

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

Samantha Schweitzer,)	
)	Supreme Court No.
Petitioner/Appellant,)	20190157
)	
vs.)	
)	Pembina County District No.
Blake M. Miller,)	34-2019-DM-00006
)	
Respondent/Appellee)	

BRIEF OF APPELLEE

ON APPEAL FROM ORDER DECLINING JURISDICTION AND
 DISMISSING CASE, ENTERED ON MARCH 20, 2019, THE HONORABLE
 BARBARA L. WHELAN PRESIDING.

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[¶1] STATEMENT OF THE ISSUES

[¶2] ISSUE #1—Whether Judge Whelan erred in dismissing for lack of subject matter jurisdiction. Appellee says NO.

[¶3] ISSUE #2—Whether the appellee is entitled to reasonable attorney’s fees. Appellee says YES.

[¶4] STATEMENT OF THE CASE

[¶5] Schweitzer filed her “Petition for Emergency Child Custody Order and Initial Child Custody Determination Or Modification of Child Custody Determination on January 18, 2019. (App. at 11-27.) Miller filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction on February 11, 2019. Doc. ID #24.) This matter is on appeal from Judge Whelan’s March 20, 2019 Order Declining Subject Matter Jurisdiction.

[¶6] STATEMENT OF THE FACTS

[¶7] The Appellee does not join in the Statement of the Facts in this case and notes that many of the alleged facts have no foundation in the Record on Appeal.

[¶8] The following facts come directly from the Petition itself so the Petitioner should take no dispute with them. (Supp. App. at 11-41.) The Petitioner and the Respondent share a child, MMM. (Id. at 11.) “Petitioner lived in Wisconsin until January 5, 2017. (Id. at 13.) Respondent cohabitated with Petitioner in Wisconsin

from late November or early December until January 5, 2017, when Petitioner terminated her lease in Wisconsin and took her child to North Dakota. Id. at 18-19.

[¶9] Schweitzer retained Wisconsin attorney, Ruth Westmont, on January 6, 2017. See App. Br. fn. 8 (“On January 6, 2017, as she was driving from Wisconsin to North Dakota, Samantha also called Westmont to seek legal advice regarding her rights as a single mother to move to North Dakota. Samantha did not know a custody petition would be filed when she contacted Westmont that day. It remains an unsolved mystery as to how or why Wessel knew to send the Wisconsin Petition to Westmont on January 13, 2017.”). However, in a timeline 1/6/2016 (which must mean 2017 given footnote 8) Schweitzer noted, “I retain Ruth Westmont and only speak to Blake through her”. (App. at 58.)

[¶10] Blake Miller filed a Petition for Custody on January 13, 2017 (Supp. App. at 59-66.) On January 17, 2017, Wisconsin attorney Ruth Westmont filed an answer and Counterclaim to Miller’s Petition in Wisconsin. (Supp. App. at 68). On June 12, 2017, a Stipulation and Order Regarding Child Support was filed with the Wisconsin Court. (Supp. App. at 14-18.) On August 28 and August 30, 2018, the Wisconsin Court had a hearing on the Petitioner’s Petition for Custody. (Supp. App. at 12-13.) The result of the hearing was a Stipulation and Order, in which Schweitzer stipulated that she “did not meet her burden to prove her allegations of

abuse.” Id. Schweitzer also stipulated that she would move to Madison. Id. at 13.

See also, Transcript, Supp. App. at 71.

