

Original

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Neil O. Toppen,
Defendant, and Appellant,
vs.
~~State of North Dakota, Ex. Rel.~~
Jacqualine K. Bless-Toppen,
Plaintiffs, and Appellees.

Supreme Court No.
20120072

Cass County Civil No.
2010-DM-01010

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SUPREME COURT APR - 2 2012

APPEAL FROM THE CASS COUNTY DISTRICT COURT ORDER AFFIRMING ADMINISTRATIVE ACTION BY
STATE, DATED THE 29TH DAY OF NOVEMBER, 2011.

APPELLANTS BRIEF

Neil O. Toppen
JRCC - 36971
2521 Circle Drive
Jamestown, ND. 58401



Neil O. Toppen - Pro se

Dated this 26th day of March, 2012.

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¶ 1.

STATEMENT OF THE CASE

¶ 2. On or about the 28th day of September, 2011, the High Intensity Enforcement Unit ("HIEU") on behalf of claimant Jaqualine Bleess-Toppen, Served a Notice of Lien ("Lien"), Appendix ("APP") 4, upon the North Dakota State Penitentiary ("NDSP") and Neil O. Toppen ("Appellant"). That being established pursuant to N.D.C.C Chapter 35-34.

¶ 3. On or about the 25th day of October, 2011, Appellant filed an "Request for Review and Answer to Notice of Lien, Dated the 28th day of September" upon the HIEU and the Cass County Clerk of Courts. APP. 5-6.

¶ 4. On or about the 3rd day of November, 2011, the State of North Dakota, by and through the Jamestown Regional Child Support Enforcement Unit and its attorney, Special Assistant Attorney General, Cynthia G. Schaar ("State"), filed an "Return to Request for Review of Notice of Lien". APP 7-8.

¶ 5. On the 29th day of November, 2011, a hearing was held before Judicial Referee Susan Solheim, Cass County, North Dakota. On this same date Referee Solheim issued her "Order Affirming Administrative Enforcement Action by State." APP. 9-10.

¶ 6. On or about the 10th day of January, 2012, Appellant filed a timely "Notice of Appeal" to the North Dakota Supreme Court. APP. 11-12.

¶ 7. Appellant, Neil O Toppen Appeals and argues that the coordinated effort, that the HIEU and the North Dakota Department of Corrections ("DOC"), which resulted in negotiations to issue liens against funds from the spending accounts of inmates, is a relationship that is in violation of the provisions of the Administrative agencies Practices Act N.D.C.C. Chapter 28-38, pursuant to N.D.C.C. 28-32-01 (2)(m), and N.D.C.C. 28-32-01(11)(f). Appellant asks this court to vacate the "Order Affirming Administrative Enforcement Action by State", APP 9-10, dated the 29th day of November, 2011, and to return all funds to Appellant taken through an unlawful personal property lien dated the 28th day of September, 2011, APP. 5-6.

¶ 8.

STATEMENT OF THE ISSUE

¶ 9. Whether the District Court Err'd when it issued its Order Affirming Administrative Enforcement Action by State.

¶ 10.

STATEMENT OF THE FACTS

¶ 11. Sometime before the 28th day of September, 2011, the HIEU and the DOC entered into a negotiated and coordinated agreement or relationship ("Coordinated Effort") pursuant to the Administrative Agencies Practice's Act N.D.C.C. Chapter 28-32, with the sole purpose or express intent of enforcement of a Administrative Action upon an inmate of a correctional facility.

¶ 12. On or about the 28th day of September, 2011, "on behalf of claimant Jacqueline Bleess-Toppen". The HIEU served a "Notice of Lien" pursuant to N.D.C.C. Chapter 35-34. This Lien requiring the NDSP Administration to "Freeze any and all funds of \$50.00 and owned by or payable to Neil Toppen." APP. 4.

¶ 13. This "Notice of Lien" also stated Appellant had the legal right to review pursuant to N.D.C.C. 50-09-14. Appellant filed a timely request for Review pursuant to N.D.C.C. 50-09-14(2).

¶ 14 The State filed it's "Return to Request for Review of Notice of Lien" ("Return"), APP 7-8, on or about the 3rd day of November, 2011. Stating in Part:

2. Respondent is mistaken as to the type of lien filed by the State. It is not an account lien pursuant to N.D.C.C. Section 35-34-03; rather, it is a personal property lein pursuant to N.D.C.C. Section 35-34-06." APP. 7-8.

¶ 15. Since the Lein was filed upon the NDSP Administration, NDSP has monitored and forwarded any and all funds over the amount of \$50.00 from Appellant's James River Correctional Center ("JRCC") account to the HIEU.

¶ 16. The DOC has issued a "memorandum" stating Appellant's "account will be monitored accordingly and funds sent out when available and forwarded to the HIEU."

¶ 17.

LAW AND ARGUMENT

¶ 18. Whether the District Court Err'd when it issued it's Order Affirming Administrative Enforcement Action by State.

