

Betz, Carolyn Dupras, Danielle M. Hirsch, Matthew D. Hirsch and Jennifer Hirsch Hummel. (A at 21)

[17] The Settlor, Emelia Hirsch, appointed Caroline Twite, and Duane Hirsch, as Co-Trustees of the Irrevocable Trust. (A at 24)

[18] On July 8, 2003, Emelia Hirsch filed a Petition for Dissolution of the Emelia Hirsch June 9, 1994 Irrevocable Trust. The petitioner claimed dissolution was appropriate due to the fact that said trust was not functioning for the purpose which Emelia intended. (Doc Id 1).

[19] On November 6th, 2003, the Honorable Thomas Schneider, Judge of Burleigh District Court, ordered in Timothy Betz v. Caroline Twite and Duane Hirsch, Civil No. 01-C-2371 that because there had been "...questionable practices occurring..." within the Trust, Marlene Betz was to be appointed as a Co-Trustee with Caroline Twite and Duane Hirsch.

[20] On June 1, 2005, the Trustee's filed an application for reformation, **Application of Carolyn Twite and Duane Hirsch for Reformation of Trust** or, in the Alternative, for Court-Supervised Administration. (A at 30) The Trustee's requested that the terms of the Irrevocable Trust be reformed and the Irrevocable Trust assets be liquidated. In which all of the thirteen (13) beneficiaries had agreed to it.

[21] On August 8, 2005, a hearing on the Trustee's Application for reformation and liquidation of the Irrevocable Trust was held, *Emelia Hirsch testified to her intent, estate planning, gifts, gift amounts made to the beneficiaries, etc.* (Transcript) (A at 43-54).

[22] **September 7, 2005, Order for Removal of Trustees, Appointment of Successor Trustee and Reformation of the Trust**, Mr. John Grinsteiner is appointed as Trustee,

and the order states in part: *the Irrevocable Trust was reformed to reflect the original intent at the time of the preparation* and ordered liquidated. The District Court's order details that the thirteen (13) beneficiaries own the Irrevocable Trust assets and what the Irrevocable Trust assets consisted of. (A at 100).

[23] August 21, 2006, Mr. Grinsteiner provides a memo to Judge Hagerty of his Final accounting and update.

[24] September 15, 2006, Order Wagner Law Firm was appointed as Trustee. (Doc Id 139). On November 23, 2006, Mr. Wagner files his Initial Report, detailing the trustee's view of Emelia Hirsch's estate planning and of the Irrevocable Trust. (Doc Id 149).

[25] January 26, 2007, Mr. Wagner, (Trustee), files his Motion and Brief in Support of Motion for Instruction with Respect to Tax Liability. (Doc Id 168, 169). Mr. Wagner, (Trustee), states: *No "Crummey Notice" was given and therefore the gifts to the trust did not qualify for the \$10,000 gift tax annual exclusion, triggering the requirement to file a gift tax return for each year a gift was made.* Caroline Twite, and Duane Hirsch, as Co-Trustees of the Irrevocable Trust were required under Section 7.02. (A at 22, 23) to issue crummey notices. Since the gifts did not qualify for the gift tax annual exclusion as Emelia had wanted (A at 51), Emelia Hirsch is now required to file gift tax returns (IRS form 709) for each year a gift was made to the Irrevocable Trust.

[26] April 4, 2008, Affidavit by Emelia Hirsch. (A at 104). The affidavit was filed with the motion that Mr. Smith (Emelia's attorney) had prepared for Emelia Hirsch. (A at 116).

[27] April 17, 2008, Carolyn Twite and Duane Hirsch filed the Motion and Brief in support of **Motion and Petition for Reformation**, or In the Alternative, Division of the

Emelia Hirsch June 9, 1994 Irrevocable Trust, (A at 107), thirty four (34) months after their June 1, 2005, Application of Carolyn Twite and Duane Hirsch for **Reformation of Trust**. Mr. Smith prepared the motion on behalf of Emelia Hirsch, but she didn't have the authority to file it. (A at 119), so Carolyn Twite and Duane Hirsch as beneficiaries filed the Motion and Affidavit by Emelia Hirsch with the District Court on behalf of Emelia Hirsch. (A at 119).

[28] May 2, 2008, Reformation Hearing, (Transcript) (A at 114). Mr. Baer appeared on behalf of Caroline Twite and Duane Hirsch and Mr. Smith appeared on behalf of Emelia Hirsch.

