

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA  
SUPREME COURT NO. 20160087**

Dustin Lawrence Richholt,

Plaintiff and Appellee,

vs.

Brittney Lynn Hrdlicka,

Defendant and Appellant.

**BRIEF OF APPELLANT BRITTNEY LYNN HRDLICKA**

APPEAL FROM JUDGMENT ENTERED  
JANUARY 7<sup>th</sup>, 2016;

BURLEIGH COUNTY DISTRICT COURT,  
SOUTH CENTRAL JUDICIAL DISTRICT JUDGE,  
HONORABLE SONNA M. ANDERSON

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¶2

### **STATEMENT OF ISSUES**

¶3 This case involves the issue of primary residential responsibility of the minor child of Appellee (hereinafter “Dustin”) and Appellant (hereinafter “Brittney”), I.A.R., born in 2011. Subsequent to trial on October 23, 2015, the court awarded Dustin primary residential responsibility of I.A.R. subject to Brittney’s right to reasonable parenting time to include alternating weekends and holidays. Appellant’s Appendix 26-29.

¶4 The issues raised on appeal are: 1) whether the district court erred in its analysis of the best interest of the child factors in awarding Dustin primary residential responsibility of I.A.R., born in 2011.

¶5

### **STATEMENT OF THE CASE**

¶6 This case comes to the North Dakota Supreme Court from the South Central Judicial District and Burleigh County in a decision rendered by the Honorable Sonna M. Anderson on December 16<sup>th</sup>, 2015, App. 9-22; and a Judgment filed on January 7<sup>th</sup>, 2016. App. 26-29. A one-day bench trial was conducted on October 23<sup>rd</sup>, 2015. It involved the primary residential responsibility of Dustin and Brittney’s minor child, I.A.R., born in 2011. Brittney appeals the district court’s decision and judgment on the grounds that the district court’s analysis of the best interest factors was clearly erroneous.

¶7

### **STATEMENT OF THE FACTS**

¶8 Dustin and Brittney were in a relationship for seven years and are the parents of I.A.R., born in December of 2011. App. 9. The parties separated on May 25, 2014. Id. After they separated, Brittney moved from Bismarck to Lidgerwood, North Dakota, taking I.A.R. with her. Dustin brought this action to establish primary residential responsibility and parenting time for I.A.R. by serving a Summons and Complaint on June 18, 2014. Id.

¶9 An Interim Order was issued on August 19, 2014, which provided that the parties would share equal parenting time with I.A.R., meeting in Valley City, North Dakota, every other Friday evening for exchanges. Id. Dustin has retained attorney Matthew Arthurs while Brittney's attorney Alex Kelsch was allowed to withdraw as counsel in January of 2015. Brittney has represented herself since such time. Id.

¶10 Trial was held on October 23, 2015. Dustin was represented at trial by Attorney Arthurs. Brittney represented herself. The Court heard testimony from Dustin, his parents, Mary and Jeff Richholt, and his sister, Carrie Richholt. The court also heard testimony from Brittney.

¶11 Dustin is 33 years old. He owns a two bedroom trailer home in Bismarck, the home where he, Brittney and I.A.R. lived before Brittney moved to Lidgerwood, North Dakota. Dustin works as a "re-con" manager at Eide Ford, Inc., where he details cars for re-sale from 4:00 p.m. to 8:00 p.m. Monday through Friday, earning \$12.00 per hour while working part time. Dustin is also a full-time student at United Tribes studying medical transcription. App. 74. Dustin and I.A.R. enjoy riding bikes, going to the zoo or the park or spending time at home.

¶12 When he leaves for work, he takes I.A.R. to his sister Carrie's home. Carrie has a daycare. When her other children leave, Carrie and I.A.R. often go to Mary and Jeff Richholt's until Dustin finishes work. I.A.R. goes to bed at approximately 9:30 or 10:00 p.m. in Dustin's care. Dustin has extended family in the Bismarck area. Dustin does not take I.A.R. to church or preschool.

