

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

John Daniel Lawrence,)
)
 Plaintiff and Appellee,)
) Supreme Court No. 20060136
 vs.)
) Burleigh County No. 92-R-01316
 Tina Lucille Delkamp,)
)
 Defendant and Appellant.)

Appeal from the Order on Motion for Contempt
and to Amend Judgment dated January 27, 2006,
the order Denying Relief for Judgment dated March 3, 2006,
and the Order Denying the Motion to Amend Order dated April 12, 2006
of the Burleigh County District Court,
South Central Judicial District,
Honorable Bruce A. Romanick

Brief of Appellant

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2

Statement of Issue

3

Did the trial court improperly refuse to allow a hearing on the motion to hold the appellant in contempt and the appellant's motion for contempt?

4

A. Section 27-10-01.3 of the North Dakota Century Code requires a hearing on a motion for contempt.

5

B. Rule 3.2 of the North Dakota Rules of Civil Procedure requires a hearing upon request of a party.

6

Statement of Case

7 This is an appeal of the Order on Motion for Contempt and to Amend Judgment
dated January 27, 2006, the order Denying Relief for Judgment dated March 3, 2006, and
the Order Denying the Motion to Amend Order dated April 12, 2006.

8 On December 19, 2005, Tina Delkamp brought a motion to hold John Lawrence in
contempt and requested that the judgment be amended to provide that she claim the minor
child as a dependency exemption. (Appendix 16).

9 Lawrence replied to the motion and filed his own motion for contempt on December
29, 2006. (Appendix 17-24). Lawrence's Notice of Rule 3.2 Motion and his letter to the
clerk dated December 28, 2006, both requested a hearing be held. Id.

10 ___ Lawrence served his Notice of Hearing on January 27, 2006. (Appendix 36).

11 The trial court issued its Order on Motion for Contempt and to Amend Judgment
on January 27, 2006. (Appendix 31).

12 Lawrence filed a Motion for Relief from Order dated February 14, 2006, again
requesting a hearing on the original motions. (Appendix at 38).

13 The trial court issued its Order Denying Relief from Order on March 3, 2006.
(Appendix 39).

14 Lawrence filed a Motion to Amend Order dated March 21, 2006, once again
requesting that the trial court reconsider its decision to deny a hearing. (Appendix 40).

15 The trial court issued its Order Denying Motion to Amend Order on April 12, 2006.
(Appendix 42).

16 Lawrence filed his Notice of Appeal on May 2, 2006. (Appendix 43).

17

Statement of Facts

18 Delkamp brought her motion to hold Lawrence in contempt and amend the judgment as a remedy for the contempt on December 19, 2006. (Appendix 16). Lawrence responded timely, brought his own motion to hold Delkamp in contempt, requested a hearing by letter to the clerk and Rule 3.2 notice of motion for his own motion, secured a time for the hearing and served notice of the hearing. (Appendix 17-25, 35-37).

19 On the same date that Lawrence served the Notice of Hearing on the motions, the trial court served its Order on Motion for Contempt and to Amend Judgment. (Appendix 32-37). The respective documents were served without knowledge of the existence of the other document. The hearing on the contempt motions was scheduled for February 28, 2006.

20 In response to the Order on Motion for Contempt and to Amend Judgment, Lawrence moved for relief from the order on the basis that he was denied his hearing. (Appendix 38). The trial court had not ruled on the motion to allow Lawrence a hearing by the morning of February 28, 2006. Therefore, Lawrence took the hearing off of the calender since the trial court had previously issued its contempt order but had not yet ruled on Lawrence's Motion for Relief from Order.

21 In its Order Denying Relief from Order dated March 3, 2006, the trial court stated:

“The Court did not act on the request and was prepared for the hearing to rule on the request and the motions of the parties anew if different information came to light. Shortly before the hearing on set for February 28, 2006, counsel for Lawrence contacted the clerk of court and cancelled the hearing.

As the hearing was cancelled by Lawrence the Court denies the motion for relief and the Order of January 27, 2006, stands.”

(Appendix 38).

22 The trial court did not provide Lawrence with any information prior to issuing its March 3, 2006 order that it had intended to use the February 28, 2006 hearing date to consider the Motion for Relief or possibly reconsider the earlier motions anew.

23 Lawrence tried again to keep this matter in the trial court by bringing a Motion to Amend Judgment which attempted to explain the time line on what had taken place. (Appendix 40). This motion was denied by order dated April 12, 2006, which provided in pertinent part:

“As set out in the Order of March 3, 2005, a hearing was set and Defendant Delkamp was set to appear by phone for the hearing. On the day of the hearing the hearing was canceled by Lawrence and no hearing was held. Parties file motions under a rule 3.2 basis and then request a hearing somewhere at the end of their documents. That appears to be what happened in this matter when the Court ruled prior to the hearing. The mistake was corrected by allowing a hearing to be set, which was canceled by Lawrence.”

(Appendix 42).

24 Prior to the above order, Lawrence had not received any information from the trial court, the clerk’s office or Delkamp concerning Delkamp appearing by *telephone* for the February 28th hearing. Further, the trial court had not *allowed* the February 28th hearing to be set. The hearing was scheduled prior to the trial court’s Order on Motion for

Contempt and to Amend Judgment dated January 27, 2006, with the Notice of Hearing being served by mail on Delkamp the same day the trial court served by mail on Lawrence its Order on Motion for Contempt and to Amend Judgment. (Appendix 32-37). The events were independent of one another.

