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STATE OF NORTH DAKOTA

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

DUSTIN REBENITSCH,)	
)	
Plaintiff/Respondent,	)	Supreme Ct. Case No. 20170302
Appellee)	
vs.)	
	)	Morton County District Court
JANIECE REBENITSCH,	)	Case No. 30-2012-DM-00178
)	
Defendant/Appellant.)	

APPELLANT'S BRIEF

APPEAL FROM AMENDED JUDGMENT DATED AUGUST 8, 2017;
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER FOR JUDGMENT DATED JULY 20, 2017; AND
COURT ORDERED PARENTING PLAN DATED JULY 20, 2017
MORTON COUNTY DISTRICT COURT

JENNIFER M. GOOSS (ID# 07971)
Attorney for Appellant
Solem Law Office
PO Box 249
109 Central Ave. N.
Beulah, ND 58523
701-873-5555
Beulaw3@westriv.com

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STATEMENT OF ISSUES

¶ 1. Whether the District Court's findings of fact regarding residential responsibility are clearly erroneous because of a misapplication of the law or improper application of the best-interest factors b and k, as the Court included findings not applicable to those factors, made findings inconsistent with the evidence and testimony presented, and misapplied the law.

¶ 2. Whether the District Court's findings of fact regarding residential responsibility are clearly erroneous because, based on the entire record, it is clear a mistake has been made in awarding Dustin primary residential responsibility, as it cannot be in the child's best interest to reside with and be cared for by a drug addict with a long history of problems that may affect her best interest.

STATEMENT OF THE CASE

¶ 3. This case was initiated by a Complaint filed by Dustin Rebenitsch (hereinafter "Dustin") on July 16, 2012 regarding divorce and child custody. App., 8. Janiece Rebenitsch (hereinafter "Janiece") filed Defendant's Answer to Plaintiff's Complaint and Counterclaim on June 5, 2013. App., 10.

¶ 4. Judgment was entered on June 25, 2014 in this case for a Divorce and Parenting Plan. App., 13. Pursuant to the Judgment, the parties had equal residential responsibility and joint decision-making responsibility of H.J.R, born 2012, with alternating weekly parenting time and exchanges occurring every Friday, and the legal residence of the child for school attendance was Janiece's. App., 14-15.

¶ 5. On February 7, 2017, Dustin filed a Motion for Change of Custody and for Evidentiary Hearing and Brief seeking primary residential responsibility of the minor child,

H.J.R. Doc. ID# 61. Dustin simultaneously filed a Motion for Interim Order seeking temporary primary residential responsibility of the minor child, H.J.R. Doc. ID# 63.

¶ 6. On February 16, 2017, Janiece filed Plaintiff's Motion for Order of Contempt and Remedial Sanctions and Request for Hearing for Dustin withholding the child in violation of the Judgment. Doc. ID# 70. Janiece also filed a Response to Plaintiff's Motion for Change of Custody and for Evidentiary Hearing and Brief; Countermotion and Brief for Change of Custody seeking primary residential responsibility of the minor child, H.J.R., on February 21, 2017 (Doc. ID# 77), and a Response Opposing the Motion for Interim Order (Doc. ID# 82).

¶ 7. A hearing was held on February 27, 2017 before the Honorable Bruce Romanick, Morton County District Court. The Court issued an Interim Order ordering the parties to continue having equal residential responsibility, extended parenting time for Janiece immediately following the order and then alternating parenting time pursuant to the June 25, 2014 Judgment, and placing restrictions on Jordan Kessel with the minor child. App., 18.

¶ 8. The matter came before the Honorable Bruce Romanick, Morton County District Court, for an evidentiary hearing on June 27, 2017. At the close of the hearing, the Court instructed Janiece's counsel to prepare an Amended Interim Order removing the restrictions on Jordan Kessel. Transcript, 229:14-21. On June 28, 2017, the Court entered the Amended Interim Order. App., 21.

¶ 9. On July 20, 2017, the Court issued its Findings of Fact, Conclusions of Law & Order for Judgment (App., 23) and Court Ordered Parenting Plan (App., 39) awarding Dustin primary residential responsibility of the minor child, H.J.R. On August 8, 2017 the

Amended Judgment was entered, pursuant to the Order for Judgment and Court Ordered Parenting Plan. App., 47.

