

ORIGINAL

20070131

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

**FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT**

AUG 28 2007

**John Daniel Lawrence,
Plaintiff and Appellant**

Appellee's Brief

STATE OF NORTH DAKOTA

vs

**Tina Lucille Delkamp
Defendant and Appellee**

Supreme Court No. 20070131

Burleigh County No. 92-R-01316

**Appeal from the order from Remand on Motion for Contempt
and to Amend Judgement dated March 9, 2007**

District of Burleigh County, North Dakota

South Central Judicial District

Case No. 08- 92-R-1316

The Honorable Bruce A. Romanick Presiding

**Tina Delkamp
Representing Myself
1810 Parkwood Dr.
Harrisonville, Mo 64701
Telephone (816) 738-5079**

Table of Contents

	Page No.
Table of contents.....	i
Table of Authorities.....	ii
I. Statement of Issues.....	1
II. Statement of Case.....	2
A. Nature of the Case.....	2
B. Course of Proceedings.....	2
C. Statement of Facts.....	2
Reference # 4.....	5
Receipt reference # 2.....	6
Receipt reference # 6.....	7
III. Law and Argument.....	8
IV. Conclusion.....	10
Certificate fo mailing.....	10

Table of Authorities

20070131

Cases **Page No**

<u>Dvorak v. Dvorak</u> ,	8
2001 ND 178, 635 N.W.2d 135	

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

SEP 13 2007

STATE OF NORTH DAKOTA

Other Authorities

Statutes and Rules

<i>N.D.R. Evid. 403</i>	8
-------------------------------	---

I. Statement of Issue

Did the trial court abuse its discretion by not allowing Lawrence to cross examine Delkamp?

II. Statement of Case

A. Nature of the Case

Mr. Lawrence appeals from an order and judgement dated March 9, 2007 that awarded Delkamp to claim Rylan (Son) on her income taxes and to allow Delkamp to pay for all medical bills that Lawrence refuses to pay.

B) Course of Proceedings

On December 18, 2006 the Supreme Court issued a judgement reversing the January 27, 2006 order. In March 2007 a hearing was held on the motion for contempt and to amend the judgement. The trial court upheld the January 2006 order. In May 2007 Lawrence files his appeal.

C) Statement of Facts

- 1) Mr. Lawrence refuses to pay his half of the medical bills Court order 1999.
- 2) In June 2005 I brought a motion to get Mr. Lawrence to start paying his part of the bills. Court ordered him to pay his medical bills. He paid for the bill that he alleges was fraud. He never brought the

fraud up in the June 2005 proceedings. His excuse in this motion was that I did not send the bills to the insurance company first. He felt he did not have to pay for anything. See page 5 Reference number 4. Letter to Delkamp.

3) He alleged fraud after he was to pay for Rylan's eye exam in September of 2005, once again he refused to pay.

4) The only new evidence that was brought up in the March 2007 proceedings was Mr. Lawrence admitted not having vision insurance see transcript page 14 lines 21-25 and page 15 lines 1-3.

5) Mr. Lawrence subpoenaed a manager from the Bismarck ND Wal-mart store. In her testimony, She could not testify without a doubt that the receipt was fraud, In fact she was not certain see transcript page 23 lines 21-25, page 24 lines 1-2. She further testifies that warranty only covers for defected glasses not glasses that became too small. See page 23 lines 21-25, page 24 lines 1-25, pages 25 lines 17-25 and page 26 lines 5-25. I have included the

two receipts for comparison From the June 2005 hearing. Reference number 2. Dated January 28 2004. See description it states Fisherprice pair.(page 6) Reference 6 dated November 14 2004, see description it states SV Youth p. Also the price is different they are two different pairs of glasses. (page 7). She had no new evidence to offer.

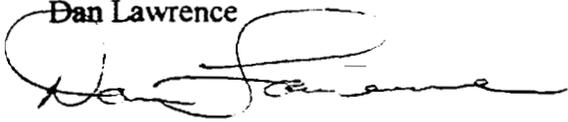
Reference 4

Dear Miss Delkamp,

You must look at the court orders, it says, I pay one-half of the medical bills after insurance is applied. You must send the bill to the insurance company. I sure where you bought the glasses, they will do this for you. You have the insurance card that was send to you by your lawyer. According to the court orders, I will be claiming our son on my taxes. You have to Feb. 15, to send me my tax exemption papers. Also, my insurance company will probably ask you, if there are any other insurance providers.....

Thank you,

Dan Lawrence

A handwritten signature in black ink, appearing to read "Dan Lawrence", written over the typed name.

Page 5.

LAB COPY

Kup

Store #: 30-0096 Order #: 1181248
Entry Date: 01/28/2004 Assoc: ROSE E.

