

SUPREME COURT  
OF THE  
STATE OF NORTH DAKOTA

Aparna Thiel,	)	
n/k/a Aparna Subramanian,	)	Supreme Court No.
	)	20200002
Plaintiff / Appellee,	)	
	)	
v.	)	Burleigh County Case No.
	)	08-2018-DM-00720
Kyle Thiel,	)	
	)	
Defendant / Appellant.	)	

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Appeal from Order dated August 16, 2019 (Docket #132) denying Appellant's Motion for Continuance and Motion for Appointment of a Parenting Investigator, Appeal from Order dated September 5, 2019 (Docket #156) denying Appellant's renewed Motion for Continuance and Motion for Appointment of a Parenting Investigator, and Appeal from the Findings of Fact, Conclusions of Law and Order for Judgment / Judgment and Parenting Plan issued and entered November 5, 2019 (Docket #227 and 228) all issued by the Honorable Gail Hagerty, District Court Judge for South Central Judicial District, Burleigh County, North Dakota.

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**APPELLEE'S BRIEF**

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**[3]      STATEMENT OF THE ISSUES**

- 1) Did the District Court err in failing to grant Kyle Thiel's Motion(s) for Continuance so as to allow him to retain, and be represented by, counsel at the trial of this matter?
- 2) Did the District Court err in failing to grant Kyle Thiel's Motion(s) for Appointment of a Parenting Investigator so as to allow input of a parenting Investigator as to the parenting rights, responsibilities, and parenting issues / determinations in this matter?
- 3) Did the District Court err and/or violate Kyle Thiel's due process rights by making various evidentiary and procedural rulings at trial which resulted in the inability of Thiel to present evidence, appropriately testify, appropriately cross-examine the Appellee and contest / refute the evidence presented by Appellee?

**[4]     STATEMENT OF THE CASE**

[5]     This is an appeal from the Order dated August 16, 2019 (Appellant's Appendix (Hereinafter "App") p. 32) which denied the Appellant's Motion for Continuance as well as his Motion for Appointment of a Parenting Investigator, appeal from an Order dated September 5, 2019 (Appellant's App 44) denying Appellant's renewed Motion for Continuance and Motion for Appointment of a Parenting Investigator, and appeal from the Findings of Fact, Conclusions of Law and Order for Judgment / Judgment and Parenting Plan issued and entered November 5, 2019 (Appellant's App 45, 54, and 65) all issued by the Honorable Judge Gail Hagerty, District Court Judge for South Central Judicial District, Burleigh County, North Dakota.

**[6]     STATEMENT OF THE FACTS**

[7]     This is a divorce case which involved a contest of identification, distribution, and valuation of marital debts and assets as well as residential responsibility and all related issues pertaining to a minor child. These parties were married on September 10, 2011. The parties have one child, namely D.T. who was born in 2013. Throughout the entire course of this divorce litigation, Aparna Thiel was represented by the undersigned, Theresa L. Kellington of Kellington and Oster, P.C. On the other hand, Kyle Thiel was represented by several attorneys. First, there was a Notice of Appearance entered by attorney Alexander Kelsch on December 3, 2018 (Appellee's App 9). Then, there was a Substitution of Counsel filed on April 24, 2019 whereby attorney Alyssa Lovas became Mr. Thiel's attorney (Appellee's App 149-150). Thereafter, there was a Notice of Appearance dated June 27, 2019 by attorney Benjamin Pulkrabek (Appellees App 173). Shortly thereafter on July 15, 2019, Mr. Pulkrabek moved to withdraw and submitted a

Brief in Support of his Motion to Withdraw (Appellee's App 174-175). The trial was scheduled on September 11, 2019.