¶ 10. Janiece filed her Notice of Appeal on August 9, 2017. App., 58.

STATEMENT OF FACTS

¶ 11. The parties were previously married, with one child born of the marriage, namely H.J.R., born 2012. The parties had equal residential responsibility and joint decision-making responsibility of H.J.R, with alternating weekly parenting time and exchanges occurring every Friday, and the legal residence of the child for school attendance was Janiece's. App., 14-15.

¶ 12. In or around November 2016 Janiece moved to Dickinson, North Dakota, moving in with Jordan Kessel. Transcript, 178:9-14. Prior to moving to Dickinson, Janiece and H.J.R. spent short periods of time at Jordan's home so that they could ease the children into it, and make sure "that everybody in our opinion could adjust well and got along and that everybody was happy with it." Transcript, 178:15-22. Janiece then stayed home with the children for most of November and December to help acclimate them to the change. Transcript, 178:23-179:5.

¶ 13. Dustin currently lives in Bismarck, North Dakota. Transcript, 71:16-18. Because H.J.R. was going to be starting kindergarten, it was no longer feasible for the parties to continue having equal residential responsibility. Both parties were seeking primary residential responsibility for the minor child.

¶ 14. The testimony presented established that both parents can assure the child receives adequate food, shelter, and medical care. App., 25, ¶ 10. However, Janiece testified that H.J.R. eats healthier food in Janiece's care and that Dustin has often dressed

H.J.R. in clothes that are not appropriate for the season or are too small. Transcript, 180:15-22. Both parties also testified that Janiece has primarily taken H.J.R. to all medical appointments. Transcript, 101:16-18, 180:23-25.

¶ 15. Dustin claimed that Jordan Kessel had a history of violence and made allegations of abuse that H.J.R. allegedly witnessed; however, the evidence established that Jordan Kessel has no history of violence. Transcript, 160:17-162:19. Further, Social Services conducted an investigation regarding the allegations of abuse against Jordan Kessel, and found that there was no safety or risk factors found. App., 101. The Child Protective Service Assessment Report also provided that there was no indication “that there is any domestic violence or physical abuse occurring.” Doc. ID# 127. The investigation was closed with no services required. Id. Finally, Chris Hertler, PhD testified that H.J.R. showed no signs of abuse. Transcript, 133:20-22. As such, the overwhelming evidence established that there were no concerns for a safe environment at Janiece’s home.

¶ 16. Dr. Hertler was providing counseling to H.J.R. beginning in March 2017. Transcript, 121:8-10. He diagnosed H.J.R. with adjustment disorder with anxiety and child affected with parental relationship distress. App., 94. He explained that the diagnosis of adjustment disorder with anxiety means that, “there’s been an event in the child’s life that has caused the child to feel anxious and to show anxiety,” and that “her anxiety seemed to be pretty mild.” Transcript, 122:18-20, 123:4-5. He further testified that the diagnosis of child affected with parental relationship distress is appropriately described as problems between the parents that causes distress to the child. Transcript, 123:10-14. Finally, he testified at trial that he didn’t “really see a whole lot of indications of significant anxiety right now.” Transcript, 141:16-17.

¶ 17. The evidence presented at trial presented concerns of H.J.R. being in a safe environment in Dustin's home. Dr. Hertler testified that his sessions with H.J.R. caused him concern regarding the children not being closely supervised or proper care given as to what the children should be doing and seeing or how they should be behaving. Transcript, 135:15-19. He further testified that H.J.R. indicated that they spend a lot of time watching videos at Dustin's that include zombies, sharks, and killing. Transcript, 135:9-13.

¶ 18. Further Dustin's wife, Jessica was diagnosed with a severe opioid use disorder, severe alcohol use disorder, and unspecified depressive disorder. App., 103. Jessica denied current use and problems; however, her treatment records indicated that she "has difficulty with impulse control and lacks coping skills," "has thoughts of suicide or harm to others," "has difficulty functioning in significant life areas," and "recurrent [drug] use resulting in failure to fulfill major role obligations at work, school, or home." App., 110 and 113. Further, Jessica testified that she continued to take care of the children even when she was drowsy and withdrawing. Transcript, 49:23-50:10, 54:24-55:5.