¶13 Dustin has Facio scapula humeral muscular dystrophy (FSHD) which affects the muscles in his face and shoulders primarily. App. 31-32. He has weakness in his shoulders, which makes it difficult to lift I.A.R. or to physically move her from place to place. Id. Dustin's motor skills are also impacted by FSHD in that he is hard of hearing and has difficulty in running, jogging, or

moving quickly. Id. Brittney expresses concern regarding Dustin's ability to adequately care for I.A.R. App. 67. Dustin receives disability payments as a result of his disability.

¶14 Brittney is 27 years old. She lives in a large four bedroom, two bath home in Lidgerwood. The home has a new furnace, air conditioner and water heater and a fresh coat of paint. Brittney worked as a manager at the Big Boy in Bismarck before she moved to Lidgerwood. When she first moved to Lidgerwood, she worked at the Cenex station and now works as a CNA at St. Gerard's Care Center in Hankinson, North Dakota, earning \$13.58 per hour. She began to work the night shift at St. Gerard's in November 2014, working from 11:00 p.m. to 7:00 a.m. When she worked the night shift, she arranged for a babysitter to come to her house and sleep overnight to watch I.A.R. In August 2015, Brittney began working the morning shift beginning at 6:00 a.m. until 2:30 p.m. Now that she works the day shift, I.A.R. attends daycare in Hankinson.

¶15 On Monday through Friday, when Brittney is working, she and I.A.R. get up at 4:45 a.m. and she delivers I.A.R. to daycare in Hankinson. Bedtime is early, at 7:00 p.m. When I.A.R. is with Brittney, she helps I.A.R. practice writing and learning her shapes and colors. They enjoy watching movies together on Saturdays. Brittney wants I.A.R. to have a childhood in a small town like Lidgerwood. There are several families with young children in Lidgerwood that I.A.R. enjoys spending time with and Brittney has several aunts and uncles living in Lidgerwood area. Brittney testified that participation in church is important to her.

¶16 I.A.R. is a normal four year-old child, reaching her normal developmental milestones. Because of Dustin's disability, I.A.R. receives a monthly support payment from Social Security as well. App. 12. Because of her age and the fact that she lives part of her time in Lidgerwood and part of her time in Bismarck, I.A.R. is presently not enrolled in any activities. While in

Brittney's care, I.A.R. attends preschool at her daycare in Hankinson. App. 70. I.A.R. is scheduled to begin Kindergarten in 2018. She would attend Riverside Elementary School if she lived in Bismarck with Dustin and would attend Lidgerwood Elementary if she lived in Lidgerwood.

¶17 Dustin acknowledged paternity by signing an Acknowledgement of Paternity at the time of I.A.R.'s birth. Brittney believes that another man is I.A.R.'s father and asked this court to order genetic tests as part of this action. App. 5-8. The court denied Brittney's request. Brittney has expressed her belief to Dustin in the past. App. 45 and 66. In the past, Brittney also expressed her belief that Dustin is not the father to I.A.R. App. 66. At the interim hearing in September of 2014, Brittney was ordered by the district court to cease raising the issue of paternity with respect to I.A.R. and she agreed. App. 5-8.

¶18 The parties separated on May 25, 2014, after a fight which occurred at their residence. After that incident, Brittney obtained a Disorderly Conduct Restraining Order against Dustin. App. 44. The Disorderly Conduct Restraining Order expired in October 2014. Brittney did not petition the court to extend the restraining order.

¶19 Although the Interim Order specified that the parties would meet in Valley City for exchanges, Dustin's parents volunteered to provide all of the transportation as they do not believe that Brittney's car is road worthy and they want to ensure that I.A.R. is transported in a safe vehicle. App. 48-49. Brittney has offered to meet halfway and/or pay for gas, however, the Richholts have declined both offers. App. 56-57.

