

SUPREME COURT OF SOUTH DAKOTA

Veldheer v. Peterson & Mandel

Veldheer, 2012 S.D. 86 (S.D. 2012) · No. #26195 · Decided December 5, 2012

SUMMARY

The South Dakota Supreme Court reviewed a custody dispute involving the children’s father, mother, and maternal grandparents, who had intervened after serving as the children’s primary caretakers. The court affirmed the grandparents’ intervention but held that the father’s presumptive right to custody had not been rebutted by clear and convincing evidence of extraordinary circumstances causing serious detriment to the children. It reversed the custody award and remanded for further findings and reconsideration of attorney’s fees.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Severson, Justice; Wilbur, Justice
JURISDICTION	South Dakota
DECIDED	December 5, 2012
DOCKET	#26195
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Father appealed the circuit court's order allowing the maternal grandparents to intervene in the custody proceeding, awarding the grandparents legal and physical custody, denying father's request for trial attorney's fees, and implicitly denying appellate attorney's fees.
STANDARD OF REVIEW	Statutory interpretation, whether the facts establish extraordinary circumstances and serious detriment, and constitutional-rights claims are reviewed de novo. The circuit court's attorney-fee ruling required findings of fact and conclusions of law sufficient for appellate review.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion
PARTIES	Jered Mandel v. Doug Veldheer and Kari Veldheer, Angela Peterson

TOPICS

- child custody
- grandparent rights
- parental rights
- appellate procedure
- statutory interpretation

PRACTICE AREAS

family law

constitutional law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the maternal grandparents were properly permitted to join or intervene in the parents' custody dispute.
2. Whether the grandparents rebutted father's presumptive right to custody under SDCL 25-5-29 and SDCL 25-5-30 by clear and convincing evidence of abandonment, forfeiture, surrender, abdication, or extraordinary circumstances causing serious detriment to the children.
3. Whether the circuit court properly denied father's request for trial attorney's fees without entering findings of fact and conclusions of law.
4. Whether either party was entitled to appellate attorney's fees.

HOLDINGS

1. The circuit court properly allowed the grandparents to join or intervene because they alleged and undisputedly had served as the children's primary caretakers for approximately two years.
2. The grandparents failed to prove by clear and convincing evidence that father totally deserted the children or intended to abandon and relinquish his parental obligations; therefore, father's presumptive right to custody was not rebutted under SDCL 25-5-29(2) or (3).
3. The grandparents failed to prove by clear and convincing evidence that awarding custody to father would cause serious detriment to the children. Their primary-caretaker status, the children's bond with them, and evidence that a custody change would cause ordinary emotional distress were insufficient by themselves.
4. The attorney-fee issue must be remanded because the circuit court did not enter findings of fact and conclusions of law, and father had become the prevailing party after reversal of the custody award.
5. Neither father nor the grandparents was awarded appellate attorney's fees.

KEY QUOTATIONS

"A parent's presumptive right to custody of his or her child may be rebutted by proof" (§ 20)

"to adequately protect the natural parent's fundamental liberty interest in the custody of h[is] children, extraordinary circumstances must denote more than a simple showing of the children's best interests." (§ 25)

"The question is whether Father's presumptive right to custody was rebutted by clear and convincing evidence of extraordinary circumstances that would result in serious detriment to the children." (§ 31)

FACTUAL BACKGROUND

Jered Mandel and Angela Peterson, who were never married, had two children and separated in January 2008. Because of the parents' deteriorating relationship, conflicting work schedules, and financial difficulties, the maternal grandparents became the children's primary caretakers for substantial periods from 2008 through

September 2010. Father nevertheless maintained contact and visitation, paid child support for a period, refused to consent to a guardianship, and exercised alternating-week custody for ten months before trial. A custody evaluator favored the grandparents under a best-interests comparison but did not conclude that returning custody to father would cause serious detriment to the children.

PROCEDURAL HISTORY

The circuit court granted the maternal grandparents' motion to join their separate custody action with the parents' custody proceeding and allowed them to intervene. After a three-day trial, it awarded the grandparents legal and physical custody, granted father visitation, and ordered each party to pay his or her own attorney's fees. The Supreme Court of South Dakota affirmed the intervention ruling, reversed the custody award, declined appellate attorney's fees, and remanded the trial-fee issue for findings and reconsideration.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including findings of fact and conclusions of law and reconsideration of father's request for trial attorney's fees. The custody award to the grandparents was reversed; the intervention ruling was affirmed.

CASES CITED

- In re Guardianship of S.M.N., T.D.N., and T.L.N., 2010 S.D. 31, 781 N.W.2d 213
- Meldrum v. Novotny, 2002 S.D. 15, 640 N.W.2d 460
- Clough v. Nez, 2008 S.D. 125, 759 N.W.2d 297
- In re Adoption of D.M., 2006 S.D. 15, 710 N.W.2d 441
- Sw. Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 819 (9th Cir. 2001)
- Troxel v. Granville, 530 U.S. 57, 66, 68-69 (2000)
- Santosky v. Kramer, 455 U.S. 745, 753, 758-59 (1982)
- Feist v. Lemieux-Feist, 2010 S.D. 104, 793 N.W.2d 57
- In re Adoption of C.D.B., 2005 S.D. 115, 706 N.W.2d 809
- Beach v. Coisman, 2012 S.D. 31, 814 N.W.2d 135
- Fuerstenberg v. Fuerstenberg, 1999 S.D. 35, 591 N.W.2d 798
- Toft v. Toft, 2006 S.D. 91, 723 N.W.2d 546