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IN THE SUPREME COURT

FOR THE STATE OF NORTH DAKOTA

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DEC 19 2005

STATE OF NORTH DAKOTA

Gerri Marchus,	)	
	)	
Plaintiff, Appellant,	)	Supreme Court
	)	No. 20050329
vs.	)	
	)	
Derle O. Marchus,	)	District Court
	)	No. 98-C-2719
Defendant, Appellee.	)	

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APPEAL FROM ORDER OF THE DISTRICT COURT  
SOUTHEAST JUDICIAL DISTRICT

THE HONORABLE JOHN E. GREENWOOD, PRESIDING

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**BRIEF OF APPELLEE**

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Derle Marchus  
1818 E. Capitol Avenue #101  
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## ARGUMENT

When custody of Beth was changed from Gerri to me, there was no time for a custodial agreement. Beth had called several times, asking to come and live with me. I said yes and she came immediately as it coincided with semester break at school. At this time I started to support Beth 100%. To continue payments to Beth's mother that were intended to be solely for the support, benefit, and best interest for Beth would have been unaffordable. I felt this was an emergency move as she was doing poorly in school and did not like the living arrangements with her mother's boyfriend. The continued financial support to Gerri would have been to no benefit to Beth. It would serve as support to Gerri, who stated she was working for \$6.00 per hour and had no money to give to her kids. Judge Greenwood made the right decision when he stated that I owed no further support and dismissed the case.

Beth moved in with me in January, 2001. She lived with me for one full year before moving in with her brother, Jesse, in Lincoln. She moved in with him in January, 2002, as also stated by Gerri in her statement. Gerri never agreed or intended for Beth to move out of her house. Beth made up her own mind due to the living conditions. It was a permanent move from Gerri's house. Beth has lived in Bismarck since she moved in with me in January, 2001. She did live with her sister in Fargo for three months. Beth has since finished high school and received her GED. She also has attended one semester of Business College.

Beth was always loved and cared for by me. Never once did I tell Beth to move out of her mother's house nor have I ever told her she would not have to follow any rules if she came to live with me as stated in Spahr's statement. Beth called and asked to live

with me. I never had to beg or promise her anything. Gerri did not agree to a temporary trial period. Beth was old enough by law to decide where she wanted to live. There was never a discussion of a trial period between Gerri and me. Beth made the decision to live where she would be properly cared for and had no intentions of moving back with her mother.

My financial support for Beth included dental, eye care, a car and insurance. She was covered under her mother's group plan for medical insurance. Beth's brother, Jesse, testified that I provided 85% of Beth's actual income. The remaining coming from Beth's part-time job. Jesse testified under oath, that the only money Beth received from her mother was possibly on her birthday.

In district court I stated that I provided for Beth's financial needs, including housing. It was brought up that I had purchased a mobile home for my son Jesse. This is where Beth lived for a short time. I had also bought and refurbished a mobile home for my daughter, Sara. Sara's project alone cost over \$5,000.00. Beth also lived with Sara for a short time.

The Honorable John E. Greenwood stated twice in the district court that child support is for the benefit of the child. The child (Beth) was not living with her mother. If the court rules that I must pay child support, I request that 100% of it be paid to Beth as it would be to benefit her. Child support is intended to benefit and support the best interests of the child. It is not intended for the parent who does not have the child living with them.

In our original divorce agreement it states: "Each party is responsible for all debts standing in his or her own name, and for his or her own debts incurred after the date of separation." It also states, "Each party shall pay his or her own attorneys' fees and costs incurred in this action." I see no reason that I should be obligated to pay any of Jerri's legal fees or debts after the date of separation.

In Spahr's argument she states that the Honorable Judge John Greenwood is using backdoor retroactive modification. She also feels that his decision will change the face of the current laws in North Dakota and violate the federal laws. Child support cases are unique in many ways. They are very much needed but each case is so different. What applies to one child does not apply to every child. Some laws need changing and updating. Each case needs to be looked at individually.

Not once through this trial, appeals, briefs, etc. has Beth's mother stated that she intends on giving the money to Beth for her benefit. Not once has Spahr said the support is meant for Beth. Just that she wants her fees included in the possible judgment.

Child support is meant for the benefit of the child and in this case I supported Beth 100%. I have already stated that I bought a mobile home for my son, Jesse, and one for my daughter, Sara. I have supported my other 2 children 100% and there should be no doubt that Beth was supported the same way..

The Honorable Judge John Greenwood made the right decision after much thought and he made the right decision.

Child support is for the benefit of the child!

Dated this 16<sup>th</sup> day of December, 2005.

Derle Marchus

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