

## IN THE SUPREME COURT

## STATE OF NORTH DAKOTA

Aarin Nygaard, and Terrance Stanley,  Plaintiffs/Appellees,  v.  Tricia Taylor,  Defendant/Appellant.	Supreme Court No. 20170016 20170017  Cass County District Court No. 09-2014-DM-00456 09-2014-DM-00898
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APPEAL FROM ORDER ON DEFENDANT'S MOTION TO QUASH CONTEMPT  
DATED DECEMBER 7, 2016, OF THE CASS COUNTY DISTRICT COURT, EAST  
CENTRAL JUDICIAL DISTRICT, THE HONORABLE SUSAN J. SOLHEIM  
PRESIDING

BRIEF OF APPELLEES AARIN NYGAARD AND TERRANCE STANLEY

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## **JURISDICTIONAL STATEMENT**

[¶1] The Supreme Court does not have jurisdiction to hear this appeal because the order appealed from is not reviewable under N.D.C.C. § 28-27-02.

**[¶2] STATEMENT OF THE ISSUES**

- I. Whether the Supreme Court has jurisdiction under N.D.C.C. § 28-27-02 to hear this appeal.
- II. If the Supreme Court has jurisdiction, whether the trial court erred in denying Taylor's Motion to Quash Contempt and Immediate Release from Imprisonment.

### **STATEMENT OF THE CASE**

[¶3] This is an appeal from an Order on Defendant's Motion to Quash Contempt dated December 7, 2016. The Defendant, Tricia Taylor ("Taylor"), moved the court for an order quashing the contempt and granting the immediate release of Taylor from imprisonment. Without a formal finding of contempt, the court denied Taylor's motion, stating the "evidence suggests" Taylor continued to remain in contempt for failing to comply with a previous order requiring her to return the minor children to their fathers. The trial court also denied Taylor's request for immediate release because she posed a flight risk and a risk to her children. In denying Taylor's motion, the court scheduled an Order to Show Cause hearing for the following day so the parties could present further evidence on the issue of contempt. Before the Order to Show Cause hearing was held, this appeal was filed.

## **STATEMENT OF THE FACTS**

[¶4] This case involves a custody dispute between a mother and the two fathers of her minor children. See generally, App. 3-14. Appellee, Terrance Stanley (“Stanley”), and Taylor were divorced by a Judgment entered in 2011 and have one minor child together, T.R.S. born in 2007. App. 57, ¶ 3. Appellee, Aarin Nygaard (“Nygaard”), and Taylor were never married but have one minor child together, C.S.N., born in 2013. App. 40, ¶ 3. More than two years ago, on September 1, 2014, Taylor fled with the minor children to the Cheyenne River Indian Reservation in South Dakota. App. 40-47, ¶ 8; App. 57-66, ¶ 8. Nygaard and Stanley have had no contact with their children since August 2014. App. 40-47, ¶ 8; App. 57-66, ¶ 8. Taylor was found in contempt of court for intentionally violating multiple court orders for refusing to return the minor children to their fathers. App. 20, ¶¶ 1-2; App. 30, ¶ 3; App. 36, ¶ 1; App. 82-83, ¶¶ 2-3; App. 84-85, ¶¶ 2-3; App. 86-87, ¶ 5; App. 88-89, ¶ 5. Taylor also pled guilty to Class C Felony Parental Kidnapping and has been incarcerated consistently since November, 2014. The record reflects that on December 22, 2014, the warrants were served on Taylor, and she was taken in to custody on both Nygaard’s civil file and the criminal file. DM-456, Doc ID #74; CR-3835, Doc ID #14. In reality, Taylor was arrested just before Thanksgiving, 2014 while on the Cheyenne River Sioux Tribal Reservation. App. 42, ¶ 11. This is an appeal from an Order on Defendant’s Motion to Quash Contempt dated December 7, 2016. Appellant’s Br., p. 6.

[¶5] On July 25, 2014, an Interim Order was issued, awarding Taylor and Nygaard equal residential responsibility of the parties’ minor child with an alternating equal parenting schedule. App. 15-19, ¶ 2. On September 1, 2014, Taylor absconded

with the minor children to the Cheyenne River Indian Reservation in South Dakota and refused to allow Nygaard and Stanley any parenting time. App. 40-47, ¶ 8; App. 50-57, ¶ 8.

