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STATE OF NORTH DAKOTA

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

Alan Albrecht, Plaintiff and Appellant, v. Mark Albrecht, Defendant and Appellee.	Supreme Court No. 20190222 Southeast Judicial District, Stutsman County 47-2019-CV-00035 The Honorable Troy J. LeFevre

APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT ENTERED ON JUNE 21, 2019 (DKT. #70) AND JUDGMENT ENTERED ON JULY 8, 2019 (DKT. #76)

BRIEF OF APPELLEE MARK ALBRECHT

ORAL ARGUMENT REQUESTED

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[¶1] Whether the district court erred by dismissing the Complaint for failure to state a claim for which relief may be granted.

[¶2] Whether the district court erred by concluding Alan Albrecht lacked standing.

[¶3] Whether the district court erred by determining Alan Albrecht's claim based upon allegations of contempt of court could only be asserted in the proceeding in which the alleged contempt occurred.

[¶4] Whether the district court erred by declining to hear argument on Alan Albrecht's summary judgment motion one week after it was served and filed.

STATEMENT OF THE CASE

[¶5] Alan Albrecht ("Alan") commenced a lawsuit against his brother, Mark Albrecht ("Mark"), alleging Mark received funds due to contemptuous actions by their late mother during a divorce proceeding. Alan characterized his claim as unjust enrichment but the claim is based entirely upon allegations of contempt of court by their late mother, Sharleen Albrecht ("Sharleen"). Alan alleges Sharleen violated the summons and interim order entered in the divorce case between her and Glenvin Albrecht ("Glen") when she removed Alan as a beneficiary on a Franklin Templeton transfer-on-death account and later liquidated the account. Sharleen and Glen did not own the account jointly; it was owned only by Sharleen.

[¶6] Mark moved to dismiss the claim. He raised several arguments including failure to state a claim, lack of standing, and that the claim is for contempt of court and must have been brought in the proceeding in which the alleged contempt occurred.

[¶7] After Mark properly served and filed the motion and scheduled a hearing for March 13, 2019, Alan attempted to convert the motion from one seeking judgment on the pleadings to a dispositive motion. Alan sent a letter to the district court contending the motion should be considered under Rule 56 instead of Rule 12(b). He later requested a status conference seeking to postpone the hearing scheduled for March 13, 2019 so he could receive responses to written discovery and depose Mark. The district court afforded Alan additional time and rescheduled the hearing for May 1, 2019.

[¶8] One week before the hearing, on April 24, Alan served and filed a motion for summary judgment. He stated in the notice that a hearing was scheduled for May 1, 2019. Mark objected to the hearing and asserted his right to have at least 30 days to respond to the motion.

[¶9] On May 1, 2019, the district court held the hearing on Mark's motion and declined to allow argument on Alan's summary judgment motion. The district court also stayed the time for Mark to respond to the summary judgment motion until after the court decided the motion to dismiss.

[¶10] The district court issued its Findings of Fact, Conclusions of Law, and Order for Judgment on June 21, 2019, dismissing Alan's claim against Mark. The district court determined Alan failed to state a claim for unjust enrichment, that he lacked standing, and that a claim for contempt of court could not be alleged in a separate action.

STATEMENT OF FACTS

[¶11] This matter stems from an ongoing conflict that dates back to a divorce between Glen and Sharleen, the parents of Alan and Mark, and then continued in a litigious probate of Sharleen's estate. See Albrecht v. Albrecht, 2014 ND 221, 856 N.W.2d 755;

Estate of Albrecht, 2018 ND 67, 908 N.W.2d 135; Estate of Albrecht, Supreme Court No. 20190180.

[¶12] Glen filed for divorce against Sharleen in February 2010. Albrecht, 2014 ND 221, ¶ 2. Prior to the entry of a final judgment dividing the marital property, Sharleen passed away on July 29, 2013. Id. Sharleen's Last Will and Testament ("Will") was admitted for probate in August 2013, and Mark was appointed the Personal Representative. Alan was not named as a beneficiary in the Will. He filed a petition to set aside the Will on November 27, 2013.

[¶13] On December 18, 2014, this Court held the divorce abated because Sharleen passed away before a final judgment was entered. Albrecht, 2014 ND 221, ¶ 15. Glen then filed a claim against Sharleen's estate. Estate of Albrecht, 2018 ND 67, ¶ 4. The Personal Representative disallowed the claim. Id.

