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STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA

No. 20130365

IN THE MATTER OF THE EMEILIA HIRSCH, JUNE 9, 1994 IRREVOCABLE
TRUST

APPELLANT'S BRIEF

Appeal from the September 9, 2013 Amended Order for
Judgment and October 10, 2013 Order
of the District Court
Burleigh County
South Central Judicial District
Honorable Gail Hagerty
Case No. 08-03-C-2228

Timothy R. Betz
5118 Hayden Ln
Fayetteville, NC 28304
(910) 429-8362
Appellant

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STATEMENT OF THE ISSUES

Did the trial court error in issuing an Amended Order for Judgment, after the trial court vacated the September 25, 2012 Order for Judgment with the October 8, 2012 Order?

Did the trial court error in imposing interest in the Amended Order for Judgment dated September 9, 2013 all the way back to the Order for Judgment dated September 25, 2012?

Did the trial court error in failing to have a hearing on the Objections to Costs for the September 25, 2012 Order and Judgment, Motion for Relief from the Order for Judgment September 25, 2012 and Objections to Cost and Interest for the September 9, 2013 Amended Order for Judgment under Rule 54?

Did the trial court fail to comply with N.D.R.Civ.P.11(c)(5)(b) limitations on monetary sanctions?

STATEMENT OF THE CASE

This action was commenced in July 8, 2003 by the petitioner, Emelia Hirsch as a Petition for Dissolution of the Emelia Hirsch June 9, 1994 Irrevocable Trust. The petitioner claimed that she sought dissolution due to the fact that said trust was not functioning for the purpose which Emelia Hirsch intended. Tom Secrest, Attorney at Law, assisted Emelia with the preparation and funding of the Irrevocable Trust.

The beneficiaries of the Emelia Hirsch June 9, 1994 (hereinafter "Irrevocable Trust") are Emelia Hirsch's three children, namely: Caroline F. Twite, Marlene M. Betz and Duane J. Hirsch; and her ten grandchildren, namely: Cynthia Knudson, Janelle

Gildemeister, Andre Twite, Rebecca Derosa (f/k/a Becky Twite), Timothy Betz, Alan Betz, Carolyn Dupras, Danielle M. Hirsch, Matthew D. Hirsch and Jennifer Hirsch Hummel.

The Trustor, Emelia Hirsch, appointed one of her daughters, Caroline F. Twite, and her son, Duane J. Hirsch, as Co-Trustees of the Irrevocable Trust. However, Caroline Twite and Duane Hirsch were unaware of their duties as co-trustees and on November 6th, 2003, the Honorable Thomas Schneider, Judge of Burleigh District Court, ordered in Timothy Betz v. Caroline Twite and Duane Hirsch , Civil No. 01-C-2371 that because there had been "...questionable practices occurring..." within the Trust, Marlene Betz was to be appointed as a Co-Trustee with Caroline Twite and Duane Hirsch. Subsequently, an Order was entered by Judge Hagerty in this case on January 11,2005, providing in relevant part that the Trustees are to present a plan for distribution of the Irrevocable Trust within 60 days. The Trustees were unable to do so and on September 7. 2005 the Court ordered to remove them as trustees and appointed Attorney John Grinsteiner as Successor Trustee of the Irrevocable Trust. Attorney John Grinsteiner motioned the Court to be removed as Successor Trustee and on August 30,2006 the Honorable Gail Hagerty granted permission for him to withdraw as trustee. The Court then appointed Wagner Law Firm, PC as successor trustee.

On July 16, 2008, the Honorable Gail Hagerty entered an Order which accepted and approved the Emelia Hirsch Trust, Dated June 9, 1994; thereby reforming, superceding and replacing the Irrevocable Trust. The appellant appealed to the Supreme Court of North Dakota, No. 20080209 affirming the July 16, 2008 Order.

STATEMENT OF THE FACTS

I filed my Motion to vacate the July 16, 2008 Reformation Order on January 9, 2012. Carolyn Twite and Duane Hirsch as co-trustees through their attorney submitted a response with a motion for contempt, restraining order, injunctive relief, attorney fees and sanctions under N.D.R.Civ.P. 11(c) along with an application for order to show cause (Appendix at 24) [hereinafter “A” at 24] on January 26, 2012.

On January 31, 2012, Mr. Smith, the attorney for the trustees, sent out two notices of hearing (A at 24) and (A at 47). The hearing was scheduled for Monday, May 7, 2012.

In the May 8, 2012 Order, (A at 63) the court states in part:

On January 27, 2012, the Court entered an Order to Show Cause directing Timothy Betz to appear and show cause why he should not be found in contempt for failure to comply with the Court’s Orders dated April 21, 2011, and June 14, 2011.

