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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Lindsey Hysjulien,	**Supreme Court Case No. 20120163**
Appellant,	
vs.	
Hill Top Home of Comfort, Inc., and Greg Armitage,	
Appellees.	

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STATE OF NORTH DAKOTA

BRIEF OF APPELLANT LINDSEY HYSJULIEN

APPEAL FROM MEMORANDUM OPINION GRANTING SUMMARY JUDGMENT DATED JANUARY 11, 2012, AND JUDGMENT DATED JANUARY 24, 2012, DUNN COUNTY DISTRICT COURT SOUTHWEST JUDICIAL DISTRICT THE HONORABLE H. PATRICK WEIR

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STATEMENT OF THE ISSUES

I. Did the District Court improperly grant Summary Judgment to Defendants for Lindsey Hysjulien's claims of violations of Title VII and the North Dakota Human Rights Act?

II. Did the District Court improperly grant Summary Judgment to defendants for Lindsey Hysjulien's claims of intentional and negligent infliction of emotional distress?

STATEMENT OF THE CASE

1 Lindsey Hysjulien ("Hysjulien") brought this action against Defendants for sexual discrimination, hostile work environment, and intentional and negligent infliction of emotional distress resulting there from. Defendants brought a Motion for Summary Judgment challenging the timeliness of Hysjulien's action and the lack of outrageous conduct necessary for the emotional distress claims. The District Court, the Honorable H. Patrick Weir, granted Defendants' motion for Summary Judgment as to all Hysjulien's claims. As Hysjulien did timely bring this action, and made numerous allegations of the outrageous conduct and the necessary bodily injury as required by North Dakota's notice pleading requirements, Defendants' Motion for Summary Judgment was premature and should not have been granted. This appeal followed.

STATEMENT OF FACTS

2 Hill Top Home of Comfort, Inc. ("Hill Top") is a long term care facility at which Hysjulien was employed as an occupational therapist beginning in 1999. See

Joint Appendix (hereinafter "JA"), Affidavit of Lindsey Hysjulien ("Hysjulien Affidavit"). Approximately five years later Hysjulien was promoted to the head of the Occupational/Physical Therapy Department. Id. Hysjulien continued in that position until September 30, 2008.

3 In May 2005, while attending a conference with other department heads and Mr. Greg Armitage ("Armitage"), the administrator/CEO of Hill Top, Hysjulien was assaulted by Armitage. Id. Hysjulien had fallen asleep and been left in Armitage's room at Armitage's request. Id. Hysjulien awoke shortly after everyone else had left the room when Armitage was on top of her trying to take off her clothes. Id. Armitage had already removed all of his own clothing and was naked. Id. Hysjulien objected and eventually Armitage stopped his assault and Hysjulien left his room. Id.

4 Upon return to Hill Top, Hysjulien was treated much differently and in a hostile manner. Id. In January 2006, Hysjulien reviewed the wages for her department and learned that a male therapist was receiving wages and benefits at a higher rate than other female employees in the department, including her. Id. When Hysjulien asked Armitage about the disparity, she learned that Armitage had made a deal with the male employee and that Armitage was unwilling to make any such deal with Hysjulien. Hysjulien was also treated differently – in a hostile manner – than other department heads. Id.

5 Armitage also would not allow Hysjulien to hire a qualified physical therapist for an opening in her department, effectively keeping her department short of employees. Id. When an occupational therapist submitted her resignation in August

2008, to be effective September 10, 2008, Hysjulien with Armitage's approval advertised for the open position but, only for one week. Id. The deadline for the applications was set at September 5, 2008, a Friday. Id.

6 On September 2, 2008, Hysjulien met with Armitage and she was told that the Board of Directors of Hill Top had met and had voted – at Armitage's recommendation – to close the Occupational/Physical Therapy Department of which Hysjulien was still the Department Head and that her position would be terminated. Id. Hysjulien advised Armitage that she had been receiving calls for the open positions and that the deadline for applications was still set at Friday, September 5, 2008. Id. At that September 2, 2008, meeting with Armitage, Hysjulien was told that a decision on closing the Department would not be made until after the September 5, 2008, application deadline. Id.