¶ 19. Dustin has lived in Bismarck since H.J.R. was born. He has maintained the same job for over 5 years, as well. Transcript, 85:11. H.J.R.'s grandmother lives in the area. Dustin's extended family does not live in the Bismarck area, but is about an hour away, and they see H.J.R. about once a month.

¶ 20. There is some concern about Dustin's financial stability. Dustin and Jessica testified that Jessica had to go back to work because of their financial struggles, and that money is still tight. According to Dustin's Financial Statement and Affidavit, they barely make enough to cover their monthly expenses. Doc. ID# 114.

¶ 21. Janiece lived in the Bismarck area since H.J.R. was born, until around November 2016 when she moved to Dickinson. Transcript, 178:9-14. Although she has had a few jobs during that time, she has worked for the State of North Dakota for approximately two years. Transcript, 176:20-177:22. Janiece has a steady income, and she and Jordan have great financial stability. Transcript, 181:17-24

¶ 22. Dustin has previously withheld parenting time from Janiece. Transcript, 103:24-104:1. On January 6, 2016, Dustin began his week of parenting time with H.J.R.; however, on January 13, 2016, Dustin refused to allow Janiece her parenting time with H.J.R. and withheld all parenting time until February 27, 2017 when the Court ordered Defendant's parenting time following an interim order hearing. Doc. ID# 96. Conversely, Janiece has never withheld parenting time from Dustin.

¶ 23. The evidence presented at trial presented concerns regarding the interaction and interrelationship between H.J.R. and Dustin's wife Jessica, which may affect H.J.R.'s best interests. Jessica was diagnosed with a severe opioid use disorder, severe alcohol use disorder, and unspecified depressive disorder. App., 103. Although Jessica testified that she is currently attending weekly N.A.-like meetings and is sober, Jessica discontinued treatment against medical advice. App., 103-107. Additionally, her treatment records indicate that she previously attended these same meetings, and "it was not helpful." App., 111. Jessica's treatment records indicate that she obtained pills off the streets the whole time of use, "lacks insight into the addiction as well as the relapse process," "reported [that] she will probably continue to use if she does not get help stopping," and that she "has poor recognition and understanding of relapse and recidivism issues and displays moderately high vulnerability mental health problems." App., 104, 106, and 111.

¶ 24. Although Dustin claimed that Jordan Kessel has a history of violence and made allegations of abuse that H.J.R. allegedly witnessed, the overwhelming evidence established that these allegations were false.

¶ 25. The testimony established that Jordan and H.J.R. have a very close relationship and that H.J.R. loves him and his family. Dr. Hertler testified that H.J.R. “tends to see Jordan as part of her family.” Transcript, 135:2-3. Jordan testified that his children and H.J.R. “get along very well” and that “H.J.R. has actually asked numerous times throughout this process of when the kids are – or when she’s going to be able to see [A]. and B. and be able to play.” Transcript, 158:8-12. Jordan further testified that he and H.J.R. have grown close. Transcript, 160:3-5. Janiece explained that H.J.R. “seems to enjoy spending time with Jordan quite a bit. Every time on exchanges when we go to drop off on Fridays and H.J.R. goes to her dad’s, she usually gives him a hug and a kiss on the cheek and says goodbye and she loved him and misses him.” Transcript, 197:7-14. She also confirmed that H.J.R. gets along with Jordan’s boys fairly well, and they “really seem to enjoy playing together.” Transcript, 197:19-25. As such, the overwhelming evidence established that H.J.R.’s relationship with Jordan affects her only positively.

ARGUMENT

A. Standard of Review

¶ 26. An award of primary residential responsibility is a finding of fact that will be reversed on appeal if it is clearly erroneous. Molitor v. Molitor, 2006 ND 163, ¶ 6, 718 N.W.2d 13. A finding of fact is clearly erroneous if it “is induced by an erroneous view of the law, there is no evidence to support it, or, though some evidence supports it, on the entire record we are left with a definite and firm conviction a mistake has been made.” Id.

¶ 27. In making a custody determination, a trial court must make the decision based on the best interests and welfare of the child and consider all of the factors under N.D.C.C. § 14-09-06.2(1). Reeves v. Chepulis, 1999 ND 63, ¶ 10, 591 N.W.2d 791, 794. The court's findings of fact must be stated with sufficient specificity to enable a reviewing court to understand the factual basis for the court's decision." Id. "It is not enough for the district court merely to recite or summarize testimony presented at trial to satisfy the requirement that findings of fact be stated with sufficient specificity." Datz v. Dosch, 2013 ND 148, ¶ 9, 836 N.W.2d 598. The court must make specific findings explaining how the statutory factors apply. Id.

B. The District Court's Findings of Fact Regarding Residential Responsibility are Clearly Erroneous Because of a Misapplication of the Law or Improper Application of the Best-Interest Factors.

¶ 28. The District Court found that factors a, c, e, f, g favor neither party, which Janiece does not dispute. The District Court further found that factors h, i, j, and l were not applicable in this case, which Janiece also does not dispute. Although Janiece disagrees with the Court's finding that factor d favors Dustin, she does not argue that this was clearly erroneous for the purpose of this appeal; however, the Court's findings regarding factors b and k are clearly erroneous, and the basis of this appeal. As such, Janiece respectfully requests that this Court reverse the judgment of the District Court regarding residential responsibility or modify the judgment, awarding her primary residential responsibility of H.J.R.

i. Factor b should have been found to favor Janiece

¶ 29. Based on the testimony provided, evidence presented, and the Court's own findings, factor b, the ability of each parent to assure that the child receives adequate food,

clothing, shelter, medical care, and a safe environment, should have been found in favor of Janiece; however, the Court's findings provide that, "the parties are equal in this factor even with the allegations back and forth about safety in the home." App., 26, ¶ 14. This is clearly erroneous.

¶ 30. The District Court found that "both parents can assure the child receives adequate, food, shelter, and medical care." App., 25, ¶ 10. Neither party disputed those issues; rather, the focus, and concern, was the ability to provide a safe environment.

¶ 31. In its findings, the District Court specifically stated, "the evidence established that there are no concerns for a safe environment at Janiece's home." App., 26, ¶ 11. The Court then made a finding that the child "was likely traumatized by the move to Dickinson, the move into a new household, and the extreme change from the life she had known all her life." Id. This factor only concerns the ability to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment. N.D.C.C. § 14-09-06.2(1)(b). How a move may have affected the child, without a finding that the new home was not adequate, has nothing to do with this factor. As such, this is not an appropriate finding under this factor, which is clearly erroneous.

¶ 32. Additionally, the Court made this finding without pointing to any evidence or testimony to support such a finding. In fact, the unrefuted testimony presented directly contradicts such a finding. Chris Hertler, PhD is a clinical psychologist with a PhD in psychology, and has been practicing for over thirty years with children. Transcript, 119:10-120:4. Dr. Hertler has been H.J.R.'s treating psychologist since March 2017. Transcript, 121:8-10. He testified that "there's been an event in the child's life that has caused the child to feel anxious and to show anxiety . . . I would say that for the most part her anxiety

has seemed to be pretty mild.” Transcript, 121:8-10, 123:4-5. He further said that he diagnosed H.J.R. with child affected by parental relationship distress, which is when “problems between the parents cause distress in the child.” Transcript, 123:10-14. Dr. Hertler further testified that he didn’t “really see a whole lot of indications of significant anxiety right now.” Transcript, 141:16-17. There was no indication by the medical professionals that H.J.R. was traumatized, or that the issues she was experiencing were due to the move or “extreme change from the life she had known her whole life.” It is clearly erroneous for the Court to make such a finding, contrary to the unrefuted expert testimony of H.J.R.’s treating psychologist.

¶ 33. Additionally, as the District Court noted, “Chris Hertler, PhD, testified that his sessions with H.J.R. caused him some concern regarding the children not being closely supervised or proper care as to what the children should be doing” while at Dustin’s home. App., 26, ¶ 12. The Court also made a point to note that Dustin’s wife was diagnosed with an “opioid use disorder, alcohol use disorder, and unspecified depressive disorder.” App., 26, ¶ 13. Her treatment records indicate that Jessica has had “difficulty with impulse control and lacks coping skills,” “thoughts of suicide or harm to others,” “difficulty functioning in significant life areas,” and “recurrent [drug] use resulting in failure to fulfill major role obligations at work, school, or home.” App., 110 and 113. The Court acknowledged this in its findings, as well as that “Jessica testified that she continued to take care of the children even when she was drowsy and withdrawing.” App., 26, ¶ 13. The Court failed to make specific findings explaining how this recitation of the testimony and evidence applied to the statutory factor of a safe environment, as required. See Datz v. Dosch, 2013 ND 148, ¶ 9, 836 N.W.2d 598.

