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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

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

W.C.,

Petitioner and Appellant

v.

J.H. and T.H.,

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

BRIEF OF PETITIONER/APPELLANT W.C.

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STATEMENT OF THE ISSUE

[¶1.]

A. The district court abused its discretion by determining the Petitioner/Appellant, W.C., was not entitled to obtain *any* discovery from Respondent/Appellee J.H. including, but not limited to, interrogatories, requests for admission, document productions or her deposition and not entitled to obtain supplemental discovery from Respondent/Appellee T.H., effectively depriving him of his right to a fair hearing.

STATEMENT OF THE CASE

A. Statement of the Facts

[¶2.] Respondent J.H. (hereafter "Mom") is the biological mother of K.N.H. (hereafter "Katie," a pseudonym). Appendix, "App." 11. Katie was born in North Dakota in 2013, less than three hundred (300) days after Mom's divorce from Respondent T.H. (hereafter "Ex-Husband"). Id. and App. 6 at ¶ 14. At the time the Petitioner and Appellant, W.C., commenced this action in February, 2018, Katie was four (4) years old. App. 1, 6 at ¶ 14 and 11. Katie has "No Father on File" with the North Dakota Department of Health. App. 11.

[¶3.] Mom and Ex-Husband were married on June 13, 2009. Docket, "Doc.," #73, pg. 1 at line 9. In July, 2012, while still married to Ex-Husband, Mom began having a sexual relationship with W.C. App. 7 at ¶ 20. In July, 2012, Ex-Husband commenced divorce proceedings against Mom, filing an Affidavit with the Ward County District Court that stated in relevant part, "For the past months my wife, … [Mom], has been frequently going out at night and returning in the early hours of the morning or on the following day…," App. 12 at ¶ 3, and, "[Mom] has readily admitted she is seeing someone else. She has no home or dwelling in …, North Dakota, other than the one she chose to abandon…" App. 13 at ¶ 5. Mom testified at the evidentiary hearing she moved in with W.C. in January, 2013 and lived with him through the end of March, 2013. Transcript of

Proceeding, August 13, 2018, hereafter "Tr.," 7 at lines 6-18. W.C. testified that during the month of February, 2013, he and Mom were having frequent, unprotected sexual intercourse. Tr. 54 at line 25 - Tr. 55 at lines 1-9.

[¶4.] On April 23, 2013, Mom text messaged W.C. and told him, "I will always have a part of you." Tr. 55 at lines 23-25 - Tr. 56 at lines 1-9. When asked what that meant, Mom told W.C. she was pregnant. Tr. 56 at lines 10-14. W.C. and Mom had ended their relationship earlier that month and Mom had, presumably, moved into a friend's basement. Tr. 56 at lines 22-25. Mom never told W.C. that Katie might not be his child and W.C. had no reason to suspect he wasn't Katie's father. Tr. 57 at lines 1-6.

[¶5.] On June 12, 2013, after disclosing her pregnancy with Katie to W.C., Mom and Ex-Husband entered into a Parenting and Property Settlement Agreement. Doc. #73. They had settled all of the issues pertinent to their divorce via court-sponsored mediation on or before February 26, 2013. Doc. #72. Mom and Ex-Husband's Parenting and Property Settlement Agreement made no mention of Mom's pregnancy with Katie and addressed residential responsibility and parenting time only as to Mom and Ex-Husband's two (2) children, T.B.H., born in 2006, and J.D.H., born in 2010. Doc. #73, pg. 2 at lines 11-14. A Judgment was entered in Mom and Ex-Husband's divorce on June 21, 2013. App. 5 at ¶ 7. Judgment also does not mention or address Mom's pregnancy with Katie and Judgment was never amended to include Katie as a child of the parties. App. 8 at ¶ 24.

[¶6.] Despite Mom disclosing her pregnancy with Katie to W.C. in April, 2013, Mom claimed via sworn affidavit on February 7, 2018, that she did not know she was pregnant at the time of her divorce from Ex-Husband. Doc. #14 at ¶ 5. Via written discovery answered on July 5, 2018, Ex-Husband said he knew Mom was pregnant prior to his

divorce from her and provided a photograph in support of that fact. Doc. #75, pg. 18 at #21.

