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SUPREME COURT JUL 19 2010

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TABLE OF AUTHORITIES

42 USC §664(8)(B)(i) .....	The income of the noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such income shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provide for an alternative arrangement.
42 USC §666(f) .....	Uniform Interstate Family Support Act. In order to satisfy section 454(20)(A) [42 USCS §654 (20)(A)], on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act...
Ramsey County v. Kamara .....	2002 ND 192
State of Nebraska v. (Name omitted)	Case No. C105-308

20100168

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

STATEMENT OF ISSUES

JUL 30 2010

STATE OF NORTH DAKOTA

Petitioner feels the District Court erred by not granting a child support payment modification that is in line with Petitioner's actual wages of \$1.25 per hour (his prison wages), and not the standard Federal Minimum Wage of \$7.25 per hour.

Petitioner is currently required to pay a total sum of \$264.00 per month in child support payments. His total monthly gross income is approx. \$125.00 per month.

Petitioner is currently paying 50% of his gross wages toward his current child support order, leaving a remainder of approximately \$200.00 in monthly arrearages.

Petitioner is requesting that your Honorable Court adjust his current child support order to reflect no more than 50% of his current gross wages.

Petitioner is also requesting that the adjustment be made retroactive up until the time his financial circumstances were altered.

Petitioner is also requesting that all penalties and interest be placed in abeyance until Petitioner is released from prison.

## JURISDICTION

The Supreme Court of North Dakota has subject matter jurisdiction over matters presented to a District Court in North Dakota.

Petitioner did file a Notice of Appeal within one(1) day of receiving the denial of his petition from the McLean County Court.

As such, his Notice of Appeal was timely and within the rules set forth in the North Dakota Rules of Civil Procedure.

Petitioner now brings his appeal of the **denial of his petition** for a change in child support order, due to a change in his economic circumstances.

## APPLICABLE LEGAL STANDARDS

The North Dakota Supreme Court has ruled that a change in economic circumstances can be the basis for a modification of child support order.

Additionally, the United States Title 42 §664-§666 provides for the modification of an existing child support order, due to changed economic circumstances.

42 USC §664 - §666 goes so far as to allow for the total cancellation of a child support payment order, if the change in economic circumstances is sufficient.

42 USC §664 - §666 explicitly state that a child support order is to be based on **actual wages**. There is nothing in the Federal Statutes governing child support, requiring child support to be falsely based on the **Federal Minimum Wage**, when the parent does not earn even a fraction of the Federal Minimum Wage amount.

## DISCUSSION

In the instant case, Petitioner finds himself faced with an insurmountable debt that continues to accumulate on a monthly basis. In addition, Petitioner's monthly required child support payments that have been ordered by the State of North Dakota (\$264.00 per month), far exceeds his total monthly gross earnings of \$200.00 per month. The petitioner is expected to pay 132% more in child support payments, than he is actually earning.

A petitioner was granted a changed child support order from the State of Nebraska, case number: C105-308, in which the monthly child support payment requirements were reduced to zero dollars, based on the changed economic circumstances of the petitioner.

Petitioner does not seek such an order from this Honorable Court. Petitioner is willing to continue to pay his current child support of fifty percent(50%) of his wages, in an effort to satisfy his obligations.

Petitioner's concern is the massive and growing debt that continues to accumulate, due to his being assessed a current child support order, based on a wage assignment of more than \$14,000.00 per year in earnings.

This wage assignment is based on the fictitious assumption that Petitioner earns the Federal Minimum Wage. Of course, Petitioner does not earn anywhere near the Federal Minimum Wage.

In fact, Petitioner earns only a fraction of the current Federal Minimum Wage, (Petitioner earns approx. \$1.25 per hour; the Federal Minimum Wage is approx. \$7.25 per hour). Petitioner will not be able to earn anywhere near the Federal Minimum Wage until he is released from prison.

By the time Petitioner is released from prison, release date 2027, he will be faced with a crushing financial burden, due to the current accumulation of arrears owed. It is abundantly clear that petitioner is unable to pay the monthly amount ordered, yet and still, the District Court in McLean County persists on demanding this exorbitant amount of monthly child support that can never be met while Petitioner is incarcerated.