I was never served the Order to Show Cause and the case summary (A at 24) does not reflect the Order was signed or served (A at 24).

In the matter of the Estate of Emelia Hirsch, Deceased, Southwest Judicial District, Notice of Trial, scheduled for February 10, 2012, at 9:00 a.m. (A at 46). In the verified statement of Attorney Fees, Costs and Disbursements, presented to the court on May 7, 2012. In the Attorney Fee Summary (A at 60) it states in part under 2-09-12:

File and Receive e-mail from Robin Ulrich: Clerk of Court re: summary of actions pending before Court – Robin states believes Judge Herauf wants to address all issues pertaining to trust (claims pertaining to trust & actions to revoke Order reforming trust).

A letter sent to Judge Hagerty, dated September 20, 2013, (A at 99), Mr. Smith states in part:

The Betz family used the probate case to deplete trust assets by filing pleadings, demands and requests, even upon being informed by Judge Herauf that the matters presented were trust issues. Judge Herauf denied their claims and I believe he denied the fees requested because the issues were trust related versus estate. Those fees and expenses were extended to the trust, Carolyn Twite and Duane Hirsch.

It should also be noted that Carolyn Twite and Duane Hirsch are one and the same representatives for the Estate and trustees for the Trust.

At the May 7, 2012 hearing, for the trust, Mr. Smith presented his verified statement of Attorney Fees, Costs and Disbursements, (A at 49), to the Court. The costs for attorney fees, costs and disbursements, Mr. Smith seeks, were previously denied by Judge Herauf at the Probate Trial on February 10, 2012. At the Probate Hearing, Mr. Smith was clearly denied receipt of any attorney fees, costs and disbursements by Judge Herauf, but now seeks the same attorney fees, costs and disbursements denied on said date. Carolyn Twite and Duane Hirsch should have been compensated or paid through the Estate and not the Trust, as the Trust is not part of the Estate.

On May 7, 2012, a hearing was held for which I did not appear. On May 8, 2012, an Order for Judgment was issued by Judge Hagerty (A at 63).

On September 25, 2012, Notice of Entry of Order and Judgment, (A at 68), was issued by Judge Hagerty.

On October 1, 2012, Timothy Betz's Objections to Costs for the September 25, 2012 Order and Judgment, (A at 74), was filed.

On October 3, 2012, Brief in Support of Motion for Relief From the Order for Judgment, dated September 25, 2012, (A at 77), was filed.

On October 8, 2012, an Order vacating the September 25, 2012 Judgment, (A at 68), was signed by Judge Hagerty, (A at 85).

On October 30, 2012, a Notice, (A at 86), was signed by Judge Hagerty. The Notice states in part:

When there was an objection, I temporarily vacated the judgments. The court vacated the Judgment and did not suspend the Judgment.

It is also noted that the Notice, (A at 86), dated October 30, 2012, does not appear in the Case Summary, (A at 32).

On September 9, 2013, an Amended Order for Judgment, (A at 88), states in part:

IT IS HEREBY ORDERED, that the Notice, of October 30, 2012 is re-affirmed and the September 25, 2012 Judgment granting monetary judgment in favor of Emelia Hirsh June 9, 1994 Trust (f/k/a Emelia Hirsh June 9, 1994 Irrevocable Trust): against Timothy Betz and Allen Betz is reinstated.

It also states in part:

Interest accrues at the rate of 6.5%, as allowed by law, on this amount from the date of September 25, 2012 and continues until principal and interest are paid in full, (A at 89).

On September 16, 2013, Timothy Betz's Objections to Cost and Interest for the September 9, 2013 Amended Order for Judgment, (A at 93) was filed.

On September 20, 2013, Mr. Smith sent a letter to Judge Hagerty, (A at 99), requesting whether or not, Carolyn Twite and Duane Hirsch, are required to file a response to Timothy Betz's Objections to Cost and Interest for the September 9, 2013 Amended Order for Judgment, (A at 93).

On September 20, 2013, an Order was signed by Judge Hagerty, (A at 101), stating:

No response is required with regard to Timothy Betz's Objections to Costs and Interest. I will not be taking any action based on that document. I am not able to issue orders concerning a Hettinger County action.

On October 10, 2013, an Order was signed by Judge Hagerty, (A at 102), stating:

The motion for a hearing under Rule 54, Objections to Cost, Motion for hearing on the October 5, 2012 Motion for Relief and 2012 Motion for Relief are denied. This matter has been fully litigated and reviewed and is closed.

