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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Rodney Brossart, Susan Brossart and Thomas Brossart, Plaintiffs and Appellants, vs. Kelly Janke, Individually and in his Official Capacity as Sheriff for Nelson County, Eric Braathen, Individually and in his Official Capacity as Deputy Sheriff for Nelson County, and Nelson County, North Dakota, Defendants and Appellees,	SUPREME COURT NO. 20190236 NELSON COUNTY DISTRICT COURT NO. 32-2017-CV-00059

Appeal from Memorandum Order of July 28, 2019
Issued by the Honorable Lolita G. Hartl-Romanick
Nelson County District Court, Northeast Central Judicial District

BRIEF OF DEFENDANTS AND APPELLEES

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STATEMENT OF THE ISSUES

[¶1] The following issues are presented for review by the Court:

a. Whether a state district court may vacate or alter a monetary judgment originally entered in a United States District Court?

b. Whether Notice of Entry of Foreign Judgment given more than 14 days after entry under N.D.C.C. § 28-20.1-03(2) renders the judgment invalid?

c. Whether the trial court abused its discretion in determining that Brossarts' Motion for Relief from Judgment was frivolous?

d. Whether the trial court abused its discretion in determining that Interrogatories in Aid of Judgment or Execution served by the judgment creditor were within the limits established by the North Dakota Rules of Civil Procedure?

e. Whether Brossarts' appeal is frivolous warranting an award of attorney's fees and costs?

STATEMENT OF THE CASE

[¶2] On June 23, 2014, Plaintiffs and Appellants, herein after referred to as "Brossarts," filed suit in the United States District Court for the District of North Dakota asserting claims under 42 U.S.C. §1983 and state law claims against the Defendants and Appellees, hereinafter referred to as the "County." The Honorable Ralph Erickson, Judge of the United States District Court, dismissed the state law claims as being time barred under N.D.C.C. § 32-12.1-10 and § 28-01-17. Judge Erickson concluded that service was not timely made as required by N.D.C.C. § 28-01-38 and N.D.R.Civ.P. 3. Judge Erickson subsequently granted summary judgment dismissing the Brossarts' remaining claims.

[¶3] Judge Erickson granted the County's Motion for Costs in the amount of $8,153.08 against the Brossarts. An Amended Clerk's Judgment was entered in the United States District Court, District of North Dakota, on March 3, 2016, in favor of the County and against the Brossarts in the amount of $8,153.08.

[¶4] Brossarts appealed the Amended Judgment to the Eighth Circuit Court of Appeals. The Eighth Circuit Court of Appeals affirmed the dismissal of the state law claims as untimely. The Eighth Circuit Court of Appeals also affirmed the dismissal of the Brossarts' claims under 42 U.S.C. §1983. Brossarts subsequently petitioned the Eighth Circuit for rehearing and rehearing en banc, which Petition was denied. Thereafter, Brossarts petitioned the United States Supreme Court for a Writ of Certiorari, which Petition was denied. *Brossart v. Janke*, 859 F.3d 616 (8th Cir. 2017), cert. denied, 138 S. Ct. 2025, 201 L. Ed. 2d 278 (2018).

[¶5] On September 12, 2017, the United States District Court's Amended Judgment was transcribed to and docketed in Nelson County District Court. The foreign judgment entered in the Nelson County District Court was in the amount of $8,153.08 with interest accruing thereafter at the rate of 6.5%. A Notice of Entry of Foreign Judgment was electronically served upon Brossarts' counsel on October 5, 2017 by counsel for the County. The Nelson County Clerk of District Court served Notice of Entry of Foreign Judgment upon Brossarts on May 10, 2019.

[¶6] On February 1, 2019, the County served Interrogatories in Aid of Judgment or Execution pursuant to N.D.R.Civ.P. 69 upon Brossarts' counsel. Brossarts have never provided answers or responses to the post-judgment discovery.

[¶7] After considerable efforts to informally resolve the discovery dispute, the County filed a Motion to Compel Answers and Responses to Interrogatories in Aid of Judgment or Execution on May 6, 2019.

[¶8] On May 7, 2019, Brossarts filed a motion seeking relief from the entry of the foreign judgment under N.D.R.Civ.P. 60 arguing that the judgment was invalid under North Dakota law. Brossarts also argued that Notice of Entry of Foreign Judgment was not timely made under N.D.R.Civ.P. 58. Brossarts also resisted the County's Motion to Compel Discovery with regard to the unanswered discovery served on February 1, 2019.

[¶9] Following a hearing, the Honorable Lolita Hartl-Romanick denied Brossarts' Motion for Relief from Judgment. Judge Hartl-Romanick further ordered Brossarts to provide answers to the County's Interrogatories in Aid of Judgment or Execution within 20 days of the July 28, 2019 Court Order.

[¶10] Judge Romanick determined that Brossarts' Motion for Relief from Judgment was frivolous and warranted an award of attorney's fees pursuant to N.D.C.C. § 28-26-01 and N.D.R.Civ.P. 11. Judge Romanick ordered the Brossarts to pay attorneys' fees in the amount of $2,340.00.

[¶11] This appeal followed on August 2, 2019.

[¶12] Brossarts made a Motion for Stay of the trial court's Order to the trial court on August 17, 2019. That motion was denied.

[¶13] Brossarts made a Motion for Stay of the trial court's Order to this Court on September 26, 2019. That motion was denied.

[¶14] Brossarts have failed to provide responses to the post-judgment discovery and have

failed to pay the Court's award of attorney's fees.

[¶15] No writ of execution has been sought or issued. The County has undertaken no efforts to enforce the judgment by foreclosure or levy upon any real or personal property.

STATEMENT OF THE FACTS

[¶16] On June 23, 2014, Rodney, Susan, and Jacob Brossart filed a Complaint in the United States District Court, District of North Dakota, alleging claims under 42 U.S.C. §1983 as well as state law claims arising out of an incident occurring on June 23, 2011 and June 24, 2011.[1] (Appellee App. 4 - Doc. ID 2).

[¶17] On July 31, 2014, the County filed a Motion for Summary Judgment seeking dismissal of all state law claims. (Appellee App. 5 - Doc. ID 18).

[¶18] On December 23, 2014, the Honorable Ralph Erickson granted the County's Motion for Summary Judgment dismissing all state law claims asserted by the Brossarts, finding that Brossarts failed to serve their pleadings before the expiration of the three year statute of limitations applicable to the state law claims governed by N.D.C.C. §32-12.1-10. (Appellee App. 7 - Doc. ID 56).