[29] **July 16, 2008 (nunc pro tunc) (Reformation) Order**. (A at 138). The District Court clearly ignored Emelia's testimony that she gave on August 8, 2005, where *she testified under oath, that she meant to execute an Irrevocable Trust for estate planning*, (A at 53, 92), *she meant to give gifts to the thirteen (13) beneficiaries*, (A at 51), *she wanted the property out of her estate so she wouldn't have to pay it to the IRS*, (A at 51), she meant to add the gifts for the thirteen (13) beneficiaries to the Irrevocable Trust from 1994 through 1999, (A at 52, 53), and she testified that: ***she knew a revocable trust, such as she already had, would not accomplish the estate tax planning benefits***. (A at 53).

The Affidavit by Emelia Hirsch (A at 104) contradicts her testimony and was obviously weighted over her testimony. The District Court also failed to review the first reformation order, September 7, 2005, Reformation / Liquidation Order issued only thirty four (34) months prior.

[30] Matter of Emelia Hirsch Trust, 2009 ND135, 770 N. W. 2d 225, Opinion, (A at 139). In the Opinion it states in part: *see Rule 3.2(c). N.D.R.Ct. (stating "[e]ven if an*

answer brief is not filed, the moving party must still demonstrate to the court that it is entitled to the relief requested."). In this case, **Emelia Hirsch provided an affidavit which supported the movants', Carolyn Twite and Duane Hirsch, contention that Emelia Hirsch never intended to create an irrevocable trust and which the district court could rely on to find clear and convincing evidence of the intent and mistake of fact or law necessary to conclude the trust should be reformed. See N.D.C.C. § 59-12-15 (providing 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."). (A at 145). The District Court erred, once you throw the Affidavit out, there is no evidence to support the July 16, 2008 (nunc pro tunc) (Reformation) Order, (A at 138), under N.D.C.C. § 59-12-15.**

[31] February 9, 2017, Motion to Reopen and Amended Brief in Support of Motion to Reopen. (A at 146). This was filed to highlight the new tax evidence against the irrevocable trust and the thirteen (13) beneficiaries.

[32] February 21, 2017, Motion to immediately vacate the July 16, 2008 Order and Brief in Support of Motion to immediately vacate the July 16, 2008 Order. (A at 154). **This new and over whelming evidence had finally come to light, the (August 8, 2005 transcript), (A at 41).** Marlene Betz paid to get a copy of the August 8, 2005 transcript of the reformation hearing, in February, 2017. On August 8, 2005, a hearing on the Trustee's (Caroline Twite, and Duane Hirsch's) Application for reformation and liquidation of the Irrevocable Trust was held, **Emelia Hirsch testified to her intent,**

estate planning, gifts, gift amounts made to the beneficiaries, etc. (Transcript) (A at 43-54). **A copy of the transcript was provide to the District Court. (Doc Id 582).**

[33] February 23, 2017, Judge Hagerty's, Notice. (A at 161). The Notice states: *This case has been resolved.* Clearly it has not been resolved.

[34] March 1, 2017, Objection to the Notice and Motion to Reopen, Brief in support of the Motion to Reopen. (A at 162). Here is a list of the supporting documents that I provided to the District Court with my motion, to prove that the tax issues had not been resolved. Whistle Blower Packet, IRS letter July 13, 2010 - IRS form 211, (A at 166), Whistle Blower Packet, IRS letter June 8, 2016 - IRS form 211, (A at 170), Letter I sent to the IRS, February 21, 2017, showing that I sent a copy of the August 8, 2005, transcript and Emelia's testimony to the IRS, (A at 176), IRS Letter, March 6, 2017, (A at 177), and a listing of documents, I sent to the IRS, March 13, 2017, (A at 178).

[35] April 19, 2017, Response for SC Admin Rule 58 Proposed Pre-Filing findings and Order. (A at 180). The response shows that the IRS has not yet resolved the Irrevocable Trust tax issues and why. Caroline Twite, and Duane Hirsch, as Co-Trustees of the Irrevocable Trust were required under Section 7.02. (A at 22, 23) to issue crummey notices. Since the gifts did not qualify for the gift tax annual exclusion as Emelia had wanted (A at 51), Emelia Hirsch is now required to file gift tax returns (IRS form 709) for each year a gift was made to the Irrevocable Trust. Meaning if the IRS and the tax issues against the Irrevocable Trust aren't resolved, then nether is this case.

