

20100216

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Linda A. Smestad,)	Supreme Court No. 20100216
)	Morton County Civil No. 30-09-C-0648
Plaintiff and Appellee,)	
)	
-vs-)	
)	
Bruce G. Harris,)	
)	
Defendant and Appellant.)	

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

JAN 12 2011

STATE OF NORTH DAKOTA

APPEAL FROM JUDGMENT ENTERED ON
MAY 7, 2010

DISTRICT COURT, MORTON COUNTY, NORTH DAKOTA
THE HONORABLE ROBERT O. WEFALD, PRESIDING

APPELLEE LINDA A. SMESTAD'S BRIEF

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STATEMENT OF THE ISSUES

1. Did the District Court err in finding that the Defendant is required to pay the Plaintiff the sum of \$30,025.00, by reason of personal loans that had not been repaid, and that a van and generator are jointly owned between the parties?
2. Did the District Court err in finding that the Defendant had failed to meet the applicable burden of proof for the causes of action in his Counterclaim?

I. STATEMENT OF THE CASE:

This case involves financial issues associated with a personal relationship between Plaintiff Linda A. Smestad (Smestad) and Defendant Bruce G. Harris (Harris), whereby Smestad loaned certain funds to Harris, individually, and for purposes relating to a business known as Oasis Water Systems, Inc., as described in her Complaint (Appellant's App. pps. 16-19).

The funds, as identified on Plaintiff's Exhibit 1, were provided at the request of Harris for personal uses that included child support, legal fees, court fees, and expenses related to personal travel. Such monies were loaned by Smestad upon specific request therefor, coupled with representations by Harris in each instance that he would make repayment, in full, without further demand by Smestad.

Smestad testified at the trial that the identified funds were provided to Harris with his assurances of repayment, based upon the nature and extent of their personal relationship, which Smestad came to understand was merely a guise for Harris' financial gain. Smestad's testimony addressed each individual payment and the purpose, based upon her knowledge thereof. As their relationship deteriorated, Smestad made numerous requests for repayment of the loan funds, which were met with further assurances but no amount of repayment by Harris.

The District Court, at p. 6 of its Memorandum Opinion, Findings of Fact, Conclusions of Law, and Order for Judgment (Appellant's App. pps. 82-90), dated May 6, 2010, identifies the amounts and source of the personal funds provided by Smestad to Harris, covering a period from May 2007 to June 2008, totaling \$30,025.00, which

require repayment as a valid obligation. The District Court in making its decision on the outstanding obligation weighed the credibility of the evidence presented by the parties, in light of the competing claims, and determined that Smestad had proven her entitlement to repayment of a certain portion of the funds claimed personally from Harris. The District Court, in its Memorandum Opinion, at p. 7, further, specifically found that Harris failed to meet the applicable burden of proof as to the various claims presented in his Counterclaim, combined with a failure to prove any measurable damages associated with such causes of action. Thereby, the District Court determined that the weight of the evidence showed that Harris had taken advantage of Smestad, such that retention of the loan funds would have constituted unjust enrichment.

Harris' presentation to this Court does not appear to reasonably address the relevant issues in this Appeal, as it generally contains collateral issues that are not necessary for a proper determination. In that context, Harris makes statements that are unsupported by the evidence presented at trial, and the rambling and relatively incoherent nature of the Statement of Case and Facts makes it extremely difficult to present a response that is limited in focus to what is properly to be addressed in this Appeal. Under such circumstances, the response by Smestad will focus on the legal arguments associated with the issues that are reasonably relevant from an appeal standpoint, notwithstanding the extraneous matters that are submitted by Harris to which a response would be difficult at best.

II. STATEMENT OF THE FACTS:

The parties were involved in a personal relationship from April of 2007 until December of 2008. During the period of this personal relationship, Harris requested that Smestad provide him with money, in varying amounts, for both personal and business purposes. Plaintiff's Exhibit 1 sets forth the multitude of such payments, which were made in each instance with a corresponding promise by Harris of full repayment. Such payments are evidenced by cancelled checks, bank account withdrawals, and other such documentation, which are recorded on such Exhibit in chronological order.

The testimony presented by Harris at trial involved a general denial that the identified funds were paid on a loan basis, together with claims that he was entitled to compensation under various theories, including and corresponding generally to those presented in his Counterclaim. Harris did not present any witnesses to attempt to corroborate or substantiate his version of the fact situation, in order to dispute Smestad's claim of entitlement to repayment.

The District Court narrowed the focus of the repayment claims by Smestad to certain funds provided to Harris, which total \$30,025.00, as shown on pps. 6-7 of the Memorandum Opinion (Appellant's App. pps. 82-90). The testimony provided by Smestad at trial, together with the cancelled checks and bank account documentation, substantiated that the subject funds had been provided, with no credible proof of repayment, or legal justification for non-payment, being presented by Harris.

III. LAW AND ARGUMENT:

1. Did the District Court err in finding that the Defendant is required to pay the Plaintiff the sum of \$30,025.00, by reason of personal loans that had not been repaid, and that a van and generator are jointly owned between the parties?

The existence of a contractual relationship between the parties and the extent of its terms are questions of fact, subject to the “clearly erroneous” standard of review under Rule 52(a), N.D.R.Civ.P. This Court in Edward H. Schwartz Construction, Inc. v. Driessen, 2006 ND 15, ¶ 6, 709 NW2d 733, restated the scope of review under the “clearly erroneous” standard that was previously outlined in Brandt v. Summerville, 205 ND 35, ¶12, 692 NW2d 144, as follows:

“A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support the finding, or if, in the entire record, we are left with a definite and firm conviction the trial court made a mistake. A trial court’s choice between two permissible views of the weight of the evidence is not clearly erroneous, and simply because we may have viewed the evidence differently does not entitle us to reverse the trial court. On appeal, we do not reweigh conflicts in the evidence, and we give due regard to the trial court’s opportunity to judge the credibility of the witnesses.”

