

ORIGINAL

980166

IN THE
SUPREME COURT
STATE OF NORTH DAKOTA

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Buffalo
vs
Buffalo,

AUG 16 1998

STATE OF NORTH DAKOTA

Defendant

Supreme Court No. 980166

Stark Co. No. 88-C-163

Brief for Appeal of the Order Entered April 06, 1998

Warren Buffalo, Sr.
Register #04596-073
P.O. Box 1500
Waseca, MN 56093

Dated: August 2, 1998

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CITATION

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Jurisdictional Statement

This is an appeal from an order by the District Court, Southwest Judicial District, County of Stark granting child support payment while the defendant had been elevated of such responsibility. This court has jurisdiction pursuant to 28 U.S.C. § 1291.A.t. VI,6,N.D. Const. and N.D.C.C. 28-27-02. This appeal is timely under rule 4(a), N.D.R. App.P.

Statement of Issue Presented for Review

Whether the amount that the state of North Dakota stated that they owe the defendant was accurate?

Whether the state of North Dakota violated the defendant's right according to Gabriel vs. Gabriel?

Whether the state of North Dakota knowingly or should have known and forced the defendant to continue to pay child support while the children had been officially adopted.

Statement of the Facts

Appellant, pro-se, Warren Buffalo, Sr., was convicted in paying child support to Esther Buffalo on 9/22/88. Appellant filed this brief which seeks relief for wrongful payment of child support to the government.

On June 2, 1998, Warren Buffalo, Sr., filed a petition in forma pauperis to waive filing fee on appeal, affidavit and order. Pursuant to Administrative Rule 5, his petition was granted on June 9, 1998.

On August 12, 1992, a petition of Esther Louise Erickson and Mark Allen Erickson praying for the termination of parental rights and the adoption of the minor children of Warren Buffalo, Sr., was granted by Honorable Judge Donald L. Jorgensen.

On August 20, 1992, a true copy was served by Dawn M. Boehm to defendant of Human Services, Capitol Building, Bismarck, N.D. 58505 via U.S. mail at Dickinson, N.D.

On November 17, 1997, an incoming withholding order prepared by the Stark County, North Dakota, ordering Federal Correctional Institution Sandstone, MN to withhold the defendant's income and transmit the said amount to the Clerk of District Court, Stark County, P.O. Box 130, Dickinson, N.D. 58602 and should retain an additional sum of \$3.00 monthly from the defendant's account to cover expenses involved in transmitting such payments.

On December 5, 1997, Southwest Area Child Support Enforcement Unit, responded on the motion by the defendant.

On March 11, 1998, Motion and Brief to Amend Judgment was prepared by Lee Armstrong, the attorney for Southwest Area Child Support Enforcement Unit, of an illegal collection of Mr. Warren Buffalo, Sr.

On March 11, 1998, Affidavit of Dora Jenson, an investigator for the Southwest Area Child Support Enforcement Unit was prepared admitting that the state was notified of the adoption that took place on August 12, 1992 concerning child support.

Then, on April 14, 1998, the termination order was prepared and witnessed by Honorable Maurice R. Hunke, Judge of the District Court Stark County, North Dakota and filed on April 15, 1998. While on April 06, 1998 the court had a different order which the amount that the State claimed that they owed the defendant or responsible for, was inaccurate.

On May 18, 1998, the defendant filed Notice of Appeal of the Order Entered April 06, 1998.

ARGUMENT

WHETHER WARREN BUFFALO, SR., IS ENTITLED TO RECEIVE THE AMOUNT THAT HE PAID AS CHILD SUPPORT TO THE STATE OF NORTH DAKOTA AFTER AUGUST 12, 1992, WHEN THE MINOR CHILDREN WERE ADOPTED, WHILE THE STATE OF NORTH DAKOTA KNEW OF THE ADOPTION.

Defendant Warren Buffalo, Sr., pro-se, was forced by the state North Dakota to pay child support of a child that had been legally adopted by another family. The state of North Dakota knew of the adoption since August 12, 1992.

However, the state of North Dakota proceeded to prepare the income withholding order on November 17, 1994, mandating the Federal Correctional Institution, Sandstone, to withhold the sum of \$24.00 per month from Mr. Warren Buffalo, Sr., defendant's income and also an additional sum of \$3.00 per month to cover expenses involved in transmitting the child support payments, totaling \$27.00 per month.

The Federal Correctional Institution executed the court's order and garnished the defendant's income for an excess of Sixty-eight (68) months after the adoption of the minor children had been effected, which meant that the defendant was erroneously charged in an excess of \$1,260.00 as child support while the state of North Dakota knew or should have known that the defendant had been elevated from this responsibility.

The state of North Dakota should have terminated the obligation of paying child support by Warren Buffalo, Sr., immediately since his "PARENTAL RIGHTS" were terminated on August 12, 1992. Because, in GABRIEL vs. GABRIEL court held that "termination of parental rights is a change in circumstances that ends the obligation of the person whose parental rights were terminated to pay support for that child,.." GABRIEL vs. GABRIEL, 519 N.W.2d 293 (N.D. 1994).

Once Warren Buffalo, Sr.'s parental rights were terminated on August 12, 1992, he no longer had a legal obligation as he was mandated by the state

of North Dakota to provide support for his minor children's care. The adopted parents have the legal duty to provide support for the minor children. Yet, the defendant was held responsible by the state of North Dakota, for the support of the adopted children, which his parental rights had been terminated.

The income withholding order should have been modified on August 12, 1992, according to the facts that showed that the minor childrens' adoption procedures were completed and the court and the agency were notified of the change. Meaning that the defendant's perantall rights had been terminated as of August 12, 1992.

Accordingly, once a motion to modify a support order has been filed as Esther Louise Erickson and Mark Allen Erickson did before the District Court, Southwest Court should have changed the terms of the supoort obligation upon a judicial finding. Wherefore, the Modification of the child support order should become effective as of the filing date of the motion to modify, August 12, 1992.

However, the defendant was subjected to pay an obligation which the state of North Dakota knew that he was not obligated to pay causing him more mental anguish, emotional stress and hardship.

Defendant, asked this Honorable court to order the state of North Dakota, to pay the sum that he was forced to pay and a \$50,000.00 impunitive damages.

Conclusion:

Wherefore, the defendant sought the relief that the state of North Dakota to pay him the amount of \$1,260.00 plus a compounded interest, as was required by Federal Statutes that applied to the sum that was erroneously collected from individual(s) by an arm of the government and deposited in the U.S. Treasury. Defendant also prays that this Honorable court should award him \$50,000.00 in damages and punitive. Couple that he request for trial by jury on all issues triable by jury.

Respectfully Submitted,

Warren Buffalo
Warren Buffalo, Sr.
Register #04596-073
Unit D Room 221
P.O.Box 1500
Waseca, MN 56093

Dated: August 2, 1998

CERTIFICATE OF SERVICE

I, Warren Buffalo, Sr., hereby, certify that the brief was served to the following via U.S. mail on August 2, 1998.

Jenny Miller, Clerk
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600 E Blvd. Ave. Dept. 180
Bismarck, N.D. 58505-0530

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