

THE SUPREME COURT  
STATE OF NORTH DAKOTA

Linda Gronland,	)	
	)	
Plaintiff and	)	Supreme Court File No. 20150108
Appellant,	)	
	)	Cass County District Court
and	)	No. 09-92-C-01576
	)	
Larry Gronland,	)	
	)	
Defendant and	)	
Appellee.	)	

BRIEF OF APPELLEE

APPEAL FROM THE MEMORANDUM OPINION

AND ORDER ENTERED ON FEBRUARY 10, 2015.

Cass County District Court

East Central Judicial District

Honorable Judge Steven L. Marquart

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[¶1] STATEMENT OF THE CASE

[¶2] On May 30, 2014, the Appellant filed a rule 3.2 Motion requesting that the Second Amended Judgment entered on December 18, 1998 be amended to modify spousal support. A hearing on this matter was held on July 25, 2014. The Appellee did not appear at the hearing. On July 29, 2014, the Court issued an Order modifying spousal maintenance. The Appellee filed a motion under Rule 60(b) of the North Dakota Rules of Civil Procedure for relief from judgment. At a hearing on December 12, 2014 Appellee's Motion for Relief from Judgment was granted and counsel made a Motion on the record to dismiss Appellant's Motion to Modify Spousal Support. The motion was denied by Referee Griffeth on January 9, 2015. Upon District Court review, the Judge rejected the Referee's Order and granted the Appellee's Motion to Dismiss. Appellant appeals the Order and Memorandum dated February 10, 2015.

[¶3] STATEMENT OF THE FACTS

[¶4] On May 30, 2014, the Appellant filed a 3.2 Motion requesting that the Second Amended Judgment entered on December 18, 1998 be amended to modify spousal support. Specifically, the Appellant requested that the Appellee be ordered to pay \$6,000.00 per month for spousal maintenance. Pursuant to the Second Amended Judgment, the Appellee's spousal support payments of \$2,000.00 per month to the Appellant would terminate, *inter alia*, at the time the Appellee "commences drawing" Social Security benefits. (Sec. Am. Jmt. ¶ 13, App. at 16-17) The Appellee turned sixty-six years old in December 2013, becoming fully eligible for social security benefits. Knowing this, Appellee sent a letter to Appellant in November 2013, advising her of his intent to begin drawing social security at that time. Appellee began drawing social security on January 1, 2014 and accordingly, stopped paying spousal maintenance to the Appellant. The Certificate of Service on file with the Court indicates that the Motion, Notice of Motion, Brief, and Affidavit of Appellant in Support of Motion to Modify Spousal Support were mailed to the Appellee on March 25, 2014 at 1202 Sea Gate Drive, Unit 306, Palm Harbor, Florida, 64385. These documents were not filed with the Court until May 30, 2014.

[¶5] A hearing on this matter was held on July 25, 2014. The Appellee did not appear at the hearing. On July 29, 2014, the Court issued an Order modifying spousal maintenance and ordering the Appellee to pay \$6,000.00 per month to the Appellant for said spousal maintenance, applying retroactively to commence on March 1, 2014.

[¶6] The Appellee finally received notice of all of these documents in early August 2014. He filed a motion under Rule 60(b) of the North Dakota Rules of Civil Procedure. Before Appellee had a chance to file his motion, an Order to Show Cause was issued by the Judge, inquiring as to why Appellee had not paid spousal support. A hearing on the Order to Show Cause was held on October 2, 2014 in front of Honorable Judge Marquart. Judge Marquart declined any ruling, due to this case having been assigned to Referee Griffeth. It was continued to December 12, 2014 for hearing on the Order to Show Cause and Appellee's Rule 60(b) Motion for relief from Judgment.

[¶7] At the December 12, 2014 hearing, Appellee's Motion for Relief from Judgment was granted and Counsel made a Motion on the record to dismiss Appellant's Motion to Modify Spousal Support based upon North Dakota case law. Appellant agreed to waive notice of Motion and simultaneous briefs were ordered to be submitted within seven days.

