

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

No. 20170195

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IN THE MATTER OF THE EMELIA HIRSCH, JUNE 9, 1994 IRREVOCABLE  
TRUST

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Appeal from the April 24, 2017 Order  
of the District Court  
Burleigh County  
South Central Judicial District  
Honorable Gail Hagerty  
Case No. 08-03-C-2228

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APPELLANT'S REPLY BRIEF

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Appellant

[¶1]

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REPLY BRIEF

[¶3] Appellant, Timothy Betz ( I ), submits this brief in response to Appellees, Carolyn Twite and Duane Hirsch’s, Brief, dated July 14, 2017.

[¶4] The District Court has never given me a hearing on any of my motions that I have filed as a self-represented party, even after the new evidence of Emelia Hirsch’s testimony (A at 43-54) and the unresolved Irrevocable Trust tax issues were presented to the District Court. I filed a Motion and amended Brief in support of Motion to Reopen, February 9, 2017 (A at 146) and a Motion and Brief in support of Motion to immediately vacate the July 16, 2008 Order, February 21, 2017 (A at 154), supported with the new evidence of Emelia Hirsch’s testimony (A at 43-54). Proving that Emelia Hirsch’s

affidavit (A at 104) was false and never should have been entered in to the District Court or relied upon by the Supreme Court to affirm the July 16, 2008 (nunc pro tunc) Second Reformation Order (A at 139). The District Court responded with a Notice, dated February 23, 2017 (A at 161) which states: *Mr. Betz has filed a motion requesting that this case be re-opened. This case has been resolved. It will not be re-opened and no further order will be entered.* Emelia Hirsch's testimony was not discovered until February 2017, the District Court has done everything it could to keep the new evidence out of the Courts.

[¶5] The Appellees filed their Motion for Rule 58 pre-filing Order on March 1, 2017, with a notice of the hearing scheduled for April 3, 2017. I filed a request to attend the April 3, 2017 hearing by teleconference because of my medical conditions on March 16, 2017 (App 17 at 604). The record lists an order March 28, 2017 (App 17 at 607), which I did not receive until Friday, March 31 in the mail, 2017, stating: *The Court does not have the availability of teleconference. You may have an attorney appear for you if you are unable to appear.* Clearly I was denied my opportunity to defend myself at the hearing.

[¶6] "A district court abuses its discretion if it acts in an arbitrary, unconscionable, or unreasonable manner, if its decision is not the product of a rational mental process leading to a reasonable determination, or if it misinterprets or misapplies the law." Holkesvig v. VandeWalle, 2016 ND 107, ¶ 17, 879 N.W.2d 728. The District Court abused its discretion by not taking in to account the entire case, Emelia Hirsch's testimony (A at 43-54) vs. Emelia Hirsch's affidavit (A at 104), the District Court's September 7, 2005 Reformation Order (A at 100) vs. the July 16, 2008 (nunc pro tunc) Second Reformation Order (A at 139) or the fact that District Court could not use

N.D.C.C. § 59-12-15 to reform the terms of the irrevocable trust based on Emelia Hirsch's testimony.

N.D.C.C. § 59-12-15 (provides a court may reform the terms of a trust to conform to the settlor's intention "if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.").

[¶7] I believe, I do not fit the definition of vexatious litigant as defined, I have always had reasonable grounds and supported by a good faith argument for an extension, modification, or reversal of existing law. I have only been seeking the return of my property that Emelia Hirsch had given me and confirmed by the District Court's September 7, 2005 Reformation Order (A at 100).

[¶8] Res judicata does not apply. I believe that the original action was not judged on the merits of the case and that the judgment was not a final judgment. **Final judgment** does not occur when the case is settled by the parties on their own, or where the judge decides a motion or makes some other determination that does not resolve the case based on the facts and evidence of the case. This means that the final judgment must concern the actual facts giving rise to the claim.

[¶9] The District Court has never issued a ruling on the gifts that Emelia had given to each of the thirteen (13) beneficiaries. Emelia testified to making the gifts and was confirmed by the District Court's September 7, 2005 Reformation Order (A at 100) as completed gifts. The July 16, 2008 (nunc pro tunc) Second Reformation Order only reformed the terms of the irrevocable trust to a revocable trust, but doesn't transfer

ownership from the thirteen (13) beneficiaries to Emelia Hirsch. Emelia should not be able to get a benefit by filing a false affidavit with the District Court.

[¶10] When you read Emelia Hirsch's testimony you realize that the District Court had erred in issuing its July 16, 2008 (nunc pro tunc) Second Reformation Order and that the judicial system had failed me and the other beneficiaries. There are a few beneficiaries waiting to see the Supreme Court's opinion before they file their motion on their property, Emelia Hirsch's testimony to support their argument.

[¶11] The Appellees request for recovery of their attorney's fee and cost in this appeal, should be denied in its entirety.

#### CONCLUSION

[¶12] The District Court ignored Emelia Hirsch's testimony, the District Courts own September 7, 2005 Reformation Order and statues establishing the guidelines for the proper reformation of the irrevocable trust. Based upon the foregoing I respectfully request that the Supreme Court vacate the April 24, 2017 Pre-filing Findings and Order, and due to the new evidence of Emelia Hirsch's testimony, the July 16, 2008 (nunc pro tunc) Second Reformation Order should also vacated.

Dated signed this 2nd day of August, 2017 by:

By: s/ Timothy R. Betz  
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Appellant

CERTIFICATE OF SERVICE

[¶13] I hereby certify that a true and correct copy of the foregoing corrected copy of the Appellant's Reply Brief was on the 2<sup>nd</sup> day of August, 2017 electronically filed with the Clerk of the North Dakota Supreme Court and e-mailed the following:

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By: s/ Timothy R. Betz  
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