

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

Dustin Lawrence Richholt,	)	Supreme Court No. 2016087
	)	
	)	
Plaintiff and Appellee,	)	District Court No. 08-2014-DM-00501
	)	
-vs-	)	
	)	
Brittney Lynn Hrdlicka,	)	
	)	
Defendant and Appellant.	)	

---

BRIEF OF APPELLEE DUSTIN LAWRENCE RICHHOLT

---

Appeal from the Judgment entered

January 7<sup>th</sup>, 2016

In and for the County of Burleigh, State of North Dakota, South Central Judicial District

Honorable Sonna Anderson, Judge of the District Court, Presiding

Matthew John Arthurs, ND Bar ID #06359  
Attorney for Appellee  
Arthurs Law  
220 North Fourth Street  
Bismarck, North Dakota 58501  
(701) 426-8396  
matt@arthurslaw.com

## TABLE OF CONTENTS

Table of Authorities	Page	ii
Appellee's Statement of the Issues	Paragraph	1
Appellee's Statement of the Case	Paragraph	2-4
Appellee's Statement of Facts	Paragraph	5-18
Standard of Review	Paragraph	19
Argument	Paragraph	20-30
Conclusion	Paragraph	31

## TABLE OF AUTHORITIES

<b>Cases:</b>	<b>Paragraph:</b>
<u>Brouillet v. Brouillet</u> , 2016 ND 40, 875 N.W.2d 485 (N.D. 2016)	19
<u>Doll v. Doll</u> , 2011 ND 24, 794 N.W.2d 425.	19
<u>Schlieve v. Schlieve</u> , 2014 ND 107, ¶ 8, 846 N.W.2d 733	19
<u>Rustad v. Rustad</u> , 2013 ND 185, 838 N.W.2d 421	19
<u>Wolt v. Wolt</u> , 2010 ND 26, 778 N.W.2d 786	19
 <b>Statutes:</b>	
N.D.C.C. § 14-09-06.2(1)	16, 17, 18, 20, 25, 26, 27, 29

## **APPELLEE’S STATEMENT OF THE ISSUES**

[¶1] Whether the District Court’s determination that the Appellee, Dustin Richholt, should have primary residential responsibility for his child is clearly erroneous.

## **APPELLEE’S STATEMENT OF THE CASE**

[¶2] This residential responsibility matter comes before the Court on direct appeal of the District Court’s December 16<sup>th</sup>, 2015 Findings of Facts, Conclusions of Law, and Order for Judgment, which was reduced to Judgment on January 7, 2016.

[¶3] Appellant Brittney Lynn Hrdlicka (“Brittney”) filed a timely notice of appeal on March, 3, 2016, and filed her Brief on June 23, 2016.

[¶4] On July 21, 2016, Appellee Dustin Lawrence Richholt, (“Dustin”) filed a Motion for Extension of Time, when it was noticed that a relevant transcript of an evidentiary hearing in this matter had inadvertently not been ordered. That Motion was granted, and the missing transcripts were filed.

## **APPELLEE’S STATEMENT OF FACTS**

[¶5] Dustin and Brittney are the parents of I.A.R., born in 2011. App. 9. Their relationship ended on May 24, 2014, when the parties had a violent altercation, where Brittney briefly strangled Dustin and hit Dustin’s father in the face with a computer keyboard, causing his mouth to bleed. App. 13, 65 and Appellee’s App. 16-17.

[¶6] As a result of this altercation, each party sought protection orders against the other. Appellee’s App 14. Dustin, who has physical disabilities, had the help of the Abused Adult Resource Center and Brittney was represented by an attorney during those

proceedings. Id. Brittney sought a disorderly conduct restraining order and Dustin sought an order for protection. Id. Brittney's petition was granted and Dustin's was dismissed. Id. Brittney's disorderly conduct restraining order allowed for Brittney to have primary residential responsibility of I.A.R. "until further orders of the District Court." Appellee App. 1-2. That June 2, 2014 order did not provide any parenting time schedule. Id. Brittney moved to Lidgerwood, North Dakota on June 14, 2016. Appellee App. 3. Lidgerwood is 276 miles away from where Dustin lived in Bismarck. App. 39.

[¶7] Dustin requested court review of both orders, which had been issued by a District Court Referee. Pending the court review of the Referee's orders, Dustin began the current action and filed an ex parte motion for interim order. A hearing on the ex parte motion was held on June 26, 2014. The Court denied the motion, but advised the parties that disorderly conduct restraining orders cannot be used to establish residential responsibility or parenting time Appellee's App 5.

