

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

**FILED**  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

**JUN 15 2015**

Kim Anderson,	)	
	)	STATE OF NORTH DAKOTA
Plaintiff, Appellee	)	
	)	
vs.	)	Supreme Court Case No.: 20150049
	)	
Biron Baker,	)	District Court No.: 30-10-C-00584
	)	
Defendant, Appellant	)	
	)	
State of North Dakota,	)	
	)	
Statutory Real Party	)	
In Interest.	)	

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**APPEAL FROM THE DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT  
MORTON COUNTY, NORTH DAKOTA  
THE HONORABLE DAVID REICH**

**BRIEF OF APPELLANT**

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### STATEMENT OF THE ISSUES

¶1 Did the district court err by failing to reconsider and reverse its finding of Defendant Biron Baker in contempt of Court for not reimbursing the Plaintiff Kim Anderson for uncovered medical expenses?

¶2 Did the district court err by failing to reconsider and reverse its award of \$1,750 of attorney's fees, which was \$750 more of attorney's fees than were requested by Plaintiff Kim Anderson, based on Defendant Biron Baker's decision to hire an attorney in the matter?

### STATEMENT OF THE CASE

¶3 The parties have a minor child together, KJA born in 2010. Complaint, Appendix, [p. 5]. Pursuant to a stipulated Judgment entered on June 10, 2011, the Plaintiff-Appellee Kim Anderson (hereinafter "Anderson") has primary residential responsibility of the minor child and Defendant-Appellant Biron Baker (hereinafter "Baker") has parenting time. Judgment, Appendix, [p. 10]. The Judgment further provides for child support, health insurance, and unreimbursed expenses. Id.

¶4 The Judgment has a specific provision that provides for reimbursement of uncovered medical expenses that identifies the requirements for both Appellant Baker and Appellee Anderson. Judgment, [p. 6], Appendix, [p. 15]. On page 6 of the Judgment, paragraph (I)(5) it states:

"Reimbursement shall be made within thirty (30) days of submission of documentation of payment by the party who incurred the child-related expense. The party incurring the child-related expense shall submit monthly requests for reimbursement for expenses incurred during the prior month." Id.

¶5 In July of 2013, Appellee Anderson presented Appellant Baker with a request to be reimbursed for uncovered medical expenses for the parties minor child that she had incurred since entry of Judgment (June 10, 2011). Order on Motion for Contempt, [p.4], Appendix, [p.22]. Appellee Anderson provided the explanation of benefits in August of 2013 to Appellant Baker. Id.

¶6 On December 6, 2014, after Appellant Baker communicated that he retained new counsel, a letter of correspondence was sent to counsel for Appellee Anderson asking her to forfeit the \$1,813.12 of past due medical expenses in exchange for her claiming the minor child for tax exemption purposes. Exhibit 2, Doc. ID#86.

¶7 One January 22, 2014, the Appellant Baker offered to make full payment of the medical expenses via email and letter correspondence. Exhibit 3, Doc. ID# 87. Despite the offer of full payment, one day later on January 23, 2014, the Appellee Anderson filed a motion for contempt and money judgment against the Appellant Baker in district court for him not reimbursing the medical expenses incurred for the parties' minor child. Motion for Contempt, Doc. ID# 62. The Appellant Baker filed a Response to the motion indicating the medical bills were not presented to him until two (2) years after they were incurred and that he offered to make payment for the medical expenses prior to Appellee Anderson filing her motion. Response to Motion, Doc. ID# 69. The Appellant Baker paid Appellee Anderson the medical bills in February of 2014 and prior to the hearing on Appellee's motion that was held by the district court on April 7, 2014. Order on Motion for Contempt, Appendix, [p. 19, 23].

¶8 On July 18, 2014, the district court entered its Order on Motion for Contempt and Order for Money Judgment. Id. The district court found that Appellee Anderson did not

submit her requests for reimbursement of uncovered medical expenses on a monthly basis as required by the Judgment, in fact waiting over two years after entry of Judgment to do so. Order on Motion for Contempt, Appendix, [p. 22]. The district court further found that despite Appellee Anderson waiting over two years, Appellant Baker was required to provide reimbursement within thirty (30) days of receiving the same. Order on Motion for Contempt, Appendix, [p. 23]. The district court further awarded Appellee Anderson attorney's fees based on Appellant Baker's decision to have communications and correspondence go through his attorney, rather than have communications with Appellee Anderson directly. Id.

¶9 On September 4, 2014, Appellant Baker filed his Rule 60 Motion for Reconsideration / Relief from Order asking the district court to reconsider its finding of him in contempt of court for not timely reimbursing medical expenses and for awarding attorney's fees based on his decision to retain an attorney. Rule 60 Motion, Doc.ID# 93. On December 22, 2014, the district court issued its Order Denying Motion to Reconsider, stating only, "Upon consideration of the motion, briefs, and file, Defendant's motion for reconsideration is DENIED." Order Denying Motion to Reconsider, Appendix, [p. 25].

