

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Samantha Jo Hoffman,

Plaintiff and Appellee,

-vs-

Matthew Reuben Jevne,

Defendant and Appellant.)

Supreme Court No. 20180367

APPEAL FROM THE DISTRICT COURT OF MORTON COUNTY
 ORDER DENYING MOTION FOR ORDER TO SHOW CAUSE
 ENTERED THE 20TH DAY OF SEPTEMBER, 2018
 DISTRICT COURT NO. 30-2018-DM-00134
 SOUTH CENTRAL JUDICIAL DISTRICT
 HONORABLE CYNTHIA FELAND

APPELLEE'S BRIEF

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STATEMENT OF THE CASE

[¶1] The parties were divorced in Texas in 2017 and have one child together. The Final Decree of Divorce entered in Bexar County District Court on October 10, 2017 was registered as a foreign child custody determination in Morton County District Court on April 26, 2018 pursuant to N.D.C.C. § 14-14.1-25 by Plaintiff/Appellee Samantha Hoffman (herein “Ms. Hoffman”). This appeal arises from an Order Denying the Appellant/Defendant’s Motion for Order to Show Cause against Ms. Hoffman pertaining to enforcement of the Final Decree of Divorce.

[¶2] On August 22, 2018, the Defendant/Appellant Mathew Jevne (herein “Mr. Jevne”), through his counsel, filed a Motion for Order to Show Cause in Morton County District Court (herein “District Court”) requesting that the Court find Ms. Hoffman in contempt of court for violating parenting provisions of the Final Divorce Decree of Divorce, as well as two financial matters unrelated to the parties’ minor child. On September 10, 2018, Ms. Hoffman, through her counsel, submitted an Answer Brief and Affidavit wherein she responded to Mr. Jevne’s allegations. Mr. Jevne did not submit a reply brief. Neither party made a request for oral argument or a hearing.

[¶3] On September 20, 2018, the District Court entered its Order Denying Motion for Order to Show Cause in which the Court determined that

Mr. Jevne failed to meet his burden of proof by satisfactorily demonstrating that any alleged non-compliance by Ms. Hoffman was willful and inexcusable. In the Order Denying Motion for Order to Show Cause the District Court also found, based upon the submissions by the parties, that Mr. Jevne's conduct, including but not limited to his noncompliance with the requirement of communicating with Ms. Hoffman through the "Our Family Wizard" platform about parenting matters, contributed to the creation of issues for which he was requesting that Ms. Hoffman be found in contempt of court.

[¶4] In this appeal, Mr. Jevne asserts that the District Court committed a clear abuse of its discretion in denying his Motion for Order to Show Cause and that the District Court erred by not holding a hearing on the Motion.

STATEMENT OF FACTS

[¶5] Mr. Jevne and Ms. Hoffman were previously married and have one child together, S.E.J., who was 11 years old at all times relevant to the District Court's determination. The parties were divorced on October 10, 2017 pursuant to a Final Decree of Divorce entered in Bexar County, Texas (herein "Divorce Decree"). (Appx. 5 – 41).

[¶6] On April 26, 2018, Ms. Hoffman filed the Divorce Decree with an Affidavit to Register the Divorce Decree as a Foreign Child Custody Determination pursuant to N.D.C.C. § 14-14.1-25 (Uniform Child Custody Jurisdiction Enforcement Act, section 305). (Appx. 2 - 41). The Clerk of Morton County, North Dakota, entered the Notice of Registration of Foreign Child Custody Determination pursuant to N.D.C.C. § 14-14.1-25 on April 26, 2018. (Appx. 42).

