20190312-20190316
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
JANUARY 8, 2020
STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

	)	Supreme Court No. 2019 0312
C & K Consulting, LLC; Stonebridge	)	Ward Co. No. 2019-CV-00103
Villas, LLC; Stonebridge Villas II, LLC;	)	
Stonebridge Development Company,	)	Supreme Court No. 2019 0313
LLC; and Townhomes at Stonebridge,	)	Ward Co. No. 2019-CV-00104
LLC,	)	
	)	Supreme Court No. 2019 0314
Appellants,	)	Ward Co. No. 2019-CV-00105
vs.	)	
	)	Supreme Court No. 2019 0315
Ward County Board of Commissioners,	)	Ward Co. No. 2019-CV-00106
	)	
Appellee,	)	Supreme Court No. 2019 0316
	)	Ward Co. No. 2019-CV-00107

APPEAL FROM ORDERS DENYING
RULE 60(B) MOTIONS DATED AUGUST 22, 2019.

THE DISTRICT COURT OF WARD COUNTY, NORTH DAKOTA
NORTH CENTRAL JUDICIAL DISTRICT
THE HONORABLE TODD L. CRESAP, PRESIDING

BRIEF OF APPELLEE

(ORAL ARGUMENT REQUESTED)

Mitchell D. Armstrong, ND ID #05892
marmstrong@smithporsborg.com
Brian D. Schmidt, ND ID #07498)
bschmidt@smithporsborg.com
Ward County Special Assistant State's
Attorneys
122 East Broadway Avenue
P.O. Box 460
Bismarck, ND 58502-0460
(701)258-0630

Attorneys for Appellee, Ward County Board of Commissioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES: Paragraph Number

STATUTES/RULES:

STATEMENT OF THE ISSUE

1. Whether the district court abused its discretion when it denied Appellants' Rule 60(b), N.D.R.Civ.P., motions to vacate the May 16, 2019, judgments.

I. STATEMENT OF THE CASE

[¶ 1] This case arises from five appeals from tax abatement decisions by the Ward County Board of Commissioners ("Ward County" or "the County"). Index # 1.[1] Briefing schedules were set by the district court. Index # 19. Appellants did not file their respective appellate briefs, and Ward County moved to dismiss the appeals. Index ## 20-23. The district court granted Ward County's motions, and judgments were entered dismissing the appeals. App. at 12-14; Index ## 32-33. Appellants' moved to vacate the judgments under N.D.R.Civ.P. 60(b). Index ## 35-42. The district court denied the motions, and Appellants appealed to this Court. App. at 24-33. Ward County requests the district court's decisions be affirmed.

II. STATEMENT OF THE FACTS

[¶ 2] These cases involve appeals from local governing body decisions under N.D.C.C. § 28-34-01. S&B Dickinson Apartments I, LLC v. Stark County Bd. of County Comm'rs, 2018 ND 158, ¶ 6-7, 914 N.W.2d 503. Upon the appellate records being filed with the district court, briefing schedules were set by the district court. Index # 19. The briefing schedules required Appellants' briefs to be submitted on or before April 26, 2019. Id. No briefs were filed by the Appellants on or before April 26, 2019.

[¶ 3] On May 10, 2019, Ward County moved to dismiss the appeals based on the failure of Appellants to file a brief. Index ## 20-23. Appellants responded, arguing they

[1]Citations to the underlying dockets will be to Case No. 51-2019-CV-00103. The referenced materials appear in the dockets for all the consolidated cases with slight differences based on the parties' names and associated index numbers.

were unaware of the briefing schedules due to confusion resulting from an attorney leaving the law firm retained by Appellants. Index # 25. The district court granted Ward County's motions, finding the Appellants' response was insufficient to explain how 37 days had passed since the attorney left the firm without any awareness of the missed deadline. Index # 28. Judgments were entered dismissing the cases. Index # 32.

