

**IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA**

State of North Dakota and Michelle Dworshak §  
Rose, n/k/a Michelle A. Alcaraz, §  
Plaintiffs and Appellees §

~~REQUEST FOR TRANSCRIPTS~~

v. §

Joshua D. Rose, §  
Defendant and Appellant §

Supreme Court No. 20170216  
Ward Co. No. 2011-DM-01109

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APPEAL FROM \_\_ IN THE DISTRICT COURT

NORTH CENTRAL JUDICIAL DISTRICT

Ward County Case No. 51-2011-DM-1109

Honorable Richard Hagar

APPELLANT'S BRIEF

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## TABLE OF AUTHORITIES

### Statutes

North Dakota Century Code § 12.1-11-02 Paragraph 10,20  
North Dakota Century Code § 12.1-24-03. Section 2.b(2) Paragraph 10  
North Dakota Century Code § 12.1-24-04 Paragraph 10

Federal 49 CFR 383.(4) Paragraph 4,19,21  
Federal 49 CFR 383.37 Paragraph 4,19,21

### Statement of Issues

1. Issue One: Did Mrs. Rose's actions of gaining Government assistance intentionally deprive Mr. Rose while the couple were still married and living together?
2. Issue Two: If the court would have allowed the subpoena duces tecum would it have shown that Mrs. Rose committed fraud?
3. Issue Three: Can Mr. Rose continue his career without a license?

### Statement of the Case

4. In 2008 Josh Rose had child support placed on him due to Michelle Dworshak-Rose going in and getting on government assistance and failing to list Mr. Rose's

income on the application, In 2009 When child Support started being taken from Mr. Rose's check he then immediately notified Child Support And Humane Services at which time Humane services started looking into Mrs. Rose for fraud, once Michelle was notified she became irate and threatened to take Josh Rose's children from him and he would never see them again unless he stated he was wrong on the dates in writing. At which time he believed she would and could do. (Which is proven now as since the Divorce Mrs. Rose has refused to allow Mr. Rose to so much as call the children, the only way Mr. Rose is allowed to have contact with the children is if they are with his family) In October of 2011 Both parties had separated and filed for divorce from 2008 to 2011 Josh had been paying support to Michelle along with all the bills as Michelle refused to work the majority of the relationship even though she had schooling in nursing. In 2016 Child Support began taking steps to suspend Josh Rose's Driver's License even after they had been notified of the fraud from the beginning even going as far as stating "It doesn't matter if you are living together or not if she says you're not giving her money then we can take support" In 2016 Josh Rose a request for a hearing at which time was granted time to talk with child support and setup a payment plan. Josh rose contacted Child support and attempted to setup a plan at which time Mr. rose was informed that the plan would require him to pay \$500.00 Immediately, Pay an additional \$167.20 on top of the original support. If one payment was missed or late the plan would then be null and void and never offered again, Josh Rose would have to waive all rights to a Trial. At which time Mr. Rose filed a Motion For Emergency trial and a motion for Relief and Updated Accounting The Honorable Richard Hagar presiding during the hearing The court did not rule on the Motion for Relief and updated accounting leaving it as an Interlocutory ruling, The Judge order on the Emergency trial stating Mr. Rose had not convinced the courts to allow him to keep his license and ordered Child support to draw up an order For him to sign and granted Mr. Rose until 01/03/2017 to create a payment plan, om 01/03/2017 Child Support suspended Mr. Roses License, on 01/18/2017 Mr. Rose Filed an appeal with the supreme court on 01/24/2017 The supreme court notified Mr. Rose that there was no written order and could not file for appeal at that time, On 02/22/2017 Mr. Rose Filed a request for relief in district court stating that there has not been a written order entered in to courts which prevented Mr. Rose from filing an appeal also asking the courts to order Child support to reinstate License until an order had been received. On 2/27/2017 an order was submitted. Mr. Rose is a Class A Driver and has had the occupation since around 2005 with Child Support suspending his license according to *49 CFR 383.1(4) Prohibits an employer from allowing a person with a suspended license to operate a commercial vehicle and 49 CFR 383.37* Mr. Rose is no longer allowed to continue his career. Mr. Rose filed a Request for adjustment on 5/10/2017 which was denied This appeal followed.

Statement of Facts

5. The District court did not rule on Motion for updated accounting, the district court focused on whether or not Mr. Rose should keep his driver's license. And ruled on that alone.

6. Mr. Rose submitted a Subpoena Duces Tecum which was not allowed, The Subpoena would have shown the courts intentional Deceit from Mrs. Rose.

7. Mr. Rose submitted a Request for Review based on the fact he can no longer pursue his career of approximately 10 years which was denied, Stating Mr. Rose is a Truck Driver and the Rate is based off of Truck Driver wages, Mr. Rose no longer has a valid class A due to Child Support suspending it.