[¶7.] Mom testified at the evidentiary hearing that her first prenatal care visit for Katie was in August, 2013, when she was approximately six (6) months pregnant. Tr. 21 at lines 11-18. Mom also testified that according to her physician, Katie's probable date of conception was the "last week of February, 2013." Tr. 21 at lines 19-21. According to earlier testimony, Mom was still living with W.C. the last week of February, 2013, and according to W.C., having frequent sexual intercourse with him during that time period. Tr. 7 at lines 6-18 and Tr. 54 at line 25 - Tr. 55 at lines 1-9.

[¶8.] At some point after a prenatal care visit, Mom revealed the gender of Katie to W.C. at his home by popping a balloon filled with pink confetti. Tr. 57 at lines 10-17. Mom apologized to W.C. because Katie was a girl but W.C. was not disappointed. Tr. 57 at lines 17-19. Mom also took W.C. with her to a prenatal care visit whereat W.C. provided his family medical history. Tr. 58 at lines 11-13 and Tr. 59 at lines 6 – 10. At the appointment, Mom corrected her physician who initially mistook W.C. for Ex-Husband and said W.C. was the father of Katie. Tr. 59 at lines 11-21. W.C. got to see Katie via ultrasound and learned Mom's due date was November 28, 2013. Tr. 60 at lines 3-9.

[¶9.] W.C. arranged to have work off for the birth of Katie and discussed baby names with Mom. Tr. 60 at lines 10-16. On the morning of Katie's birth, W.C. received a call from Mom at 7:00 am. Tr. 61 at lines 14-18. Mom said to W.C., "Don't be mad but she [Katie] is here." Tr. 61 at lines 18-19. W.C. assumed Mom thought he'd be mad because Mom did not allow W.C. to be present for Katie's birth. Tr. 61 at lines 22-25. W.C. said

Mom had previously told him she wanted somebody at the birth who cared about her and at that time, Mom and W.C. were no longer in a relationship. Tr. 61 at lines 8-11.

[¶10.] W.C. arrived at the hospital around 8:00 am then invited his parents to join him. Tr. 62 at lines 1-6. Mom informed W.C. she had named the baby "Katie," which was the name W.C. had chosen for her. Tr. 62 at lines 10-14. W.C. and his parents were able to spend time with and hold Katie. Tr. 62 at lines 18-23. Mom took pictures of W.C. and his parents holding Katie. Tr. 63 at lines 1-2.

[¶11.] After Katie's birth, Mom gifted W.C. a coffee mug with photographs of Katie. Tr. 65 at lines 10-14 and Doc. #2. The mug was inscribed, "DAD Always and Forever XOXOXO," and Mom and KATIE personally delivered it to W.C. Id. Mom also gifted W.C.'s mother a mug inscribed "Grandma." Doc #28 at ¶ 26. For the next several months, under the assumption that Mom continued to live with her friend from work, W.C. saw Katie at least once a month. Tr. 65 at lines 19-25 – Tr. 66 at lines 1-6. Mom and W.C. also resumed a sexual relationship after Katie's birth. Tr. 66 at lines 12-17. For Father's Day, 2014, Mom gifted W.C. a homemade photo collage shaped in the letters "D-A-D." Tr. 66 at lines 18-23 and Doc. #68. The pictures of the collage had been taken by Mom and depicted W.C. with Katie at W.C.'s farm. Id. and Tr. 66 at lines 24-25 and Tr. 67 at lines 1-4.

[¶12.] In May, 2017, Mom and W.C. ended their relationship for the last time after Mom and Katie spent the weekend with W.C. at his home. Tr. 67 at lines 10-16. After their relationship ended, Mom only allowed W.C. limited contact with Katie. Tr. 67 at lines 17-22 and Doc. #28 at ¶ 34. In January, 2018, W.C. text messaged Mom and asked if he could see "his kid." Tr. 72 at lines 9-11. Mom replied, "Okay," and W.C. attempted to make

arrangements to see Katie but a visit did not ultimately occur. Tr. 72 at lines 12-21. In February, 2018, W.C. filed a Petition to Adjudicate Paternity, Residential Responsibility, Decisionmaking Responsibility, Parenting Time and Child Support as to and for Katie with the Ward County District Court. App. 1 and 4-10.

