

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

John M. Hughes)	
)	
Plaintiff, Appellant)	Supreme Court
)	Case No: 20190143
vs.)	
)	Civil Case No.
Olheiser Masonry, Inc., Curt Olheiser,)	45-2018-CV-00495
and Harley D. Rapp,)	
)	
Defendants, Appellees.)	

APPEAL FROM THE DISTRICT COURT ORDER GRANTING MOTION TO DISMISS DATED FEBRUARY 22, 2019, ENTERED IN THE DISTRICT COURT, SOUTHWEST JUDICIAL DISTRICT, STARK COUNTY, NORTH DAKOTA BY THE HONORABLE JAMES D. GION, CIVIL NO. 45-2018-CV-00495.

BRIEF OF APPELLEES OLHEISER MASONRY, INC., CURT OLHEISER, AND HARLEY D. RAPP.

ORAL ARGUMENT REQUESTED

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I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

[¶1] Olheiser Masonry, Inc., Curt Olheiser, and Harley D. Rapp present the following response to John M. Hughes’s issue presented for review:

- A. WHETHER THE DISTRICT COURT ERRED IN GRANTING THE MOTION TO DISMISS FILED BY THE DEFENDANTS/APPELLEE, [SIC] OLHEISER MASONRY, INC., CURT OLHEISER AND HARLEY D. RAPP (HEREINAFTER, COLLECTIVELY, “OLHEISER”), DISMISSING THE CASE ON THE GROUNDS THAT THE APPLICABLE STATUTE OF LIMITATIONS WAS NOT MET. THE DISTRICT COURT SHOULD HAVE RULED THAT THE APPLICABLE STATUTE OF LIMITATIONS WAS SATISFIED BECAUSE, PURSUANT TO N.D.C.C. §28-01-38, THE COMPLAINT AND SUMMONS WERE TIMELY DELIVERED TO THE STARK COUNTY SHERIFF’S DEPARTMENT, WHICH, IN TURN [SIC]

The answer is no. The *Summonses* and *Complaints for Damages* in this case were not delivered to the Stark County Sheriff or any Defendant until after the applicable statute of limitations had expired. Therefore, the District Court correctly held the statute of limitations was not met in this case pursuant to N.D.C.C. § 28-01-38.

II. STATEMENT OF THE CASE

[¶2] Defendants-Appellees Olheiser Masonry, Inc. (“Olheiser Masonry”) Curt Olheiser (“Olheiser”) and Harley D. Rapp (“Rapp”) (collectively “Defendants”) agree with Plaintiff-Appellant John M. Hughes’s (“Plaintiff” or “Hughes”) statement of the case and thus do not submit their own.

III. REQUEST FOR ORAL ARGUMENT

[¶3] Defendants/Appellees request the Court schedule oral argument in this case under N.D. R. App. P. 28(h). This matter involves the statutory interpretation of N.D.C.C. § 28-01-38 governing when an action is commenced, and oral argument would be helpful in the Court’s review of the District Court’s decision.

IV. STATEMENT OF FACTS

[¶4] Defendants disagree with Hughes’s statement of facts and therefore offer their own.

[¶5] Hughes and Rapp were involved in a motor vehicle accident in Dickinson, North Dakota, on May 24, 2012 at the intersection of 6th Avenue Southeast and East Broadway (the “accident”). (Doc. ID# 1 at ¶ 6, 23 at p. 4; app.5 at ¶ 6, 21, 24).¹ At the time of the accident, Rapp was driving a forklift and Hughes was driving a pickup truck. (Doc. ID# 23 at p. 4; app.24). As Hughes entered the intersection of 6th Avenue Southeast and East Broadway, Rapp also entered the same intersection, and the front fork of Rapp’s forklift struck the right front side of Hughes’s truck. *Id.* No injuries were reported at the scene, and Hughes’s truck was towed from the intersection. *Id.* Hughes’s *Complaint for Damages* erroneously alleged the date of the accident was the “124th day of May, 2012.” (Doc. ID#

¹ Materials and evidence referenced herein are to the district court’s docket (“Doc. ID# ___”), to the appendix (“app. ___”), or to Defendants’ supplemental appendix (“supp.app. ___”).

1 at ¶ 6; app.5 at ¶ 6). Pursuant to the Dickinson Police Department Motor Vehicle Crash Worksheet of Officer James Petersen, the actual date of the accident was May 24, 2012. (Doc. ID# 23 at p. 1; app.21).