#### STATEMENT OF FACTS

¶10 The parties have a minor child together, KJA born in 2010. Complaint, Appendix, [p. 5]. Pursuant to a stipulated Judgment entered on June 10, 2011, the Plaintiff-Appellee Kim Anderson (hereinafter "Anderson") has primary residential responsibility of the minor child and Defendant-Appellant Biron Baker (hereinafter "Baker") has parenting time.

Judgment, Appendix, [p. 10]. The Judgment further provides for child support, health insurance, and unreimbursed expenses. Id.

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stating only, “Upon consideration of the motion, briefs, and file, Defendant’s motion for reconsideration is DENIED.” Order Denying Motion to Reconsider, Appendix, [p. 25].

## LAW AND ARGUMENT

### A. Standard of Review

¶17 The district court's finding about whether a party is in contempt of the district court is an abuse of discretion standard of review. Millang v. Hahn, 1998 ND 152, ¶ 7, 582 N.W.2d 665. Determining whether contempt has been committed lies within the district court's sound discretion, which will not be overturned on appeal absent an abuse of that discretion. *Id.* “A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner or when it misinterprets or misapplies the law.” *Id.*

¶18 This Court reviews a district court's decision regarding attorney's fees under the abuse of discretion standard. City of Medora v. Golberg, 1997 ND 190, P18, 569 N.W.2d 257. A district court abuses its discretion if it acts in an arbitrary, unconscionable, or unreasonable manner, or if it misinterprets or misapplies the law. *Id.*

### B. The district court erred by finding contempt despite not having a specific provision in the Judgment that Appellant Baker could have violated.

¶19 “A party seeking a contempt sanction under N.D.C.C. ch. 27-10 must clearly and satisfactorily prove the alleged contempt was committed. Berg v. Berg, 2000 ND 37, ¶ 10, 606 N.W.2d 903; Flattum-Riemers v. Flattum-Riemers, 1999 ND 146, ¶ 5, 598 N.W.2d 499. Under N.D.C.C. § 27-10-01.1(1)(c), “contempt of court” includes “intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer.” Harger v. Harger, 2002 ND 76, ¶ 14, 644 N.W.2d 182. “To warrant a remedial sanction for

contempt, there must be a willful and inexcusable intent to violate a court order.” Harger, at ¶ 14; see also Berg, at ¶ 10; N.D.C.C. § 27-10-01.1(4).

¶20 In this case, it’s undisputed that the Judgment requires Appellee Anderson to provide monthly submissions of the medical bills incurred as they come in. The district court also made a finding that Appellee Anderson did not follow the Judgment as she waited over two years to present Appellant Baker with medical expenses for reimbursement. The Judgment does not have a paragraph or provision as to the amount of time Appellant Baker has to reimburse Appellee Anderson when she waits over 2 years after the judgment has been entered to provide him with expenses. As there is no specific provision the district court can allege Appellant Baker violated under this section, he can’t be found in contempt of the district court Judgment.

¶21 Clearly the Judgment requires Appellee Anderson to provide monthly requests for reimbursement of medical expenses as they are incurred, and when this happens, for Appellant Baker to reimburse her within thirty (30) days of receiving these receipts. However the Judgment doesn’t tell the parties what the time requirements are when Appellee Anderson doesn’t follow the judgment and waits over two (2) years to present a request for reimbursement of the medical expenses. A finding of contempt must have a specific provision that has been violated. Here, there is no specific provision of the Judgment that deals with the time Appellant Baker has to reimburse medical expenses when Appellee Anderson doesn’t follow the Judgment and submits them after two (2) years.

C. The district court’s finding of contempt effectively amends the judgment to remove any requirement of monthly submissions of medical expenses for Appellee Anderson and disadvantages Appellant Baker in the future.

¶22 The finding of contempt sets an extremely unfair precedent going forward for Appellant Baker regarding the reimbursement of medical bills. As the minor child K.J.A, born in 2010, grows older, she will likely incur medical expenses until she turns eighteen (18) in the year 2028. The district court's finding of Appellant Baker being in contempt of Court will allow Appellee Anderson ignore her requirement to submit monthly requests for reimbursement and allow her to essentially sit on the medical expenses for years if she chooses. Appellee Anderson no longer has the obligation to follow the Judgment that requires monthly submissions of the medical expenses. Hypothetically, Appellee Anderson could wait until September of 2025 and present Appellant Baker with ten (10) years of unreimbursed medical expenses and he would be left trying to verify this ten (10) years of receipts, bills, etc. in only thirty (30) days. This district court finding of contempt seems to punish Appellant Baker for a problem that was created by Appellee Anderson not following the Judgment requiring her to make monthly submissions of the medical expenses.

