

SUPREME COURT OF NORTH DAKOTA

Falcon v. Knudsen

2023 ND 94 (2023) · No. 20220380 · Decided May 9, 2023

SUMMARY

The North Dakota Supreme Court affirmed orders denying Michael Knudsen’s motion to modify primary residential responsibility and his motion to disqualify Tessa Falcon’s counsel. The court held that Knudsen failed to establish a prima facie case showing that modification was necessary to serve the child’s best interests. The court also concluded that the district court did not abuse its discretion in denying the counsel-disqualification motion without additional findings.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Douglas A. Bahr, Justice; Jon J. Jensen, Chief Justice; Daniel J. Crothers; Lisa Fair McEvers; Jerod E. Tufte; Douglas A. Bahr
JURISDICTION	North Dakota
DECIDED	May 9, 2023
DOCKET	20220380
DISPOSITION	affirmed
PROCEDURAL POSTURE	Knudsen appealed from district court orders denying his motion to modify primary residential responsibility and his motion to disqualify Falcon's counsel.
STANDARD OF REVIEW	Whether a movant established a prima facie case for a change of primary residential responsibility is reviewed de novo. A district court's decision on a motion to disqualify counsel is reviewed for abuse of discretion.
PARTIES	Michael J. Knudsen, Defendant and Appellant v. Tessa R. Falcon, Plaintiff and Appellee

QUESTIONS PRESENTED

- Whether the district court was required to make specific findings of fact under N.D.R.Civ.P. 52(a) when denying Knudsen's motion to modify primary residential responsibility.
- Whether Knudsen established a prima facie case for modification of primary residential responsibility under N.D.C.C. § 14-09-06.6.

3. Whether the district court was required to make findings of fact under N.D.R.Civ.P. 52(a) when denying Knudsen's motion to disqualify Falcon's counsel.
4. Whether the district court abused its discretion by denying the motion to disqualify counsel under the asserted conflict-of-interest rules.

HOLDINGS

1. Rule 52(a) did not require the district court to make findings of fact because the court was determining as a matter of law whether Knudsen's affidavits established a prima facie case, not weighing factual conflicts or making findings of fact.
2. Knudsen failed to establish a prima facie case for modification because he did not allege a general decline in the child's condition or that a material change in circumstances adversely affected the child, and therefore did not show that modification was necessary to serve the child's best interests.
3. The district court was not required to make findings of fact when ruling on Knudsen's motion to disqualify counsel because no applicable rule required findings for that motion.
4. The district court did not abuse its discretion in denying the motion to disqualify Falcon's counsel because Knudsen failed to establish that his prior consultation concerned the same or a substantially related matter.

KEY QUOTATIONS

“The trial court makes no findings of fact when reviewing a party’s affidavits accompanying a motion to modify custody. Determination of whether [Knudsen] established a prima facie case entitling [him] to an evidentiary hearing is a question of law.” (at 3)

“Knudsen wholly failed to allege either a general decline in the condition of the child or a change in circumstances adversely affected the child.” (at 4)

“Although this Court strongly discourages district courts from incorporating a pleading as its findings or rationale, in light of the limited issue presented and narrow scope of “Plaintiff’s briefing,” the order in this case is sufficient to permit us to understand the factual basis for the district court’s decision.” (at 5-6)

FACTUAL BACKGROUND

The parties were never married but share one child. The original judgment awarded Falcon primary residential responsibility, subject to Knudsen's parenting time. Knudsen moved to modify primary residential responsibility, but he did not allege either a general decline in the child's condition or that a change in circumstances had adversely affected the child. Knudsen also sought to disqualify Falcon's counsel based on an earlier consultation with an associate at the firm concerning a different case involving Knudsen's former wife and two children.

PROCEDURAL HISTORY

The parties' original judgment awarded Falcon primary residential responsibility for their child, subject to Knudsen's parenting time. Knudsen moved to modify primary residential responsibility and sought a second amended judgment; the district court concluded he had not established a prima facie case sufficient to warrant an

evidentiary hearing and denied the motions. Knudsen separately moved to permanently disqualify Falcon's counsel, and the district court denied that motion. The North Dakota Supreme Court affirmed both orders.

DISPOSITION

affirmed

CASES CITED

- Ferguson v. Ferguson, 202 N.W.2d 760, 763 (N.D. 1972)
- Jarmin v. Shriners Hosps. for Crippled Child., 450 N.W.2d 750, 752 (N.D. 1990)
- Grigg v. Grigg, 2015 ND 229, ¶¶ 7, 9, 16, 869 N.W.2d 411
- Jensen v. Jensen, 2013 ND 144, ¶ 8, 835 N.W.2d 819
- Thompson v. Thompson, 2012 ND 15, ¶ 6, 809 N.W.2d 331
- Forster v. Flaagan, 2016 ND 12, ¶ 8, 873 N.W.2d 904
- Tank v. Tank, 2004 ND 15, ¶ 6, 673 N.W.2d 622
- Kerzmann v. Kerzmann, 2021 ND 183, ¶¶ 9, 12, 965 N.W.2d 427
- Gomm v. Winterfeldt, 2022 ND 172, ¶ 30, 980 N.W.2d 204
- Kunz v. Slappy, 2021 ND 186, ¶ 26, 965 N.W.2d 408
- Bubel v. Bubel, 2022 ND 23, ¶ 3, 969 N.W.2d 468
- Sargent Cnty. Bank v. Wentworth, 500 N.W.2d 862, 871 (N.D. 1993)
- State v. White, 2018 ND 58, ¶ 8, 907 N.W.2d 765
- Schmidkunz v. Schmidkunz, 529 N.W.2d 858, 859 (N.D. 1995)
- Atkins v. State, 2017 ND 290, ¶ 10, 904 N.W.2d 738
- Caster v. State, 2019 ND 187, ¶¶ 8-10, 931 N.W.2d 223