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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

CHS Inc., Plaintiff/Appellee, vs. Roland Riemers, Defendant/Appellant.	**SUPREME COURT NO. 20170331** Grand Forks County District Court Civil No. 18-2015-CV-01950

ON APPEAL FROM THE DISTRICT COURT'S ORDER DENYING DEFENDANT'S MOTION TO REOPEN CASE AND CLOSE JUDGMENT ENTERED JULY 5, 2017 AND FROM THE JUDGMENT ENTERED JULY 7, 2017

STATE OF NORTH DAKOTA
GRAND FORKS COUNTY DISTRICT COURT
NORTHEAST CENTRAL JUDICIAL DISTRICT
HONORABLE JOHN A. THELEN

APPELLEE'S BRIEF

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[¶1] The District Court had jurisdiction pursuant to N.D. Const. Art. VI § 8 and N.D.C.C. § 27-05-06. This Court has jurisdiction under N.D. Const. Art. VI, §§ 2 and 6 and N.D.C.C. § 28-27-01.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

[¶2] The District Court did not abuse its discretion in awarding CHS its reasonable attorneys' fees and costs incurred in responding to Riemers' Motion to Reopen Case to Close Judgment.

[¶3] The District Court did not err in declining to find the Judgment and Amended Judgment against Riemers as satisfied in full.

[¶4] The District Court did not err in finding that CHS followed all applicable law and statutes relating to the garnishment remedy.

[¶5] The District Court did not err in allowing CHS taxation of its post-judgment costs.

[¶6] The District Court did not err in finding that CHS was not improperly compounding interest.

STATEMENT OF THE CASE

[¶7] On March 21, 2016, Appellee/Plaintiff CHS Inc. ("CHS") obtained a Judgment against Appellant/Defendant Roland Riemers ("Riemers") in the sum of $38,889.00. Appendix Brief of Appellant (App.) 7. On March 31, 2016, CHS moved for an amended judgment, to include prejudgment interest at the statutory rate of 6% per annum. App. 8. An Amended Judgment was entered on May 24, 2016, in the sum of $41,793.72. App. 14. On December 8, 2016, this Court affirmed as modified the Amended Judgment, reducing the amount of prejudgment interest by $70.07 for a total prejudgment interest allowance of $2,834.65. App. 21-23. On March 17, 2017, Riemers filed a Notice of Motion and Motion to Reopen Case to Close Judgment. App. 24-33. On July 5, 2017, the District Court issued its Order Directing [CHS] to Return $130.00 Taken from Alerus Account and Order Denying Request for Appointment of Attorney. App. 85-88. On July 5, 2017, the District Court also issued its Order Denying [Riemers'] Motion to Reopen Case and Close Judgment. App. 91-94. On July 7, 2017, an additional Judgment was entered against Riemers in the sum of $1,628.55 as and for CHS's reasonable attorneys' fees and costs incurred by CHS in responding to Riemers' Motion to Reopen Case to Close Judgment. App. 95. On August 28, 2017, Riemers filed his Notice of Appeal. App. 97-99.

STATEMENT OF FACTS

[¶8] Judgment was first entered in this case against Riemers on March 21, 2016, in the amount of $38,889.00. App. 7. CHS subsequently requested entry of an amended judgment to reflect the inclusion of an award of prejudgment interest in favor of CHS by motion dated March 31, 2016. App. 8. An Amended Judgment in the amount of $41,793.72 was entered on May 24, 2016. App. 14.

[¶9] The first collection on the Amended Judgment was $1,924.92 received on June 3, 2016, based on a garnishment issued to Citizens Community Credit Union. App. 35; 38. That payment was applied first to post-judgment costs in the amount of $184.50, then to post-judgment interest in the amount of $74.43, and finally, to the balance due on the amended judgment, leaving the sum of $40,127.93 outstanding[1]. App. 82.