¶ 34. Based on the above, the District Court's findings, with respect to this factor, are clearly erroneous. This factor should have been found to favor Janiece, as the testimony, evidence, and District Court findings establish that there are no concerns for a safe environment at Janiece's, but that there is great concern for a safe environment at Dustin's. As such, Janiece respectfully requests that this Court reverse the judgment of the District Court regarding residential responsibility or modify the judgment, awarding her primary residential responsibility of H.J.R.

ii. Factor k should have been found to favor Janiece.

¶ 35. The District Court's findings were clearly erroneous regarding factor k, the interaction and interrelationship . . . of the child with any person who resides in . . . the household of a parent and who may significantly affect the child's best interests. N.D.C.C. § 14-09-06.2(1)(k). The Court included facts that are not to be considered under this factor, made findings contrary to previous findings, and misapplied the law.

¶ 36. First, the District Court misapplied the law in finding that this factor favored neither party, while finding that "the evidence presented at trial presented concerns regarding the interaction and interrelationship between H.J.R. and Dustin's wife Jessica, which may affect the child's best interests." App., 31, ¶ 37. The factor requires the court to analyze whether there is a possibility that a person interacting with the child may affect the child's best interest, not that they have already affected the child's best interest.

¶ 37. "When interpreting a statute, this Court seeks to ascertain the intent of the Legislature by giving the statute's language its plain, ordinary, and commonly understood meaning." Northern Excavating Co., Inc. v. Sisters of Mary of the Presentation Long Term Care, 2012 ND 78, ¶ 4, 815 N.W.2d 280, 283. "Words and phrases must be construed

according to the context and the rules of grammar and the approved usage of the language.” N.D.C.C. § 1-02-03. The plain language of this factor requires the analysis of relationships that may significantly affect the child’s best interests. N.D.C.C. § 14-09-06.2(1)(k) (emphasis added). “May” is legally defined as “to be a possibility.” Black’s Law Dictionary 1000 (8th ed. 2004). As such, this is a forward-looking factor, and does not require a finding of a past impact to the child’s best interest.

¶ 38. In this case, the District Court specifically found that, “the evidence presented at trial presented concerns regarding the interaction and interrelationship between H.J.R. and Dustin’s wife Jessica, which may affect the child’s best interests,” “Jessica’s drug addiction may affect the child’s best interest,” and that her failure to successfully complete any form of counseling or treatment “could have an impact on H.J.R.” App., 31, ¶ 37-38 and 32, ¶ 41 (emphasis added). This necessarily means that, pursuant to the law, this factor must have been weighed against Dustin having residential responsibility. However, the Court discounted its findings because “no evidence was provided to the [c]ourt to indicate there was any impact on H.J.R.” App., 31, ¶ 38. As explained above, this factor considers the possibility of affecting the child’s best interest, not evidence that it already has. As such, the Court’s findings are clearly erroneous, as it misapplied the law.

¶ 39. Additionally, “[t]he plain language of factor (k) requires a trial court to consider the interaction and interrelationship of the children with a person who *currently* resides in or is present in the household, not to review a parent’s past relationships with individuals not currently present in that parent’s life.” Doll v. Doll, 2011 ND 24, ¶ 22, 794 N.W.2d 425, 432. However, the District Court indicated “concern” because “Janiece has

had two serious relationships with a new child with the first...” App., 32, ¶ 40. Janiece’s past relationships are not appropriately considered under this factor, and should have no bearing on the court’s decision of the weight of this factor. Therefore, it is clearly erroneous for anything regarding Janiece’s past relationship to be included in the analysis of this factor.

¶ 40. Finally, the Court’s findings were clearly erroneous as they contradict previous findings, and include facts that are not applicable under this factor. The Court’s findings indicate that “the abuse in the home allegations by H.J.R. concern the [c]ourt if they are true and concern the [c]ourt if H.J.R. would make them up. The [c]ourt finds that the move has caused anxiety and the change in H.J.R.s behavior.” App., 32, ¶ 40. Notably missing, is whether anyone in Janiece’s household may affect the child’s best interest. The Court improperly considers Janiece’s move, rather than the impact household members may have on the child’s best interest, as required under this factor, which is clearly erroneous.