7 On Monday, September 8, 2008, Hysjulien again spoke with Armitage and discussed the calls Hysjulien had received and Armitage told Hysjulien that her department would be closed. Id. Hysjulien asked Armitage for written notice that her position was indeed terminated and asked that the notification be backdated to their meeting on September 2, 2008. Id. On September 9, 2008, Hysjulien received the backdated notice from Armitage. Id.

8 Through Hysjulien's last day of employment, Armitage continued to treat her differently and in a hostile manner. Id. Hill Top had a policy of paying its' employees additional pay if they were required to work short staffed in their department. Id. Hysjulien worked short staffed seven days of the last several weeks

of her employment following her September meetings with Armitage and, when she found in her final paycheck that she had not been paid the compensation for working short staffed, she contacted Armitage about the shortage and was told she would not be paid the short staffing pay. Id.

9 Shortly after she left employment at Hill Top, Hysjulien contacted the North Dakota Department of Labor ("ND DOL") and related the facts of the sexual assault and her termination of employment from Hill Top. Id. Instead of taking a complaint, the ND DOL referred her to the North Dakota Attorney General's Office. Id. The North Dakota Attorney General's Office referred her to local law enforcement to file criminal charges against Armitage. Id. Hysjulien elected not to contact local law enforcement authorities and proceed with criminal charges against Armitage. Id.

10 After retaining counsel, on July 1, 2009, Hysjulien filed a charge of discrimination with the ND DOL naming both Hill Top and Armitage. Id. Hysjulien erroneously included that the last day of discrimination was "9/2/2008" not understanding the significance of the date Armitage actually advised her unequivocally that her position would be terminated was September 8, 2008, rather than September 2, 2008. Moreover, until her attorney learned that the hostile and discriminatory acts by Armitage/Hill Top continued through her last day of employment, this information was also not relayed to the ND DOL until later. Id. In any event, the ND DOL dismissed Hysjulien's initial charge on the very day it was received by the ND DOL, July 2, 2009, as being received on the 303rd day or beyond the 300 day statute of limitations. Id.

11 Through continued discussions between Hysjulien's attorney and the ND DOL, although the initial charge of July 1, 2009, was dismissed by the ND DOL on July 2, 2009; on July 24, 2009, additional charge documents were completed and sent to the ND DOL; which documents on July 27, 2009, the ND DOL redrafted and returned again to Hysjulien, which Hysjulien signed on July 28, 2009. Id. It is crucial to note that the initial charge of July 1, 2009, filed by Hysjulien was given the agency number by the ND DOL "NDE1001005." Id. This number remained the ND DOL identification number through each subsequent charge document and correspondence thereafter. Id. Moreover, the facts and substance of the charge remained essentially the same from the initial filing through the last filing. Id.

LAW AND ARGUMENT

I. Scope of Review.

12 The standard for summary judgment and appellate review whether summary judgment was appropriately granted is well-settled:

> "Summary judgment . . . is 'a procedural device for promptly resolving a controversy on the merits without a trial if [there are no genuine issues of] material facts or the inferences to be drawn from the undisputed facts, or if resolving disputed facts would not alter the result.'" Great W. Bank v. Willmar Poultry Co., 2010 ND 50, ¶ 5, 780 N.W.2d 437 (quoting Farmers Union Mut. Ins. Co. v. Associated Elec. and Gas Ins. Servs. Ltd., 2007 ND 135, ¶ 7, 737 N.W.2d 253); Markwed Excavating, Inc. v. City of Mandan, 2010 ND 220, ¶ 10, 791 N.W.2d 22. "'In determining whether summary judgment was appropriately granted, we must view the evidence in the light most favorable to the party opposing the motion, and that party will be given the benefit of all favorable inferences which can reasonably be drawn from the record.'" Markwed Excavating, at ¶ 10 (quoting Lucas v. Riverside Park Condos. Unit Owners Ass'n, 2009 ND 217, ¶ 16,

> 776 N.W.2d 801). "'Whether summary judgment was properly granted is a question of law that this Court reviews de novo on the entire record.'" Great W. Bank, at ¶ 5 (quoting Schleuter v. Northern Plains Ins. Co., 2009 ND 171, ¶ 6, 772 N.W.2d 879).

