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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

MAY 29 2018

Steven Mark Orwig,

STATE OF NORTH DAKOTA

Plaintiff and Appellee,

Case No. 20170454

vs.

Civil No. 11-2016-DM-00026
(Dickey County)

Mary Caroline Orwig,

Defendant and Appellant.

Orwig's Livestock Supplements, Inc.;
Orwigs Tubs International Inc.; and
MVP Transport, Inc.,

Plaintiffs and Appellees,

Case No. 20170455

vs.

Civil No. 11-2016-CV-00068
(Dickey County)

Mary C. "Marcy" Orwig,

Defendant, Third Party
Plaintiff and Appellant,

vs.

Steven Orwig,

Third Party Defendant
and Appellee.

REPLY BRIEF OF DEFENDANT-APPELLANT MARY CAROLINE ORWIG,
ALSO KNOWN AS MARY C. "MARCY" ORWIG

APPEAL FROM THE FOLLOWING ORDERS:

- A. July 31, 2017, "Order Granting Plaintiff's Motion for Contempt and Plaintiff's Motion for Ex Parte Interim Order." [District Court Docket Entry #91 in Civil No. 11-2016-DM-00026];
- B. September 1, 2017, "Order Granting Plaintiff's Motion for Contempt and Plaintiff's Motion for Ex Parte Interim Order." [District Court Docket Entry #89 in Civil No. 11-2016-DM-00026];
- C. October 9, 2017, Order finding "Defendant, Mary Orwig, is in contempt and be ordered to follow the terms of the July 31, 2017, Order Granting Plaintiff's Motion for Contempt and Plaintiff's Motion for Ex Parte Interim Order, specifically Paragraph 4 regarding the Arizona Property." [District Court Docket Entry #96, and also, Docket Entry #101 in Civil No. 11-2016-DM-00026];
- D. November 13, 2017, Order finding "Defendant, Mary Orwig, in contempt of the Order dated October 9, 2017, and thus, Ms. Orwig shall be imprisoned for a period of six (6) months, or until compliance with the aforementioned Order is achieved, whichever is shorter. [District Court Docket Entry #111 in Civil No. 11-2016-DM-00026];
- E. Order Denying Motion to Vacate of December 8, 2017. [District Court Docket Entry #139 in Civil No. 11-2016-DM-00026].

DICKEY COUNTY DISTRICT COURT, SOUTHEAST JUDICIAL DISTRICT
HONORABLE CHERIE LaVONNE CLARK

GARAAS LAW FIRM

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[¶1]

ISSUES ON APPEAL

[¶2] Mary Caroline Orwig [“Marcy”] was the only party that appealed. Neither Steven Mark Orwig [“Steven”], nor Orwig’s Livestock Supplements, Inc., and/or Orwigs Tubs International Inc., and/or MVP Transport, Inc. [“Companies”] filed an appeal as authorized by N.D.R.App.P. 4(a)(2). Marcy objects to Steven or Companies trying to frame issues different than presented in her Brief [¶s 1-6], especially when neither Steven, nor Companies expressed dissatisfaction with Marcy’s statement. N.D.R.App.P. 28(c). Marcy is concerned with her liberty, and appealed. Protecting Marcy’s liberty interests can have no effect on the rights of Steven or Companies, nor does it raise legitimate issues – neither party can gain by their wrongful conduct/action, nor judicial indifference to fundamental liberty interests.

[¶3]

STATEMENT OF THE CASE

[¶4] The “fog of war” is a reality in military conflicts; it need not exist in appellate proceedings. Marcy presented relevant components of the underlying case so any attack on her liberty could be understood. Steven [Appellee Brief, ¶s 5-12] and Companies [Appellee’s Brief, ¶s 1-7] submit virtually identical “Statement of the Case” replete with a mixture of unsupported fact(s) and extraneous case events, and no expression of dissatisfaction with Marcy’s statement. N.D.R.App.P. 28(c). Both Steven [Brief, ¶ 10] and Companies [Brief, ¶ 5] falsely assert the “District Court ordered the (Arizona Property) be sold”, and also assert *as fact*, financial circumstances of Steven and Marcy without attribution to any evidence in the record to support the lawyer representation. N.D.R.App.P. 28(f); “argument or other remarks of an attorney (is not) evidence” - NDJI C-85.01; King v. Railway Express Agency, Inc., 107 N.W.2d 509, 517 (N.D. 1961) - “evidence”, not “some

suggestions of plaintiff's counsel"; "Allegations in pleadings are not evidence." Medd v. Fonder, 543 N.W.2d 483, 486-487 (N.D. 1996); "Statements in a motion brief are not evidence." *Id.*, page 487.

