

NORTH DAKOTA SUPREME COURT

Yon v. J.T.

681 N.W.2d 779 (N.D. 2004) · Decided June 30, 2004

SUMMARY

The North Dakota Supreme Court affirmed juvenile court orders finding a ten-year-old child deprived due to psychological maltreatment and parental alienation and placing legal custody with the Department of Human Services while allowing the child to remain with the mother. The court rejected the mother's procedural, evidentiary, jurisdictional, and constitutional arguments and held that the deprivation finding was supported by clear and convincing evidence and was not clearly erroneous.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Sandstrom, Justice; Gerald W. VandeWalle, C.J.; William A. Neumann; Mary Muehlen Maring; Carol Ronning Kapsner
JURISDICTION	North Dakota
DECIDED	June 30, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed juvenile court orders adjudicating her ten-year-old child deprived and placing legal custody with the Department of Human Services while allowing the child to remain in the mother's physical custody subject to conditions.
STANDARD OF REVIEW	A finding of deprivation must be supported by clear and convincing evidence. Findings of fact in juvenile matters are reviewed under N.D.R.Civ.P. 52(a) and will not be set aside unless clearly erroneous. Evidentiary rulings concerning relevance are reviewed for abuse of discretion. Issues not raised in the juvenile court generally are not considered for the first time on appeal.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Yon, mother v. State of North Dakota, J.T., father

TOPICS

- family law procedure
- child custody
- parental rights
- evidence
- appellate procedure

PRACTICE AREAS

family law

juvenile law

evidence

appellate procedure

constitutional law

QUESTIONS PRESENTED

1. Whether the delay between filing the deprivation petition and the adjudicatory hearing violated N.D.C.C. § 27-20-22 or the mother's due-process and equal-protection rights.
2. Whether the juvenile court improperly combined a deprivation proceeding with divorce-related custody and visitation proceedings.
3. Whether the juvenile court improperly admitted the former guardian ad litem's testimony and affidavit.
4. Whether the juvenile court violated the mother's constitutional rights to custody and companionship.
5. Whether testimony concerning parental alienation was improperly admitted.
6. Whether admission of social-service reports denied the mother an opportunity to cross-examine their authors or underlying witnesses.
7. Whether the juvenile court abused its discretion by excluding records from the supervised exchange center.
8. Whether clear and convincing evidence supported the finding that the child was deprived.

HOLDINGS

1. The juvenile court's finding that the child was deprived was supported by clear and convincing evidence and was not clearly erroneous.
2. The mother's challenge to the timing of the deprivation hearing was not reviewable because she did not raise it below; in any event, the record supported good cause for extending the hearing deadline.
3. The juvenile court did not improperly combine the proceedings.
4. The juvenile court did not err by admitting the district court's memorandum decision from the custody and visitation proceeding.
5. The mother generally could not raise on appeal issues that she failed to present to the juvenile court.
6. The juvenile court did not abuse its discretion by excluding incomplete supervised-exchange records.

KEY QUOTATIONS

"We conclude the juvenile court's finding there is clear and convincing evidence of deprivation is not clearly erroneous." (681 N.W.2d at 786)

FACTUAL BACKGROUND

The child's parents divorced in December 1998 and thereafter had persistent disputes concerning custody and visitation, with substantial involvement by social services, police, courts, and other professionals. The State alleged that parental alienation and exposure to adult conflict deprived the child of proper care necessary for his mental and emotional health. The juvenile court found that both parents had psychologically maltreated the child and engaged in parental alienation, that the child had gone six months without contact with his father, and that

the mother was unlikely to cooperate in stopping the alienation or promoting the child's relationship with the father.

PROCEDURAL HISTORY

After the State filed a deprivation petition alleging parental alienation and exposure to adult conflict, the juvenile court held an adjudicatory hearing and found the child deprived based on psychological and emotional harm caused by both parents' parental alienation. Following a dispositional hearing, the court placed legal custody with the Department of Human Services, left the child with the mother unless removal became necessary, and imposed visitation, therapy, and anti-alienation conditions. The mother appealed, and the North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Interest of D.R.J., 317 N.W.2d 391, 393 (N.D. 1982)
- Interest of R.K., 2002 ND 111, ¶ 6, 646 N.W.2d 699
- Akerlind v. Buck, 2003 ND 169, ¶ 7, 671 N.W.2d 256
- Interest of R.O., 2001 ND 137, ¶ 19, 631 N.W.2d 159
- Interest of A.G., 506 N.W.2d 402, 403-04 (N.D. 1993)
- Interest of T.M.M., 267 N.W.2d 807, 809-12 (N.D. 1978)
- Interest of K.S., 2002 ND 164, ¶ 9, 652 N.W.2d 341
- Interest of E.J.H., 546 N.W.2d 361, 363 n. 2 (N.D. 1996)
- Interest of A.S., 1998 ND 181, ¶ 14, 584 N.W.2d 853
- Interest of F.H., 283 N.W.2d 202, 214 (N.D. 1979)
- Eggl v. Letvin Equip. Co., 2001 ND 144, ¶ 23, 632 N.W.2d 435
- Quamme v. Bellino, 540 N.W.2d 142, 148 (N.D. 1995)
- Wolf v. Estate of Seright, 1997 ND 240, ¶ 14, 573 N.W.2d 161
- Global Acquisitions, LLC v. Broadway Park Ltd. Partnership, 2001 ND 52, ¶¶ 18-19, 623 N.W.2d 442

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