.2d 756
- Wald v. Holmes, 2013 ND 212, ¶ 5, 839 N.W.2d 820
- Kelly v. Kelly, 2002 ND 37, ¶ 16, 640 N.W.2d 38
- Silbernagel v. Silbernagel, 2007 ND 124, ¶ 21, 736 N.W.2d 441