[¶6] On September 9, 2014, Nygaard filed a Motion for Contempt and an Application for Ex Parte Interim Order with supporting documents. Court File Number 09-2014-DM-00456 (“DM-456”), Doc ID #40-47. Stanley also filed a pro se Application for Ex Parte Order on October 7, 2014. Court File Number 09-2014-DM-00898 (“DM-898”), Doc ID #12-13.

[¶7] The trial court issued an Ex Parte Order on September 12, 2014, finding North Dakota is the home state of the minor child under the Uniform Child Custody and Jurisdiction and Enforcement Act (“UCCJEA”), and ordering Taylor to immediately return the minor child to the State of North Dakota and Nygaard’s immediate care. DM-456, Doc ID #54, ¶¶ 1-3. On October 8, 2014, the trial court also issued an Ex Parte Order in favor of Stanley, ordering Taylor to immediately return the minor child to the State of North Dakota and Stanley’s immediate care. DM-898, Doc ID #14, ¶¶ 2-3.

[¶8] After a hearing on Nygaard’s Motion for Contempt, the trial court issued an Amended Interim Order on October 3, 2014, finding Taylor in contempt for willfully and intentionally violating the court’s Interim Order dated July 25, 2014, by refusing to follow the parenting time plan and by absconding with the child to the State of South Dakota, and ordered Taylor to turn over the minor child to Nygaard within five days from the date of the Amended Interim Order. App. 20, ¶¶ 1-2.

[¶9] As of the date of this appeal, Taylor has not returned the minor children to Nygaard and Stanley. On October 16, 2014, Taylor was charged with Parental



Kidnapping under N.D.C.C. § 12.1-18-02, a Class C Felony, and a warrant was issued for her arrest. CR-03835, Doc ID #1, 6. A bench warrant for Taylor's arrest was also issued in Nygaard's case for Taylor's contempt of court. DM-456, Doc ID #70.

[¶10] On November 19, 2014, the trial court entered an Interim Order, awarding Stanley interim residential responsibility and directing Taylor to immediately return the minor child to the State of North Dakota and Stanley's care. App. 30, ¶ 3. The court also found the State of North Dakota is the child's home state. Id. at ¶ 1.

[¶11] The record reflects that on December 22, 2014, the warrants were served on Taylor, and she was taken in to custody on both Nygaard's civil file and the criminal file. DM-456, Doc ID #74; CR-3835, Doc ID #14. In reality, Taylor was arrested just before Thanksgiving, 2014 while on the Cheyenne River Sioux Tribal Reservation. App. 42, ¶ 11.

[¶12] On January 11, 2015, despite North Dakota's exercise of jurisdiction over both minor children under the UCCJEA, the Cheyenne River Sioux Tribal Court issued a Temporary Custody Order awarding Taylor's sister, Jessica Ducheneaux, temporary custody of the minor children. App. 34-35. Neither Nygaard nor Stanley were contacted to take physical custody of the children after Taylor was arrested. Id. Neither Nygaard nor Stanley were provided notice of the Tribal Court proceedings.

[¶13] An Order to Show Cause hearing was held February 5, 2015, and the trial court issued an Order on Contempt on February 20, 2015, finding Taylor continued to be in contempt for intentionally violating the Interim Order and Amended Interim Order and for failing to return the minor child to Nygaard. App. 36, ¶ 1. The trial court ordered Taylor to remain in custody until she returned the child to Nygaard. Id. at ¶ 2.

[¶14] On April 6, 2015, Taylor pled guilty to Parental Kidnapping and was sentenced to five years in prison, first to serve two years in prison with credit for 133 days served, with the remaining three years to be suspended for three years, in addition to completing three years of supervised probation. CR-3835, Doc ID #28. Taylor was released from jail on November 5, 2015, after serving just seven months. DM-456, Doc ID #142; DM-898, Doc ID #73.

[¶15] On June 30, 2015, the trial court issued an Amended Order on Contempt, finding Taylor continued to be in contempt but released her from custody because she was being held on the Parental Kidnapping conviction. App. 38-39, ¶¶ 1-2.

[¶16] On August 4, 2015, while Taylor was incarcerated, Nygaard's custody case was tried and the trial court issued Findings of Fact, Conclusions of Law, and an Order for Judgment on September 21, 2015, awarding Nygaard primary residential responsibility subject to Taylor's supervised parenting time. App. 40-49. Stanley's custody case was tried September 1, 2015, while Taylor was in custody and the trial court issued Findings of Fact, Conclusions of Law, and Order for Judgment awarding Stanley primary residential responsibility subject to Taylor's supervised parenting time. App. 57-66.

