

## IN THE SUPREME COURT

## STATE OF NORTH DAKOTA

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Duane C. Sall,  
Plaintiff/Appellee,

v.

Caryn J. Weber (f/k/a Caryn J. Sall),  
Defendant/Appellant

and

State of North Dakota,  
Statutory Real Party in  
Interest/Appellee

)  
)  
) Supreme Court No. 20150098  
)  
)

) Cass County No. 09-02-C-03203  
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APPELLEE'S BRIEF

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Appeal from:

- 1) **Judicial Referee's Order Entered on December 16, 2014**
- 2) **Reviewed by District Court Judge Resulting in Order on Review entered on January 5, 2015**
- 3) **Fifth Amended Judgment entered on January 29, 2015**

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### **[¶3] STATEMENT OF THE ISSUES**

- [¶4] I.** Whether the 2013 child support review conducted by the Fargo Child Support Office is properly before the Court.
- [¶5] II.** Whether the State, as a Statutory Real Party in Interest, should have been included in the caption and served with Caryn's motion.
- [¶6] III.** Whether the District Court incorrectly calculated the child support calculation but arrived at the presumptively correct child support amount under the child support guidelines.

### **[¶7] LAW AND ARGUMENT**

#### **[¶8] I. The 2013 child support review conducted by the Fargo Child Support Office is not properly before the Court.**

**[¶9]** Caryn requested a review pursuant to N.D.C.C. § 14-09-08.4. (App. at 127). Duane provided sufficient financial information to conduct the review. Based on the child support guidelines, the current support order provided more support than 85% and less than 115% of the new guideline amount. The parties received a Notice of Review determination as required by N.D.C.C. § 14-09-08.7. The notice informed the parties that a determination had been made that no adjustment should be sought. Parties were also informed that each party has a right to challenge the determination by seeking an amendment to the child support from the court, at any time before the termination of the support order. (App. at 137). As Caryn was not in agreement, she exercised her statutory right to seek an amendment to

the support order. The Office's 2013 child support review determination is not subject to judicial review.

[¶10] **II. The State, as a statutory real party in interest, should have been included in the caption and served with Caryn's motion.**

[¶11] Under N.D.C.C. § 14-09-09.26:

The state is a real party in interest for purposes of establishing paternity and securing repayment of benefits paid, future support, and costs in action brought to establish, modify, or enforce an order for support of a child in any of the following circumstances:

1. Whenever aid under chapter 50-09 or 50-24.1 is provided to a dependent child.
2. Whenever application is made and accepted for services provided by the child support agency.
3. Whenever duties are imposed on the state or its public officials under chapter 14-12.2.

[¶12] The Defendant acknowledges that the State is a real party in interest pursuant to N.D.R.Civ.P Rule 10(a), which states, in pertinent part, as follows:

**Caption; Names of Parties.** Every pleading must have a caption with the court's name and the county in which the action is brought, a title that names the parties, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings may name the first party on each side and refer generally to other parties. If the State of North Dakota is a real party in interest in an action and was not named as a party in the original title, its name must be added to the title.

[¶13] The State is a statutory real party in interest pursuant to N.D.C.C. § 14-09-09.26 and N.D.R.Civ.P Rule 10(a). The State should have been

served with Caryn's motion. At the close of the hearing, the Court ordered each party to serve the state with their respective proposed findings.

Transcript of October 20, 2014 proceeding (herein after referred to as "transcript" or TR.), page 28, lines 4-9. Caryn did not serve the State with her proposed findings.

**[¶14]III. The State concurs with the District Court's child support amount but differs with the calculation method used by the District Court.**

The State agrees with the District Court child support amount but differs on how the child support should be calculated. (App. at 163-64).

	Gross Annual Income	\$84,932
Less		
	Federal Income Tax	\$13,635.00
	State Income Tax	\$1,909.00
	FICA/Medicare	\$6,497.00
	Health Insurance	\$1,059.00

(\$246.08 x 12 months = \$2,953.00. Cost to insure Duane annually  
\$69.68 x 12 months = \$836.00. Cost to insure 2 children annually  
=\$2,117.00. Cost to insure 1 child is \$1,059.00).

Out of pocket medical \$1,584.00  
(\$132.00 X 12 months = \$1,584.00)

Net Monthly Income = \$5,021.00

Child Support amount per guidelines for one child = \$907.00.

The State used the monthly out of pocket medical amount from Referee Solheim's calculation because Duane lists that amount on his financial affidavit. (App. at 36). This does not affect the child support amount.

[¶15] CONCLUSION

[¶16] With regard to Caryn's other arguments, the State respectfully requests that this Court affirm the remainder of the decision of the District Court.

Respectfully submitted this 8th day of July, 2015.

/s/ Janet K. Naumann  
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CERTIFICATE OF SERVICE

I, JANET K. NAUMANN, Special Assistant Attorney General for the State of North Dakota, and officer of the court, hereby certify that a true and correct copy of the foregoing:

**1. APPELLEE'S BRIEF**

was served by **EMAIL PURSUANT TO N.D.R.App.P. 25** on this 8th day of July, 2015, to the following:

Caryn J. Weber, ndscmisc@outlook.com  
Duane C. Sall, duane.sall@westfargond.gov

Dated this 8th day of July, 2015.

/s/ Janet K. Naumann  
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