[¶7] On August 22, 2018, Mr. Jevne filed a Motion for Order to Show Cause in District Court against Ms. Hoffman along with Mr. Jevne's Affidavit in Support of Motion for Order to Show Cause Against Plaintiff (herein "Jevne Affidavit"). (Appx. 44 – 103). In the Motion for Order to Show Cause, Mr. Jevne alleged contempt by Ms. Hoffman pertaining to the following:

- 1) Violation of Mr. Jevne's right to receive information concerning the health, education and welfare of the parties' child; Mr. Jevne's right to confer with the other parent before making a decision concerning the health, education and welfare of the child; Mr. Jevne's right to access the child's healthcare and educational records as set forth on Page 3 of the Divorce Decree (Appx.7, 46);

- 2) Violation of the right to consent to medical dental and surgical treatment during an emergency involving an immediate danger to the health and safety of the child as set forth on Page 4 of the Divorce Decree (Appx.8, 46);

3) Violation of Defendant's extended Summer parenting time with S.E.J. as set forth on Page 11-12 of the Divorce Decree (Appx. 15-16, 46 - 47);

4) Violation of Mr. Jevne's right to Facetime or Skype with S.E.J. on Monday, Wednesday, Friday and Saturday between 7:00 p.m. and 8:00 p.m. as set forth on Page 15 of the Divorce Decree (Appx. 19, 47);

5) Violation of the provision which states that neither parent is allowed to talk about the "family law issues" with S.E.J. as set forth on Page 15 of the Divorce Decree (Appx. 19, 47); and

6) Violations of two financial obligations related to the parties' divorce pertaining generally to sale of the marital residence as set forth on Pages 29 and 32 of the Divorce Decree (Appx. 33, 36, 47);

[¶8] Ms. Hoffman timely filed an Answer Brief to Motion for Order to Show Cause and Affidavit of Samantha Hoffman (herein "Hoffman Affidavit") which provides responses and explanations about the alleged violations of the Divorce Decree. (Appx. 109–138). Attached to the Hoffman Affidavit as Exhibit A is Ms. Hoffman's registration application and a record of communications sent by Ms. Hoffman to Mr. Jevne through *Our Family Wizard* about S.E.J. (Appx. 119-135). Attached to the Hoffman Affidavit as Exhibit B are email communications between Ms. Hoffman and S.E.J.'s counselor about the counselor's efforts to communicate with Mr. Jevne about S.E.J.'s

counseling. (Appx. 136). Attached to the Hoffman Affidavit as Exhibit C are email communications between Ms. Hoffman and the parties' realtor for the sale of the marital house concerning the water softener debt included in Mr. Jevne's motion. (Appx. 137).

[¶9] Ms. Hoffman provided her response to Mr. Jevne's allegation of contempt related to his access to information and records about S.E.J. and her healthcare decisions, in ¶¶ 5, 6 of the Hoffman Affidavit in which she addresses her efforts to communicate with Mr. Jevne about S.E.J. (Appx. 115-116). Ms. Hoffman asserts that she made reasonable communications with Mr. Jevne about those matters, including but not limited to her communication of such information through the "Our Family Wizard" platform. *Id.* Ms. Hoffman also responded to Mr. Jevne's allegations about withholding information and documentation pertaining to S.E.J. and asserted that Mr. Jevne has the ability to directly obtain information and documentation about S.E.J. *Id.*

[¶10] Ms. Hoffman provided her response to Mr. Jevne's allegations of contempt concerning extended/Summer parenting time with S.E.J., in ¶ 8 of the Hoffman Affidavit in which she explains that Mr. Jevne received extended parenting time in 2018 as requested and scheduled by him. (Appx. 116).

[¶11] Ms. Hoffman provided her response to Defendant's allegations of contempt concerning violation of his right to have Facetime or Skype with S.E.J.

on Monday, Wednesday, Friday and Saturday between 7:00 p.m. and 8:00 p.m. in ¶ 9 of the Hoffman Affidavit in which she explains that she works during some of those scheduled calls and is not in a position to ensure that eleven-year-old S.E.J. always timely initiates the communication with her father on each such day. (Appx. 116). Ms. Hoffman also asserts that Mr. Jevne refuses to simply initiate those electronic communications with S.E.J. directly. *Id.*

[¶12] Ms. Hoffman responded to Mr. Jevne's allegation that she violated the prohibition of discussing the parties' family law issues with S.E.J. in ¶ 10 of the Hoffman Affidavit. (Appx. 117). Ms. Hoffman explains therein her intention for her specific text message comment to S.E.J. about Mr. Jevne getting mad and texting "Lol you should get a video" for which Mr. Jevne was seeking to hold her in contempt. *Id.*

[¶13] Ms. Hoffman provided her response to Mr. Jevne's allegation of her failure to inform him of a change of address in ¶ 7 of the Hoffman Affidavit in which she denies moving her residence as alleged by Mr. Jevne. (Appx. 116).