¶20 In July of 2014, Brittney contacted law enforcement concerning a report made to her by I.A.R. regarding Dustin's father, Jeff Richholt, "touching" her. App. 68. The police investigated the claim and recommended I.A.R. complete a forensic interview. Brittney's father passed away

from a massive heart attack the day after she reported the “touching” incident to the law enforcement and thus an interview of I.A.R. was never completed. *Id.* Following a brief investigation, it was determined that the “touching” allegations were unfounded. *Id.* Despite the unfounded allegation, Mary and Jeff Richholt still has positive feelings about Brittney and testified it has not impacted their relationship with I.A.R. or Brittney. App. 58-59.

¶21 On December 16, 2015, the district court issued a Findings of Fact, Conclusions of Law, and Order for Judgment. In the district court’s Findings, it determined that following an application of the best interest factors outlined in North Dakota Century Code 14-09-06.2(1), an award of primary residential responsibility of I.A.R. to Dustin was appropriate.

¶22 The district court determined that best interest factors (a), (b), (c), (d), (f), and (g) favor both Dustin and Brittney equally. The district court determined that best interest factors (h), (i), (j), (k), and (l) were not applicable to the present case. Finally, the district court found that best interest factor (e) and (m) weighed in Dustin’s favor.

¶23 As reasoning for a finding that best interest factor (e) weighed in Dustin’s favor, the district court cited the fact that after the parties’ separation in May of 2014, Dustin had to bring the present action to exercise parenting time with I.A.R. App. 17. The district court further notes that Brittney refused to share information or answer Dustin’s telephone calls in addition to telling I.A.R. that Dustin was not her father. *Id.* The district court credits Dustin’s family for facilitating parenting time and exchanges while further noting that Dustin allows I.A.R. to call Brittney while in his care. *Id.*

¶24 As reasoning for a finding that best interest factor (m) weighed in Dustin’s favor, the district court noted that Brittney’s allegations of “touching” I.A.R. against Jeff were relevant. App. 18. The district court further noted that Brittney needlessly involved law enforcement in an

exchange in August of 2015 without reason. Id. The district court made an additional finding that Brittney has exhibited a persistent failure to communicate with Dustin about her living and work arrangements in Lidgerwood, North Dakota. Id. Lastly, the district court referenced Brittney's persistent efforts to undermine Dustin's status as I.A.R.'s father as being relevant. Id.

¶25 **STANDARD OF REVIEW**

¶26 The standard of review applied to the issues presented in this case vary depending on the issue from a clearly erroneous standard, to an abuse of discretion standard to a de novo review by this court. See, e.g., “An award of [primary residential responsibility] is a finding of fact which this Court will not disturb unless it is clearly erroneous.” McAllister v. McAllister, 2010 ND 40, 779 N.W.2d 652 (citation omitted). “Under N.D.R.Civ.P 52(a), a finding of fact is clearly erroneous only if it is induced by an erroneous view of the law 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.” McAllister, at ¶13 (citation omitted).

¶27. The district court abuses its discretion “when it acts arbitrarily, unconscionably, or unreasonably, or when its decision is not the product of a rational mental process.” Davis v. Killu, 2006 ND 32, ¶6, 710 N.W.2d 118.” A [district] court acts in an arbitrary, unreasonable, or unconscionably manner when its decision is not the product of a rational mental process by which the facts and law relied upon are stated and considered together for the purpose of achieving a reasoned and reasonable determination.” State v. Gibbs, 2009 ND 44, ¶32, 763 N.W.2d 430 (quotations omitted).

¶28 **LAW AND ARGUMENT**

¶29 The Defendant and Appellant, Brittney Lynn Hrdlicka, presents the following issues for the Court's review and consideration to reverse and remand the district court's Findings of Fact,

Conclusions of Law, and Order for Judgment. Each issue presented below relates to the standard of review therein.

- 1) Whether the district court erred in its analysis of the best interest of the child factors in awarding Dustin primary residential responsibility of I.A.R., born in 2011.

