

20110307

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SUPREME COURT
FEB 16 2012
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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Gary A. Hangsleben,)
)
Plaintiff,)
)
vs.)
)
Gail R. Halverson,)
)
Defendant.)

SUPREME COURT NO. 20110307
(Grand Forks County No.
18-10-C-01575)

FILED
IN THE OFFICE OF
CLERK OF SUPREME COURT

FEB 15 2012

STATE OF NORTH DAKOTA

APPELLANT'S BRIEF

SUPPORTING APPEAL OF

SUMMARY JUDGMENT

Brief By: Gary A. Hangsleben, Plaintiff/Appellant Pro Se

P.O. Box 14222
Grand Forks, ND 58208
701-741-4471

FILED BY CLERK
SUPREME COURT
MAR 03 2012

Rec'd corrections

(1)

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STATEMENT OF ISSUES FOR REVIEW

1. Did District Court err in granting a Motion for Summary Judgment ?

- A. That the Plaintiff asserts there does exist a genuine issue as to a material fact.
- B. That the Plaintiff asserts he was not notified of the health, condition, whereabouts, illness, residence, or death of his mother, Delores M. Hangsleben.
- C. That the Plaintiff was not told about condition of his mother, Delores M. Hangsleben for over a period of 10 years !
- D. That the Plaintiff asserts that Defendant told lies about the Plaintiff's residence to their mother, Delores M. Hangsleben. Defendant told Delores M. Hangsleben that the reason Plaintiff, Gary A. Hangsleben did not visit her in the nursing home or hospital was that he was in prison the last 10 years. This statement was in the nursing notes at the Valley Eldercare Center in Grand Forks, North Dakota where Delores M. Hangsleben was a resident before her death on January 23, 2008.
- E. That the Plaintiff asserts that Defendant, Gail R. Halverson took these unheard of actions to hide her crimes against her mother, Delores M. Hangsleben. Severe physical and financial abuse occurred at the hands of

Gail R. Halverson against her mother, Delores M. Hangsleben. Over \$3 million in assets vanished at the hands of Gail R. Halverson when she moved into the residence of Delores M. Hangsleben, with her whole family, against Delores M. Hangsleben's wishes !

- F. That the Plaintiff asserts terrible crimes were committed against Delores M. Hangsleben by Defendant, Gail R. Halverson, which was substantiated by the private investigator reports enclosed in the Plaintiff's Appendix.

2. Did the District Court err in granting an Award of Costs and Attorney Fees to Defendant ?

- A. That the Plaintiff asserts the Court erred in granting any Costs and Attorney Fees to Defendant.
- B. That the Plaintiff asserts his claim was not frivolous ! And that the Court erred in its statement that the majority of Plaintiff's claims were already litigated in the 2 previous actions !
- C. That the Plaintiff assert that not notifying of a mothers illness and death is the cause of severe and emotional distress in the extreme. Since the Plaintiff's residence was only 2 blocks from the nursing home and hospital where Delores M. Hangsleben lived her last few days.

3. Did the District Court err when it was confused and combine this action with another pending action?

- A. That the Plaintiff asserts that the Court was confused and caused err when it combined this case number 10-C-1575 and case number 18-09-C-01665. Please refer to Transcript of December 20, 2010 proceedings, Page 2 and Page 3.
- B. That the Plaintiff asserts there were no motions filed on December 20, 2010, and that the Court had a prejudicial attitude against Plaintiff before the case even began !
- C. That the Plaintiff asserts he did present a document entitled "Cause of Action" as requested by the Court. Please see in Plaintiffs Appendix.
- D. That the Plaintiff asserts that neighbors of Delores M. Hangsleben will testify to the financial and physical abuse she suffered at the hands of her daughter, Gail R. Halverson, the Defendant. As stated in the 4 reports of the private investigator firm Great Plains Claims, Inc.
- E. That the Plaintiff asserts that the Court was confused and made errors during the Hearing held on June 20, 2011. The Court admits it was confused and combined documents and different hearings on Page 2 and Page 3 of the June 20, 2011 hearing. Throughout the 60 page transcript of the June 20, 2011 hearing the Court got many things confused with the other case number 09-C-01665.

STATEMENT OF CASE

The Plaintiff and the Defendant are the only children of Gust Hangsleben and Delores Hangsleben. Gust Hangsleben died September 5, 1990 and his estate was to be formally probated in Polk County, Minnesota. That the probate was not completed for over 7 years, thus violating state probate laws. That the last will of Gust Hangsleben was a rather lengthy and complicated document of 9 pages. That 2 attorneys, Kenneth J. Kludt and George Ulseth (shared office space with attorney Donald H Leonard) felt that Gust Hangsleben didn't understand the complicated document since he was near death and was unconscious most of the last 2 weeks of his life. The will drawn up by attorney Donald H. Leonard was executed only 11 days before he passed away! That upon speaking with Gust A. Hangsleben on the day of August 24, 1990, Plaintiff was told that all assets were to be put in a Family Trust, that was the intention of Gust A. Hangsleben as told to his son, the Plaintiff, in a private conversation at his home at 1 Forest Court, East Grand Forks, Minnesota.

