

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20180387
Ward County District Case No. 51-2018-DM-00097

W.C.,
Plaintiff
~~Petitioner~~ and Appellant

v.

J.H. and T.H.,
Defendants
~~Respondents~~ and Appellees,

APPEAL OF ORDER DENYING PETITION TO ADJUDICATE PATERNITY,
RESIDENTIAL RESPONSIBILITY, DECISIONMAKING RESPONSIBILITY,
PARENTING TIME & CHILD SUPPORT ENTERED AUGUST 22, 2018
BY THE DISTRICT COURT, NORTH CENTRAL JUDICIAL DISTRICT,
WARD COUNTY, STATE OF NORTH DAKOTA

THE HONORABLE STACY J. LOUSER, DISTRICT JUDGE

REPLY BRIEF OF PETITIONER/APPELLANT W.C.

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LAW AND ARGUMENT

[¶1.]

A. W.C. is authorized by the North Dakota Rules of Civil Procedure to conduct discovery in preparation for an evidentiary hearing.

[¶2.] North Dakota Rule of Civil Procedure 26 states, in part, “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.” N.D.R.Civ.P. 26(b)(1)(A). Discovery may be obtained by deposition, interrogatories, production of documents and/or requests for admission. N.D.R.Civ.P. 26(a)(1)-(3) and (5).

[¶3.] The issue on appeal is whether the district court abused its discretion by determining W.C. was not entitled to conduct any discovery from Mom and not entitled to obtain supplemental discovery from Ex-Husband. The appeal is not on the merits of the Petition.

[¶4.] The position of the Respondents/Appellees appears to be, W.C. cannot overcome the presumption of paternity so he doesn't get to try; discovery is irrelevant. That argument, like the district court's decision to prohibit discovery, puts the cart before the horse. As the Appellee's state in their own words, “Since W.C. could never meet his burden of proof under the provisions of Section 14-20-42(2), nothing in his brief has any relevance.” Brief of Respondents/Appellees J.H. and T.H., ¶ 18. This flawed logic flies in the face of the judicial process and a litigant's right to pursue a claim upon which summary judgment has been denied. In fact, litigants are also generally entitled to conduct discovery prior to even responding to motion for summary judgment. N.D.R.Civ.P. 56(f); *See Vicknair v. Phelps Dodge Indus., Inc.*, 2011 ND 39, ¶ 19, 794 N.W.2d 746.

[¶5.] As acknowledged by the Appellees, “Procedurally, there was a motion for summary judgment for failure to state a claim upon which relief could be granted, which, after a

hearing, this motion was denied.” Brief of Respondents/Appellees J.H. and T.H., ¶ 3. W.C. was granted an evidentiary hearing by the district court after the Court ruled the hearing, “...would be scheduled in order that factual determinations could be made.” App. 36 at ¶ 5. Thereafter, however, the Court ruled W.C. was not permitted to conduct any discovery. This order prevented W.C. from obtaining information that could have been used to refute the testimony of Mom and/or Ex-Husband and rendered W.C. incapable of presenting information to the Court other than what was personally known to him to be true.

[¶6.] As a result of the district court’s decision quashing all discovery, W.C. was deprived of a fair evidentiary hearing. The decision regarding the prohibition of discovery was erroneous and an abuse of the Court’s discretion. Respectfully, W.C. is entitled to a remand of this case and for adequate time to conduct discovery.

CONCLUSION

[¶7.] For the reasons stated above, W.C. respectfully asks this Court to reverse the Ward County District Court’s decision to quash all discovery from Mom and supplemental discovery from Ex-Husband and remand the case with instruction that the district court allow W.C. adequate time to conduct discovery prior to an evidentiary hearing.

DATED this 28th day of February, 2019.

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CERTIFICATE OF SERVICE

[¶8.] I hereby certify that, on February 28, 2019, I served the foregoing Reply Brief of

Petitioner/Appellant W.C. on the following attorneys by electronic mail transmission:

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DATED this 28th day of February, 2019.

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