

20150230

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

SEP 11 2015

State of North Dakota
Plaintiff-Appellee

STATE OF NORTH DAKOTA

Vs

Supreme Court No. 20150230

Walsh County Court No. 2015-CV-00175

Patricia Ann Goodale
Defendant-Appellant

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT

ENTERED ON AUGUST 5, 2015

WALSH COUNTY DISTRICT COURT

NORTHEAST JUDICIAL DISTRICT

HONORABLE M. RICHARD GEIGER

PATRICIA ANN GOODALE

DEFENDANT-APPELLANT

PRO SE LITIGANT

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LANKIN -- ND 58250-0114

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ISSUES ON APPEAL

1. Did the District Court exceed its jurisdiction in any of the following ways:
 - A. By not requiring an action for abatement of nuisance be brought by the attorney general, the state health officer, the state's attorney, or a citizen of Walsh County?
 - B. By allowing the State of North Dakota to pursue a "private nuisance" without allegation or evidence of a special injury to a private right not common to the public?
2. Did the State of North Dakota introduce evidence sufficient to prove a nuisance?
3. Is the District Court's determination that there was a nuisance on Homeowner's real property clearly erroneous?

STATEMENT OF THE CASE

1. The State of North Dakota served a Summons and Complaint upon Defendant Patricia Ann Goodale [hereinafter "Appellant", "Homeowner", or "Homeowner Goodale"] asserting a cause of action entitled "Abatement For A Common Nuisance", predicated upon certain alleged facts.
2. This Appellant attempted to file a Complaint against the State of North Dakota [Appendix pages: 31 – 40] for undo deliberate acts and in violation of this Appellant's rights under the laws, specifically, under the Constitutions of North Dakota and of the United States of America.
3. This Appellant had made it explicitly clear that the ANSWER to the "Abatement" was included in this Appellant's Complaint [Appendix pages: 34 – 35]. Whereby, this Appellant's Complaint was dismissed without prejudice due to this Appellant regrettably citing incorrect jurisdiction in this matter. Howsoever, the ANSWER to the "Abatement" should not have been summarily ignored. This Appellant reiterates, that (I) had made it explicitly clear that the ANSWER to the "Abatement" was included within the Complaint. This Appellant so chose this forum so as to point out the infractions of the laws; and the violations of this Appellant's rights under the laws.
4. Perhaps, it was a faux pas on this Appellant's attempt at justice; howsoever, this whole scenario has been a traumatic ordeal for this Appellant; and an upheaval of justice.

5. This Appellant wishes to apologize for not having all documents available; as that this Appellant has been suffering with severe emotional distress, of which (I) am under a doctor's care for this, Letter from Dr. Fillipi [Appendix page: 29]; and that this Appellant is also on medication, BUSPIRONE. This Appellant has been under a great deal of stress since November 24, 2014, when all manner of common decency came down upon this Appellant's life. And regrettably, it has not stopped.
6. Now, this Appellant faces more unreasonable challenges by the Appellee: "Abatement" and "Eviction". This Appellant asserts with utter conviction that the Appellee has unreasonably relied upon statements of others that has induced the Appellee to believe such as truth, and causes the Appellee detrimental reliance on what this Appellant shall refer to as "retaliatory" statements against this Appellant's home and property. The false statements caused the Appellee to take action against this Appellant, which has resulted in terrible loss of innocent lives; and now in the probable loss of this Appellant's home and property.
7. The Appellee alleges that this Appellant has done nothing to correct the situation. This Appellant so states that the Appellee bespeaks of such accusations without any knowledge of what this Appellant is doing in this matter. The Appellee relies on false information; as that no one in the town of Lankin, North Dakota knows what this Appellant is doing to correct the situation. No one bothers to ask this Appellant of what (I) am doing to correct the situation.
8. This Appellant has been researching the many avenues available for funding assistance. Howsoever, with the bombardment of summons, complaints, and orders, this gives serious delays to this Appellant's research and filing of applications. Whereby, this Appellant must respond to the Appellee's unreasonable attacks, in order for this Appellant to protect (my) home and property.
9. This Appellant would appreciate if the Appellee would understand that research and filing applications for monetary assistance takes time; and it is this Appellant's right to take care of (my) home and property in such time that is needed. Afterall, Rome was not built in a day; nor was the Great Wall of China.
10. This Appellant would like to emphasize here, that this Appellant has contacted several dealerships (one in particular of which has a mobile home that comes fully furnished); as that this Appellant has researched the probability of a mobile home to be placed on this Appellant's property. [This would be more easily maintainable and economically advantageous.] Once this project can be properly arranged and completed, then this Appellant can make arrangements to take care of the older home. Once again, such projects take time.