[¶10] The next collection on the Amended Judgment was $37,801.97 received on June 7, 2016, based on a garnishment issued to Alerus Bank[2]. App. 35; 39-41. That payment was applied first to post-judgment interest in the amount of $28.58, and

[1] The District Court's calculations contained within the Findings of Fact of its Order Denying [Riemers'] Motion to Reopen Case and Close Judgment incorporate this Court's $70.07 offset at the outset of its calculations. App. 92. CHS's calculations proceed sequentially by date. Regardless, both calculations arrive at the correct outstanding balance of $679.08 as of the District Court's July 5, 2017 Order Denying [Riemers'] Motion to Reopen Case and Close Judgment.

[2] The check issued by Alerus was in the original amount of $39,644.58. As explained in Part II, infra, $1,842.61 was returned to Riemers' Alerus account by CHS.

then to the balance due on the amended judgment, leaving the sum of $2,354.34 outstanding. App. 82.

[¶11] The next recovery on the Amended Judgment was $1,957.61 received on August 9, 2016, based on a garnishment issued to Alerus. App. 35; 42. That payment was applied first to post-judgment costs in the amount of $196.00, then to post-judgment interest in the amount of $26.42, and then to the balance due on the amended judgment, leaving the sum of $619.15 outstanding. App. 82.

[¶12] On December 8, 2016, in connection with Riemers' appeal from the Judgment and Amended Judgment entered by the District Court, this Court reduced the amount of the Amended Judgment from $41,793.72 to $41,723.65 – a difference of $70.07. App. 22. Application of this credit to the balance remaining due on the Amended Judgment reduced the outstanding balance to $549.08, as of December 8, 2016. App. 92. The return of $130.00 to Riemers' Alerus account further adjusted the balance remaining due on the Amended Judgment to $679.08 as of the District Court's July 5, 2017 Order Denying Defendant's Motion to Reopen Case and Close Judgment. App. 88; 92.

[¶13] The District Court awarded CHS its reasonable attorneys' fees and costs incurred in responding to Riemers' Motion to Reopen Case to Close Judgment (hereafter, the "Motion"), upon a finding that Riemers' claims presented in support of the Motion were made without legal or factual basis, that the Motion was frivolous, and that the Motion was designed solely for the purpose of delay and to increase the costs and attorneys' fees for CHS. App. 91-94. Judgment in the amount

of $1,628.55 was entered against Riemers on July 7, 2017, as and for CHS's reasonable attorneys' fees and costs. App. 95.

LAW AND ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN AWARDING CHS ITS REASONABLE ATTORNEYS' FEES AND COSTS INCURRED IN RESPONDING TO RIEMERS' MOTION.

[¶14] Riemers argues that the District Court abused its discretion in awarding CHS its attorneys' fees and costs pursuant to N.D.C.C. § 28-26-01(2), based in part on his assertion that his legal contentions were not frivolous.

[¶15] N.D.C.C. § 28-26-01(2) provides as follows:

> In civil actions the court shall, upon a finding that a claim for relief was frivolous, award reasonable actual and statutory costs, including reasonable attorney's fees to the prevailing party. Such costs must be awarded regardless of the good faith of the attorney or party making the claim for relief if there is such a complete absence of actual facts or law that a reasonable person could not have thought a court would render judgment in that person's favor, providing the prevailing party has in responsive pleading alleged the frivolous nature of the claim. This subsection does not require the award of costs or fees against an attorney or party advancing a claim unwarranted under existing law, if it is supported by a good-faith argument for an extension, modification, or reversal of the existing law.

N.D.C.C. § 28-26-01(2).

