FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
JULY 27, 2022
STATE OF NORTH DAKOTA

IN THE SUPREME COURT OF NORTH DAKOTA

Jonathan Lee Buchholz	)	
	)	
Plaintiff and Appellee,	)	Supreme Ct. No. 20220113
	)	Dist. Ct. No. 02-2020-DM-00102
vs.	)	
	)	
Kristin Angela Overboe,	)	
	)	
Defendant and Appellant.	)	

On Appeal from Judgment entered February 16, 2022, Order re: Motion to Strike and for Protective Order entered April 25th, 2022, Order Striking Declaration of Kristin Overboe dated February 11, 2022 entered February 23, 2022, and order on Motion for Leave to Deposit Funds and Rule 58 Pre-filing Order entered March 16, 2022.
Barnes County District Court
Southeast Judicial District
Honorable Jay Schmitz

APPELLANT'S REPLY BRIEF

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LAW AND ARGUMENT

The District Court did not exercise proper jurisdiction.

[1.] The district court must have both subject matter and personal jurisdiction over the matter and the parties. Baker v. LuAnn Erickson aka Thiel, 2022 ND 137. The district court did not make specific findings regarding each aspect of jurisdiction and the record in this action does not contain proof of valid service. "Valid service of process is necessary to assert personal jurisdiction over a defendant." Id. (quoting Workforce Safety & Ins. v. Oden, 2020 ND 243, ¶8, 951 N.W.2d 187. "A party must strictly comply with the specific requirements for service of process." Sanderson v. Walsh Cty., 2006 ND 83, ¶13, 712 N.W.2d 842. "Absent valid service of process, even actual knowledge of the existence of a lawsuit is insufficient to effectuate personal jurisdiction over a defendant." Id. "Without valid service... any judgment is void because the court lack personal jurisdiction." Id.

[2.] When determining the validity of a judgment based on lack of personal jurisdiction, the Court must look at the statute and determine whether it was properly followed. Under N.D.R.Civ.P. 3, "[a] civil action is commenced by the service of a summons." Rule 4, N.D.R.Civ.P., governs service of process. In interpreting our rules of court, we apply principles of statutory construction to ascertain intent. See State v. Lamb, 541 N.W.2d 457, 459 (N.D. 1996); Bickel v. Jackson, 530 N.W.2d 318, 320 (N.D. 1995). Intent is shown by first looking at the language of the rule, where words are taken in their plain, ordinary, and commonly understood meaning. Lamb, at 459. The law is what is said, not what is unsaid. Zueger v. North Dakota Workers Compensation Bureau, 1998 ND 175, ¶ 11, 584 N.W.2d 530. N.D.R.Civ.P. 4(d)(2)(A) authorizes personal service of a summons upon an individual in several ways, including by "(i) delivering a copy of the summons to the

individual personally;" or by "(v) any form of mail or third-party commercial delivery addressed to the individual to be served and requiring a signed receipt and resulting in delivery to that individual[.]" Proof of service under N.D.R.Civ.P. 4(i) must state the date, time, place, and manner of service. N.D.R.Civ.P. 4(j)(1). Specific requirements for service of process must be strictly complied with, and a judgment based on service where the procedural requirements of the rule have not been followed is void. Farrington v. Swenson, 210 N.W.2d 82, 83 (N.D. 1973).

[3.] The record does not reflect that Kristin was properly served with the Summons and Complaint. The Admission of Service on file was for an action entitled "Jonathan Bucholz v. Kristen Angela Overboe Bucholz." (R:4). While this action was never filed, a different action entitled "Jonathan Buchholz v. Kristin Angela Overboe Buchholz" was filed. Arguably, a scrivener's error is harmless, but an admission of service by the defendant under N.D.R.Civ.P. 4(i) must state the date, time, place, and manner of service. N.D.R.Civ.P. 4(j)(1). Here, the Admission of Service not only included the wrong names of both parties, but it also failed to state the date, time, place, and manner of service. Without proper service, a trial should not have been held, and a Judgment should not have been issued.