¶ 19. The "Notice of Lien", Appellant received on or about the 28th Day of September, 2011, APP 4, was issued pursuant to N.D.C.C. Chapter 35-34, without clearly citing, mentioning or referring to any pertinent or particular section or sub-section or N.D.C.C. Chapter 35-34. the lack of clarification in the wording of this lien, led Appellant to believe this lien was an Account Lien pursuant to N.D.C.C. Section 35-34-03. See APP. 7 at No. 2. "2. Respondent is mistaken as to the type of lien filed by the State. It is not an Account Lien..." Clearly Appellant was

confused and mistaken by the wording on the Lien that States:

"This Lien will Freeze any and all funds or [accounts] held by the North Dakota State Penitentiary over the amount of \$50 and owned by or payable to Neil Toppen." APP. 4. [emphasis added].

¶ 20. The State also fails to mention or inform Appellant in the "Notice of Lien", APP. 4, or the "Return to Request for Review of Notice of Lien". APP 7-8. That the HIEU and the DOC entered into a negotiated and coordinated areement or relationship under the Administrative Agencies Practice's Act N.D.C.C. 28-32, with the sole purpose or express intent of enforcement of an Administrative Action upon an inmate of a Correctional Facility. Appellant was finally informed of this agreement under the Act from another inmate at the JRCC. See Nelson v. Brien, Cass County No. 09-99-R-00226; North Dakota Supreme Court No. 20110377. (The State in it's "Reply to Defendant's Request for Review and Answer to Notice of Lien" in Nelson v. Brien before the Cass County District Court states: "in a coodinated effort to obtain support for the minor child of incarcerated individuals, the North Dakota Child Support HIEU entered into negotiations with the DOC, to issue liens against funds from the spending accounts of inmates".) See North Dakota Supreme Court Case No. 20110377, Appellant's Apendix 13-14A.

¶ 21. The North Dakota Department of Corrections and Rehabilitations was created in the office of the Director of Institutions. See N.D.C.C. 28-23.3-01. Thus the Director of Institutions is excluded from the defination of an "Administrative Agency" and therefore, is not subject to the provisions of the Adminstrative Agencies practices Act N.D.C.C. 28-32-01(2)(m), thus DOC can not enter into a negotiated and coordinated agreement or relationship for the enforcement of an Administrative Action, and this Lien being an "Administrative Lien" would be an Administrative Action, and clearly is a violation of Appellants fourth and fourteenth Amendments to the United States Constitution, a vilation of State Law. See Jensen v. Little, 459 N.W. 2d 237, 1990 N.D. LEXIS 157 (holding Director was excluded from definition of "Administrative Agency" and, therefore, was not subject to provisions of Administrative Agencies Practices Act pursuant to N.D.C.C. 28-32-01(2)(m).)

¶ 22. Furthermore, a rule concerning only inmates at a Correctional or Detention Facility is not a rule subject to procedures of the Act, N.D.C.C. 28-32-(11)(f). See also Jensen, 459 N.W. 2d 237.

¶ 23. Appellant does concede he argued wrong at the Motion Hearing, before the Honorable Susan Solheim, Judicial Referee, on the 29th day of November, 2011. Appellant is self-represented and has no experience or education regarding the legal process and is incarcerated and was unknowing of procedural rules and requirements. See Houston v. Lack, 487 U.S. 266, 270-72 (1986); Haines v. Kerner, 404 U.S. 519, 520-21 (1972); and Grant v. Quellar, 59 F.3d 523, 524 (5th Cir. 1995). See Motion Hearing Tr. P. 3-8.

¶ 24. Appellant would also request this Court to accommodate Pro se. Appellant under Houston; Haines; and Grant.

¶ 25. CONCLUSION

¶ 26. The State was vague, lacking and failed to clearly express the form that which was used to perfect the Lien. Therefore Appellant was unknowing and unaware of how to argue this Lien in the District Court.

¶ 27. The High Intensity Enforcement Unit and the North Dakota Department of Corrections and Rehabilitations violated Appellants rights when the two Agencies entered into a negotiated and coordinated Agreement or Relationship pursuant to the Administrative Agencies Practices Act, for the sole purpose, or express intent of enforcement of an Administrative Action upon an inmate of a Correctional Facility.

¶ 28. Appellant would request this Court to Vacate the District Courts Order of the 29th day of November, 2011, and return all funds to Appellant taken through the unlawful personal property lien dated the 28th day of September, 2011.

¶ 29. CERTIFICATE OF SERVICE

¶ 30. A copy of the foregoing document was mailed to the following on the 26th day of March, 2012.

Jaqualine K. Bleess-Topen
1019 12th Street N.
Moorhead, Mn. 56560-1600

Cynthial G. Schaar
Special Assistant Attorney General
P.O. Box 427
Jamestown, ND. 58402-0427

Dated this 26th day of March, 2012

A handwritten signature in black ink, appearing to read 'Neil O. Toppen', written over a horizontal line.

Neil O. Toppen
JRCC - 36971
2521 Circle Dr.
Jamestown, ND. 58401