[¶6] Hughes filed his *Complaint for Damages* with the district court on May 22, 2018, alleging he sustained injuries as a result of the accident. (Doc. ID# 1; app.4-6). Hughes's *Complaint for Damages* asserts a negligence claim against Rapp and negligence and/or negligent entrustment claims against Olheiser Masonry and/or Olheiser. (Doc. ID# 1 at ¶¶ 9-15; app.5-6). Hughes further alleged he was injured during the May 24, 2012 accident. (Doc. ID# 1 at ¶ 12; app.5). As such, it is undisputed Plaintiff's claims in this case constitute negligence claims. (*Appellant's Opening Brief* at ¶ 11).

[¶7] On May 22, 2018, Plaintiff's attorney Mark Sherer ("Sherer") filed Plaintiff's *Complaint for Damages* along with the respective *Summonses* for the three named Defendants with the Stark County District Court via the *Odyssey* online filing system. (Doc. ID## 1-4; supp.app.3-5). Also on May 22, 2018, Sherer filed via *Odyssey* a signed "Certificate of Service", which stated:

I certify that on the 22nd day of May, 2018, I caused the Complaint and Summons to be **sent by first class United States Mail, postage prepaid to the Stark County Sheriff**, P.O. Box 130, Dickinson, ND 58602-0130, to be served upon the Defendants, Olheiser Masonry, Inc., 428 25th Avenue E., Dickinson, ND 58601; Curt Olheiser, 438 25th Avenue E., Dickinson, ND 58601 and Harley D. Rapp, 420 2nd Ave. W., Dickinson, ND 58601.

(Doc. ID# 5; app.7 (emphasis added)). On May 31, 2018, six years and seven days after the accident occurred, Stark County Sheriff Terry Oestreich received the *Summonses* and *Complaints for Damages* to be served upon each of Defendants. (Doc. ID## 6-8; app.18-

20). Sheriff Oestreich served the *Summonses* and *Complaints for Damages* upon Olheiser and Olheiser Masonry on June 1, 2018, and upon Rapp on June 2, 2018. *Id.*²

[¶8] To summarize, the undisputed events that occurred in the case are as follows:

- The motor vehicle accident occurred on May 24, 2012. (app.21; *Appellant's Opening Brief* at ¶ 2).
- Hughes filed his *Complaint for Damages* and *Summonses* for each Defendant with the district court on May 22, 2018. (Doc. ID## 1-4; app.4-6; supp.app.3-5).
- Also on May 22, 2018, Sherer filed a "Certificate of Service" certifying he sent the *Complaint for Damages* and *Summons* to the Stark County Sheriff via United States Mail. (Doc. ID# 5; app.7).
- On May 31, 2018, Stark County Sheriff Terry Oestreich received Hughes's *Summonses* and *Complaints for Damages* in the mail. (Doc. ID# 6-8; app.18-20).
- On June 1, 2018, Sheriff Oestrich served Hughes's *Summonses* and *Complaints for Damages* upon Olheiser and Olheiser Masonry. Sheriff Oestrich served the same upon Rapp on June 2, 2018. *Id.*

[¶9] On October 11, 2018, Defendants filed their *Motion to Dismiss Plaintiff's Complaint as Time Barred by the Statute of Limitations*. (Doc. ID# 21; supp.app.6). A hearing on Defendants' motion was held on February 20, 2019. (app.2). The district court entered its *Order Granting Motion to Dismiss* on February 22, 2019. (Doc. ID# 42; app.14-16). The district court then entered *Judgment* dismissing all of Hughes's lawsuit claims against Defendants with prejudice on February 28, 2019. (Doc. ID# 47; app.17).

² The Stark County Sheriff's Office Returns of Service were signed by Office Specialist Lyn Welk on June 1, 2018 for Olheiser Masonry and Olheiser, and on June 3, 2018 for Rapp.

V. STANDARD OF REVIEW

[¶10] Hughes appeals the district court’s *Order Granting Motion to Dismiss*, which Hughes argues should be construed as an order granting summary judgment. (Doc. ID# 42; app.14-16; *Appellant’s Opening Brief* at ¶ 10). “An order granting summary judgment is not appealable.” *Mertz v. 999 Quebec, Inc.*, 2010 ND 51, ¶ 5, 780 N.W.2d 446 (citation omitted). “An attempted appeal from [an] order granting summary judgment will, however, be treated as an appeal from a subsequently entered consistent judgment, if one exists.” *Id.* (citations omitted). In this case, the district court entered *Judgment* consistent with its *Order Granting Motion to Dismiss*. (Doc. ID## 42, 47; app. 14-17).