¶ 41. The overwhelming evidence provides that the only impact Janiece’s current household members have on H.J.R. is positive. The Court found “there are no concerns for a safe environment at Janiece’s home,” which indicates that the Court already determined the abuse allegations were not true. App., 26, ¶ 11. Further, the testimony provided overwhelmingly showed that the child has a great relationship with the members in Janiece’s household, including Jordan and his boys. Dr. Hertler testified that H.J.R. “tends to see Jordan as part of her family.” Transcript, 135:2-3. Jordan testified that his children and H.J.R. “get along very well” and that “H.J.R. has actually asked numerous times throughout this process of when the kids are – or when she’s going to be able to see

[A]. and B. and be able to play.” Transcript, 158:8-12. Jordan further testified that he and H.J.R. have grown close. Transcript, 160:3-5. Janiece explained that H.J.R. “seems to enjoy spending time with Jordan quite a bit. Every time on exchanges when we go to drop off on Fridays and H.J.R. goes to her dad’s, she usually gives him a hug and a kiss on the cheek and says goodbye and she loved him and misses him.” Transcript, 197:7-14. She also confirmed that H.J.R. gets along with Jordan’s boys fairly well, and they “really seem to enjoy playing together.” Transcript, 197:19-25. As such, a finding that there is concern in Janiece’s household regarding this factor, is clearly erroneous.

¶ 42. Based on the above, the District Court’s findings in relation to factor k are clearly erroneous. This factor should have been found to favor Janiece, as the testimony, evidence, and District Court findings establish that there are no concerns regarding the interaction with anyone at Janiece’s, but there is great concern that interaction with Jessica may affect the child’s best interests at Dustin’s. As such, Janiece respectfully requests that this Court reverse the judgment of the District Court regarding residential responsibility or modify the judgment, awarding her primary residential responsibility of H.J.R.

C. The District Court’s Findings of Fact and Judgment Regarding Residential Responsibility are Clearly Erroneous Because, Based on the Entire Record, it is Clear a Mistake has Been Made

¶ 43. Based on the entire record, it is clear a mistake has been made in awarding Dustin primary residential responsibility. Therefore, the District Court’s findings and judgment regarding residential responsibility are clearly erroneous. The Court’s findings indicate that the Court feels it is in the child’s best interest to be in a home with a drug addict who has “difficulty with impulse control and lacks coping skills,” “thoughts of suicide or harm to others,” “difficulty functioning in significant life areas,” and “recurrent

[drug] use resulting in failure to fulfill major role obligations at work, school, or home,” and that continues “to take care of the children even when she was drowsy and withdrawing,” than to be in a home with her mother’s boyfriend and children whom she has good relationships with simply because, without any evidence or testimony, the Court feels they may have moved in together too quickly.

¶ 44. As explained in detail above, there are significant concerns related to Jessica’s drug addiction, which could affect the child’s best interests. The District Court acknowledges this, numerous times. App., 31, ¶ 37 and 38; 32, ¶ 41; and 35, ¶ 61. Her medical records are clear that “she lacks insight into the addiction as well as relapse process,” she has “terrible” emotional health, and that “she will probably continue to use if she does not get help stopping.” App., 104, 108, and 110.

¶ 45. Although the District Court found that H.J.R.’s anxiety was caused by the “move to Dickinson” and the “move into a new blended family,” the testimony and evidence presented shows H.J.R. suffered “pretty mild” anxiety because of “an event in the child’s life that has caused the child to feel anxious and to show anxiety and “problems between the parents [that] caused distress in the child.” Transcript, 122:18-20, 123:4-5, 10-14. Dr. Hertler, H.J.R. treating psychologist, further testified that he didn’t “really see a whole lot of indications of significant anxiety right now.” Transcript, 141:16-17.