[¶11] On January 18, 2019, Judge Whelan signed a Temporary Domestic Violence Protection Order in a different case. (Supp. App. at 52-58.) The order notes that the Order is based upon a Petition Schweitzer filed against Miller alleging an “immediate and present danger of domestic violence.” (Id. at 52.) On February 5, 2019, Judge Niess held a hearing in Wisconsin to decide several motions. (Supp. App. at 19-48.) Judge Niess found Schweitzer in contempt and ordered her to return MMM to Wisconsin by the following Wednesday. (Supp. App. at 22-26.) Because the DVPO was still in place in North Dakota, Judge Niess placed MMM with the paternal grandparents instead of MMM’s father. Id. at 28.) At that hearing, one of Schweitzer’s Wisconsin attorneys noted that Schweitzer knew about the hearing. (Id. at 26.) Also on February 5, 2019 Judge Niess of Wisconsin sent Judge Whelan a letter as required by the UCCJEA. (Supp. App. at 8-11.) On March 30, 2019 Judge Whelan sent Judge Niess a letter updating him on the case. (Supp. App. at 69-70.)

[¶12] ARGUMENT

[¶13] Judge Whelan did not err in dismissing this case for lack of subject matter jurisdiction and the appellee should be awarded reasonable attorney’s fees.

[¶14] Judge Whelan did not err in dismissing this case for lack of subject matter jurisdiction.

[¶15] Standard of Review.

[¶16] The Court should apply a de novo standard review to this case because the undisputed facts set forth in Schweitzer’s initial petition allow the Court to conclude that Wisconsin had subject matter jurisdiction when it made the first custody determination in this case.

[C]hallenges to a district court's subject matter jurisdiction are reviewed de novo when the jurisdictional facts are not in dispute. When jurisdictional facts are disputed, the district court's decision on subject matter jurisdiction necessarily involves findings of fact and conclusions of law. Therefore, when disputed facts surround a challenge to the district court's subject matter jurisdiction, we are presented with a mixed question of law and fact. See *Escobar v. Reisinger*, 133 N.M. 487, 64 P.3d 514, 516 (N.M.Ct.App.2003) (holding jurisdictional challenge under the Uniform Child Custody Jurisdictional Act (“UCCJA”) is mixed question of law and fact). Under this standard, we review the “questions of law subject to the de novo standard of review [and the] findings of fact subject to the clearly erroneous standard of review.”

Schirado v. Foote, 2010 ND 136, ¶ 7, 785 N.W.2d 235, 238 (internal citations omitted).

[¶17] Law and Analysis

[¶18] Under the UCCJEA, Wisconsin has continuing exclusive jurisdiction over this case. Wisconsin had jurisdiction to make the initial child custody determination pursuant to Wis. Stat. § 822.21(1)(a) if Wisconsin was the child’s home state within six months before the action was filed, and a parent continues to live in Wisconsin (extended home state jurisdiction). Section 822.02(7) defines “Home State” as

the state in which a child lived with a parent or a person acting as a

parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding. . . . A period of temporary absence of any of the persons mentioned in this subsection is part of the period.

The definition clearly allows for a period of temporary absence of “any persons mentioned in the subsection.” Id.; see also, *Ogawa v. Ogawa*, 221 P.3d 699, 704 (Nev. 2009) (finding that a child’s three month trip to Japan during the six month time frame was a temporary absence because the trip to Japan was intended as a vacation). Here, Petitioner admits that the child was living in Wisconsin within six months before the commencement of the proceeding. (App. at 13-14.) She only contends that Mr. Miller was not living in Wisconsin when the proceedings commenced. Id. However, she does not deny Mr. Miller was living in Wisconsin until she kicked him out of the apartment in Wisconsin and took the child to North Dakota.

[¶19] It is also noteworthy that Schweitzer immediately retained a Wisconsin Attorney. This is not evidence of a person who does not believe Wisconsin has subject matter jurisdiction.

[¶20] Accordingly, Judge Whelan did not abuse her discretion in finding that, even if Miller was in Illinois when he filed the petition, that absence was only temporary.

[¶21] The Appellant contends that North Dakota was the home state when she filed the January 2019 Petition in North Dakota. She insists that she and the child

were residents of North Dakota at the time she filed her Petition. However, the child most certainly was not a resident of North Dakota in January of 2019, and if Schweitzer was, it was in clear violation of the Wisconsin Order and an admission on her part that she never intended to follow the Wisconsin Order. In the transcript from the Oral Stipulation that was entered on August 30, 2018, Schweitzer agreed that to move to Wisconsin. (Supp. App. at 74 (“Samantha will move to Madison.”)).

