

IN THE SUPREME COURT OF NORTH DAKOTA

Matthew Thomas Roy Hanson,

Plaintiff and Appellee,

v.

Kristin Dawn Hettervig,

Defendant and Appellant,

and

State of North Dakota,

Statutory Real Party
 In Interest and Appellee.

Supreme Ct. No. 20220261

Dist. Ct. No. 09-2021-DM-01199

On Appeal from an Order of Contempt entered on August 11, 2022
 Cass County District Court
 East Central Judicial District
 Honorable Daniel Eric Gast

APPELLEE'S BRIEF

/s/ Scott Patrick Brand

Scott Patrick Brand

N.D. Bar I.D.: 07287

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TABLE OF CONTENTS

	Page No.
TABLE OF AUTHORITIES	3
	Para. No
STATEMENT OF THE ISSUES.....¶	1
STATEMENT OF THE CASE.....¶	2
STATEMENT OF THE FACTS	¶ 6
LAW AND ARGUMENT	¶ 8
I. The District Court Did Not Abuse its Discretion When Exercising Subject Matter Jurisdiction	¶ 8
II. The District Court Properly Held Kristin in Contempt.....¶	11
III. The District Court Properly Assessed Attorney Fees.¶	14
CONCLUSION.....¶	16
CERTIFICATE OF COMPLIANCE.....¶	17

TABLE OF AUTHORITIES

Cases

<u>Disciplinary Board v. Overboe</u> , 2022 ND 228	¶ 5
<u>Flattum Riemers v. Flattum-Reimers</u> , 1999 ND 146, 598 N.W.2d 499	¶ 11
<u>Rath v. Rath</u> , 2017 ND 128, 895 N.W.2d 306	¶ 11
<u>Sall v. Sall</u> , 2011 ND 202, 804 N.W.2d 378.....	¶ 11
<u>Upton v. Nolan</u> , 2018 ND 243, 919 N.W.2d 181	¶ 11

Statutes

N.D. CENT. CODE § 14-20-02(2).....	¶ 8
N.D. CENT. CODE § 14-20-02(3).....	¶ 8
N.D. CENT. CODE § 14-20-45(1).....	¶ 9
N.D. CENT. CODE § 27-10-01.1(1)(c)	¶ 11

[¶1] STATEMENT OF THE ISSUES

- I. Whether the District Court abused its discretion and/or exceeded its authority in exercising subject matter jurisdiction.
- II. Whether the District Court abused its discretion by holding the Defendant in contempt.
- III. Whether the District Court abused its discretion in awarding attorney fees.

STATEMENT OF THE CASE

[¶2] This case was initiated on November 8, 2021, with the filing of a Summons and Complaint by the Plaintiff/Appellee, Matthew Thomas Roy Hanson (hereinafter “Matthew”), which was appropriately served on the Defendant/Appellant, Kristin Dawn Hettervig (hereinafter “Kristin”). (R4). On November 12, 2021, the parties filed a Stipulation with the District Court detailing their interim parenting plan. (R10). The District Court accepted the Stipulation and signed an Interim Order on November 12, 2021. (R13).

[¶3] Kristin filed an Answer on February 7, 2022. (R18). At some point in time, Kristin hired Kristin A. Overboe (hereinafter “Attorney Overboe”), who made her first appearance in the matter on May 25, 2022 at a Scheduling Conference. This is evidenced and documented through the Certificate of Service filed by the Court Reporter for the District Court on May 26, 2022. (R24). Attorney Overboe eventually filed a Notice of Appearance on July 12, 2022. (R26).

[¶4] On July 13, 2022, Matthew filed a Motion for Contempt. (R29). On July 14, 2022, Matthew filed an Application for an Ex Parte Order. (R33). The basis for these filings was Kristin withholding parenting time from Matthew. (R31). A hearing was held on the Ex Parte Motion on July 15, 2022. (R73). A hearing was held on the Motion for Contempt on August 8, 2022. (R74). During the hearing for the Motion for Contempt, the District Court received multiple pieces of evidence, without objection, establishing Matthew’s parentage of S.Q.H. One of those pieces of evidence was a Cass County Human Service Zone (hereinafter “CCHSZ”) Report that indicated a paternity test was conducted which verified Matthew to be the father of S.Q.H. (R50). The exact quote from CCHSZ

is “DNA test confirmed that Matt was the biological father.” Id. This test was conducted because S.Q.H. needed another parent to care for him because both Kristin and S.Q.H. tested positive for drugs after S.Q.H.’s birth. Id. The second piece of evidence, again submitted without objection, is a DNA test demonstrating that “the probability [of Matthew’s] paternity [of S.Q.H.] is 99.99999%.” (R51.) At the end of that hearing, the District Court determined that Kristin was in contempt of court for denying the Court’s Interim Order, awarded Matthew compensatory parenting time, and ordered Kristin to pay reasonable attorney fees. (R74:55:17-21, 56:6-18). Kristin, through Attorney Overboe, appealed from the Order of Contempt.