[¶8] After the June 26, 2014 hearing, the parties agreed to exchange I.A.R every four days pending an interim order hearing. Appellee's App 7. I.A.R arrived in Bismarck to be with Dustin on June 27, 2014 and was returned, as promised, to Brittney at Valley City, North Dakota on July 1. Id. While I.A.R. was in Bismarck with her father, between June 29, 2014 and July 1, 2014, Brittney served him with a "Motion for Order Requiring Genetic Tests and Admission into Evidence" as an attempt to disestablish paternity. Register of Actions at 19.

[¶9] The agreement that the parties made after the ex parte hearing was for I.A.R. to return to Dustin's care on July 5, 2014. Appellee App 7,8. However, Brittney requested

to not return I.A.R on the four day schedule because her father suddenly passed away on July 2, 2014, and Dustin agreed.

[¶10] Brittney then reported to law enforcement that Dustin’s father, Jeff Richholt, (“Jeff”) had committed Gross Sexual Imposition against I.A.R. Appellee App. 10. The report was made two weeks after Brittney alleged that the abuse occurred. *Id.* Law enforcement conducted an investigation into the matter and closed it as “unfounded.” App. 54.

[¶11] An interim order hearing was held on August 19, 2014. Register of Actions. The District Court heard Brittney’s Motion for Order Requiring Genetic Tests on that day as well. In support of her genetic test motion, Brittney claimed by affidavit that when she was six week’s pregnant with another man’s child, she forced herself to be intimate with Dustin so that he would think that the child was his, in case the biological father “walked away.” Appellee App. 11. Brittney further testified at hearing that the reason why she allegedly tricked Dustin into believing that he was I.A.R’s father was so she could get “financial money” to eventually leave him. Appellee App 11. Brittney also testified that she told I.A.R. that Dustin was not her father when I.A.R. was less than a year old. *Id.*

[¶12] At the conclusion of the August 19, 2014 interim order hearing, the District Court denied Brittney’s motion for genetic testing, and ordered that the parties share residential responsibility on an interim basis. App. 5. The Court ordered that the parties rotate residential responsibility every two weeks. *Id.*

[¶13] Brittney fired her attorney after the interim order hearing because he allegedly did not listen to what she wanted, and had tried to tell her what to do. App. 68-69. She was self-represented after her attorney was permitted to withdraw on January 7, 2015.

[¶14] The Disorderly Conduct Restraining Order prohibiting Dustin from contacting Brittney expired in October, 2014. Between the time of the August, 2014 Interim Order hearing and the October 23, 2015 trial, Brittney honored the Interim Order's parenting time schedule. However, while I.A.R. was in Brittney's care, Brittney often refused to let Dustin talk to his daughter over the phone, with the excuse that Dustin's calls came after I.A.R.'s bedtime. App 37. Brittney also refused to tell Dustin basic information regarding the care of I.A.R., including I.A.R.'s daycare provider and Brittney's work schedule. App. 61. Whenever I.A.R. went to live with Brittney during the Interim Order, it was like, from Dustin and his family's perspective, I.A.R. was disappearing into the Twilight Zone. Appellee App. 18. Other than from the occasional contact, all details of I.A.R.'s life were simply unknown to her father and his family. Id.

[¶15] Most, if not all, of the transportation between Lidgerwood and Bismarck while the interim order was in place was provided by Dustin's parents, Jeff and Mary Richholt. Appellee App. 15. Brittney did not voice any objection to Jeff providing transportation, even though she accused him of committing Gross Sexual Imposition against I.A.R. Id., App. 64, 65. When asked about this at trial, Brittney claimed that she did not have a choice whether or not to let Jeff, the alleged abuser of I.A.R. have contact with her, and that she was willing to let "bygones be bygones" regarding the Gross Sexual Imposition of her child. App. 64.

[¶16] At the close of trial testimony, Dustin went step by step through the best interest factors under N.D.C.C. § 14-09-06.2(1), and argued that his having primary residential responsibility was best for I.A.R. Brittney attempted to do the same. As for factor (g.), “The mental and physical health of the parents, as that health impacts the child,” Brittney argued the following:

“In response to the mental, I can’t remember what it’s called. **I believe we both in the same boat.** We each have our mental struggles, but I think we would be able to come together and work past those. As far as the physical, I believe that Dustin can properly provide for her, food, shelter, everything she needs. I do have concerns about what if she does take off running after something she sees, **but that’s where I trust his parenting responsibilities** so that she knows, hey, I can’t just run away. **That’s why I’ve never voiced any concerns about it before**”

App. 77 (Emphasis added).

