

IN THE SUPREME COURT  
FOR THE STATE OF NORTH DAKOTA

Supreme Court File Number 20050328  
Burleigh County File Number 01-C-02605

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

Todd A. Roth,

Plaintiff/Appellant,

vs.

Lynette M. Hoffer,

Defendant/Appellee.

JAN 3 2006

STATE OF NORTH DAKOTA

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APPEAL FROM THE SECOND AMENDED DIVORCE JUDGMENT AND ORDER  
DENYING MOTION FOR NEW TRIAL AND TO QUASH EXECUTION  
OF THE BURLEIGH COUNTY DISTRICT COURT

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REPLY BRIEF OF APPELLANT

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At first I felt there was absolutely no need to file a reply brief, but since I probably will not be able to attend oral argument and defend myself, because I am in prison, I am going to say some things that need to be said because it is the truth. The truth is on the record. If the N.D. Supreme Court is going to render justice, they will point out the lies of Lynette Hoffer and her attorney, Kent Morrow, and soundly and equivocally admonish and chastise him, and rule in favor of the truth, thus rule in my favor. I am outraged. The "Appellee's Brief", Kent Morrows brief, is one big twisting of the facts, of the truth, it is totally outrageous. I am in prison and I'm supposed to be the criminal, however I have more (or should I just say I have some) morals than the Judge, lawyers, and exwife in this case. The lawyers and the Judge have a sworn oath to uphold the law and tell the truth and what is being done here is undeniably contempt of court and should be treated as such.

On page 4 of his brief: Morrow does not mention that I filed a "Reply to Hoffer's Addendum to Motion". My reply is at R.A.#142. Also, Morrow put all the major documents in his appendix, but not a copy of my "Reply". Why? I do not know. However, I did refer to it on page 1 of my brief.

On page 8 of Morrow's brief: He says that the Judgment and Memorandum Order "reflected the Court's desire that Hoffer receive 65% ...". Note that he uses the word "desire". Also note that he uses the words "total amount of the fund"

in the rest of that sentence. This is a lie. Why? Because the Court ordered 65% of the net amount of the fund, not the total of the fund. Thus, he concludes there was a mistake. Plus, he ignores the tax element, making another lie. He also fails to mention the 10% early withdrawal fee, another omission. A lie is when you do not speak the whole truth. Plus, in the same paragraph, he says NACCO mistakenly paid you the money, implying to the reader that Hoffer got her writ of garnishment served on time, but NACCO paid you all of the money instead of giving her her share. Thus, another lie. Four lies in one paragraph.

On page 9 of Morrow's brief: Morrow writes that the 65/35% split was reaffirmed in the direct appeal from my divorce case. This is a lie. I did not challenge the 65/35% split in my appeal, so nothing was reaffirmed. And I am not now challenging 65/35% split. I am challenging their lie that the 65% is on the gross amount, when it was on the net amount, after taxes and the loan. Plus, in this same paragraph on page 9, he says I cannot now collaterally attach (I'm thinking he meant attack) the 65/35 split. This is a lie. I am not attacking the 65/35 split.

The next paragraph on page 9: He says 65% of \$64,657.26 equals \$42,677.22. This is a lie. It is \$42,027.22. He changes this figure so that he can come up with \$15,125.58, the amount he took from me. Plus the sheriff took an extra \$160.00 for a reason he was asked to explain, but never did.

On page 9-10: Morrow says the mistake is obvious on

the face of the July 28, 2003 divorce judgment and the QDRO. This is a lie. They show that the 65/35 split was on the net amount, not the gross amount.

On page 10: Morrow repeats his lie that it does not matter who made the mistake. It does matter. Why? Without a witness to the mistake, they cannot prove a mistake exists. Evidence can be introduced on the record only by a witness to the fact being introduced. No witness, no mistake. Also, in this same paragraph, Morrow repeats his lie that it is 65% on the gross amount of the account, not the net amount after taxes and the loan.

On page 10-11: On page 10 he admits he responded to my Motion for New Trial or to Reconsider, on the basis that it was moot, because they had gotten the money, but on page 12, at the bottom, he says it is moot because I filed my motion late. He twists this and makes another lie.

