

No. 20180124

IN THE SUPREME COURT OF NORTH DAKOTA

MARCH TERM, 2019

ERIC SMITH,
Plaintiff

V.

EMILY ERICKSON,
Defendant.

PETITION FOR REHEARING

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March, 2019 Term

CUSTODY CASE

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REASONS FOR GRANTING THE PETITION **Error! Bookmark not defined.**

1. The District Court and Supreme Court both did error when they violated due process rights.
2. The District Court did not follow the State Statute when the Court did not dictate its decision when not allowing summer visitation.
3. The District Court did error when denying transcripts to the Plaintiff.
4. The Supreme Court should take action to allow Plaintiff access to the transcript so that the Court may review the record.

CONCLUSION.....

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 40, Eric Smith respectfully petitions for rehearing of the Court's decision issued on February, 25th 2019.

Smith v. Erickson, No. 20180124 Mr. Smith moves this Court to grant this petition for rehearing and consider his case with merits briefing and oral argument. Pursuant to Supreme Court Rule 40, this petition for rehearing is filed within 14 days of this Court's decision in this case.

REASONS FOR GRANTING THE PETITION

1. The Plaintiff hereby points out the following overlooks to the Court. The Court in its decision affirms the Vexatious Litigant finding by the Court. The Plaintiff states that the District Court and Supreme Court error in that decision. On April 13th of 2018 Index # 404 was a Brief that was submitted by Counsel for the Defendant asking for a vexatious litigant finding. There is no record to show that a motion or notice of motion was ever served or filed. In order for the vexatious litigant matter to be before the Court the following procedure must be followed. A notice of motion and motion filed per the rules of court 3.2. There also must be a chance for the other side to be heard and if not this violates due process.

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2. Plaintiff states the following is written in Rule 58 Section 3 Section B. b) a district judge or referee may, on the judge's own motion or the motion of any party, refer the consideration of whether to enter a pre-filing order to the presiding judge. The presiding judge may also consider whether to enter such a pre-filing order on the judge's own motion or the motion of a party if the litigant with respect to whom the pre-filing order is to be considered is a party to an action before the presiding judge.

3. Plaintiff states there was never any motion brought before the Court so "therefore", the brief without a Motion is "Meaningless". Plaintiff states to see Norman V. Norman 521 N.W. 2d 395 Civ No. 93010 September 2, 1994. See Anton v Anton 442 N.W. 2d 445 N.D. 1989.

4. The Plaintiff states that in case law that the moving party must file a motion with a brief for it to be before the Court and allow for a hearing. Last but not least ND Supreme Court McWethy V McWethy 366 N.W. 2d 796 Civ no. 10844 April 24, 1985 states the following.

5. Judicial decision on motion of one party, without notice to an opportunity to be heard by the other party, is contrary to fundamental principles of justice and due process. Plaintiff also states federal case law. Under Federal Law, litigiousness alone is insufficient to support a finding of vexatiousness. See Moy v. United States 906 F.2d 467,470 (9th Cir 1990). Plaintiff states that the Courts have made an error.

6. The Plaintiff also states that in the finding of transcript fees that both courts have made an error when it comes to the denial of them. See, M. L. B V. M.L.J. No.95-853. Argued, Oct.7, 1996. Decided: Dec.16, 1996.

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7. Mississippi Chancery Court terminated mother's parental rights, and mother appealed. Appeal was thereafter dismissed because of mother's financial inability to comply with Mississippi statutes that required her to pay in advance record preparation fees estimated at \$2,352.36. Mississippi Supreme Court then denied mother's application to appeal in forma pauperis, and mother petitioned for writ of certiorari, which was granted, 116 S.Ct. 1349. The Supreme Court, Justice Ginsburg, held that Mississippi statutes in question violated equal protection and due process clauses of Fourteenth Amendment.

Reversed and remanded. The Plaintiff states that he has the right to the transcripts to be provided. There are many federal cases that are civil that if the Court wishes to have the transcripts that if the person needing to pay for them is indigent that the court will order the fee to be waived.

8. Over 108 cases cite this as a footnote at the federal level.
9. When addressing summer visitation the Plaintiff states that the Court did not dictate a reason as to why summer visitation was not included. The Plaintiff states that the District Court and Supreme Court did error. The statute reads as follows.

[6]

14-09-30. Parenting plans - Contents. 1. In any proceeding to establish or modify a judgment providing for parenting time with a child, the parents shall develop and file with the court a parenting plan to be included in the court's decree. If the parents are unable to agree on a parenting plan, the court shall issue a parenting plan considering the best interests of the child. 2. A parenting plan must include, at a minimum, provisions regarding the following or an explanation as to why a provision is not included: a. Decision-making responsibility relative to: (1) Routine or day-to-day decisions; and (2) Major decisions such as education, health care, and spiritual development; b. Information sharing and access, including telephone and electronic access; c. Legal residence of a child for school attendance; d. Residential responsibility, parenting time, and parenting schedule, including: (1) Holidays and days off from school, birthday, and vacation planning; (2) Weekends and weekdays; and (3) Summers; e. Transportation and exchange of the child, considering the safety of the parties;

The Plaintiff hereby petitions and asks for a rehearing

Dated this 19th day of March, 2019