STATEMENET OF FACTS

11. Firstly, there was no hearing in the matter of the “Abatement”. Therefore, there is no transcript in reference. This Appellant has been falsely accused, in particular, of not doing anything to correct the situation.
12. Now, the Appellee wants to take away this Appellant’s home and property. In research, this Appellant has found that the definition for “eviction” is the term most commonly used in communications between the landlord and tenant. This Appellant is not a tenant. This Appellant is a Homeowner. This Appellant’s home and property are fully paid for. No mortgage. No liens.
13. This Appellant is the owner of real property located at 203 Forest Street, Lankin, North Dakota, a 75’X150’ lot with a single family home. This Appellant has every legal right to use (my) property as it has been used for 20-years, a single family home on private property. This Appellant’s home sits quietly amidst a copse of trees, grass, and an aromatic array of flowers.
14. In pursuant to the appellate procedure(s), this Appellant wishes not to submit [all] of the pictures taken of this Appellant’s home and property. The three pictures this Appellant has submitted in the Appendix pages: 24-26; these pictures are not of what the date indicates as June, 2015. These are “Fall” pictures. The trees are in full bloom by mid-May. This Appellant should know because this Appellant has lived in Lankin, North Dakota for 20-years.
15. In pursuant to American Jurisprudence, Second Edition, in Book 27, it so states “that the [home]owner has a right to be heard in the proper forum on the question whether the authority to take property is being properly exercised. The [home]owner is entitled to full and fair judicial proceedings conducted pursuant to sound legal principles and in accordance with the rules of procedure.”
16. The allegations of emanations of this Appellant’s home are in and of itself out-of-source. If there were such emanations of such disturbance this Appellant would be the first to notice such due to this Appellant’s restrictive lung disease. This Appellant’s senses are heightened by pungent odors, such as second-hand smoke; the chemical outburst of harvesting; and the like when planting crops is in session.
17. This Appellant has reservations in regards to the picture that shows garbage bags on the deck of this Appellant’s home. [Appendix page: 26]. This picture is taken out-of-context; as that this Appellant removes the garbage bags to the dumpster on a daily basis. It is more than obvious that the picture was taken before this Appellant removed the garbage bags to the dumpster.

18. In Webster's New World College Dictionary, Third Edition; the definition for "evict": "As to remove a tenant from leased premises by legal procedure, as for failure to pay rent." Tenant is defined: "As a person who pays rent to occupy, or use land, a building, etc."
19. In Black's Law Dictionary, Seventh Edition, this Appellant has found the definition for "eviction" of which there are mentioned: (1) actual eviction; (2) constructive eviction; (3) partial eviction; (4) retaliatory eviction; (5) summary eviction; (6) total eviction. In all six of the "eviction(s)" mentioned are defined of landlord and tenant. This Appellant reiterates that (I) am not a tenant.

LAW AND ARGUMENT

20. N.D.C.C. Chapter 47-32 Section 47-32-01. When eviction maintainable. [Appendix pages: 27 – 28]. In all of the [8] depictions mentioned under this Section, none of them apply to this Appellant. In particular, this Appellant is not a party who has entered upon the real property of another, etc. [No. 1]. This Appellant is not a lessee, of whom has failed to pay the rent, etc. [No. 4]. This Appellant is not a lessee of whom has unreasonably disturbed other tenants' peaceful enjoyment of the premises. [No. 7]. And, this Appellant is not a lessee of whom has violated a material term of the written lease agreement between the lessor and lessee. [No.8].
21. N.D.C.C. Chapter 47-32, Section 47-32-04 [Appendix page: 28]. Eviction actions not joinable with other actions, etc. This Section proclaims that "an action of eviction cannot be brought in a district court in connection with any other action, etc." Whereby, the eviction is in conjunction with the "abatement"; wherefore, in pursuant to Section 47-32-04, explicitly states that "eviction actions not joinable with other actions."
22. This Appellant asserts that what the Appellee is truly attempting resonates of "eminent domain": which is property taken by government or delegated to third parties. Howsoever, it may also be taken for reasons of public safety; as what the Appellee alleges this Appellant's home to be a "nuisance".
23. In pursuant to American Jurisprudence, Second Edition, Book 27, so defines "eminent domain" that of which "the entire framework for the exercise of the inherent governmental power of eminent domain is statutory, and the proceedings are strictly controlled by the applicable Constitutional and statutory provisions; and litigating issues relating to compensation. The statute is strictly construed against the condemning authority; and literally construed to benefit the landowner."