¶30 In determining an initial custody or primary residential responsibility finding, the district court must apply the factors listed in North Dakota Century Code §14-09-06.2(1). Dronen v. Dronen, 2009 ND 70, ¶8, 764 N.W.2d 675. Here the district court considered all factors listed in the statute, and determined that factors (a), (b), (c), (d), (f) and (g) weighed evenly between Dustin and Brittney. App. 16-17.

¶31 In Dustin’s favor, the court determined factors (e) and (m). App. 17-18. The court determined that factors (h), (i), (k) and (l) “are not applicable in this case.” Id. And finally, it determined that factor (j) in this case “where there is some evidence that Brittney has been physically abusive and Dustin has been verbally abusive in the past, the court finds that is not a case where the presumption of parenting responsibility based upon domestic violence should be imposed.” Id.

¶32 The standard of review for this issue is expressed in Mowan v. Berg, 2015 ND 95, ¶5, 862 N.W.2d 523, wherein this court stated, “An award of [primary residential responsibility] is finding of fact which this Court will not disturb unless it is clearly erroneous.” McAllister v. McAllister, 2010 ND 40, ¶13, 779 N.W.2d 652 (citation omitted). “Under N.D.R.Civ.P. 52(a), a finding of fact is clearly erroneous only if it is induced by an erroneous view of the law 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.” McAllister, at ¶13

(citation omitted). “Under the clearly erroneous standard, we do not reweigh 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 [primary residential responsibility] decision merely because we might have reached a different result.” Wolt v. Wolt, 2010 ND 26, ¶7, 778 N.W.2d 786 (citation and quotation marks omitted).

¶33 The district court’s analysis of factor (e) under N.D.C.C. §14-09-06.2(1), which states: “The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child” is clearly erroneous for the reasons forthcoming. App. 17. First, the district court notes in its analysis of factor (e) that Dustin had to bring the present action to see I.A.R. after the parties’ separation. *Id.*

¶34 Following the incident that occurred on May 25, 2014, Brittney obtained a Disorderly Conduct Restraining Order. App. 44. Dustin brought the present action in June of 2014 and an Interim hearing was held in September of 2014 prior to expiration of the Disorderly Conduct Restraining Order in October of 2014. The Disorderly Conduct Restraining Order interfered with Brittney’s ability to communicate regarding parenting time between Dustin and I.A.R. It was not the intentional actions of Brittney which denied Dustin the opportunity to exercise parenting time prior to the Interim hearing in September. Rather, it was Dustin’s own disorderly behavior resulting in a Disorderly Conduct Restraining Order which prevented him from exercising parenting time with I.A.R.

¶35 Additionally, Dustin testified during cross examination that it was his distrust of Brittney and their inability to come to an agreement that resulted in his bringing the current action. App. 72. There was no evidence in the record to support a finding that Dustin brought the present

action because he was being denied parenting time with I.A.R. by Brittney other than during the time frame in which the restraining order was in place prohibiting contact.

¶36 Next the district court cited Brittney's alleged refusal to share information or answer Dustin's telephone calls. App. 17. As to Brittney's alleged refusal to provide information, Brittney testified that she did not receive Dustin's discovery requests which were served by email without Brittney's knowledge or awareness. App. 30. Brittney admitted to withholding from Dustin the name and telephone number of I.A.R.'s daycare provider in Hankinson because she didn't trust Dustin wouldn't use it against her. App. 61. Dustin testified that he did not trust Brittney but Brittney's mistrust of Dustin contributed to factor (e) weighing against her.