[¶16] "A district court has discretion under N.D.C.C. § 28-26-01(2) to decide whether a claim is frivolous and the amount and reasonableness of an award of attorney fees, but when the court decides a claim is frivolous, the court *must* award attorney fees." Gray v. Berg, 2016 ND 82, ¶ 14, 878 N.W.2d 79, reh'g denied (June 7, 2016) (quoting Estate of Pedro v. Scheeler, 2014 ND 237, ¶ 14, 856 N.W.2d 775) (emphasis added). "A claim is frivolous if a reasonable person could not expect to prevail based upon an absence of supporting facts or law." Gray, 2016 ND 82, ¶ 14, 878 N.W.2d at 84 (citing Sagebrush Res., LLC v. Peterson, 2014 ND 3, ¶ 15, 841

N.W.2d 705). "A court's discretionary determinations under N.D.C.C. § 28-26-01(2) will not be overturned on appeal absent an abuse of discretion." Gray, 2016 ND 82, ¶ 14, 878 N.W.2d at 84 (citation omitted). "A court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner, its decision is not the product of a rational mental process leading to a reasoned determination, or it misinterprets or misapplies the law." Id. (quoting MayPort Farmers Co–Op v. St. Hilaire Seed Co., Inc., 2012 ND 257, ¶ 8, 825 N.W.2d 883).

[¶17] In its Order Denying Defendant's Motion to Reopen Case and Close Judgment, the District Court specifically found that the claims presented by Riemers in support of his Motion were "without factual or legal basis." App. 91. The District Court made several other specific findings of fact regarding the frivolous nature of Riemers' Motion. By way of example, the District Court found that Riemers' argument that he had tendered full performance by virtue of a deposit of funds into his Alerus account had no support in the law and was, in and of itself, a frivolous argument. As to this claim the District Court noted:

> The fact that money has been frozen in an account, subject to execution, does not accomplish the execution. Such takes time, incurs costs and interest continues to accrue . . . The court does not accept [Riemers'] argument that because he lost control over the money on May 3, 2016, [CHS] can no longer charge interest or collection fees. A check out of the Alerus account was issued to Vogel Law Firm on June 2, 2016 in the amount of $39,644.58. [CHS] did not acquire access to those funds until deposited with the Vogel Law Firm.

App. 93. Regarding Riemers' assertion that CHS had been overpaid and was not entitled to continue to charge interest on any outstanding balance, the District Court

found that Riemers' "lack of verification concerning those claims demonstrates that his motion to reopen this case is frivolous and without legal or factual support." App. 93.

[¶18] Regarding Riemers' contention that CHS had been compounding interest, the District Court found:

> [T]hat [Riemers'] claim that [CHS] has been compounding interest is not true. Post-judgment interest can be charged on the total judgment amount, even when the total judgment amount includes prejudgment interest. The only argument that might have merit concerning [Riemers'] claim of an overcharge for interest would be that [CHS] charged post-judgment interest on an amount of pre-judgment interest that the SC eventually reduced by $70.07. [Riemers] has not made such an argument and any adjustment made concerning such a claim would amount to a frivolous request for correction.

App. 93.

[¶19] Finally, as to Riemers' Motion as a whole, the District Court found that: "[Riemers'] pending motion and arguments made therein fall far short of being able to justify his contentions. Such supports [CHS's] claim that this most recent motion filed by [Riemers] was designed solely for the purpose of delay and to increase costs and attorney fees for [CHS]." App. 94. Accordingly, Riemers' argument that the District Court's award of attorneys' fees to CHS was not predicated on a finding as to the frivolous nature of his Motion (Appellant's Brief at ¶ 62) is clearly contrary to the plain language of the District Court's Order denying Riemers' Motion.

[¶20] Despite the District Court's clear findings of fact regarding the frivolous nature of Riemers' Motion, which findings find full support within the evidentiary record, Riemers further argues that no attorneys' fees may be awarded to CHS, as: (a) CHS did not request said costs and fees under Rule 11, N.D.R.Civ.P.; (b) his

Motion was not a "claim for relief" as provided for by N.D.C.C. § 28-26-01(2); and (c) Riemers was not afforded the procedural protections of Rule 11, N.D.R.Civ.P. These arguments are without merit and contrary to clearly established North Dakota law.