Delores M. Hangsleben age 82 died at the Altru Hospital in Grand Forks, North Dakota on January 23, 2008. Her estate was probated in District Court, Polk County, Minnesota as Court File No. 60-PR-08-1377. Plaintiff, Gary A. Hangsleben filed claims in the probate proceeding for money that was owed him from business dealings with Gust and Delores Hangsleben. Money owed were from wages, profits, and unpaid social security coverage. Plaintiff, maintains over \$800,000

was missing from Gust A. Hangsleben estate and that Plaintiff had over \$200,000.00 in family safe that was his from business deals over a 20 years period. These claims were heard by the Polk County District Court and denied because of the time lapse of statute of limitations. The matter was appealed by Plaintiff to the Minnesota Court of Appeals, and the appeal was denied.

That the Plaintiff commenced an action in District Court of Grand Forks County, North Dakota, Court File No. 18-09-C-01665. This action alleges that Defendant, Gail R. Halverson, her husband Russell Halverson and their 2 children were guilty of financial abuse and elder abuse of Delores M. Hangsleben before her untimely death on January 23, 2008. In addition they caused her death also. Plaintiff, maintains his allegations of wrongful death of Delores M. Hangsleben, which may be overturned by the North Dakota Supreme Court, when and if case is filed and heard.

Plaintiff has alleged in the current action that Defendant has caused severe physical and emotional distress by not telling him of their mothers illness, her hospitalization, and her subsequent death. Plaintiff alleges this was in part due to Defendants financial abuse of Delores M. Hangsleben and the thus ensuing cover-up by Defendant, Gail R. Halverson.

Plaintiff maintains that the conduct of Defendant, was and is extreme and outrageous and has caused physical and emotional harm and distress to the Plaintiff. These wrongs by the Defendant caused considerable injury and pain and suffering to the Plaintiff. It was an intentional infliction of emotional distress by Defendant upon the Plaintiff.

Plaintiff also maintains that the Defendant acted in such a manner that was intentionally to cause harm to him. Defendant acted in a deliberate intention to deprive Plaintiff. Defendants actions were deliberate to conceal Delores M. Hangsleben's health and condition and her death for Defendants own financial gain. That there was a breach of civil duty to the Plaintiff by Defendant. There was a duty to inform Plaintiff of his mothers health and her death. Defendant, Gail R. Halverson harmed Plaintiff, she acted intentionally, her conduct was extreme and outrageous and her acts were and are the cause of Plaintiff's emotional distress. That Plaintiff has suffered severe emotional distress as a result of the Defendants extreme and outrageous conduct.

Plaintiff maintains that the conduct of the Defendant was and is heinous and beyond the standards of civilized decency and intolerable to a civilized society. This conduct by the Defendant, Gail R. Halverson is such that would cause a reasonable person to claim as outrageous. There is a pattern of conduct by the Defendant, and this is not just an isolated incident. The Defendant was and is in a position of power and has caused physical and emotional harm to the Plaintiff. Plaintiff prays for judgement in his favor.

That the Defendant was served with Requests For Admissions, to which she has not responded within the 30 day time allowed and therefore the truth of those statements is deemed admitted.

That the Defendant be denied any award or judgement for attorney fees or costs, since the Plaintiffs allegations and

claims are not frivolous and are the facts and the truth as will be proven at trial. That the court should not award any attorney fees or costs to Defendant, especially since she caused the Plaintiff the harm of severe emotional distress by her outrageous conduct. In addition Plaintiff asks for \$4,500.00 for his time and expenses. That the claim for emotional distress at the hands of the Defendant has not been litigated before as Defendants attorney suggests. Plaintiff again prays for judgement in his favor.

NATURE OF CASE AND COURSE OF PROCEEDINGS

Gary A. Hangsleben, Plaintiff filed a Complaint on August 30, 2010 against Gail R. Halverson. In his Complaint Hangsleben alleged the Defendant caused him to suffer severe emotional distress and it was an intentional infliction of emotional distress. For which Hangsleben is seeking \$5 million in damages from Defendant, Gail R. Halverson.

Plaintiff sent a 19 page Request For Admissions From Defendant, which she has not answered.

Defendant filed a Motion For Summary Judgment on April 15, 2011.

Defendant filed a Motion For Award Of Costs And Attorney Fees, on May 5, 2011.

District Court Judge Kleven issued an Order For Summary Judgment on September 23, 2011 and an Order For Costs And Attorney Fees.