[¶11] The standard of review in relation to an order granting dismissal under Rule 12 and/or Rule 56 of the North Dakota Rules of Civil Procedure is well established:

This Court reviews a district court’s decision granting a motion to dismiss . . . de novo. A motion to dismiss . . . is based on the pleadings, and if . . . matters outside the pleadings are presented to and not excluded by the district court, the motion [must be] treated as a motion for summary judgment under N.D.R.Civ.P. 56. . . .

An action barred by a statute of limitations generally is dismissed under the summary judgment standards of N.D.R.Civ.P. 56. . . . Whether summary judgment is properly granted is a question of law which we review de novo on the entire record.

In re Estate of Nelson, 2015 ND 122, ¶¶ 5-6, 863 N.W.2d 521 (quotations and citations omitted). As such, regardless of whether this Court construes the district court’s *Order Granting Motion to Dismiss* and subsequent *Judgment* under Rule 12 or Rule 56 of the North Dakota Rules of Civil Procedure, the standard of review is de novo. (Doc. ID## 42, 47; app.14-17).

VI. ARGUMENT

A. Hughes Failed to Commence his Action Before the Expiration of the Applicable Six-Year Statute of Limitations.

[¶12] Hughes failed to serve any of Olheiser Masonry, Olheiser or Rapp with his *Summons* and *Complaint for Damages* before the expiration of the statute of limitations, and thus, Hughes failed to commence his action before the expiration of the statute of limitations. “An action . . . for any other injury to the person or rights of another not arising upon contract, when not otherwise expressly provided[.]” “must be commenced within six years after the claim for relief has accrued[.]” N.D.C.C. § 28-01-16(5); *see Calacevera v. Vix*, 356 N.W.2d 901 (N.D. 1984) (holding N.D.C.C. § 28-01-16(5) provided the proper statute of limitations in a negligence action alleging damages for injuries sustained in a car accident). A party must strictly comply with the specific requirements for service of process. *Gessner v. City of Minot*, 1998 ND 157, ¶ 5, 583 N.W.2d 90.

[¶13] It is undisputed Hughes’s action is based upon his alleged personal injuries and/or Defendants’ alleged obligation or liability, which results in this action being controlled by the six-year time limitation of N.D.C.C. § 28-01-16. (*See* Doc. ID# 1 at ¶¶ 9-15; *Appellant’s Opening Brief* at ¶ 11). Thus, under the applicable statute of limitations, there was a six-year statute of limitations for Hughes to bring his claims in this case. Based on the foregoing facts and applicable statute of limitations, the six-year statute of limitations expired on May 24, 2018. As Hughes admits the Stark County Sheriff did not receive his *Summons* or *Complaints for Damages* until May 31, 2018, and they were not served upon any Defendant until June 1, 2018, the district court correctly held Hughes failed to commence this action before the statute of limitations expired. (*Appellant’s Opening Brief* at ¶¶ 3, 12; Doc. ID# 42 at ¶¶ 1, 2; *app.14* at ¶¶ 1, 2).

B. Hughes’s Filing of the *Summonses* and *Complaint for Damages* with the District Court via *Odyssey* on May 22, 2018, did Not Commence this Action.

[¶14] In North Dakota, the rule regarding commencement of a civil action is clear: “[a] civil action is commenced by the service of a summons.” N.D.R.Civ.P. 3. According to the explanatory note of Rule 3 of the North Dakota Rules of Civil Procedure, effective March 1, 2015, “[a]ll that is required to commence a civil action [in North Dakota] is the service of a summons on a defendant. This North Dakota rule is not in accordance with Fed.R.Civ.P. 3, which requires the filing of a complaint with the court to commence an action.” In fact, this Court has expressly held the filing of a summons and complaint with the court does not commence an action under North Dakota law. *See B.D.H. ex rel. S.K.L. v. Mickelson*, 2010 ND 235, ¶ 9, 792 N.W.2d 169.