¶37 Dustin testified that his mother Mary has had conversations with Brittney concerning I.A.R. having a urinary tract infection and discussed the antibiotics prescribed. App. 51. Mary Richholt also testified she discussed I.A.R. having a sinus infection with Brittney and also discussed a dry sore on I.A.R.'s mouth which turned out to be impetigo. App. 51. Brittney further testified that she had discussions with Dustin also regarding I.A.R. and impetigo. App. 34-35. Brittney testified to an additional conversation with Dustin concerning I.A.R. and potty training. App. 76. Dustin testified that after taking the Parents Forever class, he learned to communicate better with Brittney in general as opposed to becoming angry and hanging up on her. App. 36.

¶38 As to Brittney's alleged refusal to answer Dustin's phone calls, Dustin testified that it is rare he gets to talk to I.A.R. whenever he wants to, not that it is rare that he talks to I.A.R. while in Brittney's care. App. 37-38. Dustin further testified that if he attempts to call I.A.R. after he is off work at 8:00 p.m., Brittney informs him I.A.R. is sleeping so Brittney is answering his phone calls. Id. Dustin went on to testify that he is having telephone contact with I.A.R. "a couple

times” every two weeks. *Id.* Dustin testified that he doesn’t make I.A.R. call Brittney every night either and that Brittney has never told him she would deny him telephone contact with I.A.R. *Id.*

¶39 The district court also makes note that Dustin encourages I.A.R. to call Brittney while in his care. There was no evidence presented at trial as to whether or not Brittney encourages I.A.R. to contact her father independently while in her care. Brittney and Dustin simply both testified that Dustin speaks with I.A.R. while in Brittney’s care “a couple of times” during the two week span. App. 78. There was insufficient evidence in the record to determine that this weighed in Dustin’s favor during the district court’s analysis of factor (e).

¶40 At trial, Brittney willingly provided all pertinent information relating to her residence, place of employment, income, and daycare provider for I.A.R. App. 70. While communication may not have been perfect between the parties following their separation in May of 2014, the Disorderly Conduct Restraining Order prevented Brittney from effectively communicating with Dustin until October of 2014. Additionally, Dustin testified to having issues communicating with Brittney prior to taking the Parents Forever class and further testified he did not trust Brittney which undoubtedly impacted his ability to communicate with her. App. 36-37; App. 72. Lastly, there is no evidence in the record to suggest that Brittney has ever knowingly “refused” to provide Dustin with information beyond the daycare provider’s name which was voluntarily provided at trial or ever “refused” any of Dustin’s phone calls.

¶41 The district court’s analysis of factor (e) includes a further finding that Brittney has told I.A.R. that Dustin is not her father but fails to identify any impact the same has had on Dustin’s relationship with I.A.R. and vice versa. App. 17. To the contrary, the district court found during its analysis of factor (a) that both Dustin and Brittney share a close and loving bond with I.A.R.

App. 16. The record provides no evidence of any negative impact on Dustin's relationship with I.A.R. as a result of comments made by Brittney.

¶42 Additionally, following the Interim Order in August of 2014 in which the district court directed Brittney to cease all discussion relating to the alleged father of I.A.R., the record contained no evidence that Brittney raised the issue again with I.A.R. or Dustin. Since the Interim Order was issued in August of 2014, the parties have shared I.A.R. on an equal basis with no issue. App. 38. No evidence was presented at trial as to either party frustrating the other party's parenting time with I.A.R. with the exception of during the time frame in which the restraining order was in place prohibiting contact. App.75. The parties had shared I.A.R. on an equal basis with no issue in excess of a year by the time trial was held in October of 2015. The district court improperly determined that Brittney's comments regarding I.A.R.'s "real father" weighed in Dustin's favor during its analysis of factor (e).

¶43 The district court's analysis of factor (e) includes a further finding that "Dustin and his family have worked to facilitate the exchanges for parenting time." App. 17. In the district court's analysis of factor (b), it found that the record was insufficient to make a finding based on mere speculation that Brittney's vehicle was unsafe to transport I.A.R. App. 16. The district court, however, then references Dustin and his parent's voluntary offer to do all transportation as weighing in Dustin's favor during the district court's analysis of factor (e). App. 17.