[¶ 4] Appellants promptly filed a motion to vacate the judgments under N.D.R.Civ.P. 60(b), making additional arguments why the motions should have been denied. Index ## 35-41. Ward County responded, arguing Appellants did not meet the standard for Rule 60(b) relief, and that even if the district court considered the new arguments, the motions should be denied. Index # 45. The district court denied the motions, concluding Rule 60(b) did not provide an opportunity to raise new arguments in response to the initial motions. Index # 49 (¶¶ 12-13).

[¶ 5] The district court did not abuse its discretion, and its decisions should be affirmed.

III. APPLICABLE LAW AND ARGUMENT

A. Standard of Review

[¶ 6] The standard of review is abuse of discretion. WSI v. Eight Ball Trucking, Inc., 2019 ND 102, ¶ 7, 925 N.W.2d 411 (quoting Carroll v. Carroll, 2017 ND 73, ¶ 8, 892 N.W.2d 173). A district court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner; when it misinterprets or misapplies the law; or when its decision is not the product of a rational mental process leading to a reasoned determination. Id. at ¶ 8.

> An abuse of discretion by the trial court is never assumed and must be affirmatively established. . . . A movant for relief under Rule 60(b) has a

> burden of establishing sufficient grounds for disturbing the finality of the judgment. The moving party must also show more than that the lower court made a poor decision, but that it positively abused the discretion it has in administering the rule. We will not overturn that court's decision merely because it is not the one we may have made if we were deciding the motion.

Production Credit Ass'n of Minot v. Dobrovolny, 415 N.W.2d 489, 491-92 (N.D. 1987) (internal quotations and citations omitted).

[¶ 7] This Court has explained when evaluating Rule 60(b) motions, "[w]e do not determine whether the court was substantively correct in entering the judgment from which relief is sought, but determine only whether the court abused its discretion in ruling that sufficient grounds for disturbing the finality of the judgment were not established." Eight Ball Trucking, 2019 ND 102, ¶ 7, 925 N.W.2d 411. Accordingly, "[a]n appeal from a trial court's refusal to vacate an order under Rule 60(b), N.D.R.Civ.P., does not permit the appellant to attack the underlying order from which an appeal could have been, but was not, brought." Matter of Hirsch, 2017 ND 291, ¶ 13, 904 N.W.2d 740 (quoting Sturdevant v. SAE Warehouse, Inc., 310 N.W.2d 749, 752 (N.D. 1981)). As a result, while Ward County fully asserts the district court's judgments dismissing the appeals were correct, this appeal does not involve the merits of that decision, but rather whether Appellants were entitled to relief under Rule 60(b).

[¶ 8] Appellants could have appealed from the judgments entered following the motions to dismiss, but did not. Instead, they brought Rule 60(b) motions. As a result, the applicability of N.D.R.Civ.P. Rule 60(b) when the district court sits only in an appellate capacity must be considered. Appeals from local governing body decisions are similar to appeals from administrative agency decisions in that the district court sits solely in an appellate capacity. This Court has previously concluded that Rule 60(b) is inapplicable to

an administrative appeal to district court because the district court is acting solely as an appellate court. Friends of Duane Sand-2012 v. Job Service of North Dakota, 2016 ND 38, ¶¶ 5-7, 876 N.W.2d 433; Lewis v. North Dakota Workers Comp. Bureau, 2000 ND 77, ¶¶ 7-13, 609 N.W.2d 445. In Lewis and Duane Sand, it appears the Court recognized a potential distinction between the applicability of N.D.R.Civ.P. 60(b) motions depending upon whether the motion is based on a decision made solely by the district court or whether the district court's decision was based on a review of the appellate record. See Lewis, at ¶ 8; Duane Sand, at ¶ 6.

[¶ 9] In the present case, Appellants' Rule 60(b) motions were based on the district court's decisions to dismiss the appeals for failure to file appellate briefs. The circumstances regarding the dismissal did not involve any circumstances that were decided by Ward County, so Rule 60 arguably was an available avenue for Appellants. However, it is important to note the procedure in order to address what is actually before this Court.