[¶14] Ms. Hoffman provided her response to Mr. Jevne's allegations about the financial issues included in the Motion for Order to Show Cause in ¶ 12 of the Hoffman Affidavit in which she disputes that the Divorce Judgment obligates her to repay Mr. Jevne for water softener debt and solar panel debts incurred during the parties' marriage. (Appx. 117).

[¶15] Mr. Jevne did not submit a reply brief to Ms. Hoffman's Answer Brief and her supporting Affidavit, nor did he at any time request oral argument or an evidentiary hearing.

[¶16] On September 20, 2018, the Court entered its Order Denying the Motion for Order to Show Cause (herein "the Order"). (Appx. 142-143). In the Order, the District Court includes a finding that Defendant did not meet his burden of proof to provide evidence which satisfactorily proves the alleged willful and inexcusable non-compliance of the terms of the *Final Decree of Divorce* by the plaintiff. The Order also included the following findings set forth in ¶ 2:

The Court having reviewed Defendant's Motion for Order to Show Cause, the supporting affidavit and documents filed by Defendant, and Plaintiff's response, affidavit and supporting documents filed by Plaintiff, and being fully advised in the premises, hereby FINDS that Defendant has not met his burden of proof for issuance of an order to show cause against the plaintiff because Defendant has failed to submit evidence which satisfactorily demonstrates that any alleged non-compliance with the *Final Decree of Divorce* by the plaintiff was willful and inexcusable non-compliance which constitutes contempt. The Court further finds that the defendant's acts and omissions pertaining to the plaintiff's alleged contemptuous conduct concerning the parenting provisions in the *Final Decree of Divorce*, including but not limited to the defendant's failure to utilize the "Our Family Wizard" platform for communication about parenting matters as required in the Final Decree of Divorce and apparent unwillingness to contact the parties' 11-year-old child directly for scheduled electronic communications with the child, contributed to the creation of issues for which

Defendant has moved for an Order to Show Cause against the plaintiff.

[¶17] On September 20, 2018, Notice of Entry of the Order was served and filed by Plaintiff's counsel. (Appx. 144–145).

[¶18] On October 2, 2018, Defendant filed a Notice of Appeal and Statement of Preliminary issues appealing the Order dated September 19, 2018. (Appx. 146).

LAW AND ARGUMENT

A. Standard of Review.

[¶19] Mr. Jevne's Motion for Order to Show Cause alleges that Ms. Hoffman's violations of the Divorce Decree constitute contempt of court. "A district court has broad discretion in deciding whether to hold a person in contempt, and the court's decision will not be reversed on appeal unless there is a clear abuse of discretion." *Votava v. Votava*, 2015 ND 171, ¶ 6, 865 N.W.2d 821; Citing *Rath v. Rath*, 2014 ND 171, ¶ 10, 852 N.W.2d 377. "A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, or when it misinterprets or misapplies the law" *Id.* Citing *Lind v. Lind*, 2014 ND 70, ¶ 12, 844 N.W.2d 907. Therefore, the standard of review for determination of whether the District Court erred in denying Mr. Jevne's Motion for Order to show Cause is a clear abuse of

discretion.

