

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

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Peirce Harris aka Pierce Harris,

Appellant,

v.

NBS Consulting, Inc. dba On Point  
Management and Whitney Racine,

Appellees.

Supreme Court No. 20200203  
Ward County  
Case No. 51-2020-CV-01007

**BRIEF OF APPELLEE**

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APPEAL OF JUDGMENT DATED AUGUST 4, 2020 AND THE FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING  
THE EVICTION OF DEFENDANT DATED AUGUST 4, 2020

NORTH CENTRAL JUDICIAL DISTRICT  
HONORABLE GARY LEE PRESIDING

**FRANTSVOG LAW, P.C**

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[i.]

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**[¶2] I. STATEMENT OF THE ISSUE**

[¶3] Appellant Pierce Harris argues that the district court erred when it ordered his eviction from the property located at 5110 Highway 2 East, Lot C20, Minot, ND because he was not wrongfully in possession of such property. However, as evidence at the hearing demonstrated, Mr. Harris was indeed wrongfully in possession of this property.

**[¶4] II. STATEMENT OF THE CASE**

[¶5] Plaintiff/Appellee NBS Consulting, Inc. dba On Point Management (hereinafter “NBS”) requests that this Court affirm the judgment of the district court in favor of NBS.

[¶6] NBS initiated this eviction action under N.D.C.C. § 47-32-01(1), (2) and (3) against Mr. Harris on July 24, 2020 via personal service of the Summons and Complaint. App. 005-008.

[¶7] An eviction hearing was held on August 3, 2020 in Ward County District Court before the Honorable Gary Lee. Both NBS, by and through the undersigned, and Mr. Harris were present at this hearing and each party presented evidence on their behalf.

[¶8] After consideration of the evidence presented at the hearing, the district court entered its Findings of Fact, Conclusions of Law, and Order for Judgment on August 4, 2020 ordering Mr. Harris to remove himself from the residence before 3:30 p.m. on August 7, 2020 or be subject to removal by the Sheriff at such time. App. 015-016. Judgment was then entered accordingly by the Clerk of District Court. App. 017-018.

[¶9] On August 5, 2020, Mr. Harris made an Application to Stay Execution of Judgment and Writ of Execution to the district court. App. 019. This application was denied by the district court on August 6, 2020. App. 022-025.

[¶10] Defendant Pierce Harris filed his Notice of Appeal on August 7, 2020 and filed the non-compliant Appellant's brief on October 7, 2020. App. 026. However, Mr. Harris did not order a transcript of the district court hearing to provide to this Court on appeal.

[¶11] While it is difficult to ascertain, it appears that the heart of Defendant's appeal lies in his flawed contention that he was not wrongfully in possession of the premises and thus the order of eviction was improper.

[¶12] **III. STATEMENT OF THE FACTS**

[¶13] Magic City Management, the prior owner of the property at issue in this case, entered into a lease with Whitney Racine on August 13, 2019. Based upon information and belief, Whitney Racine was in a dating relationship with Pierce Harris. Mr. Harris was not listed as a tenant on the lease nor was he known to NBS at such time.

[¶14] NBS later acquired the property at issue. On December 1, 2019, the lease agreement between Magic City Management and Whitney Racine was terminated. App. 014. A new lease agreement was then entered into between NBS and Ms. Racine that same day. App. 009. Once again, Pierce Harris was not listed as a tenant on the lease.

[¶15] On July 23, 2020, Ms. Racine provided NBS with a notice that she was moving out of the property and terminating the lease agreement effective immediately due to concerns for her safety. NBS consented to the termination of the lease. App. 013. Ms. Racine moved out of the property and NBS went to regain possession of the premises.

[¶16] Mr. Harris remained at the property after Ms. Racine surrendered possession of the property to NBS. Mr. Harris refused to vacate and return the property to NBS.

[¶17] Despite being asked to vacate the premises by NBS, Mr. Harris continued to remain wrongfully in possession of the premises as a trespasser/holdover occupant.

[¶18] The district court ordered the eviction of Pierce Harris from the property at issue because Mr. Harris was wrongfully in possession of the premises. App. 015-016.

