

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

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SUPREME COURT NO.: 20170441  
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Mathew Zuraff,

Plaintiff/Appellee,

-vs-

Natasha Reiger,

Defendant/Appellant

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APPEAL FROM THE CIVIL JUDGMENT  
EAST CENTRAL JUDICIAL DISTRICT  
CASS COUNTY CIVIL. NO. 48-2017-DM-00006  
THE HONORABLE LONNIE OLSON PRESIDING  
-----

**PETITION FOR REHEARING**

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**STATEMENT OF THE ISSUE**

**[¶1] ISSUE:**

**I. Did the trial courts err by not considering all of the evidence of domestic violence and evidence involving serious bodily injury presented by the Defendant/Appellant, Natasha Reiger?**

## NATURE OF THE CASE

[¶2] This is a petition to rehear the North Dakota Supreme Courts opinion in the above matter that was filed on June 5, 2018

## ARGUMENT

[¶3] In its ruling affirming the district courts Judgment granting primary residential responsibility to Plaintiff/Appellee, Mathew Zuraff the Supreme Court cited two prior North Dakota cases, Thompson vs Olson, 2006 ND 54, 711 N.W.2d 226 and Cox v. Cox 2000 ND 144, 613 N.W.2d 516. In Thompson the trial court made the following detailed findings about the domestic violence presumption:

[¶11] The trial court found that the domestic violence presumption against granting custody to Thompson was triggered by two incidents:

The Court finds there has been domestic violence by Thompson against Olson. In her Application for a Domestic Violence Protection Order dated March 29, 1999, Olson related an earlier incident that occurred on or about August 9, 1998. Although she used the date July 9, 1998, Thompson put into evidence Plaintiff's Exhibit 7, which is a copy of a medical report from Turtle Lake Clinic dated August 10, 1998, for a perforated eardrum he received as a result of Olson slapping him in the ear during an altercation on August 9, 1998, thus establishing the date and that violence occurred. She reported that while she was pregnant with [Mary], Thompson assaulted her to get cigarettes away from her as he didn't want her to smoke while she was pregnant. Encouraging her not to smoke while pregnant was a good idea, but holding her to the ground and sitting on her stomach while trying to choke her gave her a self defense right to force him off of her. Thompson denies Olson's report of this incident, but the Court finds Olson's description of the event is more credible than Thompson's denial or his assertion that he was assaulted without provocation by Olson. The Court finds this incident of domestic violence did occur and did involve "the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or

assault, not committed in self-defense, on the complaining family or household members,” as defined in NDCC 14-07.1-01(2).

The Court also finds Thompson inflicted “serious bodily injury” on Olson on March 27, 1999, when he threw her out of their house because he found a copy of a letter she had written to an inmate while she was working as a correctional officer. Clearly, writing such a letter was inappropriate and keeping a copy of it for Thompson to find was incomprehensible. Nevertheless, Thompson’s subsequent actions were unlawful and resulted in bodily injury to Olson as shown by a copy of the McLean County Offense Report on the March 27, 1999, incident, which Thompson attached to his Affidavit of Cory Thompson dated June 8, 2004 . . . . The report on page 2 lists photos taken of seven injuries, only one of which was to Thompson, that being scratch on his neck (the third photo listed). Attached to the Affidavit of Nikki L. Olson dated April 30, 1999, is a copy of an Emergency Room record from St. Alexius Medical Center of March 28, 1999, detailing bodily injuries she reported she received the previous day when she was assaulted by her boyfriend.

Both Olson and Thompson were charged with Disorderly Conduct, but the charge against Olson was dismissed and Thompson pled guilty to the charge against him. Also attached to the Affidavit of Nikki L. Olson dated April 30, 1999, was a copy of a Domestic Violence Protection Order granted to Olson against Thompson along with copies of the application and temporary order. She testified she dropped the order about a month later so she could work out an arrangement with Thompson about [Mary], but that she is still, as of the date of the hearing, afraid of him. The Court finds there is “credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury.” The Court finds Thompson committed Domestic Violence involving serious bodily injury against Olson. This factor favors Olson.

