IN THE SUPREME COURT

STATE OF NORTH DAKOTA

John Daniel Lawrence,	)	
	)	
Plaintiff and Appellee,	)	
	)	Supreme Court No. 20070131
vs.	)	
	)	Burleigh County No. 92-R-01316
Tina Lucille Delkamp,	)	
	)	
Defendant and Appellant.	)	

Appeal from the Order from Remand on Motion
for Contempt and to Amend Judgment dated
March 9, 2007, of the Burleigh County District Court,
South Central Judicial District,
Honorable Bruce A. Romanick

Brief of Appellant

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Statement of Issue

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

3 **Statement of Case**

4 This is an appeal of the Order from Remand on Motion for Contempt and to Amend Judgment.

5 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 [hereinafter "A"] 16).

6 Lawrence replied to the motion and filed his own motion for contempt on December 29, 2006. (A 17-20).

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

8 Lawrence filed a Motion for Relief from Order dated February 14, 2006. (Record on Appeal).

9 The trial court issued its Order Denying Relief from Order on March 3, 2006. (Record on Appeal).

10 Lawrence filed a Motion to Amend Order dated March 21, 2006. (Record on Appeal).

11 The trial court issued its Order Denying Motion to Amend Order on April 12, 2006. (Record on Appeal).

12 Lawrence filed a Notice of Appeal on May 2, 2006. (Record on Appeal).

13 The North Dakota Supreme Court issued its Judgment on December 18, 2006, reversing the January 27, 2006 Order on Motion for Contempt and to Amend Judgment and remanding the same to the trial court with directions for a hearing. (Record on Appeal).

14 A hearing on the Motion for Contempt and to Amend Judgment was held on March

6, 2007. (A 22). The trial court upheld its Order of January 27, 2006. (A 24).

15 Lawrence filed his Notice of Appeal on May 7, 2007. (A 25).

16 **Statement of Facts**

17 On February 5, 2007, Delkamp filed a letter asking to appear at the hearing on her Motion for Contempt and Motion to Amend Judgment. (A 21). Lawrence did not object.

18 At the hearing on March 6, 2007, Delkamp appeared by telephone pro se. (Transcript at of Testimony [hereinafter "T"] 3, ls. 12-14). The trial court permitted her to extensively cross-examine Lawrence as well as Lawrence's witness. (T 15-21, ls. 16-5); (T 25-19, ls. 17-21). Much of the cross-examination consisted more of her direct testimony presenting her own facts than questioning. Id. She then was permitted to provide a closing argument which again consisted of her providing direct testimony. (T 28-30, ls. 17-9). Despite this testimony from Delkamp, the trial court did not permit Lawrence to call Delkamp as a witness to cross-examine her on the basis that Lawrence did not provide for anyone in Missouri to swear her in or have her identified. (T 21-22, ls. 16-2).

19 **Law and Argument**

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

21 Evidentiary rulings by the trial court are reviewed under the abuse of discretion standard. Langness v. Fench Urethane Systems, Inc., 2003 ND 132 ¶9, 667 N.W.2d 596. A court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner, or if its decision is not the product of a rational mental process leading to a reasoned determination. Grinaker v. Grinaker, 553 N.W.2d 200, 201 (N.D. 1996).

22 Before testifying, every witness must be required to take an oath. N.D.R.Evid. 603. The judge of the district court has the authority to administer oaths. NDCC § 44-05-01(1). Nothing prevents a judge from administering an oath by telephone for telephonic testimony and it is a fairly common practice.

23 The court may permit testimony in open court by contemporaneous transmission from a different location. N.D.R.Civ.P. 43(a). Notice must be given to the other parties as soon as reasonably possible. Id. Delkamp provided notice that she desired to appear by telephone. (A 21). There were no objections and were no stipulations placed on her or Lawrence by the court as to any requirements for this appearance.

24 A party may interrogate an adverse party. N.D.R.Civ.P. 43(b). Delkamp was an adverse party who was allowed to examine witnesses, argue, and in effect, present direct testimony at the hearing. Lawrence was not allowed to examine Delkamp and was not given any forewarning that he would not be able to examine her. He was prevented from exercising basic rights in the adversarial process.

25 **Conclusion**

26 The trial court abused its discretion by not allowing Lawrence to cross-examine Delkamp. Lawrence requests that this matter be remanded for further proceedings.

Dated this 23rd day of July, 2006.

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Certificate of Service

Loren McCray certifies that on the 23rd day of July, 2006, he served the following document:

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

upon: Tina Lucille Delkamp
1810 Parkwood 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.

(X) 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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Attorney at Law