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IN THE SUPREME COURT OF NORTH DAKOTA

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Dakota Heritage Bank, )  
f/k/a First State Bank )  
of Gackle, )

Plaintiff and Appellee )

v. )

**Supreme Ct. No. 20140016**

Logan Co. No. 24-09-C-00113

Michael J. Iannacone, Trustee for the )  
Willard L. Pankonin bankruptcy estate, )  
Christi J. Pankonin, a/k/a Kristi J. )  
Pankonin, Laverle Carstensen, )  
Paul Modell, Marjorie Modell, )  
and Punchco, Inc., )

Defendants )

----- )  
Christi J. Pankonin, )

Appellant )

and )

Ralph Rivinius and LorRaine )  
Rivinius, )

Interested Parties )

**APPELLEE'S BRIEF**

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APPELLANT, CHRISTI J. PANKONIN

APPEALS FROM AN

ORDER AND JUDGMENT

IN LOGAN COUNTY, STATE OF NORTH DAKOTA

BY THE HONORABLE SONNA ANDERSON

Date: April 18, 2014

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## **I. STATEMENT OF THE CASE**

¶1 The Appellee, Dakota Heritage Bank (“Bank”) obtained a Judgment of Foreclosure against, among others, Christi J. Pankonin, the only Appellant herein (“Pankonin”) along with her husband, Willard J. Pankonin, (“Mr. Pankonin”) who later filed a bankruptcy case in Minnesota where Michael J. Iannacone was appointed the Chapter 7 Trustee (“Iannacone”). Doc. ID #29. The foreclosure affected farmland.

¶2 The foreclosure action was completed, and there were good faith purchasers at the two Sheriff’s Sale on Foreclosure. Both sales were confirmed. Doc. ID #s 40 and 42.

¶3 Likely because the farmland rapidly increased in value, Mr. Pankonin’s bankruptcy trustee, Iannacone, became interested, and obtained bankruptcy court authority to hire Timothy C. Lamb (“Lamb”) to attempt to un-do the foreclosure. Lamb also began representing Pankonin, and the result was a motion to vacate the judgment of foreclosure, a motion that was denied by the District Court, Doc. ID #36, a ruling that was affirmed by this Court. Doc. ID #160.

¶4 The Bank sought to have the Bankruptcy Court’s order authorizing Iannacone to hire Lamb vacated. This would have been the proper remedy and would have nipped all of this in the bud. Judge Anderson had postponed the hearing on Pankonin’s Rule 60 Motion to Vacate the Foreclosure Judgment, pending a ruling from the Bankruptcy Court. Doc. ID#s 77, 78, and 92. The Bankruptcy Court might have been embarrassed that it rubber stamped an application by Iannacone to hire Lamb, where Iannacone had done nothing to learn of Lamb’s knowledge, experience and training, or to substantiate his claim that Lamb could vacate a North Dakota Judgment of Foreclosure after the sales occurred, given Lamb’s record. Lamb sought to vacate the foreclosure judgment for the principle reason that there had been some violation of the

automatic stay because Mr. Pankonin filed a bankruptcy case after the Sheriff's Sales on Foreclosure. The law had been settled for 30 years in the 8<sup>th</sup> Circuit Court of Appeals that filing a bankruptcy case after Sheriff's Sales on Foreclosure does not prevent the foreclosure process from being concluded, nor prohibit the Sheriff's Deeds from being recorded. Appendix PP. 63-64.

¶5 True enough, the Bankruptcy Court refused to do so, choosing instead to ignore Lamb's record and Iannacone's failure to investigate Lamb and present a meaningful, detailed and accurate application to employ Lamb. Appendix PP. 60 and 61. The Bankruptcy Court's order refusing to disqualify Lamb is found at PP. 67 and 68 of the Appendix. But the Bankruptcy Court has given neither the Trustee, Pankonin nor Lamb any other relief against the Bank, other than allowing the Rule 60 Motion to be decided in North Dakota.

¶6 Also, true enough, Iannacone set out to defend Lamb, likely also being embarrassed that he had not investigated the claim, nor Lamb's ability to pursue it. Appendix PP. 69 through 71. Iannacone went so far as to criticize the Bank for bringing forth Lamb's public record, citing this Court's rulings, as something "scandalous or defamatory". The record speaks for itself and there is nothing scandalous or defamatory about this Court's rulings.

¶7 In any event, Trustee Iannacone has long since fired Lamb and threatened Lamb with a malpractice action. See Exhibits B and D attached to the Bank's Affidavit in Support of Motion to Dismiss Appeal as Untimely.