[4.] The Judgment is also void because the Court either did not have subject matter jurisdiction or it exceeded it. The trial in this matter was held on December 17th, and 29th, 2021. Subsequent to the trial the court held a hearing on January 19th, 2022 to correct mathematical mistakes in the valuation of the marital estate. On February 3rd, 2022 Plaintiff's counsel submitted a letter requesting clarification of the court's math. Plaintiff's counsel did not comply with Rule 7 of the North Dakota Rules of Civil Procedure or Rule

3.2 of the North Dakota Rules of Court. Despite the lack of notice and procedure a status hearing was scheduled for February 11th, 2022. Plaintiff's counsel did not serve Kristin with the Notice of Hearing. Rather, she served Kristin's prior counsel. At the status conference the Court, again, amended his findings. The next due process violation was where Plaintiff's counsel was tasked with drafting the proposed findings and judgment. These drafts were filed only hours after the hearing to which Kristin was not properly given notice of. The Court signed the Findings and Judgment only five days later. According to the North Dakota Rules of Court, Rule 7.1(b)(1), any findings of fact and conclusions of law prepared by one or more parties must be served upon all other parties for review and comment. A party may file and serve a response in writing, within 14 days of service, or such other time as the court, in its discretion, may allow. It is not until after this time that the Court must enter findings of fact and conclusions of law as it may deem appropriate. N.D.R.Ct. 7.1(b)(1).

[5.] The next due process violation is where the Order to Strike issued on February 23rd, 2022 was issued only 8 days after the Motion to Strike was filed by Plaintiff. Under Rule 3.2 of the North Dakota Rules of Court, Kristin was entitled to 14 days within which to serve and file and answer brief with supporting papers. Kristin was not afforded due process of law in accordance with the rules because the Court issued its Order to Strike before the time allotted for Kristin's response to be filed.

[6.] The next issue was the Order to Strike that was issued on April 25th which was entered after the Notice of Appeal was filed. The district court did not have jurisdiction to issue the order because the matter was already on appeal. Quamme v. Quamme, 2022 ND 124, ¶3. The district court only retains jurisdiction to address certain collateral matters that

do not pertain to the issues directly on appeal. Id. The Plaintiff disagrees and cites the case of Holkesvig v. Grove, 2014 ND 57, as controlling precedent. However, in Holkesvig, the Court found that the plaintiff was engaging in vexatious and meritless litigation. Id at ¶17. That isn't the case here. In fact, the Plaintiff specifically requested that the Court label Kristin as a vexatious litigant and the Court denied that request in it's entirety. To understand Holkesvig, one must review a line of related cases. That line of cases provides that the Plaintiff had filed thousands of pages documentation concerning numerous individuals in the legal profession. Primarily the allegations included incompetence and lack of ethics by disciplinary counsel, and by Grove's attorney, which included the mishandling of trust account funds. In the Holkesvig line of cases there was a need to control the docket to preserve the integrity of the court. These cases do not correlate to the instant case. The only possible correlation would be the concerns Kristin raised regarding disciplinary counsel, but that is not relevant to this issue.

The Right to Divorce and Remarry

[7.] Plaintiff argues that the court properly granted both parties a divorce, and that failure to grant either party the right to remarry was harmless error. (Appellee's Brief, Pg. 10, ¶ 23-25). This is contrary to the law. Divorce actions are entirely statutory, and courts are bound to follow the scheme enacted by the legislature, without adding or deleting requirements. Vahey v. Vahey, 35 Misc. 3d 691, 940 N.Y.S.2d 824 (Sup. 2012). The legislature defines the boundaries of the Court's jurisdiction, and the court must yield to those provisions. In re Marriage of Waldren, 217 Ariz. 173, 171 P.3d 12 14 (2007).

[8.] In the case of Presswood v. Runyan, 937 N.W.2d 279, a similar issue occurred. In that case, a judgment was entered granting a divorce while reserving the division of

property and debt. Id. at ¶. However, the district court did not certify the judgment under N.D.R.Civ.P. 54(b), did not employ a severance under N.D.R.Civ.P. 21, and did not include a provision allowing the parties to remarry. Id. at ¶ 6. The Presswood court cited the case of Albrecht v. Albrecht, 2014 ND 221, 856 N.W.2d 755, noting that the judgment was not final because the district court did not certify the judgment, sever the issue from the action, or include a provision allowing the parties to remarry. Id. at ¶ 4. Justice VandeWalle concurred specially noting that the judgment did not comply with "N.D.C.C. § 14-05-02, which states in part: '[N]either party to a divorce may marry except in accordance with the decree of the court granting the divorce.' It is the duty of the court granting a divorce to specify in the order for judgment whether either or both of the parties shall be permitted to marry, and if so, when." Id. at ¶ 11. Justice VandeWalle further opined that "[w]hile it may have been the intent of the trial court that the parties may remarry immediately and that the decree of divorce be immediately appealable, the judgment did not comply with N.D.C.C. § 14-05-02 nor N.D.R.Civ.P. 54(b)." Id. at ¶ 12.

