

20160084
20160085

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

In the Matter of the Estate of Steven H. Harris

Supreme Court No. 20160084
Burleigh Co. No. 08-01-C-01442

Bruce G. Harris, Petitioner and Appellant
v.
Mary K. Harris, Respondent and Appellee

In the Trust of Steven H. Harris Testamentary Trust

Supreme Court No. 20160085
Burleigh Co. No. 08-10-P-00146

Bruce G. Harris, Petitioner and Appellant
v.
Mary K. Harris, Respondent and Appellee

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

JUL 1 2016

APPEAL FROM ORDER DENYING
RULE 60(B) RELIEF
SOUTH CENTRAL JUDICIAL DISTRICT
BURLEIGH COUNTY, NORTH DAKOTA
THE HONORABLE DAVID E. REICH

STATE OF NORTH DAKOTA

APPELLEE'S BRIEF

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STATEMENT OF ISSUES PRESENTED

- I. WHETHER RULE 60(B) RELIEF IS EXTRAORDINARY RELIEF TO BE GRANTED ONLY IN EXCEPTIONAL CIRCUMSTANCES
- II. WHETHER THE ALLEGED FAILURE TO PROVIDE DOCUMENTS CONSTITUTES A BASIS FOR RULE 60(B) RELIEF
- III. WHETHER THE STIPULATION SIGNED BY A PARTY AND HIS ATTORNEY WAS BASED ON THE MUTUAL CONSENT OF THE PARTIES
- IV. WHETHER THE STIPULATION AND JUDGMENT WERE PROCURED BY MISREPRESENTATIONS
- V. WHETHER THE STIPULATION WAS PROCURED AS A RESULT OF UNDUE INFLUENCE

STATEMENT OF THE CASE

This is an appeal by Bruce G. Harris of the lower Court's denial of Bruce's Motion for Rule 60(B) Relief.

STATEMENT OF FACTS

- [¶ 1.] The matters under review relate to the Estate of Steven H. Harris, who died on March 11, 2001. The Last Will and Testament of Steven H. Harris was probated in the Burleigh County District Court (Civil No. 08-01-C-1442). The surviving heirs of Steven H. Harris were his wife, Mary B. Harris (“Mary”); son, Steven B. Harris, who died subsequent to Steven H. Harris and who was survived by a son, Kyle Harris; son, Terry L. Harris (“Terry”); son, Wayne R. Harris (“Wayne”); son, Bruce G. Harris (“Bruce”) and daughter Genevieve Harris, who died subsequent to Steven H. Harris and who left no issue.
- [¶ 2.] The Last Will and Testament of Steven H. Harris established the Steven H. Harris Trust A and the Steven H. Harris Trust B. See, Appx. p. 196 – 197. Trust A, which is the focus of this appeal, was funded with various assets including interests in oil and gas. Trust A provided that Mary was to receive all of the income earned by the Trust and Trust principle as necessary for Mary’s support and maintenance. See, Appx. p. 196. Upon Mary’s death, the remaining principle of the Trust was to be distributed to the issue of Steven H. Harris.
- [¶ 3.] Mary was nominated and appointed as Personal Representative of the Estate and Russell R. Mather, a long time Bismarck, North Dakota attorney, was nominated as Trustee of the Trusts. Mr. Mather declined his appointment as Trustee and Mary was subsequently appointed as Trustee upon the unanimous consent the children of Mary and Steven H. Harris. See, Appellee Appx. pp. 5-8.
- [¶ 4.] Disputes between Bruce and the balance of the family members began very early in the process, with Bruce alleging, among other things, the failure of the Trustee

to account for Trust assets, the failure of the Trustee to provide Trust financial documents, that Mary was not competent to act as Trustee and that a company owned by Terry had engaged in an improper transactions with the Trust by leasing Trust oil and gas interests. See, Appellant Appx. p 8, ¶ 7; Appx. p. 9, ¶ 9; Appellant Appx. p. 14, ¶ 7, 9 and p. 16, ¶ 9d; , and Appellant Appx. p. 55 at ¶ 3.

[¶ 5.] A review of Bruce’s educational and professional history is important in considering and evaluating the merits of Bruce’s claims. At the time of the hearing, Bruce was employed by Oneok Rockies Midstream “as a provider of ‘outside legal services”. See, Appx. p. 122 at line 10. “I reviewed title documents, make ownership determinations. I work with the legal department in Tulsa, Oklahoma. I do curative on title problems. I review (sic) leases for applicability to our work. I work with all the state permitting and county and city permitting. I work with encroachment. I draft documents on behalf of Oneok to protect their assets and liabilities”. See, Appx. p. 122, lines 11 – 17.