[¶5] Steven, Companies, and their respective counsel, also identify a major legal goof permeating their appellate position(s), each stating, "As a result, the District Court ordered remedial sanctions to include a period of incarceration and an award of attorneys' fees." Steven's Brief, ¶ 11; Companies' Brief, ¶ 6. Each of them should have known – in contempt, "remedial sanctions" are not the same as "punitive sanctions", and a period of incarceration is "punitive" if the sentence is for a definite period of time. A sanction requiring payment of a sum of money is punitive if the sanction is not conditioned upon performance or nonperformance of an act, and if the sanction's purpose is to uphold the authority of the court." N.D.C.C. § 27-10-01.1, see specifically subsections 3 and 4.

[¶6] **STATEMENT OF FACTS**

[¶7] Steven [Brief, ¶s 13-44] and Companies [Brief, ¶s 8-38] submit virtually identical "Statement of the Facts", and no portion of either statement expresses dissatisfaction with Marcy's statement. N.D.R.App.P. 28(c). Both appellees' briefs persist in confusing procedural events more appropriate for a Statement of the Case, with "facts". See, Steven's Brief, ¶s 14-28, 34, portions of 35-36, portions of 37-44; and Companies' Brief, ¶s 8-22, 28, portions of 29-30, portions of 31-38.

[¶8] Incredibly, the first two (2) paragraphs of each brief asserts as "fact" claimed findings and holdings entirely based upon the unsworn allegation of Companies' attorney Andrews relating to a 2014 "prior action (that) was dismissed without prejudice". Each appellee's

representation of “fact” references Appendix, page 8 – attorney Andrew’s “Complaint” – the same allegations were “denied” by Marcy’s attorney, Erica L. Chisholm. App., p. 15. Neither attorney can provide evidence by argument, remark, allegations, or statements in briefs. See ¶ 4 above.

[¶9] Equally incredible, both Steven and Companies assert each attorney’s statements as “facts”, thereby impliedly confirming Marcy’s observations impacting her liberty – there are no written factual findings by the lower court; unexplained variances in property lists from order to order; Marcy’s sworn testimony of timely return of corporate property and/or non-possession of other missing property, along with a corporate concession that it had no evidence Marcy had possession of missing properties; and compellingly, Marcy’s conclusionary assertion of non-fact(s), without challenge – “(t)here are no facts in the record, by affidavit or by testimony, that established that Marcy intentionally disobeyed the December 13, 2016, Order. The lower court did not make a factual finding that Marcy intentionally disobeyed the December 13, 2016, Order. There was never a fact-finding process afforded to Marcy, before the lower court issued its contempt orders of October 9, 2017, and November 13, 2017.” Marcy’s Brief, ¶s 45-46.

[¶10] Equally offensive to due process, are Steven and Companies’ disregard for the burden of proof in contempt actions recognized in Flattum-Riemers v. Flattum-Riemers, 1999 ND 146, ¶ 5, 598 N.W.2d 499, citing Spilovoy v. Spilovoy, 488 N.W.2d 873, 875 (N.D. 1992): “In a civil contempt proceeding, a complainant must clearly and satisfactorily show that the alleged contempt has been committed.” Never would Marcy be required to “provide any credible evidence or other explanation as to why the corporate property that the District

Court ordered to be returned had not been returned ..”, as asserted by Steven’s Brief, at ¶ 33, and Companies’ Brief, at ¶ 27.