On November 8, 2013, Notice of Appeal for the September 9, 2013 Amended Order for Judgment, October 10, 2013 Order, and a Notice of Intent was filed, (A at 103).

STANDARD OF REVIEW

Questions of law are fully reviewable on appeal. Kienzle v. Selensky, 2007 ND167, 9, 740 N. W.2d 393. Interpretation of a statute is a question of law fully reviewable on appeal. Pryatel v. T.E., 2007 ND 166, 7, 740 N.W.2d 100. The primary objective in interpreting a statute is to determine the legislature's intent. Id.

LAW AND ARGUMENT

Did the trial court error in issuing an Amended Order for Judgment, after the trial court vacated the September 25, 2012 Order for Judgment with the October 8, 2012 Order?

The court was clear in the October 8, 2012 Order, (A at 85), that the Judgment was vacated. The Judgment was not suspended, therefore the Notice, (A at 86), dated October 30, 2012 could not be correct in stating the Order for Judgment was temporarily vacated. The Notice (A at 86) is also not included in the Case Summary, (A at 32), and is therefore not part of the court record. The Amended Order for Judgment, (A at 88), dated September 9, 2013 references the Notice, (A at 86), and not the Order (A at 85). The

Amended Order for Judgment, (A at 88), in short, states the Notice, (A at 86), is reaffirmed and the September 25, 2012, Judgment is reinstated. The Notice, (A at 86) cannot amend an Order for Judgment to vacate, (A at 85), and subsequently be included in an Amended Order for Judgment, (A at 88), when the Notice, (A at 86) is not included in the Case Summary, (A at 32). The Trustees wanted an Amended Order for Judgment on an Order that had previously been vacated, (A at 85), dated October 8, 2012. Therefore, if the Trustees did not agree with the October 8, 2012, Order, (A at 85), vacating the September 25, 2012 Order For Judgment, (A at 68), the Trustees had an option to appeal the Judgment not file for an Amended Order for Judgment, (A at 88).

Did the trial court error in imposing interest in the Amended Order for Judgment dated September 9, 2013 all the way back to the Order for Judgment dated September 25, 2012?

The September 9, 2013, Amended Order for Judgment, (A at 89) states in part:

Interest accrues at the rate of 6.5%, as allowed by law, on this amount from the date of September 25, 2012 and continues until principal and interest are paid in full.

Mr. Smith wrote the September 9, 2012, Order for Judgment, (A at 88), and submitted the Order for signature to Judge Hagerty. It is clear to me that one of two things happened:

- Judge Hagerty did not read the Order and just signed it.
- Judge Hagerty is so bias that this was an attempt to impose more punishment upon me.

The Court cannot impose interest on an Order it had already vacated, (A at 85), thereby brining any monies owed to a balance of zero. The Trustees act or imply that the Order, (A at 68), was never vacated.

Did the trial court error in failing to have a hearing on the Objections to Costs for the September 25, 2012 Order and Judgment, Motion for Relief from the Order for Judgment September 25, 2012 and Objections to Cost and Interest for the September 9, 2013 Amended Order for Judgment under Rule 54?

The Representatives for the Estate of Emelia Hirsch / Trustees of the Emelia Hirsch Trust Dated June 9, 1994. Carolyn Twite and Duane Hirsch thru their attorney Sheldon A. Smith willingly and knowingly turned in a fraudulent Verified Statement of Attorney fees, Costs and Disbursement and lied to the Court. In the Verified Statement of Attorney fees, Costs and Disbursement, is Sheldon Smiths sworn statement (A at 51) which stated, in part:

13. Attached is an itemized billing showing the time, costs disbursements expended in handling the issues related to the actions of Timothy Betz, Marlene Betz and Allen Betz in the above-entitled case.

16. That the following Statement of Attorney Fees by and on behalf of Carolyn Twite and Duane Hirsch in said action is just, true and correct, and has necessarily been paid and incurred by Carolyn Twite and Duane Hirsch in this action.