[¶17] On October 1, 2015, and October 2, 2015, after learning Taylor was scheduled for a parole hearing in the criminal case on October 5, 2015, and possible release thereafter, both Nygaard and Stanley renewed their request for contempt on an expedited basis. DM-456, Doc ID #118; DM-898, Doc ID #57. The trial court granted both requests and ordered Taylor to remain in custody, after paroled, until she complied

with the orders and returned the children to their fathers. App. 74, ¶¶ 3-4; DM-898, Doc ID #70.

[¶18] On October 4, 2015, Taylor was paroled and her release date was scheduled for November 5, 2015. App. 77-78, ¶ 2. After an expedited hearing in both custody cases, the trial court issued Interlocutory Orders on October 26, 2015, and issued a warrant for Taylor's arrest for her contempt and set bail at \$10,000. App. 77-78, ¶¶ 1-2; App. 79-81, ¶¶ 7-8. On November 5, 2015, Taylor was released from incarceration on the criminal file, but was immediately served with the contempt warrant and continued to be held solely on the contempt. DM-456, Doc ID # 142; DM-898, Doc ID #73.

[¶19] Taylor requested a hearing on the contempt in accordance with the Interlocutory Orders and a consolidated hearing was held December 14, 2015. App. 82-83, ¶ 1; App. 84-85, ¶ 1. Taylor argued, through court appointed counsel, that she did not have the ability to comply with the court's order requiring her to return the children to their fathers because the tribal court had exercised jurisdiction over the children. App. 82-83, ¶ 2; App. 84-85, ¶ 2. The trial court, however, was not convinced and found Taylor voluntarily chose to continue to withhold the children from their fathers and ordered Taylor to remain in custody until she returned the children to their fathers. App. 82-83, ¶¶ 2-3; App. 84-85, ¶¶ 2-3.

[¶20] Taylor filed a Motion to Review Contempt in both files, again arguing she had no ability to comply with the trial court's order to return the children to their fathers and argued Taylor's continued incarceration for contempt was a punitive sanction rather than a remedial sanction. App. 86-87, ¶ 2; App. 88-89, ¶ 2. Again, the trial court found

Taylor voluntarily continued to withhold the children because she had the ability to return the children but voluntarily refused to do so. App. 86-87, ¶ 5; App. 88-89, ¶ 5. Taylor requested a de novo review of the judicial referee's Orders on Defendant's Motion to Review Contempt but the district court adopted and affirmed the trial court's orders. App. 90-96, ¶ 19; App. 103, ¶ 19.

[¶21] On October 26, 2016, Taylor filed a Motion to Quash Contempt Order and Immediate Release from Imprisonment, asking the court to quash the contempt and to release Taylor from jail. DM-456, Doc ID #178-182; DM-898, Doc ID #109-113. A hearing was held December 5, 2016, but was continued to allow the parties to submit additional evidence. App. 104; App. 105. On December 7, 2016, the court issued an Order on Defendant's Motion to Quash Contempt, denying Taylor's request for immediate release because she posed a flight risk and a risk to the children. App. 104, ¶ 3; App. 105, ¶ 3. Before an evidentiary hearing was held, this appeal was filed. App. 106; App. 107.

## **ARGUMENT**

### **I. Standard of Review**

[¶22] The right to appeal is governed solely by statute, and the Court must take notice of the lack of jurisdiction and dismiss an appeal if there is no statutory basis to hear the appeal. Investors Title Ins. Co. v. Herzig, 2010 ND 138, ¶ 23, 785 N.W.2d 863 (citing Mann v. North Dakota Tax Comm’r, 2005 ND 36, ¶ 7, 692 N.W.2d 490. A two-step analysis is used to evaluate the finality of orders for review: First, the order appealed from must meet one of the statutory criteria of appealability set forth in N.D.C.C. § 28-27-02. If it does not, the inquiry need go no further and the appeal must be dismissed; if it does, then Rule 54(b), N.D.R.Civ.P. (if applicable) must be complied with. If it is not, the Court is without jurisdiction. Id. (citing Matter of Estate of Stensland, 1998 ND 37, ¶ 10, 574 N.W.2d 203).