[¶19] The County subsequently filed additional motions for summary judgment seeking to dismiss all of the federal claims asserted by the Brossarts. (Appellee App. 9, 11 - Doc. ID 77, 80, 99).

[¶20] On January 12, 2016, the Honorable Ralph Erickson, granted the County's Motions

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[1] Jacob Brossart was initially named as a plaintiff. However, pursuant to an Order issued on December 23, 2014, Thomas Brossart was substituted as a plaintiff for Jacob Brossart. No claims against the County were subsequently asserted by Jacob Brossart.

for Summary Judgment. (Appellee App. 15 - Doc. ID 139).

[¶21] On January 15, 2016, the County filed a Motion to tax costs against the Brossarts. (Appellee App. 15 - Doc. ID 142; App. 25).

[¶22] On February 12, 2016, Brossarts filed a Notice of Appeal to the Eighth Circuit Court of Appeals. (Appellee App. 15 - Doc. ID 144).

[¶23] On February 15, 2016, Brossarts filed a Motion for Extension of Time to File a Response to the County's Motion for Costs; Response to Motion; and Motion for Stay, in the Alternative. (Appellee App. 15 - Doc. ID 146).

[¶24] On March 2, 2016, the Honorable Ralph Erickson denied Brossarts' Motions. The Court granted the County's Motion for Costs and entered Judgment in favor of the County and against Brossarts in the amount of $8,153.08. The Court specifically found that 28 U.S.C. §1920 provided for the award of costs to the County as the prevailing party. In the Court's Order, Judge Erickson described the Brossarts' arguments opposing the County's motion for costs as "spurious." (App. 20-24).

[¶25] On March 29, 2016, Brossarts filed a Motion with the Eighth Circuit Court of Appeals seeking a stay of the Judgment pending appeal. (Docket of the Eighth Circuit Court of Appeals Case No. 16-1412).

[¶26] On April 13, 2016, the Eighth Circuit Court of Appeals denied Brossarts' Motion for a Stay of the District Court Judgment. (Docket of the Eighth Circuit Court of Appeals Case No. 16-1412).

[¶27] On June 16, 2017, the Eighth Circuit Court of Appeals issued a decision affirming the District Court's Judgment in favor of the County. *Brossart v. Janke*, 859 F.3d 616, 620

(8th Cir. 2017), cert. denied, 138 S. Ct. 2025, 201 L. Ed. 2d 278 (2018).

[¶28] On July 13, 2017, Brossarts petitioned for Rehearing en banc. The Eighth Circuit Court of Appeals denied Brossarts' Petition on August 8, 2017. *Brossart v. Janke*, 859 F.3d 616, 620 (8th Cir. 2017), cert. denied, 138 S. Ct. 2025, 201 L. Ed. 2d 278 (2018)**.**

[¶29] On August 14, 2017, the Eighth Circuit Court of Appeals issued its mandate. (Appellee App. 16 - Doc. ID. 155).

[¶30] On September 12, 2017, the Federal Court Judgment was transcribed to North Dakota District Court, Nelson County and docketed as a Foreign Judgment. (App. 1 - Doc. ID 1).

[¶31] On October 5, 2017, counsel for the County e-served Notice of Entry of Foreign Judgment on Brossarts' counsel. Brossarts' counsel received and opened the eServed Notice of Entry of Foreign Judgment on the same day. (App. 1 - Doc. ID 5; Appellee App. 17-20).

[¶32] On October 12, 2017, Brossarts' counsel, Timothy C. Lamb, submitted an Application to Extend Time to File a Petition for Writ of Certiorari to the Supreme Court of the United States seeking an extension from November 5, 2017 to January 4, 2018. (SCOTUS Docket Case No. 17-925).

[¶33] On October 17, 2017, United States Supreme Court Justice Gorsuch approved an extension to file a Petition for Writ of Certiorari to December 5, 2017. *Id.*

[¶34] On November 24, 2017, Brossarts' counsel, Timothy C. Lamb, submitted a second Application to further extend the time to file a Writ of Certiorari to the Supreme Court of the United States from December 5, 2017 to December 22, 2017. *Id.*

[¶35] On December 1, 2017, United States Supreme Court Justice Gorsuch granted the Brossarts' Second Application extending the time to file a Petition for Writ of Certiorari to

December 22, 2017. *Id.*

[¶36] On December 21, 2017, Brossarts' counsel, Timothy C. Lamb, filed a Petition for Writ of Certiorari with the Supreme Court of the United States. *Id.*

[¶37] On May 21, 2018, the Supreme Court of the United States denied Brossarts' Petition for Writ of Certiorari. *Brossart v. Janke*, 859 F.3d 616 (8th Cir. 2017), cert. denied, 138 S. Ct. 2025, 201 L. Ed. 2d 278 (2018).

[¶38] On February 1, 2019, the County served Interrogatories in Aid of Judgment or Execution pursuant to N.D.R.Civ.P. 69 upon Brossarts' counsel, Timothy C. Lamb. One set of Interrogatories was addressed to each of the three individual plaintiffs. (App. 8-19).

[¶39] On February 19, 2019, Brossarts' counsel corresponded with the County's counsel declaring that "[m]y clients have no intention of completing the form interrogatories, since they are only meant to harass them. This is not just a wholesale objection." He went on to characterize the foreign judgment originating in the United States District Court as "fatally flawed." (Appellee App. 26).

[¶40] On February 26, 2019, counsel for the County sent a letter to Brossarts' attorney advising that the Federal Court Judgment dated September 12, 2017 was entered pursuant to N.D.C.C. Chapter 28-20.1 relating to foreign judgments. (Appellee App. 28).

[¶41] Counsel for the County corresponded with Brossarts' counsel on March 26 and April 11, 2019 seeking responses to the outstanding discovery. (Appellee App. 29, 30).

[¶42] On April 16, 2019, Brossarts' counsel responded by letter again arguing that the foreign judgment was "invalid" and arguing that the October 5, 2017 Notice of Entry of Foreign Judgment under N.D.C.C. § 28-21.3-03 was untimely. Counsel for Brossarts

specifically indicated they would not be answering the County's discovery and would "take whatever legal means necessary to fight this frivolous action." (Appellee App. 31).

[¶43] The County's counsel again sought to discuss the outstanding discovery with Brossarts' counsel by attempting to contact him by telephone on April 18, 2019 and through written correspondence dated April 18, 2019, to which Brossarts' counsel did not respond. (Appellee App. 23 at ¶8; 32).