[¶ 10] The judgments were entered on May 16, 2019. Index # 32. The notices of appeal were not filed until October 17, 2019. Index # 52. The notices of appeal were filed within 60 days of the notice of entry of the district court's orders denying the Rule 60(b) motions, which supports and confirms this Court's caselaw that the Rule 60(b) orders are the only orders before the Court for review. Accordingly, if Rule 60(b) is an available motion to Appellants in appeals from decisions of local governing bodies, the only issue before the Court is whether the district court abused its discretion by denying Appellants' Rule 60(b) motions, consistent with the Court's caselaw discussed above. If Rule 60(b) is not an available remedy in local governing body appeals, the appeal should be dismissed

because they were not taken within sixty days of the district court's judgment. See, e.g., Duane Sand, 2016 ND 38, ¶ 7, 876 N.W.2d 433.

B. The District Court Did Not Abuse Its Discretion When It Denied Appellants' Rule 60(b) Motions.

[¶ 11] The district court's order denying the Rule 60(b) motions accurately explained the procedure leading up to its decision. Particularly, the district court accurately summarized:

> In this situation a motion to dismiss was made by Ward County setting forth both the facts and the authority which Ward County believed warranted a dismissal of the appeal. C & K had 14 days within which to respond to this motion to set forth the facts and authority they believed warranted denying the motion for dismissal of the appeal. In their response to the initial motion, C & K did not contest the Court's authority to dismiss the action under Rule 11.5. In their response to the initial motion, C & K did not contest that the briefing schedule issued by the Ward County Calendar Control Clerk was not an order or rule capable of being sanctioned under Rule 11.5. In the response to the initial motion, C & K did not dispute that Rule 31(c) of the North Dakota Rules of Appellate Procedure provided guidance to the Court in setting a consequence for failing [] to file an appeal brief in District Court. In their response to the initial motion C & K did not argue for the application of the factors set forth in Ringsaker and how those factors favored denying the dismissal of the appeal. In their response to the initial motion C & K failed to offer any affidavits that would have explained, in detail, why this particular departure caused such confusion so as to excuse the failure of C & K to file an appeal brief as directed. Rather, C & K chose to rely on a cursory response to the motion to dismiss.

App. at p. 29 (¶ 12). The district court determined Rule 60 (b) was not intended to provide Appellants with a "do over" and explained:

> To allow C & K to be granted relief under Rule 60 based on grounds not raised prior to the entry of judgment when C & K had ample opportunity to do so is not a basis for relief under Rule 60. Put another way, there is no mistake committed by the Court when ruling regarding the applicability of a statute, rule or case law, or the facts relative thereto, when the issue is never raised.

Id. at p. 30 (¶ 13).

[¶ 12] The district court's decision is accurate, well-reasoned, and complies with the law. First, in response to Ward County's motions to dismiss, Appellants did not raise any of the issues they now rely upon. They simply argued they were unaware of the briefing schedule due to an attorney leaving the firm, which was the first time Ward County learned of this issue. App. at pp. 10-11. The district court reasonably concluded Appellants were making new arguments in the motion to vacate that should and could have been made in response to the original motion. Further, the district court reasonably concluded the failure to make these arguments was not excusable because Appellants had ample time and could have made them in response to the motion. The district court recognized that Appellants provided a cursory response to the motion to dismiss, and only after the motion was granted, did Appellants raise additional arguments.