[¶ 6.] Bruce attended Bismarck Junior College for “liberal arts” and then attended North Dakota State University where he received a Bachelor’s Degree in Science. Bruce holds minors in business administration, marketing and economics. See, Appx. p. 122, line 25; p. 123, lines 1 – 3. Bruce also attended pre-engineering courses at Dawson Technical College in Glendive, Montana, from 1981 through 1983 where he earned an Associate of Arts in Petroleum Technology Degree. See, Appx. p. 123 at lines 10, 11, 15 and 16.

[¶ 7.] Prior to working for Oneok, Bruce worked for Montana Dakota Utilities where he was “... the lead field representative for all of the title and easement work that they

were doing”. See, Appx. p. 123 at lines 24 and 25; p. 124, lines 1 – 10. Bruce also work for the North Dakota Land Department where he was the “State of North Dakota mineral title specialist”. See, Appx. p. 124, lines 16 and 17. Bruce testified he “.... represented the State on all mineral title issues and industrial commission hearings and the disputes that were arising over the Missouri River and Lake Sakakawea.”. See, Appx. p. 124, lines 19 – 23.

[¶ 8.] Bruce also worked as an abstractor where he examined title and made “title determinations”. See, Appx. p. 18, lines 24, 25 and p. 125, lines 1 – 4. Finally, Bruce testified he had experience in the area mineral title work where he has allegedly “... been recognized by the State of North Dakota and the Industrial Commission as having that expertise”. See, Appx. p. 125, lines 7 – 14. Finally, Bruce asserted that he has worked with the Uniform Probate code for 30 years. See, Appellant App. p. 52 at the final sentence of Paragraph 4. Bruce has significant experience in the areas of contracts, law and oil and gas.

[¶ 9.] During December of 2014, following years of discord, a hearing was scheduled to 1) gain approval of the Trust accountings, and 2) to address Bruce’s numerous and various objections relating to the administration of the Trust. On December 4, 2014, two Stipulation documents were signed by Bruce and his attorney, William J. Delmore, both of whom were present at the hearing. During the hearing, presiding District Judge David E. Reich, and Bruce engaged in the following discussion:

THE COURT: And, Bruce, you are represented by Mr. Delmore.

You can certainly ask him any questions, **but you understand the**

terms of the stipulation, and you're in agreement with the stipulation that's been assigned?

MR. HARRIS: I understand the terms of it, yes. My concern was that I have not been provided records and requested repeatedly the information that we were provided was never the entire information related to the topic that we asked for, and it's just been like pulling teeth to try get in, understand what's happening, review

THE COURT: Okay –

MR. HARRIS: We're all in the same business the three of us, and we're all in our areas of expertise recognize but my concern is that after repeated requests for accountings, repeated requests for things, they were not being provided even in discovery or what happened.

THE COURT: Without knowing or getting into the nature and extend of the types of records you're talking about, **you do understand, I think everybody understands, that you do have a right to review the records under the stipulation.**

MR. HARRIS: **Yes, I do.**

[emphasis added]. See, Appellee's Appx. p. 20, lines 19-25, 1-9.

[¶ 10.] Earlier in the hearing, the Court received the following statements from Attorney Delmore and Attorney Tschider:

MR. DELMORE: **And I think we have a clear agreement that he does have the ability to review the records given that he doesn't have the funds, he can certainly review them. Am I correct Mr. Tschider?**

MR. TSCHIDER: **If he wants to review records, we'll find a room for him.** My understanding of trust law is beneficiaries have the right and basically unlimited to review documents. We do not have a problem with that. **We'll find a room; he can have a table and start reading to his heart's content ...**

[emphasis added]. See, Appellee's Appx. p. 18, lines 20-25, lines 1-4.

[¶ 11.] Neither Bruce nor his attorney alleged or asserted lack of mutual assent, misrepresentation, fraud or undue influence. Bruce and his attorney only voiced concerns about receiving Trust records.

[¶ 12.] Although at the hearing it was stated that "if he [Bruce] wants to **review records, we'll find a room for him...he can have a table and start reading to his heart's content ...**", there is no evidence that, following the hearing, Bruce scheduled, or attempted to schedule a meeting for purposes of reviewing Trust records.