[36] April 24, 2017, Judge Hagerty's, Pre-filing Findings and Order. (A at 190).

[37] May 25, 2017, Notice of Appeal. (A at 194).

[38] The Emelia Hirsch Irrevocable Trust cannot be revoked by Emelia. (A at 20). All the beneficiaries had not agreed to its dissolution under N.D.C.C. § 59-12-11(1). The Irrevocable Trust agreement does not reserve unto Emelia Hirsch the power of revocation. (A at 20). The gifts made by Emelia to the thirteen (13) beneficiaries are protected by N.D.C.C. § 47-11-08. The Emelia Hirsch June 9, 1994 Irrevocable Trust is irrevocable and must continue in existence.

[39] The appellant firmly believes that Judge Hagerty made an error in interpreting North Dakota law, by allowing Emelia Hirsch to imply that she revoked the Emelia Hirsch June 9, 1994 Irrevocable Trust and then executing a **(nonc pro tunc) (reformed)** Revocable Trust.

STANDARD OF REVIEW

[40] This Court has outlined the standard for review of a motion to vacate under N.D.R.Civ.P. Rule 60(b):

It is within the trial court's discretion whether to grant or deny a motion to vacate. Absent an abuse of this discretion, we will not set aside the trial court's decision on appeal. A trial court abuses its discretion if it acts in an arbitrary, capricious, or unreasonable manner, or if it misinterprets or misapplies the law.

[41] *Filler v. Bragg*, 1997 ND 24, J 9, 559 N.W.2d 225. Rule 60 is to be interpreted to accomplish justice and it should be liberally construed.

[42] Questions of law are fully reviewable on appeal. *Kienzle v. Selensky*, 2007 ND167, 9, 740 N. W.2d 393. Interpretation of a statute is a question of law fully reviewable on appeal. *Pryatel v. T.E.*, 2007 ND 166, 7, 740 N.W.2d 100. The primary objective in interpreting a statute is to determine the legislature's intent. *Id.*

LAW AND ARGUMENT

(A.) The District Court erred in issuing the Pre-filing Findings and Order, (A at 190) based on an incomplete listing of Facts and inaccurate Findings? N.D.R.Civ.P. Rule 60(b) (3) (6).

[43] Caroline Twite, Duane Hirsch and there attorney's Mr. Baer and Mr. Smith (Emelia Hirsch's attorney) are misrepresenting the facts, committing fraud and misconduct, by failing to disclose all of the key evidence and facts in this case. Not one word was ever said about the June 1, 2005, application for reformation, (A at 30), in which the Trustee's Carolyn Twite and Duane Hirsch had filed with the District Court, requesting that the terms of the Irrevocable Trust be reformed to conform to Emelia Hirsch's intent at the time of preparation.

[44] Not one word was ever said about the August 8, 2005, hearing on reformation of the irrevocable trust (A at 41), or that Emelia Hirsch testified to her intent to execute an Irrevocable Trust for estate planning, that she gave gifts to the thirteen (13) beneficiaries, every year from 1994 through 1999 or that in order for Emelia to avoid paying the IRS, she would have to give up control and all rights to the gifts. (A at 50, 51, 52, 53). Carolyn Twite, (trustee) also testified at the hearing. (A at 16 – 30). The two attorneys representing Carolyn Twite and Duane Hirsch at the hearing, were Mr. Chapman representing them as Co-trustees (A at 43) and Mr. Baer representing them as beneficiaries. (A at 90).

[45] September 7, 2005, **Order for** Removal of Trustees, Appointment of Successor Trustee and **Reformation of the Trust**, Mr. John Grinsteiner is appointed Trustee, the order states in part: *Here we have a trust that is not reasonable within its original terms*

as to disposition of the assets. And in part: The Trust shall be reformed to reflect the original intent at the time of the preparation and as follows: (A at 100). The District Court order, details that the thirteen (13) beneficiaries own the Irrevocable Trust assets and what the Irrevocable Trust assets consisted of. (A at 100).