[¶44] On May 6, 2019, the County filed a Motion to Compel Brossarts to answer and respond to the Interrogatories in Aid of Judgment or Execution. (App. 1 - Doc. ID 8).

[¶45] On May 7, 2019, Brossarts filed a Motion for Relief from Judgment in North Dakota District Court, Nelson County. (App. 2 - Doc. ID 23).

[¶46] On May 10, 2019, the Nelson County Clerk of District Court served Notice of Entry of Foreign Judgment. (App. 29).

[¶47] A hearing considering both the Brossarts' Motion for Relief from Judgment as well as the County's Motion to Compel Discovery was held before the Honorable Lolita Hartl-Romanick, Judge of the District Court on July 8, 2019. (App. 31).

[¶48] The Court issued a written Order on July 28, 2019 in which the Court denied the Brossarts' Motion for Relief from Judgment and further found that the arguments asserted by the Brossarts regarding the foreign judgment were frivolous. The Court awarded the County attorneys' fees in the amount of $2,340.00 pursuant to N.D.C.C. § 28-26-01 and N.D.R.Civ.P. 11. The Court explained that the attorney's fees were warranted because of the unsupported and frivolous nature of the arguments made by the Brossarts. The trial court also noted that attorney's fees would be warranted under N.D.R.Civ.P. 37(a)(5) due to Brossarts'

failure to respond to Defendants' post-judgment discovery. (App. 30-47).

[¶49] The court ordered the Brossarts to fully respond to the discovery served by the Defendants within 20 days of the date of the Order. This time expired on August 18, 2019. (App. 47).

[¶50] This appeal followed on August 2, 2019. (App. 48-49).

[¶51] Brossarts filed a Motion for Stay Pending Appeal in Nelson County District Court on August 17, 2019. (App. 53).

[¶52] A Memorandum and Order denying Brossarts' Motion for Stay Pending Appeal was issued by the Honorable Lolita Hartl-Romanick, Judge of the North Dakota District Court on September 17, 2019. (App. 51-58).

[¶53] Brossarts filed a Motion for Stay Pending Appeal with the North Dakota Supreme Court on September 26, 2019. (ND Sup. Ct. Docket No. 20190236 at Seq. #9).

[¶54] An Order of Denial was entered on September 27, 2019 by the North Dakota Supreme Court. (ND Sup. Ct. Docket No. 20190236 at Seq. #10).

[¶55] Brossarts have failed to comply with the trial court's Order requiring responses to the County's discovery in aid of judgment or execution.

[¶56] Brossarts have failed to pay the attorney's fees as ordered by Judge Lolita Hartl-Romanick in her July 28, 2019 Order.

[**¶57]** The Judgment in favor of the County against the Brossarts remains unsatisfied.

[¶58] No writ of execution has been sought or issued. The County has undertaken no efforts to foreclosure or levy upon property or to otherwise enforce the judgment.

STANDARDS OF REVIEW

[¶59] A trial court's interpretation of law is subject to de novo review upon appeal. *Rodenberg v. Fargo-Moorhead Young Men's Christian Ass'n*, 2001 ND 139, 632 N.W.2d 407.

[¶60] A trial court's order to impose sanctions for a frivolous pleading or proceeding will not be reversed on appeal unless the trial court abused its discretion. *N. D. Private Investigation & Sec. Bd. v. Tigerswan,* 2019 ND 219 ¶¶20, 21, 22, 932 N.W.2d 756; *Dakota Heritage Bank v. Iaccone*, 2014 ND 150, ¶15, 849 N.W.2d 219 (2014).

[¶61] A trial court's order imposing sanctions for discovery abuses will not be reversed on appeal unless the trial court abused its discretion. *PHI Financial Services, Inc. v. Johnston Law Office, PC,* 2016 ND 114, ¶9, 881 N.W.2d 216; *Bertsch v. Bertsch*, 2007 ND 168, ¶13, 740 N.W.2d 388.

[¶62] A court abuses its discretion when it acts in an arbitrary, unreasonable or unconscionable manner, it misinterprets and misapplies the law, or when its decision is not the product of a rational mental process leading to a reasoned determination. *Perius v. Nodak Mut. Ins. Co.,* 2012 ND 54, ¶8, 813 N.W.2d 580. An appellant contesting the district court's imposition of a sanction has the burden of showing that the trial court abused its discretion, and that burden is met only when it is clear that no reasonable person would agree with the trial court's assessments of what sanctions are appropriate. *Ihli v. Laazaretto*, 2015 ND 151, ¶8, 864 N.W.2d 483 (quoting *Fines v. Ressler Enterprises, Inc.,* 2012 ND 175, ¶15, 820 N.W.2d 688); *Nelson v. Nelson*, 2019 ND 221, ¶13, 932 N.W.2d 386.

LAW AND ARGUMENT

1. A state court may not vacate or alter a judgment entered in a United States District Court.

A. A foreign judgment is entitled to full faith and credit in North Dakota.

[¶63] Brossarts have submitted this appeal seeking this Court's intervention reversing the decision of the trial court and "reduc[ing] the amount of the foreign judgment to reasonable costs allowed under state law." (Appellants' Brief at ¶28). In their brief, Brossarts provide no legal basis for their request, and identify no legal authority of this Court, or any court of any state, to alter the substance of a properly entered Federal Judgment.

[¶64] North Dakota adopted the Uniform Enforcement of Foreign Judgments Act ("UEFJA") in 1964, which is codified at N.D.C.C. Ch. 28-20.1. Under the UEFJA, a judgment entered in a federal district court is a judgment of a court of the United States which may be transcribed for enforcement to any state district court. *Bechtel Corp. v. W. Contracting Corp.*, 414 N.W.2d 130 (Iowa 1987); *Keeton v. Hustler Magazine, Inc.*, 815 F.2d 857 (2nd Cir. 1987). The basic purpose of the UEFJA is to prevent a second trial on a judgment obtained in another court. *1st Summit Bank v. Samuelson*, 1998 ND 113, 580 N.W.2d 132 (N.D. 1998). Refusing to enforce judgments rendered in a federal district court by a state court would defeat that purpose. *Bechtel Corp.*, 414 N.W.2d 130 (Iowa 1987).

[¶65] In *1st Summit Bank*, the debtors commenced a civil action in North Dakota to set aside a judgment entered against them in Pennsylvania and transcribed to North Dakota. 1998 N.D. 113 at ¶30. The debtors argued that because the judgment, which was properly entered against them in Pennsylvania, was not based upon North Dakota law or procedure, the

judgment was invalid and unenforceable in North Dakota. This Court in *1st Summit Bank*, quoting the United States Supreme Court, wrote:

> The very purpose of the full-faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin. That purpose ought not lightly to be set aside out of deference to a local policy which, if it exists, would seem to be too trivial to merit serious consideration when weighed against the policy of the constitutional provision and the interest of the state whose judgment is challenged.