[¶17] In its decision, the District Court weighed the best interests factors under N.D.C.C. § 14-09-06.2(1) and determined that factors (a.), (b.), (c.), (d.), (g.), (h.), (i.), (j.), and (k.) either did not apply or weighed equally between the parents. It found that factor (e.) weighed in Dustin’s favor. The Court also noted that factor (l.), regarding one party making bad-faith allegations regarding abuse of children against another party, did not apply because “Brittney did not accuse Dustin of child abuse [in bad faith], but rather accused Dustin’s father, Jeff.” App. 18. The Court went on to find that factor (m.), the catch-all factor, weighed in Dustin’s favor due to the allegations that Brittney made against Jeff. *Id.* As to those allegations, the Court found that they were “extremely serious and disruptive to family relationships.” App. 15.

[¶18] On appeal, Brittney argues that the Court erred when it decided that factor (e.) weighed in Dustin’s favor, that the Court should have decided that factor (g.) regarding

the mental and physical health of the parents should have weighed in her favor due to Dustin's physical disabilities, and that Brittney's accusations against Jeff should not have been relevant to factor (m.).

### STANDARD OF REVIEW

[¶19] The standard of review in residential responsibility cases was recently concisely stated by the Court in Brouillet v. Brouillet, 2016 ND 40, 875 N.W.2d 485 (N.D. 2016):

[The District] court's award of primary residential responsibility is a finding of fact, which will not be reversed on appeal unless it is clearly erroneous or it is not sufficiently specific to show the factual basis for the decision. See, e.g., Rustad v. Rustad, 2013 ND 185, ¶ 5, 838 N.W.2d 421; Wolt v. Wolt, 2010 ND 26, ¶ 7, 778 N.W.2d 786. "A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support it, or, although there is some evidence to support it, on the entire record, we are left with a definite and firm conviction a mistake has been made." Doll v. Doll, 2011 ND 24, ¶ 6, 794 N.W.2d 425. "Under the clearly erroneous standard, we do not reweigh the evidence nor reassess the credibility of witnesses, and we will not retry a custody case or substitute our judgment for a district court's initial custody decision merely because we might have reached a different result." Wolt, at ¶ 7 (quotation marks omitted). The district court has substantial discretion in making a custody determination, but it must consider all of the best-interest factors. Id. at ¶ 9. "Although a separate finding is not required for each statutory factor, the court's findings must contain sufficient specificity to show the factual basis for the custody decision." Id.

Brouillet at ¶ 7, Citing Schlieve v. Schlieve, 2014 ND 107, ¶ 8, 846 N.W.2d 733.

### ARGUMENT

**The District Court's determination that the Appellee, Dustin Richholt, should have primary residential responsibility for his child is not clearly erroneous.**

[¶20] Brittney argues that the District Court's findings regarding best interest factor (e.), regarding the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, were clearly erroneous.

[¶21] First, Brittney claims that the reasons why Dustin brought the instant action were because he distrusted her and that they were unable to come to an agreement regarding I.A.R.. The record in this case shows that Dustin brought this action because the Disorderly Conduct Restraining order erroneously granted Brittney residential responsibility of I.A.R. until “further order of the District Court,” yet provided no guidance regarding parenting time. The record also shows that Brittney refused to allow I.A.R. to contact or see her father until after Dustin brought a motion for an ex parte interim order.

[¶22] Next, Brittney blames her lack of communication with Dustin regarding I.A.R. on the disorderly conduct restraining order. The record shows that the restraining order expired in October, 2014, and that there were alternate ways that Brittney could have, but didn't, share information regarding I.A.R. with Dustin – for example, through his parents, who shuttled I.A.R. between the parties – while the restraining order was still in place.

[¶23] Next, Brittney claims that she did, indeed, share information with Dustin regarding important things in I.A.R.'s life, such as the name of her daycare provider. She explains that she willingly and voluntarily did so when she was compelled to testify, under oath, at trial. Brittney's argument confuses her obligations as a parent to share with the other parent important information about a child's day to day activities with her obligations as a civil litigant. In any event, Brittney admits to hiding information from Dustin because she was afraid that it would be used against her in court.

[¶24] Next, Brittney argues that there was no evidence presented to indicate that she caused a negative impact on Dustin's parent/child relationship with I.A.R. when she told I.A.R. that Dustin was not her father. Such a finding of a negative impact is not needed

under the statute. All that is needed is an indication that a certain fact or circumstance affects the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. Logic and common sense dictate that when one tells a child that her father is not her real father, one is not wishing to facilitate and encourage a close and continuing relationship between the father and the child.

[¶25] Secondly, Brittney claims that the Court should have decided that factor (g.) regarding the mental and physical health of the parents should have weighed in her favor due to Dustin's suicidal gesture and physical disabilities, despite acknowledging, at trial, that the mental health of the parties was similar, and that she trusted Dustin's parenting abilities despite his physical limitations.