[¶8] Appellee's Motion to Dismiss was denied by the Referee on January 9, 2015. Upon District Court review, the Judge rejected the Referee's Order and granted the Appellee's Motion to Dismiss on February 10, 2015. This appeal follows.

[¶9] STATEMENT OF THE ISSUES

[¶10] I. Did the trial court properly dismiss the Appellant's motion to modify spousal support for lack of subject matter jurisdiction?

[¶11] ARGUMENT

[¶12] I. Did the trial court properly dismiss the Appellant's motion to modify spousal support for lack of subject matter jurisdiction?

[¶13] Short answer: Yes.

[¶14] "It is well settled under North Dakota law that challenges to a district court's subject matter jurisdiction are reviewed de novo when the jurisdictional facts are not in dispute." *Schirado v. Foote*, 2010 ND 136, 785 N.W.2d 235, 238, citing *Harshberger v. Harshberger*, 2006 ND 245, ¶ 16, 724 N.W.2d 148. Here, the jurisdictional facts are not in dispute. Appellant attempts to assert that she did not have actual notice that Appellee would start drawing social security benefits and that actual notice is required to divest the Court of subject matter jurisdiction to modify spousal support. However, Appellant admits receiving a letter from Appellee in November 2013, stating his intent to draw social security and Appellant did secure an attorney shortly after receiving this. Appellant was well aware of Appellee's advanced retirement age and could not believe the Appellant would continue to work indefinitely. Further, if Appellant wants to make an equitable argument at this advanced stage in litigation, Appellee could do the same, but respects the Court's time and declines to assert frivolous arguments here. The issue before the Court is one purely of law, and should be reviewed de novo.

[¶15] Under North Dakota law, a Court issuing an award of spousal support has the authority to modify that award. N.D.C.C. § 14-05-24.1 (2013). North Dakota case law has established a limit on the Court's continuing jurisdiction over



spousal support, stating that a spouse may bring a motion to modify or extend an award of spousal support before the temporary award ends. *Bellefeuille v. Bellefeuille*, 636 N.W.2d 195, 198, 2001 ND 192, ¶ 19; see also, *Quamme v. Bellino*, 540 N.W.2d 142, 147 (N.D. 1995) (finding, “If circumstances merit, before the rehabilitative spousal support ends, Bellino may apply for further spousal support, or for reservation of jurisdiction over the issue.”) The North Dakota Supreme Court has continually noted or implied that jurisdiction of spousal support must be reserved if a modification or future need is contemplated, otherwise, the court loses jurisdiction when the spousal award ends. See *van Oosting v. van Oosting*, 521 N.W.2d 93, 101 (N.D. 1994); see also *Becker v. Becker*, 262 N.W.2d 478, 484 (N.D. 1978) (noting that “jurisdiction granted for the initial decree can be maintained if there is an award of alimony.”); *Quamme*, 540 N.W.2d at 147; see also *Reineke v. Reineke*, 670 N.W.2d 841, 849, 2003 ND 167, ¶ 22-23 (finding that where permanent spousal support may be needed in the future, an award of temporary support should be accompanied by an express retention of jurisdiction to modify in the future).

[¶16] Appellant argues that *Bellefeuille* is not controlling of this issue by claiming it has been superseded by statute. This is not correct. North Dakota Century Code § 14-05-24.1 does not extend a Court’s jurisdiction to modify spousal support orders. The statute states in part, “[t]he court may modify its spousal support orders.” *Id.* Formerly found under prior N.D.C.C. § 14-05-24 (amended by N.D.C.C. § 14-05-24 (2001) and N.D.C.C. § 14-05-24.1 (2001)), with respect to property division, spousal support, and child support, the statute

stated, “[t]he court from time to time may modify its orders in these respects.” It is far more likely that the legislative intent behind separating spousal support from property division is to make it clear that awards of property division are not modifiable in accordance with case law. If the intent was to extend jurisdiction so that a spousal support obligation could be modified even after it is terminated, the legislature would have explicitly stated such. Going by Appellant’s argument, an ex-spouse could theoretically be brought back to court and forced to pay spousal support years after the obligation has ended. Such a result would be absurd.