[¶22] The Appellant’s Brief attempts to paint a picture of vast conspiracy Schweitzer fell into where she was coerced by Ruth Westmont to sign the stipulation. However, surely the North Dakota Supreme Court is not the place to make a factual determination about whether Schweitzer was coerced in Wisconsin over a year ago. Therefore, the Court needs to determine what effect the stipulations have on the question of subject matter jurisdiction. In this case, if Schweitzer intended to defy the Wisconsin Order, she can still claim she was a resident of North Dakota, but she cannot claim MMM was. Accordingly, North Dakota was not the home state of the child when Schweitzer filed her petition.

[¶23] The Court did not have Temporary Emergency Jurisdiction either. Even if the Petitioner had been able to prove Temporary Emergency Jurisdiction, that provision would have had to have an expiration date. North Dakota Century Code section 14-14.1-15(3) provides as follows:

If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 14-14.1-12 through 14-14.1-14, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 14-14.1-12 through 14-14.1-14. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

[¶24] Schweitzer stipulated to the facts supporting Wisconsin’s subject matter jurisdiction. While it is true that a party cannot stipulate as a legal matter that a Court has subject matter jurisdiction, it does not necessarily follow that a party may not stipulate to the facts that support the legal conclusion that a Court has subject matter jurisdiction. It should also go without saying that when a party admits factual allegations in an answer to a petition, that party should not be allowed to later withdraw those factual admissions. In his Petition for custody and placement, filed with the Wisconsin Court on January 13, 2017, Miller alleged the that “Schweitzer has been a bona fide resident of County for more than 30 days immediately preceding the commencement of this action and the State of Wisconsin for more than six months immediately proceeding the commencement of this action.” (Supp. App. at 64.) Schweitzer admitted this allegation in her answer. (Supp. App. at 068.)

[¶25] Fundamentally, even if every allegation regarding Miller’s residency were true, Wisconsin would have had subject matter jurisdiction when Miller filed his

petition on January 13, 2019. Even if the Court were to find that Miller never intended to return to Wisconsin, Wisconsin still had subject matter jurisdiction.

[¶26] The only question before Judge Whelan was whether Wisconsin substantially complied with the Parental Kidnapping Prevention Act (“PKPA”) in determining it had subject matter jurisdiction and that substantial evidence concerning the child’s present or future care, protection, training, and personal relationships existed in Wisconsin on January 13, 2017.

[¶27] Section 28 United States Code 1738A(a) provides, “The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistent with the provisions of this section by a court of another State.” “Home State” is defined as “the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months . . . *Periods of temporary absence of any such persons* are counted as part of the six month or other period.” *Id.* § (b)(4) (Emphasis added). The only exception that could apply to the present facts is subsection (g), which provides,

A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

28 U.S.C. § 1738A(g). The key language here, of course, is “exercising jurisdiction consistently with the provisions of this section” Subsection

(c) further articulates this distinction as follows:

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or

(E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or (E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

Therefore, the question before the North Dakota Court is whether Wisconsin acted in “substantial conformity” with the requirements of the PKPA or Wisconsin’s

UCCJEA statutes. See In re L.S., 257 P.3d 201, 206 (Colo. 2011). Specifically, at issue, then, is whether Wisconsin met the definition of “home state” for the Child, or substantial evidence concerning the child's present or future care, protection, training, and personal relationships existed in Wisconsin at the commencement of the action in Wisconsin.

[¶28] Wisconsin had jurisdiction to make the initial child custody determination pursuant to Wis. Stat. § 822.21(1)(a) if Wisconsin was the child’s home state within six months before the action was filed, and a parent continues to live in Wisconsin (extended home state jurisdiction). Section 822.02(7) defines “Home State” as

the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding. . . . A period of temporary absence of any of the persons mentioned in this subsection is part of the period.