¶23 Appellant Baker would again reiterate that this issue regarding reimbursement of medical expenses was caused by Appellee Anderson's decision to not follow the Judgment by not submitting the medical expenses on a timely monthly basis as she was ordered. It seems extremely unfair that Appellee Anderson has no consequence for not submitting the medical expenses as required by the Judgment, but that Appellant Baker is found in contempt for this situation created by her not following the Judgment.

D. The district court abused its discretion by awarding attorney's fees for one parties decision to retain an attorney.

¶24 Appellant Baker found no statutory or case law decision to support the district court's decision to award attorney's fees to Appellee Anderson based on his decision to retain an attorney for communications regarding the parties' minor child.

In reviewing the transcript, the district court stated:

“And, Dr. Baker, if you’re going to escalate all of the conversations to go through attorneys, you’re probably going to have to bare some attorney’s fees for the cost of Ms. Anderson hiring an attorney to communicate with your attorney. If that’s the way you’re going to do it, then that doesn’t come without some expense on your part for it. Most parents can talk to each other or find another way to do that that isn’t going to involve, you know, high paid – you know, I’m happy to, you keep Mr. Hager and Mr. Kranda employed – but most parents do not have to go through attorneys to have communications about health issues for their child. You’re escalating that, and that comes at a cost.” Transcript [p. 47, 48], Appendix, [p. 29, 30].

¶25 In the district court’s Order dated July 18, 2014, it awarded attorney’s fees to Appellee Anderson based on the same reasoning as stated at the hearing, with the district court Order stating as follows:

**“Attorney’s fees.**

Anderson states that Dr. Baker had made it crystal clear that he wanted no communications from her in any form and that all correspondence must go through his attorney. That position is reiterated in the correspondence from his attorney and reinforced at the hearing before the Court. While Dr. Baker is certainly entitled to assert those restrictions, such restrictions necessarily come with a financial cost and a cost in the complexity of having discussions and reaching an agreement which would be in the best interest of a four year old little girl. Dr. Baker is escalating the cost and expense of these proceedings.” Order, [p. 5], Appendix, [p. 23].

¶26 The district courts award of attorney’s fees fails for at least two reasons. There is no statute or case law authority that supports an award of attorney’s fees for one parties decision to have communications on health care expenses for a minor child to go through an attorney. The district court fails to provide any statutory or case law requirement that would indicate Appellee Anderson was required to retain an attorney for communications just because Appellant Baker decided to do so.

¶27 The district court reasoning indicates that communications on reimbursement of medical expenses or health insurance premiums should be handled between the parties

directly and does not require an attorney. If that is the case, the district court's reasoning does not explain how Appellant Baker's decision to hire an attorney in any way would force or require Appellee Anderson to retain an attorney.

### CONCLUSION

¶28 Based on the aforementioned law and reasoning, Appellant Biron Baker respectfully requests the Supreme Court find that the district court abused its discretion by finding him in contempt of court for delaying in reimbursing medical expenses to Appellee Anderson. Further, Appellant Baker would ask the Supreme Court to find the district court abused its discretion by awarding Appellee Anderson attorney's fees for his decision to hire an attorney to handle communications regarding the minor child.

Respectfully submitted this 22<sup>nd</sup> day of June, 2015.

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IN THE SUPREME COURT  
FOR THE STATE OF NORTH DAKOTA

Kim Anderson,	)	
	)	
Plaintiff, Appellee	)	
	)	
vs.	)	Supreme Court Case No.: 20150049
	)	
Biron Baker,	)	District Court No.: 30-10-C-00584
	)	
Defendant, Appellant	)	
	)	
State of North Dakota, (SRPI)	)	<b><u>CERTIFICATE OF SERVICE</u></b>

The undersigned certifies, pursuant to Rule 5 (f) of the North Dakota Rules of Civil Procedure, that on June 22, 2015, a true and correct copy of the following document(s):

1. BRIEF OF APPELLANT;
2. CERTIFICATE OF SERVICE.

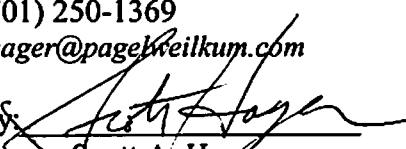
was served, via deposit in the United States Mail and email, upon the following:

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Dated this 22<sup>nd</sup> day of June, 2015.

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The undersigned certifies, pursuant to Rule 5 (f) of the North Dakota Rules of Civil Procedure, that on June 15, 2015, a true and correct copy of the following document(s):

1. BRIEF OF APPELLANT;
2. APPENDIX TO APPELLANT'S BRIEF;
3. CERTIFICATE OF SERVICE.

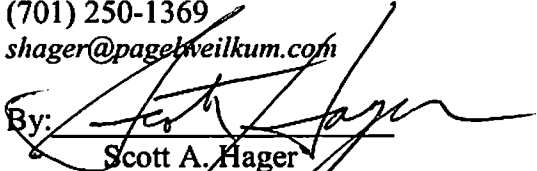
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