[¶ 13] The district court's decision is consistent with the law. This Court has recognized a "Rule 60(b) motion is not to be used to relieve a party from free, calculated, and deliberate choices." Follman v. Upper Valley Special Educ. Unit, 2000 ND 72, ¶ 11, 609 N.W.2d 90 (quoting Indus. Comm'n of N.D. v. Wolf, 1999 ND APP 2, ¶ 6, 588 N.W.2d 590); see also Key Energy Services, LLC v. Ewing Construction Co., Inc., 2018 ND 121, ¶ 13, 911 N.W.2d 319. "A party has a duty to protect his own interests, and a party's mere misjudgment or careless failure to evaluate is not sufficient to establish grounds for relief." Palmer v. State, 2012 ND 237, ¶ 7, 824 N.W.2d 406 (citing Follman, at ¶ 11). Further, even "the fact that the district court may have made a mistake of law does not justify setting the judgment aside under Rule 60(b)." Throndset v. L.L.S., 485 N.W.2d 775, 778 (N.D. 1992) (quoting Production Credit Ass'n v. Dobrovolny, 415 N.W.2d 489, 492 (N.D. 1987)). In addition, a Rule 60(b) motion is not a substitute for an appeal. Key Energy

Services, LLC, at ¶ 13.

[¶ 14] The fact that Appellants did not raise the arguments made in their Rule 60(b) motions in their response to the motion to dismiss was their own choice. Even if one assumes for the sake of argument that the district court's decision to dismiss was incorrect for the reasons later argued by Appellants, the district court did not abuse its discretion when it denied the motions to vacate because the district court's decision was addressing the arguments made by the parties on the motion. Holding otherwise would allow parties to continually make new arguments to the district court after previous arguments have been unsuccessful by the use of Rule 60(b). The district court's orders should be affirmed.

C. The District Court Did Not Err When It Dismissed These Cases.

[¶ 15] Despite the clear law that this Court does not review the underlying judgment when the appeal is from a Rule 60(b) motion, Appellants' primarily argue about the propriety of the district court's initial decision to dismiss. They argue the district court did not analyze the Ringsaker v. N.D. Wokers' Comp. Bureau factors; the briefing schedule was not an order; the district court erred by applying the North Dakota Rules of Appellate Procedure; and the district court erred by deciding the motion before the expiration of fourteen days.

[¶ 16] The first problem with Appellants' argument is that none of these issues were raised to the district court in Appellants' response to the motion. As a result, the district court had no reason to address these arguments because Appellants did not make these arguments to the district court. It is well-settled that issues not raised are waived. See, e.g., Spratt v. MDU Resources Group, Inc., 2011 ND 94, ¶ 14, 797 N.W.2d 328; see also Riemers v. Omdahl, 2004 ND 188, ¶ 19, 687 N.W.2d 445 ("We have said an argument

may be meritless without supportive reasoning or citation to relevant authority, and a party waives an issue by not providing supporting argument.") Here, Appellants did not just fail to support their argument in response to the motion to dismiss, they wholly failed to even raise the issues they later asserted in their Rule 60(b) motions. The fact that Appellants chose not to raise these issues until the Rule 60(b) motions were granted defeats their arguments. Regardless, the district court did not commit error.

1. ***Ringsaker* does not require reversal.**

[¶ 17] The first argument made by Appellants is that the district court did not engage in a "reasoned analysis of the appropriate sanction" under Ringsaker v. N.D. Workers Comp. Bureau, 2003 ND 122, 666 N.W.2d 448. Appellants' Br. at ¶ 19. As indicated, this was not an argument raised by Appellants in response to the motion to dismiss. Regardless, this case is markedly distinguishable from Ringsaker.

[¶ 18] In Ringsaker, Ringsaker appealed an administrative agency's order to district court. 2003 ND 122, ¶¶ 2-3, 666 N.W.2d 448. The district court administrator notified the parties' attorneys of the original briefing schedule. Id. at ¶ 3. The attorney for the North Dakota Workers Compensation Bureau ("WSI") requested an extension of time to file an appellee brief before its brief was due. Id. at ¶ 3. The district court granted WSI's request and ordered WSI's brief must be filed on or before August 2, 2002. Id. WSI mailed its brief on August 2, 2002; however, it was not filed with the court until August 5. Id. The court issued a letter finding WSI's "brief is late and the court will not consider it. Judgment for the appellant." Id. WSI requested reconsideration, which the court denied and a judgment was entered requiring WSI to accept Ringsaker's claim. Id. WSI appealed, arguing the district court abused its discretion by ordering judgment in favor of Ringsaker.

