

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

Supreme Court Case No. 20210144

In the Matter of the Emelia Hirsch, June 9,)
1994, Irrevocable Trust)

Timothy Betz,)
Respondent and Appellee,)

v.)

Emelia A. Hirsch, aka Emelia Hirsch, aka)
Emilia Hirsch, Carolyn Twite and Duane)
Hirsch,)
Petitioners and Appellees,)

and)

Marlene Betz,)
Interested Party and Appellee,)

and)

Allen Betz,)
Interested Party and Appellant.)

**BRIEF OF APPELLEES CAROLYN
TWITE AND DUANE HIRSCH**

APPEAL FROM THE MARCH 17, 2021 ORDER AND JANUARY 31, 2020 ORDER
OF THE BURLEIGH COUNTY DISTRICT COURT, CASE NO. 08-03-C-02228

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STATEMENT OF ISSUES

- [¶1] I. Whether the issues raised in this appeal are precluded as a matter of law.
- II. Whether the Trustees are entitled to recovery of their costs and attorney's fees in this frivolous appeal.

STATEMENT OF FACTS

[¶2] Appellees Carolyn Twite and Duane Hirsch, co-trustees of the Emelia Hirsch Trust dated June 9, 1994 (“Trustees”), submit this brief in response to the *Appellant’s Brief* of Allen Betz (“Allen”), dated May 28, 2021. The instant appeal is the latest in a long line of attempts to vacate the reformation of the Emelia Hirsch Trust dated June 9, 1994, which this Court affirmed in Matter of Emelia Hirsch Trust, 2009 ND 135, 770 N.W.2d 225. See Matter of Emelia Hirsch Trust, 2020 ND 129, 944 N.W.2d 335; Matter of Emelia Hirsch Trust, Supreme Court Case No. 20190115 (Order of Dismissal); Matter of Emelia Hirsch Trust, 2019 ND 264, 935 N.W.2d 255; Matter of Emelia Hirsch Trust, 2017 ND 291, 904 N.W.2d 740; Matter of Emelia Hirsch Trust, 2016 ND 217, 888 N.W.2d 205; Matter of Emelia Hirsch Trust, 2014 ND 135, 848 N.W.2d 719; Matter of Emelia Hirsch Trust, 2013 ND 63, 832 N.W.2d 334; Matter of Emelia Hirsch Trust, Supreme Court Case No. 20120241 (Order of Dismissal); Matter of Emelia Hirsch Trust, Supreme Court Case No. 20120141 (Order of Dismissal).

[¶3] Since the last time this matter was on appeal, the Honorable Judge Bobbi Weiler was assigned to this case following the retirement of the Honorable Judge Gail Hagerty in March 2020. As indicated by the *Order*, dated March 17, 2021 (“March 2021 Order”), Marlene Betz (“Marlene”), Timothy Betz (“Tim”), and Allen have continued in their collective efforts to re-litigate this case, having submitted the following documents to the

district court since July 2020 (dates indicate when the district court received the documents):

1. July 30, 2020: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
2. August 18, 2020: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
3. August 24, 2020: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
4. August 28, 2020: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
5. September 8, 2020: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
6. September 23, 2020: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
7. October 5, 2020: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
8. October 23, 2020: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
9. November 6, 2020: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
10. November 12, 2020: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
11. December 17, 2020: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
12. December 18, 2020: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
13. January 12, 2021: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
14. February 18, 2021: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.

15. February 23, 2021: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
16. February 25, 2021: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
17. March 3, 2021: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
18. March 11, 2021: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.
19. March 16, 2021: Motion and Documents requesting the Court vacate Judge Hagerty's Order from July 16, 2008.

(Appendix 134).