[9.] Plaintiff's counsel states "[t]t is unclear why the court would consider the parties married through August of 2022." (Appellant's Brief, ¶47). To assist Plaintiff's counsel I will try to explain. A decision which is not a final disposition of an action is interlocutory. Jordet v. Jordet, 861 N.W.2d 154, ¶ 16. Under this type of divorce decree the parties are still considered married until the final decree is entered.[1] The underlying policy supporting this type of legislation is said to encourage reconciliations and prevent hasty remarriages. Hall v. Baylous, 109 W. Va.1, 153 S.E. 293 (1930). The doctrine which operates to limit

[1] *Statutory Restrictions on the Right to Remarry after Divorce. How They are Avoided*. Virginia Law Review, Vol, 36, No. 5 (Jun., 1950), pp. 665-673.

the effectiveness of this statutory restriction is the general rule of conflict of laws which declares that the validity of a marriage is to be determined by the *lex loci contractus*. The effectiveness of this is limited by the interlocutory decree, which operates on the theory that the parties remain husband and wife until the final decree, thus making it impossible to have a lawful remarriage in another state. See King v. Klemp, 27 N.J. Misc. 140, 145, 57 A.2d 530, 533 (Ch. 1947); See also Eaton v. Eaton, 66 Neb. 676, 92 N.W. 995 (1902).

Property Division

[10.] The Plaintiff vaguely argues that "[t]o the extent Kristin is requesting the court value assets post November 2020, the district court does not have discretion to include property acquired after separation in valuing the marital estate." Berdahl v. Berdahl, 2022 ND 126, ¶18. The Plaintiff is correct. However, the only property included in the judgment after the separation were unearned funds of $26,000 in Kristin's IOLTA account and $166,000 of unvested proceeds from the Syngenta Corn Lawsuit. Following separation Kristin had only received approximately $100,000 which was not a vested interest. Kristin has not received and additional $66,000. That amount is subject to change and not vested. As Plaintiff so confidently states, these amounts cannot be included in the marital estate. To that extent, the Plaintiff is correct that "[i]nclusion of property accumulated after the valuation date would be an erroneous view of the law," and it would require reversal.

[11.] The Plaintiff argues that it would be meritless to include the 2020 crop sold prior to the valuation date. This argument is frivolous, makes no sense, and was not made prior to the appeal. A crop is a marital asset whether it was in the field, in the bins, at the elevator, in a bank account or reinvested. Any money which Jon has received for sale of grain prior

to the judgment is part of the marital estate. See Albrecht v. Albrecht, 120 N.W.2d 165 (N.D. 1963), and subject to distribution.

[12.] In regards to the evaluation of the Ruff-Fischer factors**,** the Plaintiff has spent a tremendous amount of time focusing on the "length of the marriage." Meanwhile, he (through his attorney) refuses to acknowledge the length of the relationship, even though it is required under North Dakota law and has been done for over 30 years. Despite that nonsense, the length of our marriage should not be the focus under the facts and circumstances of our situation. Plaintiff's counsel again incorrectly states that the parties met on December 31, 2007. The testimony was that the parties consummated their relationship on that date. They met the week prior. Regardless, that is irrelevant. All assets are part of the marital estate to be valued, and all of the parties assets were acquired between the years of 2010 and 2022. Plaintiff incorrectly summarizes the parties' relationship stating that "the parties, throughout their relationship from dating through marriage, maintained separate finances, debts and businesses, arguing that this supports the court's determination that the parties had a short-term marriage. This is entirely false. Almost all of the evidence, other than our business accounts, show that we did not maintain separate finances, debts and businesses. We shared expenses, income and debt. The lion's share of our debt is in both of our names. In fact, it still currently is, because Jon, his attorney, and AgCountry are unwilling to comply with the judgment they requested. Despite their awareness the Plaintiff (through his attorney) has made a fraudulent misrepresentations to not only the District Court, but now, the North Dakota Supreme Court. The falsity is easily verified from the record. While I do not believe for a second that Plaintiff really believes this ridiculous argument, it would appear that Plaintiff's

