

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

Danel Jacobs-Raak,  
Plaintiff and Appellee,  
  
vs.  
  
Daniel Raak,  
Defendant and Appellant,  
And  
  
State of North Dakota,  
Statutory Real Party in Interest and  
Appellee.

Case No. 20190123

**Petition for Rehearing**

**Appeal from October 31, 2018, Order Denying Defendant's Motion to Redistribute  
Property and Request for Hearing, February 15, 2019, Order on Contempt,  
and May 13, 2019, Third Amended Judgment  
District Court of Burleigh County  
South Central Judicial District  
Case No. 08-2013-DM-00716  
The Honorable Bruce Romanick, District Judge, Presiding**

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## I. Statement of the Issues Presented for Review

[¶1] The following issues are raised in this petition for rehearing:

1. Whether the District Court's Order denying Raak's Motion to Redistribute Property was a final order and appealable under N.D.C.C. § 28-27-02(2)?
2. Whether the Rule of Law mandates that the District Court, on remand, be given more explicit instructions by this Court on each of the issues on child support that were raised in this appeal than that provided in this Court's initial decision set forth in *Jacobs-Raak v. Raak*, 2020 N.D. 107, \_\_\_ N.W.2d \_\_\_?
3. Whether the Rule of Law also mandates that the District Court, on remand, be required to review the Evidence on the Expenses that Jacobs claimed She was entitled to be reimbursed by Raak as part of her February 15, 2018, Contempt Motion for the Purpose of Insuring the Reward of Those Claimed Expenses are Limited to only such Expenses that clearly fell under either the Health Care and Extracurricular Activity Reimbursement provisions of the Judgment, and, for the Children's Health Care Expenses, for the Purpose of Insuring each of Those Expenses were Reasonably Necessary and not Paid by Insurance or from Another Source and, for the Claimed Extracurricular Activities Expenses of each Child, for the Purpose of Eliminating from the Award to Jacobs the Claimed Expenses that were Discretionary or Incurred for the Benefit or Partial Benefit of Jacobs and/or the Parties' other Two Children?

## II. Law and Arguments

A. The District Court's Order denying Raak's Motion to Redistribute Property was Not a Final Order and, Thus, was Not Appealable under N.D.C.C. § 14-05-24(3).

[¶2] The order clearly states that Raak,"if he feels there has been a violation of the Judgment, [should] file for an order to show cause against [Jacobs]." App., p. 137, ¶ 9.

Since the order clearly allows for additional claims to be commenced by Raak against Jacobs, which could ultimately include another motion to redistribute property, based on the same factual allegations alleged in support of the initial motion, this Court's conclusion that "the court's order denying Raak's motion to redistribute property under N.D.C.C. § 14-05-24(3) and request for hearing was final in that it was a complete denial and contemplated no further proceedings on the motion," is not supported by the facts of this case. See *Jacobs-Raak v. Raak*, 2020 N.D. 107, ¶14; Order Denying Defendant's Motion to Redistribute Property and Request for Hearing, App., pp. 136-137.

¶3 Since the District Court's Order does not preclude further action by Raak on the facts he alleged in support of his motion to redistribute property, the order was not appealable after Raak reached notice of entry of the Order, as this Court initially concluded. As an interlocutory order it became appealable upon entry of the Third Amended Judgment, from which Raak timely filed his appeal. Thus, this Court should address the issues involving that order that were previously raised in this appeal.

B. The Rule of Law Mandates that the District Court, on Remand, be given more explicit instructions by this Court on each of the issues on child support that were raised in this appeal than that provided in this Court's initial decision set forth in *Jacobs-Raak v. Raak*, 2020 N.D. 107, \_\_\_ N.W.2d \_\_\_.

¶4 With all due respect to this Court and the District Court, as previously explained in the Appellant's Brief and Reply Brief, there is evidence in this case that supports a finding that the District Court exhibited bias in the manner in which it dealt with Raak and all the issues in this case. The Court ignored criminal acts of the Jacob's attorney that resulted in the failure of a witness having personal knowledge of relevant facts to appear at the evidentiary hearing in violation of a subpoena that had been timely served on the witness. Early in the evidentiary hearing, the Court harshly reprimanded Raak for referring

to the previous judge who had presided over the divorce trial in this action by her last name only. The Court adopted verbatim the 21 pages of the proposed findings and conclusions that Jacobs' attorney had filed after the evidentiary hearing, and, then, after the State filed its motion to amend or adjust the Court's findings and conclusions, the Court adopted the findings and conclusions that the State had proposed in its motion to amend or adjust the Court's findings and conclusions regarding the child support issues raised by the State in its motion to amend or adjust the original findings and conclusions of the Court. Now, this Court has instructed the District Court on remand that it "in its discretion may reopen the record to address the issues Raak raised on appeal regarding its child support determination." *Jacobs-Raak v. Raak*, 2020 N.D. 107, ¶35. The precedent cited by Raak in this appeal in support of the issues raised on appeal regarding the child support issues are all valid, and Raak is appreciative of this Court's at least partial confirmation of that fact in *Jacobs-Raak v. Raak*, 2020 N.D. 107, ¶¶ 29-35. The issue now before this Court is why does the District Court on remand get to use its discretion to decide the issues the parties raised in this appeal regarding the District Court's child support determination, when the issues have been raised and argued in this appeal. Does not the fact that the issues raised in this appeal have already been briefed and argued in this appeal entitle Raak to a decision from this Court that instructs the District Court on how to resolve all those issues on remand.