B. Course of the Proceedings

[¶13.] On January 24, 2018, Mom was personally served with W.C.'s Petition to Adjudicate Paternity, Residential Responsibility, Decisionmaking Responsibility, Parenting Time and Child Support. Doc. #3. On February 1, 2018, Mom and W.C., by and through their respective attorneys, entered into a stipulation to amend W.C.'s petition to implead Ex-Husband. Doc. #4. On February 10, 2018, Ex-Husband was personally served with an Amended Petition to Adjudicate Paternity, Residential Responsibility, Decisionmaking Responsibility, Parenting Time and Child Support (hereafter "Petition"). Doc. #9. On February 21, 2018, W.C. filed the Petition with the court. App. 1.

[¶14.] On February 23, 2018, Mom answered W.C.'s Petition and made a motion to dismiss his case. App. 14 and Doc. #s 14-19. In response to Mom's motion, on March 5, 2018, W.C. served a Cross-Motion for Interim Order supported by an answer brief and affidavit. Doc. #s 20-29. On March 19, 2018, Mom made a response opposing W.C.'s cross-motion and again asked the district court to dismiss W.C.'s Petition. Doc #s 33-34. On March 23, 2018, a Notice of Time and Place of Hearing was issued by Mom's attorney scheduling oral argument on Mom's motion to dismiss on April 27, 2018. Doc. #38. Attorney Tom P. Slorby entered a Notice of Appearance on behalf of Ex-Husband and on March 28, 2018, joined in Mom's motion to dismiss W.C.'s Petition and her response to W.C.'s Cross-Motion for Interim Order. Doc. #s 35 and 39-40.

[¶15.] On April 27, 2018, a motions hearing was held with all parties. App. 2. The Honorable Stacy J. Louser ruled from the bench that an evidentiary hearing would be scheduled in order that factual determinations could be made. App. 36 at ¶ 5. Pending the evidentiary hearing, the district court ruled issues concerning residential responsibility, parenting time, decision making authority and child support were to be held in abeyance. Id. An evidentiary hearing was subsequently noticed for August 13, 2018. Doc. #43.

[¶16.] In preparation for the evidentiary hearing, W.C. served Interrogatories, Requests for Admission and Requests for Production of Documents to Mom and Ex-Husband. Doc. #56 and 75. On June 20, 2018, Mom brought a Motion to Quash all discovery, including the taking of her deposition. Doc. #s 44-47. On July 5, 2018, W.C. served a brief opposing Mom's Motion to Quash and made a Counter-Motion to Compel Discovery. Doc. #s 48-49. That same day, W.C. received Ex-Husband's Answers to Interrogatories, Requests for Admission and Requests for Production of Documents with objections. Doc. #75.

[¶17.] On July 17, 2018, W.C. served a motion to continue the August 13, 2018 evidentiary hearing as he did not have any discovery from Mom and the hearing was in less than one (1) month. Doc. #s 52-57. Ex-Husband did not oppose a continuance, Doc. #58-59, but Mom objected on July 18, 2018. Doc. #s 58-61. W.C. replied to Mom's objection stating in part, "An evidentiary hearing cannot be conducted without evidence and evidence is obtained through discovery." Doc. #62 at ¶ 4. A Notice of Hearing on the parties' motions was issued for August 7, 2018. Doc. #64.

[¶18.] On August 7, 2018, less than one (1) week prior to the evidentiary hearing, a hearing was held on Mom's Motion to Quash and W.C.'s motion for continuance. App. 3 and 17-

33. At the hearing, Ex-Husband joined in Mom's Motion to Quash. App. 23 at lines 1-3. After oral argument, the district court ruled from the bench and granted the Respondents' Motion to Quash discovery from Mom and supplemental discovery from Ex-Husband. App. 31 at lines 1-10. The Honorable Stacy J. Louser explained she was quashing discovery, "…as W.C. was unable to establish that the information he sought, in particular, Mom's tax records and medical records, even if admissible, could disprove a parent-child relationship between Ex-Husband and Katie pursuant to N.D.C.C. § 14-20-42." App. 36 at ¶ 7.

[¶19.] As to W.C.'s motion to continue the evidentiary hearing, the court said, "My understanding is the basis of the request to continue [the evidentiary hearing] was if the request was granted to afford you an opportunity to review that information [discovery]. That information is not going to be provided and so I don't know where that puts you as far as whether or not you do wish to stand by your motion for the continuance." App. 32 at lines 7-12. Counsel for W.C. asked the court for time to speak with her client before making a decision as to whether or not he still wanted a continuance. App. 32 at lines 13-19. W.C. ultimately chose not to pursue a continuance of the evidentiary hearing as it would not change the fact that no additional discovery could be conducted.