Even if the Wisconsin Court found that neither Mr. Miller’s absence nor MMM’s absence from the state was temporary, and therefore that it did not have jurisdiction under subsection A (“(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in

such State”) it definitely had jurisdiction under subsection B (“B (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships.”) The only state that could possibly have jurisdiction under subsection A would be Wisconsin. However, Schweitzer admits in her Petition that MMM lived in Wisconsin until she moved him out of the State with no warning to North Dakota. Therefore North Dakota did not have jurisdiction under subsection A and neither did any other state except Wisconsin. Then the question becomes whether there were any other significant connections in Wisconsin and whether substantial evidence concerning the child existed in Wisconsin. Of course it did since all parties had lived in Wisconsin since the child’s birth.

[¶29] The issue of subject matter jurisdiction may not be waived, or stipulated to, but it can be finally decided as a matter of res judicata. Abercrombie v.

Abercrombie, No. 2017-CA-01158-COA, 2019 WL 3934782, at *6 (Miss. Ct.

App. Aug. 20, 2019)

[¶30] Reasonable Attorney’s Fees are Warranted in this Case.

[¶31] “If the court determines that an appeal is frivolous, or that any party has been dilatory in prosecuting the appeal, it may award just damages and single or double costs, including reasonable attorney’s fees.” N.D.R.App.P. 38. Punitive sanctions for an unmeritorious appeal should balance considerations regarding open access to the courts “with a recognition that sanctions must be imposed when an appeal is frivolous and interferes with the proper administration of justice.” *Williams v. State*, 405 N.W.2d 615, 625 (N.D. 1987). “An appeal is frivolous if it is flagrantly groundless, devoid of merit, or demonstrates persistence in the course of litigation which evidences bad faith.” *Healy v. Healy*, 397 N.W.2d 71, 76 (N.D. 1986).

[¶32] This case never should have been opened in North Dakota. Schweitzer has engaged extraordinarily egregious forum shopping in flagrant violation of the Wisconsin Order. And even after Judge Whelan dismissed the case, Schweitzer continued to violate the Wisconsin Order. Schweitzer should be required to pay Miller’s attorney’s fees for this frivolous appeal.

[¶33] Schweitzer realleged facts in her North Dakota Petition that were res judicata issues because she stipulated on August 30, 2018 that she had failed to meet her burden of proof on these allegations.

[¶34] Schweitzer stipulated to Wisconsin Jurisdiction in September, 2018. In the February 4, 2019 Hearing, Judge Niess stated,

We had a stipulated resolution following a full-day hearing where various things were agreed to openly, voluntarily, and with full knowledge and consent by Ms. Schweitzer which included placement with the father, which included that she would move to Wisconsin because she was able to do so in order to facilitate coparenting of this child. . . .

We went through a full hearing, and the evidence was flimsy at best. And frankly, Ms. Schweitzer lacked credibility during that hearing such that she stipulated that she had failed in her proof of any child abuse by the father, and also, she had alleged the same against the paternal grandfather.

Since then, the Order that was entered has been violated repeatedly by Ms. Schweitzer. . . .

Now, I understand, having received information from the parties, she has challenged the subject matter jurisdiction of this Court in a motion to attempt to void what this Court has been doing for several years in attempting to get this family moving forward in coparenting this child.

The allegations of lack of jurisdiction have not been adjudicated by the North Dakota court. There has been, apparently, some motion up there to transfer jurisdiction.