[¶ 13.] On December 23, 2014, Bruce, acting pro se, drafted a document entitled "Objections to Certification of Trust Accountings wherein Bruce essentially restated and re-argued all of his pre-stipulation objections to the administration of the trust. See, Appellant's Appx. pp. 41. The objections were the same objections Bruce had been making for ten (10) years. There was nothing new.

[¶ 14.] On February 2, 2015, Bruce Harris, acting pro se, filed a Rule 60(B) Motion to "Set Aside Stipulations and Certificate of Trust Accountings". See, Appellant Appx. p.

57. The lower court, after having received testimony and briefs, ruled that, with respect to Bruce's argument that he had not received financial documents from the trustee, Bruce's proper remedy was to seek "... an order to show cause why the respondent should not be held in contempt for failing to comply with the judgment". See, Appellant's Appx. p. 101, ¶ 2. The Court ruled that Bruce was not entitled to Rule 60(B) relief for any failure by the Trustee to provide documents. Id.

[¶ 15.] The Court, addressing Bruce's allegations of misrepresentation and fraud, determined that Bruce "... did not articulate the nature of the alleged fraud or misrepresentation, or how this influenced his decision to sign the stipulation other than to state that reports were not timely". See, Appellant's Appx. p. 101 at ¶ 4. The Court noted that relief pursuant to Rule 60(B)(3) of the North Dakota Rules of Civil Procedure "is extraordinary relief to be granted only in exceptional circumstances" and that the burden was on Bruce "to establish by clear and convincing evidence, that the adverse party obtain judgment through fraud, misrepresentation or misconduct". The Court determined "that Bruce has failed to provide clear and convincing evidence that he was induced by fraud or misrepresentation into signing the stipulation upon which the December 12, 2014 judgment was entered". See, Appellant's Appx. p. 103, ¶ 8.

LAW AND ARGUMENT

I. RELIEF UNDER RULE 60(B)(3) IS EXTRAORDINARY RELIEF TO BE GRANTED ONLY IN EXCEPTIONAL CIRCUMSTANCES

[¶ 16.] Bruce seeks relief from the judgment entered by the lower Court based upon Rule 60(B)(3) of the North Dakota Rules of Civil Procedure. The North Dakota Supreme

Court has ruled that relief premised on Rule 60(B)(3) “is extraordinary relief to be granted only in exceptional circumstances”. *Dvorak v. Dvorak*, 201 ND 78, ¶ 8, 635 N.W.2d 135; citing, *Gajawski v. Bratcher*, 240 N.W.2d 871,889 (ND 1976). The burden is on the moving party “to establish by clear convincing evidence that the adverse party obtain judgment through fraud, misrepresentation or misconduct”. *Id.* Bruce must establish that “the conduct complained of must be such as to prevent the losing party from fully and fairly presenting its case”. *Id.* quoting, *Diaz v. Methodist Hospital*, 46 F.3d 492, 496 (5th Cir. 1995). Naked claims, without specific details under lying such assertions, it is not sufficient to afford relief”. *Hatch v. Hatch*, 484 N.W.2d 283, 296 (ND 1992). “[I]t is within the Trial Court’s discretion whether to grant or deny the Motion to Vacate. Absent and abuse of discretion, we will not set aside the Trial Court’s decision on appeal. The Trial Court abuses it discretion it if acts in an arbitrary, capricious or unreasonable manner, or if it misinterprets or misapplies the law.” *Filler v. Brag*, 1997 ND 24, ¶9, 559 N.W. 2d 255. Rule 60 (B) not to be used to relieve a party from his free, calculated and deliberate choices. *City of Wahpeton v. Drake- Henne, Inc.*, 228 N.W. 2d 324,330 (N.D. 1975).

[¶ 17.] Because the Judgment to be set aside was entered pursuant to a written stipulation of the parties, Bruce, as the challenging party, bears the additional burden of showing that, under the law of contracts, there is justification for setting the contract aside. *Peterson v. Peterson*, 555 N.W. 2d 359, 361 (ND 1996).

**II. THE TRUSTEE'S ALLEGED FAILURE TO PROVIDE BRUCE WITH
COPIES OF TRUST RECORDS DOES NOT PROVIDE A BASIS FOR
RULE 60(B) RELIEF**

[¶ 18.] Bruce argues that, because he was allegedly not provided with Trust records, he is entitled to Rule 60(B) relief. Bruce's argument is totally without merit.

