ORIGINAL

20110036

IN THE SUPREME COURT, STATE OF NORTH DAKOTA

State of North Dakota, County of Cass, ex. rel. Nancy A. Schlect, formerly known as Nancy Ann Neva, and C.A.W., a minor child, Plaintiffs and Appellees vs. Troy Allan Wolff, Defendant and Appellant	**APPELLEE'S BRIEF** Supreme Court No. 20110036 District Court No. 09-96-R-02147

Appeal from the Order issued by Douglas R. Herman, Judge of the District Court, entered on December 13, 2010, and also, from the underlying "Order" and "Notice of Findings and Order and Right of Review" issued by Susan Solheim, Judicial Referee of the East Central Judicial District, dated November 17, 2010, which purports to make a finding or determination "The State has demonstrated a meritorious basis for the request for Rule 60 Relief from Judgment. The State's Motion to Vacate is hereby granted."

Janet K. Naumann (ND Bar ID #05996)
General Special Assistant Attorney
Department of Human Services/Appellee
4950 13th Avenue South, Suite 22
Fargo, ND 58103
(701)298-4900
fargocse@nd.gov

John Waller (ND Bar ID #05623)
Special Assistant Attorney General
Department of Human Services/Appellee
4950 13th Avenue South, Suite 22
Fargo, ND 58103
(701)298-4900
fargocse@nd.gov

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STATEMENT OF THE CASE

The initial appeal was from an order vacating a Second Amended Judgment. Wolff and Schlect had entered into a Stipulation for Amendment of Judgment, but the State of North Dakota, a statutory party in interest, was not a signatory to the Stipulation and brought a (Rule) 3.2 Motion to Vacate the Second Amended Judgment pursuant to N.D.R.Civ.P. 60(b)(i),(vi). Wolff responded, requesting oral argument, but failed to secure a time for a hearing as required by N.D.R.Ct. 3.2(a)(3). The district court did not hold a hearing and Judicial Referee Susan Thomas (Solheim) issued an order vacating the Second Amended Judgment, and sent Wolff a Notice of Findings and Order and Right of Review. Wolff did not request review of the referee's order by the district court.

State ex. rel. Schlect v. Wolff, 2010 ND 101, 783 N.W.2d 642, remanded the matter to the district court, directing the court to ". . . consider N.D. Sup. Ct. Admin. R. 13 and clarify the order of the presiding judge to determine whether the referee had jurisdiction to hear the State's motion," at ¶8, and also to ". . . provide an explanation of its decision sufficient to inform the parties and allow this Court to properly review its decision," at ¶13.

On September 1, 2010, the Honorable Douglas R. Herman issued an Order remanding the matter to Referee Thomas (Solheim) to provide an explanation of the decision, and noting that the East Central Judicial District judges ". . . unanimously agreed to revise its Standing Order" which ". . . cleared up the ambiguity . . . as to whether separate individual case assignments are necessary." Concluding that ". . . all such cases are on referral without the need for a separate case-by-case referral order," the court considered the procedural issued resolved.

On November 17, 2010, Referee Solheim issued an Order vacating the Second Amended Judgment and provided a detailed explanation of the order. On November 26, 2010, Wolff filed a REQUEST FOR REVIEW/APPEAL FROM "ORDER" AND "NOTICE OF FINDINGS AND ORDER AND RIGHT OF REVIEW & REQUEST FOR ORAL ARGUMENTS. On December 13, 2010, the court, following North Dakota Administrative Rule 13(11), adopted and affirmed the referee's order. This is an appeal of the district court order adopting and affirming the referee's order to vacate a Second Amended Judgment, and the underlying order of the referee.

