

ORIGINAL

IN THE SUPREME COURT OF THE
STATE OF NORTH DAKOTA

20070259

Shawn M. Walberg,)
)
Plaintiff/Appellee,)
)
vs.)
)
Michael Duane Walberg,)
)
Defendant/Appellee,)
)
vs.)
)
State of North Dakota,)
)
Intervenor/Appellant.)

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

DEC 19 2007

STATE OF NORTH DAKOTA

DEFENDANT /
APPELLEE'S BRIEF

Supreme Ct. No. 2007 0259
Cass Ct. No. 09-95-C-02879

Appeal from Order Allowing Alternative Arrangement
for Payment of Child Support
by the District Court,
County of Cass, State of North Dakota,
Honorable Georgia Dawson, Presiding Judge

Mark A. Meyer
Attorney at Law
MEYER LAW FIRM
205 North Seventh Street
P.O. Box 216
Wahpeton, ND 58074-0216
Telephone: (701) 642-1660
Facsimile: (701) 642-2061
N.D. ID #: 04966

ATTORNEY FOR DEFENDANT / APPELLEE
MICHAEL DUANE WALBERG

TABLE OF CONTENTS

	<u>Page</u>
Table of Contents.....	i
Table of Authorities.....	ii
Argument.....	1
Conclusion.....	4
Addendum.....	5

TABLE OF AUTHORITIES

Page

NORTH DAKOTA STATUTES:

North Dakota Century Code § 14-09-09.24.....	2
North Dakota Century Code § 14-09-09.30.....	1
North Dakota Century Code § 14-09-09.33.....	2

LAW AND ARGUMENT

The district court did not err as a matter of law nor abuse its discretion by including in its Sixth Amended Judgment an offset of current or future child support against past-due child support and placing limitations on collecting child support arrears.

In support of his argument that the District Court acted correctly in this case, the Defendant / Appellee Michael Duane Walberg (hereinafter “father”) relies on the legal basis provided by the Honorable Georgia Dawson in her Order on Request for Review dated March 22, 2007. (App. 29.) Specifically, she found that NDCC §14-09-09.30(2)(b) (Addendum 2) is applicable in this case, and therefore the Court may set the obligation of the father, as an obligor with primary physical custody of the children, to pay his arrears at whatever amount it deems proper and reasonable. Judge Dawson proceeded to set that amount at \$300 per month (App. 33), based on the following:

1. The Referee noted that the granting of the State’s motion to intervene would not be in the children’s best interests because (a) it was likely Shawn [the mother] would have difficulty making her current child support payments; and (b) collections against Michael [the father] would have the practical effect of taking resources away from the custodial parent. (App. 31.) (Note — the finding regarding the mother was based on the fact that she was convicted on May 1, 2006, to serve two years in prison for possession of meth paraphernalia (a felony), possession of marijuana paraphernalia, and driving under the influence. See Exhibit C,

Register 75.)

2. Judge Dawson noted in her analysis that the State was contending that the father pay the mother \$1,050 per month. (App. 32.) Implicit in her analysis was that doing so would not be in the best interests of the children, since he had custody of the children.

Judge Dawson then set the father's obligation on the arrearage at \$300 per month and the mother's obligation for current and future child support at \$252 per month. (App. 33.)

Having done so, Judge Dawson next addressed the method of payment. She cited NDCC §14-09-09.24(2) (Addendum 1) as authority for (a) NOT requiring immediate withholding and (b) allowing an "alternative arrangement for assuring the regular payment of child support." (App. 33-34.) Judge Dawson found good cause not to require immediate withholding of the father's income in order to repay the arrearage because it was not in the best interests of the children (in light of the mother's unemployment) and because the parties had reached an agreement to that effect. (App. 34.) Furthermore, she found that it WAS in the children's best interests to allow the offset as an alternative arrangement. (App. 34.)

The State cites the legislative history of §14-09-09.33 (Addendum 3) in support of its argument that Judge Dawson's order violates that statute. The State cites examples from that history, claiming those examples are on point. The problem with the State's argument is that the examples cited are NOT on point because in the pending case, the result is not that there is less money going to the children because of the offset. To the

contrary, without the offset, there would be less money going to the children because of the mother's unemployment. Without the offset, (a) the father would be paying the mother money on the arrearage obligation and (b) the mother would be paying the father nothing because of her unemployment. The net result: father has less money in his pocket to support the children. Such an arrangement is NOT in the best interests of the children. It is precisely for this reason that Judge Dawson did what she did.

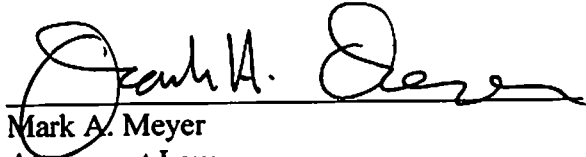
And, it is precisely for this reason that one has to wonder what the State is doing in this case. Why would the State claim to be acting in the best interests of the children, when it is crystal clear that it is doing exactly the opposite? If the State stood to benefit directly, then what it is doing in this case might make more sense. However, none of the arrears owed by the father are owed to the State as reimbursement for past benefits provided by the State to the mother — all of the arrears are owed to the mother. (App. 24.)

In sum, it appears that the State is engaging in an academic exercise to prove it is right. Unfortunately, the course being pursued by the State is not in the best interests of the children. The legislature provided means for an "alternative arrangement" to be applied in certain situations necessary to serve the best interests of the children. Judge Dawson utilized those statutes to make a decision in the best interests of the children. Therefore her decision should be affirmed.

CONCLUSION

Judge Dawson's Order and the resulting Sixth Amended Judgment should in all respects be AFFIRMED.

Respectfully submitted this 18th day of December, 2007.

A handwritten signature in black ink, appearing to read "Mark A. Meyer", written over a horizontal line.

Mark A. Meyer
Attorney at Law
MEYER LAW FIRM
205 North Seventh Street
P.O. Box 216
Wahpeton, ND 58074-0216
Telephone: (701) 642-1660
Facsimile: (701) 642-2061
N.D. ID #: 04966

ATTORNEY FOR DEFENDANT / APPELLEE
MICHAEL DUANE WALBERG