

**IN THE SUPREME COURT
 STATE OF NORTH DAKOTA**

Supreme Court Case No. 20170438
 [previous Supreme Court Case No. 20160094]
 Rolette County Case No. 40-2015-0002

Joni Tillich, Nicole LaFloe,)
Shawn Marcellais, Lisa DeCoteau,)
and Lynn Boughey,)
)
Plaintiffs-Appellants,)
vs.)
)
Don Bruce, Vinier "Poin" Davis,)
and Linda Davis,)
)
Defendants-Appellees.)

REPLY BRIEF OF THE APPELLANTS

**ON APPEAL FROM DOCKET NO. 168 FINDINGS OF FACT,
 CONCLUSIONS OF LAW, AND ORDER FOR AWARD OF
 ATTORNEY'S FEES AND COSTS, JUNE 14, 2017, DOCKET NO.
 231 MEMORANDA DECISION AND ORDER GRANTING
 PLAINTIFFS' MOTION FOR RULE 26 PROTECTIVE ORDER,
 SEPTEMBER 21, 2017, DOCKET NO. 232 AMENDED FINDINGS
 OF FACTS, CONCLUSIONS OF LAW, AND ORDER FOR
 AWARD OF ATTORNEY'S FEES AND COSTS, SEPTEMBER 21,
 2017, DOCKET NO. 234 MEMORANDA DECISION, ORDER
 DENYING RULE 60(B) MOTION TO CORRECT ORDER WITH
 EXCEPTION, ORDER DENYING RULE 7.1 OBJECTION, AND
 ORDER DENYING MOTIONS TO VACATE ORDER
 AWARDING ATTORNEY FEES, SEPTEMBER 21, 2017,
 DOCKET NO. 235 MEMORANDA DECISION AND ORDER**

**DENYING PLAINTIFF'S MOTION TO VACATE ORDER FOR
FAILURE TO HOLD EVIDENTIARY HEARING REGARDING
ATTORNEY'S FEES, AND DOCKET NO. 238 AMENDED
JUDGMENT IMPLEMENTING SEPTEMBER 21, 2017 ORDER,
OCTOBER 12, 2017, THE HONORABLE RICHARD GEIGER
PRESIDING IN ROLETTE COUNTY DISTRICT COURT,
NORTHEAST JUDICIAL DISTRICT**

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¶1 ARGUMENT

¶2 The defendants attempt to assert that the prior case resolved everything, even though the only thing the prior case before this Court resolved was whether or not an award of attorney fees had to be awarded. It is essential to note that the initial decision on appeal was the lower court's decision not to award any attorney fees since an award of attorney fees was granted in a parallel case. This Court reversed merely that decision not to award any attorney fees, and remanded the matter. Because no attorney fees were previously awarded, there was no hearing on the proper amount (even though an evidentiary hearing had been requested previously and is as a matter of record and noted in our prior brief in this matter). Since the only thing appealed was the denial of an award of attorney fees, all other aspects relating to such an award are properly before the lower court on remand, and properly before this Court on appeal. There was no evidentiary hearing relating to all of the aspects of the attorney fees, such as double billing and unreasonableness.

¶3 In determining if there was an abuse of discretion, the plaintiffs have the right to assert that the award of attorney fees itself was

arbitrary and unreasonable because the amount awarded is unjustified, because no hearing was allowed, and indeed, because the amount awarded was unreasonable. The issue of the amount of attorney fees was not before the Court previously because no attorney fees had been awarded. We also assert that it was an abuse of discretion not to provide an evidentiary hearing, which had properly been requested previously in the original district court action.

¶4 The defendants assert in their brief that the facts provided are not within the record. This is absolutely incorrect. The lower court decided the prior matter on briefs, with submissions of affidavits. The lower Court never provided any evidentiary hearing in regards to the attorney fees issue, and decided the matter by motion. The affidavits submitted by the plaintiffs are therefore taken as being true, and all reasonable inferences are to be taken in favor of the plaintiffs. The plaintiffs' affidavits clearly indicate all the facts listed in the brief and the facts relating to the issue of attorney fees, and where court rules by motion and without a hearing, the facts asserted by the party requesting a hearing are taken as true, along with any reasonable inferences.

¶5 As to the issue of jurisdiction, the plaintiffs admit that jurisdiction can be raised at any time. We are – in our initial brief – merely raising the issue raised by Chief Justice VandeWalle in his concurrence. If there is no jurisdiction for the court to hear this case, there is no jurisdiction to award attorney fees. The issue jurisdiction is properly before this court. Chief Justice VandeWalle properly raised a jurisdictional issue, which was then properly presented to the lower court on remand. That issue therefore is properly before this Court.

¶6 In regards to the issue of the plaintiffs consisting of judicial board members and their attorney, it is undisputed – and shown by the affidavits submitted – that the plaintiffs were either members of the judicial board or their attorney. One should not lose sight of the fact that the reason the Judicial Board sued this matter out was because Don Bruce and his clients sued the Judicial Board members and their attorney, a clear abuse of process. The Judicial Board realized – having been recently sued by the judges of the tribal court – that they could not bring the action in tribal court, and therefore attempted to create new law by bringing the action in state court.

¶7 Because the prior case and appeal involve the awarded no fees, it cannot be *res judicata* to now raise the issue not brought previously – that is, the amount of fees or the determination relating to the fees the award. The plaintiffs have asserted five different areas in which they consider the award to be unreasonable and arbitrary. The other side should have had the burden to prove the time incurred and the amount billed, and we should have had the right to an evidentiary hearing so as to properly present these evidentiary issues to the lower court. It is especially ironic that the amount of the award includes the amount of time taken by Attorney Baer to correct his many mistakes, his misfilings, using docket numbers, and obtaining a judgment without order for judgment. Mr. Boughey had to make motions to vacate improperly entered orders or judgments, and had to assist the court and clerk in correcting many of Mr. Baer's errors.

¶8 The greatest tragedy this case is that we would not be here if this Court would have addressed the issue of frivolousness in the prior case. The issue was properly briefed, and a cross-appeal should not have been necessary. The issue of frivolousness was essential to Bruce's appeal, and should have been considered by the Court as part of the

original appeal. The lower Court was right the first time: The defendants didn't deserve one penny for attorney fees, and still don't.

¶9 Dated this 10th day of April, 2018.

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CERTIFICATE OF SERVICE

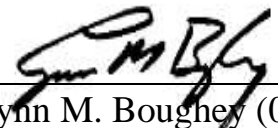
¶1 Appellants have served the following document:

1. Appellants' Reply Brief;

Upon the above named Appellees, by EMAIL on Tuesday, May 15, 2018 and filed electronically with the Clerk of Court of the North Dakota Supreme Court through email, to:

Larry M. Baer lmbaer@baerlodge.com

Dated this 15th day of May, 2018.



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