[8] Kyle filed an Answer and Counterclaim requesting that he be granted the primary residential responsibility of D.T. In his Counterclaim, Kyle requested spousal support, permission to relocate to Denver, Colorado with the minor child, and attorney's fees (Appellee's App 10-13). Noteworthy in this case is that a Scheduling Order was put in place on December 18, 2018 (Appellee's App 16). Said scheduling order was very concise in the deadlines that were to be met by both parties. Specifically, discovery was to be conducted and completed within sixty (60) days before the trial; any and all pretrial motions were to be completed within forty-five (45) days before the trial; any residential responsibility / parenting time report / evaluation was to be completed thirty (30) days prior to trial; and the date for which the parties were to be prepared for trial was May 1, 2019.

[9] The Notice of Trial was entered on December 19, 2018 (Appellee's App 17). On said Notice of Trial, the trial was noted to be September 10, 2019 and September 11, 2019. In April of 2019, Kyle brought a Motion for an Ex Parte Interim Order asking for primary residential responsibility (Appellee's App 18-22). The undersigned firmly believes that the tell all and mindset of Mr. Thiel is most clearly set forth and illustrated by the contents of his Affidavit in Support of his Motion for Ex Parte Interim Order (Appellee's App 23-51). On April 11, 2019 the Court entered an Order finding that there was no emergency warranting the entry of an Ex Parte Interim Order (Appellee's App 53). A hearing was scheduled on the Motion, which was treated as a Motion for Interim Order. The Notice to Appear was dated April 11, 2019 and which established the hearing for May 2, 2019 (Appellee's App 54).

[10] In the meantime, Aparna filed an Application for Emergency Ex Parte Interim Order on April 18, 2019 (Appellee's App 55-62). Aparna filed an extensive Affidavit summarizing all the reasons why she believed an emergency existed in the case to justify her request for the issuance of an Emergency Ex Parte Interim Order (Appellee's App 63-84). The reasons provided for issuance for the Ex Parte Interim Order included one inappropriate direct contact with her employer by Kyle (Appellee's App 85); bizarre and inappropriate contact with Aparna (Appellee's App 88-98); bizarre and inappropriate contact with Aparna's *father* (Appellee's App 99-100); bizarre and inappropriate conversations about appointments regarding the child, drop-offs regarding the child, and time spent with the child (Appellee's App 101-108); and most importantly Kyle fleeing to Denver, Colorado with the child without any notice whatsoever to Aparna (Appellee's App 109-111). In response thereto, the Court entered an Order on April 22, 2019 which indicated that there was no emergency. However, an emergency hearing would be scheduled accordingly (Appellee's App 112).

[11] Another enlightening Affidavit and multiple Exhibits were filed by Kyle on April 22, 2019 (Appellee's App 113-135). Upon Aparna submitting a Revised Affidavit (Appellee's App 138-148), a Notice of Hearing was entered on April 23, 2019 which set forth a hearing on April 29, 2019 (Appellee's App 136-137). On April 24, 2019 Alyssa Lovas took over as counsel for Kyle (Appellee's App 149-150). Simultaneously filed with said Substitution of Counsel, Kyle made a request that he appear by phone given that he was in Denver, Colorado with the child and did not want to return to North Dakota to appear at said hearing (Appellee's App 151). The Honorable Judge Gail Hagerty denied the request for him to appear by phone (Appellee's App 152). Another Affidavit was filed

by Aparna on April 25, 2019 (Appellee's App 153-165). In connection with said Affidavit, it included the statement by Kim Beck, the counselor for the minor child from Red Door Therapy Center (Appellee's App 166-167). It also included a text message between Aparna's family, who lives in Denver, Colorado, and Kyle regarding parenting time (Appellee's App 168). Based upon the pleadings and the hearing which was held on April 29, 2019, an Interim Order was entered on May 22, 2019. Said Order granted Aparna the primary residential responsibility over the minor child, parenting time to be exercised according to a schedule by Kyle, and the marital home to be in the possession of Aparna (Appellee's App 169-172).