B. The District Court did not err in denying the Motion for Order to Show Cause.

[¶20] Mr. Jevne filed a Motion for Order to Show Cause requesting that the court find Ms. Hoffman in contempt of court for violation of provisions of the Divorce Decree. Contempt of court has been defined by statute in relevant part as an “[i]ntentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer, including a referee or magistrate.” N.D.C.C. § 27-10-01.1(1)(c). This Court has described the evidentiary burden on a party seeking a contempt sanction in *Votava v. Votava*, 2015 ND 171, ¶ 7, 865 N.W.2d 821 as follows:

A party seeking a contempt sanction under N.D.C.C. ch. 27–10 has the burden to clearly and satisfactorily show the alleged contempt has been committed. *Lind*, 2014 ND 70, ¶ 12, 844 N.W.2d 907. To warrant a remedial contempt sanction, the moving party must show a willful and inexcusable intent to violate a court order. *Rath v. Rath*, 2014 ND 171, ¶ 6, 852 N.W.2d 377.

Also, the order must be clear, specific and unambiguous in order to hold someone in contempt for the willful and inexcusable violation of a court order. *Ronngren v. Beste*, 483 N.W.2d 191, 195 (N.D. 1992), internal citations omitted. Therefore, Mr. Jevne’s burden of proof for Ms. Hoffman’s alleged contempt of court requires him to satisfactorily show a clear, willful and inexcusable violation of a specific provision in the Divorce Decree.

1. The district court does not have jurisdiction to enforce alleged monetary obligations related to the registered foreign child custody determination.

[¶21] Mr. Jevne is asserting that Ms. Hoffman should be held in contempt of court in North Dakota District Court for alleged violations of parenting provisions included in the Divorce Decree concerning the parties' minor child including but not limited to visitation. Mr. Jevne also seeks that she be held in contempt for her unwillingness to pay two financial obligations unrelated to the parties' child which he asserts are included in the Divorce Decree.

[¶22] The Final Decree of Divorce was filed in Morton County District Court on April 26, 2018 as a foreign child custody determination in accordance with N.D.C.C. § 14-14.1-25 (U.C.C.J.E.A. § 305) by Ms. Hoffman. "Child custody determination" is defined in N.D.C.C. § 14-14.1-01(2), which states:

"Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

Also, N.D.C.C. § 14-14.1-26. (U.C.C.J.E.A. § 306) is entitled "Enforcement of registered determination" and states as follows:

1. A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.
2. A court of this state shall recognize and enforce, but may not modify, except in accordance with sections 14-14.1-12 through 14-14.1-21, a registered child custody determination of a court of another state.

[¶23] N.D.C.C. § 14-14.1-01(2) specifically excludes enforcement of monetary obligations of an individual in the definition of “child custody determination.” Because the Texas Divorce Decree was registered in the North Dakota District Court pursuant to N.D.C.C. § 14-14.1-25 as a foreign child custody determination, the North Dakota District Court does not have jurisdiction to enforce alleged monetary obligations included in the Divorce Decree.

[¶24] Furthermore, the Divorce Decree does not clearly or specifically include any obligation to pay a water softener debt or a solar system debt and Mr. Jevne failed to show that either of the two alleged financial obligations were “mortgage indebtedness or liens on the property” which were to be included in calculating the profit or loss from sale of the marital house as set forth on page 32 of the Divorce Decree. (Appx. 36). Concerning those allegations, Ms. Hoffman provided her response in ¶ 12 of the Hoffman Affidavit in which she points out that neither of those debts are specifically included in the Divorce Decree and that both of those debts were unsecured debts. (Appx. 117).

Regardless of the jurisdictional issue, Mr. Jevne failed to show willful and inexcusable non-compliance with a clear and unambiguous provision in the Divorce Decree pertaining to the alleged financial obligations.

2. The district court properly denied Mr. Jevne's Motion for Order to Show Cause pertaining to Ms. Hoffman's parenting responsibilities in the registered foreign child custody determination.

[¶25] The Morton County District Court has jurisdiction to enforce the Divorce Decree as a foreign child custody determination registered pursuant to N.D.C.C. § 14-14.1-25. The District Court's jurisdiction to enforce provisions of the Divorce Decree pertain to those provisions "... providing for the legal custody, physical custody, or visitation with respect to a child." N.D.C.C. § 14-14.1-01(2).

