

IN THE SUPREME COURT  
 STATE OF NORTH DAKOTA

Kayla Rath,	)	
	)	
	)	
Plaintiff and	)	Supreme Court No. 20130184; Civil Case No. 08-
Appellee,	)	2013-DM-00078
	)	
vs.	)	
	)	
Mark Rath,	)	
	)	
	)	
Defendant and	)	
Appellant.	)	

---

APPELLANTS PETITION FOR REHEARING,  
 Motion to consolidate and post-pone decision pending further appeals

---

Mark Rath  
 1021 W. St. Benedict Dr  
 Bismarck, ND 58501  
 701-516-4142  
 Pro Se Litigant

## TABLE OF CONTENTS

---

	<u>Page</u>
<u>Table of Authorities</u>	3
I. <u>Statement of issues</u>	4
II. <u>Statement of Case</u>	4
III. <u>Statement of Facts</u>	4
IV. <u>Legal argument</u>	4
a. <u>Over-looked facts</u>	5
i. <u>Kayla Admitted to what Mark alleged</u>	5
V. <u>Conclusion</u>	6

---

## TABLE OF AUTHORITIES

<b><u>CASE LAW:</u></b>	<b><u>PARAGRAPH NO.</u></b>
<u>BeauLac v. BeauLac</u> , 2002 ND 126, ¶ 10, 649 N.W.2d 210”	6, 11-15
<u>Dinius v. Dinius</u> , 1997 ND 115, 564 N.W.2d 300	10, 11-15
<u>Dschaak v. Dschaak</u> , 479 N.W.2d 484, 487 (N.D. 1992)	5, 11-15
<u>Gardebring v. Rizzo</u> , 269 N.W.2d 104 (N.D. 1978)	8, 11-15
<u>Hendrickson v. Hendrickson</u> , 1999 ND 37, ¶ 13, 590 N.W.2d 220	7, 11-15
<u>Johnson v. Schlotman</u> , 502 N.W.2d 831 (N.D. 1993)	9, 11-15

I. Statement of the Issues

[1] Did the conversation truly rise to a level that warranted Kayla's interference?

[2] Why does Mark have no right to parent his children during his parenting time and does that not legally defeat the purpose of the court's order?

[3] Why does Kayla get to use the minor children to argue with Mark in violation of the order, then end Mark's conversation because she is telling the children not to have open, honest communication with him?

II. Statement of the case

[3] Under N.D.R.App.P. 40, a Petition For Rehearing is applied for regarding the N.D. Supreme Court Opinion that was filed on December 19, 2013. Affirming the district court's decision failing to hold Kayla in contempt of court.

III. Statement of facts

[4] Appellants Briefs, affidavits and evidence provided for this court were sufficient to warrant an abuse of discretion on part of the Fact-finder.

IV. Legal Argument

a. Over-looked facts

[5] "Unlike custody, visitation between a child and a noncustodial parent is not merely a privilege of the noncustodial parent, but a right of the child, and the noncustodial parent is deprived of visitation only if "visitation is likely to endanger the child's physical or emotional health." *Dschaak v. Dschaak*, 479 N.W.2d 484, 487 (N.D. 1992) quoting NDCC 14-05-22(2)."

[6] "In a civil contempt proceeding, a complainant must clearly and satisfactorily show that the alleged contempt has been committed. Civil contempt requires a willful and inexcusable intent to violate a court order. When reviewing a contempt sentence, the ultimate determination of whether or not a contempt has been committed is within the trial court's sound discretion. A trial court's finding of contempt will not be overturned unless there is a clear abuse of discretion.. *BeauLac v. BeauLac*, 2002 ND 126, ¶ 10, 649 N.W.2d 210"

[7] We have recognized the need for trial court flexibility in visitation arrangements to foster the parent-child relationship when the custodial parent is frustrating visitation with the noncustodial parent. See *Hendrickson v. Hendrickson*, 1999 ND 37, ¶ 13, 590 N.W.2d 220

[8] "minor children are entitled to the love and companionship of both parents insofar as this is possible and consistent with their welfare", Gardebring v. Rizzo, 269 N.W.2d 104 (N.D. 1978)

[9] "physical or emotional harm resulting from the visitation must be demonstrated in detail, and we will not simply assume or surmise such harm. Hanson v. Hanson, 404 N.W.2d 460 (N.D. 1987). An order denying visitation must be based on the preponderance of the evidence. Healy v. Healy, 397 N.W.2d 71 (N.D. 1986). Absent a detailed demonstration of harm, such a restriction appears punitive." Johnson v. Schlotman, 502 N.W.2d 831 (N.D. 1993)

[10] "[Parents] may use reasonable force upon the minor for the purpose of safeguarding or promoting his welfare, including prevention and punishment of his misconduct, and the maintenance of proper discipline.... The force used must not create a substantial 303\*303 risk of death, serious bodily injury, disfigurement, or gross degradation." Dinius v. Dinius, 1997 ND 115, 564 N.W.2d 300

i. Kayla admitted to what Mark was saying.