[12] Again, another attorney took over representation for Kyle as noted in the Notice of Appearance dated June 27, 2019 (Appellee's App 173). Approximately two weeks later, Mr. Pulkrabek sought to be removed as attorney for Mr. Thiel. In his Brief in Support of his Motion to Withdraw, Mr. Pulkrabek stated:

Mr. Thiel refuses to accept Attorney Pulkrabek's opinion and thinks he knows the best way to proceed in this case. In Attorney Pulkrabek's opinion the difference of opinion he and Mr. Amyotte have about Mr. Thiel case are irreconcilable. Therefore, it would be best to allow attorney Attorney Pulkrabek to withdraw as Mr. Thiel's attorney. When an attorney and his client can't work together on a case the attorney should be allowed to withdraw close (Appellee's App 174-175).

[13] Relatively shortly afterwards, on August 8, 2019, Kyle moved the Court with a Motion for Appointment of Parenting Investigator (*Appellant's App 16-19*). On the same exact date, he also filed a Motion for Continuance of the trial as well as an Affidavit and supporting Exhibits (*Appellant's App 20-31*). On August 16, 2019 the Court entered an Order which denied both Motions on the grounds that the motions were untimely (Appellee's App 176). In accordance with the Scheduling Order that was entered in this



action, on August 27, 2019 both parties filed their Witness and Exhibit List, the Joint Property and Debt Listing, and their respective Proposed Parenting Plans (Appellee's App 177-226). Thereafter on September 5, 2019, Kyle filed another Motion for Continuance as well as a Motion for the Appointment of a Parenting Investigator (Appellee's App 227-239). On September 5, 2019 the Court entered an Order denying both motions (Appellee's App 240).

[14] The trial was held on September 11, 2019 at which time again, Kyle attempted to request that the hearing be continued. The Court denied said request going into conversation about the fact that Kyle has had three attorneys, that the trial had been known for months, and that the delay was not going to be allowed (Trial Transcript 2:9-20). At the time of trial, there was a significant amount of evidence presented regarding values of assets of the marriage as well as the balances of debts. It signaled the majority of the evidence of these debts and assets were presented by Aparna. As a result of the evidence presented at time of trial, the court entered an Order (Appellee's App 543). This Order and the resulting Judgment and Amended Judgment are what Kyle seeks to have reversed and remanded. It is upon Aparna's request that this Court affirm the ruling of the District Court. Specifically, the Honorable Judge Gail Hagerty's ruling and that attorney's cost be awarded in favor of Aparna.

## [15] **ARGUMENT**

### A. **Standard of Review**

[16] According to the Court in Lund v. Lund, 2011 ND 53, 795 N.W.2d 318, "The District Court has broad discretion over the progress and conduct of a trial, and the determination whether to grant a continuance lies within the sound discretion of the District

Court. The Supreme Court will not reverse the District Court's decision to deny a motion for continuance absent an abuse of discretion. A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner when its decision is not the product of a rational mental process leading to a reasoned determination, or when it misinterprets or misapplies the law.”

**B. The District Court did not err in refusing to grant Kyle Thiel's Motion(s) for Continuance.**

[17] The Scheduling Order was put in place in this action on December 18, 2018 (Appellee’s App 16). The Notice of Trial was entered on December 19, 2018 (Appellee’s App 17). Said Notice of Trial gave Kyle Thiel approximately nine months’ notice of the date of trial. The trial was set for September 10 and September 11 of 2019. Mr. Thiel is attempting to gain sympathy from the Supreme Court on the fact that he went through three different attorneys and ended up at the trial in September of 2019 representing himself. This was his own doing. The first Motion that Mr. Thiel made to continue the trial was made on August 8, 2019 (*Appellant’s App 20-31*). This was approximately five weeks prior to the trial date. Approximately five days prior to the trial, Mr. Thiel filed a second Motion for Continuance (Appellee's App 227-239). Judge Hagerty of the District Court appropriately denied the first Motion for Continuance claiming that said motion was made in an untimely fashion. Said order was entered on August 16, 2019 (Appellee’s App 176). The District Court ruled on the second motion for continuance of Mr. Thiel that was made on September 5, 2019 (Appellant’s App 240). Specifically, at the time of trial Mr. Thiel stated:

MR. THIEL: I'm not sure if this is the time but I apologize, Your Honor, I know the Court has addressed this a couple times. I just wanted to verbally have it on record that I am requesting a continuance of the trial so that I can seek counsel.