¶44 Mary Richholt testified that she and her husband Jeff volunteered to do all of the transportation of I.A.R. for their son Dustin's parenting time because they felt better knowing I.A.R. was getting back and forth safely. App. 48-49. Dustin does not accompany his parents during their voluntary transportation of I.A.R. Jeff Richholt testified that he sent their son Dustin

to Lidgerwood to fix the lug nuts that were allegedly creating an unsafe vehicle for I.A.R.  
App. 59.

¶45 Brittney testified that she has offered to meet Dustin's parents in Casselton but they have declined. App. 56-57. Brittney further testified that she has offered to compensate Dustin's parents for their gas money and again they have declined. Id. The district court improperly gave weight to Dustin in analyzing factor (e) as it related to his parents voluntary transport of I.A.R. for parenting time.

¶46 The district court's analysis of factor (g) under N.D.C.C. §14-09-06.2(1), which states: "The mental and physical health of the parents, as that health impacts the child" is also clearly erroneous in that the district court found this factor to weigh evenly for both parties. App. 17. The trial record clearly indicates Dustin suffers from Facial Scapular Humeral Muscular Dystrophy or FSHD. App. 31-32. Dustin testifies that FSHD impacts his facial and shoulder muscles. Id. He further testifies that he receives disability/social security payments as a result of suffering from FSHD. Dustin testifies that he is employed part-time only working approximately 20 hours a week. App. 31.

¶47 During cross examination by Brittney, Dustin admitted to not being able to lift I.A.R. onto something as simple as a swing set. App. 46. Dustin further admitted to being unable to jog after I.A.R. in the event she were to run out into the street. Id. Certainly a parent's inability to lift or run after a child impacts their ability to adequately care for a child, especially an active child such as I.A.R. The district court's determination that Dustin's disability does not impact his ability to care for the child when it qualifies him for disability payments and prohibits him from working a full-time job is clearly erroneous.

¶48 Additionally, Dustin admits to making a comment about killing himself during cross examination by Brittney. App. 71. The district court failed to recognize the admission in its analysis of factor (g). Suicidal comments made by a parent directly relates to the mental health of the parent as it impacts the safety and welfare of any minor children.

¶49 The district court’s analysis of factor (m) under N.D.C.C. §14-09-06.2(1), which states: “Any other factors considered by the court to be relevant to a particular parental rights and responsibilities dispute” is also clearly erroneous. App. 18. In effect, what the district court did was to re-analyze factors previously determined under factor (m).

¶50 The district court again noted Brittney’s alleged failure to communicate during its analysis of factor (m) after first raising the issue in its analysis of factor (e). App. 17-18. The same applies to Brittney’s discussion with I.A.R. as to Dustin not being her real father. Id. The district court re-analyzes the issue in factor (m) after first raising the issue in factor (e). Id. The argument regarding these considerations during the district court’s analyze under factor (e) also applies to its re-analysis under factor (m). It was improper for the district court in general to re-analyze these issues under factor (m) as factor (m) specifically states “any other factors to be considered by the court to be relevant”.

¶51 As to the additional considerations noted by the district court in factor (m) that were not previously analyzed under another best interest factor, the district court found that Brittney’s unfounded accusations against Jeff, Dustin’s father, were relevant. App. 18. The district court did not indicate the reasoning behind determining why the unfounded accusations were relevant or note any particular impact the unfounded allegations had on any party.

¶52 Both Jeff and Mary Richholt testified that Brittney’s report to law enforcement concerning Jeff’s “touching” of I.A.R. had no impact on their relationship with Brittney or I.A.R.

App. 58 and 58. Jeff testified that despite the allegations, he has always considered Brittney to be like a daughter and has tried to help her whenever possible. App. 58-59. Dustin did not testify that the allegations had any impact on his relationship with Brittney or I.A.R.