[¶ 19.] Initially, the hearing which gave rise to the judgment on appeal occurred on December 4, 2014. At the hearing, Bruce was duly and clearly notified that if he wanted to review records, the Trustee would find a room for him and that he could review records to his satisfaction. What is absent from the record is a request by Bruce to review any records following the December 4, 2014 hearing. The record is devoid of any such requests.

[¶ 20.] Second, if Bruce is of the opinion that the estate had an obligation to provide him with copies of documents, and if the estate in fact failed to provide documents, Bruce's proper and appropriate course of action would have been to file a motion for an order to compel and not for Rule 60(B) relief.

[¶ 21.] Third, the record reflects that the Trustee in fact provided Bruce and his attorney with a "box" of financial records. The record does not reflect what additional records Bruce allegedly sought from the Trustee. It is ridiculous to assume that the Trustee should somehow know what additional records Bruce believed were necessary and appropriate. If Bruce wanted a specific document or group of documents, he could have and should have submitted a request to the Trustee. Bruce did nothing, and now complains.

[¶ 22.] Bruce's argument that the alleged failure of the Trustee to provide documentation provides grounds to gain Rule 60(B) relief is not supported by the facts or the law and is wholly without merit.

III. **THE STIPULATIONS EXECUTED BY BRUCE AND THE TRUSTEE**
WERE BASED UPON THE MUTUAL CONSENT OF THE PARTIES.

[¶ 23.] A contract requires parties capable of contracting, consent of the parties, a lawful object and sufficient consideration. *Stoudt v. Fischer Indus., Inc.*, 199 ND 218 ¶ 11, 603 N.W.2d 52. A party's consent to a contract must be free, mutual and communicated to the other. *Id.*; *N.D.Cent.C.* §9-03-01. Consent is mutual if the parties agree to the same thing in the same sense. *Stoudt* at ¶ 11.

[¶ 24.] A review of the Stipulations executed by Bruce and his attorney reveal that the terms are clear, concise and unambiguous. *See*, Appellee Appx. p. 22-25, 26-27. Bruce has not alleged that the Stipulations are anything but clear on their face and admitted he understood the terms of the documents. Neither Bruce nor his attorney voiced any objections to the form or language of the Stipulations. Bruce's post December 4, 2014 arguments concerning his thoughts, beliefs, dreams, desires and understanding are irrelevant as the intention of the parties must be determined from four corners of the clear and concise written Stipulation documents. *Mueller v. Strangland*, 340 N.W.2d 451(N.D. 1983). Bruce, who purports to have substantial experience and knowledge in the areas of oil and gas, contracts and the law, cannot presently allege that he not understand what he was signing. Without question, the lower court properly determined that Bruce's argument that the stipulation was invalid for lack of mutual assent was without merit.

**IV. THE STIPULATION AND JUDGMENT ARE NOT SUBJECT TO
ATTACK FOR ALLEGED MISREPRESENTATIONS.**

[¶ 25.] Bruce argues that he agreed to the terms of the Stipulations as a result of alleged misrepresentations. Bruce's argument is without merit.

[¶ 26.] First, Bruce argues that he "... was induced into signing this Stipulation based upon misrepresentations by the Trustee that the requested information would be provided. It still has not been provided and this is grounds for rescission under a contract under N.D.Cent.C. §9-09-04". See, Appellant's Brief at ¶20. As previously noted, Bruce did not ask for Trust documents nor ask to review documents any time after December 4, 2014.

[¶ 27.] Second, what records Bruce wanted to review was not disclosed to the Trustee. The Trustee cannot be expected to guess as to what documents Bruce wanted to review.

[¶ 28.] Third, Bruce's remedy for an alleged failure to produce records was to file a motion to compel. Even if Bruce's claim that he did not receive documents was true, it would not be proper to vacate the Stipulation or the Judgment.

[¶ 29.] Fourth, Bruce argues that specific instances of fraud that allegedly induced him into signing the stipulation are noted somewhere in his seven page rambling affidavit found at Appellant Appendix pages 50 – 56. Neither your undersigned nor the Court are required to ferret out facts which support Bruce's frivolous claim.

[¶ 30.] Fifth, Bruce argues that attorney Delmore told Bruce that if he did not sign the Stipulation, he could be held in contempt of court. On its face, Bruce's claim is ridiculous. Further, recall Bruce did not state to suggest to the Court during the December 4, 2014 hearing that he was subjected to undue influence by virtue of

attorney Delmore's alleged threats of contempt of court. Further, the statement, even if made, was made by Bruce's attorney and not by the Trustee. If Bruce takes issue with the quality of representation provided by his attorney, that is an issue for Bruce and attorney Delmore and not the Trustee. The acts or failures to act of Attorney Delmore do not provide grounds for Rule 60(B) relief.