Let me make it very clear. . . Wisconsin is the home state for this child. There is no doubt in my mind the [Wisconsin] Court has subject matter jurisdiction. The allegations of Ms. Schweitzer to the contrary are part of her continuing plan to thwart this Court's control of the reconciliation of this family and the placement of this child, I think for largely personal and selfish reasons, to essentially rid herself of the father of this child and to move on with this child independently of the father. And I think from—I've got no evidence to conclude that there is credibility to these abuse allegations, and I have plenty of evidence to suggest that Ms. Schweitzer is both lacking in credibility and intentionally violating the rights of this child, the rights of the father, and the Orders of this Court.

I view her legal machinations in North Dakota to be part of that plan of hers to eliminate any further involvement by the father and his family with this child, and I look forward to the opportunity to discuss this matter as required under the Uniform Act with the judge who has been drawn into this dispute with one-sided and, from what I can tell, inaccurate information.

(Supp. App. at 19-49.)

[¶35] At that same hearing, Judge Niess found Schweitzer in contempt of court for failing to appear and for keeping MMM in North Dakota in violation of the Wisconsin Stipulation:

Ms. Schweitzer has refused to come to the state of Wisconsin to deal with what has been scheduled for sometime. . . . We have received motion to withdraw by Ms. Schweitzer's counsel due to irreconcilable differences between Counsel and Ms. Schweitzer. Apparently Counsel was not involved in the jurisdictional issues. Ms. Schweitzer has made it quite clear that she refuses to participate any further with this court and views this court's orders as void ab initio. I don't know where she's getting her information. I don't know who's representing her. I do know that based on everything I have seen in this case for several years there is no basis for her conclusion that this Court lacks subject matter jurisdiction. I'm hopeful that the North Dakota Court will see through her ruse and get this family back on track.

In the meantime, this child, I believe, is suffering greatly from the attempts by Ms. Schweitzer to alienate her from . . . the child's father and father's family by making these allegations that she was unable to prove in this court but believes—strike that. I don't think she actually believes them—is representing are occurring even after she has made these allegations. And the father and his father have both been under the microscope for these allegations for which there is no independent, credible evidence. And I think that this whole thing she is concocting at this point is . . . extremely damaging to the child and is certainly in contempt of this Court.

We are not scheduled for contempt of court, but I am in a position to issue temporary orders in this case. . . .

I did meet with Counsel shortly before this hearing this morning, and I have received no information from the guardian ad litem or from any of the counsel that there is any credibility whatsoever to the allegations by Ms. Schweitzer that have surfaced since she agreed she had inadequate proof of these types of things back in October. So I am prepared to issue orders vis-à-vis this child, the violation of which would potentially expose Ms.

Schweitzer to criminal penalties as well as, ultimately, contempt of court and perhaps jail time to seek compliance until she purges her contempt.

This is a situation driven by the selfish motives of Ms. Schweitzer from all indications before this Court and not for the best interest of the child, and I do believe based on the hearing and evidence that I had before me back in October and what has transpired since then that her mother is complicit in this plan to alienate this child from the father's side of the family.

...

I am not, however, going to adjourn this hearing without issuing an Order to Ms. Schweitzer to remedy her flagrant disregard, violation, intentional thwarting of a stipulated order that arose out of an evidentiary hearing just four months ago. And so I intend to take that up.

...

Mr. Wessel [Miller's Wisconsin Attorney], your motions are to enforce the physical placement order and also perhaps some immediate interim temporary relief. But I understand there have been developments in North Dakota which need to be taken into consideration.

MR. WESSEL [Miller's Wisconsin Attorney] . . .

...

She suspended any contact with Mr. Miller effective at the end of December, at some point this month filed for a domestic abuse restraining order, and obtained an ex parte Order which precludes Mr. Miller from having any contact with this child.

The Court in North Dakota held a hearing last Friday, February 1st, and issued an amendment to that ex parte order that on a temporary basis Mr. Miller is entitled to Facetime with the child. The Court took the ultimate decision of personal contact with the child under advisement, so we have no decision on that issue.

The Court does have authority under Wisconsin family law to order placement with a third party. We're asking the Court to immediately order

the return of M.M. and that he be placed with Mr. Miller's mother whose name is [Laurie Miller] . . .