17. That the following Statement of Costs and Disbursements / Expenses by and on behalf of Carolyn Twite and Duane Hirsch in said action is just, true and correct, and has necessarily been paid and incurred by the aforementioned plaintiffs in this action, to wit:

(A at 52) Attorney Fees Total \$12,808.50 Costs \$15.00
Disbursements / Expenses \$1,496.50 = Total Fees, Costs and Disbursements \$14,320.00

This Verified Statement of Attorney fees, Costs and Disbursement was done for the Estate of Emelia Hirsch, Probate Case No. 21-10-P00017. Judge Herauf denied the request for attorney fees. In the attorney fees summary, costs and disbursement the dates

and descriptions match the dates of the Probate case. I turned in my motion to vacate the July 16, 2008 Order on January 9, 2012. The Attorney fees start on July 19, 2011 and end on February 28, 2012. Here are just a few of the dates and descriptions out of the Attorney Fee Summary (A at 58, 59, 60) done for the probate case:

1. 1-27-12 Prepare for hearing in Hettinger County District Court w/ Judge Herauf;
2. 2-06-12 Work on letter to Judge Herauf,
3. 2-06-12 Work on Response and Objection to motion of Carolyn Dupras to
continue trial (hearing) (Letter to Judge Herauf).
4. 2-09-12 Prepare for Trial – Probate
5. 2-09-12 Work on trial preparation – Probate
6. 2-10-12 Review file, Travel to Dickinson, Attend hearing / trial; Meet w/ clients,
Travel to Bismarck

Disbursements / Expenses: (A at 52)

Mileage of Attorney, Sheldon A. Smith - Probate

Airline flight and parking fees of trustee, Duane Hirsch to attend hearing
(flight from out of state). - Probate

Mileage: (Trustee, Duane Hirsch): travel from Burnsville to Bismarck

(450 miles x 2 = \$900 x \$.50/mile - Probate

Per diem for Trustee, Duane Hirsch @ \$25.00 / day @ 8 days

N.D.R.Civ.P. 4(b) Personal Jurisdiction Based on Presence or Enduring Relationship. A court of this state may exercise personal jurisdiction over a person found within, domiciled in, organized under the laws of, or maintaining a principal place of

business in, this state as to any claim for relief. I argue that the district court did not have personal jurisdiction over me. *Western Life Trust v. State*, 536 N.W.2d 709, 712 (N.D. 1995) (A district court without personal jurisdiction over a defendant "is powerless to do anything beyond dismissing without prejudice.").

Rule 4(c) Process.

(1) Contents of Summons. The summons must:

(B) contain the title of the action specifying the names of the parties;

(E) notify the defendant that, if the defendant fails to appear and defend, default judgment will be rendered against the defendant for the relief demanded in the complaint; and

Rule 11(c) Sanctions.

(2) Motion for Sanctions.

A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion, brief, and other supporting papers must be served under Rule 5, but must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. The respondent must have 10 days after a motion for sanctions is filed to serve and file and answer brief and other supporting papers. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction:

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

Rule 60(b) Grounds for Relief from a Final Judgment or Order. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(6) any other reason that justifies relief.

Rule 60(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(2) grant relief under Rule 4(e)(7) to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

In the Motion for Sanctions the Co-Trustees failed to comply with N.D.R.Civ.P.11(c) (2). The motion must be made separately from any other motion and must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service.

Rule 54. Judgment; Costs (e) Costs; Objections; Attorneys' Fees.

(2) Objections to Costs. Objections must be served and filed with the clerk within 14 days after notice of entry of judgment or within a longer time fixed by court order within the 14 days. The grounds for objections must be specified. If objections are filed, the clerk must promptly submit them to the judge who ordered the judgment. The court by ex parte order must fix a time for hearing the objections. Unless otherwise directed by the court, the parties may waive the right to a hearing and submit written argument instead within a time specified by the court.

Mr. Smith willingly and knowingly turned in a fraudulent Verified Statement of Attorney fees, Costs and Disbursement to the Court. Mr. Smith is perpetrating a fraud and misrepresentation on his true Attorney fees, Costs and Disbursement as they related to the case. Mr. Smith is charging fees and cost for work and travel that was never done or performed for this case, Civil No. 08-03-C-2228. The Court at no time heard my objections on attorneys' fees.

Did the trial court fail to comply with N.D.R.Civ.P.11(c) (5) (b) limitations on monetary sanctions?

Rule 11(c) Sanctions.

(2) Motion for Sanctions.

A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion, brief, and other supporting papers must be served under Rule 5, but must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. The respondent must have 10 days after a motion for sanctions is filed to serve and file and answer brief and other supporting papers. If warranted, the court may

award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction: (B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

The Court nor the Co-Trustees served me the Order to Show Cause, dated January 27, 2012, as of today I still have not seen the Order to Show Cause. The Co-Trustees had a responsibility to serve me with Order to Show Cause, which they requested.

But instead served me a Notice of Hearing, dated January 31, 2012 which stated, in part:

through their attorney submitted a response with a motion for contempt, restraining order, injunctive relief, attorney fees and sanctions along with an application for order to show cause.

