

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,	*	
	*	
Plaintiff/Appellee,	*	
	*	
v.	*	Supreme Court No. 20150230
	*	
Patricia Ann Goodale,	*	
	*	
Defendant/Appellant.	*	

APPEAL OF DEFAULT JUDGMENT
WALSH COUNTY DISTRICT COURT FILE 50-2015-CV-00175
NORTHEAST JUDICIAL DISTRICT
THE HONORABLE M. RICHARD GEIGER, PRESIDING

BRIEF OF APPELLEE & *addendum*

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ISSUES PRESENTED FOR REVIEW

- I. Did Goodale violate North Dakota Rules of Appellate Procedure by submitting documents to the North Dakota Supreme Court that are not part of the record in the District Court?
- II. Since Goodale failed to seek relief from the default judgment in the District Court, pursuant to N.D.R.Civ.P. 60, is the review of this case limited to irregularities on the face of the judgment roll?
- III. Are there irregularities on the face of the judgment roll?

STATEMENT OF THE CASE

[¶1] This matter began by the filing of a Summons and Complaint instituted by the State of North Dakota asserting a public nuisance. The Defendant, Patricia Goodale (hereinafter "Goodale") was personally served by the Walsh County Sheriff's Office. After several weeks passed with no Answer from Goodale, the State of North Dakota moved for default judgment. The District Court made Findings of Fact, Conclusions of Law and entered an Order for Abatement of Nuisance. Goodale was served Notice of the judgment. Goodale did not seek relief from the District Court pursuant to N.D.R.Civ.P. 60. Goodale appealed directly to the North Dakota Supreme Court.

STATEMENT OF FACTS

[¶2] Goodale resides at 203 Forest Street in the city of Lankin, located within Walsh County, North Dakota. (*Action for Abatement, ¶¶3-4, Docket ID #2*)¹ The Walsh County Health Board received complaints regarding unsanitary conditions at Goodale's residence. (*Action for Abatement, ¶¶6, Docket ID #2*) In October 2014, Environmental Health Specialist Marcus Lee and Walsh County Sheriff's Deputy Richard Sherlock investigated the complaints. (*Action for Abatement, ¶¶6, Docket ID #2*)

[¶3] Their reports, accompanied by numerous photographs, told the story of a residence that was overrun with feral cats that had destroyed the entire space. The cats had urinated and defecated throughout the inside of the house, and there had been no attempt to clean up the fecal matter. The home had a very strong odor of ammonia which was discernible before even entering the residence. There was no running water in the residence, and no sewage disposal system. There were numerous structural issues readily apparent. The condition of the interior rooms of the house was such that Goodale was living only in a small entryway, which was being heated by space heaters and heat lamps. (*Action for Abatement, ¶¶6-7, Docket ID #2; and Docket ID #'s 3 through 31 which are the photographs of the home*)

[¶4] As a result of this investigation, a civil action was filed under the authority of N.D.C.C. §§ 36-21.2-02 and 36-21.2-05, assigned Walsh County File No. 50-2014-CV-312. The District Court authorized the Walsh County Sheriff to

¹ All references to the Docket ID # refer to documents that are part of the official record of this case, identified on the Register of Actions.

enter Goodale's residence and remove the cats located inside. A local veterinarian, with the assistance of law enforcement, removed and humanely euthanized seventy-eight (78) feral cats from Goodale's residence. These events occurred in November of 2014. (*Action for Abatement*, ¶5, *Docket ID #1*) Goodale did not appeal that civil action.

^[¶5] In April, 2015, complaints were raised again about the conditions at Goodale's residence. The Walsh County Sheriff investigated the outside of the residence, noting numerous bags of garbage had been left outside. The Sheriff also noted a strong odor emanating from the house. (*Action for Abatement*, ¶8, *Docket ID #2*)

^[¶6] On June 5, 2015, the State of North Dakota commenced a civil action against Goodale, asserting that her home was a nuisance as defined by N.D.C.C. § 42-01-01, insofar as Goodale was unlawfully acting or omitting to perform a duty, which act or omission annoys, injures, or endangers the comfort, repose, health or safety of others. Specifically, the State asserted that the house was a nuisance which endangered the health or safety of others because: (a) the residence did not have running water or sewage in violation of the plumbing code of North Dakota; (b) the residence housed cats that were urinating and defecating throughout the house, causing structural damage and creating a public odor; and (c) the garbage and personal waste at the residence was not properly attended to. (*Action for Abatement*, ¶3 & 9, *Docket ID #2*)