Patient: DELKAMP, RYLAN [MINOR]
Address: 2412 PEARSON CIRCLE
City, ST: HARRISONVILLE, MO 64701
Phone #: (816) 884-6023

Doctor: DEKEYSER, DIRCK L
Exam Dt: 01/28/2004 Expire Dt: 07/26/2005
Comment:

TRAY # 01069

	Mtl	Lenstyp	Sphere	Cyl	Axs	Add	SegH
R:	SL	FPSV	-1.25	-0.25	95	+0.00	0.0
L:	SL	FPSV	-1.00	-0.50	85	+0.00	0.0

	PD Far	Near	Hprism	Vprism	OC Ht	BCurv
R:	59.5	56.5	0.00	0.00	0.00	0.00
L:	59.5	56.5	0.00	0.00	0.00	0.00

Spec.Instr:

Frame: N109 Color: GUN
Eye/Brg:45/18 A:45.00 B:26.00 ED:45.00 DBL:18.0

Rx ___ UV ___ Tint ___ PD ___ Seg Ht ___ Lens Fit ___
Clear ___ AR ___ Lens Type ___ Case & Cloth ___
4 Pt Align ___ Correct Fr Size & Color ___
Order Notes:

UPC Code	Descript'n	Retail	Sell	Note
60538899593	FISHERPRIC	15.00	15.00	
60538899593	FISHERPRIC	15.00	15.00	<i>[Handwritten mark]</i>
7874263939	EYE EXAM	43.00	43.00	
8677454943	N109	38.00	38.00	

Tax at Register SUB-TOTAL: 111.00

LAYAWAY # _____

Picking Prescription:	Sphere	Cyl	Axis
R	-1.25	-0.25	95
L	-1.00	-0.50	85

SSSO

1-28-4

Due Date: 02/03/2004

0-00-11

LAB COPY

Rybb

Store #: 30-0096 Order #: 1188568
Entry Date: 11/14/2004 Assoc: ROSE E.

Patient: DELKAMP, RYLAN [MINOR]
Address: 2412 PEARSON CIRCLE
City, ST: HARRISONVILLE, MO 64701
Phone #: (816) 884-6023

Doctor: DEKEYSER, DIRCK L
Exam Dt: 01/28/2004 Expire Dt: 07/26/2004
Comment:

TRAY # 01021
Mtl LensTyp Sphere Cyl Axs Add Segl
R: SL FPSV -1.25 -0.25 95 +0.00 0.0
L: SL FPSV -1.00 -0.50 85 +0.00 0.0

PD Far Near Hprism Vprism OC Ht BCurv
R: 61.0 58.0 0.00 0.00 0.00 0.00
L: 61.0 58.0 0.00 0.00 0.00 0.00
Spec. Instr:

Frame: H100 Color: GUNMET
Eye/Brg: 45/20 A: 45.00 B: 26.00 ED: 45.00 DBL: 20.00

Rx ___ UV ___ Tint ___ PD ___ Seg Ht ___ Lens Fit ___
Clear ___ AR ___ Lens Type ___ Case & Cloth ___
4 Pt Align ___ Correct Fr Size & Color ___
Order Notes:

UPC Code	Descript'n	Retail	Sell	Note
68113163335	SV YOUTH P	25.00	25.00	
68113163335	SV YOUTH P	25.00	25.00	
8677442892	H100	74.00	74.00	

Tax at Register SUB-TOTAL: 124.00

LAYAWAY # _____

Picking Prescription: Sphere Cyl Axis
R -1.25 -0.25 95
L -1.00 -0.50 85

\$62

*Replacement
11-14-04*

Due Date: 11/21/2004

Page 7

III. Law and Arguments

A. The trial court did not err in denying Mr. Lawrence from cross-examining Miss. Delkamp

1). The receipt that Mr. Lawrence is alleging fraud was already heard and decided on in the June 2005 motion. Mr. Lawrence could have raised that argument, but did not, in fact he paid the bill. In *Dvorak V. Dvorak, 2001 ND 178, 635 N.W. 2d 135.* Trial courts may decline to consider arguments raised for the first time on a motion for reconsideration when those arguments could have been raised in earlier proceedings.

2). Pursuant to *Rule 403, NDREv.*, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. *Rule 403, NDREv.*, vests wide discretion in the trial court to control the introduction of evidence at trial to prevent the introduction of cumulative evidence. Cross examining Delkamp would have been a waste of time. There was no new evidence. Mr. Lawrence testified to the only new evidence since the June 2005 motion in that he did not have vision

insurance.

3). The trial court did not abuse its discretion in acting in arbitration, being unreasonable, or in an unconscionable manner.

IV Conclusion

The trial court did not abuse its discretion by not allowing Lawrence to cross-examine Delkamp.

Delkamp requests that this matter be affirmed.

Date this 27th day of August, 2007

Tina Delkamp
1810 Parkwood Dr.
Harrisonville Mo 64701

Certificate of service

I hereby certify that on the 28th day of August, 2007 true and correct copies of the forgoing Appellee's brief were mailed to:

Loren Mc Cray
419 East Broadway
PO box 2732
Bismarck, ND 58502-2732


Tina Delkamp