[¶14] Glen thereafter filed a petition alleging that during the divorce Sharleen violated the summons and interim order. Glen alleged Sharleen converted a jointly owned Franklin Templeton annuity to an ING annuity owned solely by Sharleen, and named Mark as the only beneficiary. Glen also alleged Sharleen converted a jointly owned United Life Insurance Company annuity to be owned solely by Sharleen, and that she later liquidated the annuity to purchase a home. Glen alleged Sharleen violated the summons and interim order by making the ownership changes to the annuities, and that Mark ultimately received the funds paid on death instead of Glen. Glen sought to recoup the funds from the estate.

[¶15] The district court denied the relief sought by Glen. Glen appealed to this Court. This Court affirmed. Estate of Albrecht, 2018 ND 67, ¶ 30.

[¶16] Alan commenced this action by service of the Summons and Complaint upon Mark on December 13, 2018. (Dkt. #3). Alan never commenced the action against Mark's wife, Kim Albrecht.

[¶17] Alan asserted a claim for unjust enrichment against Mark, which was based solely upon allegations of contempt of court by Sharleen during the divorce. (Appellee's App. 02-04). Alan alleged Sharleen owned a Franklin Templeton transfer on death account, that he was at one time a beneficiary of the account, that Sharleen removed him as a beneficiary, and later liquidated the account before she passed away. Id. at 04. Alan alleged Mark was unjustly enriched by Sharleen's actions and sought one-third of the funds as of the date of the liquidation. Mark served an Answer denying Alan was entitled to any relief and asserting several affirmative defenses. Id. at 07-012.

[¶18] Mark moved to dismiss Alan's claim on February 9, 2019. (Dkt. ##9-11). By letter filed on February 19, Alan asked the district court to consider Mark's motion to dismiss under Rule 56. (Dkt. #12). The same day Mark filed and served a notice scheduling a hearing on the motion for March 13. (Dkt. ##13-14).

[¶19] On or around February 26, 2019, Alan sent another letter to the district court asking for "intervention" on scheduling issues and requesting a telephone conference. (App. 38). On February 28, Alan filed and served "Plaintiff's Notice of Motion and Motion in Opposition to Defendants Motion to Dismiss" and "Plaintiff's Brief in Opposition of Motion to Dismiss." (Dkt. ##15-17).

[¶20] The district court held a telephone conference on March 8. (App. 4-31). The focal point of the discussion was whether Mark's motion to dismiss should be decided under Rule 12(b) or Rule 56. Id. at 8-12. One of the reasons Alan wanted to delay the

hearing scheduled for March 13 was to get responses to written discovery he served on February 8, and "incorporate any of that information in [his] opposition to a motion to dismiss." Id. at 13. He also wanted to depose Mark. Id. at 14. The district court decided to cancel the hearing scheduled for March 13 and reschedule it for May 1. Id. at 30. The district court also stated any further request to reschedule the hearing needed to be made by formal motion. Id. at 29.

[¶21] Alan served a summary judgment motion and exhibits on April 24, 2019. (Dkt. ##40-57). He included a notice indicating a hearing on the summary judgment motion was set for May 1, at the same time as the hearing on Mark's motion to dismiss. (Dkt. #40). Mark filed a Reply Brief in Support of Motion to Dismiss Plaintiff's Complaint and Objection to Hearing Plaintiff's Motion for Summary Judgment on April 30, 2019. (Dkt. ##38-39). Mark objected to Alan's summary judgment motion being argued on May 1.

[¶22] The district court held the hearing on Mark's motion to dismiss on May 1. During the hearing, the district court agreed to stay the time for Mark to respond to Alan's summary judgment motion until after a decision on the motion to dismiss. An order to that effect was entered on May 8. (Dkt. #58).

[¶23] The district court entered it Findings of Fact, Conclusions of Law, and Order for Judgment on June 21, 2019. (Appellee's App. 013-023). The district court dismissed Alan's claim. Judgment was entered on July 8, 2019. (Dkt. 76).