THE COURT: You had two attorneys and they've been released.

MR. THIEL: Yes.

THE COURT: And the trial isn't being moved because you agreed to have them removed. So you've had attorneys, you've know when this trial was set for months and months. We aren't going to delay today.

(Trial Transcript 2:9-21)

The undersigned firmly believes that the reason for the three different attorneys in this action was very specifically summarized in the Brief submitted by attorney Benjamin Pulkrabek on July 15, 2019 in support of his Motion to Withdraw. Mr. Pulkrabek stated in his Brief that:

Mr. Thiel refuses to accept Attorney Pulkrabek's opinion and thinks he knows the best way to proceed in this case. In Attorney Pulkrabek's opinion the difference of opinion he and Mr. Amyotte have about Mr. Thiel case are irreconcilable. Therefore, it would be best to allow attorney Attorney Pulkrabek to withdraw as Mr. Thiel's attorney. When an attorney and his client can't work together on a case the attorney should be allowed to withdraw close. (Appellee's App 174-175).

[18] In Mr. Thiel's Appellant's Brief, his counsel stated that he supported his Motions for Continuance with an Affidavit and Exhibits in support. Further, he cites his Appendix pages 23, 26 and 31. Said citing references an Affidavit of Kyle Thiel which states in relevant detail the following in paragraph three:

Further, I believe things like Aparna's animosity towards me have tainted her judgment in what is best for both of our relationships with the D.M.T.

In paragraph four of the Affidavit of Kyle Thiel states:

It is my position is that it is appropriate for the best interests of D.M.T. that he be placed in my primary care based on various factors including stability, ability to

work cooperatively with Aparna, work schedules and most of the best interest factors.

In paragraph five of the Affidavit of Mr. Thiel states:

I have admittedly struggled with finding and maintaining counsel who will effectively represent my interests. Two of my attorneys have withdrawn from representation. One of the areas of concerns with my prior attorney is that I communicated about my belief that there as a need, and it was my desire, to obtain a parenting investigator and, if necessary, to file a motion for a parenting investigator. Attorney Lovas did apparently communicate with Aparna's counsel about getting an investigator but her counsel declined, indicating that D.M.T.'s therapist could testify instead.

In paragraph six of the Affidavit of Mr. Thiel states:

Unfortunately, as of the present date, and even though I have discussed and requested this from my prior attorneys, not motion for a parenting investigator has ever been filed with this court and no parenting investigator has been retained.

It is extremely questionable that all three of Mr. Thiel's attorneys would refuse to request a parenting investigator from the Court if it was within the time constraints of the Scheduling Order, as ordered by the Court. This in of itself requires close scrutiny of the representations made by Mr. Thiel to the Court.

[19] According to the Court in Lund v. Lund, 2011 ND 53, a Motion for Continuance made after notice of trial has been issued is governed by N.D.R.Civ.P. 40(d), and “No continuance on trial dates will be given unless formally approved by the trial judge scheduled to hear the case. A request to continue a trial must be made within ten days after receipt of notice of trial given by the court. If unavoidable circumstances should arise, the trial judge may consider waiving the ten-day requirement. In addition, the N.D.R.Ct. 6.1(a) provides: A party is entitled to a continuance on the ground that his attorney is actually engaged in another trial or hearing, but only for the duration of the particular trial or hearing in which the attorney is then engaged.”

[20] The Court in Lund v. Lund, 2011 ND 53, further reasoned that “Although N.D.R.Ct. 6.1(a) entitles a party to a continuance when his attorney has a conflicting trial date, that most motion must satisfy other applicable procedural requirements, including the time deadline set in N.D.R.Civ.P. 40(d). If the motion is not made within the ten-day time frame, the party may argue that his new attorney’s time conflict is an “unavoidable circumstance” under N.D.R.Civ.P. 40(d) and request that the District Court, in its discretion waive the ten-day requirement and grant a continuance.”