[¶4] The March 2021 Order explains “[t]he Betzes try to justify their Motions by arguing essentially the same issues over and over again...” and that “[t]hese are the same arguments that have been resolved in previous Orders of the Court and Opinions of the North Dakota Supreme Court.” (Appendix 136). Consistent with Judge Weiler’s prior orders entered August 4, 2020; August 18, 2020; August 28, 2020; September 17, 2020; October 1, 2020; and October 8, 2020, the March 2021 Order clarifies the district court would “continue to return all filings that are based upon arguments already resolved in previous Orders of the Court and Opinions of the North Dakota Supreme Court.” (Id. at 137); (Trustees’ Appendix 31-36). The March 2021 Order further notes the district court would not accept email filings from the Betzes. (Appendix 136).

[¶5] In addition to its March 2021 Order, the district court filed an *Order* on March 22, 2021, which had previously been issued by Judge Hagerty on January 31, 2020 (“January 2020 Order”). As indicated therein, after pre-filing orders had been entered against both Marlene and Tim prohibiting them from filing new litigation or documents, Allen filed a motion to vacate the trust reformation order from July 16, 2008. (Appendix 142-143). The

January 2020 Order recognized “[t]he timing of the filing and the content of the filing make it clear that Allen Betz is acting in collusion with Marlene Betz and Timothy Betz.” (Id. at 142). The January 2020 Order further explains that Allen “makes the same arguments which have been repeatedly presented by both Timothy Betz and Marlene Betz.” (Id. at 143). Similar to Tim and Marlene, the district court identified Allen as a “vexatious litigant” and that it would begin the process of implementing a pre-filing order against him. (Id.)

[¶6] As the first step in the process, Judge Hagerty had also issued a *Notice and Proposed Pre-Filing Findings and Order* against Allen on January 31, 2020. (Trustees’ Appendix 25-28). Pursuant thereto, and in accordance with N.D. Sup.Ct. Admin. R. 58, Allen was notified that the district court intended to issue the proposed findings and pre-filing order against him, and that Allen had fourteen (14) days to file a written response to the same. (Id.) There was no response from Allen. However, with the subsequent appeal taken by Marlene in February 2020, along with the retirement of Judge Hagerty in March 2020, there was no pre-filing order entered against Allen as proposed. It was after Marlene’s appeal and this Court’s opinion in Matter of Emelia Hirsch Trust, 2020 ND 129, 944 N.W.2d 335, that Judge Weiler was assigned to this case and began issuing the orders identified above in response to the Betzes continued filings. (Trustees’ Appendix 31-36).

[¶7] A *Notice of Appeal* was filed on May 10, 2021, in which Allen purports to appeal the district court’s March 2021 Order and re-issued January 2020 Order. (Docket Entry # 1). In reality, however, the instant appeal is merely another attempt to re-litigate reformation of the trust as decided by Matter of the Emelia Hirsch Trust, 2009 ND 135, 770 N.W.2d 225. Following a request by Tim to respond to Allen’s appeal, this Court

entered an *Order* on June 3, 2021, denying the same. (Id. at # 10-11). A second request by Tim to respond in this appeal was also denied on June 18, 2021. (Id. at # 16-17). For the reasons explained, the issues raised by Allen in this appeal are precluded as a matter of law and the Trustees are entitled to an award of their costs and attorney’s fees in this frivolous appeal.

LAW AND ARGUMENT

I. The issues raised by Allen Betz in this appeal are precluded as a matter of law.

[¶8] This Court has routinely rejected prior attempts to re-litigate the district court’s reformation of the Emelia Hirsch Trust dated June 9, 1994, as affirmed by this Court in Matter of Emelia Hirsch Trust, 2009 ND 135, 770 N.W.2d 225. See Matter of Emelia Hirsch Trust, 2020 ND 129, 944 N.W.2d 335; Matter of Emelia Hirsch Trust, Supreme Court Case No. 20190115 (Order of Dismissal); Matter of Emelia Hirsch Trust, 2019 ND 264, 935 N.W.2d 255; Matter of Emelia Hirsch Trust, 2017 ND 291, 904 N.W.2d 740; Matter of Emelia Hirsch Trust, 2016 ND 217, 888 N.W.2d 205; Matter of Emelia Hirsch Trust, 2014 ND 135, 848 N.W.2d 719; Matter of Emelia Hirsch Trust, 2013 ND 63, 832 N.W.2d 334; Matter of Emelia Hirsch Trust, Supreme Court Case No. 20120241 (Order of Dismissal); Matter of Emelia Hirsch Trust, Supreme Court Case No. 20120141 (Order of Dismissal).

