

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Kathy Wolt,)
Appellee,)
vs.)
Steve Wolt,)
Appellant,)
And)
State of North Dakota,)
Appellee.)

Case No. 20180304

**APPELLANT’S PETITION
FOR REHEARING**

**Appeal from June 13, 2018, Memorandum and Order on the Defendant's Motion
to Modify Monthly Child Support Payment and Motion to Correct Clerk of
Court's Child Support Records, July 3, 2018, Third Amended Judgment, and
July 17, 2018, Order Denying Defendant Motion for Sanctions
District Court of Morton
South Central Judicial District
Case No. 30-08-C-00347
The Honorable James S. Hill, District Judge, Presiding**

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I. The Only Reasonable Interpretation of North Dakota Child Support Guidelines on Self-employment Income Supports Steve’s arguments, not State’s Argument.

[¶ 1] A new fact was discovered by the undersigned on March 8, 2019, the day after oral arguments were held before this Court in this appeal, which sheds new light on the State’s argument that the definition of self-employment contained in N.D. Admin. Code § 75-02-04.1-01(10) only “describes what type of employment or business activity is going to be treated as a self-employment business [and] does not discuss or define what income is to be treated as self-employment income,” as argued by counsel for the State for the first time during oral arguments before this Court on March 7, 2019, in the State’s defense to Steve’s argument that the only reasonable interpretation of § 75-02-04.1-01(10) is that it applies to both the determination of the type of employment or business activity that is going to be treated as a self-employment business as well as the determination of what income the obligor receives from such a business is to be treated as self-employment income. Counsel for the State, Sheila Keller, like her subordinates from her office, the Bismarck Regional Child Support Enforcement Unit, had done, before Ms. Keller she took over representing the State in the case, contended, despite the unambiguous wording of § 75-02-04.1-01(10) to the contrary, that the Internal Revenue Code definition of “self-employment income” controlled what income under the North Dakota Child Support Guidelines was to be considered self-employment income. As far as the undersigned is aware, Ms. Keller has never advised this Court of the fact that her office, the Bismarck Regional Child Support Enforcement Unit, takes different positions in cases that involve the above stated issue.

[¶ 2] On March 8, 2019, in the undersigned's review of child support calculations prepared by Heather Krumm, one of Ms. Keller's subordinates at the time from the Bismarck Regional Child Support Enforcement Unit, in a case entitled *John Schaaf vs. Melissa Sharp*, Burleigh County District Court Case No. 08-07-C-2426, Ms. Krumm within her calculations of the undersigned's client's monthly child support obligation treated rental income my client, Mr. Schaaf, received from land he personally owned as self-employment income, when under the Internal Revenue Code such rental income is considered ordinary income to the individual who owns the land.

[¶ 3] To gain full knowledge of the facts involved in *John Schaaf vs. Melissa Sharp*, the undersigned recommends this Court review all the briefs filed in this appeal, including the documents contained in *Appellant's Appendix* that are referred to in those briefs, and then listen to the oral arguments that were presented in the case by the parties to this Court on March 7, 2019, and then compare the State's arguments in this case to the income information and child support calculations submitted by the State in the *Schaaf* case in the 2018-2019 post-judgment proceedings in that case. See, Burleigh County District Court Case No. 08-07-C-2426, Register of Action, Index ## 34-113. Such an expansive review is needed to fully understand the different ways the attorneys at the Bismarck Regional Child Support Enforcement Unit, Ms. Keller and her subordinates, treat self-employment income under the North Dakota Child Support Guidelines.

[¶ 4] It is well established law in North Dakota, as stated by this Court in *Martin v. Stutsman County Social Services*, 2005 N.D. 117, ¶ 13, 698 N.W.2d 278; *Luthle v. Burleigh County Social Serv*, 474 N.W.2d 497, 500-1 (N.D. 1991); and *Bottineau County Water Resource Dist. v. N.D. Wildlife Society*, 424 N.W.2d 894, 900 (N.D. 1988):