Spratt v. MDU Resources Group, 2011 ND 94, ¶ 6, 797 N.W.2d 328. In Opp v. Source One Management, 1999 ND 52, ¶ 16, 591 N.W.2d 101, 106-07, this Court stated:

> At the summary judgment stage, the non-moving party gets the benefit of all favorable inferences, and thus neither we nor the trial court are allowed to weigh evidence, determine credibility, or attempt to discern the truth of the matter. Quick v. Donaldson Co., 90 F.3d 1372, 1376-77 (8th Cir. 1996) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986)). The federal courts generally recognize summary judgment is seldom appropriate in the employment discrimination context where factual inferences are often the basis of the claim. Breeding v. Arthur J. Gallagher & Co., 164 F.3d 1151, 1156 (8th Cir. 1999); Smith v. St. Louis Univ., 109 F.3d 1261, 1264 (8th Cir. 1997). In a similar vein, we have long held issues dealing with negligence or the reasonable person standard are generally inappropriate for summary judgment. Hougum v. Valley Mem. Homes, 1998 ND 24, P24, 574 N.W.2d 812 [reasonable person standard]; Vandal v. Peavey Co., 523 N.W.2d 266, 267 (N.D. 1994) [negligence].

13 The Opp Court stated further: "Summary judgment is a procedural device for properly disposing of a lawsuit without trial if, after viewing evidence in a light most favorable to the non-moving party, there "are no genuine issues of material fact or conflicting inferences which can reasonably be drawn from undisputed facts, or if the only issues to be resolved are questions of law." [Citation omitted]. Opp, at ¶ 15. In the instant employment discrimination matter, there are indeed disputes of material fact and there are obvious issues even of undisputed facts.

14 Therefore, long-standing summary judgment standards would require that summary judgment have been denied to Defendants' motion. The District Court erred in ignoring direct evidence of sexual discrimination and a hostile work environment that continued until Hysjulien's last day of employment with Hill Top and the District Court's grant of summary judgment to Defendants must be reversed.

II. Defendants' argument that Hysjulien's charge of discrimination is beyond the 300 day deadline and therefore time-barred is wrong.

15 Defendants were correct in citing both N.D.C.C. § 14-02.4-19 of the North Dakota Human Rights Act and 42 U.S.C. § 2000e-5(e)(1) for the 300 day time period within which to bring a claim of discrimination. When a cause of action accrues for applying a statute of limitations is normally a question of fact unless the facts are undisputed. See, Johnson v. Hovland, 2011 ND 64, ¶ 13, 795 N.W.2d 294. Defendants then went on to misapply the facts to conclude that Hysjulien's charge is untimely. The facts to determine when Hysjulien's claim is timely are clearly disputed and summary judgment was improper.

16 In their motion, Defendants used July 28, 2009, as the date Hysjulien filed her charge with the ND DOL. Obviously, based on Hysjulien's Affidavit and supporting documents, Hysjulien's **initial** filing received by the ND DOL for discrimination by these Defendants was on July 2, 2009. JA 9, Hysjulien Affidavit, p. 49. The internal procedures thereafter of the ND DOL in "investigating and pursuing" Hysjulien's charge do not change that July 2, 20009, date of her initial filing. In addition, the

initial filing named Hill Top and Armitage and Hysjulien set out fully the same facts and allegations that were utilized in all subsequent charge filings requested by the ND DOL thereafter. Moreover, even the ND DOL viewed all the initial and subsequent filings to be filed under the same internal ND DOL number given to Hysjulien's initial filing – NDE1001005. Id. pp. 49-51 and see, Ex 3 attached thereto. Therefore, by law, Hysjulien's initial filing dated July 1, 2009, was received by the ND DOL on July 2, 2009, and subsequent correspondence and charge documents requested by the ND DOL were redundant.