¶53 Brittney testified that she believed Jeff may not have necessarily molested I.A.R., but something happened causing I.A.R. to tell Brittney “Grandpa touched me”. App. 64-65. Brittney further testified that she reported the incident to law enforcement and put her faith in God that Jeff was telling the truth about what happened. Id. Brittney testified that she did not frustrate Jeff’s relationship or his interfere with his contact with I.A.R. as a result of the investigation. Id.

¶54 Brittney also testified that because her father passed away the day after she reported to law enforcement what had allegedly occurred, she did not have the opportunity to have I.A.R. interviewed immediately as recommended. App. 68. Brittney’s father’s death was an unexpected tragedy which understandably created a distraction for Brittney inhibiting her ability to focus her full attention on what potentially occurred between I.A.R. and Dustin’s father Jeff. There was no evidence presented at trial to suggest that Brittney contacted law enforcement out of spite or maliciousness in an attempt to interfere with Dustin or his family’s relationship with I.A.R. To the contrary, the evidence presented on record suggests that Brittney acted as any concerned parent would have and allowed the investigation to take its course.

¶55 Subsequent to the outcome of the investigation regarding Jeff and I.A.R., Brittney testified that she “let bygones be bygones” and continued to allow him the opportunity to be a grandfather to I.A.R. App. 64. Because no impact on I.A.R. or her relationship with any family member was cited and Brittney was only acting as any concerned parent would, it was clearly erroneous for the district court to determine that the allegations reported by Brittney weighed in Dustin’s favor.

¶56 Lastly, the district court cited testimony by Mary Richholt relating to Brittney’s alleged involvement of law enforcement during an exchange in August of 2015 without cause during its analysis of factor (m). App. 18. Mary Richholt testified that law enforcement first came to her place of employment and then her home in August of 2014 to speak with her about the investigation concerning her husband Jeff Richholt. App. 53-54. There is no testimony on the record to support the district court’s finding that Brittney needlessly involved law enforcement in an exchange in August of 2015. Yet the district court found this to weigh in Dustin’s favor which is clearly erroneous.

¶57 The district court failed to consider during its analysis under factor (m) the fact that I.A.R. has been attending preschool in Brittney’s care. App. 18 and 70. This is relevant in that Brittney has taken steps to prepare I.A.R. for Kindergarten in 2018. It is also relevant in that I.A.R. has developed a tie to the community and established roots in Brittney’s community.

¶58 The district court further failed to recognize that Dustin testified he is a full-time student attending United Tribes for medical transcription. App. 18 and 74. He testified his employment future is unknown with Eide Ford and someday he hopes to work from home. App. 74. This is a relevant consideration in that Dustin’s weekly schedule includes a part-time job in addition to being a full-time student. This leaves little time for meeting the day to day needs of a child in addition to managing his own disability. At minimum, the issue of preschool and Dustin’s full time status as a student should have been a consideration by the district court in determining the best interests of I.A.R.

¶59 **CONCLUSION**

¶60 To summarize, the district court’s erroneous analysis of the best interest of the child factors (e), (g), and (m), in addition to its oversight in considering additional facts, led to an

award of primary residential responsibility of I.A.R. to Dustin as opposed to Brittany. For the reason stated above, the Defendant and Appellant, Brittney Lynn Hrdlicka, respectfully prays for this Court to reverse and remand the district court's Findings of Fact, Conclusions of Law, and Order for Judgment, as well as the Judgment, with instructions consistent with the Court's ruling.

Dated: June 23, 2016.

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Dustin Lawrence Richholt,

Plaintiff, Appellee,

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**CERTIFICATE OF SERVICE**

Brief of Appellant, Appendix of Appellant with attached Word Count Certification and Certificate of Service;

was served upon Mr. Matthew John Arthurs, Attorney for Appellee, by transmitting a copy of the same by electronic submission to [matt@arthurslaw.com](mailto:matt@arthurslaw.com) on June 27<sup>th</sup>, 2016.

By: /s/Erica L. Chisholm

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