### Law and Argument

8. Issue One: Did Mrs. Rose's actions of gaining Government assistance intentionally deprive Mr. Rose while the couple where still married and living together?

Short answer to question presented: YES

9. This issue, is a question of law, and as such is fully reviewable by this court.

10. Under *N.D.C.C 12.1-24-03. Deceptive writings. 1. A person is guilty of an offense if, with intent to deceive or harm the government or another person, or with knowledge that the person is facilitating such a deception or harm by another person, the person knowingly issues a writing without authority to issue it or knowingly utters or possesses a deceptive writing*

*N.D.C.C 12.1-24-04. Definitions. In this chapter: 1. The definitions prescribed in section 12.1-23-10 apply. 2. A "deceptive writing" is a writing which has been: a. Procured by deception; or b. Issued without authority.*

*N.D.C.C. 12.1-11-02. False statements. 1. A person is guilty of a class A misdemeanor if, in an official proceeding, he makes a false statement, whether or not material, under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, if he does not believe the statement to be true. 2. A person is guilty of a class A misdemeanor if, in a governmental matter, he: a. Makes a false written statement, when the statement is material and he does not believe it to be true; b. Intentionally creates a false impression in a written application for a pecuniary or other benefit, by omitting information necessary to prevent a material statement therein from being misleading; c. Submits or invites reliance on any material writing which he knows to be forged, altered, or otherwise lacking in authenticity; d. Submits or invites reliance on any sample, specimen, map, boundarymark, or other object which he knows to be false in a material respect; or e. Uses a trick, scheme, or device which he knows to be misleading in a material respect.*

Mrs. Rose used false statements to gain Child support and Custody of minor children.

11. In this case then, the evidence demonstrates that Mrs. Rose did in fact Commit Fraud or Deceit

12. Issue Two: If the court would have allowed the subpoena duces tecum would it have shown that Mrs. Rose committed fraud?

Short answer to question presented: YES

13. The Subpoena would have provided the original application from North Central Human services in Williston showing to the courts that Mrs. Rose Intentionally deceived Human services to gain benefits and force Child Support onto Mr. Rose for years before they Separated.

14. Subpoena Would have provided the courts with all documentation and records from Child Support Showing Humane Services requested Child Support Based off Mrs. Roses application for assistance

15. Subpoena to Western Cooperative Bank Would have shown the courts That Mrs. Rose had clear access to Mr. Roses bank accounts whether it be access via Credit card or Checks Signed with Mr. Roses name in Mrs. Roses handwriting

16. Subpoena to Cigna Health Care would have provided the courts with records showing all minor children and Mrs. Rose had health coverage during the time frame.

17. All of the Subpoenas would have shown the courts Mrs. Roses clear deceit and fraud from 2008 to 2011 when Exhibit F clearly shows Mrs. Rose and Mr. Rose agree under oath they did not separate until October of 2011

18. Issue Three: Can Mr. Rose continue his career without a license?

Short answer to question presented: NO

19. According to *49 CFR 383.1(4) Prohibits an employer from allowing a person with a suspended license to operate a commercial vehicle and 49 CFR 383.37* Mr. Rose is no longer allowed to continue his career.

Conclusion

20. Since Mrs. Rose Committed fraud according *N.D.C.C 12.1-11-02.* to get Child Support instated and has openly admitted under oath in case 51-2012-DM-00411 that both parties did not separate until October 2011 this case should not have started until October of 2011

21. Due to federal rules *49 CFR 383.1(4)* and *49 CFR 383.37* Mr. Rose child support payment should be based off unemployed wages as Child Support has suspended Mr. Rose's driver's license and is no longer able to peruse his career and has no other training to change careers

In the alternative, it has recently been brought to Mr. Rose's attention that this case falls under *RULE 60. RELIEF FROM A JUDGMENT OR ORDER(b) Grounds for Relief from a Final Judgment or Order. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party*

22. Respectfully submitted this 22<sup>nd</sup> day of August 2017.

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COUNTY OF WARD

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IN DISTRICT COURT  
NORTH CENTRAL JUDICIAL DISTRICT

State of North Dakota and Michelle Dworshak  
Rose, n/k/a Michelle A. Alcaraz,  
Plaintiffs and Appellees

**CERTIFICATE OF SERVICE**

v.

Joshua D. Rose,  
Defendant and Appellant

Supreme Court No. 20170216  
Ward Co. No. 2011-DM-01109

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of August, 2017, the following documents were served upon the following through electronic service/email:

- 1. **Appellant’s Brief**
- 2. **CERTIFICATE OF SERVICE**

Meredith Childress  
Child Support Attorney  
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DATED this 22<sup>nd</sup> day of August, 2017.

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