17 Defendants keep referring to the letter of Armitage to Hysjulien dated September 2, 2008, as the date from which the 300 day deadline must be counted to determine if Hysjulien's charge was within the 300 day deadline as set out in the above statutes. Again, the Defendants are wrong that the September 2, 2008, date is the critical date related to Hysjulien's charge of discrimination.

18 The importance of the date is related to when Hysjulien received the "notice of her termination of her employment at Hill Top." But, Defendants over-emphasize dramatically that Hysjulien's discrimination charge lives or dies based on the date of the September 2, 2008, letter.[1]

19 Hysjulien agrees that she met with Armitage on Tuesday, September 2, 2008, and Armitage told her about the recent Board meeting and discussed with her closing

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[1] Defendants also pointed out the ND DOL used the date of the September 2, 2008, letter for its initial – and apparently a later decision – related to Hysjulien's claim filed with the ND DOL. For the very same reason that Defendants are wrong, so obviously was the ND

her department and ending her employment. Id. Hysjulien Affidavit, p. 50-51. However, Hysjulien testifies that although she and Armitage discussed closing the department and her termination that would result should the department be closed, they also discussed an advertisement for a therapist which was still running in the *Bismarck Tribune* through Friday, September 5, 2008, and that Hysjulien was receiving calls of interest for the position. Id. Hysjulien testifies that at the September 2, 2008, meeting, it was agreed that the advertisement should run its course and that no final decision would be made regarding Hysjulien's department and her continued employment at Hill Top until after that date. Id. at p. 46-47.

20 As it would turn out, no applications were received by Friday, September 5, 2008. Id. at p. 47. Hysjulien met with Armitage again on Monday, September 8, 2008, at which time Armitage told her that she would be terminated effective September 30, 2008. Id. Supporting Hysjulien's testimony in regard to the actual date she received "unequivocal notice" of her termination is Monday, September 8, 2008, are the advertisement for the position from the *Bismarck Tribune* dated Wednesday, August 26, 2008 (Id. and see, Ex 1 attached thereto), and an email that she sent to Armitage following her meeting with him on September 8, 2008, asking for written notice of her termination but dated for the "last Tuesday," September 2, 2008. Id. and see, Ex. 2 attached thereto. Why she asked for the letter to be backdated to the previous Tuesday is quite simply unknown but, she obviously did

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DOL wrong.

ask – on the date she was informed unambiguously that she was to be terminated, September 8, 2008. Id.

21 One court in addressing a similar issue stated:

> Quite simply, the 180-day charge filing period does not run until the plaintiff is told that she is actually being terminated, not that she *might* be terminated *if* future contingencies occur. See Grayson v. K Mart Corp., 79 F.3d 1086, 1100 n. 19 (11th Cir.1996) (noting that the EEOC charge filing period does not begin to run until the employee receives "unequivocal notice of the adverse employment decision."); Pearson v. Macon-Bibb County Hosp., 952 F.2d 1274, 1279-80 (11th Cir.1992) (holding that trial was necessary to determine the availability of equitable tolling when an employee was told she could resign, apply for a transfer or, if she refused those options, be terminated); Cocke v. Merrill Lynch & Co., 817 F.2d 1559, 1561 (11th Cir.1987) (holding that the charge filing period was equitably tolled when the employee's notice of termination stated that the employer was pursuing positions for the employee within the company "until such time as it is or should be apparent to an employee with a reasonably prudent regard for his rights that the employer has ceased to actively pursue such a position."); see also Delaware State College v. Ricks, 449 U.S. 250 at 258, 101 S. Ct. 498, 66 L. Ed. 2d 431 ("The only alleged discrimination occurred-and the filing limitations periods therefore commenced-at the time the tenure decision was made and communicated to Ricks."). Beginning the charge-filing period any earlier would make little sense: to require a plaintiff to file a discriminatory termination charge with the EEOC prior to the receipt of notice of termination would be to require a filing prior to the occurrence of the discriminatory conduct, thereby charging the EEOC with responsibility for the arguably advisory task of investigating a hypothetical case of discrimination.