¶8 Meanwhile, when Judge Anderson denied the Rule 60 Motion to Vacate the Foreclosure, she also awarded the Bank its costs and disbursements "...without prejudice to any claim for attorney's fees in the event a motion for attorney's fees is filed and considered by the Court." Doc. ID#136.

¶9 This the Bank did by a motion served on July 2, 2012, Doc. ID #138. No notice of entry of Judge Anderson's June 6, 2012 Order had been served or filed before July 3, 2012.

¶10 Lamb's Brief in Opposition to Plaintiff's Motion for Attorney's Fees and Costs, Doc. ID# 147, argued many things, but never that the Bank's Motion was untimely.

¶11 On September 6, 2012, Judge Anderson filed her Order on Request for Sanctions, Doc. ID#155, and the Bank served and filed prompt Notice of Entry of that Order. Doc. ID#157.

¶12 But the Order was just that, an order, not a judgment that could be used to support garnishments, discovery under Rule 69, N.D.R. Civ. P., or other collection efforts.

¶13 The Bank chose to let the Order lie until this Court could rule on the appeal from the order denying Rule 60 relief, which occurred on March 20, 2013. Doc. ID #s 159 and 160.

¶14 The Bank submitted proposed findings and a proposed judgment to Judge Anderson to convert the Order into a judgment which could be enforced, which resulted in the judgment awarding reasonable, actual and statutory costs, including reasonable attorney's fees entered July 18, 2013, Doc. ID #168. This judgment awards the Bank judgment for \$2,100.00 jointly and severly against Iannacone, Pankonin, and Lamb himself.

¶15 The Bank has been attempting to collect the judgment against Lamb since he is the responsible party. Pankonin has lost her farmland, and is likely judgment proof.

¶16 On April 17, 2014, the Bank filed a Motion to Dismiss this Appeal pointing out that only Pankonin is an Appellant, had actual knowledge of the judgment at least 60 days before Pankonin filed her Notice of Appeal on January 10, 2014, and that both Iannacone and Lamb have had similar actual knowledge of the judgment, but have not yet filed a Notice of Appeal.

¶17 Even if the Bank's Motion to Dismiss is denied the Court hears Pankonin's appeal, and grants her relief, the best the Court can do is to vacate that part of the July 18, 2013

judgment making Pankonin jointly liable along with Iannacone and Lamb for the \$2,100.00. Since neither Iannacone nor Lamb have appealed, their joint and several liability remains.

¶18 So the overall effect of all of this is that the Bank foreclosed a farmland mortgage against, among others, Willard Pankonin and Pankonin, who were represented by Attorney Jon Brakke of the Vogel Law Firm at the time, the Sheriff's Sales on Foreclosure were confirmed, and one of the parties bidding at the sale did so on the basis of a current fair market real estate appraisal, with other totally unrelated good faith parties purchasing the balance of the property.

¶19 Then farmland values went up and both Mr. Pankonin's bankruptcy trustee in Minnesota, and Pankonin, here in North Dakota, get the idea that somehow Mr. Pankonin's bankruptcy filing could be a basis to undo the foreclosure.

¶20 There was never any support for this under federal or state law, and the district court properly denied Rule 60 relief, ordering appropriate sanctions, as the Bank informed everyone during November of 2011. Appendix PP. 62-66.

## **II. LAW AND ARGUMENT**

### **A. The Standard of Review**

¶21 The Bank agrees with Lamb that an award of attorney's fees is made within the sound discretion of the trial court, which discretion will not be reversed on appeal absent an abuse of discretion.

¶22 But Pankonin has done nothing to show that Judge Anderson abused her discretion. In fact, she exercised extreme restraint and deference in making the award she did.

### **B. Judge Anderson Did Not Abuse Her Discretion By Ignoring An Applicable Deadline**

¶23 Pankonin argues that the July 3, 2012 Motion for Sanctions, Doc. ID #138, was filed too late after Judge Anderson's June 6, 2012 Order, Doc. ID #136. Pankonin cites Rule 54(e)(3) N.D.R. Civ. P. which Pankonin says requires the motion to be filed within 21 days after

Notice of Entry of Judgment. See page 10 of Pankonin's Brief. But on that same page, Pankonin admits that there had been no Notice of Entry of Judgment filed by July 3, 2012. Thus, the 21 day deadline Pankonin says applies, never started to run.

