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IN SUPREME COURT

STATE OF NORTH DAKOTA

20010135

Jenese A. Peters-Riemers
Plaintiff and Appellee

vs.

Roland C. Riemers
Defendant and Appellant

) **Supreme Court No. 20010135**

) Ref. Traill County C-00-42

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STATE OF NORTH DAKOTA

APPELLANT'S REPLY BRIEF

SUPPORTING APPEAL OF

TRAILL COUNTY DIVORCE DECREE

BRIEF BY APPELLANT ROLAND C. RIEMERS

By: Roland C. Riemers, Pro Se, Appellant

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OBJECTIONS TO APPELLEE'S STATEMENT OF CASE

Appellee's attorney - Michael Gjesdahl - presents a Statement of the Case so devoid of truth, designed to mislead and inflame the court, and such a blatant violation of Rule 11(b), that Roland feels compelled to object to at least part his statements.

1. Page 1. "*Roland cheated on his first wife. . .*" p.117, line 25 of Transcript.

Roland's Objection: This 30 year old information was objected to and sustained.

2. Page 2. Referring to #1&2 above, Gjesdahl: "*Roland is a dishonest man.*" .

Objection: Is intended to inflame the Court. Just name calling.

3. Page 2. "*Due to his active deception, it was virtually impossible to determine Roland's net worth or annual income.*"

Objection: Less than a 1/2% difference in assets. Page 000149 Appellee's Appendix.

4. Page 3. "*Roland had cleansed his Quicken data.*" P.45, lines 19-22, Trans.

Objection: On 5 December 2000, Roland had clearly wrote to O'Halloran and Gjesdahl that: "*As previously mentioned, I have tried to limit these reports to actually taxable events, so I have adjusted out things like personal draws and deposit refunds and inputs.*" P.8, part15, Exhib.2.

5. Page 3. "*Roland did not file state or federal income tax returns in 1997, 1998, or 1999.*" P.53, lines19-22, Trans.

Objection: Roland had filed all tax returns through 2000 and these were clearly displayed in uncontested Exhibit 80.

6. Page 4-5. Roland's loan documents do not agree with each other or with the prenuptial agreement.

Objection: Roland admitted loan documents were slanted solely for purpose of securing needed financing. P.28-29, Trans.

7. Page 5. Gjesdahl: There are differences in the 8.3 statements.

Objection: Omits fact these differences were caused by Gjesdahl leaving off major debts. Nor does Gjesdahl mentioned the even more drastic change in Jenese's own Net Estate figures from \$1,372,598 in August to \$743,818 in January. *Appellee's Apx., p.000144, line 12 and p.000149, line 19.*

8. Page 6. Gjesdahl: In February of 1997 domestic incident. *P.268, lines 8-10, Trans.*

Objection: During the course of this litigation Gjesdahl has been well aware that the above claims are utterly false. He has read Jenese's sworn deposition of 11 March 1998 in which Jenese admitted to threatening to **KILL** Roland with knives. Jenese admitted she had grabbed Roland's testicles and was only struck in the head by Roland's attempt to get away. Jenese admitted she was hit in the stomach while Roland was trying to get the knife away from her. Judge Leclerc would not allow Roland to submit Jenese's sworn deposition into evidence. *P.527-529 Trans.* Roland was thus forced to read the deposition into testimony by "refreshing his memory". *P.530, line 1-3.*

Gjesdahl has also been well aware Roland had un-restricted visitation with Johnathan in 2000. He was reminded of this with dozens of photographs of Roland and Johnathan taken together during the summer of 2000 and which Leclerc refused to allow into evidence. Gjesdahl was furnished several hours of audio tape of Jenese's phone calls to Roland where she frequently admitted she and Gjesdahl were lying to the court. Gjesdahl later admitted at a protection order hearing (C-0035) earlier this year that Jenese had allowed frequent unsupervised visits by Roland. Yet, Gjesdahl has refused to allow Roland to have unsupervised visits, unless he antes up with money for Gjesdahl's legal fees!