[46] April 4, 2008, Affidavit by Emelia Hirsch. (A at 104). Not one word of the Application of Carolyn Twite and Duane Hirsch for Reformation of Trust. (A at 30), the August 8, 2005, hearing on reformation of the Irrevocable Trust or her testimony, (A at 41), or the September 7, 2005, *Order* for Removal of Trustees, Appointment of Successor Trustee and *Reformation of the Trust*. (A at 100)

[47] April 17, 2008, Carolyn Twite and Duane Hirsch filed the Motion and Brief in support of Motion and Petition for Reformation, or In the Alternative, Division of the Emelia Hirsch June 9, 1994 Irrevocable Trust, (A at 107), thirty four (34) months after their June 1, 2005, Application of Carolyn Twite and Duane Hirsch for Reformation of Trust. (A at 30).

Once again, not one word of their Application of Carolyn Twite and Duane Hirsch for Reformation of Trust. (A at 30), the August 8, 2005, hearing on reformation of the Irrevocable Trust or Emelia Hirsch's testimony, (A at 41) or the September 7, 2005, *Order* for Removal of Trustees, Appointment of Successor Trustee and *Reformation of the Trust*. (A at 100)

The Motion and Petition for Reformation states in part: *On September 7, 2005, the court appointed John Grinsteiner trustee and ordered that the trust assets were to be liquidated and distributed to the beneficiaries in the years 2005, 2006, and 2007.* (A at 108). They

failed to state it was a reformation order or that the terms were reformed, solely to mislead everyone.

[48] May 2, 2008, Reformation Hearing, (A at 114). Caroline Twite, Duane Hirsch and there attorney's Mr. Baer and Mr. Smith (Emelia's attorney) had another chance to disclose the evidence and facts, Carolyn Twite and Duane Hirsch's application for Reformation of the Trust. (A at 30), Emelia Hirsch's testimony (A at 50, 51, 52, 53) at the August 8, 2005, hearing on reformation of the Irrevocable Trust and that the September 7, 2005 Order was a reformation order, and that the District Court reformed the terms of the Irrevocable Trust in 2005. **Mr. Wagner (trustee) had no idea that Emelia had already testified on her intent and the gifts in 2005.**

[49] Mr. Baer and Mr. Smith appeared at the Matter of Emelia Hirsch Trust, 2009 ND135, 770 N. W. 2d 225. (A at 139) hearing on March 12, 2009 and once again they fail to mention anything about, Carolyn Twite and Duane Hirsch's application for Reformation of the Trust. (A at 30), Emelia Hirsch's testimony (A at 50, 51, 52, 53) at the August 8, 2005, hearing on the reformation of the Irrevocable Trust or that the September 7, 2005 Order was a reformation order, and that the District Court had already reformed the terms of the Irrevocable Trust. None of this evidence or facts were disclosed at the May 2, 2008, District Courts hearing or at the March 12, 2009, Supreme Court hearing.

[50] Had the District Court been provided this evidence and facts, the District Court would have never been unable to come to the conclusion that the Irrevocable Trust needed to or could be reformed to a (nunc pro tunc) (reformed) Revocable Trust, nor would the District Court been able to issue the Pre-filing Findings and Order.

[51] Emelia's testimony at the August 8, 2005, hearing on reformation of the Irrevocable Trust, confirms and supports all of my documents, motions and appeals presented to the courts since the July 16, 2008, (nunc pro tunc) (reformed) Revocable Trust Order was issued. Emelia gave gifts to the thirteen (13) beneficiaries and they were completed gifts the minute Caroline Twite, and Duane Hirsch (Co-trustees) accepted them.

(B.) Caroline Twite, and Duane Hirsch's Brief in support of Motion and Petition for Reformation, or In the Alternative, Division of the Emelia Hirsch June 9, 1994 Irrevocable Trust, April 17, 2008 and Affidavit by Emelia Hirsch, April 4, 2008 did constitute fraud, misrepresentation or misconduct by an opposing party under N.D.R.CIV.P.Rule 60b (3) (6) and does warrant relief from the July 16, 2008 Reformation Order?

[52] The statements and arguments made above, also apply here, with some additional support to this argument. Mr. Smith on behalf of Emelia Hirsch filed a Petition for Dissolution of the Emelia Hirsch June 9, 1994 Irrevocable Trust on July 8, 2003. Emelia testified in part: *at the August 8, 2005, reformation hearing, Emelia testified she consulted with Sheldon Smith about revoking the irrevocable trust and that they tried, but they said there's no use and that it would be too much problem with the IRS.* (A at 46).