### **II. This Appeal Should Be Dismissed Because the Supreme Court Lacks Jurisdiction.**

[¶23] This Court should dismiss Taylor’s appeal because the order appealed from is not an appealable order under N.D.C.C. § 28-27-02 or N.D.C.C. § 27-10-01.3(3). The Supreme Court does not have jurisdiction to hear this appeal under N.D.C.C. § 28-27-02 because the order appealed from is not an order affecting the substantial rights of the action, is not a final order, and is not an order affecting the merits of the action. In addition, the Supreme Court does not have jurisdiction to hear this appeal under N.D.C.C. § 27-10-01.3(3) because the order appealed from is not an order finding a person guilty of contempt.

[¶24] Before the Supreme Court can consider the merits of an appeal, it must first determine whether it has jurisdiction. Brummund v. Brummond, 2008 ND 224, ¶ 4,

758 N.W.2d 735. “Only judgments and decrees which constitute a final judgment of the rights of the parties to the action and orders enumerated by statute are appealable.” Mann v. N.D. Tax Comm’r, 2005 ND 36, ¶ 8, 692 N.W.2d 490. “The right to appeal is governed solely by statute, and [the Supreme Court] will take notice of the lack of jurisdiction and dismiss an appeal if there is no statutory basis to hear the appeal.” Investors Title Ins. Co. v. Herzig, 2010 ND 138, ¶ 23, 785 N.W.2d 863.

**A. The Supreme Court Does Not Have Jurisdiction to Hear This Appeal Under N.D.C.C. § 28-27-02.**

[¶25] Taylor asserts the Supreme Court has jurisdiction under N.D.C.C. § 28-27-02. Appellant’s Br. p. 4. Because the order appealed from was not a reviewable order under N.D.C.C. § 28-27-02, the Supreme Court lacks jurisdiction to hear this appeal and the appeal should be dismissed.

[¶26] In determining whether it has jurisdiction to hear an appeal, the Supreme Court utilizes a two-step analysis to evaluate the finality of orders for review:

First, the order appealed from must meet one of the statutory criteria of appealability set forth in N.D.C.C. § 28-27-02. If it does not, our inquiry need go no further and the appeal must be dismissed. If it does, then Rule 54(b), N.D.R.Civ.P. [if applicable,] must be complied with. If it is not, we are without jurisdiction.

Gast Const. Co., Inc. v. Brighton P’ship, 422 N.W.2d 389, 390-91 (N.D. 1988) (internal citations omitted).

[¶27] The following orders are reviewable by the Supreme Court:

1. An order affecting a substantial right made in any action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken;
2. A final order affecting a substantial right made in special proceedings or upon a summary application in an action after judgment;

3. An order which grants, refuses, continues, or modifies a provisional remedy, or grants, refuses, modifies, or dissolves an injunction or refuses to modify or dissolve an injunction, whether such injunction was issued in an action or special proceeding or pursuant to the provisions of section 35-22-04, or which sets aside or dismisses a writ of attachment for irregularity;
4. An order which grants or refuses a new trial or which sustains a demurrer;
5. An order which involves the merits of an action or some part thereof;
6. An order for judgment on application therefor on account of the frivolousness of a demurrer, answer, or reply; or
7. An order made by the district court or judge thereof without notice is not appealable, but an order made by the district court after a hearing is had upon notice which vacates or refuses to set aside an order previously made without notice may be appealed to the supreme court when by the provisions of this chapter an appeal might have been taken from such order so made without notice, had the same been made upon notice.

N.D.C.C. § 28-27-02.

[¶28] Here, the trial court issued an order denying Taylor's request to quash contempt and denying Taylor's request for immediate release from imprisonment. App. 104; App. 105. In denying Taylor's motion, the court scheduled a hearing for the following day to allow the parties to submit evidence and to determine whether Taylor should continue to be held in custody for contempt. App. 104; App. 105. The order appealed from is not reviewable under N.D.C.C. § 28-27-02 because a hearing was scheduled for the next day to address the issue of whether Taylor was still in contempt of the court's previous orders. The order appealed from did not dispose of the issues and therefore was not a final order. For these reasons, the Supreme Court lacks jurisdiction to hear this appeal and the appeal should be dismissed.

**B. The Supreme Court Does Not Have Jurisdiction to Hear This Appeal Under N.D.C.C. § 27-10-01.3(3).**

[¶29] The Supreme Court does not have jurisdiction to hear this appeal under N.D.C.C. § 27-10-01.3(3) because the order appealed from is not an order finding Taylor guilty of contempt. “An appeal may be taken to the supreme court from any order or judgment finding a person guilty of contempt. An order or judgment finding a person guilty of contempt is a final order or judgment for purposes of appeal.” N.D.C.C. § 27-10-01.3(3).

