

IN THE SUPREME COURT, STATE OF NORTH DAKOTA

SUPREME COURT NUMBER 20060039
STARK COUNTY CIVIL NUMBER 01-R-00138

Christopher Paul Harshberger,

Plaintiff/Appellee,

v.

**Tannya Radke, f/k/a Tannya Harshberger,
individually, and as the natural guardian of [redacted],
a minor child,**

Defendant/Appellant.

APPELLANT BRIEF

APPEAL TAKEN FROM CIVIL JUDGMENTS AND ORDERS
ENTERED
IN DISTRICT COURT
COUNTY OF STARK
SOUTHWEST JUDICIAL DISTRICT

THE HONORABLE RONALD HILDEN, PRESIDING

Bonnie Paradis Humphrey (ID # 04991)
Humphrey Law Office
Attorney and Counselor at Law for Defendant/Appellant
Heritage Place, STE 200
201 Main Street South
Minot, ND, 58701
(701)852-4837

TABLE OF CONTENTS

TABLE OF AUTHORITIES 2

ISSUES 3

STATEMENT OF THE CASE 4

STATEMENT OF THE FACTS 6

ARGUMENT

I. WHETHER THE STATE OF NORTH DAKOTA HAS SUBJECT MATTER JURISDICTION AND THEREFORE, PROPER AUTHORITY TO CHANGE CUSTODY AND ESTABLISH VISITATION OF THE MINOR CHILD OF THE PARTIES? 11

II. WHETHER THERE IS AN ADEQUATE BASIS IN LAW FOR CHANGE OF CUSTODY OF THE MINOR CHILD? 15

CONCLUSION 20

—

TABLE OF AUTHORITIES

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) 12

North Dakota Cases

Bader v. Bader, 448 N.W.2d 187 (N.D. 1989) 16

Benson v. Benson, 667 N.W.2d 582, 2003 N.D. 131 12

Freed v. Freed, 454 N.W.2d 516 (N.D. 1990) 11

Leppert v. Leppert, 519 N.W.2d 287 (N.D. 1994) 19

Long v. Long, 439 N.W.2d 523 (N.D. 1989) 12

Vandeberg v. State, 660 N.W.2d 568, 572 (N.D. 2003) 15

Wolf v. Wolf, 474 N.W.2d 257 (N.D. 1991) 11

Rules and State Statutes

N. D. Rules Civ. P. Rule 52(a) 11

N.D.C.C. § 14-09-06.2 15

N.D.C.C. § 14-14.1-01 to -37. 12

N.D.C.C. § 14-14.1-12 13

N.D.C.C. § 14-14.1-13(1) 13

N.D.C.C. § 14-14.1-14 13

N.D.C.C. § 14-14.1-15 13

N.D.C.C. § 14-14.1-17 13

N.D.C.C. § 14-14.1-18 13

N.D.C.C. § 50-25.1-02 17

N.D.C.C. § 14-07.1-01 17

ISSUES

- I. WHETHER THE STATE OF NORTH DAKOTA HAS SUBJECT MATTER JURISDICTION AND THEREFORE, PROPER AUTHORITY TO CHANGE CUSTODY AND ESTABLISH VISITATION OF THE MINOR CHILD OF THE PARTIES?
- II. WHETHER THERE IS AN ADEQUATE BASIS IN LAW FOR CHANGE OF CUSTODY OF THE MINOR CHILD?

STATEMENT OF THE CASE

This is an appeal from the Judgment entered by the District Court for Stark County, North Dakota, on or about the 8th day of December, 2005 (there is a typographical error in the Judgment in that the Clerk states it was signed on January 8, 2005, but the Judgment is stamped with the December 8, 2005 filing date) (Appendix page 78), ***and all underlying orders of the District Court in this matter which led to the Judgment in the above-entitled matter***, with the Honorable Ronald L. Hilden, Judge of the District Court, presiding.

In October of 2001, the Plaintiff, Christopher Harshberger (hereinafter Christopher) filed a Summons (A 4) and a Complaint (A 5) in District Court which requested genetic testing to determine paternity of the minor child of the parties, in response to a separate action by the Child Support Enforcement Agency requesting that he pay child support in accordance with the North Dakota Child Support Guidelines. Since the minor child's birth in April of 1996, Christopher had failed to support the minor child, financially, or in any other way, despite custody and visitation having been determined through the parties' divorce judgment in Montana which was entered in August 1996, several months after the child was born.