[¶11]

LAW AND ARGUMENT

[¶12]

Punitive Nature of the Orders to be Voided

[¶13] Marcy argues the underlying orders appealed from appear to be legal anomalies, and void of thought or due process — hence, void. Only Steven argues the three (3) underlying orders “are Not Punitive.” Steven’s Brief, ¶ 48-60. Companies now take no position whatsoever. Companies’ Brief, ¶ 39-40. Companies’ current stance will not excuse their prior willingness to gang-up on Marcy, to include legal sanctions suggested in her absence [noted in Marcy’s Brief at ¶ 57] directly attributed to attorney Andrews in the transcript, at pages 9-12. Steven should re-examine N.D.C.C. § 27-10-01.1 – it provides the legal definition for each type of sanction, and they are different. Marcy was subjected to only “punitive sanctions” – six (6) months of incarceration; she could never comply with the time-lines, nor could she control the sale of the Arizona property for she only owned one-half, and no buyer was ever presented. Steven’s citation, at ¶ 49 of his Brief, to Prchal v. Prchal, 2011 ND 62, ¶ 5, 795 N.W.2d 693, is erroneous. Prchal does not place any evidentiary burden initially upon a party resisting a contempt order as asserted by Steven. A party seeking a contempt sanction has the burden under N.D.C.C. Chap. 27-10: “clearly and satisfactorily prove the alleged contempt was committed”; Prchal only requires the burden of proving the defense of “(a)n inability to comply with an order”.

[¶14] As to all Orders, due process considerations makes them void; each results in a punitive action, impossible for Marcy to remediate – she will be confined for the duration,

deprived of all rights of corporate participation or control, and access to the courts for jury trials on legal issues. It is incredible that lawyers would assert the propriety of using their erroneous comments or remarks as evidence to sanction “punitive” sanctions, which is truly offensive when predicated upon a mere “telephonic status conference” for October 19, 2017 [App., ps. 156-157], and nothing in the record to show Marcy even knew the status conference was to be held. Lawyers should not take advantage of anyone’s absence, nor should courts allow any attempt to do so. See Marcy’s Brief, ¶ 57.

[¶15]

Violations of Due Process of Law

[¶16] Marcy notes that Steven does not cite any legal basis for his assertion due process only requires two (2) ingredients: “her attorney was present and proceeded without objection.” Steven’s Brief, ¶ 64; 62. If such is the due process standard, mute public defenders will be well-rewarded. Marcy also notes that Steven’s Brief fails to identify any “evidence” [with attribution in the record] of “Marcy’s open and obvious violations of the prior court order(s)” [Brief, ¶ 71], nor is there explanation given for other missing ingredients: (1) actual notice or knowledge of the order; (2) proof of “willful and inexcusable intent to violate the order”; (3) actual personal service of the underlying order(s); and (4) properly noticed evidentiary hearing. Marcy’s Brief, ¶s 62-69; 70-71. Additional violations of due process were also ignored, to include inadequate (non-existent?) findings only supported by “comments (or) remarks by counsel”. Marcy’s Brief, ¶s 73-74. Companies do little more than parrot concepts, however their attempt to put words into Marcy’s mouth cannot be ignored. Marcy’s words, “I do not want to sell by home .. and I do not feel it is necessary to sell this property” [Companies’ Brief, ¶ 50] cannot be reasonably

equated with “an admission of Contempt made in open court.” *Id.* Marcy’s expressed opinion is a constitutionally protected position – the First Amendment in our Bill of Rights. Besides, the realtor was admitted entry, and it is attorney Liebl’s false comments which lead the court to believe realtor access was denied by Marcy [Tr. of 10/19/2017, pages 5-6]. Attorney Liebl later “fessed-up”, noting “when the realtor went to the property she would not or could not take pictures of the property because of the state of disarray it was in.” Tr. of 12/13/2017, page 9.

[¶17] **Companies’ relief has to be disturbed**

[¶18] The July 31, 2017, Order acts as a punitive sanction *without any methodology to purge the declared contempt*. Marcy has never claimed “that the good cause extension of the preliminary injunction was a remedial sanction of contempt and so should be overturned.” Companies’ Brief, ¶ 55. The July 31, 2017, Order was a void “punitive sanction”. Companies’ counsel sought to put Marcy down, and keep her down – if they obtain void orders, not even the Supreme Court can breathe life into that state of nonexistence.