[¶19] In the Appellant's Brief, Mr. Harris brought up various issues that were not raised at the lower court.

[¶20] **IV. LAW AND ARGUMENT**

[¶21] **A. The North Dakota Supreme Court reviews the district court's findings of fact to determine whether they are clearly erroneous.**

[¶22] "[O]n appeal[,] the party challenging the findings of fact of a trial court has the burden of demonstrating that those findings are clearly erroneous." Rosendahl v. Rosendahl, 470 N.W.2d 230, 231 (N.D. 1991); see N.D.R.Civ.P. 52(a). "[A] finding of fact is clearly erroneous only if it is induced by an erroneous view of the law, or although there is some evidence to support it, on the entire record we are left with a definite and firm conviction a mistake has been made." Marsden v. Koop, 2010 ND 196, ¶ 8, 789 N.W.2d 531.

[¶23] **B. The district court's findings in this case were not clearly erroneous and should be affirmed by this Court.**

[¶24] Under N.D.R.App.P. 10(b), the appellant must file with this Court the transcript of any evidentiary hearing held in the matter. Schmitt, et al. vs. Schmitt, et al., 2014 ND 225, ¶ 7, 857 N.W.2d 362. "An appellant assumes the consequences and the risk for failing to file a proper transcript." Weiss, Wright, Paulson & Merrick vs. Stedman, 507 N.W.2d 901, 903 (N.D. 1993). This principle applies equally to self-represented litigants. Wagner v. Miskin, 2003 ND 69, ¶ 9, 660 N.W.2d 593." The failure to provide a transcript may prevent a party from being successful on appeal." Id. (quotation marks omitted).

[¶25] Here, Pierce Harris did not file a transcript of the district court's evidentiary hearing. Accordingly, the Court must look only to the record in reviewing the district court's findings. Schmitt, at ¶ 8.

[¶26] In regard to Pierce Harris' argument that NBS never requested him to remove himself from the property, the district court's findings do not reflect this, and furthermore, such allegations are simply not true. The record clearly shows that a Summons and Complaint was served upon Mr. Harris. Furthermore, testimony was presented that a No Trespass Order was also served upon Mr. Harris by the Plaintiff(s). Appellant cannot simply choose to ignore the testimony presented to the district court by failing to file a transcript with this Court. The district court's findings were not clearly erroneous.

[¶27] In regard to Pierce Harris' argument that NBS never properly served him with a 3 Day Notice of Intent to Evict, this contention lacks merit. A general appearance in any civil matter generally waives any objection to a lack of service. Intercept Corporation v. Calima Financial, LLC, 2007 ND 180, ¶ 10, 741 N.W.2d 209. When Mr. Harris appeared at the hearing before the district court to contest the eviction, by virtue of his appearance, he waived any objection to lack of service. Furthermore, under N.D.C.C. § 47-32-02, a 3 Day Notice of Intent to Evict is only required when an eviction action is brought forth under subsections 4, 5, 6, and 8 of N.D.C.C. § 47-32-01. Here, NBS brought forth the eviction action under N.D.C.C. § 47-32-01(1)-(3) and it was granted accordingly by the district court based upon the facts presented at the hearing. Here, a Notice of Intent to Evict was not required. The district court's findings were not clearly erroneous.

[¶28] In regard to Pierce Harris' argument that he was a lawful tenant at the property, this contention lacks merit and is not supported by the facts or the record. If Pierce Harris

was living at the property after Whitney Racine terminated her lease and surrendered possession of the property, he was wrongfully in possession as he was not listed as a tenant on the lease agreement. Mr. Harris never had a lease agreement with NBS to possess the property at issue. Mr. Harris was wrongfully in possession of the property and the eviction was proper. The district court's findings were not clearly erroneous.

[¶29] In regard to Pierce Harris' argument that NBS and Whitney Racine executed fraudulent paperwork in connection with the case, this contention lacks merit and is not supported by the facts or the record. Additionally, Mr. Harris has raised this issue for the first time on appeal and thus should not be considered by this Court. The district court's findings were not clearly erroneous.