The paternity testing requested was duly completed, (A 8) and Christopher was found to be the biological father of the minor child, and began making the requested child support payments. After that, years passed, and the Court issued its Notice to Dismiss Action on or about April 15, 2004. (A 9). Only then did Christopher file a request to establish visitation with the minor child, in May of 2004 (A 10). There was then a request

to cancel the hearing scheduled for July 2004 to consider that request (A 13), but finally an interim order setting forth terms for visitation was ordered by the Court on December 14, 2004 (A 14). After that, the matter sat on the Court's docket for another eight months, until the Court issued another Notice of Intent to Dismiss in August of 2005. (A 20).

Christopher then filed a Motion to Amend as to Custody and for Contempt of Court (A 21), which was denied by the Court, and the matter was set for trial in November 2005 on the Court's own order (A 28, 29) in September 2005. A Request for a Hearing on Plaintiff's Objection to the Dismissal of the action was filed by Tannya through the undersigned counsel at that time (A 30) in September of 2005. A Motion to Change Venue was denied by the Court just a few days before the trial scheduled by the Court (A 48) in November 2005, and a Request for Continuance (A 49, 51) was also denied a day after the trial was held, on November 8, 2005, as was a Motion for Dismissal (A 52). A Motion to Vacate Oral Decision (A 56, 57) was also denied on December 14 2005 (A 86), as was a Motion for Reconsideration (A 87, 88) on January 13, 2006 (A 97). This Appeal was filed with the Court on February 6, 2006 (A 98).

STATEMENT OF THE FACTS

Tannya and Christopher were divorced in the State of Montana in August 1996, after being married almost a year.(R 61, paragraph 1; A 78). During the marriage, their child was born, and the divorce decree stated that Tannya was to have physical custody of the child, subject to the reasonable visitation rights of Christopher.(Ibid.) Christopher did not have any further contact with Tannya until she requested that he begin to make child support payments through the Child Support Enforcement Unit in 2001. (R 61, paragraph 3; A 78). At that point, Christopher decided to contest paternity of the minor child and requested genetic testing through a separate action in North Dakota, and not through the Montana divorce decree, or through the regional child support enforcement unit in North Dakota, which would have been more appropriate, and likely less expensive.(/R 1 and 2; A 4, 5). By that time, Christopher was about \$6,000 behind in child support payments. No one contested subject matter jurisdiction at that time.

In his action, Christopher requested only paternity testing, and did not request visitation or custody of the minor child. (Ibid.) The action languished after it was determined that Christopher was the father of the minor child, ordered him to pay child support, and after some years, the Court issued its usual Notice of Intent to Dismiss in April of 2004, which happens when there is nothing taking place on a case. This was a little over two years after the Order regarding genetic testing was issued in July of 2002 (R 14; A 8). There was no reason for Tannya to do anything at this point, since paternity had been established, she was content with having physical custody of the couple's minor child, and had finally been able to obtain child support from Christopher, even though he

was someone whom she believed to be a statutory rapist (R 61 at paragraphs 7,9, and 43, Exhibits A and B attached to same; Transcript [hereinafter T] page 63-65; A 78). The action should have been dismissed at that point, since everything requested by Christopher had been accomplished.

However, at that point, Christopher decided to file a Motion to Establish Visitation Rights (R No. 17; A 10) in May 2004; then, in July 2004, that hearing was cancelled at his own request. (R No. 21; A 13). The hearing was eventually held late in November 2004 (R No. 23; A 14). Tannya was represented at that time by Mr. Keough, on a pro bono basis. The Honorable Judge Hilden gave the parties some time to work things out, and in fact, stated on the record that the agreement “would be wonderful. I guess I’m just so cheered because everybody knows that most of the time that we meet there is bitterness, rage, hatred, antagonism, all of those things. And if there’s any glimmer of hope for something to avoid all of those emotions and do something that will foster the best interest of this child, my God, let’s do it.” (T of November 29, 2004 hearing, page 5, lines 10 through 16; A 99).

The parties had problems determining who would cover which part of the visitation-related costs, and, without seeking further information about Christopher’s financial situation (the Court knew that Mr. Keough was representing Tannya on a pro bono basis), made a decision that Tannya should bear part of the associated costs, although he did term the order “interim” at that point, and order that the parties provide financial information to the Court. (Ibid., page 17-20; A 100-103). Again, no one contested the subject matter jurisdiction of the Court.