1998 ND 113, ¶ 13, 580 N.W.2d 132, 135 (quoting *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 276–77, 56 S.Ct. 229, 234 (1935)). The UEFJA provides that state law only applies to the method by which a foreign judgment is enforced, not the substance thereof. *Id.* at ¶¶31-33. This Court explained that "[u]nder the Full Faith and Credit Clause, North Dakota is obliged to recognize the judgments of a foreign state as our own, even though a similar judgment could not be obtained here. *Id.* at ¶13. *See also American Standard Life and Accident Ins. Co. v. Speros*, 494 N.W.2d 599, 602 (N.D.1993); *Titus v. Wallick*, 306 U.S. 282, 291, 59 S.Ct. 557, 562 (1939). Consequently, it is beyond reasonable debate that the North Dakota courts are required to give full faith and credit to a foreign judgment. *Id.* at ¶37.

[¶66] This Court has been consistent in holding that a judgment that is proper in its jurisdiction of origin is enforceable as a foreign judgment in North Dakota courts. *See Speros*, 494 N.W.2d 599 (N.D.1993*); 1st Summit Bank,* 580 N.W.2d 132 (N.D. 1998)*; Medical Arts Building, Ltd. v. Eralp*, 290 N.W.2d 241 (N.D. 1980). Even if a judgment

"could not be obtained in the forum state as a matter of law" or "as a matter of strong public policy," it will still be afforded full faith and credit in North Dakota. *Speros*, 494 N.W.2d 599 (N.D.1993). Once a properly authenticated foreign judgment is filed in North Dakota, the judgment is to be treated in the same manner as a judgment of the district court of the state. *Speros*, 494 N.W.2d at 602; N.D.C.C. § 28-20.1-02. North Dakota law does not apply to the underlying creation or issuance of the judgment. *Speros*, 494 N.W.2d 603. Questions of federal law litigated in federal court are not issues to be relitigated in state court. *Nelson*, 2019 ND 221, ¶25, 932 N.W.2d 386. This Court has recently affirmed that the review of a foreign judgment is limited to a question of jurisdiction of the issuing court. *See Palmer, et al. v. Gentek Building Products, Inc.*, 2019 ND 306. A question of jurisdiction has not been alleged by Brossarts, and would not apply here because Brossarts selected the forum and commenced the underlying action.

[¶67] Brossarts argued at length before the trial court that the underlying federal judgment was invalid. Although Brossarts have not restated these arguments in their brief to this Court, and have elected to provide no legal support whatsoever, they still seek alteration of the underlying judgment. (App.48; Appellants' Brief at ¶28). Before the trial court, the Brossarts reasserted the unsuccessful arguments rejected by this Court in *Speros* and *1st Summit Bank*, and attempted to challenge the substance and basis of the foreign judgment itself, not the method of enforcement. If the law were as argued by the Brossarts, the concept of full faith and credit would become a metaphorical empty suit. *1st Summit Bank,* 1998 N.D. 113, ¶34. The Brossarts still contend, in direct contradiction to the well settled precedent of this Court, that they are entitled to relief from the judgment entered in the United Stated District Court.

B. Federal court judgments are not subject to re-litigation or appeal in state courts.

[¶68] Brossarts also argued before the trial court that the underlying judgment issued by the United States District Court was based upon "unreasonable" and "unnecessary" costs and expenses, and should be vacated or altered by the state court. (App. 41). Brossarts further asserted the award of costs was unwarranted because the federal litigation was not frivolous or unreasonable. "Given the four years of litigation, a volume of docket entries, and the length of federal judicial consideration evidenced by the sheer volume of pages and opinions, this court should use its reasonable discretion under Rule 60(b)(6) North Dakota Rules of Civil Procedure and grant the [Brossarts] relief from this foreign judgment. [Brossarts] have paid the price of prosecuting controversial civil rights claims." (Nelson County District Court Doc. ID 25 at 6-7). Brossarts provide no law which supports these arguments, and entirely ignore this Court's precedent in *Speros* and *1st Summit Bank*.

[¶69] In the federal court's Order granting the County's costs, Judge Erickson specifically ruled that Defendants' costs were proper pursuant to 28 U.S.C. §1920. (App. 23). Judge Erickson also expressly rejected Brossarts' arguments contesting the claimed costs, calling the arguments "spurious." (App. 22). Rule 54 of the FEDERAL RULES OF CIVIL PROCEDURE specifically contemplates an award of costs to the prevailing party, absent a rule to the contrary. *Blakley v. Schlumberger Tech. Corp.*, 648 F.3d 921, 930 (8th Cir. 2011). If the Brossarts contend that Judge Erickson committed error, such error should have been raised in their appeal to the Eighth Circuit Court of Appeals.

C. Brossarts have failed to establish any legal basis for relief from the foreign judgment under North Dakota Rule of Civil Procedure 60.

[¶70] Brossarts based their Motion for Relief from Judgment on N.D.R.Civ.P. 60. In doing so, Brossarts bear a heavy burden. *First National Bank v. Bjorgen*, 389 N.W.2d 789 (N.D. 1986). Notably, outside of their "Statement of the Facts" Brossarts provide absolutely no reference to or analysis of N.D.R.Civ. P. 60 in their brief to this Court. However, Brossarts continue to argue upon appeal that the United States District Court Judgment is subject to vacation or alteration. (App. 48; Appellants' Brief at ¶28).

[¶71] Brossarts argued to the trial court that the foreign judgment should be vacated or modified under N.D.R.Civ.P. 60(b)(1) relating to mistake, inadvertence, surprise, or excusable neglect; 60(b)(3) relating to fraud, misrepresentation, or misconduct by an opposing party; and 60(b)(6) for any other reason that justifies relief. Under N.D.R.Civ.P. 60(b)(1), an actionable mistake justifying relief from judgment must be one made by the court. *See Lowry v. McDonnell Douglas Corp.,* 211 F.3d 457, 460 (8th Cir. 2000). Relief under Rule 60(b)(1) for an error by the clerk of court in the timing of the service of notice of entry of foreign judgment is not a basis for relief. *See L.Z. v. Parrish*, 733 F.2d 585 (8th Cir. 1984). The only "mistake, inadvertence, surprise or excusable neglect" that the Brossarts have identified is with respect to the timing of the notice of entry of the foreign judgment herein. Consequently, Brossarts' efforts under Rule 60(b)(1) fail as a matter of law.