[¶4] In Cox the trial court made the following detailed findings:

[¶18] The trial court addressed Christi Cox’s allegations of domestic violence:

Christi claimed that Russell engaged in domestic violence. However, she related only a few incidents, the facts of which were disputed. During one incident, Christi hit Russell in the face when

they were in the care together. He got out and hit the car, saying he did not want to hit her. In another incident she claimed Russell pushed her over in a chair she was sitting in. Russell denied this incident. Although it was supposed to have occurred in her parents' living room, both of her parents attended the entire trial and were in the Courtroom. Neither one testified in support of her allegation. She then claimed that she walked in on Russell and claims he was screaming at [the child] and was trying to smother him. Mrs. Alveshere testified only that she was there and saw Russell with "his hand over the baby's mouth." The incident which ended the parties' relationship was on an evening when the parties had a fight. The police were called, and Russell was arrested. He later pleaded guilty to simple assault. The parties were never together after that time. Pursuant to NDCC Section 14-09-06.2(j), the Court finds that Christi has not proven credible evidence that domestic violence has occurred which involved serious bodily injury, use of a dangerous weapon, or a pattern of domestic violence.

[¶5] In Zuraff vs Reiger 2018 ND 143 the trial court made the following:

[¶15] Relating to factor (j), the domestic violence presumption, the district court concluded:

Natasha obtained a protection order against Matthew in the past. Thus, a court did find probable cause of an act of domestic violence, or threat of domestic violence. However this Court does not find sufficient evidence that it involve serious bodily injury. As such, the Court does not need to analyze whether or not there is clear and convincing evidence to overcome the presumption of this subsection of Section 14-09-06.2. Overall, this factor weighs in Natasha's favor.

[¶6] The above finding in Reiger only addresses the protection order and makes no finding on the domestic violence and serious bodily injury that Ms. Reiger testified that Mr. Zuraff performed on her. According to Thompson and Cox the district court should have made findings on Ms. Reiger's testimony.

## CONCLUSION

[¶7] The trial judge in Reiger only referred to the protection order in her findings. Mr. Zuraff's conviction of simple assault and what Ms. Reiger testified to about the domestic violence and serious bodily injury should have been included in the court's findings. Because these things weren't included Ms. Reiger's Post Conviction Application should be granted.

DATED this 13th day of June, 2018.

    /s/Benjamin C. Pulkrabek      
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**CERTIFICATE OF SERVICE BY MAIL**

[¶8] The undersigned hereby certifies that she is an employee in the office of Pulkrabek Law Firm and is a person of such age and discretion as to be competent to serve papers.

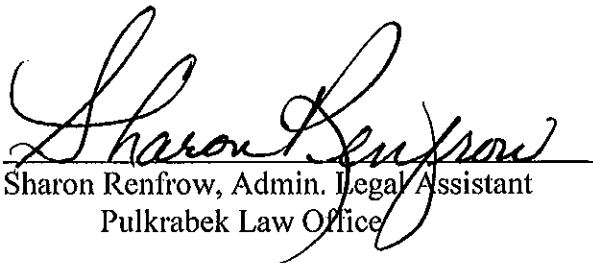
That on June 13th, 2018 , she served, by e-mail and/or mailed a copy of the following:

**APPELLANTS PETITION FOR REHEARING**

to: Megan Essig  
Attorney at Law  
Megan@handylawgroup.net

Mailed to: Natasha Reiger  
725 S. 12<sup>th</sup> St.  
#37  
Bismarck, ND 58504

The undersigned further certifies that on June 13th, 2018, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLANTS PETITION FOR REHEARING.

  
Sharon Renfrow, Admin. Legal Assistant  
Pulkrabek Law Office