On October 17, 2011 Hangsleben filed a Notice of Appeal to this Court.

LAW AND ARGUMENT

Answer of Plaintiff against Defendant's Motion for Summary Judgement. First of all, the allegations contained in paragraphs 4 through 13 in Plaintiff's Complaint show the history of fraud, deception, and theft from the estate of Gust A. Hangsleben who died September 5, 1990. The estate was probated in District Court, Polk County, Crookston, Minnesota, in Court File No. 60P5-90-1043. by attorney Donald H. Leonard of East Grand Forks, Minnesota. As of February 8, 1995 the estate/probate case was open and a mystery to attorney Kenneth J. Kludt, County Clerk, and Judge John M. Roue of Polk County, Minnesota. The estate was formally opened. Even in an informal administration the personal representative has a duty of providing an Inventory and Appraisal within 6 months of appointment or 9 months of death of the decedent. Minnesota Stat. Section 524.3-706. This was not done. See Exhibit A, a letter drafted by attorney Kenneth J. Kludt, dated February 8, 1995. Mr. Kludt represented Gust A. Hangsleben in a divorce/child custody dispute and grandparental visitation hearings concerning Christine Ann Hangsleben, daughter of Plaintiff Gary A. Hangsleben in 1983.

Attorney Donald H. Leonard states, "The probate was essentially completed 1995", Plaintiff, Gary A. Hangsleben believes that the probate case of Gust A. Hangsleben would still be open and a mystery if he didn't write a 5 page letter to Judge John M. Roue asking for help in the theft of over \$800,000 in assets that belonged to Plaintiff, Gary A. Hangsleben. See Exhibit B,

5 page letter to Judge John M. Roue, dated February 9, 1995 by Plaintiff, Gary A. Hangsleben. In addition, an Order To Show Cause, was drafted by Judge John M. Roue to Delores M. Hangsleben why she shouldn't be removed as personal representative in the estate of Gust A. Hangsleben, for her failure to file an inventory or to make an accounting as required by law. This Order by Judge John M. Roue was dated July 10, 1995. See Exhibit C, Order To Show Cause issued by Judge John M. Roue, dated July 10, 1995.

According to John E. Vallager, a Certified Public Accountant, from Crookston, Minnesota who reviewed the Probate/Estate file of Gust A. Hangsleben and financial documents of Gust A. Hangsleben (his firm did the bookkeeping for Gust A. Hangsleben) he issued a 4 page document/analysis dated July 7, 2003, stating he found over \$774,000.00 missing from the estate of Gust A. Hangsleben. See Exhibit D, 4 page document from Accountant, John E. Vallager dated July 7, 2003 and 1 page cover letter dated February 27, 2004.

Attorney Donald H. Leonard makes reference to several pages of the Court Order in Case No 60-PR-08-1377 in the Estate of Delores M. Hangsleben by Judge Jeffrey S. Remick. Plaintiff, Gary A. Hangsleben, wishes to point out to the Court the reason his claims did not prevail in county court and Minnesota Appeals Court was due to the operation of the relevant statues of limitation. Page 18 claims of Gary A. Hangsleben in this regard must be DENIED and DISALLOWED, due to the statute of limitations.

See Exhibit E, 22 page court Order dated June 7, 2009 by Judge Jeffrey S. Remick, case No. 60-PR-08-1377.

Attorney Donald H. Leonard makes mention of paragraphs 14 through 17 in the Plaintiffs Complaint. Concerning the claims of elder abuse and financial abuse of Delores M. Hangsleben, they have not been disproved by Mr. Leonard. There are still 2 active cases being investigated by the Grand Forks Police Department and the East Grand Forks Police Department. See Exhibit F, 3 page Formal Complaint of Elder Abuse (Physical and Financial abuse) of Delores M. Hangsleben dated March 19, 2008, by Plaintiff, Gary A. Hangsleben. See Exhibit G, 5 page letter from East Grand Forks Police Department by Detective Srgt. Rick Blazek dated June 30, 2008. See Exhibit H, 5 page Police Report by Grand Forks Police Department dated February 19, 2008 by Officer L.N.Olson.

See Exhibit I, 4 page letter to Judge Jeffrey S. Remick of Polk County Court, Crookston, Minnesota dated May 22, 2008 by Plaintiff, Gary A. Hangsleben.

Paragraphs 16 through 19 show the extreme and outrageous conduct by Defendant, Gail R. Halverson against Plaintiff, Gary A. Hangsleben which has caused physical and emotional harm and distress of the Plaintiff. These wrongs by the Defendant caused considerable injury and pain and suffering to Plaintiff. It was an intentional infliction of emotional distress by the Defendant upon the Plaintiff.