^[¶7] Goodale was personally served with the Summons and Complaint in this action by the Walsh County Sheriff's Office. The service document shows

proof that Goodale was served on June 8, 2015. (*Docket ID #32*) Moreover, the Clerk of Court served Goodale with the Notification of Assignment and Case Number, 50-2015-CV-175, which included the specific directive that any future filings were to have the case number on the upper right hand corner of the document. (*Docket ID #5*)

[18] On August 5, 2015, with no Answer having been filed in the civil action alleging the nuisance, the State of North Dakota submitted documents to the District Court to obtain a default judgment. The State e-filed the following documents: (a) Affidavit of Default and Proof for Judgment; (b) proposed Findings of Fact, Conclusions of Law and Order for Abatement of Nuisance; (c) proposed Judgment for Abatement of Nuisance; and (d) Affidavit of Service by Mail indicating that the documents were served upon Goodale. (*Docket ID #33, 34, 35 & 36*)

[19] Upon noting that there was an error in the Affidavit, a Corrected Affidavit of Default and Proof for Judgment was filed with the Court and served upon Goodale by US Mail on August 7, 2015. (*Docket ID #37 & 38*) Later that day, the District Court signed the Findings of Fact, Conclusions of Law and Order for Abatement of Nuisance, as well as the Judgment for Abatement of Nuisance. (*Docket ID #39 & 40*) A Notice of Entry of Judgment was prepared and the documents were personally served upon Goodale by the Walsh County Sheriff's Office on August 8, 2015. (*Docket ID #41 & 45*)

[¶10] Goodale brought this appeal by filing notice with the District Court on or about August 10, 2015. (*Docket ID #42 & 43*) Goodale did not seek relief from the default judgment pursuant to N.D.R.Civ.P. 60.

[¶11] Goodale filed her brief and appendix with the Supreme Court on or about September 11, 2015. Goodale's brief and appendix refer to numerous documents and matters that are not part of the record in this case (*e.g., Goodale's Appendix, pages 29-40*).

ARGUMENT

I. Did Goodale violate the Rules of N.D.R.App.P by submitting documents to the North Dakota Supreme Court that are not part of the record in the District Court?

[¶12] The answer to this question is a resounding Yes.

[¶13] "Failure to comply with the Rules of Appellate Procedure may be grounds for dismissal of the appeal." Bye v. Federal Land Bank Association of Grand Forks, 422 N.W.2d 397 (N.D. 1988), *citing* N.D.R.App.P. 3(a) and 13, *and Estate of Raketti*, 340 N.W.2d 894, 897 (N.D. 1983) *and Kastrow v. Kastrow*, 310 N.W.2d 573, 574 (N.D. 1981). In this instance, the State asserts that dismissal of this appeal is an appropriate consideration.

[¶14] This Court has provided practitioners and Courts with specific guidance about dealing with the difficulties that are presented by a *pro se* litigant.

[A] pro se litigant is not granted leniency solely because of his status as such. [Citations omitted] We have stated that we are not ferrets and we will not consider an argument that is not adequately articulated, supported, and briefed. [Citation omitted] We will not engage in unassisted searches of the record for evidence to support a litigant's position. [citation omitted] Judges are not expected to be psychics, with the ability to divine a party's

true intentions. . . .The parties have the primary duty to bring to the court's attention the proper rules of law applicable to a case. [citation omitted] The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law. [citation omitted] State v. Noack, 2007 ND 82, ¶8, 732 N.W.2d 389.

¶15] The State recognizes that a *pro se* litigant is at a disadvantage because of unfamiliarity with the rules of procedure and the inability to conduct comprehensive legal research. Still, there are some bare-bones standards that must be present in order to proceed in the North Dakota Supreme Court as a *pro se* litigant. This Court has recognized that, “*pro se* litigants, if they wish this Court to review the decision of the trial court, must reasonably comply with our appellate rules.” Noack, ¶9. The Court set out three specific areas that need to be addressed.

¶16] The first is a statement of the issues that are being presented for review. In this case, the issues outlined by Goodale are well outside the scope of an appellate review of a default judgment. The issues proposed by Goodale are simply not legally available for review in this type of an appeal.