[¶15] In *Mickelson*, plaintiffs filed their summons and complaint directly with the district court on April 9, 2009, “without having served the documents on any of the defendants.” *Id.* (quoting N.D.R.Ct. 3.1(i) (“[p]roof of service must be securely attached to pleadings and documents submitted to the clerk for filing”). Along with stating “the summons and complaint should not have been filed without proof of service”, this Court expressly held “the filing [with the district court] did not commence the action under North Dakota law and the plaintiffs did not commence the action by serving the summons and complaint on any of the defendants until May 5, 2009.” *Id.*

[¶16] In this case, similar to *Mickelson*, Hughes did not commence the action on May 22, 2018, when he filed his *Summonses* and *Complaint for Damages* via the *Odyssey* online filing system with the district court. (*See* Doc. ID## 1-4; app.4-6; supp.app.3-5). Rather, this action was commenced when Olheiser Masonry and Olheiser were served with

Hughes's *Summonses* and *Complaints for Damages*, which Hughes concedes occurred on June 1, 2018, eight (8) days after the statute of limitations had expired, or at the earliest when the Stark County Sheriff received the *Summonses* and *Complaints for damages* for delivery on May 31, 2018, seven (7) days after the statute of limitations had expired. (See Doc. ID## 2, 3; app.18-20; *Appellant's Opening Brief* at ¶¶ 3, 12).

C. Neither Hughes's Direct Filing of the *Summonses* and *Complaint for Damages* with the District Court Nor his Mailing Thereof to the Sheriff's Office for Service Tolloed the Statute of Limitations.

[¶17] Hughes's filing of his *Summons* and *Complaint for Damages* with the District Court and mailing such to the Stark County Sheriff's Office did not commence this lawsuit or toll the statute of limitations in this case. Rule 4 of the North Dakota Rules of Civil Procedure governs the service of a summons and complaint: "[v]alid service of process under N.D.R.Civ.P. 4 is necessary for a court to acquire personal jurisdiction over a defendant." *Olsrud v. Bismarck-Mandan Orchestral Ass'n*, 2007 ND 91, ¶ 9, 733 N.W.2d 256. Further, it is clear from the explanatory note of N.D.R.Civ.P. 3 that N.D.C.C. § 28-01-38 is the controlling statute for when an action is commenced in North Dakota: "[a]n action is not commenced for the purposes of tolling a statute of limitations except as provided in N.D.C.C. § 28-01-38."

[¶18] In *Sanderson v. Walsh County*, this Court made clear that mailing a summons and complaint out for service, even by certified mail, does not constitute service because it has not been delivered within the meaning of N.D.R.Civ.P. Rule 4(d)(2)(A):

Rule 4 makes a clear textual distinction between service by "delivering" and service by "mail." Specifically, N.D.R.Civ.P. Rule 4(d)(2)(A) authorizes personal service of process of a summons upon an individual in several ways, including by "(i) **delivering** a copy of the summons **to the individual personally**;" or by "(v) **any form of mail** or third-party commercial delivery addressed to the individual to be served and

requiring a signed receipt **and resulting in delivery to that individual[.]”**

2006 ND 83, ¶ 17, 712 N.W.2d 842 (quoting N.D.R.Civ.P. Rule 4(d)(2)(A)) (emphasis added).

[¶19] In *Sanderson*, the plaintiff attempted to commence an action against various state and county officials by mailing them his summons and complaint by certified mail with return receipt and restricted delivery. *Id.* at ¶ 2. In response to Defendants’ motion for summary judgment, “seeking dismissal for lack of proper service of process”, the district court dismissed plaintiff’s complaint, “concluding there was insufficient service of process.” *Id.* at ¶ 3. On appeal, this Court, in analyzing the “delivering” versus “mailing” issue, reinforced the importance of Rule 4’s requirement of actual delivery, and stated, “the use of the words ‘personal service,’ unqualified, in a statute means actual service by delivering to the person, and not to a proxy.” *Id.* at ¶ 18 (quoting *McKenzie v. Boynton*, 19 N.D. 531, 536, 125 N.W. 1059, 1062 (1910)). The *Sanderson* Court held “‘delivering’ a copy of the summons as contemplated under N.D.R.Civ.P. 4(d)(2)[] **does not include mailing**, even by certified mail with return receipt and restricted delivery.” *Id.* (emphasis added).