Stewart v. Booker T. Washington Ins., 232 F.3d 844, 849 (11th Cir. 2000).

22 This holding in Stewart was followed in Wright v. AmSouth Bancorporation, 320 F.3d 1198, 1203 (11th Cir.). Of course, this holding only makes logical sense. Based on her September 2, 2008, discussion with Armitage, had another therapist applied and been hired by Hill Top, it is likely that Hysjulien would have remained

employed. Therefore, it only makes sense that the **unequivocal** notice on September 8, 2008, would start the time period accruing for Hysjulien's termination. This is a critical – and obviously material – factual dispute as it is 303 days from September 2, 2008, to July 2, 2009, while it is 297 days between September 8, 2008, to July 2, 2009.

23 Obviously, viewing the facts in a light favorable to Hysjulien and, giving her any favorable inferences, any question whether her complaint was filed within 300 days of her actual notice of termination **must** be resolved in her favor. The District Court did not even discuss the factual dispute related to the timeliness of Hysjulien's filing with the ND DOL in its decision, the District Court simply found that Hysjulien's claim was untimely. Whether Hysjulien's initial filing with the ND DOL is timely (within 300 days) is a factual finding and cannot be determined for summary judgment purposes.

III. Because Hysjulien's charge and action are also claiming hostile work environment claims, there is no single discrete act or date before her actual termination date that would start the statute of limitations running.

24 Of course, the dispute over when Hysjulien received unequivocal notice of her termination makes a difference only because July 2, 2009, the date of Hysjulien's initial filing with the ND DOL is the 303rd day after the September 2, 2008, date while it is the 297th day from September 8, 2008, and, therefore, within the 300 day deadline for a charge to be filed. This truly matters **only if Hysjulien's discrimination charge were based solely on her termination!**

25 However, that is obviously NOT the case. As pointed out by the United States Supreme Court majority in National Railroad Passenger Corp. (Amtrak) v. Morgan, 536 U.S. 101, 115, 122 S. Ct. 2061, 153 L.Ed.2d 106 (2002):

> Hostile environment claims are different in kind from discrete acts. Their very nature involves repeated conduct. See 1 B. Lindemann & P. Grossman, Employment Discrimination Law 348-349 (3d ed. 1996) (hereinafter Lindemann) ("The repeated nature of the harassment or its intensity constitutes evidence that management knew or should have known of its existence"). The "unlawful employment practice" therefore cannot be said to occur on any particular day. It occurs over a series of days or perhaps years and, in direct contrast to discrete acts, a single act of harassment may not be actionable on its own. See Harris v. Forklift Systems, Inc., 510 U.S. 17, 21, 126 L. Ed. 2d 295, 114 S. Ct. 367 (1993) ("As we pointed out in Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 67, 91 L. Ed. 2d 49, 106 S. Ct. 2399 (1986), 'mere utterance of an . . . epithet which engenders offensive feelings in a employee,' ibid. (internal quotation marks omitted) does not sufficiently affect the conditions of employment to implicate Title VII"). Such claims are based on the cumulative affect of individual acts.

26 Morgan went further:

> A hostile work environment claim is comprised of a series of separate acts that collectively constitute one "unlawful employment practice." 42 U.S.C. § 2000e-5(e)(1). The timely filing provision only requires that a Title VII plaintiff file a charge within a certain number of days after the unlawful practice happened. It does not matter, for purposes of the statute, that some of the component acts of the hostile work environment fall outside the statutory time period. Provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court for the purposes of determining liability.

