

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

City of Grand Forks,)	
)	
Plaintiff and Appellee,)	
)	
vs.)	
)	
)	Supreme Court No. 20150326
)	Case No. 18-2015-CR-00453
)	
)	
Nicole Louell Jacobson,)	
)	
Defendant and Appellant.)	

ON APPEAL FROM THE DISTRICT COURT
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT
GRAND FORKS COUNTY, NORTH DAKOTA
THE HONORABLE DONALD HAGER, PRESIDING.

APPELLANT'S REPLY BRIEF

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¶ 2] STATEMENT OF THE ISSUE

- I. Whether the District Court erred as a matter of law when it determined it did not have the discretion to dismiss a charge of Driving under Suspension pursuant to N.D.C.C. § 39-06-42(3)?

STANDARD OF REVIEW

¶ 3] The issue in this case involves whether N.D.C.C. § 39-06-42 grants a court the discretion to dismiss a driving under suspension charge if a defendant reinstates his or her license within sixty days of committing the offense. Interpretation of a statute is a question of law and questions of law are reviewed de novo. State v. Rufus, 2015 ND 212, ¶ 12, 868 N.W.2d 534.

¶ 4] The City of Grand Forks misstates the Standard of Review as an abuse of discretion standard. (Appellee’s Brief at ¶ 13). The City is operating under the assumption of factual disputes rather than an error in statutory interpretation. (Appellee’s Brief at ¶ 14). As stated previously, the District Court erred as a matter of law in interpreting N.D.C.C. § 39-06-42(3). Therefore, the appropriate standard of review is de novo. Rufus, 2015 ND 212 at ¶ 12.

ARGUMENT

- I. The District Court erred as a matter of law when it determined it did not have discretion to dismiss a charge of Driving under Suspension pursuant to N.D.C.C. § 39-06-42(3).**

¶ 5] The City of Grand Forks argues that, “the facts of this case do not support dismissing the Driving Under Suspension charge.” (Appellee’s Brief at ¶ 18). The issue at hand is whether the District Court erred as a matter of law in interpreting a statute, not whether the

facts of the case support dismissal. The facts of the case have no bearing on the outcome before this Court.

[¶ 6] The City argues that it asked the court to exercise its discretion by denying the Motion to Dismiss. (Appellee’s Brief at ¶ 21). The District Court Order clearly indicates it understood the City’s argument was to have the 60-day reinstatement timeframe begin after a period of suspension has expired, rather than when the current offense occurred. (Appellant’s App. at 6-7). Section 39-06-42(3) is not written to restrict its application to situations when a DUS offense occurred after the suspension period expired. If the legislature intended to apply the statute in such a manner it would have reflected that intent in the language of the statute. If a statute’s language is clear and unambiguous, the legislative intent is presumed clear on the face of the statute. Poppe v. Stockert, 2015 ND 252, ¶ 7, 870 N.W.2d (quoting Northern X-Ray Co., Inc. v. State by and Through Hanson, 542 N.W.2d 733, 735 (N.D. 1996)). The District Court’s Order indicates that the Defendant’s Motion to Dismiss was denied based on interpretation of the statute in relation to other statutes. “To **interpret** the 60-day reinstatement law otherwise, as set out in N.D.C.C. § 39-06-42(3), would be contrary to the overall scheme of our driving statutes” (Appellant’s App. at 15) (emphasis added). It’s clear from the court’s own reasoning it was interpreting the statute in question. It is the Defendant’s position it did so in error.

[¶ 7] The District Court misinterpreted the statute. It stripped itself of the discretion which the legislature gave it and instead handcuffed itself. The District Court “found no such manipulative exception” in the statute. (Appellant’s App. at 16). It did not exercise discretion, rather it found it did not have any discretion. The District Court determined that because there was no statutory exception or indication of legislative intent, it could not grant the motion. (See

Appellant's App. at 15-16).

CONCLUSION

[¶ 8] Jacobson respectfully requests this Court remand to the District Court with instructions to use its discretion in determining whether to dismiss the case. Jacobson additionally requests this Court remand to a different judge because it would be nearly impossible for the present judge to remain impartial and act with objectivity in the proceedings.

Dated this 23rd day of March, 2016.

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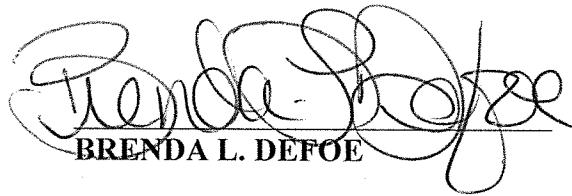
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 Nicole Louell Jacobson,) **AFFIDAVIT OF SERVICE**
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) Appellee.)

State of NORTH DAKOTA)
) ss
 County of GRAND FORKS)

BRENDA L. DEFOE, being first duly sworn, says that she is 18 years of age and that on the 23 day of March, 2016 she served a copy of **REPLY BRIEF OF APPELLANT** in the above entitled case by e-mailing to the below described people:

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BRENDA L. DEFOE

Subscribed and sworn to before me, a Notary Public, this 23 day March, 2016.



Notary Public
My Commission Expires:

