ORIGINAL (e-filed)

20030094

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Doreen T. Chapman, Plaintiff, vs. Benton Dewayne Chapman, Defendant/Appellee.	FILED IN THE OFFICE OF THE CLERK OF SUPREME COURT FEB 11 2004 STATE OF NORTH DAKOTA

SUPREME COURT CASE NO. 20030094

DISTRICT COURT CASE NO. 03C010

APPEAL FROM THE FINDINGS AND ORDER AND ORDER OF THE

DISTRICT COURT OF RICHLAND COUNTY

SOUTHEAST JUDICIAL DISTRICT

THE HONORABLE RONALD E. GOODMAN, JUDGE

PETITION FOR REHEARING

APPELLANT, SOUTHEAST REGIONAL CHILD SUPPORT ENFORCEMENT UNIT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES:

RULES:

PETITION FOR REHEARING

The Southeast Regional Child Support Enforcement Unit (hereinafter "Unit") appeared in this appeal on behalf of Richland County and respectfully requests rehearing of this matter pursuant to N.D.R.App.P. 40 on the grounds that Richland County was a party to the proceeding by operation of law under N.D.C.C. § 14-09-09.26. The Unit respectfully suggests the Court's opinion in this case misapprehends the statutory responsibility of Richland County in the area of child support enforcement.

The State of North Dakota is required to operate a child support enforcement program under Title IV-D of the Social Security Act as a condition of receiving federal funds for public assistance programs. 42 U.S.C. § 655. The program is administered by the fifty-three counties in North Dakota under the direction and supervision of the child support enforcement division of the North Dakota Department of Human Services (hereinafter "Department"). N.D.C.C. §§ 50-09-02(16), 50-09-03(5). Attached to this petition is a copy of the official interagency agreement establishing the Unit and apportioning child support duties between the Department, the Unit, and the counties in the region served by the Unit, including the respective state's attorney's offices. (Add. 9). Richland County and the Unit are both "child support agencies" as defined in N.D.C.C. § 14-09-09.10(3). The Unit's actions are taken strictly on behalf of its member counties, and not as a separate legal entity. Thus, just as Richland County's interests were represented in the litigation below by an assistant Richland County State's Attorney, counsel for the Unit in this matter was appointed as a Special Assistant Richland County State's Attorney and represented Richland County's interests in this appeal. The question is not whether the "Unit" had standing or was a party

to the litigation below; the question is whether Richland County was a party to the litigation below.

N.D.C.C. § 14-09-09.26 describes the various ways the child support enforcement program may become involved in a child support case under Title IV-D. Paraphrasing the statute, there are assignment cases, application cases, and interstate cases. When participating in one of these cases, the attorney for Richland County–be it an employee of the Richland County State's Attorney's office or a duly appointed special assistant state's attorney employed by the Unit–represents the interests of Richland County and the people of the state of North Dakota in administering the child support enforcement program under Title IV-D. N.D.C.C. § 14-09-09.27. In a IV-D case, the assistant attorney for Richland County and the special assistant attorney for Richland County employed by the Unit serve the same client.

As explained above, whether the "Unit was ... a party to the litigation before the district court" is irrelevant; the question is whether Richland County was a party to the litigation. The Unit does not dispute that Richland County is not listed in the caption of the case. However, in IV-D cases, the people of the State of North Dakota, acting through Richland County, are a party by operation of law. N.D.C.C. § 14-09-09.27; cf. Kilpatrick v. Kilpatrick, 673 N.W.2d 528, 530-31 (Minn.App. 2004) (noting county is a "real party in interest" by Minnesota statute when assigned support). It would be burdensome and unnecessary to require the child support enforcement program to intervene and withdraw multiple times in the life of a case whenever an application or assignment is executed or terminated.

The Court appears to be deducing from the appearance by the assistant Richland County State's Attorney in the proceeding below, and by the appearance by the undersigned counsel employed by the Unit in this appeal, that the interests of Richland County and the Unit are distinct, or that this was not a IV-D case. The interests of Richland County and the people of North Dakota were represented at the proceeding below and on appeal, albeit through different individual attorneys. The assistant Richland County State's Attorney's role in the proceeding below could be equally explained as an appearance on behalf of the State and the child support enforcement program in a IV-D case under N.D.C.C. § 14-09-09.26 or as an appearance in a "non IV-D" case under N.D.C.C. § 11-16-01(15). On this record, one cannot categorically conclude that Richland County was not a party to the proceeding below.

The Unit, acting in this appeal on behalf of Richland County, concedes it did not produce or allege the existence of an assignment or application for enforcement services that had been executed by the custodial parent in this case. The Unit respectfully requests that the Court consider the context of this proceeding. The child support enforcement program is involved in literally thousands of cases that fall within one of the three categories listed in N.D.C.C. § 14-09-09.26. The Unit believes that it is well-understood by the district courts in this state when a case is being enforced under Title IV-D, and, although it may not be perfect practice, it should not come as a surprise if the courts and litigants frequently assume that the county has standing in a case without requiring the introduction of an assignment or application for services.

It should be noted that Mr. Chapman requested an appearance before the District Court on January 23, 2003, and the hearing was held the very same day. (App. 24). The

spontaneous procedure used by the District Court in this case deprived Richland County, and the people of North Dakota, of the opportunity to make a proper record in the District Court. Had either the District Court or Mr. Chapman questioned the county's standing in this case, Richland County could have addressed its standing and produced any relevant documentation. Instead, all parties concerned, including the District Court, accepted Richland County's standing in this case under Title IV-D and the order issued by the District Court was clearly addressed to the Unit. The Unit's appellate brief addresses why it is appropriate for this Court to address this issue notwithstanding the lack of an objection during the hearing.

The Unit has been careful not to assert the factual basis for its standing under N.D.C.C. 14-09-09.26 since it would be inappropriate to present a completed assignment or application for the first time on appeal. However, while Richland County has perhaps not "shown" it was a party to the litigation below under N.D.C.C. § 14-09-09.26, the record does not support the statement that Richland County "was not" a party. The Unit respectfully requests that this statement be stricken from paragraph 6 of the Court's opinion.

The second conclusion of this Court in paragraph 6 of the opinion is that the Unit "has not shown it has a contractual assignment of rights which might confer upon it standing to appeal the district court's orders . . ." The Unit suggests that such an assignment is unnecessary if it shows that it is acting pursuant to a request for enforcement services as referenced in N.D.C.C. § 14-09-09.26(2) or fulfilling statutory duties imposed under N.D.C.C. Ch. 14-12.2. However, the Unit concedes it did not allege or present documentation showing an assignment of rights, application for services, or performance of

duties under N.D.C.C. Ch. 14-12.2.

The Unit asks this Court to assume that the District Court's order was addressed to the Unit for a reason. The lack of advance notice of the proceeding below and of the areas that would be addressed by the District Court during the proceeding will be aggravated unnecessarily if the Unit, acting on behalf of Richland County, is held by this Court not to be a party and not permitted to challenge the District Court's order. The Unit would then be subjected to an order that the North Dakota Attorney General has determined to be illegal, but that the Unit feels bound to follow and yet cannot appeal the order to this Court. If the Unit, acting on behalf of Richland County, was not a party to the proceeding below, is the Unit free to disregard the District Court's order? The standing of the people of North Dakota under N.D.C.C. § 14-09-09.26 is a question of law and does not turn on whether the undersigned counsel cited the proper statute or presented the proper document.

The Court's opinion also states that the Unit "has not shown it has been injuriously affected by the district court's orders." Again, the Unit respectfully submits that the Court misapprehended the Unit's role in this matter. The responsibility to issue income withholding orders should not be trivialized as the function of an adjunct of the court, analogous to the statutory duty of the county sheriff to serve papers for the court. N.D.C.C. § 11-15-03(4), (8). Enforcing child support in general, and issuing income withholding orders in particular, is a function of the executive branch of government, performed through a unique partnership of federal, state, and county government; a function that involves a major investment of public funds, maintains compliance with numerous and complicated federal mandates, and ensures the State's continued eligibility for millions of dollars to fund

public assistance programs. Our appellate brief identifies the federal requirements of the proper amounts of funds to be withheld by an income withholding order. The decision of the District Court to delay enforcement of a portion of Mr. Chapman's obligation without a proper modification of the underlying support obligation violates federal requirements and interferes with Richland County's statutory responsibility to collect the child support that is owed in this case. This is the injurious affect to Richland County and the people of the State of North Dakota from the District Court's order.

This Court has on occasion expressed a preference for deciding cases on their merits. Yet, if this court's ruling stands, it will be the second time in less than one year in which the vitality of the Attorney General's opinion regarding substantive changes to a child support obligation at a contempt proceeding is at issue, yet the important question addressed in the opinion is left unanswered. See Morton County Social Service Board v. Hakanson, 2003 ND 78, 660 N.W.2d 599. This question should be resolved by the judicial branch rather than the Legislature.

In the many years the child support enforcement program has operated, its standing has not been questioned on appeal in this type of case until oral argument in this case. At the very least, the Unit respectfully requests a revision to this Court's opinion that is limited to the failure to establish its standing under Section 14-09-09.26 and does not erroneously suggest it was neither a party to the proceeding nor injured by the District Court's orders. Such a conclusion would mislead parties and attorneys throughout the state regarding the proper role of the child support enforcement program.

Dated this 11th day of February, 2004.

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