The parties proceeded to follow the Interim Order of the Court establishing visitation rights, even though none of this was actually necessary, because the State of Montana's divorce decree between the two already provided for "reasonable" visitation. Tannya was in a difficult position; now without legal counsel to guide her, she was trying to do the best she could; first, she had sought child support from the minor child's father, in an effort to support their child; she had testified in court that she never denied that Christopher was the father of the child (T of November 8, 2005 hearing, page 29, lines 23-250; A 104); visitation was scheduled by the Court, with each party to make payments toward the transportation costs, and by that time, she had had other children, to whom she also had a responsibility for support.

Following the interim order of the Court, the first visitation over New Year's went well, and Christopher testified in court that "I was greeted by a running child at the door at the hotel... when I went to see [redacted] for the first time. She was excited to meet me as an individual and I too was excited to see her, so it went very well." (T, page 59, lines 12-16; A 114). He further admitted that Tannya might have had something to do with the child's positive attitude:

MS. HUMPHREY: ...*You stated that at first, for the visitation that happened around New Year's or thereafter, that you were greeted by a running child and that she was excited to meet you?*

MR. HARSHBERGER: *That's correct.*

MS. HUMPHREY: *Now, that sounds really cool to me, but you know, don't you think that Ms. Radke's preparation for that visit might have contributed to*

[readacted]'s attitude?

MR. HARSHBERGER: *Yes, I do. (T of November 8, 2005 hearing, page 81, lines 18-25; A 116).*

Tannya was in Billings to give the child to Christopher for the second scheduled visitation, which was to occur over four days and three nights, when her car broke down. (T page 33, lines 18-22; page 38, lines 16-18; A 105, 107). She testified that she tried to rent another vehicle so that she could drive the extra hour to where the meeting place was, but was not able to find one. She only had to wait an hour to get it fixed, but Christopher refused to wait that hour, and went back to Washington State without the child. (Ibid.) Christopher also failed to follow through with payment for the train tickets as ordered. (T, page 39, lines 16-20; A 108). Tannya testified that Christopher did not contact her after that to make arrangements for another visitation. (T, page 40, lines 9-11; A 109).

Christopher testified that he used the event to “test” Tannya and see “if she [was as] serious about my relationship with Ashley as I was.” (T, page 68, lines 16-18; A 115). He also admitted under oath that he was testing Tannya, and that this was not appropriate behavior. (T, page 84, lines 3-9, 23-25; page 85, line 1; A 118-119) After the initial visitation, which had gone so well, this didn’t make sense. After that, visitations fell apart between the parties. Tannya was without legal counsel to advise her, and after being “tested” by Christopher, she didn’t know what to do. Christopher did not bother to go back into Court to resolve the problem until yet another Notice of Intent to Dismiss was sent to him from the Court in August of 2005, because he was “referred to him to allow a history to be developed.” (R 24, T, page 83, lines 4 -11; A 20, 117). Only after that

second Notice of Intent to Dismiss did he bother to file a motion for custody and accompanying documents with the Court, in August of 2005, which were denied by the Court, and a “trial” scheduled instead. (R 26-31; A 21, 29).

In August of 2005, Tannya had moved back to North Dakota with her family and settled in the Bismarck area where there was extended family support available to them. In September 2005, [redacted] and her siblings were removed from the home without notice and turned over to Montana for placement in foster care, and the undersigned was requested to represent her in this matter. (T, page 35, lines 24-25, page 36, line 1; page 43, lines 16-19; A 106, 107, 112); the Court was given documentation of the proceedings as long as the undersigned was involved in the matter in that state. The undersigned attempted to change venue to that county on short notice, believing it would be more convenient and appropriate for the parties involved, but that request was denied, with a statement that it would only “spawn mischief.” (R 45; A 48). Once the undersigned was made aware of the Montana divorce decree which did have provisions regarding custody and visitation for the minor child, a motion to dismiss for lack of subject matter jurisdiction was duly filed (R 54; A 52), and several attempts to vacate the Court’s decision were also filed, with accompanying responses by opposing counsel. (R 54 through 71; A 56-98).