[¶21] It is well established in North Dakota that attorneys' fees may be awarded under N.D.C.C. § 28-26-01(2), upon a finding as to the frivolous nature of a motion:

> The district court has authority to stem abuses of the judicial process, which comes not only from applicable rules and statutes, such as N.D.R.Civ.P. 11, but "from the court's inherent power to control its docket and to protect its jurisdiction and judgments, the integrity of the court, and the orderly and expeditious administration of justice." Federal Land Bank v. Ziebarth, 520 N.W.2d 51, 58 (N.D.1994). A district court has discretion under N.D.C.C. § 28-26-01(2) to decide whether a claim is frivolous and the amount and reasonableness of an award of attorney fees, but when the court decides a claim is frivolous, the court must award attorney fees. See Strand v. Cass Cnty., 2008 ND 149, ¶¶ 12–13, 753 N.W.2d 872. "A claim for relief is frivolous under N.D.C.C. § 28-26-01(2) only if there is such a complete absence of actual facts or law a reasonable person could not have expected a court would render a judgment in that person's favor." Estate of Dion, 2001 ND 53, ¶ 46, 623 N.W.2d 720. We review the district court's decision under the statute for an abuse of discretion. Id.

Estate of Pedro, 2014 ND 237, ¶ 14, 856 N.W.2d at 780. In Estate of Pedro, the appellant/movant had motioned for an order from the trial court requiring the subject Estate's personal representative to file a supplemental affidavit. The trial court denied the motion, awarded the Estate's personal representative's law firm its attorneys' fees, and barred the appellant/movant from further filings in the matter. Id. at 777. After concluding that the dispositive issue was whether the appellant/movant had established any legal grounds for the relief sought in his *motion*, the North Dakota Supreme Court concluded that (a) the appellant/movant had failed to establish a basis for the relief

sought in his motion; and (b) the appellant/movant's "arguments are frivolous and wholly without merit." Id. at 777, 779. It is thus clear that Rule 11, N.D.R.Civ.P. does not provide the only procedural basis for an award of attorneys' fees and costs as a sanction for the abuse of the legal process, and that such sanctions are available as a response to frivolous motion filings, pursuant to N.D.C.C. § 28-26-01(2). In that the District Court's award of attorneys' fees and costs to CHS was made pursuant to N.D.C.C. § 28-26-01(2), Riemers could not have availed himself of the procedural protections provided by Rule 11, N.D.R.Civ.P.

[¶22] As with the trial court in Estate of Pedro, the District Court made specific findings of fact as to the frivolous nature of Riemers' Motion. App. 91; 93-94. Furthermore, in its Return to Defendant's Motion, CHS alleged the frivolous nature of Riemers' arguments and claim for relief, stating "[i]n that [Riemers'] claim in this motion is frivolous, pursuant to N.D.C.C. § 28-26-01(2), the appropriate sanction for [Riemers'] abusive behavior is to assess against [Riemers] the costs and attorneys' fees incurred by [CHS] in connection with this motion." App. 36-37. In support of its request, CHS provided a detailed listing of the costs and attorneys' fees it had incurred in responding to Riemers' Motion. App. 43-44. The District Court's award of attorneys' fees and costs incorporated this itemization. App. 94. Accordingly, the District Court did not abuse its discretion in awarding CHS its costs and attorneys' fees in responding to Riemers' Motion. See Rath v. Rath, 2016 ND 46, ¶ 29, 876 N.W.2d 474, reh'g denied (Mar. 23, 2016) (affirming trial court's award of attorneys' fees pursuant to N.D.C.C. §§ 28-26-01(2) and 28-26-31 based

on a finding that appellant/movant's motion was frivolous and repetitious and order barring appellant/movant from filing further, similar motions).