STANDARD OF REVIEW

[¶24] "The purpose of a N.D. R. Civ. P. 12(b)(vi) motion is to test the legal sufficiency of the statement of the claim presented in the complaint." Ziegelmann v. DaimlerChrysler Corp., 2002 ND 134, ¶ 5, 649 N.W.2d 556. "In reviewing an appeal from

a Rule 12(b) dismissal, [this Court] construe[s] the complaint in the light most favorable to the plaintiff, taking as true the well-pleaded allegations in the complaint." Id. This Court's scrutiny of the pleadings are deferential to the plaintiff, but a judgment dismissing a complaint for failure to state a claim will be affirmed if this Court cannot discern a potential for proof to support it. Id. A district court's decision granting a motion to dismiss under Rule 12(b)(vi) is reviewed de novo. Nandan, LLP v. City of Fargo, 2015 ND 37, ¶ 11, 858 N.W.2d 892.

LEGAL ARGUMENT

I. THE DISTRICT COURT DID NOT ERR BY DISMISSING THE COMPLAINT FOR FAILURE TO STATE A CLAIM.

[¶25] The district court's conclusion that Alan's Complaint against Mark failed to state a claim upon which relief may be granted should be affirmed. The district court correctly concluded the allegations in the Complaint did not establish a cognizable claim for unjust enrichment.

[¶26] A motion to dismiss under Rule 12(b)(vi) tests the legal sufficiency of the claim as presented in the complaint. Vandall v. Trinity Hospitals, 2004 ND 47, ¶ 5, 676 N.W.2d 88. Under Rule 12(b)(vi) a complaint should be dismissed if "it is disclosed with certainty the impossibility of proving a claim upon which relief can be granted." Id. Alan's claim is characterized as unjust enrichment.

[¶27] Alan's Complaint against Mark failed to state a claim for relief under North Dakota law. Alan alleged:

> 2. That Plaintiff is a person injured or damaged as a result of the unlawful actions of a party [Sharleen Albrecht] who was subject to a court order restraining her from carrying out said action.
>
> . . .

4. . . . This cause of action stems from a violation of an order issued by this court[.] . . .

. . .

10. That this court issued an order on July , 2010 [sic] which restrained the parties to the action from disposing of real or personal property during the pendency of the action.

11. That at the time of the issuance of the Summons and Complaint, Sharleen Albrecht owned an Investment account with Franklin Templeton, Acct. Number 10990220378714.

. . .

14. That subsequently thereafter, again in direct convention [sic] of the summons served upon her, and the temporary order issued by this court, Sharleen Albrecht liquidated the above mentioned Franklin Templeton account.

15. That the proceeds from the liquidation of the fore mentioned Franklin Templeton account were subsequently transferred to Mark Albrecht after the death of Sharleen Albrecht.

. . .

18. That both Mark Albrecht and Kim Albrecht have unjustly benefited from the possession of said funds and have been unjustly enriched by the use and possession of said funds all to the detriment of the plaintiff.

(Appellee's App. 01-05). Alan contends these allegations are sufficient to establish a claim for unjust enrichment against Mark. His claim is legally deficient.

[¶28] Under North Dakota law, a "determination of unjust enrichment is necessarily a conclusion of law for it holds that a certain state of facts is contrary to equity." Midland Diesel Serv. & Engine Co. v. Sivertson, 307 N.W.2d 555, 557 (N.D. 1981). "A conclusion that unjust enrichment has occurred is tantamount to a declaration of a contract implied in law, or a quasi contract." Id. "The doctrine of unjust enrichment serves as a basis for requiring restitution of benefits conferred in the absence of an express or implied in fact contract." Id. The claim is therefore the same as implying a contract in law between the parties. Importantly, "a third party who derives gain from an agreement between others has not necessarily been unjustly enriched." Id. at 558 (citing Commercial Fixtures & Furnishings, Inc. v. Adams, 564 P.2d 773, 774 (Utah 1977)).

[¶29] "Unjust enrichment requires a plaintiff to show (1) an enrichment; (2) an impoverishment; (3) a connection between the enrichment and the impoverishment; (4) absence of a justification for the enrichment and impoverishment; and (5) an absence of a remedy provided by law." Thimjon Farms P'ship v. First Int'l Bank & Tr., 2013 ND 160, ¶ 20, 837 N.W.2d 327 (quotations omitted). "The essential element in recovering under a theory of unjust enrichment is the ***receipt of a benefit by the defendant from the plaintiff*** which would be inequitable to retain without paying for its value." Apache Corp. v. MDU Res. Grp., Inc., 1999 ND 247, ¶ 14, 603 N.W.2d 891 (emphasis added). There must be a relationship between the parties that could have caused reliance or inducement. Crescimanni v. Trovato, 162 A.D.3d 849, 851 (N.Y. App. Div. 2018).