[¶72] Brossarts' arguments to the trial court that relief from the foreign judgment is warranted pursuant to N.D.R.Civ.P. 60(b)(3) or 60(b)(6) are likewise without legal support. A party alleging exceptional circumstances or fraud must demonstrate by clear and

convincing evidence that the judgment was obtained through fraud, misrepresentation or misconduct. *See Dvorak v. Dvorak*, 2001 ND 178, 635 N.W.2d 135 (N.D. 2001). Vague and conclusory allegations, without a clear and convincing showing, are insufficient to support a finding of misconduct, misrepresentation, fraud or other substantial reason justifying relief. *Frafjord v. Ell*, 1997 ND 16, ¶ 12, 558 N.W.2d 848, 851 (N.D. 1997). "Something more" or "extraordinary" must be demonstrated to justify relief. *First National Bank*, 389 N.W.2d 789 (N.D. 1986). Brossarts have presented no evidence to support any contention that the judgment issued in the United States District Court was obtained by the County through any fraud, misrepresentation, or misconduct, or that any exceptional circumstances exist which warrants relief from the federal judgment. Moreover, Brossarts have no basis to question the jurisdiction of the Federal District Court, as Brossarts selected the forum and commenced the underlying lawsuit. *See Palmer, et al.*, 2019 ND 306.

D. Brossarts' Rule 60 Motion was not timely.

[¶73] Brossarts' arguments pursuant to N.D.R.Civ. P 60(b)(1) and (3) regarding notice of the entry of foreign judgment are untimely under N.D.R.Civ. P 60(c)(1), which requires that motions be made within a reasonable time and no more than one year after entry of judgment. The entry of foreign judgment occurred on September 12, 2017. Brossarts' Motion for Relief from Judgment was dated May 7, 2019. Such motion was not timely and is therefore barred. *Lende v. Wiedmeier*, 179 N.W.2d 736 (N.D. 1970).

2. Notice of Entry of Foreign Judgment given more than 14 days after entry under N.D.C.C. § 28-20.1-03(2) does not render the judgment invalid.

A. Rule 58 does not apply to foreign judgments.

[¶74] Brossarts argue that the foreign judgment is not valid or enforceable because service of the Notice of Entry of Foreign Judgment was made on October 5, 2017, more than 14 days after the filing of the foreign judgment in violation of N.D.R.Civ.P. 58(b)(2). (Appellants' Brief at ¶13). However, N.D.R.Civ.P. 58 is inapplicable to a foreign judgment and applies only to original judgments issued by North Dakota courts. N.D.R.Civ.P. 58 provides as follows:

> (a) Entry of Judgment.
>
> (1) Appropriate Judgment. On the filing of an order for judgment, the prevailing party must submit to the clerk an appropriate form of the judgment. The clerk must sign and file the judgment and enter it in the register of civil actions, at which time the judgment becomes effective.
>
> (2) Failure to Submit Judgment. If the prevailing party fails to submit to the clerk an appropriate form of the judgment within 30 days after the order for judgment is filed, any party may submit an appropriate form without prejudice to any rights that party may have to challenge it.
>
> (3) Judgment for Sum Certain. If the judgment directs the payment of money for a sum certain, or a sum that can be made certain by calculation, the clerk must also docket the judgment in the judgment docket as provided by law.
>
> (b) Notice of Entry of Judgment.
>
> (1) In General. A notice of entry of judgment must identify the docket number and the date the judgment was signed.
>
> (2) Service. Within 14 days after entry of judgment in an action in which an appearance has been made, notice of entry of judgment in compliance with Rule 58(b)(1) must be served by the prevailing party on the opposing party. A copy of the judgment must be served with the notice of entry.
>
> (3) Filing. The prevailing party must file the notice of entry of judgment. A copy of the judgment may be filed as an attachment to the notice of entry.

> (4) Post Judgment Motion or Appeal. Service of notice of entry of judgment is not required to begin the time for filing a post-judgment motion or an appeal if the record clearly evidences actual knowledge of entry of judgment through the affirmative action of the moving or appealing party. (Emphasis added)

In the case of the entry of a foreign judgment, no order for judgment is required or ever filed. An order for judgment is entered only for a judgment originating in the state court.

[¶75] The filing of a foreign judgment in a North Dakota court is expressly governed by N.D.C.C.§ 28-20.1-03, which does not contain the 14-day time restriction for the service of notice of entry of judgment relied upon by Brossarts:

> **28-20.1-03. Notice of filing.**
> 1. At the time of filing of the foreign judgment, the judgment creditor or the judgment creditor's lawyer shall make and file with the clerk of court an affidavit setting forth the name and last-known post-office address of the judgment debtor and otherwise complying with section 28-20-15.
> 2. Promptly upon the filing of a foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice must include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.
> 3. No execution or other process for enforcement of a foreign judgment filed hereunder may issue until ten days after the date the judgment is filed.

The notice requirements under N.D.C.C. § 28-20.1-03 differ from those requirements set forth in N.D.R.Civ.P. 58 relating to original judgments entered by North Dakota courts. The County complied with the procedure required by N.D.C.C. § 28-20.1-03 for the transcription

of its Federal District Court Judgment to Nelson County. Notably, neither N.D.C.C. § 28-20.1-03 nor N.D.R.Civ.P. 58 render a judgment void for lack of timely service.

B. Notice of the entry of the foreign judgment was electronically served upon Brossarts' Counsel on October 5, 2017.

[¶76] N.D.R.Civ.P. 5(b)(2)(A) requires service of pleadings upon an attorney representing a party unless the court orders otherwise. "It is mandatory that service be made on counsel unless service on the party himself has been ordered by the court." *Kinsella v. Kinsella*, 181 N.W.2d 764 (N.D. 1970). NORTH DAKOTA RULES OF COURT Rule 3.5 further requires pleadings be served electronically through Odyssey®, which substitutes for first class mail.

[**¶77**] On August 14, 2017, the Eighth Circuit Court of Appeals entered its Mandate affirming the judgment of $8,153.08 entered by the Federal District Court against Rodney, Susan, and Thomas Brossart. (Appellee App. 16 - Doc. ID 155). On September 12, 2017, that judgment of $8,153.08 was transcribed to and filed in Nelson County District Court. (App. 4). Electronic service of Notice of the Entry of Foreign Judgment was made upon and received by Brossarts' counsel on October 5, 2017. (Appellee App. 19-20). Counsel for Brossarts admits that "he received the notice in this particular state case." (Appellants' Brief at ¶13). Notwithstanding this admission, Brossarts contend that the October 5, 2017 electronic service of the Notice of Entry of Judgment upon their attorney was ineffective because their attorney was not representing them in any state court proceedings.