[¶ 31.] Finally, Bruce's Brief focuses on the Affidavit of Terry Harris [Plaintiff Appellant Appx. p. 20 – 21] arguing that the leasing of Trust mineral interests to Twin City Technical, an entity owned by Terry Harris, constitutes misrepresentation and fraud. The record is devoid of any suggestion or inference that the terms of the mineral lease between Twin City Technical and the Trustee were unfair or otherwise detrimental to the Trust. Second, Bruce had fully knowledge of the lease before Bruce signed the December 4, 2014 Stipulation. See, Appellant Appx. p. 16. Because there is no evidence the lease was unfair and because Bruce was aware of the alleged conflict of interest before he signed the Stipulation, Bruce cannot argue that he was wrongfully induced to sign the Stipulation by the contents of Terry Harris' affidavit.

[¶ 32.] Bruce's argument that he was wrongfully induced by the Trustee to sign the Stipulation is without merit and was properly rejected by the District Court.

V. **BRUCE DID NOT SIGN THE STIPULATIONS AS A RESULT OF UNDUE INFLUENCE.**

[¶ 33.] Bruce alleges that he signed the Stipulations as a result of undue influence. Bruce's arguments concerning undue influence are found at Section 3, ¶22 through 25 of Bruce's Brief wherein he suggests that North Dakota law presumes any

“transaction” between a Trustee and a Trust beneficiary is presumed to be entered by the Trust beneficiary without sufficient consideration and under undue influence. See, N.D.Cent.C. §59-18-01.1. Bruce argues that the presumption controls even if a) the Stipulation relates to a Court proceeding, b) the Stipulation is signed by the beneficiary, who is represented by an attorney, c) the attorney representing the beneficiary also signs the document, d) the Stipulation is filed with the Court, d) the Stipulation is discussed with the presiding Judge at a hearing, attended in person by the beneficiary and his attorney, wherein the Judge specifically asks the beneficiary if he understands the Stipulation with the beneficiary, in open court, with the beneficiary responding that he understood the terms of the document, and e) where neither the beneficiary nor his attorney suggest, argue or assert that the beneficiary was somehow subjected to undue influence. The entire process was transparent and subject to review, consideration and approval by the lower Court. The act of negotiating and filing a Stipulation in a Court proceeding where the complaining party is represented by legal counsel does not constitute a “transaction” for purposes of North Dakota Century Code Section 59-18-01.1.

[¶ 34.] Even if the presumption of undue influence applies to the facts of this case, the presumption is rebuttable. N.D. Cent. C. §59-18-01.1. In addition to the fact that Bruce and his attorney both signed the Stipulation and both appeared at the hearing, in person, at which hearing Bruce stated that he understood the terms of the Stipulation, and at which hearing neither Bruce nor his attorney suggested or claimed undue influence, the Court will recall that Bruce is a college graduate and

a self-proclaimed expert in contracts, probate, oil and gas and the law. Bruce was not a vulnerable unprotected person. Any presumption of undue influence was rebutted by Bruce's own testimony and by the fact that Bruce was represented by an attorney who was present with Bruce at the hearing, that Bruce has substantial experience in the law, and that Bruce failed to issue any objections concerning the Stipulation or the terms of the Stipulation at the hearing.

VI. THE ABSENCE OF A SEVERABILITY CLAUSE DOES NOT PROVIDE BRUCE WITH RELIEF.

[¶ 35.] Finally, Bruce argues that “because paragraphs 7 and 9 of the Stipulation are contrary to the requirements under N.D.C.C. §59-16-13, which pertains to the Trustee’s duty disclose to disclose and inform. Bruce argues the entire Stipulation is void because there is no severability clause. It is presumed that Bruce is referring to the sections 7 and 9 of the Stipulation found at Appendix pages 22 through 25. North Dakota Century Code Section 59-16-13(2)(g). provides that “... a beneficiary may waive the right to a Trustee’s report or other information otherwise required to be furnished under this Section”. The Stipulation signed by Bruce constitutes a waiver. Further, the Trustee provided Bruce with a “box” of financial documents and records, told Bruce he could review records to his satisfaction, and Bruce made no requests or demands to receive or review records after the date of the hearing. Bruce does nothing but complain. What more was the Trustee obligated to do to satisfy Bruce’s undefined demands?