[¶20] In this case, Hughes did not mail his *Summonses* and *Complaints for Damages* directly to Defendants, but rather mailed them to the Stark County Sheriff’s Department. (Doc. ID## 1-4; app.7; supp.app.3-5). Thus, there is no evidence in this case to suggest Hughes even attempted delivery by mail on the Defendants before the statute of limitations expired. Instead, Hughes filed the *Summonses* and *Complaint for Damages*, without proof of service, with the Stark County District Court on May 22, 2018, purportedly in advance of the expiration of the statute of limitations. However, for purposes of the statute of

limitations, pursuant to N.D.C.C. § 28-01-38, delivery of the summons to the opposing party or the sheriff must actually occur within the statute of limitations:

An action is commenced as to each defendant when the summons is served on that defendant, or on a codefendant who is a joint contractor or otherwise united in interest with that defendant. An attempt to commence an action is equivalent to the commencement thereof within the meaning of this chapter when the summons, with the intent that it shall be actually served, is delivered:

1. To the sheriff or other officer of the county in which the defendants or one of them usually or last resided; or
2. To the sheriff or other officer, if a corporation is defendant, of the county in which was situated the principal place of business of such corporation, or in which its general business was transacted, or in which it kept an office for the transaction of business.

....

N.D.C.C. § 28-01-38 (emphasis added). In other words, the summons must be actually delivered to the defendant or sheriff for the action to commence. By the plain language of the statute, Hughes's *Summonses* must have been delivered to the Stark County Sheriff before the expiration of the statute of limitations, in this case May 24, 2018. Hughes argues he attempted to comply with the statute of limitations, so his case should not have been dismissed. (*Appellant's Opening Brief* at ¶ 13). However, to properly serve a party under the plain language of N.D.C.C. § 28-01-38, an "attempt" is only considered if the summons has been delivered to the sheriff before the statute of limitations expires, which did not occur in this case.

[¶21] Sherer certifies that on May 22, 2018, he sent, by first class United States Mail, copies of the *Summonses* and *Complaints for Damages* to the Stark County Sheriff's Office. (Doc. ID# 5; app.7). However, pursuant to the to the Stark County Sheriff's Office Return of Service documentation, the Stark County Sheriff did not receive the *Summonses*

and *Complaints for Damages* for delivery until May 31, 2018, seven days after the statute of limitations expired, and did not serve any Defendant until June 1, 2018. (Doc. ID## 6-8; app.18-20). Hughes argues placing the *Summonses* and *Complaints for Damages* in the mail constitutes delivering them to the Stark County Sheriff. (*Appellant's Opening Brief* at ¶ 13). However, this Court has held "'delivering' a copy of the summons as contemplated under N.D.R.Civ.P. 4(d)(2) [] does not include mailing, even by certified mail with return receipt and restricted delivery." *Sanderson v. Walsh County*, 2006 ND 83, ¶ 18, 712 N.W.2d 842. Despite Hughes's argument that mailing the *Summonses* to the Stark County Sheriff constituted delivery and/or "an attempt" under N.D.C.C. § 28-01-38, the statute requires actual delivery, not the mere intention of future delivery, of the summons to the sheriff prior to the expiration of the statute of limitations. (*Appellant's Opening Brief* at ¶ 13). Therefore, pursuant to N.D.C.C. § 28-01-38, the earliest the *Summonses* and *Complaints for Damages* were delivered to the Stark County Sheriff for service on Defendants was May 31, 2018, seven days after the statute of limitations expired, and the district court correctly dismissed Hughes's claims against Defendants with prejudice.

[¶22] Plaintiff's reliance on *American Family Ins. V. Waupaca Elevator Co., Inc.*, is misplaced as the facts are inapposite to this case. (*Appellant's Opening Brief* at ¶¶ 14-15). In *American Family Ins.*, this Court determined under the applicable statute of limitations, the last day for the plaintiff to serve its summons was December 30, 2010. *American Family Ins. v. Waupaca Elevator Co., Inc.*, 2012 ND 13, ¶ 15, 809 N.W.2d 337. The plaintiff faxed a copy of its summons and complaint on December 30, 2010, to the sheriff's department, and the sheriff's department "acknowledged receipt of the fax the same day by stamping the cover letter." *Id.* at ¶ 2. Therefore, delivery of the summons and complaint