[21] In the actual Lund v. Lund case, Orvell contended that the denial of his motion for a continuance severely prejudiced his opportunity to present his case and constituted an abuse of discretion. In his affidavit in support of his motion, however, Orvell did not explain why he waited until four months after the case was commenced, and more than two months after the notice of trial was issued, to seek the services of an attorney. The District Court, in denying the motion, specifically noted that ten weeks had passed since the notice of trial had issued and that Orvell had “unreasonably delayed the search for counsel.” They also noted that, after the motion for continuance was denied, Orvell still have more than a month before trial to attempt to secure other counsel. The record does not show that he made any attempt to contact another attorney, but instead he waited one week before trial and then filed a renewed motion for continuance and sought to disqualify the trial judge on grounds of bias. The District Court determined that despite ample opportunity to secure counsel, Orvell unreasonably delayed obtaining counsel to represent him and that Betty should not be forced “to wait for additional months because of [Orvell’s] lack of diligence. Under the circumstances presented in this case, the Court concluded that the District Court did not abuse its discretion in denying his motion for continuance.

[22] Although opposing counsel in this case, Mr. Pagel, attempts to argue that the logic behind the case of Lund v. Lund supports his grounds for appeal, the Appellee firmly believes that it actually favors the Appellee's position and supports the District Court's granting or denial of the motion for continuance. Mr. Thiel knew as of December 19, 2018 that his trial would be held in September of 2019. Notwithstanding this knowledge, he allowed the withdrawal of two of his attorneys, obviously, but with assumption due to being unable to communicate or agree on a plan of action with these attorneys. The third attorney, Benjamin Pulkrabek, was forced to file a Motion to Withdraw on the grounds that he simply could not work with Mr. Thiel. This motion was filed in July of 2019, approximately two months prior to the trial. Nowhere in Mr. Thiel's Affidavit in Support of Motion to Continue did he provide any detail of his attempts made to contact any other attorney to try to seek counsel. In fact, the subject was left completely underdressed. There was absolutely nothing. There was a complete devoid of any information of attempts made to contact alternative counsel. And again, this was proximally two months prior to the date of trial.

[23] Mr. Thiel again, renewed his Motion for Continuance five days prior to the trial. Kyle attempts to argue that the District Court allowed his attorney to withdraw at a very late date, giving Kyle a mere 36 days prior to the commencement of the trial to locate new counsel in order to prepare to try a case. However, Benjamin Pulkrabek filed his Motion to Withdraw on July 15, 2019 (Appellee's App 174-175). The trial date was September 10 and September 11 of 2019. This is not a mere 36 days. This was close to two months that Mr. Thiel had full knowledge his attorney was seeking to withdraw and full knowledge as to the reasons why. Mr. Thiel also indicates in his Appellant's Brief that he

tried to locate counsel to represent him but was unable to do so. However, in his Affidavit in Support of his Motion for Continuance, he does not list any names of attorneys with whom he contacted. He did not list any other contacts made or other attempts made. His Motion is completely devoid of any such information.

[24] Mr. Thiel then attempts to argue in his Appellant's Brief that he was legally incompetent to represent himself at time of trial. As the Supreme Court is well aware, it is not the Supreme Court's job nor should the Supreme Court be asked to re-weigh the credibility of the witnesses. Supreme Court justices were not present at the day of trial. In fact, not even Mr. Pagel, the current attorney for Mr. Thiel was present at the day of trial. If any of the justices or opposing counsel were present at the hearing on September 10, 2019, they would be left with the same impression and the same reasoning as Judge Hagerty had when ruling what she did. Mr. Thiel appeared throughout this entire process to be narcissistic and to know the law better than anyone else including trained attorneys. He appeared controlling, and in fact disrespectful to the judge throughout the trial on September 10, 2019. Not having legal experience does not make him incapable of representing himself. Judge Hagerty went beyond what was expected to try to assist Mr. Thiel in keeping on track and focusing on issues that would help the District Court in rendering a ruling on the issues at hand in this divorce.