Meanwhile, [redacted] remains in foster care placement in Dawson County, Montana, and Tannya continues to work on her treatment plan in that matter in order to again have her children placed back into her home, including [redacted], subject to reasonable visitation or as otherwise ordered on the part of Christopher. (T, page 42, line

11-25; page 43, lines 1-5; A 111-112).

ARGUMENT

- I. WHETHER THE STATE OF NORTH DAKOTA HAS SUBJECT MATTER JURISDICTION AND THEREFORE, PROPER AUTHORITY TO CHANGE CUSTODY AND ESTABLISH VISITATION OF THE MINOR CHILD OF THE PARTIES?

Standard of Review

“The trial court’s determinations of matters of child custody are treated as findings of fact. The Supreme Court does not set aside the findings of the trial court unless they are clearly erroneous.” *Freed v. Freed*, 454 N.W.2d 516, N.D. 1990). Matters involving custody determinations and visitation are reviewed by the Supreme Court under N. D. Rules Civ. P. Rule 52(a), and the court will reverse the custody determination only if it is clearly erroneous or if it believes a mistake has been made. *Wolf v. Wolf*, 474 N.W.2d 257 (N.D. 1991). In this matter, it will be shown through the case law, statutes, previous orders, pleadings and other documentation in the file, as well as the Ts of the hearings, that there were clearly erroneous decisions made by the trial court.

Subject Matter Jurisdiction

The Court in this matter chose to directly ignore the fact that the State of Montana had already been exercising jurisdiction over the parties and the subject matter of this action, and in fact, it turned out that they had never given it up. There were numerous documents and pleadings sent by the undersigned relative to the matter pending in that

State, and repeated requests for the Court to communicate with the Dawson County District Court in Glendive, Montana so that the issue could be resolved in an efficient, practical manner. (R 46 at paragraph 1, No. 54, 57; A 49). Since they had original jurisdiction, Montana did not have to use the provisions contained in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to exercise jurisdiction over [redacted] and her siblings when the Motion to Establish Visitation Rights and the Motion to Amend Judgment as to Custody were filed by Christopher. (R, 17, 26; A 10, 21). Therefore, that alone should have been enough for the Court to determine it did not have subject matter jurisdiction over this action. See N.D.C.C. § 14-14.1-01 to -37. Prior to that time, there were no requests in regard to the same, as the original Summons and Complaint filed by Christopher only dealt with determination of paternity. Although Christopher merely had to have Montana's divorce decree registered with this state in order to seek its protection and guidance on these matters, he had at that time failed to do so. He could have been exercising "reasonable" visitation all along, but chose not to do so from 1996 through 2004, at the very minimum.

Similar to *Long v. Long*, 439 N.W.2d 523 (N.D. 1989) and its progeny including but not limited to *Benson v. Benson*, 667 N.W.2d 582, 2003 N.D. 131, this matter involves a child who is currently living out of state, and where that state should be considered the home state of the child. In the instant matter, Christopher is living in Washington State, and Tannya and the minor child [redacted], along with her siblings, were only in North Dakota a little over the month at the time of the most recent motions made by Christopher, after the two Notices of Intent to Dismiss filed on the Court's own

motion due to no actions taken on the file. (R 15, 17, 24, 26; A 9, 10, 20, 21). The Court should have followed the established protocol for such matters. Since this matter involved an interstate custody dispute, the Court should have done the following:

(1) Determined whether it had jurisdiction over the parties and the subject matter of the action. As stated in *Long*, no one can “accede to” jurisdiction, and it doesn’t matter how long the action has been pending or what decisions were made prior to the determination that subject matter jurisdiction was lacking. (*Long*, at 525; *Benson* at 584, paragraph 8). The court has an obligation to determine whether there are custody proceedings pending or a decree made by another state which has jurisdiction. (*Benson*, at 584, paragraph 8 and the UCCJEA, enacted at N.D.C.C. § 14-14.1-17). Here, there were proceedings pending in Montana, the minor child and the custodial parent had lived there until a little over a month before, and there was a divorce decree made by that state, which had jurisdiction. The analysis could have stopped there, and the trial court could have declined to exercise jurisdiction under N.D.C.C. § 14-14.1-18, especially in light of the fact that Montana would have had access to the most up-to-date information regarding the minor child, and the custodial parent; Montana also had access to information regarding Christopher as well, including the fact that his criminal record had been expunged.