[¶30] Here, Alan did not allege that Mark received a benefit from Alan. There were no allegations of any connection between Alan and Mark that resulted in reliance by Alan or inducement by Mark. Alan did not allege he relied upon an action or statement by Mark to his detriment. Alan did not allege Mark did anything to induce Alan resulting in Alan suffering a loss or detriment. All of Alan's allegations pertain to actions taken by Sharleen in the divorce case. Alan's failure to allege that Mark did something to induce Alan or that he relied upon Mark to his detriment is fatal to the claim. The lack of some connection between Alan and Mark resulting in the alleged unjust enrichment made it impossible for the district court to grant the equitable relief sought by Alan.

[¶31] The district court did not err by concluding Alan failed to adequately state a claim for unjust enrichment. The district court correctly found Alan asserted only that Sharleen's liquidation of her Franklin Templeton account caused him detriment. Alan alleged unjust enrichment against Mark, but really his claim was based entirely upon there

being a "lack of justification for the actions of Sharleen." (Appellee's App. 017). The district court concluded Mark did not receive any benefit from Alan, nor did Alan rely upon a statement or action by Mark to his detriment. Id. at 018-019. Alan failed to allege facts sufficient to support a claim for unjust enrichment against Mark and the district court did not err in dismissing the Complaint.

[¶32] The district court followed the law by accepting Alan's allegations as true. It then determined Alan could not prove he would have remained a beneficiary on the Franklin Templeton account until the time of Sharleen's death on July 29, 2013. Id. at 017-018. The court correctly determined the date of death is the point in time when Alan would have derived an interest in the funds if he remained a beneficiary until then. Id. at 017. But because Sharleen withdrew the money and closed the account, Alan never had a right to the funds.

[¶33] The claim also fails because the summons and interim order in the divorce did not prohibit Sharleen from taking the actions Alan alleges resulted in unjust enrichment. Alan alleged he was the beneficiary of the Franklin Templeton account, that Sharleen change the beneficiary designation, and then later liquidated the account. Id. at 03-04. The summons and interim order did not prohibit Sharleen from removing her adult son as a beneficiary on the account.

[¶34] The district court recognized the summons did not preclude Sharleen from changing beneficiary designations on the Franklin Templeton account, which was an investment owned solely by Sharleen. Id. at 020. The summons required the parties to maintain insurance coverages and not change the beneficiaries of insurance coverage during the divorce. Id.

[¶35] The interim order did not prohibit Sharleen from removing her adult son as a beneficiary on the Franklin Templeton account. The district court correctly interpreted this Court's decision in Estate of Albrecht, 2018 ND 67, 908 N.W.2d 135 by concluding the prohibited conduct was both the removal of Glen as a joint tenant and designating someone other than Glen as a beneficiary on accounts owned jointly by Glen and Sharleen. (Appellee's App. 020). Glen did not own the Franklin Templeton account at issue here. The interim order did not vest Alan with a right to receive the funds. The district court did not err in dismissing his claim.

[¶36] Alan failed to state a claim for unjust enrichment. There is no proof to support his claim so it fails as a matter of law. The district court did not err by dismissing the Complaint.

II. THE DISTRICT COURT DID NOT ERR BY CONCLUDING ALAN LACKED STANDING.

[¶37] The district court concluded Alan lacked standing to assert a claim to obtain the funds from the Franklin Templeton account. The district court correctly concluded Alan never had a vested interest in the funds, the account did not exist when Sharleen passed away, and the summons and interim order did not prevent Sharleen from removing Alan as a beneficiary on the account. It also correctly found Alan could not present evidence that Sharleen would have kept him as a beneficiary if she had not liquidated the account. The district court's conclusions should be upheld.