counsel is desperate to create a false narrative of the actual facts of our situation. The more serious concern is why she is so personally invested in creating this false narrative when the evidence does not support it. Why does she have private detectives invading my privacy. The concern here is whether this behavior is that of a divorce attorney, or a stalker. This behavior would suggest the latter. Especially because Jon's representation has been intentionally set up to make him lack credibility. This is purposeful.

[13.] That leads me to the next concern regarding Plaintiff's desperate attempts to create a false narrative. With the help of his attorney, Jon testified that he was farming with his deceased grandfather. This testimony was painful, although not as painful as watching Plaintiff's counsel pretend she understood the FSA paperwork, the balance sheets and the PGA assembly sheets. The point is that both Plaintiff and his attorney know that these statements are false, but they continue. For that reason additional discovery is necessary as: (1) Jon's grandfather is deceased; and (2) he does not farm with Jon or Jon's family. It is also necessary that I know why they included provisions in the Judgment pertaining to life insurance policies when neither Jon, nor I had life insurance. It is important to bring up the fact that Plaintiff's attorney cited "Schitt's Creek" a comedy television sitcom to describe how tax deductions work, as applied to a serious matter, our marital estate. This is extremely unprofessional, inappropriate, and not comical by any means.

[14.] It is important to address the value of Kristin's practice, and her earning ability. While Plaintiff's attorney argues that the parties stipulated to an Order in Limine entered on October 30, 2021 prohibiting Kristin "from introducing any evidence concerning any disciplinary complaints or related issues that may impact her ability to practice law or the value of her business," Kristin does not recall agreeing to that but does recall thinking that

it was inappropriate for Plaintiff, his attorneys, and disciplinary counsel to have discussions pertaining to any pending issues. Kristin has provided information that shows she has been selectively targeted by disciplinary counsel and that her peers were making defamatory allegations about her which have harmed her practice. Regardless of how this court looks at the situation, Kristin's career has been irreparably harmed by this.

[15.] Plaintiff argues that "the court's ultimate determination of a roughly 35/65 split of the marital estate of $1,469,858 to Jon and $791,576 to Kristin was not clearly erroneous..." However, if you add these two numbers together you get $2,261,434. Yet, in the Court's findings the net worth of the marital estate to be $2,456,054. (R: 245:8:¶24). If this was actually the correct value of the estate (which it is not), 35% would be $859,618.90. This is clearly erroneous and requires reversal.

[16.] The undersigned requests the relief sought in her initial brief, for attorney fees, and any other relief the Court determines is appropriate.

[17.] I certify that this reply brief does not exceed 12 pages, as required under Rule 32 of the North Dakota Rules of Appellate Procedure.

[18.] Dated this 27th day of July, 2022.

/s/ Kristin Angela Overboe

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IN THE SUPREME COURT OF NORTH DAKOTA

Jonathan Lee Buchholz Plaintiff and Appellee, vs. Kristin Angela Overboe, Defendant and Appellant.	)))))))))	Supreme Ct. No. 20220113 Dist. No. 02-2020-DM-00102 CERTIFICATE OF SERVICE

1. I, Kristin A. Overboe, state, pursuant to Rule 5 of the North Dakota Rules of Civil Procedure, that I am an attorney licensed in the State of North Dakota. I further state that on the 27th day of July, 2022, I electronically served a true and correct copy of the following:

    1. **Appellant's Reply Brief; and**
    2. **Appellant's Response to Appellee's Motion for Attorney Fees; and Cross motion for attorney fees and sanctions; and**
    3. **Certificate of Service.**

2. Copies of the foregoing were sent by EMAIL/electronic service to the following address:

    Lynn Slauthhaug Moen
    Lynn@nilsonbrandlaw.com

3. To the best of my knowledge, the above listed address is the actual email address of the party intended to be served.

Dated this 27th day of July, 2022.

PER N.D.R. Civ. P. 5

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