FACTS

On August 8, 1996, the Unit filed a Summons and Complaint seeking establishment of paternity, child support, AFDC reimbursement, and medical support. (Docket entry Nos. 3, 4, and 1). The provision of public assistance asserted in the complaint was supported by the Affidavit of Expenditures (Docket entry 10) and Affidavit of Proof (Docket Entry 9) and the court explicitly recognized in the Findings of Fact, Conclusions of Law, and Order for Judgment. (Docket entry 12). A Default Judgment adjudicating paternity and establishing medical and child support was entered on January 3, 1997. (Docket entry No. 13). An Amended Judgment reducing Troy's child support was entered on September 21, 1999. (App. at 13). On March 6, 2009, Troy and Nancy entered into a Stipulation for Amendment of Judgment. (App. at 18). The Stipulation states that Troy and Nancy have equal physical custody of the minor child citing N.D. Admin. Code § 75-02-04.1-08.2. (App. at 20). Paragraph 4 of the Stipulation for Amended Judgment provides in part:

Child Support

> As of February, 2009, Defendant Troy Allan Wolff has no obligation to pay child support payments to the Plaintiff. Plaintiff Nancy Ann Schlect has acknowledged receipt of, or has forgiven all of Defendant's obligation to pay child support, delinquent child support, or interest thereon, that she can forgive through the month of January, 2009, in the above entitled action. In consideration of the forgiveness of delinquent child support, Defendant Troy Allan Wolff agrees that he will not seek child support from the Plaintiff, unless he obtains public assistance and is required to seek child support by the governmental authority providing public assistance to him. However, if either Plaintiff or Defendant is successful in obtaining social security administrative disability, then, in that event, the social security benefit to the parties' minor child shall be paid to Plaintiff Nancy Ann Schlect as child support. (App. at 20-21).

The State of North Dakota is on the caption of the Stipulation but was not a signatory on the Stipulation to Amend Judgment. (App. at 18, 22). An Order for Second Amended Judgment was entered on March 9, 2009, (App. at 23), and the Second Amended Judgment was entered on March 17, 2009. (App. at 26).

After the Unit received a copy of the Second Amended Judgment, it filed a Rule 10 Notice on April 29, 2009, pursuant to N.D.C.C. § 14-09-08.9. (Docket Entry No. 124). The Unit filed a (Rule) 3.2 Motion to Vacate Second Amended Judgment on October 5, 2009. (App. at 34). Affidavits of service for Nancy and Troy accompanied the 3.2 Motion to Vacate Second Amended Judgment filed with the Cass County Clerk of Court. (Docket Entry No. 131). Troy filed a Response to the 3.2 Motion to Vacate Second Amended Judgment on October 22, 2009. (App. at 45). Pursuant to Rule 3.2 of the North Dakota Rules of Court, Troy requested oral arguments in his Response to Motion to Vacate the Second Amended Judgment, but Troy failed to secure a time for the argument and did not serve notice to all other parties. (App. at 45). As Troy did not secure a time for oral argument, the Court granted the Unit's Motion to Vacate the

Second Amended Judgment, and the Notice of Findings and Order and Right of Review with Order Vacating the Second Amended Judgment were filed on December 1, 2009. (App. at 67-68) Troy filed an appeal on January 28, 2010. (App. at 69).

State ex. rel. Schlect v. Wolff, 2010 ND 101, 783 N.W.2d 642, remanded the matter to the district court, directing the court to ". . . consider N.D. Sup. Ct. Admin. R. 13 and clarify the order of the presiding judge to determine whether the referee had jurisdiction to hear the State's motion," at ¶8, and also to ". . . provide an explanation of its decision sufficient to inform the parties and allow this Court to properly review its decision," at ¶13.

On September 1, 2010, the Honorable Douglas R. Herman issued an Order remanding the matter to Referee Thomas (Solheim) to provide an explanation of the decision, and noting that the East Central Judicial District judges ". . . unanimously agreed to revise its Standing Order" which ". . . cleared up the ambiguity . . . as to whether separate individual case assignments are necessary." Concluding that ". . . all such cases are on referral without the need for a separate case-by-case referral order," the court considered the procedural issued resolved.

