

SUPREME COURT OF NORTH DAKOTA

Christopher A. Lindberg v. Sherri L. Lindberg

Lindberg, 2009 ND 136 (N.D. 2009) · No. No. 20080174 · Decided July 21, 2009

SUMMARY

The Supreme Court of North Dakota affirmed the district court’s award of physical custody of the parties’ children to Sherri Lindberg and rejected Christopher Lindberg’s constitutional challenge to the denial of shared physical custody. The court held that the custody findings under the statutory best-interest factors were not clearly erroneous. It reversed and remanded the spousal-support award because the district court did not adequately explain Sherri Lindberg’s need for support or Christopher Lindberg’s ability to pay, and because its findings concerning Sherri’s anticipated living expenses were contradictory.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Daniel J. Crothers; Gerald W. VandeWalle, Chief Justice; Carol Ronning Kapsner; Dale V. Sandstrom; Mary Muehlen Maring
JURISDICTION	North Dakota
DECIDED	July 21, 2009
DOCKET	No. 20080174
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Christopher Lindberg appealed a divorce judgment awarding Sherri Lindberg physical custody of the parties' children and rehabilitative spousal support.
STANDARD OF REVIEW	Child-custody findings and spousal-support awards are reviewed as findings of fact under the clearly erroneous standard. Constitutional issues are reviewed as questions of law.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Christopher A. Lindberg v. Sherri L. Lindberg

TOPICS

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PRACTICE AREAS

family law

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QUESTIONS PRESENTED

1. Whether the district court clearly erred in awarding Sherri Lindberg physical custody after applying the statutory best-interest factors.
2. Whether denying Christopher Lindberg shared physical custody violated his constitutional right to parent his children.
3. Whether the district court adequately explained its award of rehabilitative spousal support and made findings sufficient to establish Sherri Lindberg's need and Christopher Lindberg's ability to pay.

HOLDINGS

1. The district court did not clearly err in awarding Sherri Lindberg physical custody because the evidence supported its findings under the statutory best-interest factors, including the children's stability and continuity with Sherri.
2. The denial of shared physical custody did not violate Christopher Lindberg's constitutional right to parent because he retained liberal visitation, and the constitutional right to parent does not include a constitutional right to shared physical custody.
3. The district court's spousal-support award could not be affirmed because the court's findings were contradictory and did not adequately explain Sherri Lindberg's need for support or Christopher Lindberg's ability to pay. The award was therefore reversed and remanded for further proceedings.

KEY QUOTATIONS

“A parent's constitutional right to parent his children does not include a constitutional right to shared physical custody of the children.” (¶ 25)

“We reverse and remand to the district court for further proceedings regarding Sherri Lindberg's need for, and Chris Lindberg's ability to pay, spousal support.” (¶ 33)

FACTUAL BACKGROUND

Christopher and Sherri Lindberg married in 1994 and had three children. After separating in 2004, Sherri and the children lived with Sherri's parents, while Christopher had military deployments, including a deployment to Iraq. After trial, the district court awarded Sherri physical custody and liberal visitation to Christopher, and ordered Christopher to pay rehabilitative spousal support based in part on findings concerning Sherri's anticipated expenses and earning ability.

PROCEDURAL HISTORY

After the parties separated, Christopher Lindberg sought a legal separation and Sherri Lindberg countersued for divorce. Following a divorce trial, the district court awarded Sherri physical custody with liberal visitation for Christopher and ordered Christopher to pay \$750 per month in rehabilitative spousal support for four years. The

North Dakota Supreme Court affirmed the custody award, dismissed the constitutional claim, and reversed and remanded the spousal-support award for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings concerning Sherri Lindberg's need for spousal support and Christopher Lindberg's ability to pay. The case must be reassigned because the trial judge retired, and the successor judge must comply with N.D.R.Civ.P. 63.

CASES CITED

- Wessman v. Wessman, 2008 ND 62, ¶ 12, 747 N.W.2d 85
- Burns v. Burns, 2007 ND 134, ¶ 9, 737 N.W.2d 243
- Gietzen v. Gabel, 2006 ND 153, ¶ 6, 718 N.W.2d 552
- Jelsing v. Peterson, 2007 ND 41, ¶ 11, 729 N.W.2d 157
- Klein v. Larson, 2006 ND 236, ¶¶ 7, 13, 16, 724 N.W.2d 565
- Schmidt v. Schmidt, 2003 ND 55, ¶ 6, 660 N.W.2d 196
- Shaw v. Shaw, 2002 ND 114, ¶ 7, 646 N.W.2d 693
- Eifert v. Eifert, 2006 ND 240, ¶¶ 8, 9, 11, 724 N.W.2d 109
- McDowell v. McDowell, 2001 ND 176, ¶ 24, 635 N.W.2d 139
- Hanisch v. Osvold, 2008 ND 214, ¶ 11, 758 N.W.2d 421
- Hoff v. Berg, 1999 ND 115, ¶ 15, 595 N.W.2d 285
- Reineke v. Reineke, 2003 ND 167, ¶ 6, 670 N.W.2d 841
- Sommers v. Sommers, 2003 ND 77, ¶ 15, 660 N.W.2d 586
- Solem v. Solem, 2008 ND 211, ¶ 5, 757 N.W.2d 748
- Krueger v. Krueger, 2008 ND 90, ¶¶ 7-8, 748 N.W.2d 671
- Sommer v. Sommer, 2001 ND 191, ¶ 9, 636 N.W.2d 423
- Overland v. Overland, 2008 ND 6, ¶ 16, 744 N.W.2d 67
- Routledge v. Routledge, 377 N.W.2d 542, 545 n.1 (N.D. 1985)
- Meyer v. Meyer, 2004 ND 89, ¶ 23, 679 N.W.2d 273