¶24 Equally important, Pankonin's Brief in Opposition to the Motion for Sanctions filed July 17, 2012, Doc. ID #147, says nothing about Rule 54 N.D.R. Civ. P., or anything about timeliness. Pankonin has not raised this issue before, has waived it, and cannot raise it for the first time in this appeal. Although not raised by Pankonin, Rule 54(e)(3) N.D.R. Civ.P. allows a court to enter an award of attorney fees even after an appeal has been filed.

¶25 Pankonin complains that she only had 6 days to review the proposed order for judgment and judgment before it was entered, and is somehow prejudiced.

¶26 But it was Judge Anderson's order filed September 6, 2012 which awarded the \$2,100.00 in sanctions. Doc. ID#155. Thus everyone knew since September of 2012 that the obligation existed. All the joint and several judgment did over 10 months later on July 18, 2013, Doc. ID #169, was to make the earlier order effective and enforceable. The dollar amount is the same.

¶27 Judge Anderson has not abused her discretion in any way. She has shown marked restraint and has carefully exercised her inherent authority to control the conduct of parties and attorneys who have come before her.

### **III. IT IS NOT IMPROPER FOR THE BANK TO ATTEMPT TO COLLECT ITS JUDGMENT**

¶28 Pankonin complains that since the Bank did not serve and file a Notice of Entry of Judgment, it cannot collect the judgment.

¶29 First, as shown by the Bank's Motion to Dismiss this Appeal, it did serve Notice of Entry of Judgment immediately upon entry of the judgment and Pankonin through her attorney Lamb, obtained actual knowledge of the judgment.

¶30 Second, until and unless there is an order vacating a judgment or a stay pending appeal, once the automatic 14 day stay of Rule 62(a) N.D.R. Civ. P. expires, a judgment creditor is free to enforce or collect a judgment.

**IV. THERE HAS BEEN NO FLAGRANT PERSONAL ATTACK ON LAMB WARRANTING SANCTIONS**

¶31 Recall that the only Appellant is Pankonin. Thus, whether there have been personal attacks on Lamb or not, is an irrelevant issue.

¶32 The Minnesota Bankruptcy Court and the Minnesota Bankruptcy Trustee, who has now fired Lamb and threatened him with a malpractice action, were not interested in Mr. Lamb's background.

¶33 Lamb's record IN THIS Court as a result of its published decisions speaks for itself, and if the record and this Court's rulings are viewed by Lamb as a personal attack, so be it. There is no forbidden truth, there are no speech codes, there is a right to free speech, and a privilege applies to attorneys involved in court proceedings. Thus, no sanctions are available.

¶34 The Bankruptcy Court and Iannacone might have been embarrassed after learning about Lamb's history, but the history speaks for itself, just as the course of these proceedings and this appeal speak for themselves.

¶35 Any reference by Lamb to the Fair Debt Collection Practice's Act is misplaced. That Act applies only to "consumer debts" not attorney fee sanctions stemming from commercial litigation.

¶36 All of this should be viewed against the backdrop that Judge Anderson also had to enter an order compelling Lamb to respond to the Bank's interrogatories and request for production of documents to attempt to collect the money judgment, imposing another \$250.00 sanction. Doc. ID #188.

V. CONCLUSION AND PRECISE RELIEF SOUGHT

¶37 The Bank exercised its rights to regularly conduct and conclude a North Dakota foreclosure action where the principle defendants, Mr. Pankonin and Pankonin, were represented by prominent counsel, all along the way, and where the foreclosure action was closely supervised by the Court, which issued orders confirming all Sheriff's Sales on Foreclosure.

¶38 Judge Anderson correctly denied Rule 60 Relief, finding that the motion was frivolous, and awarding attorney fees. This Court affirmed that ruling.

¶39 The Bank has every right to collect the judgment.

¶40 This Appeal is by Pankonin only, and her appeal is untimely. The Court should grant the Bank's Motion to Dismiss Pankonin's Appeal.

¶41 There is nothing before the Court to do anything about Iannacone's and Lamb's joint and several obligation to pay the Bank the \$2,100.00 in the judgment from which Pankonin appeals.

¶42 The Court should either dismiss Pankonin's Appeal as Untimely, or should summarily affirm the judgment, without oral argument finding that Judge Anderson has not abused her discretion.

Dated this 18th day of April 2014.