On November 17, 2010, Referee Solheim issued an Order vacating the Second Amended Judgment and provided a detailed explanation of the order. (App. at 86). On November 26, 2010, Wolff filed a REQUEST FOR REVIEW/APPEAL FROM "ORDER" AND "NOTICE OF FINDINGS AND ORDER AND RIGHT OF REVIEW & REQUEST FOR ORAL ARGUMENTS. (App. at 94) On December 13, 2010, the court, following North Dakota Administrative Rule 13(11), adopted and affirmed the referee's order. (App. at 99).

While Ms. Schlect's AFDC or TANF case is closed, she continues to have an open file with the Child Support Enforcement Title IV-D program, and the State remains a statutory party in interest.

STANDARD OF REVIEW

Child support determinations involving questions of law are subject to the de novo standard of review. Berge v. Berge, 2006 ND 46, ¶ 7, 710 N.W.2d 417. A court errs as a matter of law when the court does not make the required findings. Buchholz v. Buchholz, 1999 ND 36, ¶ 11, 590 N.W.2d 215. Questions of law are fully reviewable upon appeal. Wilhelm v. Wilhelm, 543 N.W.2d 488, 489-90 (N.D. 1996) (citing Gabriel v. Gabriel, 519 N.W.2d 293, 294 (N.D. 1994).

LAW AND ARGUMENT

1. Whether the State of North Dakota, as a Statutory Party in Interest, is entitled to relief from a stipulated amended judgment regarding child support that it did not sign or otherwise agree to.

The State of North Dakota is a party in the caption but was not a signatory to the Stipulation to Amend Judgment. Further, N.D.C.C. § 14-09-09.26 provides:

> The State is a real party in interest for purpose of establishing paternity and securing repayment of benefits paid, future support, and costs in action brought to establish, modify or enforce an order for support of a child in any of the following circumstances:
>
> 1. Whenever aid under chapter 50-09 or 50-24.1 is provided to a dependent child.
>
> 2. Whenever application is made and accepted under section 14-09-08.9 or 14-09-08.13.
>
> 3. Whenever duties are imposed on the state or its public officials under chapter 14-12.2.

It is not disputed that aid under chapter 50-09 was provided to a dependent child.

The North Dakota Supreme Court in McWethy v. McWethy, 366 N.W.2d 796, 798 (N.D. 1985) (citing N.D.R.Civ.P. 5(a)) held that a "judicial decision on the motion of one party without notice or opportunity to be heard by the other party, is contrary to fundamental principles of justice and due process, except under exigent circumstances with reasonably prompt subsequent notice and opportunity to be heard."

Troy claims the Unit engaged in discrimination because the matter initially involved paternity establishment. The Unit's use of "ex. rel." is not limited to paternity pleadings as the State of North Dakota has an interest in all IV-D cases and is properly and necessarily made a party. 42 U.S.C. § 654(25) requires a State IV-D program to provide services even after a family is no longer receiving assistance. The agency administering the IV-D plan shall:

> provide that if a family with respect to which services are provided under the plan ceases to receive assistance under the State program funded under part A [public assistance] of this subchapter, the State shall provide appropriate notice to the family and continue to provide such services, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under the plan, except that an application or other request to continue services shall not be required of such a family . . . . Id.

Troy acknowledges the State was a party in interest when Nancy applied for IV-D services to establish paternity but claims the State's interest was extinguished after paternity was established and public assistance closed. Troy continues to equate a case being opened or closed to IV-D with a case opened or closed to AFDC/TANF. The federal mandate in 42 U.S.C. § 654(25) requires the Unit to provide all of the same child support services received by families on public assistance to families who do not receive public assistance. Once a case starts to receive IV-D services, the State cannot

discontinue providing IV-D services unless the case closes based on the criteria listed in 45 C.F.R. § 303.11. None of the closing criteria apply in this case. Nancy has not made a request to close her file under 45 C.F.R. § 303.11(b)(8).

Troy continues to assert that because the case closed to public assistance, it then is closed to IV-D. In support of this assertion, Troy mistakenly cites to N.D. Admin. Code § 75-02-01.2, sections of the North Dakota Administrative Code that deal with TANF, not child support.