- 24. The Fifth Amendment of the Constitution of the United States requires that eminent domain be coupled with “just compensation” for those whose property is taken.**
- 25. In furtherance, GROTIUS, the 17th Century Scholar believed that the state possessed the power to take or destroy property for the benefit of the social unit, but he believed that when the state so acted, it was obligated to compensate the injured property owner for his losses.**
- 26. Sir William Blackstone, an English jurist, judge, and Tory politician of the 18th Century, he too believed that society had no general power to take the private property of landowners, except on the payment of a reasonable price.**
- 27. N.D.C.C. Chapter 42 Section 42-01-12. Act done under statutory authority not deemed nuisance. This Section explicitly states: “Nothing which is done or maintained under the express authority of a statute shall be deemed a nuisance.”**
- 28. The Fourteenth Amendment of the Constitution of the United States, so says: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”**
- 29. Constitution of North Dakota, Declaration of Rights, Article 1 Section 1: “All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property and reputation; pursuing and obtaining safety and happiness; etc.”**
- 30. It was so clearly stated and incorporated in the Constitution of the United States by James Madison, “Father of the Constitution”; first author of the Bill of Rights; and 4th President of the United States 1809-1817: “That government is instituted and ought to be exercised for the benefit of the people, which consists in the enjoyment of life and liberty with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety.”**
- 31. The Fourteenth Amendment to the Constitution of the United States defines a “citizen”, and the State of North Dakota cannot qualify [never having been born nor naturalized]. The State of North Dakota can never be a “citizen” you must first be a living, breathing person. N.D.C.C. Chapter 32-27; N.D.C.C. Section 54-01-21.**
- 32. The State of North Dakota cannot properly assert a “private nuisance”; nor can it properly assert a “public nuisance”.**
- 33. It is explicitly clear that the District Court has ignored all of the laws mentioned in this Appellant’s Brief to allow such action(s) to be brought against this Appellant’s home and property. That the District Court erroneously ignored the Motion(s) of**

this Appellant of whom submitted suggestions to alleviate the situation by more reasonable solution(s).

34. In State v. Tibor, 373 N.W.2d 877, 880 (N.D. 1985), the doctrine of overbreadth prohibits the law from criminalizing constitutionally protected activity. N.D.C.C. Section 42-01-12 is consistent with such concept, and provides that “nothing which is done or maintained under the express authority of a statute shall be deemed a nuisance”.

35. This Appellant strongly believes that the State of North Dakota has failed to prove its case due to the violations of this Appellant’s rights under the laws; and that this Appellant’s pleadings of suggestion(s) have been flagrantly ignored.

CONCLUSION

The Human Rights Act (1948), Article 12: “No One Shall Arbitrarily Interfere With One’s Home, Family, Life, Privacy.” Interference is all that has been brought down upon this Appellant’s life. This Appellant implores the Supreme Court not to take away (my) home and property. This Appellant has no money to leave, nor has this Appellant anywhere to go. This Appellant’s home and property is all (I) have in this world; as that this Appellant has no family. Unfortunately, unforeseeable things happen in life. Howsoever, there are always alternative means to a situation other than to react with such drastic measures as to take away a person’s home and property. Literally, taking away a person’s life. It would be a great travesty of justice to irrationally and radically take away this Appellant’s home and property.

The Supreme Court of North Dakota is being asked to restore this Appellant’s protected status, free from unwarranted judicial action. This Appellant requests the Supreme Court issue its opinion directing the District Court to vacate its illegal and unwarranted orders. And whereby, this Appellant implores the Supreme Court to grant this Appellant the time for however much time is needed to correct the situation.

Respectfully submitted this 11th day of September, 2015.

Patricia Ann Goodale/Defendant-Appellant

Pro Se Litigant

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DECLARATION UNDER PENALTY OF PERJURY

I, Patricia Ann Goodale, the Defendant-Appellant, do so declare under penalty of perjury under the laws of the United States of America, that the foregoing "Brief" is true and correct to the best of (my) knowledge and belief.

Date: 11 SEPTEMBER 2015

A handwritten signature in black ink, appearing to read "Patricia Ann Goodale", written over a horizontal line.

Original Signature of Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of this Appellant's "Brief" and "Appendix" to which this certificate is attached, was served upon all attorneys of record or upon all parties if not represented by an attorney, by placing said copy in the United States Mail, postage prepaid, and mailing to their last known address:

State of North Dakota Plaintiff-Appellee

Barbara L. Whelan

Walsh County State's Attorney

Walsh County Courthouse

600 Cooper Avenue – 2nd Floor

Grafton – ND 58237

Dated this 11th day of September, 2015.

A handwritten signature in black ink, appearing to read "Patricia Ann Goodale", is written over a horizontal line.

Patricia Ann Goodale

PO Box 114

Lankin – ND 58250-0114

701-520-8433

Dated this 11th day of September, 2015.



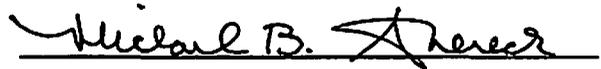
Patricia Ann Goodale

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Subscribed and sworn to before me this 11th day of September, 2015, by Patricia Ann Goodale, known to me to be a resident of Lankin, North Dakota in the County of Walsh, who acknowledged that she prepared this "Brief" based upon her information and belief, and who also acknowledged to me that she signed this "Brief".



Notary Public

MICHAEL B. SHERECK
Notary Public
State of North Dakota
My Commission Expires July 23, 2020

State of ND
County of Walsh