STATEMENT OF ISSUES FOR REPLY

- I. Right to jury trial?
- II. N.D.C.C. 14.05-22(3) and N.D.C.C. 14.09-06.2(1)(j) unconstitutional?
- III. Illegal venue change?
- V. Was Judge Leclerc biased and professionally incompetent?
- VI. Domestic violence opinion?
- VII. Slap and butt boot domestic violence, but not Jenese's knives and guns?
- IX. Adultery by character evidence?
- X. Did the Court clearly error in finding "extreme cruelty?"
- XI. Premarital agreement unconscionable?
- XII. Division of marital property?
- XV. Financial division of property?
- XXI. Was Roland's plea bargain also an admission to domestic abuse?

LAW AND ARGUMENT

I.(Jenese's A) Right to jury trial?

Gjesdahl argues *Murtian* and resulting court decisions. P.8, *Appellee's Brief*.

Reply: History. In the beginning there was the Territorial code and jury trials were mandated in most civil actions (including divorce). §236 of Part II of the 1883 Revised Codes of the Territory of Dakota. "Actions of law and suits of equity," were changed to "one form of action for . . . private wrongs, which shall be denominated a civil action." §33, *Id*. To keep things simple civil actions were divided into Law or Fact. §231, *Id*. Law issues were defined as: "An issue of law arises upon a demurrer to the complaint, answer, or reply: or to some thereof." §233, *Id*. Issues of law had to be tried first. §234, *Id*. And had to be tried by a court. §236, *Id*. "Marriage is a personal relation arising out of a civil contract." §34, Part III, *Id*. This was repeated in 1887. §2533, Chapter 1, Art.1, *Compiled Laws of Dakota*. In 1887 they eliminated the list of items for jury trial but kept the more general rule of jury trials for issues of fact. §5032 and §5034 of the *Compiled Laws of Dakota*. In regards to contract law, jury trials were mandated for issues of fact in actions arising in contract. §5065, *Id*. And there was peace in the Red River Valley.

In 1889 the founders passed the Constitution of North Dakota and Article I, §13 declared: "The right of trial by jury shall be secured to all, and remain inviolate." **These rights appear to be on any issue of fact in a civil or contract action and includes divorce.**

Of course, this simple solution to a complex problem makes too much sense. So non-existent courts of equity were kept and it was decreed that there were still cases of law and equity. With courts deciding equity and juries deciding law issues? Great confusion descended upon the Red River Valley and even the most learned men now don't have the faintest idea of their jury trial rights.

As for the nature of divorce, "Actions for divorce are not equity actions in the

normal sense. The jurisdiction of the courts of the State to grant divorces and to order alimony and property division is entirely statutory.” *Becker v. Becker*, 262 N.W.2d 478, at 482 (N.D.1978). There are mixes of equitable and law cases. Where a complaint prays for both legal and equitable relief and legal relief is alone warranted, there is a right to jury trial. *Kilgore v. Farmers Union Oil Co.*, 74 N.D. 640, at 651, 24 N.W.3d 26 (N.D.1946). Furthermore: “Equity jurisdiction cannot be predicated upon the prayer for relief only, but must be based upon allegations of fact in the complaint.” *General Electric Credit Corp. v. Richman*, 338 N.W.2d 814, at 817 (N.D.1983). There is also a sharp line between “legal” and “legal defense” issues. If you raise “legal issues” in a counterclaim you are entitled to a jury, but if “legal defenses”, you have no jury right. *First Nat. Bank and Trust v. Brakken*, 468 N.W.2d 633, at 635 (N.D.1991).

In the present case there is a premarital agreement stated in the counterclaim. This is a legal issue and thus is subject to a separate jury trial as a contract right. Or, if you look at jury rights under the N.D. Constitution, there is a right to jury trial on all factual issues in a divorce as well as the contract issues in the Premarital Agreement.