As this Honorable Court can see from the Nebraska case cited in his brief to the District Court, the inmate from Nebraska had his entire child support order suspended, all interest and penalties set aside, and all collection efforts ceased, until he is released from prison.

Federal Equal Protection Law requires that persons from different states, under the same circumstances, be treated equally under the law.

The radically different treatment North Dakota inflicts on persons in Petitioner's circumstances, is a violation of the equal protection clause.

Petitioner should expect the same treatment from North Dakota that is afforded to persons from other States like Nebraska.

The District Court has consistently and systematically violated Petitioner's rights under the equal protection clause.

While this jurisdiction may have found that incarceration is not solely a justification for reducing a child support order in **Ramsey County v. Kamara, 2002 ND 192**, the different treatment received by persons under the jurisdiction of North Dakota is an issue that violates the equal protection clause of the United States Constitution.

The fact that Petitioner only makes a fraction of the free-world Federal Minimum Wage, a wage that does not apply to incarcerated persons, is causing him to fall deeper into debt at a monthly increment; While inmates from other nearby states are afforded moratoriums and other forms of relief, until such time they are released from prison.

Petitioner feels strongly that if this child support order continues as is up until his release from prison, this insurmountable debt will burden and even cripple his reacclimation back into society.

For these reasons, Petitioner does respectfully seek relief from this Honorable Court. Petitioner respectfully submits that his child support order should be limited to not more than fifty percent, which is what he is currently paying, of his earnings; And in fact should be limited to only twenty-five percent of his prison earnings, being in consistency with Federal and North Dakota Law.

Petitioner is more than willing to pay fifty percent (50%) of his earnings, but strongly objects to paying 132% in excess of his gross earnings.

## CONCLUSION

Petitioner currently owes in excess of \$100,000 in back child support, and the current child support order is adding to that amount every month. The amount owed is simply unpayable at this juncture while Petitioner is incarcerated, and will only become increasingly unpayable with the imposition of a child support obligation far greater than his current or future wages could ever be while in prison.

42 USC 664 - 666 provide for the changing of a child support order, due to changed economic circumstances, and incarceration is specifically recognized as such a change in economic circumstances.

By changing Petitioner's child support obligation, this Honorable Court will allow Petitioner to at least have a chance to catch up on his obligations.

WHEREFORE PETITIONER PRAYS, this Honorable Court will Order that Petitioner's current child support payment be limited to fifty percent (50%) of his **actual** current prison earnings, until such time he is released and economic circumstances change for the better.

AND FINALLY, grant any additional relief this Honorable Court may deem just and proper.

Respectfully Submitted,

CERTIFICATE OF NONCOMPLIANCE

I hereby certify under penalty of perjury of laws of the State of North Dakota that I am unable to comply with the electronic brief filing requirements of this court, due to the current restrictions that have been placed upon me by prison officials at USP Leavenworth, where I am currently incarcerated. I ask that this court please accept my brief in hardcopy form.

I have attempted to comply with all other rules of this court to the best of my ability, and I ask the court to accept my brief as properly filed.

7/15/2010

Date

David Kidwell

David Kidwell #07246-059

DECLARATION AND CERTIFICATE OF SERVICE

I, David Kidwell , hereby declare, under the penalty of perjury, pursuant to 28 USC §1746, that the foregoing pleading is true to the best of my knowledge, and certify that I served, by first-class postage, prepaid surrender to prison officials, a true original of the foregoing pleading to:

1. Clerk of Court  
N.D. Supreme Court

Date: 7/15/2010

David Kidwell

David Kidwell

Fed. Reg. No. 07246-059

USP Leavenworth

P.O. Box

Leavenworth, KS 66048

20100168

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IN THE OFFICE OF THE  
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AFFIDAVIT OF SERVICE

JUL 30 2010

STATE OF NORTH DAKOTA

I, David Kidwell, hereby declare, under the penalty of perjury pursuant to 28 USC §1746, that the foregoing pleading is true to the best of my knowledge, and certify that I served, by first-class postage, prepaid surrender to prison officials, a true original of the foregoing pleading to:

- 1) Erica J. Shively, ID# 06296  
Special Assistant Attorney General  
PO Box 7310  
Bismarck, ND 58507-7310

Date: \_\_\_\_\_

7/24/10

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