[¶5] Though this Court has discussed the purpose of the rule of law in criminal actions, it appears to the undersigned that rationale is equally applicable in in civil actions. In *State v. Desjarlais*, 2008 N.D. 13, ¶ 10, 744 N.W.2d 529, in addressing the issue if obvious error under N.D.R.Crim.P. 52(b), this Court stated:

There is no obvious error when a rule of law is not clearly established. *State v. Weaver*, 2002 ND 4, ¶ 17, 638 N.W.2d 30 ("An alleged error does not constitute obvious error unless there is a clear deviation from an applicable legal rule under current law.").

And in *State v. Miller*, 2001 N.D. 132, ¶ 25, 631 N.W.2d 587 (citations omitted), in addressing an evidentiary matter, this Court stated:

An alleged error does not constitute obvious error unless there is a clear deviation from an applicable legal rule under current law. Even if the defendant meets the burden of establishing obvious error affecting substantial rights, ***the determination whether to correct the error lies within the discretion of the appellate court, and the court should exercise that discretion only if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.***

(Emphasis added).

[¶6] In light of the manner in which the District Court has either completely accepted every argument made by Jacobs or the State on the material issues in this case or completely ignored material issues raised by Raak in this action when doing so was to Jacobs' or the State's advantage to do so, this case, with all due respect, appears to the undersigned to be one that calls for this Court to be more explicit in its directives to the District Court on remand on all the issues raised and argued in this appeal, as in the view of the undersigned, failure to do so will likely have a serious adverse affect on the fairness, integrity, and public reputation of judicial proceedings in this State.

C. The Rule of Law also Mandates that the District Court, on Remand, have to review the Evidence on the Expenses that Jacobs claimed She was entitled to be reimbursed by Raak as part of her February 15, 2018, Contempt Motion for the Purpose of Limiting those Claimed Expenses for which Jacobs was seeking reimbursement was for items that clearly fell under either the Health Care and Extracurricular Activity Reimbursement provisions of the Judgment, and, for the Children's Health Care Expenses, for the Purpose of Insuring each of Those Expenses were Reasonably Necessary and not Paid by Insurance or from Another Source and, for the Claimed Extracurricular Activities Expenses of each Child, for the Purpose of Eliminate from the award to Jacobs the Claimed Expenses that were Discretionary or Incurred for the Benefit or Partial Benefit of Jacobs and/or the Parties' other Two Children.

[¶7] Given the apparent bias of the District Court against Raak exhibited by the District Court in the prior post judgment proceedings of this action, that are now on appeal to this Court, as explained previously in this petition and the prior briefs filed by Raak in this appeal, particularly the District Court's complete verbatim acceptance of the proposed findings and conclusions that Jacobs' attorney had filed after the evidentiary hearing, it also appears to the undersigned, again with all due respect to this Court and District Court, that it would be advantageous to the reputation of our judicial system for fairness and integrity, if this Court were to at a minimum overturn the District Court's findings and conclusions on Jacobs' motion for contempt, which in reality were that which Jacobs solely desired, and remand the motion for contempt to the District Court with instructions that the District Court conduct its own independent review of the evidence and enter its own findings of fact and conclusions of law on Jacobs' motion for contempt after such an independent review. See *State v. Desjarlais*, 2008 N.D. 13, ¶ 10, 744 N.W.2d 529; *State v. Weaver*, 2002 ND 4, ¶ 17, 638 N.W.2d 30.; *State v. Miller*, 2001 N.D. 132, ¶ 25, 631 N.W.2d 587.

### III. Conclusion and Prayer for Relief

[¶8] For all of the reasons, stated herein and in the previous briefs submitted by Raak in this appeal, it is again respectfully requested that this Court reverse the District Courts' October 31, 2018, Order Denying Defendant's Motion to Redistribute Property and Request for Hearing, the February 21, 2019, Order on Contempt, and the May 13, 2019, Third Amended Judgment, and remand this case to the District Court with directions that are consistent with all the relief requested in this *Petition for Rehearing* and the previously filed briefs of Raak in this appeal.



¶9 Dated this 21<sup>st</sup> day of May, 2020.

¶10

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Certificate of Compliance with Page Limitation

¶11 I hereby certify that the foregoing document, *Petition for Rehearing*, complies with the 10 page limit set out in Rule 32(a)(8)(A), N.D.R.App.P.

/s/ Arnold V. Fleck  
Arnold V. Fleck (ND Bar ID# 04102)

Certificate of Service

¶12 I hereby certify that on the 21<sup>st</sup> day of May, 2020, the foregoing document, *Petition for Rehearing*, was served on Sheila Keller, the attorney of record for the State of North Dakota, and Rodney Pagel, the attorney of record for the Appellee//Plaintiff, by emailing a digital/electronic copy of the *Petition* in *PDF* to the last known email addresses of each attorney as set out below.

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