[¶78] Although Brossarts now argue that attorney Lamb was not representing them in state court at the time of entry of the foreign judgment, it is undisputed that attorney Lamb was continuing to contemporaneously represent them in the underlying federal proceedings. On

October 12, 2017, only 8 days after the service and receipt of the Notice of Entry of Foreign Judgment, attorney Lamb submitted an application to extend the deadline to file a Petition for Writ of Certiorari with the Supreme Court of the United States. (SCOTUS Docket Case No. 17-925). Lamb continued actions in furtherance of his representation of the Brossarts on November 24, 2017, seeking a second extension of time to file a Petition for Writ of Certiorari, and filing said Petition on December 21, 2017. *Id.* The petition was denied on May 21, 2018. See *Brossart v. Janke*, 859 F.3d 616 (8th Cir. 2017), cert. denied, 138 S.Ct. 2025, 201 L.Ed.2d 278 (2018). It is unrefutable Lamb was actively engaged in the representation of the Brossarts seeking to overturn the very United States District Court Judgment at issue here, prior to, at the time of, and after the transcription and entry of the United States District Court Judgment in state district court. The filing of the United States District Court Judgment in Nelson County District Court was fundamentally an extension of the litigation proceedings pending in the federal courts.

[¶79] The Odyssey® electronic filing system records conclusively establish that Lamb, as counsel for the Brossarts, was electronically served with the Notice of Entry of Foreign Judgment at 1:02 PM on October 5, 2017, and that he received and opened the Notice of Entry of Foreign Judgment at 2:46 PM on the same day. (Appellee App. 19-20). At no time prior to or thereafter did Lamb ever advise the County's counsel that he was no longer representing the Brossarts, or that he did not represent the Brossarts in any matter related to the transcription of the foreign judgment to the Nelson County District Court. Rather, Brossarts' counsel sat by silently while continuing to represent the Brossarts in an attempt to obtain a Writ of Certiorari from the Supreme Court of the United States from the very

same Judgment that was transcribed to Nelson County District Court.

C. Delayed service of the Notice of Entry of Foreign Judgment by the Nelson County Clerk of Court does not invalidate or in any way affect the merit of the Foreign Judgment.

[**¶80**] Brossarts argue that they are entitled to "relief" from the foreign judgment as a result of the delayed mailing of the Notice of Entry of Foreign Judgment by the Nelson County Clerk of Court. (Appellants' Brief at ¶14). Failure to give notice of entry of judgment by a court is not grounds, by itself, for a vacation of a judgment. *Rogers v. Watt*, 722 F.2d 456 (9th Cir. 1983). This is particularly true under the provisions of N.D.C.C. § 28-20.1-03(2), which expressly provides that the failure to give notice of entry of judgment by the clerk of court does not invalidate enforcement of the judgment if notice of the entry of judgment was given by the judgment creditor. Here, in accordance with N.D.R.Civ.P. 5(b)(2)(A) and N.D.R.Ct. 3.5, notice of entry of judgment was electronically served upon, and received by, Brossarts' attorney on October 5, 2017. Notice of the entry of judgment was also made by the Clerk of District Court on May 10, 2019. Consequently, there is no impediment to the validity or enforcement of the foreign judgment.

[¶81] Brossarts argue that this Court's ruling in *Beck v. Smith*, 296 N.W.2d 886 governs this matter, and that a "stay of the proceedings" should be ordered by this Court. (Appellants' Brief at ¶¶8-11). However, Brossarts' reliance upon *Beck* is misplaced. In *Beck*, where the physical custody of three minor children was at issue, the majority of the Court held that enforcement of a foreign custody decree would be stayed for 10 days because no notice of the entry of the foreign judgment had occurred. Furthermore, in *Beck*, the entire issue related to attempts to enforce the foreign (Maryland) judgment.

[¶82] To date, the County has undertaken no efforts to enforce the judgment against the Brossarts. The only action taken by the County with regard to the foreign judgment is the service of interrogatories seeking information about assets owned by the Brossarts. (App. 8-19). Counsel for the Brossarts has unsuccessfully argued before this Court previously that post-judgment service of discovery is an attempt to enforce a judgment. This Court specifically rejected this argument in *Dakota Heritage Bank*, 2014 ND 150, ¶20, 23. See also *MidDakota Clinic, P.C. v. Kolsrud*, 1999 ND 244, ¶5, ¶16, ¶25, 603 N.W.2d 475 (holding that a judgment creditor may serve post-judgment discovery without the issuance of an execution). Moreover, this Court in *Dakota Heritage Bank* also held that a judgment remains valid even in the event of improper service of notice of entry of judgment. *Id.* at ¶21.

[¶83] Aside from the fact that the County has not made any attempt to enforce the judgment against the Brossarts, Brossarts request for a stay is moot. Notice of the entry of foreign judgment was given by the County on October 5, 2017 and by the Clerk of Court on May 10, 2019. (App. 1,2 - Doc. ID 5, 33). Ignoring the fact that attorney Lamb received proper notice of the entry of the foreign judgment on October 5, 2017, any stay of enforcement proceedings under *Beck* would have expired no later than May 20, 2019, ten days after notice by the Clerk of Court. As such, by the date of the trial court's hearing on July 8, 2019, any arguable deficiency in the notice of the entry of foreign judgment had been rectified by the Nelson County Clerk of District Court, and any stay of enforcement actions would have expired no later than May 20, 2019.

3. The trial court did not abuse its discretion in determining that Brossarts' motion for relief from judgment was frivolous.

[¶84] Brossarts baldly assert that the trial court abused its discretion in granting an award of attorney's fees to the County. (Appellants' Brief at ¶27). "A court abuses its discretion when it acts in an unreasonable, arbitrary, or unconscionable manner, when its decision is not the product of a rational mental process leading to a reasoned decision, or when it misinterprets or misapplies the law." *W. Horizons Living Ctr. v. Feland*, 2014 ND 175, ¶11, 853 N.W.2d 36.

