

## IN THE SUPREME COURT

## STATE OF NORTH DAKOTA

Paul Lunde,	)	
	)	Supreme Court Case No.:
Plaintiff-Appellee,	)	20180248
	)	
v.	)	District Court Case No.:
	)	03-2018-CV-00043
Brad Paulson,	)	
.	)	
Defendant-Appellant.	)	

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**APPEAL FROM THE JUDGMENT  
DATED APRIL 18, 2018  
THE HONORABLE DONOVAN FOUGHTY, PRESIDING  
NORTHEAST JUDICIAL DISTRICT**

**BRIEF OF APPELLEE**

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Respectfully submitted by:

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## **TABLE OF AUTHORITIES**

### **Cases**

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### STATEMENT OF THE ISSUES

Whether entry of default judgment against defendant / appellant Brad Paulson was proper when reviewing the judgment roll for any irregularities?

### STATEMENT OF THE CASE

¶1 This is a personal injury case which resulted from an assault on May 18, 2015, in Maddock, Benson County, North Dakota. (*Complaint*, Appendix p.4, Doc. ID #2). Paulson punched Lunde in the jaw region, which caused him to fall to the ground and fracture his right leg in several locations. *Id.*

¶2 A letter was sent to the Benson County Sheriff's Department, North Dakota with a copy of the Summons, Complaint and Demand for Jury Trial asking to be served on the Defendant Paulson at the address 3107 56th Ave. NE, in the city of Maddock, County of Benson, State of North Dakota. Personal Service of the Summons, Complaint, and Demand for Jury Trial on Paulson was accomplished by Deputy Alex Ertelt on May 24, 2017. (*Sheriff's Return*, Appendix p.8, Doc. #4).

¶3 On May 16, 2018, Lunde commenced litigation in district court, which included filing a Motion for Default Judgment and associated documents with the motion against Brad M. Paulson. (Motion, Appendix p.9-39, Doc #5). Service of the motion was sent to Paulson at 505 Railway Ave, Maddock, ND 58348 on the same date. The Court having found the motion for default judgment to be meritorious, granted the motion two days later, entering Judgment on May 18, 2018. (Judgment, Appx. pg 40).

¶4 Appellant Brad Paulson filed two Notice of Appeals, one filed on June 15, 2018 and one filed on June 29, 2018. (Notice of Appeal, Appx. pg. 42, 43).

## STATEMENT OF THE FACTS

¶5 This is a personal injury case which resulted from an assault on May 18, 2015, in Maddock, Benson County, North Dakota. (*Complaint*, Appendix p.4, Doc. ID #2). Paulson punched Lunde in the jaw region, which caused him to fall to the ground and fracture his right leg in several locations. *Id.*

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¶8 Appellant Brad Paulson filed two Notice of Appeals, one filed on June 15, 2018 and one filed on June 29, 2018. (Notice of Appeal, Appx. pg. 42, 43).

## LAW AND ARGUMENT

### A. Standard of Review

¶9 The standard of review for a district court's grant of a default judgment is established as follows:

"When a default judgment is appealed, ..., [we] review the default judgment to determine if 'irregularities appear on the face of the judgment.'" *State ex rel. North Dakota Dept. of Labor v. Riemers*, 2008 ND 191, ¶ 11, 757 N.W.2d 50 (quoting *Reimers Seed Co. v. Stedman*, 465 N.W.2d 175, 176 (N.D. Ct. App. 1991); see also *Vogel v. Roberts*, 204 N.W.2d 393, 394 (N.D. 1973)); see also *Burgard v. Burgard*, 2013 ND 27.

"We considered a default judgment on direct appeal in *Vogel*, 204 N.W.2d 393. We held, "[o]n an appeal from a judgment, where no specifications of error are attached to and served with the notice of appeal, [we] may consider only errors which appear on the face of the judgment roll." *Vogel*, 204 N.W.2d at 394; see also *Burgard v. Burgard*, 2013 ND 27.

"To the extent *Reimers Seed Co.*, 465 N.W.2d at 176; *Riemers*, 2008 ND 191, ¶ 11, 757 N.W.2d 50; and the analysis in *Brossart*, 2012 ND 89, ¶ 10, 816 N.W.2d 47, may lead to the conclusion that the merits of the default judgment may be reviewed on direct appeal, that conclusion is inaccurate. On an appeal from a default judgment granted in accordance with N.D.R.Civ.P. 55(a)(2), we may consider only irregularities of procedure or process that appear on the face of the judgment roll. There are no additional grounds for relief on an appeal brought directly from a default judgment." See *Burgard v. Burgard*, 2013 ND 27; see also *Flemming*, 2010 ND 212, ¶ 3, 790 N.W.2d 762; *Riemers*, 2008 ND 191, ¶ 11, 757 N.W.2d 50; *Overboe*, 496 N.W.2d at 577; *Vogel*, 204 N.W.2d at 394.