[¶26] A litigant in a residential responsibility action has the burden of persuading the court that a factor under N.D.C.C. § 14-09-06.2(1) weighs in her favor. That burden is not met when one concedes an issue at the trial court. The trial court cannot be said to have erred under these circumstances.

[¶27] Finally, Brittney argues that her accusation that Jeff committed gross sexual imposition against I.A.R. should not have been relevant to factor (m.). She explains that Dustin's parents testified that her allegation had no impact on their relationship with I.A.R.. Simply because Dustin's parents have the grace to forgive Brittney for her actions does not erase the wounds that her allegations caused.

[¶28] The record suggests that Brittney's allegation against Jeff was made in bad faith, because Brittney's behavior was atypical of a parent of a child victim of Gross Sexual Imposition. Such behavior included Brittney not seeking medical attention for I.A.R.

immediately, not reporting the alleged crime for two weeks, continuing to allow the alleged perpetrator access to the child, and nonchalantly dismissing any grudge or distrust of the perpetrator.

[¶29] That being said, there is no requirement of bad faith under factor (m.). The only thing that is required under that factor is that the observations of the district court be relevant to the best interests of the child. The court made a finding that allegations like these have a devastating impact on families. Its finding was sufficient to establish the relevancy of Brittney's conduct as a factor in its best interests analysis.

[¶30] Of special note, Brittney states in ¶20 of her brief that law enforcement recommended that I.A.R. complete a forensic interview. The cite to the record does not support this contention.

### CONCLUSION

[¶31] The findings of the district court were not clearly erroneous. Brittney's attempts to have this Court reweigh the evidence in this matter to her favor must be rejected. The findings of the District Court should be affirmed.

[¶32] Respectfully submitted this 7<sup>th</sup> day of September, 2016.

Matthew John Arthurs, ND Bar ID #06359  
Attorney for Appellant  
Arthurs Law  
220 North Fourth Street  
Bismarck, North Dakota 58501  
(701) 426-8396  
matt@arthurslaw.com

**ATTORNEY'S CERTIFICATE OF SERVICE**

[¶33] The undersigned hereby certifies that a true and correct copy of the foregoing document, in word and pdf formats, as well as Appellee's Appendix, was on the 14<sup>th</sup> day of September, 2016, emailed to:

Erica Chisholm  
Attorney for Appellant  
elchishol@hotmail.com

Matthew John Arthurs, ND Bar ID #06359  
Attorney for Appellee  
Arthurs Law  
220 North Fourth Street  
Bismarck, North Dakota 58501  
(701) 426-8396  
matt@arthurslaw.com

[¶34] The undersigned hereby certifies that a true and correct copy of the foregoing document, in word and pdf documents, as well as Appellant's Appendix was on the 14th day of September, 2016, emailed to:

Ms. Penny L. Miller, Esq.  
Clerk of the Supreme Court  
Supreme Court  
Judicial Wing, 1st Floor  
600 E. Boulevard Ave., Dept. 180  
Bismarck, ND 58505-0530  
[supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov)

Matthew John Arthurs, ND Bar ID #06359  
Attorney for Appellee  
Arthurs Law  
220 North Fourth Street  
Bismarck, North Dakota 58501  
(701) 426-8396  
matt@arthurslaw.com

SUPREME COURT CASE NUMBER 20160213

**In the Matter of Darl John Hehn** )  
 ----- )  
 Jonathan Byers, Special Assistant )  
 State’s Attorney, )  
 )  
*Petitioner and Appellee,* )  
 )  
 v. )  
 )  
 Darl John Hehn, )  
 )  
*Respondent and Appellant.* )

**CERTIFICATE OF SERVICE  
 UPON JONATHAN BYERS,  
 ATTORNEY FOR  
 PETITIONER AND APPELLEE**

¶54 The undersigned attorney represents the Respondent/Appellant, Darl John Hehn, in the above-entitled matter and hereby certifies that on September 13, 2016, I served Appellant’s Brief (corrected) and Appendix (corrected) electronically upon Jonathan Byers, attorney for Petitioner/Appellee, State of North Dakota, at the following email address:

jbyers@nd.gov.

Dated this 16<sup>th</sup> day of September, 2016.

GREEN LAW FIRM, P.C.  
 522 Dakota Avenue, Suite 1  
 Wahpeton, ND 58075  
 (701) 672-1218 (Office)  
 (701) 672-1219 (Fax)

By: /s/ Jonathan L. Green  
 Jonathan L. Green (ND Bar ID #06853)  
 Attorney for Respondent/Appellant  
 jon.green@jongreenlawfirm.com