

ORIGINAL

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SUPREME COURT

20090187

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Amerifirst Home Improvement
Finance Co.)

Respondents-Appelles,)

vs.)

Walter Kile, et.al)

Petitioner-Appellant.)

Supreme Court No. 20090187

FILED
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JUL 14 2009

STATE OF NORTH DAKOTA

REVIEW FROM THE WARD COUNTY DISTRICT COURT
NORTHWEST JUDICIAL DISTRICT

BRIEF OF PETITIONER-APPELLANT,
WALTER KILE JR.

Walter Kile Jr.
P.O. Box 5521
Bismarck, ND. 58506-5521

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STATEMENT OF ISSUES TO BE PRESENTED FOR REVIEW

This is a review of the District Court's abuse in failure to remove Walter Kile, Jr., from the entitled-action the following issues are for review:

POINT I:

WHETHER KILE WAS DENIED HIS DUE PROCESS RIGHTS WHEN HE WAS NOT SERVED WITH A COPY OF THE ORIGINAL SMOMONS AND COMPLAINT?

POINT II:

WHETHER KILE SHOULD OF NOT BEEN NAMED AS A PARTY TO THIS ACTION?

POINT III:

WHETHER THE DISTRICT COURT FAILED TO DISMISS WALTER KILE JR. FROM THIS ACTION.

STATEMENT OF THE CASE

On or about the 16th day of June, 2009, the Defendant Walter Kile Jr., (herein after referred to as Kile) recieved a Amended Sumomons and a Amended Complaint.

On the 9th day of May 2009 Kile filed a Response to Complaint; Findings of Judgment; Affidavit of Service by Mail, to the Northwest Judicial District Court in Minot North Dakota, and a copy of the same was served to Matthew H. Olson Attorney for the Plaintiff.

On or about the 16th or 17th of June 2009, Kile recieved a copy of a Judgment and a Notice of Entry of Judgment.

Kile was never served with a Notice of Hearing so that Kile could make the proper arrangements to be present via telephonically.

STATEMENT OF THE FACTS

Kile was denied his Due Process Rights when Kile was not notified of a Court hearing as stated in the N.D.R.Civ.P. Rule 27(2).

Kile served in a timely manner a Response to the Complaint. Which is not shown on the register of actions, but is supported by the (appendx page 1).

POINT I.

KILE WAS DENIED HIS DUE PROCESS RIGHTS WHEN HE WAS NOT SERVED WITH A COPY OF THE ORIGINAL SUMOMONS AND COMPLAINT.

Kile was also not served with a Notice of Hearing as stated in the N.D.R.Civ.P. 27(2) Notice of Hearing date; at least twenty (20) days before the hearing date, the Petitioner MUST serve each expected adverse party with a copy of the petition and a notice of hearing.

Kile responded to all the motions in a timely manner.

The register of actions indicates that numerous Motions were made and amended on the 8th day of May, 2009. However, the register of actions does not indicate the Response to Complaint, (exhibits Findings of Fact Conclusion of Law and Order for Judgment; or an Affidavit of Service by mail which were made on the 9th day of June, 2009.

At no time is there anything that indicates that a Notice of Hearing was served upon Kile, this just indicates the Petitioner failed to notify Kile of the up and coming hearing, which violated Kile's Due Process rights, had Kile been properly notified then Kile would of been able to make the proper arrangements to be present via telephonically. Which Kile could not do cause his Due Process Rights were violated.

POINT II.

KILE SHOULD OF NOT BEEN NAMED AS A PARTY TO THIS ACTION.

Kile served the District Court and the Attorney for the

Plaintiff a copy with the Judgment from the Defendant's divorce action (see appendix pg 17-19) it states that Darcy Lyn Kile a/k/a as Darcy Basarab," Basarab shall be responsible for and shall timely pay the following: The monthly mortgage for the home located at 217 1st Avenue NW, Kenmare, North Dakota, which is to be retained by the Plaintiff (Darcy Kile a/k/a Darcy Basarab) as her primary residence. Said payments shall include the escrow for the property taxes and insurance on the property.

N.D.Cent.Code 14-05-24(1) Division of Property; when a divorce is granted the Court's determinations on matter of property division are treated as Findings of Fact and WILL NOT BE SET ASIDE...unless they are clearly erroneous. Haller v. Haller 367 N.W.2d 179 (N.D. 1985).

POINT III.

THE DISTRICT COURT FAILED TO DISMISS KILE FROM THIS ACTION.

The District Court should of removed Kile from this action when Kile served the District Court with a copy of the Judgment from the 8th day of September, 2003. Which stated that Kile was to be held not responsible for the mortgage or taxes for the property located at 1st Avenue NW., in Kenmare North Dakota.

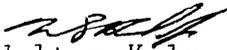
Had Judge Mattson looked at the exhibit (see appendix page 19) the Judge would of seen that it was he who signed off on Kile's divorce and therefore Kile is not responsible for that property.

CONCLUSION

Kile respectfully request that he be held not responsible for the debts owed on the property located at 1st Avenue NW. in Kenmare, North Dakota, as referred to in (appendx page 18). That Kile be removed for this and any other actions that may be pending.

CERTIFICATE OF COMPLIANCE:

Pursuant to North Dakota Rules of Appellant Procedure, Rule 28. I certify that this brief complies with the requirments dated this 13 day of July, 2009.


Walter Kile Jr.
Appellent
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document, together with a copy of the Appendix was served by U.S., Mail on this 13 day of July, 2009.

NORTH DAKOTA SUPREME COURT
State Capitol
Judicial Wing, 1st Floor
600 E. Boulevard Ave., Dept 180
Bismarck, ND. 58505-0530


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CERTIFICATE OF SERVICE:

I hereby certify that a true and correct copy of the foregoing document, together with a copy of the Appendix was served by U.S. Mail on this day of July, 2009.

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CERTIFICATION OF BRIEF

I Walter Kile Jr., the named Appellant do hereby certify that the foregoing brief was not prepared on a computer or a word processor. This is in compliance with North Dakota Rules of Appellate Procedure Rule 31(C).

Signed this 13 day of July, 2009.


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