[25] Kyle Thiel has an above average IQ and education. He has a Bachelor of Science in computer technology management (Trial Transcript 12:16-17). He also has entrepreneurial experience with web development and fireworks retail business (Trial Transcript 13:15-21). Unfortunately, none of those businesses earned profits (Trial Transcript 15:6-8). Whether or not Mr. Thiel suffers from any type of mental illness

is completely unknown and documented unknown. At the time of trial, he testified that he suffers from depression and anxiety but that there was no diagnosis of bipolar disorder (Trial Transcript 92:22-23). However, the feelings and behavior as well as testimony of Mr. Thiel clearly supports that he is controlling and narcissist. For example, when Mr. Thiel discovered email correspondence between Aparna and another coworker, he emailed her employer directly the very extensive email thereby jeopardizing the primary financial source of the family (Trial Transcript 22:1-14). Additionally, he called and texted Aparna's brother and father numerous times (Trial Transcript 25:18-19). Judge Hagerty had asked Mr. Thiel on many occasions throughout the trial on whether or not he had any legal objections to the Exhibits as introduced, to which Mr. Thiel replied no (Trial Transcript 26:14-15; 28:12-14; 33:20-22; 36:16-25; 38:7-9; 41:12-13; 44:17-18; 45:19-22; 46:8-10; 51:9-11; 53:20-21; 54:22-23; 59:17-18; 67:3-4). In fact, there were numerous Exhibits that Mr. Thiel offered for admission to which there was an objection and the Court still admitted the Exhibit in favor of Mr. Thiel.

**C. The District Court did not err in failing to grant Mr. Thiel's Motion(s) for Appointment of a Parenting Investigator**

[26] As noted in the Appellant's Brief, North Dakota Century Code section 14-09-06.3(1) allows for the appointment of investigators and provides in paragraph 1:

1. In contested proceedings dealing with parental rights and responsibilities the court, upon the request of either party, or, upon its own motion, may order an investigation and report concerning parenting rights and responsibilities regarding the child. The Court shall designate a person or agency responsible for making the investigation and report, which designees may include the county social service board, public health officer, school officials, and any other public agency or private practitioner it deems qualified to make the investigation.



The determinative word in the above statute is *may*. The Court is not obligated or mandated to order a parenting investigator. It is in the sole discretion of the Court on whether or not to appoint a parenting investigator. Mr. Thiel attempts to argue that he requested his three different attorneys to seek the appointment of a parenting investigator. He argues that he had his second attorney, Alyssa Lovas, reach out to the undersigned to address the appointment of a parenting investigator. The undersigned indicated that one was not necessary.

[27] This action commenced in November of 2018. At the time of commencement or relatively soon thereafter, in December Mr. Thiel was represented by a seasoned attorney, Alexander Kelsch. As indicated above, the Notice of Trial was entered in December of 2018. There was 10 months' notice of the trial given to Mr. Thiel's attorney. It wasn't until Mr. Thiel retained Alyssa Lovas that an attempt was made to reach out to the undersigned about the appointment of a parenting investigator. Ms. Lovas was not substituted in as Mr. Thiel's attorney until April 24, 2019. As such, there was four months delay right in that span. If Mr. Kelsch was not willing to file a motion for the appointment of the parenting investigator as alluded by Mr. Thiel, why did he wait four months to request a different attorney? Mr. Pulkrabek did not get involved in the case until June of 2019. If Ms. Lovas was not willing to file a motion for the appointment of the parenting investigator, why did Mr. Thiel wait over two months to find another attorney in order to file a motion for parenting investigator? Secondly, why did he not locate an attorney who was willing to do so immediately? Instead, shortly after being retained, Mr. Pulkrabek sought for withdrawal on the grounds that he could not see eye to eye with this

client. Mr. Thiel's argument that his request for the filing of a motion for appointment of a parent investigator simply does not make sense given the history of this case.