[¶85] In its well-reasoned Memorandum and Order, the trial court granted an award of attorney fees to the County pursuant to N.D.R.Civ. P. Rule 11 and N.D.C.C. §28-26-01(2). (App. 42 at ¶37). N.D.R.Civ.P. 11(b) states, in pertinent part, as follows:

> (b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, submitting, or later advocating it, an attorney or self-represented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
> (3) the factual contentions have evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> (4) the denials of factual contentions are warranted on the evidence or are reasonably based on belief or a lack of information.

Additionally, N.D.C.C. § 28-26-01(2) provides as follows:

> 2. In civil actions the court shall, upon a finding that a claim for relief was frivolous, award reasonable actual and statutory costs, including reasonable attorney's fees to the prevailing party. Such costs must be awarded regardless of the good faith of the attorney or party making the claim for relief if there is such a complete absence of actual facts or law that a reasonable person could not have thought a court would render judgment in that person's favor, providing the prevailing party has in responsive pleading alleged the frivolous nature of the claim. This subsection does not require the award of costs or fees against an attorney or party advancing a claim unwarranted under existing law, if it is supported by a good-faith argument for an extension, modification, or reversal of the existing law.

[¶86] The trial court specifically determined that relief under N.D.R.Civ.P. 60 was unavailable to challenge the notice of entry of the foreign judgment by the Nelson County Clerk of Court, and that Brossarts' request for Rule 60 relief was untimely. (App. 43 at ¶39) The trial court concluded that Brossarts' attempt to seek relief under Rule 60 was frivolous. *Id.* The trial court similarly determined that Brossarts' "asking this court to vacate a Federal District Court's Judgment equates to a frivolous argument attempting to 'modify or reverse existing law' in violation of the Full Faith and Credit Clause of the United States Constitution and state law." *Id*. The trial court's finding that the Brossarts' efforts to vacate a Federal District Court Fudgment in state court were frivolous is not arbitrary, unreasonable or unconscionable.[2] The trial court correctly identified, interpreted, and applied the law, and demonstrated the court's rational mental process resulting in a reasoned and reasonable determination. This Court should uphold the trial court's order imposing attorney's fees against the Brossarts.

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[2] The trial court also recognized that an award of attorney fees against Brossarts would be proper under N.D.R.Civ.P. 37(5)(a) as a result of their failure to provide any discovery responses.(App. 46 at ¶43).

4. The trial court did not abuse its discretion in determining that Interrogatories in Aid of Judgment or Execution served by the judgment creditor were within the limits established by the North Dakota Rules of Civil Procedure.

[¶87] Brossarts contend that the trial court misapplied the law in issuing its Order to compel discovery responses. Brossarts first argue that it was unreasonable for the trial court to compel independent responses to the Interrogatories in Aid of Judgment or Execution from Rodney, Susan, and Thomas Brossart. (Appellants' Brief at ¶18). Brossarts assert that discovery upon each individual family member is patently unreasonable. Brossarts provide no law in support of such argument, and entirely ignore the fact that each of the three individuals have reached the age of majority and are subject to an outstanding judgment for which each individual is jointly and severally labile. Brossarts also appear to ignore the high probability that three adult individuals would possess distinct and separate assets from which the judgment may be satisfied, necessitating discovery from all three debtors.

[¶88] Brossarts also argue that Defendants exceeded the number of interrogatories permitted by Rule 33 of the North Dakota Rules of Civil Procedure. N.D.R.Civ.P. 33(a)(3) establishes that a party may serve a maximum of 50 interrogatories upon any party, including interrogatories in aid of execution. (Appellants' Brief at ¶20). However, the rule clarifies that the 50 interrogatory maximum does not include subparts that are "logically or factually subsumed within and necessarily related to the primary question."

[¶89] In its 18 page Memorandum and Order, the trial court engaged in robust analysis of the number and substance of interrogatories served by the County. The Court determined that the form of the interrogatories followed the pattern of "[g]enerally, a primary question is stated. That question then is followed by subsequent questions that are logically related and

factually subsumed within and necessarily related to the primary questions." (App. 44-46 at ¶¶41-42) The trial court went so far as to specifically analyze the language of the discovery at hand: "[f]or example, Interrogatory 2 asks a primary question whether the respective Plaintiff owns any real property. Interrogatory 3 then necessarily and logically is included as part of that question, because it directly relates to the real property which Plaintiff has identified in response to Interrogatory 2...If the answer to the primary question, i.e. Interrogatory 2, is 'no,' then the Plaintiff simply skips the subsequent questions in Interrogatory 3." *Id.* The Court further analyzed the entirety of the Interrogatories applying the standard set forth in *Waterbury v. Scribner*, 2008 U.S. Dist. LEXIS 53142, 2008 WL 2019432 (E.D. Cal. 2008)(holding that "[o]nce a subpart of an interrogatory introduces a line of inquiry that is separate and distinct from the inquiry made by the portion of the interrogatory that proceeds it, the subpart must be considered a separate interrogatory no matter how it is designated").[3]

[¶90] The trial court ultimately determined that 42 interrogatories were served by the County upon each individual debtor. (App. 45-46 at ¶42). In reaching this determination, the Court also considered post-hearing briefs submitted by each party. The trial court concluded that the number of interrogatories served by the County was permitted, and ordered that each Brossart respond to the outstanding discovery, in its entirety. (App. 47 at ¶44).

[¶91] Brossarts assert that the trial court erred it is application of the law, and that the interrogatories served by the County exceeded the maximum of 50 imposed by N.D.R.Civ.

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[3] The North Dakota Rules of Civil Procedure generally follow interpretation of the Federal Rules of Procedure. *Key Energy Services, LLC v. Ewing Construction Co., Inc.,* 2018 ND 121 ¶8, 911 N.W.2d 319.

P 33. (Appellants' Brief at ¶20). Brossarts rely upon the decision of this Court in *PHI Financial Services*, 881 N.W.2d 216 (N.D. 2016) in support of their position. However, in *PHI,* Johnston actually answered those interrogatories served post-judgment that he believed were within the number of permissible interrogatories, and objected to the balance. *Id.* at 219. Johnston based his objection on an argument that only a combined total of pre and post-judgment interrogatories of 50 was permitted under N.D.R.Civ.P.33. *Id.* at 222. This Court ruled that this interpretation of the rule was in error, and that the trial court did not abuse its discretion in ordering Johnston to respond to 50 post-judgment interrogatories irrespective of the number of interrogatories previously served. *Id.* at 224-225.

[¶92] Unlike the facts in *PHI,* and as explicitly addressed by the trial Court, Brossarts' counsel in this case responded to none of the interrogatories, and served no objections to the discovery served by the County. Brossarts have simply identified no law which supports their wholesale refusal to engage is post-judgment discovery.

