

SUPREME COURT OF NORTH DAKOTA

Justin Neidviecky v. Tina (Blawat) Neidviecky

Neidviecky v. Neidviecky, 657 N.W.2d 255 (N.D. 2003) · No. No. 20020176 · Decided March 5, 2003

SUMMARY

The Supreme Court of North Dakota reviewed a divorce judgment awarding Tina Neidviecky custody of the parties' child and allocating marital debt. The court affirmed the custody determination, concluding it was not clearly erroneous, but reversed and remanded the debt allocation because the trial court improperly excluded loan amounts incurred before the marriage or after separation without determining whether they were legitimate debts.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Neumann, Justice; Gerald W. Vande Walle, C.J.; Mary Muehlen Maring, J.; Carol Ronning Kapsner, J.; Dale V. Sandstrom, J.
JURISDICTION	North Dakota
DECIDED	March 5, 2003
DOCKET	No. 20020176
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a divorce judgment awarding Tina Neidviecky custody of the parties' minor child and allocating marital debt.
STANDARD OF REVIEW	A child-custody determination is a finding of fact reviewed under the clearly erroneous standard. Findings are clearly erroneous if induced by an erroneous view of the law, unsupported by evidence, or if the reviewing court is left with a definite and firm conviction that a mistake has been made. The court reviewed the marital-debt allocation under the same clearly erroneous framework because the district court applied an erroneous view of the law.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Justin Neidviecky v. Tina (Blawat) Neidviecky

TOPICS

- child custody
- equitable distribution
- divorce
- standard of review
- appellate procedure

PRACTICE AREAS

family law

appellate law

QUESTIONS PRESENTED

1. Whether the district court's award of custody to Tina was clearly erroneous under the statutory best-interests factors.
2. Whether the district court erred by excluding loan amounts incurred before the marriage or after separation from the marital estate before allocating marital debt.

HOLDINGS

1. The custody award to Tina was not clearly erroneous because the district court appropriately considered the statutory best-interests factors and the record supported its findings.
2. The district court erred by excluding legitimate loan amounts incurred before marriage or after separation from the marital estate solely because of when they were incurred. Before allocating responsibility for marital debt, the court must determine the net marital estate by considering all property and debt of the parties.

KEY QUOTATIONS

“Visitation between a child and a noncustodial parent is presumed to be in the best interests of the child.”
(657 N.W.2d at 259)

“Prior to dividing the marital estate, the trial court must determine the net marital worth by considering all property and debt accumulated by the parties.” (657 N.W.2d at 260)

“In making an equitable distribution, justice requires use of the elementary accounting equation of assets minus liabilities to determine the net worth of the marital property.” (657 N.W.2d at 260)

FACTUAL BACKGROUND

Justin and Tina Neidviecky married in 1998 and had a daughter, Cassidy, in 1999. Tina was Cassidy's primary caregiver, while Justin worked various jobs and later worked as a salesperson. The parties separated after Tina took Cassidy to North Dakota and told Justin she would not return to New Mexico. At trial, the parties disputed custody and the allocation of approximately \$17,078 in debt, including a claimed \$14,800 loan from Justin's parents.

PROCEDURAL HISTORY

Justin Neidviecky filed for divorce and custody, and Tina counterclaimed for divorce and custody. After a bench trial, the district court granted a divorce based on irreconcilable differences, awarded custody to Tina with liberal visitation for Justin, and allocated the parties' marital debt. Justin appealed the custody award and debt allocation. The Supreme Court affirmed the custody determination, reversed the debt allocation, and remanded for reconsideration.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reconsider the allocation of marital debt after properly determining the net marital estate by including all legitimate property and debts of the parties, then equitably allocating responsibility for repayment.

CASES CITED

- Dufner v. Dufner, 2002 ND 47, ¶ 17, 640 N.W.2d 694
- Stoppler v. Stoppler, 2001 ND 148, ¶ 7, 633 N.W.2d 142
- Kjelland v. Kjelland, 2000 ND 86, ¶ 8, 609 N.W.2d 100
- DesLauriers v. DesLauriers, 2002 ND 66, ¶¶ 8, 21, 642 N.W.2d 892
- Gregg v. Gregg, 1998 ND 204, ¶ 10, 586 N.W.2d 312
- Hurt v. Hurt, 2001 ND 13, ¶ 14, 621 N.W.2d 326
- McDowell v. McDowell, 2001 ND 176, ¶ 23, 635 N.W.2d 139
- Heinz v. Heinz, 2001 ND 147, ¶ 5, 632 N.W.2d 443
- Grinaker v. Grinaker, 553 N.W.2d 204, 208 (N.D. 1996)
- Barth v. Barth, 1999 ND 91, ¶ 8, 593 N.W.2d 359
- Fischer v. Fischer, 139 N.W.2d 845, 847 (N.D. 1966)
- Ruff v. Ruff, 78 N.D. 775, 52 N.W.2d 107, 108 (1952)
- Emter v. Emter, 1999 ND 102, ¶ 6, 595 N.W.2d 16
- Anderson v. Anderson, 368 N.W.2d 566, 569 (N.D. 1985)
- Gaulrapp v. Gaulrapp, 510 N.W.2d 620, 622 (N.D. 1994)
- Marschner v. Marschner, 2002 ND 67, ¶ 4, 642 N.W.2d 857

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