**D. The District Court did not err and did not violate Mr. Thiel's due process rights by making evidentiary and procedural rulings at trial which resulted in the inability of Mr. Thiel to present evidence, appropriately testifying, appropriately cross-examine the Appellee and contest / refute the evidence as presented by the Appellee.**

[28] As the justices of the Supreme Court will be able to discern from the trial transcript in this matter to the best of their ability given that they were not actually physically present at the time of hearing, the District Court tried to assist Mr. Thiel in the formulating of proper questions in cross-examination. The District Court kept reminding Mr. Thiel that he would have his opportunity to testify to the items for which he was trying to cross-examine Aparna Thiel. He was given his opportunity to present his evidence. The difficulty that Mr. Thiel had was properly formulating cross-examination questions. This does not create a situation where his substantial rights were affected or that he suffered serious injustice.

[29] According to the Court in K.E.N. v. R.C., 513 N.W.2d 892, "Even if a party has not timely objected in the trial court, the erroneous admission of evidence may provide a basis for reversal if it affects substantial rights." Further, "For reversal, an error must affect the substantial rights of a party" and "The appellate court will reverse for obvious error only in exceptional situations where the defendant has suffered serious injustice." Mr. Thiel has not shown that he has suffered serious injustice as result of representing himself, or the District Court's treatment of him during the trial. On page 70 of the trial transcript, the Court indicates:

THE COURT: Well, it sounds to me like what you're trying to do is really tell your story and that would be through your testimony.

(Trial Transcript 70:21-23)

Mr. Thiel continued to attempt to formulate proper questions for cross-examination of Aparna Thiel, and he continued to do so without interruption from the Court. However, being present at the hearing, there were long lapses between each question. The Court then addressed these long lapses:

THE COURT: I'm sorry. There are these long lapses.

MR. THIEL: I know. I'm having a hard time formulating things properly.

THE COURT: Well, this is a really difficult procedure –

MR. THIEL: Yes.

THE COURT: -- because there are long, long, long lapses.

MR. THIEL: I know.

THE COURT: So you will either need to be able to ask questions or we will move on to the next phase of trial.

MR. THIEL: Okay.

(Trial Transcript 74:16-25 and 75:1-2)

Mr. Thiel then continues on to try and ask questions. He continues to ask questions with very little interruption or interference from the court up to page 80 of the transcript. At that time, the Court indicates:

THE COURT: I think that that's maybe something you can present through testimony. I'm not – a lot of what you're talking about here today isn't really going to be very helpful in making the decisions I have to make. Ans do I'm trying to keep you on track with regard to information I need to make the decisions that I'm going to be called on to make; so you need to try to focus a little (Trial Transcript 80:13-19).

Judge Hagerty was trying to keep Mr. Thiel on track with regards to the information that she needs. Mr. Thiel then continues on to ask questions of Ms. Thiel. He continues his

questioning until page 90 of the transcript with very few interruptions by the Court, but rather with some instructions from the Court which are helpful to assist Mr. Thiel in asking his questions. Then, the transcript goes on to direct examination by the undersigned. The Court then takes a lunch break to give Mr. Thiel an opportunity to organize his Exhibits, testimony, and any other information he may have for his own testimony.

[30] Upon returning from lunch, Mr. Thiel called his mother, Lisa Nagel, as his witness. She testified on his behalf, which is reflected in the Trial Transcript 94-100. This witness testifies on his behalf with very little, if any, interruption by the District Court. Then, commencing on page 100, Mr. Thiel calls Aparna Thiel to the stand for his direct examination. Mr. Thiel directly examined Aparna Thiel until page 107 of the Trial Transcript. At that time, he is then given an opportunity to testify on his own behalf. He testifies in narrative on everything that he wishes to present to the court instead of an ask and answer format, which is the general rule of thumb in trial. He testifies all the way through with very little interruption from the District Court, all the way up to page 139 of the Trial Transcript. During this period of time, the District Court asked Mr. Thiel very specifically what he is requesting from the court, what his thoughts were on the property and debt distributions, values, etc., and what he was requesting with regards to residential responsibility, etc. Mr. Thiel is given a full opportunity to testify. As a result of all the evidence and testimony presented at the time of hearing, the Court entered its order (Appellee's App 543). As a result of that Order, the Findings of Fact, Conclusions of Law and a Judgment, and then a subsequent Amended Judgment was entered in this action.