[¶38] Alan alleged Sharleen owned a Franklin Templeton account at the time the summons and interim order were issued in the divorce. (Appellee's App. 03). Alan alleges he, Mark, and their brother, Matthew, were the beneficiaries of the account. Id. at 03-04. He alleges Sharleen then removed him as a beneficiary and later liquidated the account. Id.

at 4. He alleges Mark ultimately received the funds. Id. at 04-05. He alleges Sharleen acted improperly and that her actions resulted in Mark being unjustly enriched. Because Alan never had a vested interest in the account, he lacks standing to bring any claim.

[¶39] Under North Dakota law, "a beneficiary in an account having a [pay-on-death] designation has no right to sums on deposit during the lifetime of any party." N.D.C.C. § 30.1-31-08(3). "[I]t is presumed that the beneficiary of a POD designation has ***no present ownership interest during lifetime*** of the owner of the account." N.D.C.C. § 30.1-31-08, Official Comment (emphasis added). Here, Sharleen was the owner of the account. Alan did not allege Glen had any ownership interest in the Franklin Templeton account. (Appellee's App. 01-05). Alan was not an owner. Mark was not an owner. Only Sharleen had a vested interest in the funds within the Franklin Templeton account. Sharleen was free to liquidate the account without Glen's consent. See Albrecht, 2018 ND 67, ¶ 26 (the removal of Glen as a joint tenant "can be considered to be both the dissipation of the assets and the encumbrance of the assets."). Sharleen liquidated the account before she passed away. Because Alan never had a vested interest in the Franklin Templeton account, it is impossible for him to prove a claim for unjust enrichment.

[¶40] Alan argues he acquired a vested interest in the Franklin Templeton account when the summons and interim order were issued in the divorce case. The summons and interim order cannot be read to have prevented Sharleen from removing her adult children from investments she owned individually. The summons and interim order existed to protect the divorcing parties' interests during the divorce. The summons and interim order did not exist to protect their adult children's beneficiary status on investment accounts. Even if the summons and interim order prohibited Sharleen from liquidating the Franklin

Templeton account, or prevented her from removing Glen (as her spouse) as a beneficiary of any investment accounts, nothing prevented her from revoking the beneficiary status of one of her adult children. She was free to remove Alan at any time prior to her death. Alan never had a vested interest in the funds, and the account did not exist when Sharleen passed away, so he has no standing to assert a claim to the funds.

[¶41] Alan also lacks standing to seek redress for an alleged violation of a summons and interim order in a case to which he was never a party. The summons and interim order were issued in the divorce, and the restraining provisions were meant to protect the spouses' interests throughout the divorce. The summons and interim order do not exist to protect an adult child or to ensure the adult child remains a beneficiary to an investment account. Alan lacks standing to seek redress for an alleged violation of the summons and interim order.

[¶42] Alan is attempting to acquire funds he never had a vested interest in. He is attempting to acquire funds from an account that did not exist when Sharleen passed away. The district court's decision determining Alan lacks standing should be affirmed.

III. THE DISTRICT COURT DID NOT ERR BY CONCLUDING A CLAIM BASED UPON CONTEMPT OF COURT MAY ONLY BE RAISED IN THE PROCEEDING IN WHICH THE ALLEGED CONTEMPT OCCURRED.

[¶43] Alan's claim against Mark was based entirely upon allegations of contempt of court by Sharleen. He alleged that the sole reason he did not receive a share of the funds from the Franklin Templeton account was because Sharleen violated the summons and interim order by removing him as beneficiary then liquidating the account. Alan's characterization of the claim as "unjust enrichment" does not hide that it is really based on contempt of court. By characterizing the claim as unjust enrichment Alan is trying to

circumvent the procedural requirements of N.D.C.C. § 27-10-01.3(1)(a) and established precedent. The district court recognized a claim for contempt must be brought in the proceeding in which the alleged contempt occurred. The decision must be affirmed.

[¶44] A district court may impose a remedial sanction for contempt on a motion of the aggrieved party "in the proceeding to which the contempt is related." N.D.C.C. § 27-10-01.3(1)(a). This Court recently clarified that remedies for contempt must be raised in the proceeding in which the contempt occurred. Estate of Albrecht, 2018 ND 67, ¶¶ 20-21, 27. Section 27-10-01.3(1)(a) precludes consideration of remedies for contempt of court in a separate action. Id. Alan's claim, which is based entirely upon allegations that Sharleen committed contempt of court, cannot be asserted in a separate action. N.D.C.C. § 27-10-01.3(1)(a). It also cannot be asserted against a person who did not commit the alleged acts of contempt.