II. (Jenese’s B) Is N.D.C.C.14-05-22(3) and N.D.C.C. 14-09-06.2(1)(j) unconstitutional?

Gjesdahl: Not timely objection and supports AG Brief. P.9, *Appellee Brief*.

Reply: Timely objection, p.2, Trial Objections (*Roland’s Apx. K*).

Reply: AG’s Brief. Mentions if a parent sexually abuses his child, after being first proven guilty, can recover visitation with treatment. P.7,*Id*. Compare this to domestic violence where abuse is presumed, and no treatment or evidence will overcome it.

III.(Jenese’s C). Illegal Venue Change?

Gjesdahl, No timely objection. P.9, *Appellee Brief*

Reply: Timely objection in Objections to Findings. *Roland’s Apx.M. p.22, ¶89.*

V. (Jenese’s E) Was Judge Leclerc biased and professionally incompetent?

Gjesdahl: "Roland failed to preserve his 'bias' claim for appeal." *P.13, Appellee Brief.*

Reply: Timely objection in Objections to Findings. *Roland's Apx.p.5, ¶22.*

VI. (Jenese's F) Domestic violence opinion?

Gjesdahl cites ¶10,15,16,17,18,19 & 20 of the District Court Findings of Fact as proof of domestic abuse: *P.14, Appellee Brief.* Reply:

¶10. Deals with the old 1997 incident in which she later admitted in a 11 March 1998 deposition that she attacked Roland with knives, threatened to kill Roland while Roland tried to defend himself.

¶15. Jenese testified she made an angry comment at Roland and got slapped. *P.269-270 Trans.* Not domestic abuse. *N.D.C.C.14-07.1-01(2).*

¶16. Jenese was kicked in the back (butt) when she destroyed Roland's videos. After boot Jenese turned around and asked "What did you do that for?" *P.270-271 Trans.* Not domestic abuse per *N.D.C.C.14-07.1-01(2).*

¶17. March 4th 2000 altercation in which Roland refused to allow Jenese to endanger their child by driving him into town when she was ballistic. Abuse? *N.D.C.C.14-07.1-01(2).*

¶18. Repeats ¶17.

¶19. Again repeats ¶17, then adds: "*Jenese may have struck, hit or scratched Roland. However her actions were largely in self defense. . .*" Left out was any reference that Jenese had threatened to KILL Roland with knives, guns, trains, threaten false rape charges, and has even threatened to kill herself and Johnathan.

¶20. Deals with cord organ removal. Chet Aubol give supporting testimony that Roland had nothing to do with this. *P.470-472, Trans.*

Aubol also testified that on 1 April 2000 (with protection order) a screaming Jenese chased Roland into workshop. *P.469, line 7-13, Trans.*

VII. (Jenese's G) Slap and butt boot domestic violence, but not Jenese's knives and guns?

See Reply to VI above. Gjesdahl describes a "BB gun." This "BB gun" was exhibit 141 and was a 22 caliber Magnum pistol. *P.459, lines 4-5, Trans.* Deputy Paul Anderson described this "BB" gun as: (*P.459, lines 20-25, p.460, line 1, Trans.*)

Q And would such a weapon cause injury if it was pointed at someone and shot?

A Yes.

Q Serious injury?

A It could inflict serious injury..

Q More injury then, say, a BB gun?

A Yes.

IX. (Jenese's I) Adultery by character evidence? Gjesdahl admits adultery proven by character evidence. *P.19, Appellee's Brief.* Character evidence to prove present conduct is violation of N.D.R.Ev.404 and 608.

Roland's letter to Ruth (p.64-66 of *Appellee's Apx.*) is totally platonic in nature.

The couple's "*Strange Contract*" presented on p.120-121. Key point was Jenese was put on notice Roland would not tolerate Jenese's dominating and violent behavior. "You will not physically or verbally assault me (Roland) for any reason." "You will never bad mouth me to friends or relatives." Lastly, Roland also promised to: "Try to be a kind and loving husband at all times, and to listen to your concerns."

