

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

Cheri Poitra, State of North Dakota,	)	Supreme Court No. 20180141
	)	Sheridan County District
Plaintiff/Appellee	)	Court Case No. 42-2017-DM-00005
	)	
vs.	)	
	)	
Shane M. Martin,	)	
	)	
Defendant/Appellant	)	
	)	

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Appeal from the

Order Denying Motion for Relief from Judgment dated April 3, 2018.

District Court, Sheridan County, North Dakota  
The Honorable Cynthia Feland, Presiding

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**BRIEF OF APPELLANT**

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## **I. Jurisdictional Statement**

[¶1] "Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law." North Dakota Constitution, Article VI, Section 6. "A judgment or order in a civil action may be removed to the Supreme Court by appeal as provided in this chapter." N.D.C.C., § 28-27-01. A final order affecting a substantial right made in special proceedings or upon a summary application and action after a Judgment is appealable. N.D.C.C. § 28-27-02(2).

## **[¶2] Statement of the Issues**

- I. **[¶3]** Whether the district court erred by denying Shane Martin's motion for relief from default judgment.

## **III. Statement of the Case**

[¶4] This is an appeal from the district court's order denying Appellant, Shane Martin ("Shane's") motion for relief from default judgment. (App. 35).

[¶5] This matter was commenced by service of a Summons and Complaint on September 19<sup>th</sup>, 2017 by the State of North Dakota. Shane is the biological father of IRP pursuant to an acknowledgement of paternity that he executed. The State of North Dakota sought to establish a child support obligation due to the mother of IRP, Cheri F. Poitra ("Cheri") receiving child support services.

[¶6] On November 7<sup>th</sup>, 2017, the State of North Dakota filed a motion for default judgment alleging that Shane had failed to make an appearance or otherwise answer the State of North Dakota's complaint. (App. 4).

[¶7] On November 17<sup>th</sup>, 2017, attorney Robert G. Ackre filed a special notice of appearance on behalf of Shane. (App. 11). In his special appearance, attorney Ackre

disputed that the State of North Dakota had subject matter jurisdiction over the issue of child support due to an ongoing custody matter pending in Turtle Mountain Tribal Court.

[¶8] Shane obtained a hearing date of January 11<sup>th</sup>, 2018 for the purpose of arguing the state's lack of subject matter jurisdiction. (App. 24). At the time and place of the hearing, the district court declined to hear any testimony or argument and summarily denied Shane's request.

[¶9] On February 20<sup>th</sup>, 2018, the district court granted the state's motion for default judgment and entered a judgment against Shane establishing a child support obligation. (App. 28).

[¶10] On February 28<sup>th</sup>, 2018, Shane filed a motion for relief from judgment under Rule 60 of the North Dakota Rules of Civil Procedure, arguing that default judgment was inappropriate due to his appearance in this matter and the lack of notice to enter default judgment against him. (App. 30). The state resisted that motion and a hearing was held on March 29<sup>th</sup>, 2018. Following that hearing, the district court entered an order denying Shane's motion for relief from judgment. (App. 35). Shane is now presently appealing that order. (App. 41).

#### **IV. Statement of the Facts**

[¶11] Shane Martin and Cheri Poitra have one child together, IRP. Shane has executed an acknowledgment of paternity for that child. In August of 2016, Cheri had obtained child support services in the State of North Dakota, and as a result, the State of North Dakota initiated an action against Shane to establish a child support obligation.

[¶12] The State of North Dakota filed a motion for default judgment against Shane on November 7<sup>th</sup>, 2017. (App. 4). A few days later, on November 17<sup>th</sup>, 2017, Shane entered

a special appearance through attorney Robert G. Ackre contesting subject matter jurisdiction over the issue of child support. (App. 11). In his special appearance, attorney Ackre alleged that both parties, referring to Shane and Cheri, are enrolled members of a federally recognized tribe, namely the Turtle Mountain Band of Chippewa Indians. It was also alleged that the child was an enrolled member of the Turtle Mountain Band of Chippewa Indians, the child was conceived within the external boundaries of the Turtle Mountain Band of Chippewa Indian Reservation, and that the parties had a pending action to determine parenting rights and responsibilities in Turtle Mountain Tribal Court. Attorney Ackre supported this contention with a copy of the Summons and Petition for Custody that had been filed in Turtle Mountain Tribal Court. Attorney Ackre then secured a hearing date on January 11<sup>th</sup>, 2018 for the purposes of arguing his special appearance and provided notice of that hearing. (App. 24).

[¶13] When the hearing was eventually held on January 11<sup>th</sup>, 2018, the district court indicated that it did not understand what was occurring, or why the hearing had even been set, and refused to provide Shane any opportunity to present evidence or testimony in support of his special appearance. The hearing was then summarily concluded (Tr. 1).