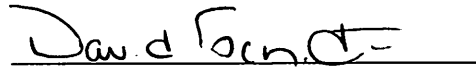
CONCLUSION

[¶ 36.] WHEREFORE, in light of the foregoing, it is evident that Bruce is utilizing Rule 60(B) of the North Dakota Rules of Civil Procedure in an attempt to gain relief from his free, calculated and deliberate choices. It is further evident that the lower Court's refusal to grant Bruce relief does not constitute an abuse of discretion, and that the decision was not arbitrary, capricious or unreasonable and did not misinterpret or misapply the law. In light of the foregoing it is respectfully requested that the Judgments of the lower court be in all ways affirmed.

Dated this 6th day of July, 2016.

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BY:




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CERTIFICATE OF COMPLIANCE

The undersigned, as attorney for the Respondent/Appellee in the above matter, and as author of the above brief, hereby certifies, in compliance with Rule 32(a) of the North Dakota Rules of Appellate Procedure, that the above Brief was prepared with proportional type face and that the total number of words in the Brief, excluding words in the Table of Contents, Table of Authorities, signature block, Certificate of Service and Certificate of Compliance totals 4,571.

Dated this 6th day July, 2016.



David A. Tschider

IN THE SUPREME COURT
FOR THE STATE OF NORTH DAKOTA

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Bruce G. Harris, Petitioner and Appellant
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Mary K. Harris, Respondent and Appellee

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Virginia Swanson, being first duly sworn, on oath, deposes and says: That she is a citizen of the United States, over the age of twenty-one, and not a party to the above-entitled matter; that on the 1st day of July 2016, this affiant deposited in the mailing department of the United States Post Office at Bismarck, North Dakota, a true and correct copy of the following documents filed in the above-captioned action:

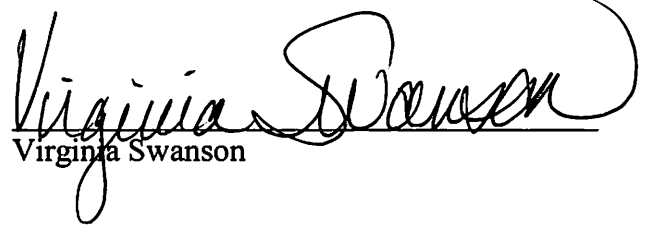
1. Appelle's Supreme Court Brief
2. Appelle's Appendix
3. Affidavit of Service

That copies of the above documents were securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

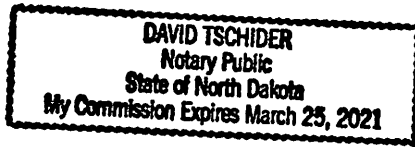
PEARCE DURICK PLLC
ZACHARY E. PELHAM, ND BAR #05904
314 E Thayer Avenue
PO Box 400
Bismarck ND 58502-0400

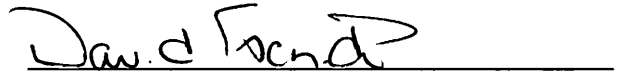
To the best of your affiant's knowledge, information and belief, such address as given above was the actual post office address of the party intended to be served.

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


Virginia Swanson

Subscribed and sworn to before me this 1st day of July 2016.




David A. Tschider, Notary Public

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FILED
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CLERK OF SUPREME COURT

AFFIDAVIT OF SERVICE BY MAIL

JUL 11 2016

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

STATE OF NORTH DAKOTA

Virginia Swanson, being first duly sworn, on oath, deposes and says: That she is a citizen of the United States, over the age of twenty-one, and not a party to the above-entitled matter; that on the 7th day of July 2016, this affiant deposited in the mailing department of the United States Post Office at Bismarck, North Dakota, a true and correct copy of the following documents filed in the above-captioned action:


- 1. Appelle’s Supreme Court Brief
- 2. Appelle’s Appendix
- 3. Affidavit of Service

That copies of the above documents were securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

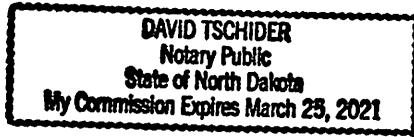
PEARCE DURICK PLLC
ZACHARY E. PELHAM, ND BAR #05904
314 E Thayer Avenue
PO Box 400
Bismarck ND 58502-0400


To the best of your affiant's knowledge, information and belief, such address as given above was the actual post office address of the party intended to be served.

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


Virginia Swanson

Subscribed and sworn to before me this 7th day of July 2016.




David A. Tschider, Notary Public