Other jurisdictions have addressed whether a child support enforcement agency has standing to bring a child support enforcement action when the case is non-public assistance. The Wyoming Supreme Court addressed this issue in Dept. of Family Svs,. Div. of Public Assistance and Social Services v. Peterson, 955 P.2d 884 (Wyo. 1998) (Peterson I) and in Dept. of Family Svs,. Div. of Public Assistance and Social Services v. Peterson, 960 P.2d 1022 (Wyo. 1998) (Peterson II). The court in Peterson I held the Department did not have an unconditional right to intervene in child support enforcement actions where the obligee was not receiving public assistance and the support was not assigned to the State. Peterson I, 955 P.2d at 888 (stating that "[t]he legislature did not see fit to confer upon the Department an unconditional right to intervene in child support enforcement actions."). The Department petitioned the Court for rehearing. The Court in Peterson II modified the original opinion in Peterson I holding the statutory language requirement to provide "the same services to applicants who are not recipients of public assistance" authorized the Department to bring an action to enforce a child support order without regard to the obligee's status as a recipient or non-recipient. Peterson II, 960 P.2d 1023 (citing Wyo. Stat. Ann. § 20-6 (106)(m)(ii) (1997) (repealed by 2000 Wyo.

Laws Ch. 53, 2). See also Maxwell v. State, 33 S.W. 3d 108,110 (Ark. 2000) (holding the Office of the Child Support Enforcement (OCSE) had standing as a party in a non-AFDC case because it was a party to the original action, having filed the paternity complaint.).

That aid under chapter 50-09 or 50-24.1 was provided to a dependent child was found to be a fact in the initial Findings of Fact, Conclusions of Law, and Order for Judgment. N.D.C.C. § 14-09-09.26 makes clear that such a fact gives statutory party in interest status to the State of North Dakota. The applicable regulations demonstrate that whether a case remains open for IV-D services is not determined by the current receipt of public assistance, but rather, in this case, by the actions of the recipient. There is no allegation that Nancy has requested to close her case. Without such a request, the case must receive IV-D services.

2. Whether the Second Amended Judgment complied with the Child Support Guidelines.

Troy's arguments regarding the procedural history of the case and the standing of the State are an attempt to distract this court from the numerous state laws and administrative rules that are violated by the stipulation. Upon being made aware of these violations, the court below properly vacated its prior decision and left the parties, including the State, responsible for modifying the child support obligations in conformity with those statues and rules.

The child support paragraph in the vacated Second Amended Judgment contains unenforceable language. Troy and Nancy cannot contract away the right to receive support since the right to support belongs to the child. Sweeney v. Sweeney, 2002 ND

206, ¶ 22, 654 N.W.2d 407 (providing the custodial parent may have a representational right to collect child support on behalf of the child, but "child support belongs to the child."). Troy "agrees that he will not seek child support from the Plaintiff, unless he obtains public assistance and is required to seek child support from the Plaintiff by the governmental authority providing public assistance to him." As the Unit pointed out in its motion to Vacate Second Amended Judgment, the right to support belongs to the child, and not to the Defendant. Even if Troy did not "obtain public assistance," a court of equity would not prevent Troy from applying for IV-D services (which would require our program to pursue a support obligation). N.D.C.C. § 14-09-09.32 specifically addresses agreements to waive child support:

> **Agreements to waive child support.** An agreement purporting to relieve an obligor of any current or future duty of child support is void and may not be enforced. An agreement purporting to waive past-due child support is void and may not be enforced unless the child support obligee and any assignee of the obligee have consented to the agreement in writing and the court has been approved by a court of competent jurisdiction. A copy of the order of approval must be provided to the state disbursement unit. As used in this section, "child support" does not include spousal support.