[¶20.] An evidentiary hearing was held on August 13, 2018. App. 3 and 36 at ¶ 8. At the outset of the hearing prior to the first witness being called, W.C. informed the court that his presentation of evidence would be incomplete due to the court's quashing of discovery. Tr. 4 at lines 23-25 – Tr. 5 at lines 1-5. Following oral argument, the Honorable Stacy J. Louser denied W.C.'s Petition from the bench. App. 37 at ¶ 9. W.C. filed and served a Notice of Appeal on October 22, 2018. App. 41-43.

LAW AND ARGUMENT

[¶21.] Katie was born less than 300 days after Mom and Ex-Husband's divorce; as a result, Ex-Husband is presumed to be Katie's father. N.D.C.C. § 14-20-10(1)(b). Katie does not have an acknowledged father; no man has established a father-child relationship with Katie under N.D.C.C. §§ 14-20-11 through 14-20-24. N.D.C.C. § 14-20-02(1). Katie also does not have an adjudicated father; no man has been determined by a court of competent jurisdiction to be the father of Katie. N.D.C.C. § 14-20-02(2). There is "No Father on File" for Katie with the North Dakota Department of Health. App. 11.

[¶22.] A proceeding brought by an individual to adjudicate the parentage of a child having a presumed father must be commenced no later than two (2) years after the birth of the child. N.D.C.C. § 14-20-42(1). W.C., Mom's ex-boyfriend and Katie's putative father, brought a Petition to adjudicate his parentage of Katie in February, 2018, just after Katie had turned four (4) years old. N.D.C.C. § 14-20-37(3).

[¶23.] A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained *at any time* if the court determines that the presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and, the presumed father never openly held out the child as his own. N.D.C.C. § 14-20-42(2)(a) and (b) (emphasis added).

[¶24.] Section 14-20-42, N.D.C.C., contemplates an evidentiary hearing to determine whether the threshold requirements to maintain a proceeding to adjudicate the parentage of a child with a presumed father more than two (2) years after the child's birth can be met. See D.E. v. K.F., 2012 ND 253, ¶ 4, 825 N.W.2d 832 ("After an evidentiary hearing, the

district court decided D.E.'s request was time-barred by the two-year limitation period…") In D.E. v. K.F., the district court found there was not sufficient evidence to show E.B. and D.B. did not cohabit during the probable time of conception and never engaged in sexual intercourse with each other during the probable time of conception. Id. The court also found there was not sufficient evidence showing E.B. never openly held the child out as his own child; rather, the court found there was evidence showing E.B. had openly held out the child as his own child." Id.

[¶25.] A defense based on the statute of limitations in a civil proceeding is an affirmative defense and the party relying on the statute of limitations has the burden of proving the action is barred. Interest of K.B., 490 N.W.2d 715 (N.D. 1992) citing McCarter v. Pomeroy, 466 N.W.2d 562, 566 (N.D. 1991) and N.D.R.Civ.P. 8(c). Generally, "A party who claims the benefit of an exception to a statute of limitations bears the burden of showing the exception." F/S Mfg. v. Kensmoe, 2011 ND 113, ¶ 26, 798 N.W.2d 853 (quoting Kimball v. Landeis, 2002 ND 162, ¶ 29, 652 N.W.2d 330 (citing Motley v. United States, 295 F.3d 820, 824 (8th Cir. 2002).

[¶26.] At an evidentiary hearing, W.C. has the burden of proving an exception to the statute of limitations and Mom and Ex-Husband have the burden of proving W.C.'s action is time-barred. See Id.

[¶27.]

A. The district court abused its discretion by determining the Petitioner/Appellant, W.C., was not entitled to obtain *any* discovery from Respondent/Appellee J.H. including, but not limited to, interrogatories, requests for admission, document productions or her deposition and not entitled to obtain supplemental discovery from Respondent/Appellee T.H., effectively depriving him of his right to a fair hearing.