[¶14] On February 2<sup>nd</sup>, 2018, the district court denied Shane's special appearance and found that the State of North Dakota had subject matter jurisdiction over the issue of child support. (App. 25).

[¶15] On February 20<sup>th</sup>, 2018, the district court granted the state's motion for default judgment, despite Shane's appearance one month prior on January 11<sup>th</sup>. (App. 28). On February 28<sup>th</sup>, Shane moved for relief from default judgment contending that he had

made an appearance, both through counsel and in person, and that default judgment was inappropriate. (App. 30). A hearing was held on that motion on March 29<sup>th</sup>, 2018, and following that hearing, the district court entered an order on April 3<sup>rd</sup>, 2018, denying Shane's motion for relief from judgment. (App 35).

## **V. Argument**

### **Standard of Review**

[¶16] This Court reviews a trial court's denial of a motion for relief from a default judgment to determine whether the court abused its discretion. City Bank v. Reikowski, 2005 ND 133, ¶6, 699 N.W. 2d, 851. An abuse of discretion occurs when a trial court acts in an arbitrary, unreasonable, or unconscionable manner, or when it misinterprets or misapplies the law. Id.

#### **I. The District Court Erred By Denying Shane Martin's Motion for Relief from Default Judgment.**

[¶17] North Dakota Rules of Civil Procedure 60(b) provides grounds for relief from a final judgment or order. Prior to appealing the entry of a default judgment, a defendant should move the district court for relief from that judgment under N.D.R.Civ.P. 60(b), as that is the exclusive means for opening a default judgment. Flemming v. Flemming, 2010 ND, 212, ¶3, 790 N.W. 2d, 762. This Court has repeatedly held that because it prefers decisions on the merits, "trial courts should be more lenient when entertaining motions to vacate default judgments, as distinguished from judgments after trial on the merits." City Bank at ¶6.

[¶18] Under the North Dakota Rules of Civil Procedure, a district court may enter default judgment against a party who fails to plead, or "otherwise appear." N.D.R.Civ.P.

55(a). Whether an appearance has been made for purposes of Rule 55(a) of the North Dakota Rules of Civil Procedure is a question of law. Hatch v. Hatch, 484 N.W. 2d, 283, 286 (N.D. 1992). Questions of law are fully revealable on appeal. US Bank Nat'l Assoc. v. Arnold, 2001 ND, 130, ¶12, 631 N.W. 2d, 150.

[¶19] An appearance has been defined as “any response sufficient to give the Plaintiff or his or her attorney notice of an intent to contest the claim.” Thronset v. Hawkenson, 532 N.W. 2d, 394, 397 (N.D. 1995).

[¶20] In the instant case, Shane not only submitted a special appearance through an attorney, but he actually appeared in person at the January 11<sup>th</sup>, 2018 hearing for the purpose of contesting the proceedings against him. Although that appearance was for the purpose of contesting subject matter jurisdiction, it nevertheless should have made it abundantly clear to the Plaintiff and to the district court that Shane intended to appear and contest the proceedings against him. Under these circumstances, there is no reasonable interpretation by the district court that the Shane did not intend to contest the proceedings against him, and should have been afforded the opportunity to be heard at a hearing on the merits. Given this Court's strong preference for hearing cases upon the merits, rather than upon procedural quirks, in cases such as Sioux Falls Construction Co. v. Dakota Flooring, 109 N.W. 2d, 244 (N.D. 1961), the district court should never have granted the state's motion for default judgment in the first place, and more importantly, should have granted Shane's motion to vacate that judgment.

[¶21] The district court erred in denying Shane's motion for relief from judgment, as he had clearly made an appearance, both in person and through counsel. Accordingly, this matter should be reversed and remanded with instructions for the district court to vacate



its February 20<sup>th</sup>, 2018 judgment and allow Shane the opportunity to have this matter heard on the merits.

**CONCLUSION:**

[¶22] Based on the foregoing, Shane respectfully requests this Court reverse the order denying Shane's motion for relief from judgment, and remand the case with instructions for his motion for relief from judgment to be granted.

[¶23] Dated this 15<sup>th</sup> day of June, 2018.

**/s/ Robert G. Ackre**

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Shane Martin,

Sheridan Co. Case No. 42-2017-DM-00005

Defendant/Appellee

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CERTIFICATE OF SERVICE

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[¶1] I hereby certify that on June 15<sup>th</sup>, 2018, the following documents:

Appellant's Appendix, Appellant's Brief

Were emailed to the Clerk of the North Dakota Supreme Court @

supclerkofcourt@ndcourts.gov and courtesy copies were emailed and mailed to the following:

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