

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

Joseph S. Motisi,  
Petitioner ~~Plaintiff~~ and Appellant,

Supreme Court No. 20210248  
Morton Cty. No. 30-2021-CV-00687

v.

Hebron Public School District,  
Respondent ~~Defendant~~ and Appellee.

**Appeal from District Court, Morton County, North Dakota  
South Central Judicial District  
Honorable Douglas Bahr**

Appeal from Judgment dated July 26, 2021

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**REPLY BRIEF OF APPELLANT JOSEPH S. MOTISI**

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## TABLE OF CONTENTS

Law and Argument .....	1
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**TABLE OF AUTHORITIES**

**CITATIONS**

	<b>¶</b>
<u>City of Jamestown v. Nygaard</u>	
2021 N.D. 172, ¶18, 965 N.W.2d 47 .....	1
<u>Meier v. North Dakota Department of Human Services</u>	
2012 N.D. 134 ¶6 818 N.W.2d 774.....	3
<u>Kaspari v. Kaspari</u>	
2021 N.D. 63, 958 N.W.2d 139.....	4
<u>Public Service Commission v. Wimbledon Grain Company</u>	
2003 N.D. 104 ¶28, 663 N.W.	

**STATUTES**

N.D.C.C. § 14-05-24.1(1) .....	4
N.D.C.C. § 15.1-15-02.....	1, 2
N.D.C.C. § 15.1-15-02 (6) .....	1, 2
N.D.C.C. § 15.1-15-02 (8) .....	1
N.D.C.C. § 15.1-15-05.....	2
N.D.C.C. § 15.1-15-05.1 .....	5
N.D.C.C. § 15.1-15-06.....	2

## LAW AND ARGUMENT

[¶ 1] In its brief, the Hebron School District (District) cites to the issue as follows: “Whether a probationary teacher under N.D.C.C. § 15.1-15-02 is a teacher employed less than two years in a school district, or whether it is a teacher employed less than two years in the state of North Dakota, in the country, in the world, etc.”. (District Brief ¶1). Both parties seek clarification from this Court as to whether a teacher who has taught six years in the state of North Dakota is considered a probationary teacher under N.D.C.C. § 15.1-15-02(8). (Hereinafter referred to as subsection 8.) The District Court concluded the statute, N.D.C.C. § 15.1-15-02, to be unambiguous. (App. 25). This conclusion of course would include subsection 8. The District Court should have stopped its analysis at that point and held that Motisi was not a probationary teacher. However, the District Court then proceeded with an analysis of other sections of a supposedly unambiguous statute to determine the intent of the Legislature as it relates to subsection 8. The District Court disregarded well established rules of statutory construction. The District Court then buys in to the District’s argument that the legislative intent for subsection 8 can only be determined by looking at N.D.C.C. § 15.1-15-02 (6) (hereinafter referred to as subsection 6). The District Court then went on to a needless application of useless legislative history which to a great extent is neither clarifying nor helpful in determining the legislative intent. In fact, this Court has warned District Courts about using legislative history when a statute is unambiguous. See City of Jamestown v. Nygaard 2021 N.D. 172, ¶18, 965 N.W.2d 47. This Court cannot ignore the plain wording of the statute, even when

there is evidence of a different meaning contained in some legislative history. Finally, the District Court did what no Court should ever do...it turned into the Legislature.

[¶ 2] Before beginning the legal discussion and the analysis of the statutes and the rules of statutory construction, it must be pointed out from a factual basis this case has nothing to do with the waiver of probationary status. The District's entire argument is based upon the interpretation of N.D.C.C. § 15.1-15-02 (6) which deals with the waiver of probationary status. It is clear from the facts that Motisi never requested the waiver of his probationary status because he had been a teacher in the state of North Dakota for six years. Moreover, there is nothing in the record which indicates the District ever considered the waiver of his probationary status as they proceeded to non-renew his teacher's contract under the provisions established specifically by the Legislature for probationary teachers N.D.C.C. § 15.1-15-02. As Motisi has previously argued, there are two specific procedures to non-renew teachers in the state of North Dakota; one for "probationary teachers" which is simply a walk through in front of the school board (N.D.C.C. § 15.1-15-02) and procedure for all other teachers which is actually a due process hearing (N.D.C.C. § 15.1-15-05 and N.D.C.C. § 15.1-15-06).