[11] First and foremost, it strongly needs to be emphasized, That Kayla is not the only parent to H.R and A.R, Kayla is not the only parent that has rights to provide guidance and discipline the minor children for negative behaviors. Kayla might be the custodial parent of the Children, however, that does not give her a right to interfere in Mark and the children's relationship, especially A.R if nothing bad has happened between them, because without evidence that Mark and A.R conversation was inappropriate, there is no supporting facts or evidence to support Kayla's interference with the parent-child relationship and this court, and the trial courts opinion and ruling is punishing Mark and his youngest daughter for contact with another human being, that defeats all purpose of the importance of the parent child relationship. Id

[12] Second it needs to be strongly emphasized that, Kayla blames Mark for the problems with the phone calls, however, as she even stated in her Affidavit "I told H.R to tell him", Also Kayla told H.R a lot more that night, she told Mark, through H.R to talk to Bobbi, Kayla has been doing this kind of thing for over the past year, but that is actually very irrelevant to Mark's actual claim in this matter, to clarify, though Mark does not and will not ever agree that the conversation was inappropriate enough to interfere with his parenting time, this court and the district court over-look the major issue, Kayla did not allow Mark to speak to A.R based on his conversation with H.R. Id

[13] As a parent, it is a very well-known fact, that you are not always going to make your children happy, you are going to have bad conversations with one of your children, you are not always going to say the best thing or the right thing, you are going to make your children cry

from time to time, as a parent, sometimes you have to do what is best for them in your opinion, even if the other parent does not agree with it, or if the courts do not agree with it, this court cannot tell me Mark how to parent his children anymore; than it can tell Mark he cannot breathe. However, again denying Mark and A.R to talk based on a bad conversation with H.R, is not appropriate and Kayla has been doing it and Mark has been continually denied relief from this course of Action. Id

[14] Kayla cannot deprive A.R the right to talk to her father, because H.R and Mark have a bad conversation. There is more than one parent-child relationship governed by this order. Id

[15] Where this court states that the submitted conversation bolsters Kayla's argument, what this court is not aware of, are the facts to be presented with the facts and evidence of the newest appeal to be brought to this court. Kayla Rath and attorney bobbi weiler are persistent in attempting to get Mark in trouble with the courts and other legal agencies to get their way in this divorce case. Kayla has also continually lied to the courts as has her attorney, this has most presently been proven in the last hearing between the parties, where Kayla falsified evidence to get her way and justify interfering with the parent child relationship completely between Mark and the children.

#### V. CONCLUSION

[23] However, the case, what is justice and rights if obtained through an unjust and immoral act or manner, surely this court will see that the district court has been un-naturally cruel to me, has violated my rights and has continued to do so just because I can't afford to appeal every single decision, this is not justice, it is abuse of power and perverse to what legislature and this superior court have defined as a status quid pro quo of the parenting relationship with the children. This court stated at the hearing that I use the contempt matter for small issues, however, that's far from the truth, though I am really bad with dates, times, ect, I do not try to hold Kayla in contempt for just one or two small things, it's a building of things over a period of time, such as Kayla not having the children call every night she is ordered to, or not attempting to work anything out with me, where Kayla and Mrs. Weiler are pro's at manipulation of facts and evidence, which this court will be treated to in the next appeal, since a majority of the issues regarding Judge Reich's ruling in that matter is identical to this issue, it is as I have stated multiple times an escalating issue, granted these might be small issues to some, might be small issues in relevance to law, but these small issues are creating much bigger issues, creating arguments caused by both parents, not just myself, creating a very bias and prejudiced order against myself, though my conversation with H.R may not have been the most appropriate, it was

not enough to deny me communication with A.R that night, but yet this court and the district court do not even address such violations to A.R's right to talk to me, So I argue that as a result of everything, not just this single little issue, but as a whole unity of the ongoing issues of Kayla's frustration on my parenting time with the minor children, I seek this court to reconsider on all of the facts herein, this is more than just one or two bad conversations with the minor children, this is common sense, parenting and respect for all parties involved, the court issued its order knowing all of the facts and Kayla and I are bound by this order within reason, that reason is not Kayla escalating the phone call by teaching the children to argue with me or lie to me.

/s/Mark Rath

Mark Rath

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Responsive Brief of Defendant - Appellant, Mark Rath, was on the 7th day of February, 2014, served electronically to the following:

Bobbi Weiler.

/s/Mark Rath

Mark Rath