II. THE DISTRICT COURT DID NOT ERR IN DECLINING TO FIND THE JUDGMENT AND AMENDED JUDGMENT AGAINST RIEMERS AS SATISFIED IN FULL.

A. The District Court did not err in its calculation of Riemers' outstanding balance.

[¶23] Riemers asserts - in part - that the District Court erred in finding that the Judgment and Amended Judgment against Riemers had not been satisfied in full as of April 20, 2016, the date on which Riemers placed $41,100 into an Alerus account. App. 27. Accordingly, per Riemers, there can be no finding as to the frivolous nature of his Motion.

[¶24] "[F]indings of fact … are subject to the clearly erroneous standard of review, and may, in some limited areas, be matters of discretion subject to the abuse of discretion standard of review." Buchholz v. Buchholz, 1999 ND 36, ¶ 11, 590 N.W.2d 215. "A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support it, or if, on the entire record, we are left with a definite and firm conviction that a mistake has been made." Id. (quoting Edwards v. Edwards, 1997 ND 94, ¶ 4, 563 N.W.2d 394).

[¶25] As part of its Order Denying Defendant's Motion to Reopen Case and Close Judgment, the District Court made detailed findings of fact regarding the application of garnished funds to CHS's Judgment and Amended Judgment, including the outstanding balance due and owing by Riemers following application of each of

CHS's collections. App. 92. These calculations included the appropriate adjustment following this Court's deduction to the previous pre-judgment interest balance. Id. Each of the findings made by the District Court were supported by CHS's submissions, including amounts collected on garnishments to Citizens Community Credit Union and Alerus (App. 38-39; 42), credits back to accounts held by Riemers (App. 40-41), post-judgment costs incurred by CHS (App. 69), and CHS's computations regarding the principal balance, accrual of interest on said balance, and application of payments to costs, interest, and principal. App. 82.

[¶26] Riemers attempts to muddy the waters of an otherwise clear calculation by referencing several amounts returned by CHS. Those returns and the reasons for the same were clearly set forth by CHS and accepted by the District Court:

> A. A return of $10.00 to Riemers by Alerus on or about April 26, 2016. CHS determined that the expense of pursuing said garnished funds would be greater than the amount to be recovered.
>
> B. The sum of $1,842.61 returned to Riemers by Alerus on June 24, 2016. The garnishment related to this return was initiated prior to entry of the District Court's Amended Judgment. The amounts withheld pursuant to that garnishment and the garnishment initiated at the same time against Riemers' account at the Citizens Community resulted in CHS receiving more than the amount of the original Judgment entered by the District Court. Even though by the time Alerus remitted on the garnishment, the Amended Judgment had been entered, CHS did not believe it could take the extra amount and apply it against the Amended Judgment. As a consequence, the excess of $1,842.61 was returned for re-credit to Riemers' account at Alerus.
>
> C. The sum of $10.42 returned to Riemers by Alerus on June 23, 2016. CHS determined that the expense of collecting this amount would be greater than the amount to be recovered. Thus, the monies were returned to Riemers' account at Alerus.

App. 36.

[¶27] Riemers further contends that CHS is entitled to no "fees, interest and costs of collection after 20 April 2016[3] when it was disclosed to CHS that $41,100 was placed in the Alerus account for their collection." App. 24. According to Riemers, this "tender of full performance" "*extinguished* any further obligation Riemers [or his property] had in the garnishment proceedings as of the date of the offer." Brief of Appellant at ¶ 83 (emphasis in original). This contention has no basis in either fact or law. As correctly noted by the District Court, "[t]he fact that money has been frozen in an account, subject to execution, does not accomplish the execution." App. 93. See N.D.C.C. § 32-09.1-07(1)(c) ("The garnishee summons must state . . . [t]hat the garnishee shall retain property, earnings, or money in the garnishee's possession pursuant to this chapter until the plaintiff causes a writ of execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff."). As the District Court correctly found, Riemers failed to present any evidence: (a) that CHS garnished his Alerus account for $41,417.69; (b) that on May 3, 2016, Alerus withdrew $41,110 from his account; or (c) that CHS was overpaid on the amounts due and owing under the Judgment and Amended Judgment. App. 93. The District Court noted that Riemers' failure to provide any evidence documenting these claims demonstrated that his Motion was made without legal or factual support and was, in effect, frivolous. Id.