[¶5] On December 15, 2022, Attorney Overboe’s license to practice law was suspended. Disciplinary Board v. Overboe, 2022 ND 228. Notice was sent to the undersigned and to Defendant/Appellant about this development. To date, the undersigned is unaware of any new counsel representing Kristin and has every good faith reason to believe that Kristin is currently representing herself pro se.

STATEMENT OF THE FACTS

[¶6] The parties were in a romantic relationship resulting in the birth of S.Q.H. Matthew holds himself out as being the father of S.Q.H. *R. Passim*. Kristin and Attorney Overboe have repeatedly admitted, accepted, and held Matthew out as being the father of S.Q.H. (R73:7:14-16, R74:30:4-6, 41:17-25, 42:24-25, 43:1-8). Further, a paternity test establishing Matthew as the father was submitted and accepted, without any objection whatsoever, as evidence to the District Court. (R74:6:2-12).

[¶7] The parties seem to agree on many of the facts when it comes to the physical altercation on July 9, 2022. Matthew was in a physical altercation with Kristin’s brother,

Michael, when Matthew was trying to return S.Q.H. to Kristin so she could exercise her parenting time. (R31). The parties agree that Kristin was either “heel kicking” (R74:12:1-4) or that her foot made “physical contact” with Matthew while she was holding S.Q.H. (R74:43:10-20). The parties do not dispute that the Cass County State’s Attorney’s Office declined to prosecute Matthew for the incident (R49), but instead chose to prosecute Michael in case 09-2022-CR-03840. The parties also both agreed that Kristin denied Matthew his court-ordered parenting time after this altercation. (R74:45:18-21).

LAW AND ARGUMENT

I. The District Court Did Not Abuse its Discretion When Exercising Subject Matter Jurisdiction.

[¶8] Matthew is, at the very least, one of two things: either he is the alleged father, in that he is a man who alleges himself to be the genetic father of S.Q.H. pursuant to N.D. CENT. CODE § 14-20-02(3), or he is the adjudicated father, in that a court of competent jurisdiction has deemed him to be the father pursuant to N.D. CENT CODE § 14-20-02(2). Regardless of which this Court decides Matthew is, what is certain is that the District Court was not lacking in jurisdiction. Matthew made it abundantly clear that one of the purposes of bringing this action is to have a court properly adjudicate him as the father. (R74:20:2-7). The District Court agreed that Matthew’s parentage of S.Q.H. was not in question. “Paternity is not really disputed, so I don’t know why it’s brought before me today.” (R74:54:22-24). The Appellant arguing that the District Court somehow lacks jurisdiction is completely inappropriate and contradictory to North Dakota law.

[¶9] North Dakota law states, “a proceeding to adjudicate parentage may be joined with a proceeding for ... child custody or visitation, child support... or other appropriate proceeding.” N.D. CENT. CODE § 14-20-45(1). Appellant’s argument that the

Court somehow lacks jurisdiction because paternity has not been adjudicated ignores what North Dakota law clearly allows, which is for the District Court to adjudicate parentage in an appropriate proceeding. The fact that this proceeding was brought to the Court through a custody matter does not strip the District Court of jurisdiction; rather, it vests the District Court with jurisdiction.

[¶10] As mentioned in the Statement of Facts, the Appellant does not argue that Matthew is the father of S.Q.H. In fact, both Kristin and her former attorney have admitted that Matthew is the father of S.Q.H. multiple times in open court. Further, the Court accepted, without any objection, a report that indicated Matthew took custody of S.Q.H. just days after S.Q.H. was born because both Kristin and S.Q.H. tested positive for methamphetamine at the hospital, necessitating the involvement of CCHSZ. (R50). That same report indicates that Cass County Human Service Zone acknowledges that a “DNA test confirmed that Matt was the biological father.” (R50). That very test, that showed “the probability [of Matthew’s] paternity [of S.Q.H.] is 99.99999%,” was also accepted by the Court, again without any objection whatsoever. (R51). Any argument that the Court somehow lacks jurisdiction because paternity has not been established is entirely improper and should be deemed meritless. The District Court properly exercised subject matter jurisdiction pursuant to North Dakota law.