¶17] The second minimum requirement is the need for a statement of the facts, including where the facts are disputed, with references to the evidentiary record. Although Goodale’s brief has a heading entitled “Statement of Facts,” a quick review reveals that the majority of the contents are not legal facts, nor are there any references to the evidentiary record.

¶18] The third minimum requirement is that there is a legal argument, supported by legal authority. Again, this is completely absent from Goodale’s

brief. The “Law and Argument” portion of Goodale’s brief refers to eviction actions, eminent domain, and violations of the US Constitution and the Constitution of North Dakota. There is no connection between Goodale’s purported issues and her legal arguments.

[¶19] Most significantly, however, is Goodale’s clear violation of the North Dakota Rules of Appellate Procedure. N.D.R.App.P. 10 sets out what constitutes the record on appeal: the original papers and exhibits filed with the district court; two copies of the transcript, if any; and a certified copy of the docket entries prepared by the clerk of district court. N.D.R.App.P.30 places the responsibility of preparing an appropriate appendix upon the appellant, in this case Goodale. These Rules are put in place to assure that before issues are brought to the Supreme Court, the alleged errors have been properly addressed at the District Court level and are therefore ripe for review.

[¶20] Goodale is not the first litigant to attempt to supplement the evidentiary record on appeal. In Oien v. Oien, 2005 ND 205, 706 N.W.2d 81, the appellant’s appendix included an affidavit from a purported witness that was not a part of the underlying record. This Court noted, “Inappropriate attempts to supplement the evidentiary record at the appellate level cannot be condoned.” Oien, ¶11. More specifically, this Court has determined that the appropriate response to this is that items that are not in the record and which were not subject to a motion to supplement the record, but nevertheless placed in the appendix “are not considered.” Oien, ¶11. See also Hurt v. Freeland, 1997 ND 194, 569 N.W.2d 266 (*appellant’s counsel included 4 documents in the appendix*

that were not on the record below, and those documents were subsequently struck).

[¶21] In this instance, Goodale has included documents in her appendix that are clearly not part of the record in this case. The State notes that appendix pages 29 through 40 are not part of the District Court record. Under these circumstances, the State believes that this Court should not consider appendix pages 29 through 40, nor any arguments raised by Goodale that are somehow affiliated with those documents.

II. Since Goodale failed to seek relief from the default judgment in the District Court, pursuant to N.D.R.Civ.P. 60, is the review of this case limited to irregularities on the face of the judgment roll?

[¶22] The State asserts that the answer to this question is Yes. This is a review that is limited to reviewing if there are procedural irregularities in the granting of the default judgment.

[¶23] The case *sub judice* is in the same procedural posture as many other cases that have been brought before this Court. A default judgment was entered, and rather than seeking relief from that default judgment pursuant to the provisions of N.D.R.Civ.P. 60, Goodale has filed an appeal of the default judgment. An appeal of a default judgment has clear-cut parameters.

[¶24] In Burgard v. Burgard, 2013 ND 27, 827 N.W.2d 01, a District Court granted default judgment against Mr. Burgard, awarding primary residential responsibility of his children to their mother. Burgard appealed the default judgment, and this Court noted:

Dammon Burgard did not move to set aside the default judgment under N.D.R.Civ.P. 60(b). He is not, therefore, appealing from an order denying a motion to vacate the default judgment, rather he is appealing from the default judgment. We require a party to move to set aside the default judgment before appealing to this Court. [citation omitted] This allows the trial court to review its decision before the matter is submitted to the appellate court. [citation omitted] Burgard, ¶10.

Consequently, this Court determined that its review the default judgment extended only to determining whether or not irregularities appear on the face of the judgment. Burgard, ¶11.

¶[25] This Court went on to explain in more detail the definition of an “irregular judgment.” In essence this Court has said that it means an irregularity of process or procedure, such as lack of adherence to a procedural rule that resulted in omitting to do something that is necessary or doing something at the wrong time or in an improper manner. Burgard, ¶12 Therefore, in an appeal such as this brought by Goodale, this Court is obliged to check the face of the “judgment roll” with a limited review of procedural errors which appear thereon. Burgard, ¶14.

III. Are there irregularities on the face of the judgment roll?

¶[26] The State asserts that the answer to this question is No. There are no irregularities on the record of this case. A review of the record shows that default judgment was granted pursuant to the procedures set out in Rule 55 of the North Dakota Rules of Civil Procedure.