[¶30] On October 26, 2016, Taylor filed a Motion to Quash Contempt Order and Immediate Release from Imprisonment and supporting documents, requesting Taylor’s immediate release from custody because her imprisonment exceeded the maximum six month time limit one could be held for contempt under N.D.C.C. § 27-10-01.4(1)(b). DM-456, Doc ID #178-182. Without a formal finding of contempt, the court denied Taylor’s request to quash the contempt and request for immediate release and scheduled the matter for a hearing the following day. App. 104, ¶ 3. The court denied Taylor’s request for immediate release because Taylor “pose[d] a significant flight risk and a risk to the child’s wellbeing.” Id. Although the court acknowledged it was undisputed the child had not yet been returned to Nygaard and “evidence suggests” the contempt was continuing, there was no formal finding of contempt because the court scheduled the matter for an Order to Show Cause hearing to allow the parties to submit additional evidence. Id. at ¶ 23. Because the Order on Defendant’s Motion to Quash Contempt was not an order or judgment finding a person guilty of contempt, the order is not appealable under N.D.C.C. § 27-10-01.3(3). Accordingly, the Supreme Court does not have jurisdiction to hear this appeal and the appeal should be dismissed.



### **III. The Trial Court Did Not Err in Denying Taylor's Motion to Quash Contempt and Immediate Release from Imprisonment.**

[¶31] If this Court considers the substance of this appeal, it should nevertheless affirm the trial court's decision and conclude the trial court's order denying Taylor's motion to quash contempt and immediate release from imprisonment was lawful.

[¶32] As a preliminary issue, since the dates and orders in both DM-456 and DM-898 are essentially identical after the June 30, 2016 order releasing Taylor from incarceration on the contempt order, counsel will only reference orders in DM-456 for purposes of simplicity.

[¶33] Taylor argues she has been illegally incarcerated for contempt for more than six months in violation of subsection (b) of N.D.C.C. § 27-10-01.4(1). Appellant's Br., ¶ 36. Taylor's analysis, however, ignores altogether the existence of subsection (d) of N.D.C.C. § 27-10-01.4(1), which allows the court to enter "an order designed to ensure the compliance with a previous order of the court" after a finding of contempt. See generally, Appellant's Br. The trial court had authority under N.D.C.C. § 27-10-01.4(1)(d) to hold Taylor in custody for her continued contempt and intentional refusal to return the minor children to their fathers in violation of the court's previous orders.

[¶34] Taylor is correct in asserting the applicable contempt statute in this case is N.D.C.C. § 27-10-01.1(1)(c). Appellant's Br., ¶ 26. Under subsection (c), contempt of court includes "[i]ntentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer, including referee or magistrate." N.D.C.C. § 27-10-01.1(1)(c).

[¶35] Although not referenced by Taylor, contempt of court also includes the "[i]ntentional refusal to produce a record, document, or other object after being ordered

to do so by the court.” N.D.C.C. § 27-10-01.1(1)(e). Taylor intentionally refused to produce the minor children to their fathers after being ordered by the court to do so. Accordingly, N.D.C.C. § 27-10-01.1(1)(e) is also applicable in this case.

[¶36] Taylor is also correct in stating the court may impose (1) restitution, (2) imprisonment, (3) forfeiture, or (4) other sanctions, as a remedial sanction after a finding of contempt. Appellants’ Br., ¶ 27; N.D.C.C § 27-10-01.4(1). But Taylor fails to acknowledge a fifth remedial sanction available to the court after finding contempt. See generally, Appellant’s Br. After finding a person in contempt and in addition to ordering restitution, imprisonment, forfeiture, or other sanctions, the court may also impose an “order designed to ensure compliance with a previous order of the court.” N.D.C.C. § 27-10-01.4(1)(d). The statute on remedial sanctions for contempt states in its entirety:

A court may impose one or more of the following remedial sanctions:

- a. Payment of a sum of money sufficient to compensate a party or complainant, other than the court, for a loss or injury suffered as a result of the contempt, including an amount to reimburse the party for costs and expenses incurred as a result of the contempt;
- b. Imprisonment if the contempt of court is of a type included in subdivision b, c, d, e, or f of subsection 1 of section 27-10-01.1. The imprisonment may extend for as long as the contemnor continues the contempt or six months, whichever is shorter;
- c. A forfeiture not to exceed two thousand dollars for each day the contempt continues;
- d. *An order designed to ensure compliance with a previous order of the court*; or
- e. A sanction other than the sanctions specified in subdivisions a through d if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt.