25

Law and Argument

26 Did the trial court improperly refuse to allow a hearing on the motion to hold the
appellant in contempt and the appellant's motion for contempt?

27 This matter concerns the application of law and is fully reviewable on appeal.
Amyotte v. Rolette, 2003 ND 48, ¶15, 658 N.W.2d 324.

28 A. Section 27-10-01.3 of the North Dakota Century Code requires a hearing
on a motion for contempt.

29 Delkamp brought a written motion to hold Lawrence in contempt. Delkamp
requested the remedial sanction of an amended judgment allowing her to claim the child as
a dependency exemption. Lawrence responded and brought a motion to hold Delkamp in
contempt.

30 The contempt procedures used by the parties are governed by NDCC § 27-10-
01.3(1)(a). This statute provides in pertinent part:

31 **27-10-01.3 Nonsummary procedure for remedial and punitive
sanctions-Joint hearing and trial-Summary Procedure-Appeal.**

1.

a. The court on its own motion or motion of a person aggrieved by
contempt of court may seek imposition of a remedial sanction for the
contempt by filing a motion for that purpose in the proceeding to which the
contempt is related. The court, *after notice and hearing*, may impose a
remedial sanction authorized by this chapter. . . .

NDCC § 27-10-01.3(1)(a) (1999) (emphasis added).

32 The language in the statute is mandatory. See Gosbee v. Martinson, 2005 ND APP

10, ¶7, 701 N.W.2d 411. A remedial sanction may be imposed only after a hearing. No discretion is given to the trial court to dispense with the need for a hearing.

The trial court here imposed a remedial sanction without having a hearing despite Lawrence's requests for one.

The trial court's decision to not allow a hearing was improper and should be reversed.

33 B. Rule 3.2 of the North Dakota Rules of Civil Procedure requires a hearing upon the request of a party.

34 Rule 3.2 of the North Dakota Rules of Civil Procedure provides in pertinent part:

RULE 3.2 MOTIONS

(a) Submission of Motion. Notice must be served and filed with a motion.

The notice must indicate the time of oral argument, or that the motion will be decided on briefs unless oral argument is timely requested. Upon serving and filing a motion, the moving party shall serve and file a brief and other supporting papers and the adverse party shall have 10 days after service of a brief within which to serve and file an answer brief and other supporting papers. The moving party may serve and file a reply brief within 5 days after service of the answer brief. Upon the filing of briefs, or upon expiration of the time for filing, the motion is deemed submitted to the court unless counsel for any party requests oral argument on the motion. If any party who has timely served and filed a brief requests oral argument, the request must be granted even if the movant has previously served notice indicating that the motion is to be decided on briefs. The party requesting oral

argument shall secure a time for the argument and serve notice upon all other parties. The court may hear oral argument on any motion by telephonic conference. The court may require testimony on the motion. Requests for oral argument or the taking of testimony must be made not later than 5 days after expiration of the time for filing the answer brief.

* * *

N.D.R.Ct. Rule 3.2(a)

35 This Court has repeatedly held that “the language of Rule 3.2 is mandatory, and that the trial court does not have discretion to refuse to hold a hearing when one has been properly requested.” Gosbee, at ¶ 8; Anton v. Anton, 442 N.W.2d 445, 446 (N.D. 1989). Properly requesting a hearing includes securing a time for oral argument. Gosbee, At ¶ 9.

36 Lawrence responded to Delkamp’s written motion timely, requested a hearing by letter to the clerk and a Rule 3.2 notice of motion, secured a time for the hearing and served notice of the hearing. (Appendix 17-25, 35-37). Therefore, he should have been provided a hearing.

37 The appropriate remedy for the erroneous failure to provide a hearing is remanding the matter back to the trial court for a hearing. Gosbee, at ¶ 13.

38

Conclusion

39 The language of NDCC § 27-10-01.3(1)(a) mandates a hearing before holding a
person in contempt. Further, Lawrence properly requested a hearing under Rule 3.2 of the
North Dakota Rules of Court. Therefore, Lawrence requests that this matter be remanded
for a hearing.

40 Dated this 13th day of June, 2006.

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Certificate of Service

Loren McCray certifies that on the 13th day of June, 2006, he served the following document:

1. Brief of Appellant
2. Appendix to Brief of Appellant

upon: Tina Lucille Delkamp
612 Silver Maple Drive
Harrisonville, MO 64701

in the following manner:

- by handing a true and correct copy to the attorney personally.
- by leaving a true and correct copy at the office of the attorney with a clerk or other individual in charge thereof.
- by leaving a true and correct copy at the office of the attorney in a conspicuous place therein.
- by placing a true and correct copy thereof in an envelope so addressed and depositing the same, with postage prepaid, in the United State mail at Bismarck, North Dakota.
- by facsimile transmission to the attorney at the facsimile number at m. (CT).
- electronically by electronically filing the same with the United States Bankruptcy Court, District of North Dakota.
- electronically by emailing the same by p.m. (CT.)

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