The statute is clear that parties may agree to waive past-due support, as long as the agreement is in writing, it is approved by court, and a copy of the order of approval is provided to the SDU, but parties cannot waive current or future child support obligations. The obligation to support children arises by operation of law, not contract. Stipulations that waive a parent's right to receive child support are against public policy and may not be enforced. Reimer v. Reimer, 502 N.W.2d 231, 233 (N.D. 1993). See also Lee v. Lee, 2005 ND 129, ¶ 8, 699 N.W.2d 842 (stating the court takes a "dim view of agreements purporting to sign away the rights of a child in a support settings – not from a contractual background, but from a public policy one.").

Troy and Nancy's agreement functions as an offset prohibited by N.D.C.C. §14-09-09.33(5) (providing an obligor's current or future child support obligation may not be offset by past-due child support or other debts owed to the obligor by an obligee) (amended in 2009). Nancy is agreeing to waive Troy's past-due support, and Troy is promising not to seek to establish a current child support obligation against Nancy, effectively offsetting Troy's arrears with Nancy's current child support obligation.

In addition to violating N.D.C.C. § 14-09-09.32 and N.D.C.C. §14-09-09.33(5), the agreement violates the child support guidelines in two significant ways: 1) there is no determination of net monthly income or a support obligation for either parent as is required by the guideline addressing equal residential responsibility, and 2) it purports to base any obligation of only Troy on the level of Social Security benefits that either Nancy or Troy may secure.

N.D.C.C. § 14-09-09.7(4) creates a rebuttable presumption that the amount of child support resulting from application of the child support guidelines is the correct amount of child support. See also 42 U.S.C.A. § 667(b)(2) and 45 C.F.R. § 302.56 (providing that the child support guidelines must be used and that these provisions are not limited to IV-D cases).

Troy and Nancy have equal primary residential responsibility pursuant to N.D. Admin. Code § 75-02.04.1-08.2. The child support guidelines require that a separate child support obligation for each parent be calculated assuming the other parent is the custodial parent of the child. The lesser obligation is subtracted from the greater. The difference is the amount owed by the parent with the greater obligation. The offset of child support obligations is for payment purposes only and must be discontinued for any

month in which the rights to support of a child for whom the obligation was determined are assigned to a government agency as a condition of receiving public assistance.

The language in Troy and Nancy's child support paragraph does not comply with the child support guidelines because it does not calculate an obligation for each parent. The closest it comes to calculating an obligation is when it addresses the possibility that either party may receive disability benefits.

The Social Security children's benefit language does not comply with the North Dakota Child Support Guidelines in two basic ways: 1) it confuses crediting a derivative disability payment toward the support obligation with setting the obligation at the children's benefit amount; and 2) its asymmetry, treating potential children's benefits derivative of either party's disability as payable only to Nancy, demonstrates that the agreement avoided setting obligations based on the parties net monthly income.

The child support paragraph in the vacated Second Amended Judgment provides: "However, if either Plaintiff or Defendant is successful in obtaining social security administrative disability, then, in that event, the social security benefit to the parties' minor child shall be paid to Plaintiff Nancy Ann Schlect as child support."

N.D. Admin. Code § 75-02-04.1-02(11) provides "[a] payment of children's benefits made to or on behalf of a child must be credited as a payment toward the obligor's support obligation in the month it is intended to cover, but may not be credited as a payment toward the child support obligation for any other month or period." (emphasis added). See Tibor v. Bendrick, 1999 ND 92 ¶ 9, 593 N.W.2d 395.

But crediting the benefit as a payment toward the support obligation is very different from automatically setting the obligation at that benefit amount. Crediting a

disability benefit as a payment toward the support obligation is largely a matter of bookkeeping. Adjustments are made to the ledger to show that payments have been directly made to the child rather than having passed through the State Disbursement Unit.

While crediting such payments does not, by itself, modify the underlying obligation, since such payments are considered credits for the obligor, they are also considered income for purposes of determining a support obligation. See N.D. Admin. Code § 75-02-04.1(5)(b). A child support obligation is based on the guidelines, not on social security derivative benefits. Lautt v. Lautt, 2006 ND 161, ¶ 7, 718 N.W.2d 563 (stating a district court is required to follow the guidelines and set forth how it assessed income and determined child support).

