

NORTH DAKOTA SUPREME COURT

Machart v. Machart

776 N.W.2d 795 (N.D. 2009) · Decided December 15, 2009

SUMMARY

The North Dakota Supreme Court affirmed the modification awarding Patrick Machart primary residential responsibility for the parties’ children, concluding the referee’s best-interests determination was not clearly erroneous. The court held that the referee improperly calculated Tracy Bunkowske’s child support obligation by failing to explain how her net income was determined and by failing to account for her support obligation to a child living with her. The child support portion of the judgment was reversed and remanded for recalculation.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Gerald W. Vande Walle, Chief Justice; Dale V. Sandstrom, Justice; Daniel J. Crothers, Justice; Carol Ronning Kapsner, Justice
JURISDICTION	North Dakota
DECIDED	December 15, 2009
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the seventh amended judgment of divorce modifying primary residential responsibility and establishing the appellant's child support obligation.
STANDARD OF REVIEW	Modification of primary residential responsibility is reviewed for clear error. Child support determinations involve de novo review of questions of law, clearly erroneous review of findings of fact, and abuse-of-discretion review of matters committed to the court's discretion.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Tracy Bunkowske, formerly Tracy Machart v. Patrick Machart

TOPICS

- child custody
- child support
- standard of review
- family law procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the referee's award of primary residential responsibility to Machart was clearly erroneous and contrary to the children's best interests.
2. Whether the referee improperly calculated Bunkowske's child support obligation by failing to explain the determination of her net income and by failing to account for her duty to support a child living in her household who was not Machart's child.

HOLDINGS

1. The award of primary residential responsibility to Machart was not clearly erroneous because the record supported the finding of a material change in circumstances and the determination that the change served the children's best interests.
2. The referee erred as a matter of law by failing to state how Bunkowske's net income was determined and by failing to perform the additional guideline calculations required because she owed a duty of support to a child living with her who was not Machart's child.

KEY QUOTATIONS

“A finding of fact is clearly erroneous if there is no evidence to support it, if the finding is induced by an erroneous view of the law, or if the reviewing court is left with a definite and firm conviction a mistake has been made.” (776 N.W.2d at 798)

“[W]e do not retry custody issues or reassess the witnesses' credibility if the court's decision is supported by evidence in the record.” (776 N.W.2d at 798)

“If the district court fails to comply with the child support guidelines in determining an obligor's child support obligation, the court errs as a matter of law.” (776 N.W.2d at 800)

FACTUAL BACKGROUND

Bunkowske and Machart had two teenage children, and Bunkowske had primary residential responsibility under their 1999 divorce judgment. In 2008, both children expressed a sincere preference to live with Machart, citing problems in their relationship with Bunkowske's current husband; a psychologist testified that the children were mature and had legitimate reasons for their preference. The referee found a significant change in circumstances and that living with Bunkowske and her husband had become less desirable, then awarded Machart primary residential responsibility. The referee also ordered Bunkowske to pay \$723 per month in child support, using an unexplained net-income figure and making no allowance for Bunkowske's daughter living with her and her current husband.

PROCEDURAL HISTORY

The parties were divorced in 1999, with Bunkowske receiving primary residential responsibility for their two children. In 2008, Machart moved to modify custody and child support. A judicial referee conducted an

evidentiary hearing and entered findings, conclusions, and an order for a seventh amended judgment. The parties did not seek district-court review of the referee's findings and order, and Bunkowske appealed directly.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The portion of the judgment establishing Bunkowske's child support obligation was reversed and remanded for recalculation in compliance with the child support guidelines, including a stated determination of net income and an allowance for Bunkowske's duty to support her daughter. The award of primary residential responsibility to Machart was affirmed.

CASES CITED

- Frueh v. Frueh, 2009 ND 155, ¶¶ 7-10, 771 N.W.2d 593
- Siewert v. Siewert, 2008 ND 221, ¶¶ 16-19, 24, 758 N.W.2d 691
- Mosbrucker v. Mosbrucker, 1997 ND 72, ¶¶ 2-4, 10, 12, 562 N.W.2d 390
- Alvarez v. Carlson, 524 N.W.2d 584, 592 (N.D. 1994)
- Barstad v. Barstad, 499 N.W.2d 584, 589 (N.D. 1993)
- Novak v. Novak, 441 N.W.2d 656, 658 (N.D. 1989)
- State ex rel. K.B. v. Bauer, 2009 ND 45, ¶ 8, 763 N.W.2d 462
- Buckholz v. Buchholz, 1999 ND 36, ¶ 11, 590 N.W.2d 215
- Serr v. Serr, 2008 ND 229, ¶ 10, 758 N.W.2d 739
- Korynta v. Korynta, 2006 ND 17, ¶ 18, 708 N.W.2d 895

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