27 Morgan, 536 U.S. at 117. The District Court did not even reference the hostile work environment claim in its decision granting Defendants summary judgment. Again, this is completely improper and the District Court could only have

reached its conclusion granting Defendants summary judgment if viewing the facts in favor of the Defendants.

28 Hysjulien's discrimination charge to the ND DOL – and the action she brought against Defendants – alleges sexual conduct and assault, i.e. sexual harassment, differential and hostile treatment thereafter, wrongful termination, and wage differences all based both on hostile action creating a hostile work environment and sexual discrimination. Although Hysjulien testifies in her Affidavit that the actual date of notice of her termination is within the 300 day deadline as discussed, supra, the hostile work environment and wage discrimination continued through her **last day of employment** which it is undisputed was September 30, 2008. Indeed, Hysjulien includes in her Affidavit that the hostile and differential treatment by Defendants even included her last day of employment, September 30, 2008, when Armitage refused to pay the same differential to Hysjulien as other employees received for working short staffed – clearly treating her differently, and in a hostile manner. JA 9, Hysjulien Affidavit, p. 48. Thus, every charge document filed with the ND DOL – each at the request of the ND DOL – was undisputedly within the 300 day deadline of her last date of employment, September 30, 2008. Therefore, Hysjulien's complaints of discrimination – hostile work environment – were filed within the 300 day deadline and, contrary to Defendants' argument otherwise, Hysjulien's action is not time-barred. The timeliness of Hysjulien's filing is at the very least a dispute of material fact.

29 Hysjulien's hostile work environment began after she talked her way out of a sexual assault by Armitage in 2005 but, the hostile work environment facts alleged continued up through her last day of employment, September 30, 2008. There is not a single discrete act which constituted the basis for Hysjulien's claims but, a series of acts and non-acts which constitute the hostile work environment and, therefore, her action is not time-barred.

IV. Of course, this same argument applies to Hysjulien's claims of hostile and discriminatory practices related to her wages and those claims are not time-barred.

30 There is not a single discrete act that constitutes the retaliatory, hostile and discriminatory decisions made by Armitage related to Hysjulien's wages and benefits. Indeed, as apparent in Hysjulien's Affidavit, Armitage's decisions to pay her differently continued to be made up through her last day of employment, September 30, 2008. JA 9, Hysjulien Affidavit, p. 48. Thus, Hysjulien's wage and benefit claims are not beyond the statute of limitations.

V. Hysjulien's claims of intentional and negligent infliction of emotional distress are not time-barred and wholly supported by the facts.

31 As discussed, supra, Hysjulien's claims for sexual discrimination are not time-barred. Thus, all of her claims arising there from are not time-barred either.

32 As to Defendants' argument that her claims for intentional and negligent infliction of emotional distress should – even if not time-barred – be dismissed as there are not enough allegations of enough distress; there are more than enough allegations of distress along with the distress that would be expected to follow the

hostile and discriminatory environment that Hysjulien was required to suffer to support both claims. Keeping in mind that this matter is at the summary judgment stage and all inferences must be made favorably for the non-movant, and there has been very little discovery undertaken as yet in this matter, given the allegations made of the type of acts constituting Hysjulien's hostile work environment which include a near-rape, followed by years of hostile treatment thereafter, Hill Top's/Armitage's ...conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

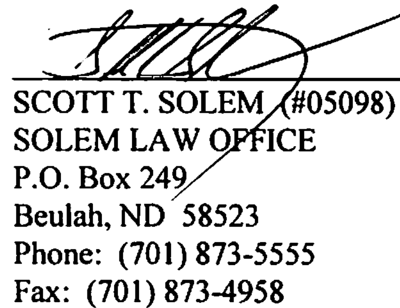
33 Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!" Muchow v. Lindblad, 435 N.W.2d 918, 924 (N.D. 1989). Application of this holding was done in an employment case at the summary judgment level in Swenson v. Northern Crop Ins. Inc., 498 N.W.2d 174 (1993) and the court rightly found that on the facts in that case, there were sufficient facts for the issue to be decided by the trier-of-fact. In reviewing the facts of the Swenson case to the instant case, the conduct of Defendants is much, much more extreme and outrageous. Therefore, summary judgment would be improper.

