

SUPREME COURT OF NORTH DAKOTA

Reineke v. Reineke

670 N.W.2d 841 (N.D. 2003) · No. No. 20030014 · Decided November 13, 2003

SUMMARY

The Supreme Court of North Dakota affirmed a divorce judgment addressing property division, rehabilitative spousal support, child custody, child testimony, custody-investigator appointment, and attorney fees. The court held that the property distribution, support award, custody determination, denial of a custody investigator, and denial of attorney fees were not erroneous or an abuse of discretion. It remanded the matter with directions for the trial court to retain jurisdiction over possible future modification of spousal support.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Kapsner, Justice; Gerald W. Vande Walle, Chief Justice; Dale V. Sandstrom, Justice; William A. Neumann, Justice; Mary Muehlen Maring, Justice
JURISDICTION	North Dakota
DECIDED	November 13, 2003
DOCKET	No. 20030014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ronald Reineke appealed from a divorce judgment, and Frances Reineke cross-appealed regarding spousal support and attorney fees.
STANDARD OF REVIEW	Property division, spousal support, and child custody determinations are findings of fact reviewed for clear error. Exclusion of witness testimony and denial of a custody investigator are reviewed for abuse of discretion. Attorney-fee awards are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Ronald K. Reineke v. Frances M. Reineke, also referred to as Frances M. Michels

TOPICS

divorce

spousal support

child custody

appellate procedure

evidence

PRACTICE AREAS

family law

appellate procedure

evidence

remedies

QUESTIONS PRESENTED

1. Whether the trial court's unequal division of marital property was clearly erroneous.
2. Whether the award of rehabilitative spousal support of \$300 per month for four years was clearly erroneous.
3. Whether the award of primary physical custody to Frances was clearly erroneous.
4. Whether the trial court abused its discretion by refusing to allow the fourteen- and seventeen-year-old children to testify without first assessing their intelligence, understanding, and experience to express a custody preference.
5. Whether the trial court abused its discretion by denying Ronald's request for appointment of a custody investigator.
6. Whether the trial court should have retained jurisdiction to modify spousal support after the temporary award expired.
7. Whether the trial court abused its discretion by denying Frances attorney fees.

HOLDINGS

1. The trial court's property distribution and \$300-per-month rehabilitative spousal-support award were not clearly erroneous.
2. The award of primary physical custody of the parties' children to Frances was not clearly erroneous.
3. The trial court abused its discretion by refusing to allow the fourteen- and seventeen-year-old children to testify without first assessing whether they had sufficient intelligence, understanding, and experience to express a custody preference, but the error did not require reversal of the custody determination.
4. The trial court did not abuse its discretion by denying Ronald's request for appointment of a custody investigator.
5. When a trial court awards temporary rehabilitative support but is uncertain whether permanent support may later be necessary, it should retain jurisdiction to consider a future modification or award of spousal support.
6. The trial court did not abuse its discretion by denying Frances attorney fees.

KEY QUOTATIONS

“Although we have concluded the trial court abused its discretion in refusing to allow the children to testify without such an assessment, we do not reverse the court's custody determination, because the court assumed the daughter preferred to live with her father in making its determination, and, under the trial court's analysis, consideration of the statutory factors overwhelmingly favored Michels.” (849)

“If trial courts find no immediate need for awarding permanent spousal support, they should retain jurisdiction to do so beyond a temporary award, when facing uncertainty about the need for permanent support.” (849)

FACTUAL BACKGROUND

The parties married in 1983 and had two children. Frances had multiple sclerosis, earned approximately \$19,000 annually as a medical-clinic records clerk, and had two years of college; Ronald earned approximately \$32,000 annually as a truck driver and had diabetes and anxiety attacks. The trial court found that Ronald had been controlling and demeaning, had controlled the marital finances, had contributed to the parties' debt and divorce, and had entered an intimate relationship before the divorce proceedings. The court awarded Frances a disproportionate share of marital property, rehabilitative spousal support, primary physical custody, and child support.

PROCEDURAL HISTORY

The district court entered a December 5, 2002 judgment dissolving the parties' marriage, dividing marital property, awarding rehabilitative spousal support and child support, and awarding Frances primary physical custody. Ronald appealed the judgment, and Frances cross-appealed. The Supreme Court affirmed but remanded for modification of the judgment to retain jurisdiction over spousal support.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Remand the matter to the trial court to modify the judgment to retain jurisdiction over spousal support and to permit a future award or modification if subsequent circumstances demonstrate a need.

CASES CITED

- Sommers v. Sommers, 2003 ND 77, 660 N.W.2d 586
- Hogan v. Hogan, 2003 ND 105, 665 N.W.2d 672
- Ruff v. Ruff, 78 N.D. 775, 52 N.W.2d 107 (1952)
- Fischer v. Fischer, 139 N.W.2d 845 (N.D. 1966)
- Sommer v. Sommer, 2001 ND 191, 636 N.W.2d 423
- Fox v. Fox, 1999 ND 68, 592 N.W.2d 541
- Riehl v. Riehl, 1999 ND 107, 595 N.W.2d 10
- Pfliger v. Pfliger, 461 N.W.2d 432 (N.D. 1990)
- Shields v. Shields, 2003 ND 16, 656 N.W.2d 712
- Mellum v. Mellum, 2000 ND 47, 607 N.W.2d 580
- McDowell v. McDowell, 2001 ND 176, 635 N.W.2d 139

- Corbett v. Corbett, 2002 ND 103, 646 N.W.2d 677
- Schmidt v. Schmidt, 2003 ND 55, 660 N.W.2d 196
- Fargo Women's Health Org., Inc. v. Larson, 391 N.W.2d 627 (N.D. 1986)
- Green v. Green, 1999 ND 86, 593 N.W.2d 398
- Glander v. Glander, 1997 ND 192, 569 N.W.2d 262
- Kautzman v. Kautzman, 1998 ND 192, 585 N.W.2d 561
- van Oosting v. van Oosting, 521 N.W.2d 93 (N.D. 1994)
- State v. Oliver, 78 N.D. 398, 49 N.W.2d 564 (1951)
- Wagner v. Peterson, 430 N.W.2d 331 (N.D. 1988)
- Barstad v. Barstad, 499 N.W.2d 584 (N.D. 1993)
- Tasker v. Tasker, 395 N.W.2d 100 (Minn. Ct. App. 1986)
- Paryzek v. Paryzek, 776 P.2d 78 (Utah Ct. App. 1989)
- Palmer v. Palmer, 138 Vt. 412, 416 A.2d 143 (1980)
- Jordana v. Corley, 220 N.W.2d 515 (N.D. 1974)
- Alvarez v. Carlson, 524 N.W.2d 584 (N.D. 1994)