[¶30] In regard to Pierce Harris' argument that Attorney Dean Frantsvog used fraudulent information to misrepresent the facts of this case to the district court, this contention lacks merit and is not supported by the facts or the record. These allegations are simply not true and likewise are made in bad faith by the Defendant. Additionally, these false allegations have been raised by Mr. Harris for the first time on appeal and thus should not be considered by this Court. The district court's findings were not clearly erroneous.

[¶31] In regard to Pierce Harris' argument that rent was paid through the end of the month of August, 2020 so an eviction during the month of August would not be proper, this contention lacks merit and is not supported by the facts, the record, or the laws of this State. NBS presented evidence that rent for the month of August was never received. App. 021. The lease in question was terminated by NBS and Whitney Racine on July 23, 2020. App. 014. After this date, if Mr. Harris was living at the premises, he was at best a holdover tenant and at worst, a trespasser. In any event, Mr. Harris had no right to remain



on the property through the month of August, regardless of whether rent was paid to NBS. N.D.C.C. § 47-32-01. The district court's findings were not clearly erroneous.

[¶32] In regard to Pierce Harris' argument that he was not able to submit proof or video footage to the district court due to the fact he was not properly served with notice of the hearing, this contention lacks merit and is not supported by the facts or the record. Mr. Harris' failure to bring certain evidence to the hearing was his own choice. He was personally served with the Summons on July 24, 2020 bearing a hearing date of August 3, 2020. App. 005. Furthermore, Mr. Harris attended the hearing and presented other evidence on his behalf. The district court's findings were not clearly erroneous.

[¶33] In regard to Pierce Harris' argument that the lease agreement in this matter was a void contract, this contention lacks merit and is not supported by the facts or the record. Also, this argument has been raised by Mr. Harris for the first time on appeal and should not be considered by this Court. The district court's findings were not clearly erroneous.

[¶34] **V. CONCLUSION**

[¶35] For the above stated reasons, NBS requests that the judgment of the district court be affirmed.

[¶36] Dated this 3<sup>rd</sup> day of November, 2020.

**FRANTVOG LAW, P.C.**

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[¶37]                    **CERTIFICATE OF COMPLIANCE ON PAGE COUNT**

[¶38] I hereby certify that this brief complies with NDAPP 32(a)(8); the page count is 9.

Dated this 3<sup>rd</sup> day of November, 2020.

**FRANTSVOG LAW, P.C.**

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[¶39]                    **CERTIFICATE OF WORD PROCESSING PROGRAM**

[¶40] The word-processing program is Microsoft Office Word 2019.

Dated this 3<sup>rd</sup> day of November, 2020.

**FRANTSVOG LAW, P.C.**

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Supreme Court No. 20200203  
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Case No. 51-2020-CV-01007

**AFFIDAVIT OF SERVICE**

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STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF WARD             )

Remington M. Kostenko, being first duly sworn on oath, deposes and states that he is of legal age and is a resident of Ward County, North Dakota, not a party to nor interested in the action, and that that on the 3<sup>rd</sup> day of November, 2020, he served the attached:

Notice of Appearance;

Brief of Appellee; and

Appendix of Appellee

on the above-named Appellant by electronic mail:

Pierce Harris  
harris Pierce88@gmail.com

and on the above-named Appellant by U.S. Mail:

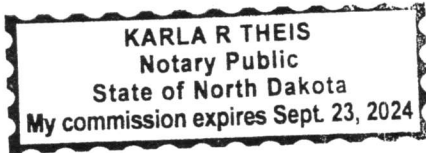
Pierce Harris  
1310 34<sup>th</sup> Ave. SE, Apt. 101  
Minot, ND 58701

To the best of Affiant's knowledge, the e-mail and physical addresses above given are the actual electronic mail and U.S. Mail addresses of the party intended to be so served. The above documents are email and mailed in accordance with the provisions of the North Dakota Rules of Appellate Procedure.

*Remington M. Kostenko*

Remington M. Kostenko

SUBSCRIBED AND SWORN TO before me this 3<sup>rd</sup> day of November, 2020.



*Karla R. Theis*

Notary Public