[¶17] In the present case, the Court awarded Appellant a temporary award of spousal support to end when Appellee commenced drawing social security. This Judgment was made in 1994. Appellant had 20 years to bring her motion to modify. Appellee did not suddenly retire early and not warn Appellant that he would stop making these payments. Appellee told Appellant in November 2013 that he intended to start collecting social security when he turned sixty-six in December 2013 and that would be his last payment. He could have started collecting social security payments prior to this time. Appellant was well aware of Appellee’s age and knew this would end, yet she did not bring her motion until months after the spousal support terminated. Since there was no spousal support ordered at that time, there was nothing for the Court to modify. Appellee’s spousal support obligation had terminated and according to caselaw, so did the court’s continuing jurisdiction to modify. For this reason, the decision of the District Court should be affirmed.

[¶18] CONCLUSION

[¶19] Upon the termination of the spousal support award in December 2013, the Court no longer had continuing jurisdiction to modify such award. In following the case of *Bellefeuille v. Bellefeuille*, 636 N.W.2d 195, 2001 ND 192, the District Court correctly dismissed Appellant's motion to modify spousal support. The Memorandum Opinion and Order of the District Court dated February 10, 2015, should be affirmed.

Respectfully submitted this 8 day of July, 2015.

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## THE SUPREME COURT

## STATE OF NORTH DAKOTA

Linda Gronland,

Plaintiff and  
Appellant,

Supreme Court File No. 20150108

and

Cass County District Court  
No. 09-92-C-01576

Larry Gronland,

## AFFIDAVIT OF SERVICE BY ELECTRONIC TRANSFER

Defendant and  
Appellee.

STATE OF NORTH DAKOTA

)SS

**COUNTY OF CASS**

[¶ 1] Heather Livdahl, hereby being first duly sworn on oath, does depose and say:

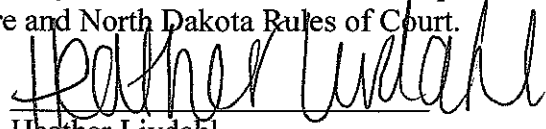
[¶ 2] That on the 8 day of July, 2015, this affiant did transmit via electronic mail, a true and correct copy of the following documents filed in the above captioned

- 1. Appellee Brief;**
- 2. Motion for Sanctions including Dismissal;**
- 3. Brief in Support of Motion for Sanctions;**
- 4. Exhibits 1-7; and**
- 5. Affidavit of Attorney Rachel Gehrig.**

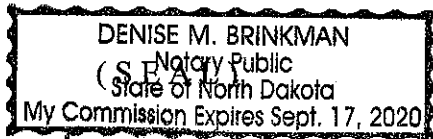
[¶ 3] That the copies of the above documents were addressed as follows:

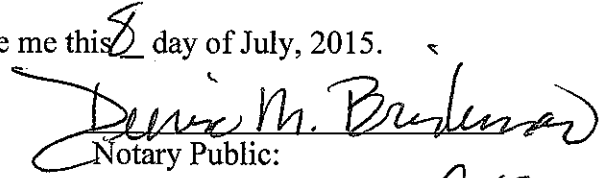
Jesse Matson – Attorney for the Plaintiff/Appellant  
eserve@matson-law.com

[¶ 4] That the above documents were duly sent in accordance with the provisions of the North Dakota Rules of Civil Procedure and North Dakota Rules of Court.

  
Heather Livdahl

Subscribed and sworn to before me this 8 day of July, 2015.



  
Notary Public:  
My Commission Expires: 9-17-2020