In the instant case, the District Court, at ¶ 3 of the Findings of Fact, found that Smestad had provided checks and cash to Harris in the amount of \$30,025.00, which he had promised to repay to her, and had not been shown to have been repaid. Further, at ¶ 4 and 6 of the Findings of Fact, the District Court found that a van and generator were jointly owned personal property of the parties, due to the circumstances involved in the acquisition thereof. These findings by the District Court were based upon its weighing of

any conflicts in the evidence, that are alleged by Harris in his Brief, and, more importantly, the District Court had the opportunity to judge for itself the relative credibility between the parties with regard to the evidence presented by each in furtherance of their claims or legal positions at the trial. The District Court reviewed the individual checks and bank transactions, as outlined in the summary presented by Plaintiff's Exhibit 1, and determined those payments that were made to Harris on an individual basis, upon an inducement involving his promise to make repayment. These payments totaled the sum of \$30,025.00 for which Smestad was awarded a money Judgment, as a result of Harris not proving repayment or establishing a legal justification that excused such obligation. The same type of reasoning by the District Court resulted in the finding regarding the joint ownership of the two items of personal property, upon its assessment of the facts and circumstances surrounding the acquisition and use thereof by the parties.

Harris appears to be alleging some type of impropriety on the part of the District Court in not accepting his version of the fact situation involved in the exchange of funds for his promises of repayment. While Smestad does not necessary fully agree with the District Court's reasoning in limiting its award of compensation to the specifically identified checks and bank transactions, there was no impropriety involved in Court's decision making in this case. The questionable credibility of Harris' factual assertions at trial was clearly evident from the contradictions therein, as well as the fact that there was no reasonable substantiation thereof, by a writing or otherwise, presented for the District Court's consideration.

These contractual arrangements between the parties do not fall within the statute of frauds, NDCC § 9-06-04, in that Harris, as the promisor, received a direct personal benefit as a result of the promise, whereby such promise is outside the statutory protection. Further, the statute of frauds should not be allowed to perpetuate a fraud or to promote an injustice. Nelson v. TMH, Inc., 292 NW2d 580 (ND 1980). In this instance, Harris must account for his promises of repayment, to prevent an injustice to Smestad.

Thus, the District Court did not err in making its determinations that Harris owes Smestad the sum of \$30,025.00 for repayment of funds loaned in good faith coupled with a repayment promise. Nor, did the District Court err in its determination that the parties jointly owned a van and generator, based upon particulars of the acquisition and use thereof.

2. Did the District Court err in finding that the Defendant had failed to meet the applicable burden of proof for the causes of action in his Counterclaim?

The District Court found by the greater weight of the evidence that Harris failed to meet the applicable burden of proof as to the causes of action in his Counterclaim, including slander, breach of contract, unjust enrichment, fraud and deceit, and conversion. This finding is outlined in the second full paragraph of p. 7 of the Memorandum Opinion, to which the District Court added that, in any case, Harris failed to prove “measurable damages” relating to any of these causes of action. This general finding of fact is adequate under the provisions of Rule 52(a), N.D.R.Civ.P., coupled with applicable numbered findings of fact, for this Court to understand the District Court’s conclusion that Harris failed to prove his denied claims. In Schneider v. Klein, 544

NW2d 176 (ND 1995), this Court made the following statement with regard to such general findings:

“Although the findings of fact and conclusions of law should be stated with sufficient specificity to assist us and afford us a clear understanding of the trial court’s decision, we have indicated that if we understand from the findings the factual basis for the trial court’s determination, the findings are adequately specified.”

In this instance, the findings as a whole should adequately assist this Court to understand the District Court’s overall decision, involving its assessment of the evidence submitted between the parties, and the lack of sufficient proof by Harris of his claims. In that regard, this Court should look at the fact that the causes of action alleged by Harris were unsupported by any credible evidence, such that the District Court’s general finding that Harris failed to prove his denied claims is sufficient under this Court’s standard.

The issues presented by Harris in his Brief, and the arguments relating thereto, aside from his attacks on the impartiality of the District Court, also wrongfully allege improprieties on the part of Smestad’s and his own counsel. Court proceedings of this type are necessarily adversarial in nature. This situation can be exacerbated when the fact situation involves an inter-personal relationship of the type that existed between these parties, which precipitated the various monetary and related claims against each other. With that said, there is no basis for the insinuations made by Harris that either counsel did anything but perform their individual duties on behalf of their respective clients in a professional and proper manner.

Harris would have been better served by presenting reasonable arguments directed at the specific findings and conclusions of the District Court, rather than making unwarranted accusations, that do not in any manner assist this Court in reviewing the propriety of the decision-making by the District Court. Unfortunately, this type of approach can be the method of someone short on valid legal arguments to present. The undersigned is not intending to respond to such accusations, as doing so would tend to dignify them to some degree, which is not warranted or necessary for this appeal.

IV. CONCLUSION:

The Judgment of the District Court, dated May 7, 2010, should be affirmed in its entirety.

Dated this 12th day of January, 2011.

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By: _____



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CERTIFICATE OF SERVICE

12th I hereby certify that a true and correct copy of the foregoing document was on the
day of January, 2011, mailed to:

Bruce G. Harris
900 2nd Street NE
Mandan, ND 58554



Charles R. Isakson