Plaintiff maintains that the Defendant acted in such a way that has intentionally caused harm to him. Defendant acted in a deliberate intention to deprive Plaintiff. Defendant's actions were deliberate to conceal Delores M. Hangsleben's health and condition for Defendants own financial gain. There was a breach of civil duty to the Plaintiff by Defendant. There was a duty to inform Plaintiff of his mothers health and her death. Defendant, Gail R. Halverson harmed Plaintiff, she acted intentionally, her conduct was extreme and outrageous and her acts were and are the cause of Plaintiff's distress. Plaintiff, has suffered severe emotional distress as a result of the Defendant's conduct. Defendants conduct was and is heinous and beyond the standards of civilized decency and intolerable to a civilized society. This conduct by Defendant, Gail R. Halverson is such that would cause a reasonable person to claim as outrageous. There is a pattern of conduct by Defendant, and not just an isolated incident. The Defendant was/is in a position of power and has caused physical and emotional harm to Plaintiff. Plaintiff prays for judgement in his favor.

That Defendant was served with Requests For Admissions, Exhibit J, to which she has not responded withing 30 day time allowed, and therefore the truth of those statements is deemed admitted. See Exhibit J, 19 page document dated May 12, 2011.

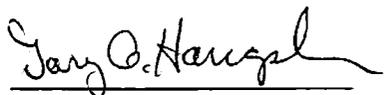
That Defendant be denied any award or judgement for attorney costs or fees since Plaintiffs allegations and claims are not frivolous and are the facts and the truth as will be proven at trial. The court should not award any attorney fees or costs to Defendant, especially since she caused the Plaintiff the harm. In addition Plaintiff asks for \$4,500.00 for his time and expenses. The claim for emotional distress at the hands of the Defendant has not been litigated before as Defendants attorney suggests.

CONCLUSIONS

Gary A. Hangsleben, Plaintiff/Appellant asks that the District Court Summary Judgment Finding be reversed and that the case be remanded for trial in that Court. And that the Order For Costs and Attorneys Fees be also reversed. The Defendant has not acted in good faith and there are several factual disputes that need to be settled in a jury trial and thus the Defendant is not entitled to a Summary Judgment or Dismissal. And that Hangsleben be entitled to the right to do reasonable discovery and that Defendant answer the 19 pages of Requests For Admission.

Delores M. Hangsleben died on January 23, 2008 at the Altru Hospital in Grand Forks, North Dakota, without the presence of her son, the Plaintiff nor of his children or 6 grandchildren during her last days on earth ! Facts the Defendant cannot deny. The only facts in dispute are the Defendants role in her death and causing distress to the Plaintiff. A jury of our peers should determine the case at hand.

Dated: February 14, 2012

By: 
Gary A. Hangsleben
P.O.Box 14222
Grand Forks, ND
58208
701-741-4471

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Gary A. Hangsleben,)
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 Plaintiff,)
)
 vs.)
)
 Gail R. Halverson,)
)
 Defendant.)

SUPREME COURT NO. 20110307

(Grand Forks County No.
18-10-C-01575)

Affidavit of Service

I, Trevor Tharaldson, being sworn, state that I am a citizen of the United States of America over the age of 18 and that I am not a party to the above-entitled matter. That on this 14th day of February, 2012, this Affiant deposited in the mailing department of the United States Post Office at Grand Forks, North Dakota, true and correct copies of the following documents in the above captioned action.

APPELLANT'S BRIEF and APPENDIX

That copies of the above documents were securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

Donald H. Leonard
308 DeMers Ave NW
East Grand Forks, MN 56721

To the best of his Affiant's knowledge, information and belief, such addresses as given above are the actual post office addresses of the parties intended to be served. The above documents were mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

Affiant's Signature: *Trevor Tharaldson*

The above Person I have personally identified and has subscribed and sworn to before me this 14th day of February, 2012.

MARISSA SULLIVAN
Notary Public
State of North Dakota
My Commission Expires Sept 22, 2017

Marissa Sullivan

Notary Public, State of North Dakota

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 Defendant.)

SUPREME COURT NO. 20110307

(Grand Forks County No.
18-10-C-01575)

Affidavit - Certificate
of Non-Compliance

This Document is an affidavit or certificate of Non-Compliance. Plaintiff uses a small portable electric typewriter (Smith-Corona) to type out brief and appendix for the current appeal, and does not know how to or is not able to produce and send to the Court an electronic copy or email of the Brief and/or Appendix. Plaintiff does not have access to a Word-processor nor Word Perfect or other program. Plaintiff was instructed to construct this document by the Clerk of the Court to explain his situation. Plaintiff does not have a computer/printer to work from, all documents are generated by hand on a electric typewriter. Thank you.
Sincerely, Gary A. Hangsleben, Plaintiff/Appellant.



Gary A. Hangsleben
P.O. Box 14222
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701-741-4471
February 14, 2012