Mr. Miller will obviously comply with all terms of any North Dakota Order until that matter is resolved.

We would also ask that the Order put Ms. Schweitzer on notice of Wisconsin Statute 948.31 which requires her to comply with placement orders, and that any interference with such an Order for a period exceeding 12 hours would be a felony.

. . .
THE COURT: . . . I will grant the motions as follows: Based upon a finding that Ms. Schweitzer is in open and contemptuous disregard of the Court's orders intentionally violating them for her own personal gain. . . .

This is a travesty for this entire family on the paternal side. I think, frankly, it's going to bear ill fruit for the maternal side of the family as well. However it comes out, this is a horrible thing for this child to be caught in the middle of this. It has—it's again--, I've seen almost nothing other than Ms. Schweitzer's less than credible allegations against the father.

So . . . I will order, not as a contempt remedy but as an enforcement of the motion for placement that the Order for placement that was agreed to, on the record I believe, in October and ordered by this Court that that be followed strictly by Ms. Schweitzer from this point forward.

As a purge for the contempt, I will order that she return this child to the state of Wisconsin to the paternal grandparents by no later than Wednesday at 4:30 p.m. and that that child will remain in that home until further order of the Court upon consideration of what we can do to ensure the orders of this Court will be followed in the future by Ms. Schweitzer and her mother.

I am not looking to disrupt this family and particularly disrupt this child by yo-yoing him back and forth between North Dakota and Wisconsin. And I understand that he has an enforced stability that has excluded the father at this point which he is used to, and so I'm not looking to destabilize the situation anymore than I have to, but I am putting it on the record here and I'm making it clear to Ms. Schweitzer, should she read this, and to the North Dakota courts that I fully intend to proceed to reintegrate this father fully as

an equal parent to this child based upon everything that has been brought to the Court's attention at this point. And the only way I can see to do that is to provide consequences to Ms. Schweitzer, including a finding of contempt, which she, as I say, can purge by no later than 4:30 p.m. on Wednesday.

And I do say when I say—I do mean what I say when I say she's to comply with the Order of the Court. Her mother is not to be accompanying this transfer on Wednesday afternoon.

All one needs to do is look at the videos that were—several videos that were taken where this child was coached into statements by both the mother and the grandmother that were supposedly actually brought to the Court's attention . . . they were supposed to support her contentions of abuse, and all they did was support crass manipulation by the mother and the grandmother of a vulnerable child who had just awakened from a nap.

I also want to put on the record that the failure to comply with Court orders regarding placement may very well bear further penalties in this court up to and including jail sentence to ensure compliance with the purge conditions and to ensure compliance with the Court order. And I also note and make no opinion one way or the other of the requirements of the Wisconsin criminal statute Section 948.31 regarding interference with custody by a parent. And I urge her to --- and her counsel to educate themselves as to the requirements of that statute.

This is a situation of Ms. Schweitzer's making entirely. She has blown up an orderly reconciliation process which in retrospect I don't believe she had any intention of abiding by even when she looked at me, said she understood, said she agreed and will abide.

. . .

The problem we have, of course, is the -- I don't want to, A, get either party in trouble with the North Dakota Court, which I think is proceeding under information that's not credible. But, nonetheless, the Court's orders up there are to be followed.

So the placement Order—until there is a resolution of the issues in North Dakota is to place the child with the paternal grandparents rather than directly with Mr. Miller. In all other respects the Order is to be complied with.

Id.

[¶36] Despite this strong language, Schweitzer continued to defy the order. Even after Judge Whelan dismissed the case for lack of Subject Matter Jurisdiction. In a letter dated March 29, 2019, Judge Whelan gave Judge Niess the following update:

My Court received a Petition for Expedited Enforcement of a Child Custody Determination as well as a request for a Warrant of Attachment, arising out of your recent order dated February 15, 2019. These documents were filed on Monday, March 25, 2019, pursuant to Chapter 14-14.1 of the North Dakota Century Code (our version of the UCCJEA). Likewise, this communication with you is made in compliance with the UCCJEA.