[3] Riemers alternately argues that a tender of performance occurred on May 3, 2016, the date on which Riemers claims Alerus withdrew $41,100 from his account pursuant to CHS's garnishment. See Brief of Appellant at ¶ 84. See also App. 93. Regardless, Riemers' argument is utterly without merit.

[¶28] As noted by the District Court in its Findings of Fact, a check for $39,644.58 was issued from Riemers' Alerus account to the Vogel Law Firm on June 2, 2016. App. 93. CHS did not acquire access to said funds until deposit with the Vogel Law Firm, and, as set forth at length above, the funds did not fully satisfy CHS's Judgment and Amended Judgment against Riemers. Accordingly, the continuing accrual of interest on the Judgment and Amended Judgment is definitively provided for under the law.

[¶29] The District Court's findings of fact regarding an outstanding balance owed by Riemers on the Judgment and Amended Judgment are firmly supported by the evidence on record in this matter, including the documentation provided by CHS regarding the application of payments obtained by CHS toward the Judgment and Amended Judgment, credits where applicable, and remaining balance.

III. THE DISTRICT COURT DID NOT ERR IN FINDING THAT CHS FOLLOWED ALL APPLICABLE LAW AND STATUTES RELATING TO THE GARNISHMENT REMEDY.

[¶30] In an additional attempt to create a roadblock to CHS's lawful collection on its Judgment and Amended Judgment, Riemers contends that CHS failed to follow applicable statutes relating to the "garnishment remedy." See Brief of Appellant at ¶ 68.

[¶31] As an initial matter, Riemers failed to raise the issue of CHS's compliance with applicable statutes relating to garnishment and/or execution with the District Court. "A party may not raise an issue for the first time on appeal." First Nat. Bank & Tr. Co. of Williston v. Jacobsen, 431 N.W.2d 284, 287 (N.D. 1988) (citing Spier

v. Power Concrete, Inc., 304 N.W.2d 68 (N.D.1981)). See also Rutherford v. BNSF Ry. Co., 2009 ND 88, ¶ 28, 765 N.W.2d 705, 715 ("[I]f a party fails to properly raise an issue or argument before the district court, the party is precluded from raising that issue or argument on appeal.").

[¶32] Even assuming this issue is properly before this Court (which it is not) Riemers' contention is without merit. Questions of law are subject to the de novo standard of review. Buchholz, 1999 ND 36, ¶ 11, 590 N.W.2d at 218. Here, the District Court correctly found that CHS "follow[ed] the appropriate statutes and rules concerning execution and garnishment and no order directing [CHS] to do so is necessary." App. 93.

[¶33] Riemers first asserts that the retention amounts included by CHS in its garnishment summonses to Alerus and Citizens Community Credit Union contained the incorrect retention amount. In addition to the fact that Riemers failed to raise this argument with the District Court, this argument also fails for at least three reasons. First, Riemers bases his calculation of the "correct" retention amount off of an incorrect outstanding balance. As set forth in Part II, supra, the District Court did not err in its calculation of Riemers' outstanding balance. Accordingly, there is simply no basis for Riemers' argument on the retention amount having been incorrectly calculated. Second, Riemers never challenged the garnishment summonses to Alerus and Citizens Community Credit Union, and is thus barred from now raising an objection as to any retention amounts contained therein. Third, regardless of the retention amount provided to either Alerus or Citizens Community

Credit Union, there was at all times relevant an outstanding balance owed by Riemers. Thus, Riemers' argument is legally insignificant.