### B. The district court properly entered default judgment as there are no irregularities on the face of the judgment roll.

¶10 In reviewing a direct appeal of a default judgment, the North Dakota Supreme Court can only consider irregularities of procedure or process that appear on the face of the Judgment roll. *Burgard v. Burgard*, 2013 ND 27. It may not consider the merits of the default judgment. *Id.* In this case, there were no irregularities of procedure or process that appear on the face of the judgment roll.

¶11 As indicated in the Sheriff's Return, the Summons, Complaint, and Demand for Jury Trial were received by the Sheriff's office on May 11, 2017 and were personally served on Paulson on May 24, 2017. (*Sheriff's Return*, Appendix p.8, Doc. ID #4). Lunde filed with the Clerk of Court the Summons, Complaint, Demand for Jury Trial, Sheriff's Return, Notice of Motion, Motion, Brief, Affidavit of Paul Lunde, Affidavit of Proof and Default, Affidavit of Judgment Debtor & Military Service, Exhibits A-C, Findings of Fact, Conclusions of Law, Order for Judgment and Judgment via Odyssey on April 16, 2018. (Cert. of Service, Appx. pg. 1, Doc ID #16). On April 18, 2018, the district court signed the Judgment. (*Judgment*, Appx. pg 40, Doc. ID # 18).

¶12 There are no irregularities apparent on the face of the judgment roll. Paulson was served with the Complaint. (*Sheriff's Return*, Appendix p.8, Doc. ID #4). Under N.D.R.Civ.P. Rule 12 (a)(1)(A), a defendant has twenty-one days to answer the complaint. If the defendant fails to answer or otherwise appear, a default judgment may be entered under N.D.R.Civ.P. Rule 55(a). In this case, Paulson did not answer the complaint, nor did he enter an appearance in the matter prior to default judgment, therefore the district court was not required to have a hearing or provide notice to Paulson that a default judgment would be entered. Based on the judgment roll, Lunde and the district court conformed to the proper procedure and process under N.D.R.Civ.P. Rule 55, and no irregularities appear on the face of the record.

C. Notice of the Motion for Default Judgment is not required to be served if the opposing party has not made an appearance.

¶13 Throughout the brief of appellant, he argues that he was not properly served "paperwork" (meaning the motion for default judgment) or given a hearing on the



motion for default judgment. Defendant did not appear in this matter prior to default judgment being entered. Where a Defendant is in default, the Plaintiff is entitled to apply for default judgment without notice to Defendant. CORN Exch. Sav. BANK v. Nw. Constr. Co., 65 N.D. 577, 260 N.W. 580 (1935). Defendant cites no case law or other statutory law to support his position that he is entitled to a hearing on the motion for default judgment when he has not entered an appearance or an answer in the matter. The district court may enter a default judgment against a party that has not appeared or answered. Id. Brad Paulson did not enter an appearance or serve an answer prior to default judgment being entered.

D. Appellant waived his defenses by not answering the complaint, and the merits / facts of the default judgment are not issues properly before this Court.

¶14 Appellant attempts to raise possible defenses he has waived by not answering the complaint; and therefore it is not proper the North Dakota Supreme Court to consider them. The notice of appeal and brief of Paulson ask to this Court to consider the merits of the case and / or following waived defenses; arguing a lack of medical records and bills; blood clot was not related to the assault; arguing for less wage loss damages; argued plaintiff's alcohol consumption without physical activity contributed to the blood clot; argued he did not unlawfully assault Mr. Lunde; requested actual medical records; and other items he could have argued as defenses had he answered the complaint in this matter.

¶15 It is not proper for the North Dakota Supreme Court to consider the merits of a motion for default judgment. In Burgard, this Court made it clear that it may not review the merits of the motion for default judgment, but rather it should only review the

judgment roll for any irregularities on its face. *Burgard v. Burgard*, 2013 ND 27. Any analysis of the merits of the default judgment is not proper. Id. Paulson is in default and has waived any defenses in the matter.

#### CONCLUSION

¶16 Based on the aforementioned law and reasoning, Appellee respectfully requests the Supreme Court uphold the District Court's Findings of Fact, Conclusions of Law and Order for Judgement and Judgment; and further award Appellee his costs associated with this appeal.

Respectfully submitted this 12<sup>th</sup> day of September, 2018.

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ATTORNEYS FOR APPELLEE

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Paul Lunde,	)	
	)	
Plaintiff-Appellee.	)	

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**Certificate of Service**

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The undersigned certifies, pursuant to Rule 5 (f) of the North Dakota Rules of Civil Procedure, that on September 12, 2018, a true and correct copy of the following document(s):

1. Appellee's Brief; and
2. Certificate of Service.

was served, via email transmission, upon the following:

Brad Paulson  
3107 56<sup>th</sup> Ave NE  
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