

SUMMARY STATEMENT

Hess v. Hess

Docket No. 50719-2023

This case concerns child custody proceedings between Isaac William Hess and Lisa Ann Hess. Isaac and Lisa have two minor children, who are registered members of the Cherokee Nation. During the proceedings, Isaac alleged that Lisa had abused the children. Isaac's father was briefly granted emergency guardianship of the children in the District Court of the Cherokee Nation during the proceedings. The Idaho court stayed its proceedings pending the resolution of the guardianship action in the Cherokee Nation court. Shortly thereafter, the District Court of the Cherokee Nation dismissed the guardianship action because the children lived outside the jurisdictional borders of the Cherokee Nation. The Idaho court then held a trial on the custody issues, after which the magistrate court awarded Lisa sole physical custody of the children and awarded Isaac and Lisa joint legal custody but granted Lisa the final say on all issues relating to the children. Finally, the magistrate court ordered Isaac to pay child support and backdated the payments to the first day of the month after the filing of the divorce petition. Isaac appealed the decision to the district court, which affirmed the magistrate court.

Isaac appealed to the Idaho Supreme Court and argued that the district court erred in affirming the magistrate court because: (1) the magistrate court should have conferred with the courts of the Cherokee Nation regarding jurisdiction over custody and support of the minor children; (2) the magistrate court was required by Idaho Code section 32-717C to refer Isaac's child abuse allegations to the Idaho Department of Health and Welfare for an investigation; (3) the magistrate court impermissibly focused on only one of the Idaho Code section 32-717 factors in awarding Lisa sole physical custody; (4) the magistrate court effectively awarded Lisa sole legal custody without making the necessary findings; and (5) the magistrate court should not have made the child support award retroactive because the children primarily resided with Isaac at the time the divorce petition was filed and for several months thereafter.

The Idaho Supreme Court affirmed in part and reversed in part the district court's decision. The Court affirmed the district court's decision affirming the magistrate court's decision that the magistrate court was not required to confer with the Cherokee Nation court regarding jurisdiction over the children. The Court concluded that no conference was required under the Uniform Child Custody Jurisdiction and Enforcement Act because Isaac had failed to establish that the Cherokee Nation was a "home state" of the children for purposes of the Act, that the Cherokee Nation courts had indicated an interest in asserting jurisdiction over child custody matters involving the children, or that there was a pending proceeding concerning child custody in the Cherokee Nation courts that predated his filing of the Idaho petition. Next, the Court concluded that the magistrate court did not err in declining to refer Isaac's allegations of child abuse to the Department of Health and Welfare for investigation because his allegations did not rise to the level of child abuse as defined in Idaho law. Finally, the Court concluded that the magistrate court considered all relevant statutory factors prior to awarding Lisa sole physical custody of the children.

However, the Idaho Supreme Court reversed those portions of the district court's order affirming the magistrate court's decisions concerning legal custody and backdating its child support award. The Court held that the magistrate court's legal custody decision was internally

contradictory and required clarification because it awarded joint legal custody and, at the same time, gave Lisa final decision-making authority on all matters. Lastly, the Court held that the magistrate court's decision to backdate the child support deviated from the Idaho Child Support Guidelines without explanation. The Court reversed the district court's decision on those two points and remanded for further proceedings.

This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.