

SUPREME COURT OF NORTH DAKOTA

Richardson v. Richardson

2022 ND 185 (2022) · No. 20220163 · Decided November 10, 2022

SUMMARY

The North Dakota Supreme Court affirmed the denial, without a hearing, of Reuben Richardson’s motion to modify residential responsibility because he failed to establish a prima facie case showing a material change in circumstances that adversely affected the child. The court also affirmed the denial of his motion for reconsideration, concluding that he did not meet the requirements of North Dakota Rules of Civil Procedure 59(j) or 60(b).

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jon J. Jensen, Chief Justice; Jon J. Jensen, C.J.; Daniel J. Crothers; Lisa Fair McEvers; Jerod E. Tufte; Allan L. Schmalenberger, S.J.
JURISDICTION	North Dakota
DECIDED	November 10, 2022
DOCKET	20220163
DISPOSITION	affirmed
PROCEDURAL POSTURE	Reuben Richardson appealed from an order denying his motion to modify residential responsibility without a hearing and from the subsequent denial of his motion for reconsideration.
STANDARD OF REVIEW	Whether a movant established a prima facie case for modification is reviewed de novo. Denial of a motion to reconsider is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Reuben M. Richardson v. Kimberly R. Richardson, State of North Dakota, statutory real party in interest

TOPICS

- child custody
- family law procedure
- motion for reconsideration
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Richardson established a prima facie case requiring modification of primary residential responsibility.
2. Whether the district court abused its discretion by denying Richardson's motion for reconsideration.

HOLDINGS

1. A party seeking modification of primary residential responsibility must establish a material change in circumstances and that the change adversely affected the child. Richardson failed to present prima facie evidence satisfying that requirement, so the district court properly denied modification without a hearing.
2. The district court did not abuse its discretion in denying reconsideration because Richardson neither invoked nor argued grounds available under N.D.R.Civ.P. 59(j) or 60(b), but merely reargued his entitlement to an evidentiary hearing.

KEY QUOTATIONS

“To establish a prima facie case justifying modification of primary residential responsibility, a movant must show there has been a material change in circumstances and “the change in circumstances has adversely affected the child[.]” (¶ 2)

“If properly written and argued, this Court treats requests for reconsideration as motions to alter or amend a judgment under N.D.R.Civ.P. 59(j) or motions for relief from a judgment under N.D.R.Civ.P. 60(b).” (¶ 3)

FACTUAL BACKGROUND

Reuben Richardson sought to modify primary residential responsibility for the parties' child. The district court found he had not provided prima facie evidence of a material change in circumstances that adversely affected the child and denied the motion without a hearing. Richardson then sought reconsideration, but he did not identify grounds under the applicable civil rules and instead reargued his entitlement to an evidentiary hearing.

PROCEDURAL HISTORY

The district court of Ward County concluded Richardson had not established a prima facie case that a material change in circumstances adversely affected the child and denied modification without an evidentiary hearing. It later denied Richardson's motion for reconsideration. The North Dakota Supreme Court affirmed both rulings.

DISPOSITION

affirmed

CASES CITED

- Gomm v. Winterfeldt, 2022 ND 172, ¶ 30

- Klundt v. Benjamin, 2021 ND 149, ¶ 8, 963 N.W.2d 278
- Johnshoy v. Johnshoy, 2021 ND 108, ¶ 9, 961 N.W.2d 282
- Rath v. Rath, 2018 ND 138, ¶¶ 9-10, 911 N.W.2d 919
- Schmidt v. Hageness, 2022 ND 179, ¶¶ 7-9
- Hanson v. Hanson, 2003 ND 20, ¶ 5, 656 N.W.2d 656
- Fonder v. Fonder, 2012 ND 228, ¶ 10, 823 N.W.2d 504
- Shull v. Walcker, 2009 ND 142, ¶ 14, 770 N.W.2d 274

OPINION

PER CURIAM.

FILED IN THE OFFICE OF THE CLERK OF SUPREME COURT NOVEMBER 10, 2022
STATE OF NORTH DAKOTA IN THE SUPREME COURT STATE OF NORTH DAKOTA 2022
ND 185 Kimberly R. Richardson, Plaintiff and Appellee v. Reuben M. Richardson, Defendant and
Appellant and State of North Dakota, Statutory Real Party in Interest No. 20220163 Appeal from
the District Court of Ward County, North Central Judicial District, the Honorable Douglas L.
Mattson, Judge.