[¶34] Riemers also argues that, because CHS "did not ever obtain a judgment in any garnishment action, it cannot obtain an execution issued in the garnishment action pursuant to the authority of N.D.C.C. § 28-21-04.2" and that CHS improperly utilized "returned" or "expired" Executions of Judgment. See Appellant's Brief at ¶¶ 75-76. As with the other strained arguments presented by Riemers in this appeal, this contention is contrary to the plain meaning of the law.

[¶35] A judgment creditor's attorney seeking recovery of funds retained pursuant to a garnishment is not governed by the same procedures as a sheriff's or officer's proceedings under a general execution on personal property. N.D.C.C. § 28-21-04.2 governs summary executions for the recovery of funds retained pursuant to a garnishment. In order to recover the funds at issue, Counsel for CHS served a copy of the Execution of Judgment on Alerus by certified mail. App. 75-79. Additionally, executions issued on North Dakota state court judgments do not expire automatically. The only time limit is N.D.C.C. § 28-21-07, which requires a sheriff or officer to return an execution to the Clerk of Court within 60 days or receipt, or within 90 days after a sale of levied property. Other than the obligation of the sheriff to return, there is no time limit specified in North Dakota law for an execution. Therefore, the District Court did not err in finding that CHS followed proper procedure for a summary execution on the garnished funds in full compliance with

N.D.C.C. § 28-21-04.2, and Riemers' argument to the contrary is utterly without basis in the law.

IV. THE DISTRICT COURT DID NOT ERR IN ALLOWING CHS TAXATION OF ITS POST-JUDGMENT COSTS.

[¶36] Riemers asserts that CHS cannot recover its post-judgment costs and disbursements incurred in recovering a judgment without first: (a) obtaining a judgment against the garnishee in a garnishment action; and (b) following the procedures set forth in Rule 54, N.D.R.Civ.P. Yet again, Riemers misstates and misconstrues the plain meaning of North Dakota law regarding post-judgment costs and disbursements.

[¶37] Questions of law are subject to the de novo standard of review. Buchholz, 1999 ND 36, ¶ 11, 590 N.W.2d at 218. Here, the District Court correctly found that CHS was not required by law to seek the court's approval of taxation of post-judgment costs incurred in recovering a judgment. App. 94. Additionally, the District Court found that CHS had "substantiated such costs" as a matter of record. Id. See also App. 69.

[¶38] Riemers' argument that a judgment creditor may only recover its costs after obtaining a judgment against a garnishee has no support whatsoever in law. Pursuant to N.D.C.C. § 32-09.1-15, a creditor may obtain a judgment against a garnishee in the event of the garnishee's failure to serve written answers to disclosures under N.D.C.C. § 32-09.1-09. See N.D.C.C. § 32-09.1-14. This is, however, entirely separate from a judgment creditor's ability to obtain post-

judgment costs against a judgment debtor. See, Mid-Dakota Clinic, P.C. v. Kolsrud, 1999 ND 244, ¶ 4, 603 N.W.2d 475 ("Mid–Dakota also asserts public policy favors allowing post-judgment discovery without an execution because the costs of the execution, *which are added to the judgment*, create a burden for the debtor; whereas post-judgment interrogatories are a simple and inexpensive means to obtain information about the debtor's assets.") (emphasis added).

[¶39] Furthermore, the statutes cited by Riemers in support of his argument that CHS did not follow statutory procedures to obtain its costs – N.D.C.C. §§ 28-26-06 and 28-26-19 – relate to prejudgment costs that are taxed under Rule 54, N.D.R.Civ.P. Rule 54, N.D.R.Civ.P., in turn, clearly refers to costs awarded in a judgment. By definition, post-judgment costs are not costs taxed in the judgment and are an entirely different matter. See e.g., N.D.C.C. § 28-20-36 ("A partial payment made on a judgment must be applied first to postjudgment costs."). There is no obligation to tax post-judgment costs and no obligation to file the same with the court, nor is there any limitation on the recovery of post-judgment costs against garnishees only.