Amended Notice of Hearing, dated February 13, 2012 which stated, in part:

Scheduled to be heard in the above captioned case before the Court are any and all motions pending by any and all parties at the time of the May 7, 2012 hearing.

The Co-Trustees submitted a Motion for Contempt of Court to the Court if they wanted me to be there they were required to serve me the Order to Show Cause or Summons. One of two things happened, either Mr. Smith did not know that the Court had signed the application for Order to Show Cause or he choose not to serve the Order to Show Cause. A Notice of Hearing is not an Order to Show Cause or Summons. Mr. Smith should have informed the Court that I was not served. By not doing so Mr. Smith misrepresented to the Court I was served the Order to Show Cause and that I knew to be

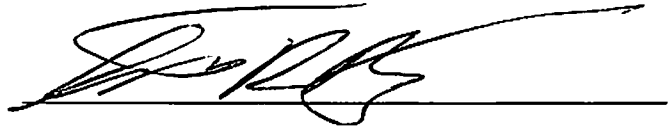
there in court. The Amended Notice of Hearing says nothing about an Order to Show Cause. I was not personally notified of the Order to Show Cause hearing.

CONCLUSION

It is clear that the District Court made errors. In consideration of the foregoing, Timothy Betz respectfully requests the Court provide the following relief:

1. Vacate the May 8, 2012 Order
2. Vacate the September 9, 2013 Amended Order for Judgment

Dated this __21st__ day of January, 2014

A handwritten signature in black ink, appearing to read 'Timothy R. Betz', is written over a horizontal line.

Timothy R. Betz
5118 Hayden Ln.
Fayetteville, NC 28304
(910) 429-8362
Appellant

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Timothy R. Betz
5118 Hayden Ln
Fayetteville, NC 28304
(910) 429-8362
Appellant

Supreme Court No. 20130365
District Court
Burleigh Co. Case No. 08-03-C-2228

In the Matter of the Emelia Hirsch June 9, 1994, Irrevocable Trust

Appeal from Order
South Central Judicial District Court,
Honorable Gail Hagerty, Presiding

AFFIDAIT OF SERVICE

The undersigned, being duly sworn, deposes and says that I am a citizen of the United States, over the age of 18 years and not a party to the above entitled matter, that on the __21st__ day of January, 2014, I served copies of the following:

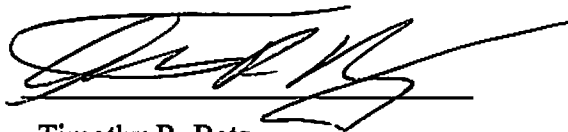
**APPELLANT'S BRIEF; and
APPENDIX TO APPELLANT'S BRIEF**

By placing true copies in postage paid envelopes addressed to the persons named below, at the addresses stated below which are the last known addresses of the addressees, and by depositing said envelopes in the United States mail, at Fayetteville, North Carolina;

David J. Smith
Attorney at Law
PO Box 460
Bismarck, ND 58502

Allen Betz, Emailed Marlene Betz, Emailed

I declare under penalty of perjury under the laws of the State of North Dakota that the foregoing is true and correct and that this declaration is executed on the __21st__ day of January, 2014.

A handwritten signature in black ink, appearing to read 'Timothy R. Betz', written over a horizontal line.

Timothy R. Betz

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Timothy R. Betz
5118 Hayden Ln
Fayetteville, NC 28304
(910) 429-8362
Appellant

Supreme Court No. 20130365

District Court
Burleigh Co. Case No. 08-03-C-2228

In the Matter of the Emelia Hirsch June 9, 1994, Irrevocable Trust

Appeal from Order
South Central Judicial District Court,
Honorable Gail Hagerty, Presiding

AFFIDAIT OF SERVICE

The undersigned, being duly sworn, deposes and says that I am a citizen of the United States, over the age of 18 years and not a party to the above entitled matter, that on the __21st__ day of January, 2014, I served copies of the following:

**APPELLANT'S BRIEF; and
APPENDIX TO APPELLANT'S BRIEF**

By placing true copies in postage paid envelopes addressed to the persons named below, at the addresses stated below which are the last known addresses of the addressees, and by depositing said envelopes in the United States mail, at Fayetteville, North Carolina;

Sheldon Smith
Attorney at Law
PO Box 460
Bismarck, ND 58502

Allen Betz, Emailed Marlene Betz, Emailed

I declare under penalty of perjury under the laws of the State of North Dakota that the foregoing is true and correct and that this declaration is executed on the ___21st___ day of January, 2014.

SS

Timothy R. Betz

A handwritten signature in black ink, appearing to read 'Timothy R. Betz', with a stylized, flowing script.