ORIGINAL
20040217

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
NOV 24 2004
STATE OF NORTH DAKOTA

Williams County Social Service Board, T[redacted] C[redacted] R[redacted] by and through Michon C. Sax as Guardian Ad Litem, and Karen Rosaaen, Plaintiffs, Appellee,	NDSC Case No. 20040217
vs.	
Dean A. Kinsey, Defendant, Appellant.	

BRIEF OF APPELANT
ON APPEAL FROM THE
Judgement and Order dated 18 June 2004
Entered by the Honorable Gerald Rustad
Judge of the District Court
Williams County, North Dakota

BRIEF OF THE APPELLANT

SUBMITTED BY:

Dean A. Kinsey
JRLL
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Jamestown, ND 58401

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FOR APPELLANT'S BRIEF

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ISSUES PRESENTED

1. That the Court erred in Denying Defendant's Motion To Amend Order, with-out allowing Defendant an opportunity to participate in a proceeding in person or by Telephonic arrangements.

2. That the Court erred when it allowed JANET HOLTER ZANDER, contract attorney for the Williston Regional Child Support Unit, To state on line 16 and 17 of page 2 on BRIEF IN RESISTANCE dated 6 of July 2004, With-out allowing Defendant to answer, or get transcripts from Karen E. Rosaaen criminal proceeding.

3. That the Court erred when it allowed Karen E. Rosaaen, mother of T.C.R., minor child to collect child support from Defendant, since June 5, 2004.

Statement of the Case

Defendant, Dean A. Kinsey, is the father of T.C.R., minor child, born May 18, 1993. Karen E. Rosaaen is the mother of T.C.R.

On June 5, 2000, Karen E. Rosaaen was arrested for the offense of ASSAULT on Dean A. Kinsey, The ASSAULT was committed by Karen E. Rosaaen stabing Dean A. Kinsey (Williams Case No. 53-00-K-00385) The Court issued a no CONTACT order on Karen E. Rosaaen if she made bail, and was released from jail. During the criminal proceedings The Honorable Dave Nelson, Williams County District Court, told Dean A. Kinsey "He now had custody of T.C.R." Dean A. Kinsey, whom has a seventh grade education, can not read or write, understood the Judge to mean. DEFENDANT DEAN A KINSEY had FULL-CUSTODY! The Honorable Dave Nelson told Dean A. Kinsey that he would need to hire an attorney to stop paying child support and Motion the Court for an proceeding to Amend Child Support. In 2004 Dean A. Kinsey came to prison on a drug charge, had treatment, and is now putting his life back together for his release in early 2005. During his time in prison T.C.R. minor child has been living full-Time with his Grandparents, Dean A. Kinsey's Mother

and father. Karen E. Rosaaen T.C.R. mother, has not supported T.C.R. with funds or love of a parent. Karen E. Rosaaen has nothing to do with T.C.R. minor child.

Since June 5 2000, Dean A. Kinsey has been paying child support or accuring arrears. And yet not one cent has been given to the care-giver's of T.C.R. minor child, even while in prison Dean A. Kinsey has worked and 1/2 his wages go to child support, not one cent has gone to the care-giver of T.C.R. minor child.

On June 4, 2004 Dean A. Kinsey filed Motion to Amend Child Support, On the 18th June, 2004 Honorable Gerald Rostad Judge of District Court, Williams County. Denied Defendant's Motion to Amend Order. (Civil No. 94-RP-0101) and set child support at $168.00 per month which Williston Regional Child Support pays to Karen E. Rosaaen. On June 30, 2004 Defendant filed Motion to Vacate Order which the Court Denied on 15th July, 2004. There was never a hearing or proceeding that Defendant could take part in. Defendant was not even given 10 days to respond to Plaintiffs Brief and Affidavit by Janet Holter Zander

LAW AND ARGUMENT

1. That the Court erred in Denying Defendant's Motion to Amend Order, with-out allowing Defendant an opportunity to participate in a proceeding in person or by telephonic arrangements.

The North Dakota Supreme Court considers it well-settled that courts which issue divorces and award child support retain the authority to modify the amount paid.
(Sweeny vs. Hoff, 478 N.W. 2d 9 (N.D. 1991))

In this case there are many material changes in circumstances, and yet the Trial Court choose not even to have an hearing or proceeding, And than only considered what the Plaintiff's attorney said. and never gave Dean A. Kinsey a chance to respond to Plaintiff's statements, And was never allowed to get copies of Transcripts from the Karen E. Rosaaen criminal case. Even after 5 different, motions, letters and calls. And finally when Dean A. Kinsey's Mother went up to Clerk of Court in Williams County. Was told the Court Reporter was not in and

he would call. No call to this day.

Defendant should have been allowed to participate in a proceeding or been given time to respond to Plaintiff's statements.

2. That the Court erred when it allowed JANET HOLTER ZANDER, contract attorney for the Williston Regional Child Support Unit, To state on line 16 and 17 of Page 2 on BRIEF IN RESISTANCE dated 6 of July 2004, With-out allowing Defendant to answer, or get transcripts from Karen E. Rosgaard criminal proceeding.

Dean A. Kinsey should have been allowed to respond and answer Brief's and Answer's by Plaintiff's before Judge Rustad ruled, as there was some confusion as to what Judge Nelson ordered in 2000.

Dean A. Kinsey should have been allowed to respond and answer Brief's and Answer's by Plaintiff's before Judge Rustad denied Dean A. Kinsey's Motion to Vacate Order to Modify Child Support.

3. That the Court erred when it allowed Karen E. Rosaen, mother of T.C.R. minor child to collect child support from Defendant, since June 5, 2004.

Child Support is for children, yet for over 4 years support has been paid not one cent going to T.C.R. minor child or his care-giver. 1 month or maybe 2 month's but 4 years. It's hard to believe the State of North Dakota would allow this to continue. This is an in-justice to a young child and his grand-mother and his father. It's wrong for the child not to get the funds his father paid, but to give the funds to the mother who stabed the childs father, and gives nothing and cares nothing at this child is wrong. At least give child support to care-giver.

SUMMARY OF ARGUMENT

What happened in this case is remote indeed from the concept of the legal justice system that all Americans believe in, and rely upon. The performance of the Trial Court is deplorable and appalling. Whether it was "legal" will be determined by this Court - but it did not afford "justice", in the sense of establishing a balanced, level, playing field presided over by a temperate, patient, knowledgeable Judge who does not show favoritism toward either litigant in a case. When the Court's do not act in a fair, balanced, and judicious way, the very concept of justice is absent.
Dean A. Kinsey, T.C.R., minor child Darlene Kinsey, they are not rich, or powerful, or beautiful or brilliant, still deserved better than was accorded by the Trial Court
What remedy is there when the Judge has abandoned the robe of impartiality to become a zealous advocate, not for justice, but for one side?

This Court should take steps that it can take to set this matter right: to emphasize and require that rules, and standards, and laws, and justice herself, are for everyone.

CLAIM FOR RELIEF

That the Court order a new proceeding that Dean A. Kinsey can participate in and within a new and different county in North Dakota. which would be fitting, proper and appropriate.

Respectfully Submitted this 22 November 2004.

By: Dean Kinsey
DEAN A. KINSEY
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