V. THE DISTRICT COURT DID NOT ERR IN FINDING THAT CHS WAS NOT IMPROPERLY COMPOUNDING INTEREST.

[¶40] Riemers asserts that CHS's calculations regarding his debt evidence the improper compounding of interest. The District Court specifically found that this claim "is not true." App. 93. As previously noted, "findings of fact … are subject to the clearly erroneous standard of review, and may, in some limited areas, be

matters of discretion subject to the abuse of discretion standard of review." Buchholz, 1999 ND 36, ¶ 11, 590 N.W.2d at 218. "A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support it, or if, on the entire record, we are left with a definite and firm conviction that a mistake has been made." Id. (quoting Edwards, 1997 ND 94, ¶ 4, 563 N.W.2d 394).

[¶41] North Dakota law prohibits the compounding of interest on judgments. N.D.C.C. § 28-20-34. In accordance with N.D.C.C. § 28-20-36, governing the application of partial payments on judgments, payments received by CHS were applied first to post-judgment costs. If any payment exceeded the costs, the excess amount was applied to post-judgment interest. If the payment exceeded the costs and interest, the excess amount was applied to the unpaid principal balance. As the District Court correctly noted, "[p]ost-judgment interest can be charged on the total judgment amount, even when that total judgment amount includes prejudgment interest." App. 93. See N.D.C.C. § 28-20-36 ("If the payment exceeds the costs and interest, the excess amount must be applied toward discharging the judgment amount, and the subsequent interest is to be computed on the balance of the judgment amount remaining due.").

[¶42] A review of CHS's computation as to the balance due on its Judgment and Amended Judgment clearly establishes that CHS never compounded interest. Riemers' argument alleging the same is totally without merit, and the District Court's findings that "[Riemers'] claim that [CHS] has been compounding interest

is not true" (App. 93) is clearly supported by the evidence on record in this matter, including the documentation provided by CHS and accepted by the District Court.

CONCLUSION

[¶43] The District Court did not abuse its discretion in awarding CHS its reasonable costs and attorneys' fees, which award was predicated on a finding as to the frivolous nature of Riemers' Motion. The District Court's findings of fact regarding Riemers' outstanding balance on the Judgment and Amended Judgment are firmly supported by the evidence on record in this matter, and the District Court did not err in declining to find Riemers' Judgment and Amended Judgment as having been satisfied in full. Furthermore, the District Court did not err in finding that CHS followed all applicable statutes and rules concerning the execution and garnishment of funds to satisfy the Judgment and Amended Judgment, nor did the District Court err in allowing CHS taxation of its post-judgment costs. Finally, the District Court did not err in finding that CHS was not improperly compounding interest. For the foregoing reasons, this Court should affirm the District Court's Order Denying Defendant's Motion to Reopen Case and Close Judgment.

Dated this 5th day of January, 2018.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

CHS Inc., Plaintiff/Appellee, vs. Roland Riemers, Defendant/Appellant.	**SUPREME COURT NO. 20170331** Grand Forks County District Court Civil No. 18-2015-CV-01950

ON APPEAL FROM THE DISTRICT COURT'S ORDER DENYING DEFENDANT'S MOTION TO REOPEN CASE AND CLOSE JUDGMENT ENTERED JULY 5, 2017 AND FROM THE JUDGMENT ENTERED JULY 7, 2017

STATE OF NORTH DAKOTA
GRAND FORKS COUNTY DISTRICT COURT
NORTHEAST CENTRAL JUDICIAL DISTRICT
HONORABLE JOHN A. THELEN

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of January, 2018, I served by electronic mail a true and correct copy of the following documents:

APPELLEE'S BRIEF

A copy of the foregoing was securely e-mailed to the address as follows:

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