[31] The assertion by opposing counsel that Kyle in essence threw up his hands in presenting his case and defense is not true. The transcript is complete with full testimony,

exhibits, and explanations, etc. by Mr. Thiel, as well as a relatively coherent cross-examination. There were no pieces of documentation or evidence that was admitted erroneously. There were no substantial rights of Mr. Thiel's that were impaired. Mr. Thiel did not undergo a substantial injustice. The Order that was entered was fair and equitable. Mr. Thiel was represented by counsel at the time of entry of the Interim Order. The final Order was very close in terms of the residential responsibility, etc. to the terms of the Interim Order during which time he was represented by legal counsel. I ask the justices of the Supreme Court to review the very first Affidavit of Mr. Thiel which is contained in Appellee's Appendix pages 23-51 to gain insight as to Mr. Thiel's personality throughout this case. Then, one will fully have an idea as to the type of controlling and narcissistic personality that this Court was faced with throughout this legal proceeding.

**[32]    CONCLUSION**

**[33]**    In light of the foregoing, the evidence presented and throughout the entire course of proceeding, the District Court ruled fairly, objectively, with rationale, and reason, and did not act in any arbitrary or unconscionable way against Mr. Thiel. The District Court's decisions in all regards should be affirmed and costs should be awarded to Aparna.

Respectfully submitted this 26<sup>th</sup> day of March, 2020.

/s/Theresa L. Kellington  
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SUPREME COURT

OF THE

STATE OF NORTH DAKOTA

Aparna Thiel,	)	
n/k/a Aparna Subramanian,	)	Supreme Court No.
	)	20200002
Plaintiff / Appellee,	)	
	)	
v.	)	Burleigh County Case No.
	)	08-2018-DM-00720
Kyle Thiel,	)	
	)	
Defendant / Appellant.	)	

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**CERTIFICATE OF COMPLIANCE WITH RULE 32**

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[1] COMES NOW Plaintiff / Appellee Aparna Thiel, n/k/a Aparna Subramanian, by and through her attorney of record, Theresa L. Kellington of Kellington & Oster, P.C., who files this Certificate of Compliance with the page limitations of N.D. R. App. P. (32).

[2] I certify that the Appellee's Brief contains 22 pages and the Appendix to the Appellee's Brief contains 551 pages.

[3] Dated this 26<sup>th</sup> day of March, 2020.

/s/Theresa L. Kellington  
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Kyle Thiel,	)	
	)	
Defendant / Appellant.	)	

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Appeal from Order dated August 16, 2019 (Docket #132) denying Appellant's Motion for Continuance and Motion for Appointment of a Parenting Investigator, Appeal from Order dated September 5, 2019 (Docket #156) denying Appellant's renewed Motion for Continuance and Motion for Appointment of a Parenting Investigator, and Appeal from the Findings of Fact, Conclusions of Law and Order for Judgment / Judgment and Parenting Plan issued and entered November 5, 2019 (Docket #227 and 228) all issued by the Honorable Gail Hagerty, District Court Judge for South Central Judicial District, Burleigh County, North Dakota.

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**PROOF OF SERVICE**

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[1] Theresa L. Kellington does hereby certify that on the 26<sup>th</sup> day of March, 2020, this document and the following:

- A. Appellee's Appendix; and**
- B. Appellee's Brief – with Certificate of Compliance**

[2] were served via electronic mail upon the following:

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Clerk, N.D. Supreme Court  
[supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov)

[3] Dated this 26<sup>th</sup> day of March, 2020.

/s/Theresa L. Kellington  
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