RESPECTFULLY SUBMITTED,

/s/ Roger J. Minch

Roger J. Minch

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**ATTORNEYS FOR APPELLEE**

**DAKOTA HERITAGE BANK, fka**

**FIRST STATE BANK OF GACKLE**

**AFFIDAVIT OF SERVICE BY U.S. MAIL OR ELECTRONIC MAIL**

STATE OF NORTH DAKOTA       )  
  ) ss  
COUNTY OF CASS                )

Lesha K. Ladwig, being duly sworn, deposes and says that she is a resident of the City of Fargo, State of North Dakota, is of legal age; and that she served the within:

**Appellee's Brief**

on April 18, 2014, by placing a true and correct copy thereof by U.S. Mail or Electronic Mail to the following addresses, to-wit:

**Clerk of the Supreme Court  
North Dakota Supreme Court  
600 E Boulevard Ave.  
Dept. 180  
Bismarck, ND 58505-0040  
[supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov)**

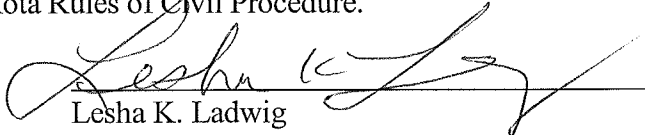
**Puncho, Inc.  
[larry\\_seckinger@uno.com](mailto:larry_seckinger@uno.com)**

**Mr. Timothy Lamb  
Attorney at Law  
PO Box 5562  
Grand Forks, ND 58206-5562  
[Lamb-law@earthlink.net](mailto:Lamb-law@earthlink.net)**

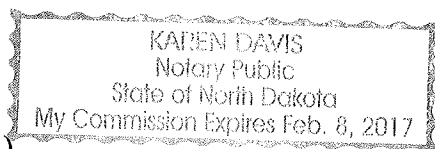
**Mr. LaRoy Baird  
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**Laverle Carstensen  
c/o David Carstensen  
503 Tenth Avenue  
Worthington, MN 56187**

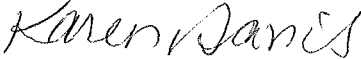
To the best of affiant's knowledge, the addresses above given are the actual post office addresses and emails of the parties intended to be so served. The above documents were mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

  
Lesha K. Ladwig

Subscribed and sworn to before me this 18th day of April 2014.



(SEAL)

  
\_\_\_\_\_  
Notary Public  
Cass County, North Dakota

**RE: Dakota Heritage Bank, f/k/a First State Bank of Gackle v. Michael J. Iannacone, Trustee for the Willard L. Pankonin Bankruptcy Estate, Christi J. Pankonin, a/k/a Kristi J. Pankonin, Laverle Carstensen, Paul Modell, Marjorie Modell, and Puncho, Inc.  
Supreme Court No. 20140016, Civil No. 24-09-C-00113**

**AFFIDAVIT OF SERVICE BY U.S. MAIL OR ELECTRONIC MAIL**

STATE OF NORTH DAKOTA        )  
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COUNTY OF CASS                )

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**Appellee's Brief**

on April 22, 2014, by placing a true and correct copy thereof by U.S. Mail or Electronic Mail to the following addresses, to-wit:

**Clerk of the Supreme Court  
North Dakota Supreme Court  
600 E Boulevard Ave.  
Dept. 180  
Bismarck, ND 58505-0040  
[supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov)**

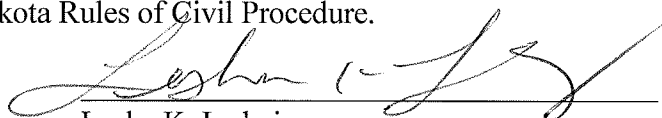
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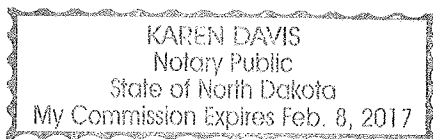
**Mr. LaRoy Baird  
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PO Box 913  
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[laroybaird@midco.net](mailto:laroybaird@midco.net)**

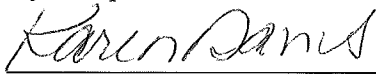
**Laverle Carstensen  
c/o David Carstensen  
503 Tenth Avenue  
Worthington, MN 56187**

To the best of affiant's knowledge, the addresses above given are the actual post office addresses and emails of the parties intended to be so served. The above documents were mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

  
Lesha K. Ladwig

Subscribed and sworn to before me this 22nd day of April 2014.



  
Notary Public  
Cass County, North Dakota

(SEAL)

**RE: Dakota Heritage Bank, f/k/a First State Bank of Gackle v. Michael J. Iannacone, Trustee for the Willard L. Pankonin Bankruptcy Estate, Christi J. Pankonin, a/k/a Kristi J. Pankonin, Laverle Carstensen, Paul Modell, Marjorie Modell, and Puncho, Inc.  
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