Troy and Nancy agreed that if either one of the parties should obtain Social Security Disability, and the child is eligible for a derivative benefit, that benefit would be paid to Nancy as child support.

By the terms of the agreement, if Nancy were to become disabled and the child were to qualify for children's benefits, such money would be paid to Nancy as child support. But who is to receive the credit? How would the State maintain a record of child support payments as required by N.D.C.C. § 50-09-02.1? Is it the intent of the agreement that Troy's child support obligation would be set at the child's benefit amount, even though that amount is based on Nancy's disability? If so, the agreement is absurd as it would base Troy's child support obligation not on his ability to pay, but rather on an element of Nancy's gross income. If the intent is to use that children's benefit amount as the basis for Nancy's support obligation, why is it payable to herself, and what would

Troy's obligation be based upon, since the guidelines are clear that in instances of equal primary responsibility that obligations are to be calculated for each parent?

3. Whether Troy was entitled to a hearing considering his failure to comply with N.D.R.Ct. 3.2(a)(2).

N.D.R.Ct. 3.2(a)(2) provides "the motion is deemed submitted to the court unless counsel for any party requests oral argument on the motion." Troy requested oral argument in his Response to Motion to Vacate; Request for Oral Arguments. However, Troy did not comply with the N.D.R.Ct. 3.2(a)(3) requirement that "[t]he party requesting oral argument shall secure a time for the argument and serve notice upon all other parties." See In re Adoption of J.S.P.L., 532 N.W.2d 653, 657 (N.D. 1995) (stating "failure to secure a time for oral argument renders the request incomplete"). The district court's order vacating the Second Amended Judgment came fifty-seven days after the State's Rule 3.2 motion and forty days after Troy's incomplete request. Because Troy's request was incomplete, he was not entitled to a hearing, and the court was not required to wait indefinitely until Troy got around to securing a time for hearing.

Upon remand, and following the district court's clarification of the order of the presiding judge, and following the referee's explanation of the decision, Troy requested district court review and a hearing. However, N.D. Sup. Ct. Admin. R. 13(11) does not require the district court to hold a hearing. Rather, the rule requires de novo review of the record, and the court may 1) adopt the referee's findings; 2) remand to the referee for additional findings; or 3) reject the referee's findings. The only mention of a hearing in the rule is subpart (c), and that is limited to situations where the district court judge rejects the referee's findings, and even in that circumstance, a hearing is optional.

4. Whether the Referee had jurisdiction.

Troy argues that the referee was without jurisdiction to consider the matter. N.D.C.C. § 27-05-30(2) permits a district court judge to "assign a referee to preside in any case or proceeding provided for in title 14." N.D. Sup. Ct. Admin. R. 13(5)(c) requires the presiding judge of the judicial court district to sign the order giving the judicial referee authority to hear a case and provide a copy of the order to the State Court Administrator. "A copy must be made available to any party upon request." N.D. Sup. Ct. Admin. R. 13(5)(d) provides: "Within the limits set forth in the written order of the presiding judge, district court judges may refer individual cases or classes of cases to a judicial referee by written order. (emphasis added) On September 5, 2008, by order of the presiding judge of the East Central Judicial District, Referee Thomas was appointed to preside over matters including Title 14 of the North Dakota Century Code, which includes matters regarding the support of children. Upon remand, the East Central Judicial District cleared up any ambiguity in regard to the order by specifically referring the class of cases that involve child support matters.

Troy argues that N.D. Sup. Ct. Admin. R. 13(8) requires case-specific notification to the parties prior to the assignment of a judicial referee. The rule reads: "Any party to a proceeding before a judicial referee is entitled to have the matter heard by a district court judge, if written request therefor is filed by the party within five days after service of either initiating documents or other notice informing the party of this right." Troy could have filed a written request to have the matter heard by a district court judge pursuant to N.D. Sup. Ct. Admin. R. 13(8), but did not.