[¶26] It is Mr. Jevne's burden to establish not only non-compliance with a specific provision of an order, but also to be able to satisfactorily show that Ms. Hoffman had the requisite willful intent to violate the order. In her Affidavit Ms. Hoffman provided reasonable explanations for some alleged non-compliance with the Divorce Judgment and refuted other factual allegations. (Appx. 114–118). Mr. Jevne did not submit a reply to the Hoffman Affidavit and Answer Brief. Upon consideration of the parties' factual submissions, the District Court reasonably determined that Mr. Jevne

failed to satisfactorily show the requisite clear, willful and inexcusable unwillingness to comply with the Divorce Decree.

[¶27] In the Order Denying Motion for Order to Show Cause, the District Court clearly set forth the rationale for denial of the Motion for Order to Show Cause. The District Court considered the parties' submission and found that Mr. Jevne did not meet his burden of proof. (Appx. 142–143). The District Court also found that Mr. Jevne's acts and omissions contributed to some of the issues for which he sought to hold Ms. Hoffman in contempt of court, including but not limited to his failure to comply with requirement in the Divorce Decree that the parties communicate through the "Our Family Wizard" and his unwillingness to initiate the calls with S.E.J. *Id.*

C. The District Court did not err in denying the Motion for Order to Show Cause without a hearing.

[¶28] Mr. Jevne filed his motion pursuant to N.D.R.Ct. 3.2 and did not make a request for oral argument on the motion. N.D.R.Ct. 3.2(a)(3) permits "... any party who has timely served and filed a brief ..." to obtain a hearing by making a request for oral argument. "Requests for oral argument or the taking of evidence must be made not later than seven days after expiration of the time for filing the answer brief." *Id.* N.D.R.Ct. 3.2(a)(2) provides that the moving party has seven days after service of the answer brief to submit a reply brief. The Answer Brief and Hoffman Affidavit were served electronically on

September 10, 2018. Therefore, Mr. Jevne had until September 17, 2018 to serve a reply brief. His deadline to request a hearing was September 17, 2018 pursuant to N.D.R.Ct. 3.2(a)(3).

[¶29] In this case, Mr. Jevne did not make a request for oral argument on his motion, nor did Ms. Hoffman. N.D.R.Ct. 3.2(c) provides that “[A]fter reviewing the parties’ submissions, the court may require oral argument and may allow or require evidence on a motion.” Because neither party requested a hearing pertaining to the motion, it was within the District court’s discretion as to whether to schedule oral argument, an evidentiary hearing, or to rule upon the pending motion based upon the parties’ submissions.

[¶30] After expiration of the time to submit a Reply to the Answer, the District Court determined, based upon the parties’ submissions, that Mr. Jevne did not meet his evidentiary burden to support the requested relief against Ms. Hoffman. (Appx. 142-143). The District Court was not required to hold a hearing on the Motion for Order to Show Cause and the District Court did not abuse its discretion in electing not to hold an evidentiary hearing or oral argument on the Motion for Order to Show Cause.

CONCLUSION

[¶31] Based upon the aforementioned law and reasoning, it is clear that the District Court reasonably and properly denied Mr. Jevne Motion for Order

to Show Cause without a hearing and in doing so, did not abuse its discretion. Ms. Hoffman therefore respectfully requests that this Court deny Mr. Jevne's appeal and affirm the District Court's decision.

Dated this 26th day of December, 2018.

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CERTIFICATE OF COMPLIANCE

[¶32] The undersigned, as attorney for the Plaintiff-Appellee in the above matter, hereby certifies, in compliance with Rule 32 of the N. D. R. App. P., that the above brief was prepared with proportionally spaced, 14-point font typeface, and the total number of words in the above Brief, including footnotes, but excluding words in the table of contents, table of authorities, signature block, certificate of service, and this certificate of compliance, totals 3,261 words.

Dated this 26th day of December, 2018.

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CERTIFICATE OF SERVICE

[¶33] I, David M. Knoll, certify that I served the following document(s) as indicated below:

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

On December 26, 2018, by sending a true and correct copy thereof by electronic means only to the following email address which, to the best of my knowledge, is the actual email address of the person intended to be served, to wit:

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