[53] The two attorneys representing Carolyn Twite and Duane Hirsch were Mr. Chapman representing them as Co-trustees (A at 43) and Mr. Baer representing them as beneficiaries. (A at 90). Mr. Chapman filed the Application of Carolyn Twite and Duane Hirsch for Reformation of Trust, (A at 30) and the hearing on the application was held on August 8, 2005, (A at 41) were Mr. Baer listened to Emelia testify to her intent, her gifting's that she had made and the years that she had made those gifting's. Mr. Baer had

received a copy of the September 7, 2005, Order for Reformation of the Irrevocable Trust, (A at 100). Mr. Smith prepared the April 17, 2008 Motion and Petition for reformation (A at 107) on behalf of Emelia (A at 116, 119). Mr. Baer filed the Motion and Petition for reformation, (A at 107), and Emelia's Affidavit (A at 104) on behalf of Carolyn Twite and Duane Hirsch, because Emelia did not have the authority to file.

[54] Mr. Baer, Emelia Hirsch, Carolyn Twite and Duane Hirsch knew or should have known that Emelia's affidavit was false and contradicted her testimony and that there 2008 Motion and Petition for reformation also contradicted there 2005 application of Carolyn Twite and Duane Hirsch for Reformation of Trust. (A at 30). Had these important facts such as Emelia's testimony and the District Court's Order for Reformation of the Irrevocable Trust issued just thirty four (34) months prior been disclosed, it would have clearly changed the outcome of this case. By filing those misleading and fraudulent documents to the District Court and opposing party, there is no doubt, they were trying to get the irrevocable trust assets back in Emelia's name and get rid her tax debt that Carolyn Twite and Duane Hirsch had created by failing to issue crummey notices.

(C.) When the District Court issued the July 16, 2008 Reformation Order, the District Court erred by ignoring the testimony of Emelia Hirsch given during the August 8, 2005 reformation hearing and the District Court's September 7, 2005 Reformation Order, stating that the thirteen (13) beneficiaries own the gifts / Irrevocable Trust assets and then going on to detail as to what the Irrevocable Trust assets consisted of?

[55] When the July 16, 2008, (nunc pro tunc), (reformation), Order (A at 138) was

issued the District Court had erred by ignoring the testimony of Emelia Hirsch (A at 43-54) and the District Court own September 7, 2005 reformation Order. (A at 100).

[56] Carolyn Twite and Duane Hirsch wanted the Irrevocable Trust terms reformed in 2005, then in 2008, thirty four (34) months later they want the terms reformed again. Since the District Court couldn't reform the irrevocable trust to a revocable trust, giving it back to Emelia Hirsch in 2005, it makes no sense that the District Court would think it could in 2008. Knowing that Emelia had testified, she meant to execute an irrevocable trust, she gave gifts to the thirteen (13) beneficiaries and Irrevocable Trust. The District Court then confirms it with the September 7, 2005 reformation Order (A at 100) detailing the Irrevocable Trust assets that the thirteen (13) beneficiaries own.

[57] Emelia's testimony was used to support the September 7, 2005 reformation Order. (A at 100). Now Emelia's affidavit which is false and contradicts Emelia's testimony is the only evidence used to support the July 16, 2008, (nunc pro tunc), (reformation), Order. (A at 138). Based solely on the affidavit, the District Courts order is affirmed in the Matter of Emelia Hirsch Trust, 2009 ND135, 770 N. W. 2d 225, Opinion, (A at 139).

(D.) The District Court's second July 16, 2008 Reformation Order, issued thirty four (34) months after the first Reformation Order, did not change ownership of the Irrevocable Trust assets from the thirteen (13) beneficiaries to Emelia Hirsch?

[58] Let me first say, time does not matter because the ownership of the irrevocable trust assets never changed from the thirteen (13) beneficiaries. Emelia executed an irrevocable trust for estate planning, Emelia made gifts to the thirteen (13) beneficiaries, making them completed gifts by filing the warranty deeds and the proper documents to transfer ownership of the life insurance policies and investments to the Irrevocable Trust and the

thirteen (13) beneficiaries. This is all confirmed by Emelia's testimony (A at 43-54) and the District Courts own September 7, 2005 reformation Order. (A at 100). *A gift to a trust is a gift to trust beneficiaries.* Treas Reg § 25.2503-2(a).

[59] Thirty four (34) months later, the District Court issues the July 16, 2008 (nunc pro tunc), (reformation) Order. (A at 138). The order did not change ownership of the irrevocable trust assets, it doesn't even mention the irrevocable trust assets. There are no filings of warranty deeds or quick claim deeds, no filings of any documents transferring ownership of the life insurance policies or investments to Emelia Hirsch.