[¶45] Here, Alan is seeking a remedial sanction against Mark for the alleged contempt of court committed by Sharleen. (Appellee's App. 02-05). Alan even used the phrase "contempt of court" in his Complaint. Id. at 2. The district court did not err in following the clear precedent of this Court that a claim for contempt must be raised in the proceeding in which the alleged contempt occurred.

IV. THE DISTRICT COURT DID NOT ERR IN DECLINING TO HEAR ARGUMENT ON PLAINTIFF'S SUMMARY JUDGMENT MOTION ONE WEEK AFTER IT WAS SERVED AND FILED.

[¶46] Alan takes exception to the district court's refusal to allow argument on his summary judgment motion during the hearing on May 1, 2019. The district court did not err by declining to allow argument one week after Alan served and filed the motion.

[¶47] Alan filed and served a motion seeking summary judgment on April 24, 2019. (Dkt. #57). He attempted to set a hearing on the motion for the same date and time as the already scheduled hearing on Mark's motion to dismiss. (Dkt. #40). Mark objected to the motion being heard prior to him having 30 days to oppose the motion. (Dkt. #38). At the hearing on May 1, the district court declined to allow Alan to argue the merits of his summary judgment motion. (Trans. 5-17).

[¶48] The latest version of N.D. R. Civ. P. 56 became effective on March 1, 2019, prior to when Alan served and filed his summary judgment motion. Rule 56 is clear that a party opposing a summary judgment motion must have 30 days after service to serve and file an answer brief and supporting documents. N.D. R. Civ. P. 56(c)(1). More importantly, the rule requires the motion to be served at least 45 days before the day set for a hearing. Id.

[¶49] Mark never waived his right to have 30 days to oppose Alan's summary judgment motion. Mark never waived his right to be served at least 45 days before a hearing on the summary judgment motion. Alan never sought an order from the district court to be relieved of the requirements of Rule 56. A party's pro se status does not relieve him of the requirement of strict compliance with procedural rules. State v. DuPaul, 527 N.W.2d 238, 244 (N.D. 1995). "The rules of procedure are not to be applied differently merely because the party is acting pro se." Rosendahl v. Rosendahl, 470 N.W.2d 230, 231 (N.D. 1991).

[¶50] The district court did not err by declining to hear argument on Alan's summary judgment motion one week after it was served and filed. Alan is bound by the same procedural rules as all parties and attorneys. His failure to serve and file the summary judgment motion in accord with the timing requirements of Rule 56 is the reason the district

court did not allow argument on the motion on May 1. The district court did not err by enforcing the procedural rules. The decision should be affirmed.

CONCLUSION

[¶51] The Appellee, Mark Albrecht, respectfully asks this Court to affirm the decision of the district court dismissing the Complaint with prejudice.

REQUEST FOR ORAL ARGUMENT

[¶52] Oral argument is hereby requested to address any questions about the procedural history of this case. The opportunity to present oral argument will allow the parties to address particular questions or concerns of the Court.

Dated this 25th day of October, 2019.

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CERTIFICATE OF COMPLIANCE

[¶53] The undersigned, as attorney for the Appellee, Mark Albrecht, in the above-captioned matter, and as the author of the above brief, hereby certifies, in compliance with Rule 32(e) and Rule 32(a)(8) of the North Dakota Rules of Appellate Procedure, that the total number of pages of the above brief does not exceed 38.

Dated this 25th day of October, 2019.

/s/ Kasey D. McNary

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IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

In the Matter of the Estate of Sharleen Albrecht, Deceased	Supreme Court No. 20190180 Stutsman County District Court Civil No. 47-2013-PR-00075 **AFFIDAVIT OF SERVICE**

STATE OF NORTH DAKOTA
COUNTY OF CASS

[¶1] I hereby certify that on October 25, 2019, the following document:

BRIEF OF APPELLEE MARK ALBRECHT

was filed electronically with the Clerk of the Supreme Court through the Supreme Court E-Filing Portal system for electronic service through the E-Filing Portal system on the following:

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Dated this 25th day of October, 2019.

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