occurred on December 30, 2010, prior to the expiration of the statute of limitations. The plaintiff also mailed the summons and complaint to the sheriff on December 30, 2010, and the sheriff's department received them on January 4, 2011, after which the sheriff served the documents on the defendant. *Id.* This Court held "[the plaintiff] delivered its summons and complaint to the Outagamie County Sheriff's Department within the statute of limitations with the intent both documents would be actually served on [the defendant] after the sheriff's department received the original documents by certified mail." *Id.* at ¶ 27. In other words, this Court held that since the summons and complaint were **actually delivered** to the sheriff's department, and the sheriff's department acknowledged receipt thereof, before the statute of limitations expired, service was proper and timely in that case. [¶23] In this case, although Hughes's *Summonses* and *Complaints for Damages* were sent by mail to the Stark County Sheriff prior to the expiration of the statute of limitations, they were not **delivered** to the Sheriff until seven days after the statute of limitations had expired, unlike what occurred in the *American Family Ins.* case. As N.D.C.C. § 28-01-38 and *Sanderson* make clear, delivery, not merely the mailing of, the summons and complaint must occur before the statute of limitations expires. Hughes failed to timely deliver his *Summonses* to the Stark County Sheriff. As correctly stated by the district court:

The present case is distinguishable from *Waupaca Elevator Co.* because the Stark County Sheriff did not receive the summons from Plaintiff until seven days after the statute of limitations ran. The sheriff's department in *Waupaca Elevator Co.* had a stamped fax indicating that they received a copy of the summons the day before the statute of limitation [sic] ran. The salient point for delivery is when the sheriff's office received the summons, not how they received it. Since the Stark County Sheriff's Office did not receive the summons until May 31, 2018, this action was not commenced within the six-year statute of limitations.

(Doc. ID# 42 at ¶ 6; app. 16 at ¶ 6).

[¶24] Hughes’s reliance on Rule 5(b)(3) of the North Dakota Rules of Civil Procedure is similarly misplaced. Rule 5 does not apply to service of a summons and complaint. N.D.R.Civ.P. 5(a)(1) (stating “[o]ther than service of a summons and complaint under Rule 4, each of the following documents must be served under this rule on every party, unless the rules provide otherwise”). According to the explanatory note of Rule 5, effective March 1, 2016:

Rule 5 applies to service of documents other than “process.” In contrast, Rule 4 governs civil jurisdiction and service of process. When a statute or rule requiring service does not pertain to service of process, nor require personal service under Rule 4, nor specify how service is to be made, service may be made as provided in Rule 5(b).

There is no dispute that service of a summons constitutes service of process governed by N.D.R.Civ.P. 4. (*See Appellant’s Opening Brief* at ¶ 15). How service of non-process documents may be effectuated under Rule 5 is wholly irrelevant to this case.

VI. CONCLUSION

[¶25] For the foregoing reasons, Olheiser Masonry, Inc., Curt Olheiser, and Harley D. Rapp request the Court to affirm the district court’s *Order Granting Motion to Dismiss* and subsequent *Judgment* dismissing all of Hughes’s claims against Defendants with prejudice.

[¶26] Dated this 16th day of July, 2019.

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CERTIFICATE OF COMPLIANCE

[¶27] The undersigned, as attorneys for the Appellees in the above matter, and as the authors of the above brief, hereby certify, in compliance with Rule 32(a) of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with proportional type face in 12-point font and equals 16 pages.

[¶28] Dated this 16th day of July, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **BRIEF OF APPELLEES OLHEISER MASONRY, INC., CURT OLHEISER, AND HARLEY**

D. RAPP was on the 16th day of July, 2019, emailed to the following:

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

John M. Hughes)	
)	
Plaintiff, Appellant)	Supreme Court
)	Case No: 20190143
vs.)	
)	Civil Case No.
Olheiser Masonry, Inc., Curt Olheiser,)	45-2018-CV-00495
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Defendants, Appellees.)	

APPEAL FROM THE DISTRICT COURT ORDER GRANTING MOTION TO DISMISS DATED FEBRUARY 22, 2019, ENTERED IN THE DISTRICT COURT, SOUTHWEST JUDICIAL DISTRICT, STARK COUNTY, NORTH DAKOTA BY THE HONORABLE JAMES D. GION, CIVIL NO. 45-2018-CV-00495.

CERTIFICATE OF SERVICE

[¶1] I hereby certify that a true and correct copy of the foregoing **[CORRECTED] BRIEF OF APPELLEES OLHEISER MASONRY, INC. , CURT OLHEISER, AND HARLEY D. RAPP** was on the 18th day of July, 2019, emailed to the following:

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