Id. at ¶ 5.

[¶ 19] On appeal, the Court concluded "that in failing to file its brief by August 2, 2002, the Bureau failed to perform an act required by court order, which was an event for which the district court could impose a sanction." Id. at ¶ 10. However, the Court explained that a "case-by-case analysis of all the circumstances presented in the case" is required and the following three factors must also be considered when imposing sanctions: 1) the culpability, or state of mind, of the party against whom sanctions are being imposed; 2) a finding of prejudice against the moving party, and the degree of this prejudice, including the impact it has on presenting or defending the case; and 3) the availability of less severe alternative sanctions. Id. at ¶ 13. The Court determined the district court's decision was incomplete because it failed to consider prejudice and the availability of less severe sanctions. Id. at ¶¶ 14, 16.

[¶ 20] The circumstances of Ringsaker were different as WSI made a motion for an extension of time prior to the date its brief was due, it was granted an extension, and the only reason its brief was untimely was because of a delay between mailing/service and date of filing. This is substantially different than not filing any brief on an appeal whatsoever, which is typically considered an abandonment of an appeal for which dismissal can be ordered.

[¶ 21] However, even if Ringsaker applies to this case, dismissal was appropriate. First, the district court concluded there was culpability on the part of Appellants. As explained in its order granting Ward County's motion to dismiss, the district found the justification provided by Appellants insufficient to explain how Appellants were unaware of the briefing schedule until 37 days after it had been entered. App. at 13-14 (¶ 5). In its

order denying the Rule 60 motions, the district court further explained:

> It is the Court's belief, based upon the above, there remains only the issue of whether or not the Court properly dismissed the matter based upon the evidence and arguments made at the time of the motion for dismissal. Specifically, the Court believes it needs to address the allegation that it relied upon improper factors (i.e. the size and location of C & K's law firm) in granting the motion to dismiss.
>
> C & K alleges the Court's reliance on the size and location of the law firm suggests the Court would have resolved the matter differently had C & K been represented by a smaller firm, one from Minot, or one exclusively located in North Dakota. The Court believes this to be a tortured interpretation of the Court's May 15, 2019, order. The location of practice never was a factor in the Court's decision. The actual language used by the Court in its order clearly states the size of the law firm indicated to the Court that attorneys leaving and/or joining the firm was a commonplace occurrence and should not cause confusion within the firm. This statement was made to both contradict the almost nonexistent excuse provided in the Response to Motion to Dismiss of C & K, and to indicate that the attorneys for C & K were not going to be held to a lesser standard than other practitioners, especially when they face this situation with far greater frequency than other practitioners.

App. at 30-31 (¶¶ 14-15). The district court fully explained its reasoning, which was reasonable based on the facts and circumstances.

[¶ 22] With respect to prejudice, this Court has previously recognized that in appeals from local governing body's decisions, the legislature has enacted laws stressing the importance of prompt resolution. See Garaas v. Cass County Joint Water Resource Dist., 2016 ND 148, ¶ 20, 883 N.W.2d 436. Therefore, there is inherent prejudice by failure to take any action in response to deadlines set by the district court. Further, this appeal will impact public funds and function resulting in prejudice due to such delay. As a result, there is prejudice to the County as a result of this delay.

[¶ 23] Appellants also argue Ward County had not previously shown any "interest in haste" and had itself requested additional time to file the record on appeal. However,

the requested extension to file the record was based upon the fact that the court reporter required an extension to prepare the transcripts. Index # 9. In addition, reasonable requests for continuances or extensions between parties are routinely not contested, which is simply a balance between "haste" and practicality. There are numerous reasons why a reasonable extension or continuance may be agreed upon between parties without unnecessary dispute. In fact, agreeing to reasonable requests is usually more expeditious than disputing them in court. However, such agreements are not a recognition that prompt resolution, as recognized by the legislature, is not important to or desired by the local governing body.