[¶93] Judge Romanick's decision regarding the appropriate number of interrogatories and the issuance of an order to compel discovery responses is logical, rational, and supported by law. (App. 43-44 at ¶ 40-42). Her ruling simply is not an abuse of discretion. Her determination that subsequent inquiries are directly related to a principle interrogatory is a reasonable, rational, and sound interpretation of the interrogatories served upon the Brossarts by the County. As further determined by the trial court, Brossarts refused to answer a single interrogatory and took no efforts to resolve the discovery dispute. (App. 46 at ¶43). The County, on the other hand, undertook considerable efforts to resolve the discovery dispute prior to bringing a Motion to compel discovery. *Id.* Brossarts' refusal to answer a single

interrogatory is further support for the trial court's award of attorney's fees.[4]

5. Appellants' appeal is frivolous warranting an award of attorney's fees and costs.

[¶94] The County respectfully asserts that this appeal taken by the Brossarts to this Court is frivolous, and requests costs and attorney's fees pursuant to N.D.R.App.P. 38, which provides in pertinent part as follows: "[i]f the court determines that an appeal is frivolous . . . it may award just damages and single or double costs, including reasonable attorney's fees." An appeal is frivolous under this rule "if it is flagrantly groundless, devoid of merit, or demonstrates persistence in the course of litigation which could be seen as evidence of bad faith." *Mitchell v. Preusse*, 358 N.W.2d 511, 514 (N.D. 1984); *see also Questa Resources, Inc. v. Stott*, 2003 ND 51, 658 N.W.2d 756, ¶7, 8; *Nissen v. City of Fargo*, 338 N.W.2d 655 (N.D. 1983). Frivolous appeals unjustly burden the resources of the courts and of litigants.

[¶95] Brossarts continue to argue that the state courts have jurisdiction to vacate or modify a United States District Court Judgment, notwithstanding the adoption of the Uniform Enforcement of Foreign Judgment Act codified as Chapter 28-21 of the North Dakota Century Code, the application of the full faith and credit clause of the United States Constitution (U.S. Constitution Article IV, Section 1), or the precedent of this Court (See *1st Summit Bank,*1998 ND 113, 580 N.W.2d 132 (N.D. 1998), *Speros*, 494 N.W.2d 599, 602 (N.D.1993), and *Medical Arts Building, Ltd.*, 290 N.W.2d 241 (N.D. 1980)). Brossarts raise no facts or law establishing any authority of this Court to invalidate the substance of the federal judgment. Moreover, Brossarts have submitted no law or facts to suggest that the

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[4] An award of attorney fees against Brossarts would also be proper under N.D.R.Civ.P. 37(5)(a) as a result of their refusal to respond to discovery.

well-settled law should be, or can be, overturned.

[¶96] Brossarts continue to argue that there were "substantive errors" with the United States District Court Judgment, and that the trial court misapplied the law by failing to give consideration to application of North Dakota law to a United States Federal District Court's judgment for costs. (App. 48 at ¶3(a)). Brossarts now seek this Court's intervention "reduc[ing] the amount of the foreign judgment to reasonable costs allowed under state law."(App. 48 at ¶3(a) and (c); Appellants' Brief at ¶28). The Honorable Ralph Erickson characterized Brossarts' arguments opposing the subject costs in the federal district court as "spurious." (App. 22). Those same arguments certainly have not gotten any better or stronger over time, nor do they carry any weight in state court.

[¶97] Despite the adverse rulings by Judge Erickson, the Eighth Circuit Court of Appeals, the Supreme Court of the United States, and Judge Romanick, Brossarts have continued to challenge the judgment rendered in the United States District Court by making arguments that have no merit, have no support in law or in fact, or have previously been ruled upon. It is inconceivable and unreasonable for the Brossarts and their attorney to expect this Court to enter an order reversing a federal trial court's award of costs when the issue was available to be appealed to the Eighth Circuit Court of Appeals.

[¶98] It is similarly unreasonable to argue to the district court and to this Court that the foreign judgment was void or unenforceable because the Nelson County Clerk of Court did not give notice of entry of judgment within 14 days of the date of entry of the foreign judgment. This is especially true when N.D.C.C. §28-20.1-03 specifically provides as follows: "Lack of mailing notice of filing by the clerk shall not affect the enforcement

proceedings if proof of mailing by the judgment creditor has been filed." This argument is particularly meritless when the Nelson County Clerk of Court served Notice of Entry of Judgment upon the Brossarts on May 10, 2019, prior to the hearing before the trial court.

[¶99] Brossarts' arguments are so legally devoid of merit that they knew or should have known of the improbability of success on appeal. Brossarts continue to pursue challenges to the federal judgment without legitimate legal or factual basis, merely to continue litigating this matter and delaying satisfaction of the judgment. Therefore, this Court should conclude that Brossarts' appeal is frivolous and award the County's reasonable attorney's fees.

CONCLUSION

[¶100] For the reasons set forth above, this Court should:

(1) affirm the July 28, 2019 trial court Order denying Brossarts' Motion for Relief from Judgment;

(2) affirm the trial court's July 28, 2019 Order compelling Brossarts to answer Defendants' discovery in aid of judgment or execution;

(3) affirm the trial court's award of attorney's fees in the amount of $2,340.00; and

(4) award Appellees' reasonable attorney's fees for responding to a frivolous appeal pursued by the Appellants.

STATEMENT ON REQUEST FOR ORAL ARGUMENT

[¶101] Brossarts have requested oral argument in this matter. The County is not independently seeking oral argument in this matter, but does not waive participation if Brossarts' request for oral argument is granted.

Dated: January 2, 2019

/s/ Howard D. Swanson

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CERTIFICATE OF COMPLIANCE

[¶102] The undersigned hereby certifies, in compliance with N.D.R.App.P. 32(e) that the above Brief of Defendants and Appellees complies with the page limitation set forth in Rule 32(a)(8)(A) N.D.R.App.P. I further certify that the total number of pages in the Brief of Defendants and Appellees, excluding the Certificate of Service, totals 38 pages.

Dated: January 2, 2019

/s/ Howard D. Swanson

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CERTIFICATE OF SERVICE

[¶112] I hereby certify that on the 2nd day of January, 2020 true and correct copies of the **BRIEF OF DEFENDANTS AND APPELLEES** and **APPENDIX TO BRIEF OF APPELLEES** were served via email upon counsel for the Plaintiffs and Appellants as follows:

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