N.D.C.C. § 14-14.1-13(1) gives further illumination:

1. Except as otherwise provided in section 14-14.1-15, a court of this state which has made a child custody determination consistent with section 14-14.1-12 or 14-14.1-14 has exclusive, continuing jurisdiction over the determination **until:**

a. A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant

connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

b. A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

2. A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 14-14.1-12. (Emphasis added).

In this matter, even if North Dakota started out having jurisdiction over the parties and the subject matter, when Montana determined it appropriate to place [redacted] and her siblings into foster care, and to exercise jurisdiction over them for the investigative authority before that, North Dakota no longer had jurisdiction, if it ever did. The best, most recent evidence concerning the parties and the minor child were in that state.

Instead of taking into careful consideration the case law, statutes and in fact, national standards established especially for these matters, the Court instead chose to rebuff Tannya's repeated requests with comments such as "the most salient aspect of this case to date is the mother's eagerness to flee across state lines when social service agencies began closing in" (R 71 at paragraph 2; A 97) as if she were a gangster rather than a mother who was trying to protect her child and trying to establish some semblance of a normal life for that child and her siblings. If the Court had exercised a modicum of restraint in regard to his disparaging remarks about Tannya, and a little judicial wisdom about what was actually within the court's power to do, this matter would have been vacated for lack of subject matter jurisdiction, and that would have been that.

To analogize from an often-cited quote, “judges are not ferrets,” (*Vandeberg v. State*, 660 N.W.2d 568, 572 (N.D. 2003)); it is also true that lawyers should not be lemmings, leaping off cliffs in the faith that previous lawyers have been following the right path, so whatever they did is correct for this time and place in the matter. Subject matter jurisdiction simply cannot be waived by the parties, by the Court or by their legal counsel, especially as in this matter, when another state is actively exercising their rights over the parties who are involved in this action.

II. WHETHER THERE IS AN ADEQUATE BASIS IN LAW FOR CHANGE OF CUSTODY OF THE MINOR CHILD?

Best Interests of the Child Factors

Changed Circumstances

If the Court finds that somehow the trial court did indeed have subject matter jurisdiction over this matter, there are still numerous problems to be resolved, which the trial court ignored. The minor child of the parties entering foster care in Montana was definitely a “change in circumstances,” but that did not occur until September 2005, a month after the Plaintiff’s Motion to Amend Judgment as to Custody (R 26; A 21) was filed, and two weeks after the Court’s second Notice of Intent to Dismiss was filed with the Clerk of District Court. (R 24; A 20.)

Evaluation of the Factors

In the trial court’s ruling from the bench after the November 8, 2005 hearing, the Court stated that “it’s certainly long overdue for time for change of custody” and did not indicate anything at all regarding which of the N.D.C.C. § 14-09-06.2 factors had been

considered, if any. (T, page 129, lines 18-20; A 123). The trial court then proceeded to give Christopher less than what he already had in Montana, if he had bothered to follow the divorce decree there; preference over a foster home as a relative placement in *North Dakota*. (*Ibid.*, lines 24-25, emphasis added.).

“The trial court should have given equal weight to each relevant factor enumerated in this section to determine the best interests of the minor child. *Bader v. Bader*, 448 N.W.2d 187 (N.D. 1989). This trial court only rubber-stamped findings and an order which did not contain a careful analysis of each factor as required, rather a mere recitation of the statute’s citation. (T, page 130, lines 3-5; R 61, at page 11, paragraph 4; A 124, 78).

The factors enumerated at N.D.C.C. § 14-09-06.2 are:

1. For the purpose of custody, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:

a. The love, affection, and other emotional ties existing between the parents and child.

b. The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child.

c. The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.

d. The length of time the child has lived in a stable satisfactory environment and the desirability of maintaining continuity.

e. The permanence, as a family unit, of the existing or proposed custodial home.

f. The moral fitness of the parents.

g. The mental and physical health of the parents.

h. The home, school, and community record of the child.

I. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

j. Evidence of domestic violence. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent's participation as a custodial parent. The court shall cite specific findings of fact to show that the custody or visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards custody to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.

k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.

m. Any other factors considered by the court to be relevant to a particular

child custody dispute.