[¶ 24] With respect to the final factor, while there may be less severe sanctions available, dismissal of an action for failure to file an appellant's brief is recognized as a proper sanction in appellate courts. For instance, N.D.R.App.P. 31(c) provides that if an appellant fails to file a brief within the time prescribed or within the time allowed by an extension, "the court on its own motion may dismiss the appeal or an appellee may move to dismiss the appeal." See also In re B.B., 2010 ND 9, ¶ 1, 777 N.W.2d 350 ("Because B.J.F. failed to submit a brief, she abandoned her claims, and we dismiss her appeal."); Johnson v. Schlotman, 502 N.W.2d 831, 836 (N.D. 1993) ("Because Dianne has not briefed this issue, we assume she abandoned the claim, and we have the authority to dismiss the appeal pursuant to Rule 31(c), N.D.R.App.P."); South v. National R.R. Passenger Corp. (AMTRAK), 260 N.W.2d 212, 214 (N.D. 1977) ("As we said in State v. Vogan, 243 N.W.2d 382 (N.D.1976), unless good cause is shown for a failure to comply with the rules of this Court, an appeal will be dismissed.") As stated in Ringsaker, "[l]itigants have an unflagging duty to comply with clearly communicated case-management orders" and the district court has an inherent power to sanction. 2003 ND 122, ¶ 10, 666 N.W.2d 448.

Other court rules also indicate a failure to file a brief may be deemed an admission that a party's position is without merit. See N.D.R.Ct. 3.2(c) ("Failure to file a brief by the moving party may be deemed an admission that, in the opinion of party or counsel, the motion is without merit.") Rule 11.5, N.D.R.Ct. provides the "trial court may take any appropriate action against any person failing to perform an act...required by court order...." The district court's decisions are consistent with how such situations are addressed in appeals. Therefore, even if this Court were to address the underlying judgments, the district court's decisions should be affirmed.

2. The briefing schedule was a court order.

[¶ 25] Next, Appellants argue the briefing schedule was not a "court order" because it is different from a formal scheduling order under N.D.R.Civ.P. 16. Again, this argument was not raised in response to the motions to dismiss, but for the first time in the Rule 60(b) motion. The district court in this case was acting solely as an appellate court. Rule 9.1, N.D.R.Ct., specifically addresses appeals and provides "after receipt of the record, the court shall fix a time for filing briefs." This is precisely what occurred in this case. The briefing schedule was not a suggestion, it was a briefing schedule set by the court in accordance with N.D.R.Ct. 9.1. See Ringsaker, at ¶ 10 ("litigants have an unflagging duty to comply with clearly communicated case-management orders").

3. The district court did not err by referencing N.D.R.App.P. 31.

[¶ 26] Appellants next argue the district court erred by determining the North Dakota Rules of Appellate Procedure applied. Again, this argument was not raised in response to the motions to dismiss, but for the first time in the Rule 60(b) motions. Regardless, this argument misinterprets the district court's decision and Ward County's

motion. As the district court was sitting exclusively as an appellate court, N.D.R.App.P. 31 was cited as an example and guideline demonstrating that the requested relief was consistent with the manner in which this Court handles similar situations. App. at 8 (¶ 5). The district court recognized this, explicitly noting in its decision that Ward County argued its position was "consistent with Rule 31(c) of the North Dakota Rules of [A]ppellate Procedure." App. at p. 13 (¶ 3). The district court specifically referenced that the rules of appellate procedure were viewed as guidance and being consistent with the requested relief. See App. at p. 29 (¶ 12) ("C & K did not dispute that Rule 31 (c) of the North Dakota Rules of Appellate Procedure provided guidance to the Court in setting a consequence for failing to file an appeal brief in District Court.")

