

NORTH DAKOTA SUPREME COURT

Hoverson v. Hoverson

828 N.W.2d 510 (2013) · Decided April 4, 2013

SUMMARY

The North Dakota Supreme Court affirmed a divorce judgment distributing the parties’ approximately \$14.5 million marital estate, awarding temporary spousal support and child support, and ordering attorney’s fees. The court held that the property division and spousal-support award were not clearly erroneous, the child-support award was supported by the record, and the attorney’s-fee award was not an abuse of discretion.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Maring, Justice; Gerald W. Vande Walle, C.J.; Daniel J. Crothers, J.; Carol Ronning Kapsner, J.; Dale V. Sandstrom, J.; Maring, J.
JURISDICTION	North Dakota
DECIDED	April 4, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Sandra Hoverson appealed and Carl Hoverson cross-appealed from a divorce judgment distributing the marital estate, awarding spousal and child support, and awarding attorney's fees.
STANDARD OF REVIEW	Marital-property distribution and spousal-support awards are findings of fact reviewed for clear error. Child-support determinations involve de novo review of legal questions, clear-error review of factual findings, and abuse-of-discretion review in limited areas. Attorney's-fee awards are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Sandra Hoverson, Carl Hoverson (cross-appellant) v. Carl Hoverson, Sandra Hoverson (cross-appellee)

TOPICS

- equitable distribution
- spousal support
- child support
- family law procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court clearly erred in distributing the parties' marital property.
2. Whether the district court clearly erred in awarding Sandra Hoverson \$3,000 per month in spousal support for two years rather than permanent support or a different amount.
3. Whether the district court clearly erred in determining the amount of child support and the extent of the upward deviation from the presumptive guideline amount.
4. Whether the district court abused its discretion by awarding Sandra Hoverson attorney's fees.
5. Whether Sandra Hoverson was entitled to attorney's fees on appeal when the request was made for the first time in her reply brief.

HOLDINGS

1. The district court's unequal distribution of the marital estate was not clearly erroneous because the court considered the Ruff-Fischer factors and adequately explained the disparity.
2. The award of \$3,000 per month in spousal support for two years was not clearly erroneous.
3. The district court did not clearly err in ordering \$3,002 per month in child support, including a \$900 upward deviation from the presumptive guideline amount.
4. The district court did not abuse its discretion by ordering Carl to pay Sandra's attorney's fees.
5. Sandra was not entitled to attorney's fees on appeal because the request was raised for the first time in her reply brief.

KEY QUOTATIONS

"A property division need not be equal to be equitable, but a substantial disparity must be explained." (516)

"Although we do not sanction the blind application of a set formula or ratio for distributing marital property, on the record before the district court and based on findings under the Ruff-Fischer guidelines, we are not left with a definite and firm conviction the court made a mistake in distributing the parties' marital estate." (518)

"Spousal support and property division are intertwined." (519)

"The list of criteria for rebutting the presumption [in N.D. Admin. Code § 75-02-04.1-09(2)] is exclusive," (520)

"We therefore conclude the court did not abuse its discretion in awarding her attorney's fees." (521)

FACTUAL BACKGROUND

Carl and Sandra Hoverson married in May 2004 and had one child in 2005. Carl operated a highly successful farming business and had substantial income and business interests, while Sandra had previously worked as a radiologic technician but left employment shortly after the marriage. The parties lived separately for significant periods, and the district court valued their marital estate at approximately \$14.5 million, awarding about 20

percent to Sandra and 80 percent to Carl. The district court also awarded Sandra \$3,000 per month in spousal support for two years, \$3,002 per month in child support, and attorney's fees.

PROCEDURAL HISTORY

Carl Hoverson initially filed for divorce in January 2010, but that action was dismissed after reconciliation. He filed the present divorce action in August 2010. After an interim order and a December 2011 trial, the district court entered a divorce judgment distributing the marital estate, awarding Sandra Hoverson spousal support for two years, ordering child support, and awarding attorney's fees. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Hoverson v. Hoverson, 2001 ND 124, 629 N.W.2d 573
- Wold v. Wold, 2008 ND 14, 744 N.W.2d 541
- Lynnes v. Lynnes, 2008 ND 71, 747 N.W.2d 93
- Hitz v. Hitz, 2008 ND 58, 746 N.W.2d 732
- Martire v. Martire, 2012 ND 197, 822 N.W.2d 450
- Ulsaker v. White, 2006 ND 133, 717 N.W.2d 567
- Horner v. Horner, 2004 ND 165, 686 N.W.2d 131
- Ruff v. Ruff, 78 N.D. 775, 52 N.W.2d 107 (1952)
- Fischer v. Fischer, 139 N.W.2d 845 (N.D. 1966)
- Wagner v. Wagner, 2007 ND 101, 733 N.W.2d 593
- Bladow v. Bladow, 2003 ND 123, 665 N.W.2d 724
- Orgaard v. Orgaard, 1997 ND 34, 559 N.W.2d 546
- Halvorson v. Halvorson, 482 N.W.2d 869 (N.D. 1992)
- Duff v. Kearns-Duff, 2010 ND 247, 792 N.W.2d 916
- Sack v. Sack, 2006 ND 57, 711 N.W.2d 157
- Paulson v. Paulson, 2010 ND 100, 783 N.W.2d 262
- Pearson v. Pearson, 2009 ND 154, 771 N.W.2d 288
- Wagner v. Wagner, 2007 ND 33, 728 N.W.2d 318
- Moilan v. Moilan, 1999 ND 103, 598 N.W.2d 81
- Kostelecky v. Kostelecky, 2006 ND 120, 714 N.W.2d 845
- Buchholz v. Buchholz, 1999 ND 36, 590 N.W.2d 215
- Schmalle v. Schmalle, 1998 ND 201, 586 N.W.2d 677
- Montgomery v. Montgomery, 481 N.W.2d 284 (N.D. 1992)
- Heggen v. Heggen, 452 N.W.2d 96 (N.D. 1990)

- Wolf v. Wolf, 474 N.W.2d 257 (N.D. 1991)
- Jondahl v. Jondahl, 344 N.W.2d 63 (N.D. 1984)
- Heller v. Heller, 367 N.W.2d 179 (N.D. 1985)
- MayPort Farmers Co-Op v. St. Hilaire Seed Co., Inc., 2012 ND 257, 825 N.W.2d 883
- McGhee v. Mergenthal, 2007 ND 120, 735 N.W.2d 867
- Hendrickson v. Hendrickson, 2000 ND 1, 603 N.W.2d 896

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