

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
MARCH 22, 2017
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Natasha Reiger,)
Petitioner,)
)
vs.)
)
State of North Dakota,)
Judge Lonnie Olson,)
JZ, minor child,)
Matthew Zuraff, Father)
Respondents.)

Case No. 2017_____

PETITION FOR SUPERVISORY WRIT

**Appeal from March 10th, 2017 Order Denying Defendant's Motion for Change of Venue
Juvenile Court of Towner
Case No. 48-2017-DM-00006
The Honorable Lonnie Olson, District Judge, Presiding**

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1. Petition For Supervisory Writ

[¶1] Petitioner, Natasha Reiger moves and requests the North Dakota Supreme Court for a Supervisory Writ requiring District Court Judge Lonnie Olson to grant her motion for change of venue provided for in NDCC 28-04-05.

[¶2] Further reasons for this Motion are set out in a Brief which is filed with this Motion and should be considered a part of this Motion.

2. Brief

STATEMENT OF FACTS

[¶3] This is a custody action brought by the Respondent, Matthew Zuraff. Mr. Zuraff resided in the State of Washington when this action began and plans on in the future residing in the State of Washington. His attorney, Megan J.K. Essig resides in Grand Forks, North Dakota.

[¶4] Petitioner, Natasha Reiger's county of residence was Burleigh County, North Dakota when this action was started and will be in the future her county of residence. Her attorney Benjamin C. Pulkrabek resides in Mandan, North Dakota.

[¶5] Prior to Mr. Zuraff starting this action in Towner County, North Dakota to decide custody of Mr. Zuraff, and Ms. Reiger's child. Another action was commenced when both Mr. Zuraff and Ms. Reiger lived in Towner County. That action is scheduled for a final hearing in May of 2017. At the present time the child is in the state of Washington with Mr. Zuraff. Therefore the only party involved in this lawsuit who resides in North Dakota is the child's mother, Natasha Reiger.

ISSUE

[¶6] Because the Respondent in this case, Natasha Reiger, resided in Burleigh County when this action was commenced is she entitled to have the venue in this case transferred to her

county of resident?

ARGUMENT

[¶7] According to *Traynor vs Leclerc*, 1997 ND 47, 561 N.W.2d 644

[¶6] This court's authority to issue supervisory writs derives from N.D. const., Art. VI, § 2:

The supreme court shall be the highest court of the state. It shall have appellate jurisdiction, and shall also have original jurisdiction with authority to issue, hear, and determine such original and remedial writs as may be necessary to properly exercise its jurisdiction.

(in part); *Trinity Med. Ctr., Inc. v. Holum*, 544 N.W.2d 148, 150 (N.D. 1996). See also NDCC 27-02-04: "The supreme court . . . in its superintending control over inferior courts, [] may issue such original and remedial writs as are necessary to the proper exercise of such jurisdiction." Our power to issue supervisory writs is discretionary, and we use our superintending control over inferior courts "only to rectify errors and prevent injustice in extraordinary cases where no adequate alternative remedy exists." *Holum*, 544 N.W.2d at 151. Although reviewable on appeal from a final judgment, orders denying demands for change of judge are not appealable. *In re Estate of Ketterling*, 515 N.W.2d 158, 161 (N.D. 1994). The Bureau has no alternative remedies to supervisory writs. We conclude these cases are appropriate for exercise of our supervisory jurisdiction.

[¶8] In this case a district judge in Towner County, Lonnie Olson on March 10, 2017 signed an Order Denying Defendant's Motion for Change of Venue. Below the word Order were the following words "The Defendant's 3.2 Motion for Change of Venue is hereby DENIED."

[¶9] NDCC 28-04-05. Actions having venue where defendant resides.

In all other cases, except as provided in section 28-04-03.1, and subject to the power of the court to change the place of trial as provided by sections 28-04-0 and 28-04-10, the action must be brought in the county in which the Defendant or one of the defendants resides at the time of the commencement of the action. If that county is attached to another county for judicial purposes, the action must be brought in the latter county.

[¶10] The following language in the above statute is clear "THE ACTION MUST BE BROUGHT IN THE COUNTY IN WHICH THE DEFENDANT OR ONE OF THE

DEFENDANT RESIDES AT THE TIME OF THE COMMENCEMENT”.

[¶11] At this time Defendant/Petitioner, Natasha Reiger has exhausted all her legal remedies getting the venue in her case changed from Towner County to Burleigh County except a Superseding Writ to the North Dakota Supreme Court.

[¶12] In North Dakota there are two cases that state a Defendant ha an absolute right to have the case venued in his or her county of residence. The first is Springer v. Paulson 72 ND 560, 9NW2d 440 1943 ND which says “When the proper county for the trial of a civil action is that of defendant’s residence under the provisions of § 7417, ND Comp Laws 1913, the right of the defendant to a trial in such county is absolute if asserted within the time and in the manner provided by statute.”

[¶13] In this case Defendant/Petitioner, Natasha Reiger asserted her claim to a change of venue within the time and in the manner provided by statute.

[¶14] In the second case Summers v. Summers 74 ND 741, 24 NW2d 688, 1946 ND which says “If the defendant is a resident of the state, the statute vests in her the right to have the action tried in the county of her residence. This is an absolute right. Springer v. Paulson, 72 N.D. 560, 9 N.W.2d 440.”

[¶15] According to both Springer and Summer a Defendant in North Dakota has an absolute right to have the case tried in her county of residence.

CONCLUSION

[¶16] District Judge Lonnie Olson in Towner County has denied Defendant/Petitioner Natasha Reigers timely request for a change of venue. That denial is found in App P17.

[¶17] At this point the only change of venue remedy still available to Defendant/Petitioner, Natasha Reiger when a district judge denied her timely filed motion for a

change of venue is this Superintending Writ.

[¶18] NDCC 28-0-05 requires that a Defendant be allowed to have his civil tried in his county of residence. A North Dakota district judge can't be allowed to disregard NDCC 28-0-05.

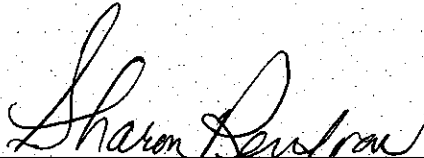
[¶19] At this time the only way to get this case venued in Defendant/Petitioner, Natasha Reiger's county of residence is for the North Dakota Supreme Court to grant this Superintending Writ.

[¶20] Dated this 20th day of March, 2017.

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CERTIFICATE OF SERVICE

[¶21] I hereby certify that on the 20th day of March, 2017, the foregoing *Petition for Supervisory Writ, Brief* and accompanying *Petitioner's Appendix* were served on the Honorable Lonnie Olson, District Judge of the Northeast Judicial District of North Dakota, the judge who presided over this case in Towner County, Megan Essig, attorney for Matthew Zuraff, Tom Nikolaisen Jr. State's Attorney, Lakes Social Service District and Mary Ann Dunbar, Guardian Ad Litem by e-mailing electronic drafts of each document to: lwolson@nd.gov, megan@handylawgroup.net, tom@bulielaw.com, ramseyrecep@nd.gov and mystnd@polarcomm.com.


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