4. The district court's decision was after Appellants responded to Ward County's motion and complied with N.D.R.Ct. 3.2.

[¶ 27] Appellants' final argument is the district court erred by deciding the motion before allowing Appellants fourteen days to respond pursuant to N.D.R.Ct. 3.2 and an additional seven days to request a hearing. This argument was not raised to the district court at any time, and should be rejected on that basis alone. State v. Dockter, 2019 ND 203, ¶ 8, 932 N.W.2d 98 ("We have repeatedly held that issues not raised or considered in the district court cannot be raised for the first time on appeal, and we will not address them.") Even if this Court were to address this argument, Appellants' position misapplies and misinterprets Rule 3.2, and is inconsistent with routine motions practice.

[¶ 28] As relevant, Rule 3.2(a)(2), N.D.R.Ct., provides that a party opposing a motion "must have 14 days after service of a brief within which to serve and file an answer brief and other supporting papers." Appellants seem to argue that even though they served and filed an answering brief (Index # 25), they still had time to file "other supporting

papers." However, Rule 3.2 does not envision allowing an answer brief filed sometime before the expiration of the time to respond, and then later filing supporting papers. Rather, the rule allows filing the answer brief along with other supporting papers. Further, the fact that the moving party may serve and file a reply brief within seven days after service of the answer brief, indicates Rule 3.2 requires the simultaneous filing of an answer brief along with the other supporting papers. Were the rule to be interpreted differently, then a movant's reply brief could be due before the responding party has filed its "other supporting papers."

[¶ 29] Appellants' attempt to interpret the rule as allowing some string of filings rather than an answer brief along with other supporting papers to the answer brief should be rejected. There was no indication in Appellants' responses to the motions that they intended or even desired to submit any additional information, much less that they wanted additional time to do so. Instead, Appellants filed their responses, which did not include a request for hearing. In fact, Appellants never requested a hearing on the motions to dismiss with the district court at any time. Upon the filing of the responses, the district court was well within its discretion to decide the motions.

IV. REQUEST FOR ORAL ARGUMENT

[¶ 30] Pursuant to N.D.R.App.P. 28(h), Ward County requests oral argument to respond to any arguments raised in Appellants' reply and to answer any questions the Court may have.

V. CONCLUSION

[¶ 31] For the foregoing reasons, Ward County requests the district court's decisions be affirmed.

Dated this 8th day of January, 2020.

By */s/ Mitchell D. Armstrong*

Mitchell D. Armstrong, ND ID # 05892
marmstrong@smithporsborg.com
Brian D. Schmidt, ND ID # 07498
bschmidt@smithporsborg.com
Ward County Special Assistant State's Attorneys
122 East Broadway Avenue
P.O. Box 460
Bismarck, ND 58502-0460
(701)258-0630

Attorneys for Appellee, Ward County Board of Commissioners

CERTIFICATE OF COMPLIANCE

[¶32] Pursuant to N.D.R.App.P. 32(e), the undersigned certifies the above brief is in compliance with N.D.R.App. P. 32 and the total number of pages of the brief is 22 pages.

Dated this 8th day of January, 2020.

By */s/ Mitchell D. Armstrong*
Mitchell D. Armstrong, ND ID # 05892
marmstrong@smithporsborg.com
Brian D. Schmidt, ND ID # 07498
bschmidt@smithporsborg.com
Ward County Special Assistant State's Attorneys
122 East Broadway Avenue
P.O. Box 460
Bismarck, ND 58502-0460
(701)258-0630

Attorneys for Appellee, Ward County Board of Commissioners

CERTIFICATE OF SERVICE

[¶33] I hereby certify that a true and correct copy of the foregoing **BRIEF OF APPELLEE** was on the 8th day of January, 2020, filed via Electronic Filing and served via email as follows:

mraum@fredlaw.com
azuger@fredlaw.com

Michael S. Raum
Aubrey Zuger
Attorneys at Law
51 Broadway, Suite 400
Fargo, ND 58102-4991

By */s/ Mitchell D. Armstrong*
MITCHELL D. ARMSTRONG