[¶28.] A district court has broad discretion regarding the scope of discovery and its discovery decisions will not be reversed on appeal absent an abuse of discretion. Martin v. Trinity Hosp., 2008 ND 176, ¶ 17, 755 N.W.2d 900 (citing Bertsch v. Bertsch, 2007 ND 168, ¶ 10, 740 N.W. 2d 388). "A district court abuses its discretion if it acts in an unreasonable, arbitrary, or unconscionable manner, if its decision is not the product of a rational mental process leading to a reasoned decision, or if it misinterprets or misapplies the law." Citizens State Bank-Midwest v. Symington, 2010 ND 56, ¶ 8, 780 N.W.2d 676.

[¶29.] W.C. is authorized by the North Dakota Rules of Civil Procedure to conduct discovery. Rule 26, N.D.R.Civ.P., provides:

> "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense, including the existence, description, nature, custody, condition, and location of any documents, electronically stored information, or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order the discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."
>
> N.D.R.Civ.P. 26(b)(1)(A).

[¶30.] Parties may obtain discovery by one or more of the following methods: (1) depositions on oral examination or written questions; (2) written interrogatories; (3) production of documents or things or permission to enter on land or other property, for inspection and other purposes; (4) physical and mental examinations; and (5) requests for admission. N.D.R.Civ.P. 26(a)(1)-(5).

[¶31.] Evidence is relevant if it has any tendency to make a fat more or less probable than it would be without the evidence; and, the fact is of consequence in determining the action. N.D.R.Ev. 401.

[¶32.] At the hearing on April 27, 2018 to address Mom's motion to dismiss W.C.'s Petition, "[T]he Court ruled from the bench an evidentiary hearing would be scheduled in order that factual determinations could be made." App. 36 at ¶ 5. Implicit in the district court's ruling was the parties would be allowed to gather evidence in order to prepare for and present their respective cases at the evidentiary hearing. The court had already received sworn affidavits from Mom and Ex-Husband in February, 2018, in support of Mom's motion to dismiss stating Mom and Ex-Husband were engaging in sexual intercourse during the probable time of Katie's conception and Ex-Husband has held Katie out as his own child. Doc. #s 14 and 19. The court did not grant Mom's motion to dismiss the Petition but rather, concluded an evidentiary hearing was required.

[¶33.] At the hearing on August 7, 2018 on Mom's Motion to Quash discovery, the district court suggested the purpose of the evidentiary hearing was so W.C. could cross-examine Mom and Ex-Husband on the statements they made in their affidavits. App. 29 at lines 6-8. The inherently self-serving affidavits of Mom and Ex-Husband, they argued, and the district court seemingly agreed, was the only evidence that need be considered.

[¶34.] The Court does not reverse a trial court when a rational reason for entering a protective order as to discovery exists. See, e.g., Smith v. State, 389 N.W.2d 808, 812 (N.D. 1986) (concluding deposition would constitute "fishing expedition"); Gowin v. Hazen Memorial Hosp. Ass'n., 349 N.W.2d 4, 8 (N.D. 1984) (limiting discovery and limiting time for discovery). Here, however, the district court offered no reason for

forbidding *all* discovery from Mom, specifically addressing only medical records and tax returns, stating: "I agree with Mr. Steinberger, that information is not relevant." App. 31 at lines 7-10. Just prior to making that statement, the district court said, "I don't believe the interrogatories were provided to the Court so I don't know specificity other than there was a request for tax information and medical records." App. 30 at lines 17-20. Despite the acknowledgment that the court had no information as to what questions were being asked of Mom, the court quashed every interrogatory, request for admission, request for document production and prevented W.C. from conducting any case discovery whatsoever from Mom. Id.

[¶35.] Medical records pertaining to the prenatal care and birth of Katie are relevant to W.C.'s claim in any number of different ways. For example, Mom's pelvic ultrasounds of Katie *in utero* can be used to establish the probable date of conception. Prior to Mom testifying at the evidentiary hearing, W.C. could only speculate as to the probable date of conception of Katie by inputting Mom's due date into an online conception calculator. Mom testified at the evidentiary hearing that her physician, whose name is still unknown, told Mom she conceived Katie "the last week of February, 2013." Tr. 21 at lines 19-21. Without being able to conduct any pretrial discovery, W.C. was unable to verify the truthfulness of this statement and/or seek to obtain evidence regarding his, Mom's and Ex-Husband's whereabouts during that period of time.

[¶36.] The date of conception can most accurately, and objectively, be determined through the analysis of medical records. The objective medical facts, particularly the date of Katie's conception, are of grave importance in determining the proper outcome of this action.