I signed the Warrant of Attachment on Tuesday, March 26, and the Pembina County Sheriff located the minor child, MMM, on that same day. MMM was turned him to the custody of his father Blake Miller, who was present in North Dakota with his mother, Laurie Miller. I required Mr. Miller to remain in North Dakota until the hearing on expedited enforcement could be held.

Due to the inability to personally serve Ms. Schweitzer, the hearing on the petition was rescheduled each consecutive day. Ms. Schweitzer was served yesterday, and the hearing was held this afternoon. She appeared *pro se*, and sought a stay of the proceedings. I did not grant her request for a stay.

Following the hearing, from the bench, I ordered that MMM was placed in the custody of Blake Miller, and that they were to return to the State of Wisconsin immediately. I noted to him, on the record, that the last Order I had reviewed from Wisconsin required that MMM be in the custody of his mother, Laurie Miller. I further advised him that any changes with regard to that Order would need to be addressed by Your Honor.

If you need any documentation from the North Dakota Court system as to these events, please do not hesitate to contact my office and we will assist you as best we can.

In the same vein, Ms. Schweitzer filed a motion to reconsider my decision in 34-2019-DM-6, which was the action filed by her requesting North Dakota

to take emergency jurisdiction of the case. I denied her petition and dismissed 34-2019-DM-6 on March 20, 2016. Her motion to reconsider was filed last week, and supplemented earlier this week. It is pending.

Finally, I remain most concerned about the evidence that Ms. Schweitzer continues to refer to: MMM's stained underwear and the SANE kit, both collected after MMM's Christmas visit with Mr. Miller. Apparently these items are in possession of the Wisconsin Crime Lab, awaiting testing. I mention this with the hope that all efforts are being made by MMM's Guardian ad Litem to press the Crime Lab for swift results. It would seem to me that this evidence, regardless of the results thereof, would provide very significant guidance to all involved regarding the allegations being made that MMM in harm's way.

(Supp. App. at 68-69.) The SANE kit came back negative. See Supp. App. at 88.)

[¶37] CONCLUSION

[¶38] For all the reasons set forth in this brief, Judge Whelan's Order should be affirmed and the Appellant should be ordered to pay reasonable attorney's fees.

Dated: December 2, 2019.

Respectfully submitted,



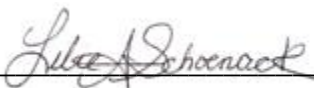
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**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Samantha Schweitzer,)	
)	Supreme Court No.
Petitioner/Appellant,)	20190157
)	
vs.)	
)	Pembina County District No.
Blake M. Miller,)	34-2019-DM-00006
)	
Respondent/Appellee)	

APPELLEE’S RULE 32(3) CERTIFICATE OF COMPLIANCE

[¶1] This “Appellee’s Brief,” filed on December 2, 2019, by attorney for the Respondent and Appellee, Lilie A. Schoenack, complies with the 8000 word count limit for proportionally spaced face set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedures. It also does not exceed the 38 page limit for monospaced typeface as it only has 24 pages including exempted material under Rule 32(a)(8)(D).



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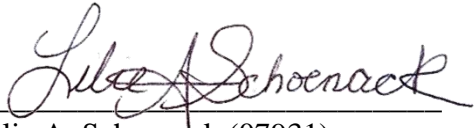
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APPELLEE’S CERTIFICATE OF SERVICE

[¶1] On December 2, 2019, a copy of the documents (1) Appellee’s Brief (2) Supp. App. were electronically served via email to Appellant’s attorneys Shawn E. Shearer at shawn@shearerlaw.pro; Lawrence D. Dubois; and Robert Fleming at fdflaw@polarcomm.com.

Dated this day December 2, 2019.



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