

SUPREME COURT OF NORTH DAKOTA

Horsted v. Horsted, 2012 ND 24

812 N.W.2d 448 (N.D. 2012) · Decided February 17, 2012

SUMMARY

The North Dakota Supreme Court reviewed a divorce judgment awarding joint decision-making responsibility, establishing parenting time, and dividing custody investigator fees. The court affirmed the allocation of investigator fees and the amended visitation schedule, but reversed and remanded for additional findings concerning the child’s best interests, domestic violence, dispute resolution, and the basis for the parenting plan.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Kapsner, Justice; Kapsner; Gerald W. Vande Walle, C.J.; Mary Muehlen Maring; Daniel J. Crothers
JURISDICTION	North Dakota
DECIDED	February 17, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Theresa Horsted appealed from a district court order, divorce judgment, and amended divorce judgment concerning joint decisionmaking responsibility, visitation, parenting-plan findings, and allocation of custody-investigator fees.
STANDARD OF REVIEW	Custody and visitation determinations are reviewed under the clearly erroneous standard. The allocation of custody-investigator fees is reviewed for abuse of discretion. A district court abuses its discretion when it acts arbitrarily, unreasonably, or unconscionably, or when its decision is not the product of a rational mental process leading to a reasoned determination.
PRECEDENTIAL VALUE	published and precedential North Dakota Supreme Court opinion
PARTIES	Theresa Horsted v. Christopher Horsted

TOPICS

- child custody
- visitation
- domestic violence
- appellate procedure
- statutory interpretation

PRACTICE AREAS

family law

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether the district court made sufficient findings to support awarding the parties joint decisionmaking responsibility.
2. Whether the district court applied the correct statutory definition of domestic violence when evaluating joint decisionmaking responsibility.
3. Whether the district court adequately addressed a method for resolving disputes between the parents.
4. Whether the district court made sufficient findings to support adoption of Christopher Horsted's proposed parenting plan.
5. Whether the district court clearly erred by declining to follow the custody investigator's recommendations.
6. Whether the amended visitation schedule was clearly erroneous.
7. Whether the district court abused its discretion by dividing custody-investigator fees equally between the parties.

HOLDINGS

1. A district court must make sufficiently specific findings showing the factual basis for allocating joint decisionmaking responsibility in the child's best interests. The district court's conclusory finding that Christopher's proposed parenting plan furthered the child's best interests was insufficient, requiring reversal and remand for additional findings.
2. When determining whether joint decisionmaking responsibility is in a child's best interests, the court must apply the definition of domestic violence in N.D.C.C. § 14-07.1-01, not the different domestic-violence criteria in N.D.C.C. § 14-09-06.2(1)(j). If domestic violence has occurred and joint decisionmaking is awarded, the court must make written findings supporting that award.
3. An allocation of decisionmaking responsibility is not in the child's best interests unless the order includes a method for resolving disputes when the parents do not agree on an issue. The district court was required on remand to address the dispute-resolution method in its written order.
4. A district court may adopt a party-prepared parenting plan, but its findings must be sufficient to permit understanding and appellate review of the factual basis for the decision. The district court's conclusory best-interests finding was insufficient, requiring remand for additional findings.
5. A district court has broad discretion to determine the weight assigned to a custody investigator's recommendations and is not required to follow those recommendations. The district court did not clearly err by declining to adopt the investigator's recommended supervised and graduated visitation schedule.
6. Modification of visitation requires proof of a material change in circumstances since the prior visitation order and that the modification is in the child's best interests. The district court's amendment of extended summer visitation was not clearly erroneous.

7. When neither party is indigent, N.D.C.C. § 14-09-06.3(4) permits the district court to assess custody-investigator costs against either or both parties. The equal division of fees was not an abuse of discretion.

KEY QUOTATIONS

“A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, although there is some evidence to support it, on the entire evidence we are left with a definite and firm conviction a mistake has been made.” (451)

“When a trial court does not make required findings, it errs as a matter of law, and it is necessary to remand for additional findings.” (451)

“In such cases,, the court shall make orders for the allocation of parental rights and responsibilities that best protect the child, the parent, or both.” (452)

“In awarding visitation to' the non-custodial parent, the best interests of the child, rather than the wishes or desires of the parents, are paramount.” (453)

“We affirm in part, reverse in part, and remand for further proceedings.” (455)

FACTUAL BACKGROUND

Theresa and Christopher Horsted married in 2009 and had one child, R.M.H., born in 2010. Theresa alleged that Christopher had been verbally and physically abusive, and the trial court found that Christopher had grabbed Theresa by the neck and shoved or slammed her against a surface; the court also found that Theresa had pulled Christopher's hair during a separate incident. The parties agreed that Theresa would have primary residential responsibility, but they disagreed about decisionmaking and parenting time. A custody investigator recommended a graduated parenting-time schedule and an anger/domestic-violence assessment before unsupervised visitation, while the district court adopted Christopher's proposed plan and later modified extended summer visitation after evidence that the child was experiencing distress following visits.

PROCEDURAL HISTORY

After Theresa Horsted commenced a divorce action, the district court appointed a custody investigator and held a trial concerning parenting responsibilities and visitation. The court awarded the parties joint decisionmaking responsibility, adopted Christopher Horsted's proposed parenting plan, later amended the plan after Theresa moved for modification, and divided custody-investigator fees equally. Theresa appealed, and the North Dakota Supreme Court affirmed the fee allocation and the amended visitation ruling in part, reversed in part, and remanded for additional findings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must make additional findings regarding the child's best interests and the factual basis for awarding joint decisionmaking responsibility and adopting the parenting plan; address a method for resolving disputes when the parents disagree; and consider the evidence of domestic violence under the definition in N.D.C.C. § 14-07.1-01. The court may make further amendments to visitation if appropriate in light of its findings. The allocation of custody-investigator fees and the amended visitation ruling were affirmed.

CASES CITED

- Edwards v. Edwards, 2010 ND 2, 777 N.W.2d 606
- Wolt v. Wolt, 2010 ND 26, 778 N.W.2d 786
- Sailer v. Sailer, 2009 ND 73, 764 N.W.2d 445
- Bertsch v. Bertsch, 2006 ND 31, 710 N.W.2d 113
- Marquette v. Marquette, 2006 ND 154, 719 N.W.2d 321
- Kramer v. Kramer, 2006 ND 64, 711 N.W.2d 164
- Doll v. Doll, 2011 ND 24, 794 N.W.2d 425
- Dufner v. Trottier, 2010 ND 31, 778 N.W.2d 586
- Evenson v. Evenson, 2007 ND 194, 742 N.W.2d 829
- Hoggarth v. Kropp, 2010 ND 197, 790 N.W.2d 22
- In re Estate of Loomer, 2010 ND 93, 782 N.W.2d 648