¶ 46. Further, the overwhelming testimony presented showed that H.J.R. had blended well with Jordan and his kids, and thought of them as her family. Dr. Hertler testified that H.J.R. “tends to see Jordan as part of her family.” Transcript, 135:2-3. Jordan testified that his children and H.J.R. “get along very well” and that “H.J.R. has actually asked numerous times throughout this process of when the kids are – or when she’s going

to be able to see H. and B. and be able to play.” Transcript, 158:8-12. Jordan further testified that he and H.J.R. have grown close. Transcript, 160:3-5. Janiece explained that H.J.R. “seems to enjoy spending time with Jordan quite a bit. Every time on exchanges when we go to drop off on Fridays and H.J.R. goes to her dad’s, she usually gives him a hug and a kiss on the cheek and says goodbye and she loved him and misses him.” Transcript, 197:7-14. She also confirmed that H.J.R. gets along with Jordan’s boys fairly well, and they “really seem to enjoy playing together.” Transcript, 197:19-25. As such, even if the District Court was not comfortable with Janiece moving in with Jordan when she did, the evidence shows that H.J.R. has adjusted well to the move, and there is no evidence that it has caused H.J.R.’s anxiety.

¶ 47. Based on the above, it is evident that the District Court’s findings of fact and judgment, related to residential responsibility, were clearly erroneous. An overall review of the record shows that a mistake has clearly been made. Therefore, Janiece respectfully requests that this Court reverse the judgment of the District Court regarding residential responsibility or modify the judgment, awarding her primary residential responsibility of H.J.R.


CONCLUSION

¶ 48. The District Court’s findings of fact regarding residential responsibility are clearly erroneous because of a misapplication of the law or improper application of the best-interest factors b and k. The Court included findings not applicable to those factors, made findings inconsistent with the evidence and testimony presented, and misapplied the law, among other things.

¶ 49. Further, the District Court's findings of fact regarding residential responsibility are clearly erroneous because, based on the entire record, it is clear a mistake has been made. It cannot be in the child's best interest to be with a drug addict with a long history of problems that may affect her best interest.

¶ 50. As such, Janiece respectfully requests that this Court reverse the judgment of the District Court regarding residential responsibility or modify the judgment, awarding her primary residential responsibility of H.J.R.

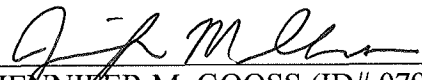
Respectfully submitted this 13th day of November, 2017.


JENNIFER M. GOOSS (ID# 07971)
Attorney for Appellant
SOLEM LAW OFFICE
PO Box 249
109 Central Ave. N.
Beulah, ND 58523
701-873-5555
Beulaw3@westriv.com

CERTIFICATE OF COMPLIANCE

¶ 51. The undersigned, as the attorney representing Appellant, Janiece Rebenitsch, and the author of this Brief hereby certifies that said brief complies with Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, in that it contains 4,889 words from the portion of the brief entitled "Statement of the Issues " through the signature block. This word count was done with the assistance of the undersigned's computer system, which also counts abbreviations as words.

DATED this 13th day of November, 2017.


JENNIFER M. GOOSS (ID# 07971)
Attorney for Appellant
SOLEM LAW OFFICE
PO Box 249
109 Central Ave. N.
Beulah, ND 58523
701-873-5555
Beulaw3@westriv.com

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

DUSTIN REBENITSCH,	)	AFFIDAVIT OF SERVICE BY
	)	ELECTRONIC MAIL ON
Plaintiff/Respondent,	)	SUPREME COURT CLERK OF
	)	COURT and KENT MORROW
vs.)	
)	
JANIECE REBENITSCH,	)	Supreme Ct. Case No. 20170302
	)	District Ct. Case No 30-2012-DM-00178
Defendant/Appellant.)	
STATE OF NORTH DAKOTA)	
	) ss.	
COUNTY OF MERCER)	

LYNNETTE HARRISON, being first duly sworn, does depose and state that she is of legal age and not a party to the above entitled matter and on November 13, 2017, the following documents:

- A. Appellant's Brief
- B. Appendix
- B. AFFIDAVIT OF SERVICE BY ELECTRONIC MAIL

was filed electronically through email to the addresses as given below:

Supreme Court of North Dakota
supclerkofcourt@ndcourts.gov

Kent M. Morrow
morrow@midconetwork.com


LYNNETTE HARRISON

Signed and sworn to before me on November 13, 2017.

§§§§§
SUSAN NEUBERGER
Notary Public
State of North Dakota
My Commission Expires October 28, 2018
§§§§§


SUSAN NEUBERGER, Notary Public
Mercer County, North Dakota