AFFIRMED. Opinion of the Court by Jensen, Chief Justice. Erin M. Conroy, Bottineau, ND, for
plaintiff and appellee; submitted on brief. Alyssa L. Lovas, Bismarck, ND, for defendant and
appellant; submitted on brief. Richardson v. Richardson No. 20220163 Jensen, Chief Justice. [¶1]
Reuben Richardson appeals from a district court order denying his motion to modify residential
responsibility without a hearing after finding he had failed to assert a prima facie case that a
material change in circumstances had resulted in an adverse impact on the parties' child.

He also appeals from the court's subsequent denial of his motion for reconsideration. [¶2]
"Whether a moving party established a prima facie case for modification is a question of law
reviewed de novo on appeal." Gomm v. Winterfeldt, 2022 ND 172, ¶ 30.

To establish a prima facie case justifying modification of primary residential responsibility, a
movant must show there has been a material change in circumstances and "the change in
circumstances has adversely affected the child[]." Klundt v. Benjamin, 2021 ND 149, ¶ 8, 963
N.W.2d 278 (quoting Johnshoy v. Johnshoy, 2021 ND 108, ¶ 9, 961 N.W.2d 282).

After our review of the record, we conclude Reuben Richardson did not provide prima facie
evidence that there has been material change in circumstances which has adversely affected the
child and we affirm under N.D.R.App.P. 35.1(a)(6). [¶3] Reuben Richardson argues the district
court erred by denying his motion for reconsideration. North Dakota does not formally recognize
motions to reconsider.

Rath v. Rath, 2018 ND 138, ¶ 9, 911 N.W.2d 919. In Schmidt v. Hageness, we recognized the following: If properly written and argued, this Court treats requests for reconsideration as motions to alter or amend a judgment under N.D.R.Civ.P. 59(j) or motions for relief from a judgment under N.D.R.Civ.P. 60(b). Denial of a motion to reconsider will not be reversed on appeal unless the district court abused its discretion.

Rath, at ¶ 9. A district court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner; its decision is not the product of a rational mental process leading to a reasoned determination; or it misinterprets or misapplies the law. Id. at ¶ 10. 1 North Dakota Rules of Civil Procedure 59(j) allows a party to seek reconsideration of a district court's judgment.

Hanson v. Hanson, 2003 ND 20, ¶ 5, 656 N.W.2d 656. This rule can be used to present previously unavailable evidence, but should not be used to reexamine facts nor reconsider evidence already presented. Fonder v. Fonder, 2012 ND 228, ¶ 10, 823 N.W.2d 504. North Dakota Rules of Civil Procedure 60(b) allows a party to seek relief from a final judgment if: 1) mistake or neglect occurred; 2) newly discovered evidence that could not have been discovered previously; 3) fraud; 4) the judgment is void; 5) the judgment was based on an earlier judgment that has been reversed or vacated; or 6) any other reason that justifies relief.

The party asking for relief has the burden to show sufficient grounds for disturbing the final judgment and relief will only be granted in exceptional circumstances. Shull v. Walcker, 2009 ND 142, ¶ 14, 770 N.W.2d 274. 2022 ND 179, ¶¶ 7-9. [¶4] Reuben Richardson did not cite to N.D.R.Civ.P. 59(j) or 60(b), nor did he argue the grounds available for relief under either rule.

Instead, he reargued he is entitled to an evidentiary hearing. Reuben Richardson's arguments for reconsideration do not meet the requirements of N.D.R.Civ.P. 59(j) or N.D.R.Civ.P. 60(b). Therefore, the district court did not abuse its discretion in denying his motion for reconsideration.

We affirm the district court's denial of Reuben Richardson's motion to reconsider. [¶5] Jon J. Jensen, C.J. Daniel J. Crothers Lisa Fair McEvers Jerod E. Tufte Allan L. Schmalenberger, S.J. [¶6] The Honorable Allan L. Schmalenberger, S.J., sitting in place of VandeWalle, J., disqualified.