II. The District Court Properly Held Kristin in Contempt.

[¶11] Under North Dakota law, a variety of things can be construed as “contempt of court,” but specific to this case, it includes, “[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. CENT. CODE § 27-10-01.1(1)(c). As this Court is well aware, “[w]hen reviewing a contempt sentence, the ultimate determination of whether or not a contempt

has been committed is within the trial court's sound discretion.” Flattum-Riemers v. Flattum-Reimers, 1999 ND 146, ¶ 5, 598 N.W.2d 499, 501. The North Dakota Supreme Court “will disturb a district court's contempt determination *only* if the court abused its discretion.” Rath v. Rath, 2017 ND 128, ¶ 9, 895 N.W.2d 306 (emphasis added). Further, “[a] district court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner; its decision is not the product of a rational mental process leading to a reasoned determination; or it misinterprets or misapplies the law.” Id. The North Dakota Supreme Court’s “determination on contempt is very limited.” Sall v. Sall, 2011 ND 202, ¶ 7, 804 N.W.2d 378. See also Upton v. Nolan, 2018 ND 243, ¶¶ 17-20, 919 N.W.2d 181.

[¶12] Again, it is important to note that most of the facts in this case are not in dispute. There was an interim court order that instructed the parties as to how they should handle their parenting time. (R13). This order was the result of the parties stipulating as to how they should handle their parenting time. (R10). By her own admission, Kristin, intentionally chose to disobey, resist, and obstruct that Order. (R74:45:18-21). She did so on her own volition and without any attempt to use the judicial process properly. The Court put on the record its decision and it was the product of a rational mental process leading to a reasoned determination. (R74:55:8-12, 56:7-15). It has also never been disputed that Kristin was properly noticed about the contempt issue and that she was allowed to argue her position at a hearing on the matter.

[¶13] Here, where the facts are not in dispute that Kristin admitted (1) that a valid order was in place, and (2) that she willfully violated that order, there is no basis to

find the Appellant's argument that the District Court abused its discretion is meritorious or even worthy of serious debate.

III. The District Court Properly Assessed Attorney Fees.

[¶14] The Appellant's position that somehow the District Court did not make specific findings about contempt is not truthful. The District Court made very specific findings as to why Kristin was in contempt:

But the facts here that aren't disputed are that you two agreed on a parenting schedule and you brought it to me and I signed it and made it an Order. It was week on, week off. You, Ms. Hettervig, didn't return the child for the parenting schedule....

And we wouldn't be here if you hadn't made that denial.... If you – if I had an Order on my desk Monday morning or Tuesday morning saying the child is in danger, then – so I'm not giving parenting time, I would give more credence to that. That's not what happened. In fact, they had to bring an Order. So that's costs that he would not have incurred had you not violated the Order. So I'm going to order you to pay reasonable attorney's fees.

(R74:55:8-12, 56:7-15).

[¶15] The District Court made a clear record that the undersigned was to provide a bill to the District Court to approve, subject to any adjustments the District Court found necessary. (R74:56:12-18). The record contains no objection that the attorney fees submitted to the court were unreasonable. The District Court did not abuse its discretion in awarding attorney fees.

CONCLUSION

[¶16] The Appellant's brief is nonsensical. The undisputed facts are that (1) there was an Order in place determining parenting time, (2) Kristin did not follow that Order, (3) the District Court found Kristin in contempt of that Order, and (4) the District Court awarded attorney fees to Plaintiff/Appellee. The District Court had jurisdiction on the

matter and did not abuse its discretion in any way. Matthew respectfully requests this Court affirm the District Court's Order finding Kristin in contempt and the award of attorney's fees. Matthew also respectfully requests this Court to award additional attorney's fees and costs for the hours spent having to respond to this peculiar appeal.

Dated: January 5, 2023.

/s/ Scott Patrick Brand
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CERTIFICATE OF COMPLIANCE

[¶17] The undersigned, as attorney for the Plaintiff-Appellee in the above matter, hereby certifies this brief complies with Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure as it contains 11 pages.

Dated: January 5, 2023.

/s/ Scott Patrick Brand
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Matthew Thomas Roy Hanson, Plaintiff and Appellee, v. Kristin Dawn Hettervig, Defendant and Appellant, and State of North Dakota, Statutory Real Party In Interest and Appellee.	Supreme Ct. No. 20220261 Dist. Ct. No. 09-2021-DM-01199 DECLARATION OF SERVICE
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[1] The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the Appellee's Brief upon:

Justin Thomas Breitwieser, Party in Interest, fargocse@nd.gov

by electronically filing said documents through the court's electronic filing system and upon:

Kristin Hettervig, Appellant, 573 22nd St E, Unit A, West Fargo, ND 58078 and
kristinhettervig@gmail.com

by placing a true and correct copy of said document in a sealed envelope, via certified mail, with USPS.

Dated: January 5, 2023.

/s/ Nicole R. Engelman
Nicole R. Engelman

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DECLARATION OF SERVICE

[1] The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the Appellee's Brief upon:

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Kristin Hettervig, Appellant, 573 22nd St E, Unit A, West Fargo, ND 58078 and
kristinhettervig@gmail.com

by placing a true and correct copy of said document in a sealed envelope, via certified mail, with USPS.

Dated: January 6, 2023.

/s/ Nicole R. Engelman
Nicole R. Engelman