[¶37.] As for W.C.'s request for income tax returns, it is not the parties' income information that W.C. seeks, rather, it is information related to Katie's status as a dependent of Mom or Ex-Husband and information as to who provides Katie with health insurance and/or pays her childcare expenses. Additionally, income tax returns provide employment history through accompanying Wage and Earnings Statements as well as documentation of prior residential addresses. Employment history is relevant to the extent that it can be used to cross-reference physical whereabouts of Mom and/or Ex-Husband during the probable time of conception as established through medical records.

[¶38.] In deciding to quash discovery, the district court said, "This isn't a situation where, for example, an individual is in the military and was stationed overseas making it very difficult to establish that relationship of a parent and child." App. 30 at lines 22-25. The problem is, without discovery, we simply don't know Mom and Ex-Husband's whereabouts during the probable date of conception. Even if Ex-Husband was not stationed overseas, he may not have been in the same physical location as Mom when she conceived Katie which would have made it difficult, if not impossible, for him to have engaged in sexual intercourse with her during the probable time of conception. Objective evidence of a person's whereabouts can be gathered, for example, through the examination of financial records, which W.C. was not entitled to obtain or review.

[¶39.] In Johnson v. Johnson, 2000 ND 170, 617 N.W.2d 97, the Court relied on Wener v. Wener, 312 N.Y.S.2d 815, 817-18 (N.Y. App. Div. 1970), in determining a divorcing husband was obligated to pay child support for a child because he agreed to adopt the child and held the child out as his own. As a demonstration of holding the child out as his own, in the Wener case, the husband supported the child during the marriage, claimed the child

as his dependent on a federal income tax return, wrote a letter to his wife expressing his love for the child and sent the child a card which he signed "Love Dad." Id. at 817. The court stated that, "[h]aving agreed to adopt the child and support her, and having treated her as his own prior to the parties' separation, the [husband] may not now disavow all obligation and shift the entire burden onto [his wife]." Id. at 818. The Uniform Parentage Act, N.D.C.C. Chapter 14-20, does not define what it means to hold a child out as one's own so W.C. was seeking information from Mom and Ex-Husband as to how they support their conclusory claims that Ex-Husband has, in fact, held out Katie as his child.

[¶40.] A party may serve written interrogatories on any party after service of the summons and complaint on that party. N.D.R.Civ.P. 33(a)(1). An interrogatory may relate to any matter that may be inquired into under Rule 26(b). N.D.R.Civ.P. 33(a)(2). A party answering interrogatories is required to provide full and complete answers. N.D.R.Civ.P. 33(b)(3). A party is not at liberty to "pick and choose" what information will be provided and what information will be withheld. Selective, substantial compliance is not enough; complete, accurate and timely compliance is required by the rules." Vorachek v. Citizens State Bank of Lankin, 421 N.W.2d 45, 51 (N.D. 1998). If a party were allowed to withhold certain information because it had provided some of the requested information, the discovery process would be rendered useless. Id.

[¶41.] Despite the fact that Mom's attorney came to the hearing on August 7, 2018, with "all of the answers sitting here in a file," the district court did not allow W.C. to obtain those answers. App. 22 at lines 8-9; App. 31 at line 25 – App. 32 at lines 1-4. If the district court found a particular discovery request irrelevant, improper or privileged, discovery could have been quashed only as to that particular request. If necessary, the district court

could have also placed certain limitations on the frequency and/or extent of discovery in accordance with N.D.R.Civ.P. 26. Instead, however, the court ruled there would be absolutely *no* discovery.

[¶42.] The district court's conclusion that every interrogatory, every request for admission, every request for production and every question that could have been asked of Mom and/or Ex-Husband during a deposition is irrelevant is an abuse of discretion because it misapplies and misinterprets the rules allowing for and governing discovery. Mom's argument, which the district court accepted, is essentially, W.C. cannot prove an exception to N.D.C.C. § 14-20-42 so therefore any/all discovery is irrelevant. This puts the cart before the horse, is unreasonable and an abuse of the district court's discretion.

CONCLUSION

[¶43.] 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 30th day of January, 2019.

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CERTIFICATE OF SERVICE

[¶44.] I hereby certify that, on January 30, 2019, I served the foregoing Brief of Petitioner/Appellant W.C. on the following attorneys by electronic mail transmission:

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DATED this 30th day of January, 2019.

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