CONCLUSION

Hysjulien's filings of discrimination are timely. Moreover, the timeliness of Hysjulien's filings are at the very least, a dispute of material fact. All of Hysjulien's claims arising out of the sexual discrimination and hostile environment are supported

by her Amended Complaint and her Affidavit. Viewed in the light most favorable to Hysjulien, as they must be at Summary Judgment, the conduct of Defendants is most certainly outrageous and a trier of fact could so find. The District Court's grant of Summary Judgment was inappropriate and must be overturned.

Respectfully submitted this 27th day of April, 2012.



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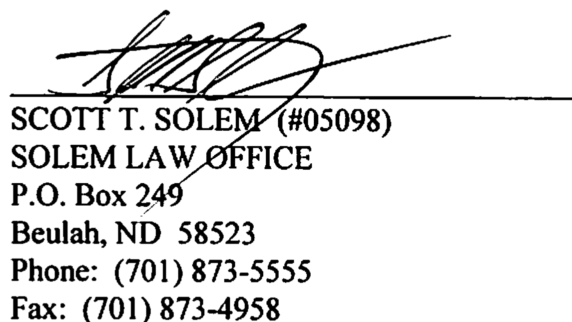
CERTIFICATE OF COMPLIANCE

The undersigned, as the attorney representing Appellant , Lindsey Hysjulien and the author of this Brief hereby certifies that said brief complies with Rule 32(a)(7)(A) of the North Dakota Rules of Appellate Procedure, in that it contains 4,373 words from the portion of the brief entitled "Statement of the Case " through the signature block. This word count was done with the assistance of the undersigned's computer system, which also counts abbreviations as words.

DATED this 27th day of April, 2012.



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SOLEM LAW OFFICE
P.O. Box 249
Beulah, ND 58523
Phone: (701) 873-5555
Fax: (701) 873-4958

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Lindsey Hysjulien,	)	Supreme Court Case No. 20120163
Appellant,	)	
vs.	)	
Hill Top Home of Comfort, Inc., and Greg Armitage,	)	
Appellees.	)	

AFFIDAVIT OF SERVICE BY MAILING

STATE OF NORTH DAKOTA)
)ss
COUNTY OF MERCER)

LEONE WAGNER, BEING FIRST DULY SWORN, ON OATH, DEPOSES AND SAYS: That she is of legal age, a citizen of the United States, and is not a party, to, now has she an interest in the above-entitled action; that on the 28th day of April, 2012 she deposited in the United States Mail in the City of Beulah, North Dakota a true and correct copy of the following documents filed in the above-entitled action:

JOINT APPENDIX
BRIEF OF APPELLANT LINDSEY HYSJULIEN
AFFIDAVIT OF SERVICE BY MAILING

That said envelopes were addressed to the following person at his known address as follows:

BRENDA BLAZER
ATTORNEY AT LAW
P. O. BOX 2097
BISMARCK, NORTH DAKOTA 58502-2097

To the best of your affiant's knowledge, information and belief, such is the address of the party intended to be so served.

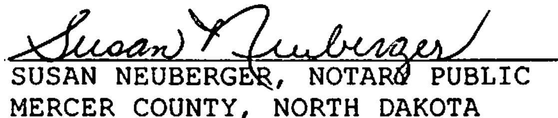
That the above documents were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

LEONE WAGNER

SOLEM LAW OFFICE
109 CENTRAL AVE S.
P.O. BOX 249
BEULAH, ND 58523
PH. (701) 873-5555
FAX (701) 873-4958
e-mail: beulaw@westriv.com

Subscribed and sworn to before me this 28th day of April, 2012.

SUSAN NEUBERGER
Notary Public
State of North Dakota
My commission expires Oct 28, 2012



SUSAN NEUBERGER, NOTARY PUBLIC
MERCER COUNTY, NORTH DAKOTA