

Statement of Issues

1. Whether the circuit court abused its discretion by granting Todd visitation under an erroneous legal conclusion that the court did not have legal authority to deny Todd visitation.

The circuit court granted Todd visitation because the court concluded that the court did not have the legal authority to deny Todd visitation, even if denying Todd visitation was in the children's best interests.

In re Termination of Parental Rights of P.A.M., 505 N.W.2d 395, 398 (S.D. 1993).
Chicoine v. Chicoine, 479 N.W.2d 891, 894 (S.D. 1992)
Credit Collection Servs., Inc. v. Pesicka, 2006 S.D. 81, ¶ 5, 721 N.W.2d 474, 476
Lindley v. Lindley, 401 N.W.2d 732, 736 (S.D. 1987)

2. Whether the circuit court abused its discretion by granting Todd visitation when the court applied an incorrect burden of proof, relied on clearly erroneous facts and hearsay evidence and disregarded the preponderance of the evidence proving that Todd sexually abused B.P., the court's visitation decision will harm the children, and Nicole did not influence B.P.'s statements.

The circuit court applied the incorrect burden of proof and granted Todd visitation based on clearly erroneous facts and hearsay evidence regarding Todd sexually abusing B.P., the psychological harm the children will experience under the court's visitation order, and the veracity of B.P.'s statements regarding the abuse.

L.S. v. C.T., 2009 S.D. 2, ¶ 23, 760 N.W.2d 145, 151
Maroney v. Aman, 1997 S.D. 73, ¶ 39, 565 N.W.2d 70, 78-9
Schieffer v. Schieffer, 2013 S.D. 11, ¶ 15, 826 N.W.2d 627

3. Whether the circuit court abused its discretion by granting Todd visitation when the court disregarded B.P.'s treating counselor's expert opinion that visitation was not in the children's best interests, terminated the counseling relationship, and instead relied upon an expert who the court ordered to prepare

a forced reunification plan rather than consider the best interests of the children.

The circuit court rejected B.P.'s counselor's opinion that visitation was not in the children's best interests and instead relied upon an expert, who the court directly ordered to prepare a reunification plan rather than consider whether visitation was in the children's best interests. The Court terminated B.P.'s counselor.

Peterson v. Evangelical Lutheran Good Samaritan Soc'y, 2012 S.D. 52, ¶ 22, 816 N.W.2d 843, 850
Jewett v. Real Tuff, Inc., 2011 S.D. 33, ¶ 29, 800 N.W.2d 345, 352

4. Whether the circuit court abused its discretion improperly delegating its duty to determine the best interests of the children to a social worker.

The court delegated to a social worker the duty to determine what visitation is in the children's best interest.

Marko v. Marko, 2012 S.D. 54, ¶ 33, 816 N.W.2d 820, 830
In re Marriage of Stephens, 810 N.W.2d 523, 530 (Iowa App. 2012)
Walters v. Walters, 673 N.W.2d 585, 592 (Neb. App. 2004)

5. Whether the circuit court erroneously valued Nicole's retirement at the time of the divorce rather than when Nicole initiated the divorce, when Todd was incarcerated for the year following Nicole's initiation of the divorce and did not contribute to the marital estate during his incarceration.

The circuit court valued Nicole's retirement at the time of the divorce rather than when she initiated the divorce proceedings.

Duran v. Duran, 2003 S.D. 15, ¶ 12, 657 N.W.2d 692, 697