2. In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the unmarried minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

Tannya testified that she never denied Christopher access to any medical, dental, religious or other records of the minor child. (T, page 40, lines 16-18; A 109). She further testified that she never denied him access to any educational conferences (T, page 40, lines 19-20; Ibid.); never denied him reasonable access to the child by written, telephonic and electronic means (T, page 40, lines 21-23, Ibid.). Tannya testified that she never denied Christopher knowledge about any serious accidents or illnesses. (T, page 40, line 24-25, page 41, lines 1-2; A 109, 110). None of these items were refuted by Christopher, and in fact, he acknowledged that he had not become aware of [redacted]'s medical needs. (T, page 89, lines 1-5; A 120).

The *only time* Tannya failed to tell him about a change of address was when she moved from Glendive to Bismarck in August of 2005, and she acknowledged her duty to do that, but she also noted that he never asked about what school she was in. (T, page 41, lines 3-18; A 110). She acknowledged that at the time, they were experiencing difficulties with the children, and that shortly after that, the children were placed into foster care in Montana. (T, page 43, lines 13-19; A 112).

Separation of Siblings and Alienation

“As a general rule, courts do not look favorably upon separating siblings in custody cases.” *Leppert v. Leppert*, 519 N.W.2d 287 (N.D. 1994.) Christopher agreed

with this basic premise during his testimony at the hearing in November 2005. (T, page 85, lines 24-25, and page 86, line 1; A 119). Tannya testified that [redacted] is very close to her siblings, “they’ve been together since day one, [redacted] loves her siblings to death. [Redacted] (T, page 45, lines 15-16; A 113).

Further, it was error for the Court to suddenly jump to “parental alienation” syndrome or “overdue for time for change of custody” (T, page 129, lines 18-20; A 123) as a quick answer to the issues in this matter when in fact there was no proof before the Court that Tannya or her family had done anything to purposefully hinder a relationship between the minor child and her father, and there was no testimony on which to base such a statement at the close of the case. (T, page 117, 122; A 121, 122). If anything, the trial court was fostering alienation between [redacted] and her siblings when he entered the order for custody in this matter without careful consideration for the “small people” involved. (R 53, last sentence; A 51).

Conclusion

Tannya respectfully appeals all judgments and orders in this matter, and requests reversal of the same on grounds that the Court did not have the proper authority to act, nor the need to do so, since the State of Montana did not give up jurisdiction over the subject matter nor the child involved in this matter. Tannya argues that the Court should have followed procedures as outlined in the Uniform Child Custody Jurisdiction and Enforcement Act, or the Interstate Compact, since the child in question was in foster care in another state, and the Court had been given the pertinent documentation regarding that fact.

Therefore, she respectfully requests that the Judgment and underlying Orders of the district court be vacated in their entirety, and that the matter be remanded with instructions that the trial court enter an order denying the motions of Christopher relating to visitation and custody for lack of jurisdiction, with copies to be forward to the Seventh Judicial District of the State of Montana, Dawson County, for their information and further action in that state. She also requests that her attorney's fees be reimbursed to her for having to defend this action.

Respectfully submitted at Minot, North Dakota, this 29th day of May, 2006.

Bonnie Paradis Humphrey /s/
Bonnie Paradis Humphrey (ID # 04991)
Humphrey Law Office
Attorney for Defendant/Appellant
Heritage Place, STE 200
201 Main Street South
Minot, ND, 58701
(701)852-4837

IN THE SUPREME COURT, STATE OF NORTH DAKOTA

Christopher Paul Harshberger,)
)
Plaintiff,)
)
v.)
Tannya Radke, f/k/a Tannya)
Harshberger, individually, and as the)
natural guardian of [redacted], a minor child,)
Defendant.)

CERTIFICATE OF SERVICE
Supreme Court No. 20060039
Stark County Civil No. 01-R-00138

Bonnie Paradis Humphrey, certifies as follows:

That she is a citizen of the United States of America, of legal age, and is not a party to nor interested in the above-entitled action; that on the date stated below, I served the following:

Appellant Brief
Appendix of Appellant

to the persons listed below by electronic means through N.D. Sup. Ct. Admin. Order 14:

Mr. Charles L Neff
Attorney at Law
111 E Bdwy
PO Box 1526
Williston ND 58802-1526
nefflaw@skylandnd.com

Dated this 29th day of May, 2006.

Bonnie Paradis Humphrey /s/
Bonnie Paradis Humphrey, ID No. 04991
Attorney for Defendant/Appellant
Heritage Place, Suite 200
201 South Main Street
Minot, ND 58701
(701) 852-4837