

SUPREME COURT OF NORTH DAKOTA

Vetter v. Vetter

2020 ND 40 (2020) · No. 20190151 · Decided February 12, 2020

SUMMARY

The North Dakota Supreme Court affirmed a divorce judgment awarding Michelle Vetter primary residential responsibility for the parties’ child and dividing the marital assets and debts. The court held that the district court’s findings concerning best-interest factors, domestic violence, and the property division were not clearly erroneous.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Gerald W. VandeWalle, Justice; Gerald W. VandeWalle; Daniel J. Crothers; Lisa Fair McEvers; Jerod E. Tufte; Jon J. Jensen, Chief Justice
JURISDICTION	North Dakota
DECIDED	February 12, 2020
DOCKET	20190151
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kyle Vetter appealed from a divorce judgment awarding Michelle Vetter primary residential responsibility for the parties' minor child and dividing the marital estate, including an equalization payment.
STANDARD OF REVIEW	The Supreme Court reviews primary residential responsibility determinations and property distributions as findings of fact and will not reverse unless clearly erroneous. A finding is clearly erroneous if it is induced by an erroneous view of the law, unsupported by evidence, or leaves the reviewing court with a definite and firm conviction that a mistake has been made. The Court does not reweigh evidence, reassess witness credibility, retry custody matters, or substitute its judgment for that of the district court.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Kyle Vetter v. Michelle Vetter, State of North Dakota, Statutory Real Party in Interest

TOPICS

child custody

equitable distribution

standard of review

appellate procedure

family law procedure

PRACTICE AREAS

family law

child custody

equitable distribution

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court's findings under N.D.C.C. § 14-09-06.2(1)(c), (d), (e), and (j) were clearly erroneous in awarding Michelle Vetter primary residential responsibility.
2. Whether Michelle Vetter's child-abuse conviction triggered the rebuttable presumption against awarding her residential responsibility under N.D.C.C. § 14-09-06.2(1)(j).
3. Whether the district court's division of the marital estate and equalization payment were inequitable or clearly erroneous.

HOLDINGS

1. The district court did not clearly err in awarding Michelle Vetter primary residential responsibility of the parties' minor child.
2. The child-abuse conviction did not, by itself, trigger the rebuttable presumption against awarding Michelle residential responsibility because the conviction did not necessarily establish serious bodily injury, although the conviction constituted evidence of domestic violence that the court was required to consider.
3. The district court did not clearly err or act inequitably by awarding the parties unequal percentages of the marital estate and ordering Kyle Vetter to make a \$135,294.57 equalization payment.

KEY QUOTATIONS

“Under the clearly erroneous standard, we do not reweigh the evidence nor reassess the credibility of witnesses, and we will not retry a custody case or substitute our judgment for a district court’s initial [primary residential responsibility] decision merely because we might have reached a different result.” (¶ 8)

“Even if the evidence of domestic violence does not trigger the statutory presumption under N.D.C.C. § 14-09-06.2(1)(j), the violence must still be considered as one of the factors in deciding primary residential responsibility.” (¶ 11)

“A property distribution need not be equal to be equitable, but the district court must explain any ‘substantial disparity’ in its distribution.” (¶ 18)

FACTUAL BACKGROUND

Kyle and Michelle Vetter married in 1998 and had a daughter, B.L.V., in 2009. During the divorce proceedings, Michelle was convicted of child abuse, and the district court considered that conviction and other allegations of domestic violence in determining residential responsibility. After a two-day trial and consideration of a parenting investigator's report, the district court awarded Michelle primary residential responsibility and divided the

parties' marital estate, awarding Michelle 38.3 percent and Kyle 61.7 percent, with Kyle required to make an equalization payment.

PROCEDURAL HISTORY

Michelle Vetter initially commenced a divorce action in 2016, which the parties stipulated to dismiss. Kyle Vetter commenced the present divorce action in 2017. Following a two-day trial in March 2019, the Burleigh County District Court awarded Michelle Vetter primary residential responsibility, divided the marital estate, and ordered Kyle Vetter to make a \$135,294.57 equalization payment. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Vetter, 2019 ND 262, 934 N.W.2d 543
- Zuo v. Wang, 2019 ND 211, ¶ 11, 932 N.W.2d 360
- Grasser v. Grasser, 2018 ND 85, ¶ 17, 909 N.W.2d 99
- Mowan v. Berg, 2015 ND 95, ¶¶ 5, 8-9, 862 N.W.2d 523
- Wolt v. Wolt, 2010 ND 26, ¶ 7, 778 N.W.2d 786
- Heinle v. Heinle, 2010 ND 5, ¶ 11, 777 N.W.2d 590
- Datz v. Dosch, 2013 ND 148, ¶ 18, 836 N.W.2d 598
- Law v. Whittet, 2014 ND 69, ¶ 17, 844 N.W.2d 885
- Gietzen v. Gabel, 2006 ND 153, ¶ 9, 718 N.W.2d 552
- Boeckel v. Boeckel, 2010 ND 130, ¶ 16, 785 N.W.2d 213
- Berg v. Berg, 2018 ND 79, ¶¶ 6-7, 908 N.W.2d 705
- Rebel v. Rebel, 2016 ND 144, ¶ 7, 882 N.W.2d 256
- Bladow v. Bladow, 2003 ND 123, ¶ 6, 665 N.W.2d 724
- Neidviecky v. Neidviecky, 2003 ND 29, ¶ 10, 657 N.W.2d 255
- Horner v. Horner, 2004 ND 165, ¶ 12, 686 N.W.2d 131
- Linrud v. Linrud, 1998 ND 55, ¶ 7, 574 N.W.2d 875
- Lizakowski v. Lizakowski, 2017 ND 91, ¶ 12, 893 N.W.2d 508
- Kosobud v. Kosobud, 2012 ND 122, ¶ 6, 817 N.W.2d 384
- Lill v. Lill, 520 N.W.2d 855, 857 (N.D. 1994)
- Ulsaker v. White, 2006 ND 133, ¶ 14, 717 N.W.2d 567