N.D.C.C. § 27-10-01.4(1) (emphasis added).

[¶37] Taylor’s argument focuses solely on subsection (b), which allows the court to order imprisonment “for as long as the contemnor continues the contempt or six months, whichever is shorter.” Appellant’s Br., ¶ 36; N.D.C.C. § 27-10-01.4(1)(b). Taylor argues the court had no authority to hold Taylor in custody for more than six months for contempt, regardless of whether Taylor actually purged herself of the contempt. Appellant’s Br., ¶¶ 36-37. Although Appellees disagree with Taylor’s position, a full analysis of this argument is not necessary because the answer to the substantive question before this Court—namely, whether the trial court had authority to order Taylor to be held in custody until she complied with the court’s previous orders to return the children—lies within subsection (d) of N.D.C.C. § 27-10-01.4(1).

[¶38] Subsection (d) of N.D.C.C. § 27-10-01.4(1) allows the court to issue “[a]n order designed to ensure compliance with a previous order of the court” after a finding of contempt. N.D.C.C. § 27-10-01.4(1)(d). After finding Taylor in contempt for failing to return the children to their fathers, the trial court issued a warrant for Taylor’s arrest and ordered her to remain in custody until she produced the children to their fathers. App. 36-37, ¶¶ 1-2. Taylor was held in custody to ensure her compliance with the court’s previous orders to return the children to their fathers. Id. Accordingly, Taylor’s incarceration for more than two and a half years was lawful under N.D.C.C. § 27-10-01.4(1)(d) because the order was designed to ensure her compliance with the court’s previous orders to return the children to their fathers.

[¶39] The trial court first found Taylor in contempt when it issued the Amended Interim Order on October 3, 2014. App. 20, ¶¶ 1-2. The trial court found Taylor in contempt for “intentionally and willfully violat[ing] the Court’s Interim Order in this

matter dated July 25, 2014, specifically by refusing to follow the residential responsibility and parenting time plan provided for in the Interim Order, by absconding with the minor child to the State of South Dakota, and [by] refusing to allow [Nygaard] any contact or information regarding the child's whereabouts." App. 20, ¶ 1. The trial court ordered Taylor to return the minor child to Nygaard within five days from the date of the Amended Interim Order, and if she failed to do so, a warrant for her arrest was to be issued. App. 20, ¶ 2. Taylor failed to return the child within five days of the order and a bench warrant for her arrest was issued October 20, 2014. DM-456, Doc ID #70.

[¶40] The record reflects that on December 22, 2014, the warrants were served on Taylor, and she was taken in to custody on both Nygaard's civil file and the criminal file. DM-456, Doc ID #74; CR-3835, Doc ID #14. In reality, Taylor was arrested just before Thanksgiving, 2014 while on the Cheyenne River Sioux Tribal Reservation. App. 42, ¶ 11. An Order to Show Cause hearing was held February 5, 2015. DM-456, Doc ID #74; App. 36-37. Again, the trial court found "Taylor continues to be in contempt of court as she has intentionally and willfully violated the Court's Interim Order in this matter dated July 25, 2014, and the Amended Interim Order date October 3, 2014, specifically by refusing to follow the residential responsibility and parenting time plan provided for in the Interim Order and Amended Interim Order, by absconding with the minor child to the State of South Dakota, and refusing to allow [Nygaard] any contact or information regarding the child's whereabouts." App. 36-37, ¶ 1. The court further ordered, "[Taylor] shall remain in custody until she complies with the Amended Interim Order and turns over the minor child" to Nygaard. Upon her compliance with the terms

of the Amended Interim Order, the contempt order will be lifted, and [Taylor] may be released from jail.” App. 36-37, ¶ 2.

[¶41] The court issued its Order on Contempt on February 20, 2015, nearly six months after Taylor initially absconded with the children to the Cheyenne River Indian Reservation in South Dakota on September 1, 2014. App. 36-37, ¶¶ 1-2; App. 40-49, ¶ 8. Before Taylor was arrested and incarcerated on November, 2014, months had passed without the children having any contact with their fathers. App. 36-37; App. 40-49, ¶ 8; DM-456, Doc ID #74. The order holding Taylor in custody until she returned the children to their fathers was necessary to ensure Taylor’s compliance with court’s previous orders.