Troy was served with Notice of Findings and Order and Right of Review giving him an opportunity to request a review by a district court. Parties were served with the Order Vacating Second Amended Judgment along with Notice of Findings and Order and Right of Review. (App. at 67-68). See N.D. Sup. Ct. Admin. R. 13(10) (stating "[c]opies of findings and order together with written notice of the right of review must be promptly served on the parties in accordance with N.D.R.Civ.P. 5."). Troy had an opportunity to request district court review after the Judicial Referee issued the Notice of Findings and Order vacating the Second Amended Judgment and Right of Review. Troy chose not to request district court review and instead filed a Notice of Appeal. (App. at 69).

5. Whether the IV-D program is unconstitutional.

A parent's constitutional right to the care custody and control of minor children is not absolute. Troy relies on Troxel v. Granville, 530 U.S. 57 (2000) to support his argument that parents have fundamental right to the care, custody, and control of their children. The Court in Troxel v. Granville addressed third-party visitation statutes and a parent's right to make child-rearing decisions. The U.S. Supreme Court held that parental rights may not be interfered with under the guise of protecting the public interest by legislative action that is arbitrary or without reasonable relation to some purpose, within the competency of the state to act, but the Court pointed out that it "...has never held that the parent's liberty interest in this relationship is so inflexible as to establish a rigid constitutional shield, protecting every arbitrary parental decision from any challenge absent a threshold finding of harm." Troxel, 530 U.S. 57 at 86.

The North Dakota Child Support statutes "set forth a strong public policy requiring courts to assure minor children receive proper support and maintenance."

Houmann v. Houmann, 499 N.W.2d 593, 594 (N.D. 1993). (stating "N.D.C.C. § 14-09-09.7(3) creates a rebuttable presumption that the amount of child support resulting from application of the child support guidelines is the correct amount of child support.").

CONCLUSION

Because the Judicial Referee properly granted the Unit's Motion to Vacate Second Amended Judgment pursuant to Rule 60(b) of the North Dakota Rules of Civil Procedure, the Unit requests that the Court affirm the Judicial Referee's Order vacating the Second Amended Judgment.

Respectfully submitted this 8th day of April, 2011.

Janet K. Naumann (ND Bar ID #05996)
Special Assistant Attorney General
Department of Human Services/Appellee
4950 13th Avenue South, Suite 22
Fargo, ND 58103
(701)298-4900
fargocse@nd.gov

John Waller (ND Bar ID #05623)
Special Assistant Attorney General
Department of Human Services/Appellee
4950 13th Avenue South, Suite 22
Fargo, ND 58103
(701)298-4900
fargocse@nd.gov

ORIGINAL

IN THE SUPREME COURT, STATE OF NORTH DAKOTA

State of North Dakota, County of Cass, ex. rel. Nancy Ann Schlect, formerly known as Nancy Ann Neva, and C.A.W., a minor child,

Plaintiffs and Appellees,

vs.

Troy Allan Wolff,

Defendant and Appellant

AFFIDAVIT OF SERVICE BY MAIL

Supreme Co. 20110036

Cass Co. 09-96-R-02147

STATE OF NORTH DAKOTA)
) ss:
COUNTY OF CASS)

The undersigned, being first duly sworn on oath, deposes and says that she is over the age of 18 and not a party to the above-entitled matter.

On the 8 day of April, 2011, affiant deposited in the United States Mail at Fargo, North Dakota, a true and correct copy of the following document(s) in the above-entitled matter:

APPELLEE'S BRIEF

The copies of the foregoing were securely enclosed in an envelope with postage duly prepaid and addressed as follows:

Jonathan T. Garaas
Attorney At Law
1314 23rd St s
Fargo, ND 58103-3796

Nancy Schlecht
PO Box 36
Casselton, ND 58012-0036

To the best of affiant's knowledge, the address above-given was the actual post office address of the party intended to be so served. The above documents were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

Onica Johnson

The foregoing instrument was acknowledged before me this 8 day of April, 2011.

Megan Nettum
Notary Public
Cass County, North Dakota

MEGAN NETTUM
Notary Public
State of North Dakota
My Commission Expires Feb. 7, 2013