[¶19] **Time to Appeal**

[¶20] Companies assert untimely appeal from the first two (2) Orders under N.D.R.App.P. 4(c). The argument is not made as to the third (3rd) Order, nor from the ultimate order denying vacation of all three (3). “(I)t is not contempt to disobey a void order.” Dahlen v. Dahlen, 393 N.W.2d 769, 770 (N.D. 1986). At Companies’ and Steven’s request, the lower court entered a series of snowballing “rolling orders” starting on July 31, 2017, punitively sanctioning Marcy with respect to the corporations, and a mere judicial suggestion it might be better if the Arizona property were sold. Without due process compliance, the

replacement judge misconstrued the prior suggestion as an *order for sale [impossible for Marcy to accomplish]*, followed by false representations made by attorney Liebl resulting in compelled incarceration for a set period of time [“punitive sanction”] without possibility of early release. Marcy’s new counsel gave the new judge the opportunity to correct error affecting fundamental liberties, but she choose to ignore clear law, and Marcy timely appealed. There was no contempt action; there was a civil case (2 cases) where litigants sought to use (a) contempt, (b) Marcy’s absence, and (c) lack of notice/failure of personal service, to gang-up on their opposition. Under N.D.R.App.P. 4(a)(1), the sixty days start running “from service of notice of entry of the judgment or order being appealed”. This record does not reflect any service of the October 9, 2017, Order upon Marcy – ever! Whether pro se, or represented, due process does not permit legal prejudice exist from essentially secret order(s) or untimely hearings, not known to have occurred. Under principles in Thorson v. Thorson, 541 N.W.2d 692, 694 (N.D. 1996) - “Nonetheless, we recognize that ‘irregular procedures do not extend the time for appeal indefinitely. Actual knowledge of entry of an order, when clearly evidenced by the record, commences the running of the time for appeal.’” See also, Matter of Estate of Vendsel, 2017 ND 71, ¶ 6, 891 N.W.2d 750. The record would reflect November 17, 2017, as the start of the 60 day period. App., ps.189-198; 328-352.

[¶21]

CONCLUSION

[¶22] To stop unconstitutional restraints on Marcy’s liberty, this Court should act.

Respectfully submitted this 29th day of May, 2018.

Garaas Law Firm

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal stroke, positioned above a horizontal line.

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Plaintiff and Appellant,

Civil No. 11-2016-CV-00068
(Dickey County)

vs.

AFFIDAVIT OF MAILING

Steven Orwig,

Third Party Defendant
and Appellee.

State of North Dakota
County of Cass

[¶1] Pat Doty, being first duly sworn on oath, deposes and says: Affiant is a resident of the City of Fargo, North Dakota, and over the age of eighteen years, and not a party to the above entitled matter.

[¶2] On the 29th day of May, 2018, Affiant deposited in the United States Post Office at

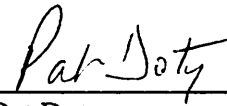
Fargo, North Dakota, a true and correct copy of the following documents in the above entitled action: **Reply Brief of Defendant and Appellant Mary Caroline Orwig, also known as Mary C. "Marcy" Orwig.**

[¶3] The copies of the foregoing were securely enclosed in an envelope with postage duly prepaid and addressed as follows:

Greg. W. Liebl
Severson Wogsland & Liebl
Attorneys at Law
4627 44th Avenue South, Ste 108
Fargo, ND 58104

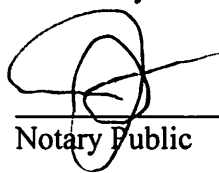
Michael T. Andrews
Anderson, Bottrell, Sanden & Thompson
Attorneys at Law
P O Box 10247
Fargo, ND 58106-0247

[¶4] To the best of Affiant's knowledge, the address above given was the actual post office address of the party intended to be so served. The above documents were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.



Pat Doty

Subscribed and sworn to before me this 29th day of May, 2018.



Notary Public

JONATHAN T. GARAAS
Notary Public
State of North Dakota
My Commission Expires Dec. 28, 2021