¶[27] The record on appeal is consistent with the standard civil litigation practices. A summons and complaint setting forth the cause of action and relief

sought were filed by the State of North Dakota. Those same documents were personally served upon Goodale. More than twenty-one (21) days elapsed without Goodale filing an answer or other pleading, or without Goodale making any other appearance on the record. After waiting more than 55 days for an answer or other pleading, the State of North Dakota filed documents with the Court to obtain a default judgment. The Court signed the default judgment documents, and Goodale was served notice that the judgment had been entered. Within a few days thereof, Goodale filed her appeal to this Court.

[¶128] That is the record in this case. Nothing more. Nothing less.

[¶129] The State respectfully requests that this Court not be sidelined by issues raised by Goodale that fall outside the record of this case. This Court has made it clear: “[R]elief from judgment may **not** be granted, or a judgment vacated, for irregularity, **unless the irregularity appears on the face of the record, and does not depend on proof beyond the record.**” Burgard, ¶13 [*emphasis supplied*].

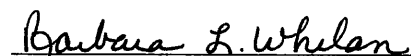
CONCLUSION

[¶130] For the reasons stated herein, the State respectfully requests that the Court exercise its authority and dismiss this appeal pursuant to its authority under Rule 3(a)(2) of the North Dakota Rules of Appellate Procedure based on Goodale’s inclusion of improper documents in the appendix, and her failure to comply with the basic requirements of submitting a brief to this Court.

[¶31] In the event the Court does not dismiss this appeal, the State respectfully requests that the Court conduct a limited review of the record for irregularities on its face. After such a review, the State respectfully suggests that the Court enter an order that affirms the decision of the District Court.

[¶32] Dated this 14th day of October, 2015.

Respectfully submitted,



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ADDENDUM

Pursuant to N.D.R.App.P.28(g)

N.D.C.C. §42-01-01. Nuisance - Definition.

A nuisance consists in unlawfully doing an act or omitting to perform a duty, which act or omission:

1. Annoys, injures, or endangers the comfort, repose, health, or safety of others;
2. Offends decency;
3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake, navigable river, bay, stream, canal, basin, public park, square, street, or highway; or
4. In any way renders other persons insecure in life or in the use of property.

N.D.R.App.P. 3. Appeal as of Right – How Taken

(a) *Filing the Notice of Appeal.*

- (1) An appeal permitted by law as of right from a district court to the supreme court may be taken by filing a notice of appeal with the clerk of the supreme court within the time allowed by Rule 4.
- (2) An appellant's failure to take any step other than the timely filing of a notice of appeal and payment of any required docket fee does not affect the validity of the appeal, but is ground only for the supreme court to act as it considers appropriate, including dismissing the appeal.

* * * * *

N.D.R.App.P. 10. The Record on Appeal

(a) *Composition of Record on Appeal.* The following items constitute the record on appeal:

- (1) the documents and exhibits filed in the district court, including the notice of appeal as filed in Odyssey® by the clerk of the supreme court;
- (2) an electronic copy of the transcript, if any; and
- (3) certification prepared by the clerk of district court stating what constitutes the record filed in the district court.

* * * * *

N.D.R.App.P. 30. Appendix to the Briefs

(a) *Appellant's Responsibility.*

(1) *Contents of the Appendix.* Only items in the record may be included in the appendix. The author's signature on the brief, under Rule 32, certifies compliance with this rule. The appellant must prepare and file an appendix to the briefs containing only the following relevant portions of the lower court record:

- (A) the docket sheet of the lower court, and agency docket sheet when an appeal is taken under the Administrative Agencies Practice Act;
- (B) the indictment, information, or complaint, as amended;
- (C) the answer, counterclaim, cross claim, and replies;
- (D) parts of any pre-trial order relevant to the issues on appeal;
- (E) any supporting memorandum of decision, findings of fact and conclusions of law filed by the court;
- (F) any supporting reasoning, findings of fact or conclusions of law delivered orally by the court;
- (G) the judgment, order, or decision in question;
- (H) any other orders to be reviewed;
- (I) the instruction in question, if the correctness of a jury instruction is in issue, and any other relevant part of the jury charge;
- (J) any other relevant parts of the record, including portions of the transcript, to which the particular attention of the court is invited; and
- (K) the notice of appeal.