[¶ 3] In contrast to the District Court's analysis and the arguments of the District, Motisi concentrates on the language of subsection 8 which provided the definition of a probationary teacher. The statute says what it says and is not ambiguous. To apply the rules of statutory construction, they must be applied in a sequential manner. Interpretation of a statute is a question of law. In interpreting statutes,

this Court looks at the plain language and gives each word its plain and ordinary meaning unless a contrary intention plainly appears. Meier v. North Dakota Department of Human Services 2012 N.D. 134 ¶6 818 N.W.2d 774. Statutory language of subsection 8 says what it says. There is no need to consider subsection 6 and there is certainly is no need to consider legislative history. Moreover, this Court, since this is a question of law for the Court to decide, is not bound by the District Courts conclusion. This Court can simply look at the provision of subsection 8 and make a determination. What is ambiguous about the phrase “individual teaching for less than two years”? If the determination is the statute is unambiguous, the statutory construction review must stop and the District Courts judgment must be reversed. If and only if this Court determines the statute is ambiguous or of doubtful meaning, this Court can then consider subsection 6 and potentially the legislative history.

[¶ 4] A recent example of the Court focusing down on specific statutory phrase which included a legislative change is Kaspari v. Kaspari, 2021 ND 63, 958 N.W.2d 139. In Kaspari, the husband appealed from a divorce judgment arguing the District Court had erred when it ordered him to pay spousal support to his wife until her death or remarriage. Id. at ¶1. The District Courts authority to award spousal support was provided in N.D.C.C. § 14-05-24.1(1). The statute was changed in 2015 by the Legislature. The prior version of the statute allowed a District Court to order spousal support for “any period of time” rather than “a limited period of time” as provided in the 2015 statute. The husband argued the District Court erred because its award of spousal support against him was unlimited in duration. This

Court reviewed his argument and focused on the phrase “limited period of time”. This Court found a spousal support award until death or remarriage violated the statute because it was indefinite and not for a limited period of time. *Id.* at ¶ 5. In applying the rules of statutory construction, this Court focused on the plain language of the statute, did not consider other statutes and did not consider any legislative history. That is all that Motisi is asking this Court to do is to correctly apply the rules of statutory construction and focus on the language in subsection 8.

[¶ 5] Motisi has been consistent in his argument that subsection 8 is unambiguous and no other sources including legislative history need to be reviewed to determine the legislative intent. In its brief, the District points out the argument that Motisi has not been consistent in his argument as he cited to another statute, N.D.C.C. § 15.1-15-05.1 which addresses non-renewal rights of principals, assistant superintendents and associate superintendents. Motisi makes this argument on the basis that the Legislature clearly knows how to draft limiting legislation in statutes to limit the probationary status of education employees to years of service in a particular school district. The District argues that the statute involving probationary teachers has “been in existence for many years prior to the Legislature’s adoption of the statute dealing with the non-renewal rights of administrators” (District Brief ¶ 26). Here, the District attempts to avoid its timing issue. The Legislature did enact the limitations on the non-renewal rights of administrators in 2015. The legislative change that is being debated before this Court involving N.D.C.C. § 15.1-15-02 happened in 2019. The District puts forth

no meaningful argument to distinguish the fact that the Legislature does know how to draft legislation to limit the rights of probationary teachers. Simply put, if the Legislature wanted to limit the probationary status of teachers to two years of teaching in a particular school district in the state, they simply could have said so. As previously cited in Motisi's main brief, it is presumed that the Legislature intended all that it said and that it said all that it intended to say. (Motisi brief ¶27. Citing Little v. Tracy 497 N.W.2<sup>nd</sup> 70 (N.D. 1993)). Consequently, this Court will not correct an alleged legislative "oversight" by rewriting unambiguous statutes to cover the situation at hand. Public Service Commission v. Wimbledon Grain Company 2003 N.D. 104 ¶28, 663 N.W.2d 186. The District Courts judgment must be reversed.

Dated this 11<sup>th</sup> day of November, 2021.

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## **CERTIFICATE OF COMPLIANCE**

The undersigned certifies this Brief complies with the page limitations set forth in N.D.R.App.P. 32. Based on information provided by Microsoft Word, this Brief is 9 pages and is typeset in Arial (12 point) font.

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**CERTIFICATE OF SERVICE**

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[¶ 1] I hereby certify that on November 11, 2021, the following document:

**Reply Brief of Appellant**

were filed electronically by e-mail with the Clerk of the North Dakota Supreme Court at [supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov) and was served electronically on the following:

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