Was Jenese's repeated false claim of adultery harmless error? **No! False charges of infidelity, constantly repeated may inflict grievous mental suffering.** *Beaton v. Beaton, 99 N.W.2d 92 at 96 (N.D.1959)*

X. (Jenese J) Did the Court clearly error in finding "extreme cruelty"? Gjesdahl cites "a man's conduct with other women . . ." as cruelty. from *Ruff vs. Ruff, 78 N.D. 775. 52*

N.W.2d 107 (N.D.1952). But no conduct here, just one platonic letter.

XI. (Jenese K) **Premarital agreement unconscionable?** Gjesdahl makes the following arguments:

a. “Jenese saw the agreement for the first time in that room.”

Reply: **Utterly false.** Jenese testified in court she had seen the agreement 3 weeks earlier. *L.9-10, p.295, & L.2-3, p.331, Trans.*

b. “Roland provided Jenese no documentation to verify his self-generated asset and debt disclosure.” Also that assets didn’t match loan disclosures.

Reply: Premarital assets closely match the final 8.3 list of assets and valuations.

c. If the court had enforced the premarital agreement, Jenese would have just ended up with her clothes. *P.23, Appellee’s Brief.*

Reply: Jenese would have ended up with all the wealth and debts she had at the time of marriage, plus spousal support and a college education previously fully paid for by Roland.

XII.(Jenese L) **Division of marital property?** Gjesdahl response is that Art.11, Sec.23 is just an “*anachronistic section*” of the state constitution.

Reply: This section is also reflected in current statutes such as: N.D.C.C.14-07-04, 05, 06, and 08 which provide for maintaining separate marital property and debts.

This is also been upheld as recently as 1953 when this court approved the division of separate marital property. “*Except for necessary support the wife has no interest in the property of her husband.*”. *Fleck v. Fleck, 79 N.D. 561 at 574 (1953).* The confusion on this matter has been brought about by the fact North Dakota courts want all property, regardless of source, put into the marital pot. See *Kautzman v. Kautzman, 1998 ND 192, ¶10, 585 N.W.2d 561.* Courts have “forgotten” the purpose of this was to aid the division of “marital property”, but not to add separate property as part of the marital estate itself. See *Fleck at*

574. Thus, separate property could be used to off-set marital property for better property division (by cash payments or liens), or for establishing proper spousal support as allowed under 14-07-03 and 04. Note also, "there is no common law in any case where the law is declared by the code." N.D.C.C. 1-01-06.

XV. (Jenese O) **Financial division of property?** Gjesdahl states the figures the court used (and that he supplied) were not "*clearly erroneous*."

Reply: Gjesdahl deliberately ignores the \$118,826 math error made by the court on page 22 of the Judgment. And error pointed out to him in Appellant's Brief, page 29.

Gjesdahl removed \$177,000 of debt (HUD and Bill mortgages) from the August 8.3 statement (*p.000128 Id.*), and added in 2 properties sold before the divorce Summons (the Hazen hanger and the 319-4 house) to the final January 8.3 statement. *p.000149 Id.* Thus the actual net estate is now really less then \$459,606.

Without reference to Ruff-Fischer guidelines, court awarded Jenese \$510,000 in property and Roland 98.3% of all debts.

XXI.(Jenese U) **Was Roland's plea bargain also an admission to domestic abuse?** Gjesdahl claims Roland did not preserve the issue for appeal, and that conceding a factual basis for the assault charge was an admission to domestic abuse. *P.33-34, Appellee's Brief.*

Reply: So. what was the "*factual basis*?" Was it just a plea bargain to "*assault*," or also an admission to "*domestic abuse*?"

CONCLUSIONS

This case has been abomination of justice with Gjesdahl and Jenese knowingly conspiring to commit fraud upon the courts and Roland by presenting false information or suppressing the truth. Most fowl of their actions is their using contact between Roland and his son as a bargaining chip, and the domestic abuse laws as their legal sledge hammer.

Dated: 25 November 2001

By: 

Roland Riemers, Pro Se, LOVING FATHER

For Jonathan with love