* * * * *

N.D.R.Civ.P. 55. Default; Default Judgment

(a) *Entry.* If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise appear and the failure is shown by affidavit or otherwise, the court may direct the clerk to enter an appropriate default judgment in favor of the plaintiff and against the defendant as follows:

- (1) If the plaintiff's claim against a defendant is for a sum certain or a sum that can be made certain by computation, the court, on affidavit of the amount due and on production of the written instrument, if any, on which the claim is based, may direct the entry of judgment.

- (2) In all other cases, the court, before directing the entry of judgment, must require the necessary proof to enable it to determine and grant any relief to the plaintiff. To this end, the court may:
 - (A) Hear evidence and assess damages;
 - (B) Direct a reference for an accounting or for taking testimony or for a determination of the facts; or
 - (C) Submit any issue of fact to a jury.
 - (3) A default judgment may be entered against a minor or incompetent person only if represented by a general guardian or other representative who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with a motion for judgment. Notice must be served with the motion and must comply with N.D.R.Ct. 3.2(a).
 - (4) When service of the summons has been made by published notice, or by delivery of a copy outside the state, default judgment must not be entered until the plaintiff, if required by the court, has filed a court-approved bond that conforms to a court order regarding the restitution of property obtained from the judgment if a defense is later permitted and sustained. A bond is not required in actions involving the title to real estate or to foreclose mortgages or other liens.
- (b) *Judgment Against the State.* A default judgment may be entered against the state, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

N.D.R.Civ.P. 60. Relief from a Judgment or Order

- (a) *Corrections Based on Clerical Mistakes; Oversights and Omissions.* The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with notice. But after an appeal has been docketed in the Supreme Court and while it is pending, such a mistake may be corrected only with the Supreme Court's leave.
- (b) *Grounds for Relief from a Final Judgment or Order.* On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
 - (1) mistake, inadvertence, surprise, or excusable neglect;

- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
 - (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
 - (4) the judgment is void;
 - (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
 - (6) any other reason that justifies relief.
- (c) *Timing and Effect of the Motion.*
- (1) **Timing.** A motion under Rule 60(b) must be made within a reasonable time, and for reasons (1), (2), and (3) no more than a year after notice of entry of the judgment or order in the action or proceeding if the opposing party appeared, but not more than one year after a default judgment has been entered.
 - (2) **Effect on Finality.** The motion does not affect the judgment's finality or suspend its operation.
 - (3) Leave to make the motion need not be obtained from an appellate court unless an appeal from the judgment is actually pending before that court.
- (d) *Other Powers to Grant Relief.* This rule does not limit a court's power to:
- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
 - (2) grant relief under Rule 4(e)(7) to a defendant who was not personally notified of the action; or
 - (3) set aside a judgment for fraud on the court.
- (e) *Bills and Writs Abolished.* The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota, *
 *
 Plaintiff/Appellee, *
 *
 v. * Supreme Court No. 20150230
 *
 Patricia Ann Goodale, *
 *
 Defendant/Appellant. *

CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

[1] I, Barbara L. Whelan, Walsh County State's Attorney, do hereby certify that on October 14, 2015, I served the following document:

- **BRIEF OF APPELLEE**

upon the Patricia Ann Goodale, by sending via electronic means to the following email address which Ms. Goodale was using for communication with the Clerk of the North Dakota Supreme Court: patty_goodale@yahoo.com. The email was sent with the Brief in both Word and PDF format.

[2] Dated this 15th day of October, 2015.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA

State of North Dakota,

*

Plaintiff/Appellee,

*

v.

*

Supreme Court No. 20150230

*

Patricia Ann Goodale,

*

*

Defendant/Appellant.

*

CERTIFICATE OF SERVICE BY US MAIL

[1] I, Barbara L. Whelan, Walsh County State's Attorney, do hereby certify that on November 9, 2015, I served the following documents:

- BRIEF OF APPELLEE
- CERTIFICATE OF SERVICE BY ELECTRONIC MEANS
- CERTIFICATE OF SERVICE BY US MAIL

upon the Patricia Ann Goodale, by putting them in an envelope addressed to Ms. Goodale at Post Office Box 114, Lankin, ND 58250, and affixing first class postage to the envelope and depositing in the US Mail in Grafton, North Dakota. This second service was accomplished due to concern that electronic service was not successful.

[2] Dated this 9th day of November, 2015.

Barbara L. Whelan

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