20100220

SUPREME COURT CASE NO. 20100220

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

SEP 16 2010

STATE OF NORTH DAKOTA

IN THE SUPREME COURT OF NORTH DAKOTA

Robert Adell Brown,

Appellant,

vs.

MONTANA-DAKOTA UTILITIES CO.,
AND
CITY OF HALLIDAY, NORTH DAKOTA,

Appellee(s).

Civil Appeal From Summary Judgment And Order

IN DISTRICT COURT, SOUTHWEST JUDICIAL DISTRICT,

COUNTY OF DUNN, STATE OF NORTH DAKOTA.

APPELLANT'S AMENDED OPENING BRIEF

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TABLE OF AUTHORITIES

CASES

SANDERSON V. WALSH COUNTY, 2006 ND 83, 712 N.W. 2d 842, 2006 N.D. LEXIS 88 (Apr. 21, 2006).

CHOICE FIN GROUP v. SCHELLPFEFFER, 2006 ND 87, 712 N.W. 2d 855, 2006 N.D. LEXIS 90 (Apr.25, 2006).

STATUTES AND RULES

Rule 3(a)(1) NDRAP

Rule 4(1) NDRAP

Section 69-02-02-02 North Dakota Administrative Code

Section 69-09-02-05.1 North Dakota Administrative Code

Section 49-02-11, North Dakota Century Code

Section 35-03-04 North Dakota Century Code

OTHER

Pharmacy Initiative vs Al Jager , State of North Dakota

JURISDICTION

Filing the notice of appeal. Rule 3(a)(1)NDRAP:3(1)An appeal permitted by law as a right from a district court to the supreme court may be taken only by filing a notice of appeal with the clerk of district court by rule 4, North Dakota Rule(s) of Appellate Procedure.

II. Appeal when taken . Rule 4(1)NDRAP.

Appeal in Civil Case .

Time for filing notice of appeal. In a civil case, the notice of appeal required by rule 3 must be filed with the clerk of district court within 60 days from service of entry of the judgment or order being appealed.

(Rule 4(1)NDRAP)

I. STATEMENT OF THE ISSUE

Whether, constitutionally, is it lawful or reasonable for any utility provider of public services such as heat and water, necessities for life to deny this senior citizen heat and water during the alpine winter or any other season in the state of North Dakota.

II. STATEMENT OF THE CASE

Separate and unequal treatment in the delivery of life sustaining public utilities, heat, water, garbage collection and sewer service for the purpose of maintaining the status quo.

III. STATEMENT OF FACTS

The primary focus in this case was to create such a hopelessly painful living environment that Robert Brown would abandon his home in Halliday, North Dakota, or perish from exposure to hypothermia.

IV. SUMMARY OF THE ARGUMENT

The district court's dismissal of the complaint was improper, capricious and disappointing; Moreover, the concept of denial does not and will not act as a bar to suppress the legitimate pursuit for human and civil rights.

V. ARGUMENT

There are three essential and compelling parts of this discussion; Whereas, the district court aborted and short circuited this legal adventure, genuine issues of dispute remain unresolved.

1. STONEWALLING PRETRIAL PREPARATION

(a). Independent legal counsel unavailable and indifference to the needs and concerns of this appellant.

(b). As a senior citizen residing in rural western North Dakota, it is unconstitutional and unreasonable to apply with specificity the North Dakota Century Codes/Rules of Civil Procedure when accessibility to a computer, research materials including pleading paper is more than 100 miles away. Furthermore, in the ideal world, and western North Dakota (Halliday) is not, access, diversity and equal opportunities are non-existant.

(c). There has been a pattern of dirty tricks by the local postmaster in Halliday, North Dakota, regarding the selective delivery of residential, personal and important mail addressed to Robert A. Brown at 118 2nd St., NW, Halliday, North Dakota 58636. [See Clerk's Certificate of Record dated: August 26, 2010] Also [Item No. 43, Brief In Support: DISTRICT COURT LACKS JURISDICTION] And [Item No. 44, LETTER FROM ZUGER KIRMIS & SMITH--RETURNED MAIL] Dated: 05/04/2010 and 05/05/2010.

II. INSTITUTIONAL CONSPIRACY

The Postmaster in the City of Halliday, Montana-Dakota Utilities Company, Inc., the City of Halliday, North Dakota dba for profit provider of Water, Sewer and Garbage Collections Services. The aforementioned did conspire together and collectively in concert to deprive Robert Brown of his home and personal property.

[Prerequisites for recordation-Post-office address of mortgage or assignee. The recorder may not record a mortgage of real property unless the mortgage contains the post-office address of the mortgagee. An assignment of a mortgage on real property which does not contain the post-office address of the assignee may not be received for record.] North Dakota Century Code 35-03-04.

III. MONTANA-DAKOTA UTILITIES COMPANY AND CITY OF HALLIDAY, NORTH DAKOTA .

(a). Section 69-09-02-05.1 of the North Dakota Administrative Code requires "Personal notice by delivery is required"; prior to shutting off the utilities of anyone 65 years of age. Moreover, Montana Dakota Utilities company shall be held to the same standard of review as any other provider of public services. The language of the administrative code does not propound the theory that once a termination of service door hanger is placed at a residence the notice remains valid several months in the future. Furthermore, the door hanger may possibly be removed by a stranger or be placed/hung on the wrong residence;

Whereas, "Personal Service", "Personal notice" by delivery unqualified, means actual service by delivering to the person

and not to a proxy.

[Sanderson v. Walsh County, 2006 ND83, 712 N.W. 2d 842, 2006 N.D. Lexis 88 (Apr. 21, 2006.]

(b). Also, the transcript of the oral argument hearing conducted on April 26, 2010, page 5 linel7 and 18--if we were going by the legal term "personal service" under Rule 4, I don't believe we've met the strict requirements of Rule 4. Furthermore, transcript, page 5, lines 24 and 25, ...But I will concede if the Court deems personal notice to be personal service under....page 6, line 1, Rule 4. Technically we did not comply.

(c). The use of water as a weapon by the city of Halliday, North Dakota was unlawful, cruel and inhumane treatment; Water, a necessity for life and for a senior citizen the absence of water is truly a death sentence.

(d). Appellant was punished and humiliated by the City of Halliday, North Dakota through the misuse of the U.S. Postal Service, a punishable crime and padlocking the only drinking fawcett in town.

CONCLUSION

1. Remand this case to the district court for trial ,
2. Set aside the Summary Judgment
3. Costs to be borne by Defendants, as the price for doing business.

Dated: September 16, 2010

Respectfully submitted:

Robert Adell Brown

Robert Adell Brown

CERTIFICATE OF SERVICE

I hereby certify that true copies of Appellant's Amended Opening Brief were placed into sealed envelopes with first class postage pre-paid and deposited into the United States Postal Service addressed as follows:

1. Supreme Court of North Dakota
   Office of the Clerk
   600 E. Boulevard Avenue, Dept. 180
   Bismarck, ND 58505-0530

2. Paul Sanderson
   P.O. Box 1695
   Bismarck, ND 58502-1695

3. Smith Bakke Porsborg & Schweigert
   P.O.Box 460
   Bismarck, ND 58502-0460

Dated: September 16, 2010

Submitted by:

Robert Brown

CERTIFICATION OF COMPLIANCE

I hereby certify that Appellant's Amended Opening Brief was not prepared on a computer or word processor. Rule 31(1)(C).NDRAP.

Dated: September 16, 2010

by: Robert Brown
Robert Brown