On page 11: Morrow now says the judgment was against both me and Mitchell Schlaht jointly and severally, that is, a personal judgment. He ignores the constructive trust part.

The next paragraph on page 11: Morrow says my Motion for New Trial or to Reconsider was not timely filed. This is a lie. I filed my Motion for New Trial from the Second Amended Judgment. He talks only about the time from the first Amended Judgment. He totally ignores the Second Amended Judgment. Plus, under Rule 60(b)(iv), on the reconsideration part of my motion, there is no time limit to file. He ignores

this. If his claim were true, why didn't he raise this in an answer to my Motion for New Trial. Because he is not telling the truth. He had to make up a story for his appeal brief.

As a point of truth and fact I did not deceive anyone when I received my 401K monies. I sent NACCO a copy of the divorce judgment and asked for the 35% I was awarded in it. They sent me the whole 401K account (minus 20% taxes and the amount of the loan) because they determined that the divorce judgment did not qualify as a QDRO. They even asked her to submit this after I requested my 35%, but she did not comply after written requests and phone calls, so they did what they had too, according to ERISA, send me the money. Because she was dilatory in serving her writ of garnishment on the account, then by statute, they had to give it to me. One may say that this is not fair and right, but it is because it is according to law. There was nothing preventing Lynette from timely serving her writ of garnishment. On May 1, 2003, the trial court judge warned Lynette and her attorney, Richard Baer, to get the writ of garnishment served ASAP. The divorce judgment was not filed until July 28, 2003. Lynette and her attorney had 90 days to prepare. They did not. Instead, they waited until September 26, 2003 to serve the writ of garnishment. This is five months after the fact! Is this standard legal practice? I suppose it is if you want to make more money by inducing more litigation, as seems to be a habit for

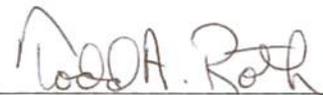
Mr. Baer. I have put in the briefs that I have filed, that if Lynette was late because her attorney was dilatory, then her recourse would be to sue her attorney for not doing the job he was paid to do, not punish the other side. It appears everything being done to me is done to try and protect Richard Baer, Lynette's divorce attorney, who was the one not following the Court's crystal clear orders. Also, of course, and ultimately, everything being done to me is simply because Lynette wants 100% of everything, including the money. Is Lynette being fair and just with Todd. No. So why are they judging and condemning me. I violated no rule of law. My only mistake was that I didn't return the money immediately, but I am required to return the \$28,651.78 to NACCO, which I fully intend to do. That leaves me with only \$14,087.01, almost a thousand dollars less than I was supposed to get. The real truth is on the record and always has been. On page 8 of the appellee's appendix, in the Judgment under 9(A.) it clearly states what she is to get. Somehow or the other NACCO added on an extra \$1,100.00. And this is what really upsets me. The Judge was allowing her 65% because the plaintiff took a loan against the 401K plan. This loan was made in 1998 as a home improvement loan by both of us. Both signatures were on this loan. Also I worked this job for a year before we got married, but he gave me no offset for this, and the facts were clearly on the record. I do not see how they can now change the amounts. A dollar figure was given after the percentages

were figured, and that is what has to be adhered too. Just because the account increased slightly after this was figured, it has no bearing on the dollar amount as Roth would have been responsible for the loss if the account would have decreased and she would have still received her \$27,551.64 The truth is so obvious. Morrow's lies are so obvious. The record, even Morrow's appendix which he submitted plainly show his lies.

#### CONCLUSION

It is clear that Morrow wrote his lies because he fully expects the Court render injustice. It happened in the Trial Court and now he expects it on appeal. It is a shame that in our Nation, lawyers have no fear of submitting lies before our justices, and fully expect to get what they want. If you are not an attorney you are fined and/or thrown in jail. Wherefore, I renew my prayer that this Supreme Court vacate the judgment and rule the District Court's conduct 'coram non judice', and order restitution and any other appropriate fees to Mr. Roth

Dated this 29th day of December, 2005.



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