[60] The District Court also tries to imply that Emelia revoked the gifts, but the Century Code prevents it. N.D.C.C. § 47-11-08. Gift irrevocable - Exception. A gift, other than a gift in view of death, cannot be revoked by the giver.

(E.) The District Court erred by ignoring the new evidence presented to the Court that the Irrevocable Trust tax issues had not been resolved?

[61] I filed an Objection to the Notice and Motion to Reopen, Brief in support of the Motion to Reopen, along with the supporting documents. (A at 162). The District Court ignored the motion and issued no response to the motion. I point out in detail to the District Court that the tax issues had not been resolved by the July 16, 2008, (nunc pro tunc), (reformation), Order. (A at 138).

[62] Whistle Blower, IRS letter July 13, 2010 – IRS form 211, (A at 166). The IRS issued a CP210 on April 13, 2015 that changes were made to Emelia's 1994 gift tax return (IRS form 709). (A at 168). The claim was closed on October 21, 2015. (A at 169).

[63] Whistle Blower, IRS letter June 8, 2016 – IRS form 211, (A at 170).

[64] I sent to the IRS on February 21, 2017, the August 8, 2005 hearing transcript, (A at 41) highlighting Emelia's testimony on intent, estate planning, gifts, gift amounts to the beneficiaries, etc. and a copy of the Trustee's application for reformation. (A at 30). The IRS responded with a letter, dated March 6, 2017 (A at 177), stating they received my correspondence of February 21, 2017.

[65] March 13, 2017, I wrote a list of the documents that I had provide to the IRS and filed with the District Court. (Doc Id 605), (A at 178).

[66] The Response for Rule 58 proposed Pre-filing Findings and Order, (A at 180) is clear, that the District Court erred and that the July 16, 2008 (nunc pro tunc) (reformation) Order did not resolve the Irrevocable Trust issues.

[67] Now that the IRS has Emelia's testimony stating that she meant to execute an irrevocable trust for estate planning, she meant to give gifts to the thirteen (13) beneficiaries and that the gifts were completed gifts at the time that they were received. Making the assets of the Irrevocable Trust the sole property of the thirteen (13) beneficiaries. The thirteen (13) beneficiaries have a responsibility to, as well as required to file tax returns and account for their property.

[68] At some point the IRS is going to make the Irrevocable Trust amend tax returns and file tax returns. This whole tax issue was caused because Carolyn Twite and Duane Hirsch as Co-trustees failed to follow the irrevocable trust instrument and issue crummey notices as required. Because no crummey notices were issued, none of the gifts qualified for the gift tax annual exclusion, triggering the requirement for Emelia to file gift tax returns for each year she made gifts. Since none of the gifts qualified for the gift tax annual exclusion and Emelia never filed gift tax returns, which in turn, left her with a

large tax debt. Emelia refused to file the gift tax returns on the three (3) liquidated Irrevocable Trust assets that the District Court had ordered sold. (A at 100). Emelia's failure to file the gift tax returns on those three (3) liquidated irrevocable trust assets created even more problems with the IRS for Emelia and the thirteen (13) beneficiaries.

CONCLUSION

[69] There is no doubt, that the District Court made errors when it ruled on the Emelia Hirsch Irrevocable Trust, the District Court had a responsibility to review the record, taking into account Emelia's testimony and its own September 7, 2005 reformation Order, prior to issuing the July 16, 2008, (nunc pro tunc), (reformation), Order.

[70] If not for the fact that, Caroline Twite, Duane Hirsch, Emelia Hirsch and there attorney's Mr. Baer and Mr. Smith (Emelia Hirsch's attorney) had failed to disclose all of the key evidence and facts in this case, especially Emelia's testimony. There never would have been a July 16, 2008, (nunc pro tunc), (reformation), Order or April 24, 2017, Pre-filing findings and Order.

[71] The Supreme Court must give Emelia Hirsch's testimony and the September 7, 2005 reformation Order the highest consideration, ignoring Emelia's affidavit which is clearly false and contradicts her testimony that she had given under oath.

[72] As such, the District Court's April 24, 2017, Pre-filing findings and Order, along with the District Court's July 16, 2008, (nunc pro tunc), (reformation), Order must be vacated.

Dated this 15th day of June, 2017

/S/ Timothy Betz
Timothy Betz