[¶9] “Under the doctrine of res judicata, a valid, existing final judgment from a court of competent jurisdiction is conclusive on the parties . . . in all other actions with regard to the issues raised, or those that could have been raised, and determined therein.” Glass v. Glass, 2018 ND 14, ¶ 5, 906 N.W.2d 81 (quoting Jundt v. Jurassic Res. Dev., N. Am., L.L.C., 2004 ND 65, ¶ 6, 677 N.W.2d 209). Principles of res judicata prevents courts from

re-litigating claims that were raised or could have been raised “in order to promote finality of judgments, which increases certainty, avoids multiple litigation, wasteful delay and expense, and ultimately conserves judicial resources.” Missouri Breaks, LLC v. Burns, 2010 ND 221, ¶ 10, 791 N.W.2d 33.

[¶10] As explained, the instant appeal is merely another attempt to re-litigate reformation of the Emelia Hirsch Trust dated June 9, 1994 as decided by Matter of the Emelia Hirsch Trust, 2009 ND 135, 770 N.W.2d 225. With pre-filing orders against Tim and Marlene in these proceedings, it is now Allen who has taken up the mantle (acting in concert with Marlene and Tim) in their continued attempts to re-litigate matters which previous controlling appellate decisions are dispositive. The instant appeal is frivolous and completely without merit. The Trustees respectfully request this Court to issue a summary affirmance pursuant to N.D.R.App.P. 35.1(a)(1) and (7).

II. The Trustees are entitled to recovery of their costs and attorney’s fees in this frivolous appeal.

[¶11] North Dakota law prohibits the filing of frivolous appeals and allows for an award of attorney fees and costs in matters such as this appeal filed by Allen. See N.D.R.App.P. 38 and 39. “If the court determines that an appeal is frivolous, or that any party has been dilatory in prosecuting the appeal, it may award just damages and single or double costs, including reasonable attorney’s fees.” N.D.R.App.P.38.

Frivolous appeals unjustly burden the resources of the court and the government. The devotion of limited resources and time to these meritless cases causes deserving litigants to wait. In addition, the opposite party is delayed in receiving the just benefits of the trial court's judgment until the appeal is concluded. Justice delayed is justice denied. Sanctions are imposed to deter such suits.

United Bank of Bismarck v. Young, 401 N.W.2d 517, 519 (N.D. 1987).

[¶12] As indicated above, the instant appeal by Allen is merely the latest of many frivolous attempts to re-litigate the district court's reformation of the Emelia Hirsch Trust as upheld by this Court in Matter of Emelia Hirsch Trust, 2009 ND 135, 770 N.W.2d 225. Prior attempts to re-litigate the issues being raised by Allen have been found frivolous and without merit by this Court warranting attorney's fees and double costs under N.D.R.App.P. 38. The Trustees are again entitled to recovery of double costs and attorney's fees in this appeal.

CONCLUSION

[¶13] For the reasons discussed herein, Appellees Carolyn Twite and Duane Hirsch respectfully request this Court to summarily affirm this matter pursuant to N.D.R.App.P. 35.1(a)(1) and (7); and award the Trustees double costs and attorney's fees pursuant to N.D.R.App.P. 38.

Dated: June 25, 2021.

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CERTIFICATE OF COMPLIANCE

[¶14] I hereby certify that this document contains 11 pages and complies with the page limitation prescribed under N.D.R.App.P. 32(a)(8).

Dated: June 25, 2021.

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CERTIFICATE OF SERVICE

[¶15] I hereby certify that a true and correct copy of the foregoing appendix was filed electronically with the Clerk of the North Dakota Supreme Court on the 25th day of June, 2021, and e-mailed to **Allen Betz** (adbetz@gmail.com), **Marlene Betz** (famassist@aol.com) and **Timothy Betz** (tbetz@embarqmail.com).

Dated: June 25, 2021.

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