

SUPREME COURT OF NORTH DAKOTA

Oppegard-Gessler v. Gessler

681 N.W.2d 762 (N.D. 2004) · No. No. 20030205 · Decided June 30, 2004

SUMMARY

The Supreme Court of North Dakota reviewed the denial of a custodial parent's motion to relocate two children from Grand Forks, North Dakota, to Baxter, Minnesota. The court held that the district court improperly applied the relocation factors by failing to give appropriate weight to the stipulated sole physical custody arrangement and by incorrectly concluding that adequate visitation could not be established. The court reversed and remanded for reconsideration of the relocation factors and, if relocation were permitted, establishment of an appropriate visitation schedule.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Vande Walle, Chief Justice; Carol Ronning Kapsner, Justice; Mary Muehlen Maring, Justice; William A. Neumann, Justice; Dale V. Sandstrom, Justice
JURISDICTION	North Dakota
DECIDED	June 30, 2004
DOCKET	No. 20030205
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The custodial parent appealed a district court order denying her motion under N.D.C.C. § 14-09-07 to relocate with the parties' two sons from Grand Forks, North Dakota, to Baxter, Minnesota.
STANDARD OF REVIEW	A trial court's determination whether an interstate relocation is in a child's best interests is a finding of fact reviewed for clear error. A finding is clearly erroneous if it is induced by an erroneous view of the law, unsupported by evidence, or leaves the appellate court with a definite and firm conviction that a mistake has been made.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Janell Marie Oppegard-Gessler v. Richard Matthew Gessler

TOPICS

relocation

child custody

appellate procedure

standard of review

family law procedure

PRACTICE AREAS

Family law

Child custody

Interstate relocation

Appellate procedure

QUESTIONS PRESENTED

1. Whether the district court properly applied the Stout relocation factors when evaluating the advantages of moving the children with their stipulated sole physical custodian.
2. Whether the district court clearly erred in finding that an adequate visitation schedule could not be devised to preserve the relationship between the children and their noncustodial father.
3. Whether the district court's denial of permission to relocate was clearly erroneous.

HOLDINGS

1. In evaluating a relocation request, the trial court must give due weight to the economic and noneconomic advantages of the move to the custodial family unit while recognizing the importance of continuity and stability in that custodial family. A relocation request is not itself a custody determination when primary physical custody has already been established, including by stipulated decree.
2. A good-faith move providing legitimate advantages to the custodial parent and child cannot be denied solely because visitation cannot continue in its existing pattern. Less frequent but extended visitation may adequately preserve the noncustodial parent's relationship with the child, and the law does not require equal visitation time after relocation.

KEY QUOTATIONS

"We must recognize a relocation request does not involve a custody determination. That determination has previously been made." (766)

"A visitation schedule which provides less frequent, but extended, visitation periods will preserve a noncustodial parent's ability to foster and develop a relationship with the child." (767)

FACTUAL BACKGROUND

Oppegard-Gessler and Gessler divorced after eighteen years of marriage, and Oppegard-Gessler was awarded sole physical custody of their two sons, who were eleven and twelve years old at the relocation hearing. The parties nevertheless maintained flexible, liberal, nearly daily visitation, and the district court characterized the arrangement as de facto joint physical custody. Oppegard-Gessler became engaged to a man living in Baxter, Minnesota, approximately 210 miles from Grand Forks, and testified that relocation would allow her to stop working outside the home and spend more time with the boys. The boys strongly preferred to remain in Grand Forks because of their friends and family.

PROCEDURAL HISTORY

The parties divorced in 2000, and Oppegard-Gessler was awarded sole physical custody of the two sons, subject to Gessler's liberal visitation. After Oppegard-Gessler sought permission to move to Minnesota, the district court found the disadvantages of relocation outweighed its advantages and concluded an adequate visitation schedule could not preserve the children's relationships with their father and community. The North Dakota Supreme Court reversed and remanded because the district court misapplied the relocation factors and clearly erred in finding that adequate visitation could not be devised.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must reconsider the first Stout factor by properly weighing the economic and noneconomic advantages of relocation in the context of continuity and stability in the custodial family unit. The court may receive additional evidence concerning the current circumstances of the parties and children. If relocation is permitted, the court should establish an appropriate restructured visitation schedule.

CASES CITED

- State ex rel. Melling v. Ness, 1999 ND 73, 592 N.W.2d 565
- Stout v. Stout, 1997 ND 61, 560 N.W.2d 903
- Negaard v. Negaard, 2002 ND 70, 642 N.W.2d 916
- Dickson v. Dickson, 2001 ND 157, 634 N.W.2d 76
- Keller v. Keller, 1998 ND 179, 584 N.W.2d 509
- Hawkinson v. Hawkinson, 1999 ND 58, 591 N.W.2d 144
- Hentz v. Hentz, 2001 ND 69, 624 N.W.2d 694
- Tibor v. Tibor, 1999 ND 150, 598 N.W.2d 480
- Tishmack v. Tishmack, 2000 ND 103, 611 N.W.2d 204
- Goff v. Goff, 1999 ND 95, 593 N.W.2d 768
- Peek v. Berning, 2001 ND 34, 622 N.W.2d 186
- Hendrickson v. Hendrickson, 2000 ND 1, 603 N.W.2d 896
- Lapp v. Lapp, 293 N.W.2d 121 (N.D. 1980)
- Thomas v. Thomas, 446 N.W.2d 433 (N.D. 1989)
- Olson v. Olson, 2000 ND 120, 611 N.W.2d 892
- In re Marriage of Lamusga, 32 Cal. 4th 1072, 88 P.3d 81 (2004)
- In re T.K., 2001 ND 127, 630 N.W.2d 38
- State v. Ehli, 2003 ND 133, 667 N.W.2d 635
- Berg v. Berg, 2002 ND 69, 642 N.W.2d 899
- Sweeney v. Sweeney, 2002 ND 206, 654 N.W.2d 407