[¶42] Furthermore, the order was lawful because Taylor would have been released from custody immediately upon her return of the children to their fathers’ custody. “When the petitioners carry the keys of their prison in their own pockets, the action is essentially a civil remedy designed for the benefit of other parties and has quite properly been exercised for centuries to secure compliance with judicial decrees.” Shillitani v. United States, 384 U.S. 364, 368 (1966) (internal quotations and citations omitted). Taylor’s imprisonment was conditional and she carries the keys of her prison in her own pocket. Had she complied with the court’s previous orders to return the children, she would have been immediately released. Accordingly, the trial court had the authority to issue such a conditional order and Taylor’s subsequent incarceration, no matter how lengthy, was lawful. As a result, if this Court reviews the merits of Taylor’s appeal, it should affirm the trial court decision.

## **CONCLUSION**

[¶43] For all of the foregoing reasons, Appellees would respectfully request that the Court DISMISS the appeal as there is no statutory basis for the Court to hear the appeal. In the alternative, if the Court considers the substance of this appeal, it should nevertheless AFFIRM the trial court's decision and conclude the trial court's order denying Taylor's motion to quash contempt and immediate release from imprisonment was lawful

Dated this 21<sup>st</sup> day of April, 2017.

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IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

Aarin Nygaard, and  
Terrance Stanley,

Plaintiffs/Appellees,

v.

Tricia Taylor,

Defendant/Appellant.

Supreme Court No.  
20170016  
20170017

Cass County District Court No.  
09-2014-DM-00456  
09-2014-DM-00898

APPEAL FROM ORDER ON DEFENDANT'S MOTION TO QUASH CONTEMPT  
DATED DECEMBER 7, 2016

CERTIFICATE OF SERVICE

Jericka Lyon hereby certifies under N.D.R.Civ.P. 5(f), that on Friday, April 21, 2017 she served the attached:

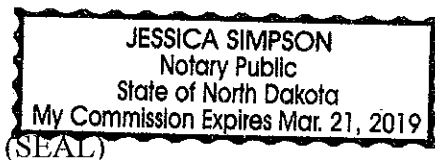
**BRIEF OF APPELLEES AARIN NYGAARD AND TERRANCE STANLEY**

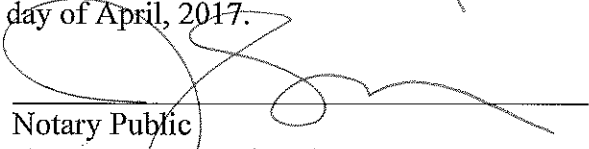
Upon Stormy Vickers, attorney for Defendant/Appellant, by e-mail to the following email addresses:

stormyvickers@stormyvickerslaw.com  
vickerslaw.efile@gmail.com

  
Jericka Lyon

Subscribed and sworn to before me this 21<sup>st</sup> day of April, 2017.



  
Notary Public  
Cass County, North Dakota  
My Commission Expires:

## IN THE SUPREME COURT

## STATE OF NORTH DAKOTA

Aarin Nygaard, and Terrance Stanley,  Plaintiffs/Appellees,  v.  Tricia Taylor,  Defendant/Appellant.	Supreme Court No. 20170016 20170017  Cass County District Court No. 09-2014-DM-00456 09-2014-DM-00898
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APPEAL FROM ORDER ON DEFENDANT'S MOTION TO QUASH CONTEMPT  
DATED DECEMBER 7, 2016, OF THE CASS COUNTY DISTRICT COURT, EAST  
CENTRAL JUDICIAL DISTRICT, THE HONORABLE SUSAN J. SOLHEIM  
PRESIDING

## CERTIFICATE OF SERVICE

Jericka Lyon hereby certifies under N.D.R.Civ.P. 5(f), that on Monday, May 1, 2017 she served the attached:

**BRIEF OF APPELLEES AARIN NYGAARD AND TERRANCE STANLEY  
(AMENDED)**

Upon Stormy Vickers, attorney for Defendant/Appellant, by e-mail to the following email addresses:

stormyvickers@stormyvickerslaw.com  
vickerslaw.efile@gmail.com

  
Jericka Lyon

Subscribed and sworn to before me this 1<sup>st</sup> day of May, 2017.

(SEAL)



  
Notary Public

My Commission Expires: