

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

Ashley Feickert,)	
)	
Plaintiff and Appellee,)	
)	
vs.)	
)	Supreme Ct. Case No. 20220102
Cheryl Feickert,)	District Ct. Case No. 52-2021-CV-00017
)	
Defendant and Appellant.)	

RESPONSE TO MOTION TO DISMISS APPEAL

[¶ 1] COMES NOW Appellant, Cheryl Feickert, by and through her attorney, Jennifer M. Gooss, and hereby submits this Response to Motion to Dismiss Appeal filed by Appellee, Ashley Feickert. It is respectfully requested that Appellee’s Motion be denied in its entirety, and that this Court make a decision based on the merits of the case.

FACTUAL AND PROCEDURAL HISTORY

[¶ 2] This case was initiated by Ashley Feickert (hereinafter “Ashley”) upon filing and serving her Complaint. (R2). Cheryl Feickert (hereinafter “Cheryl”) filed an Answer thereto (R13).

[¶ 3] Trial was held on December 6, 2021.

[¶ 4] At trial, Cheryl testified that she had \$20,000 in savings for Ashley, which was funds produced from Ashley’s portion of the land. (R53:50:19-25). She also agreed that she was alleging that she used “approximately \$161,000 - \$162,000 for Ashley’s benefit.” (R53:51:1-3).

[¶ 5] The district court issued its Findings of Fact, Conclusions of Law and Order for Judgment on February 16, 2022. (R39). Judgment was entered that same day (R40), as

was the Notice of Entry of Judgment. (R41). Pursuant to the Judgment, Cheryl was obligated to pay Ashley the amount of \$119,994.97 plus post-judgment interest. (R40).

[¶ 6] After Judgment was entered, Cheryl made a payment to Ashley in the amount of \$20,000.00, and a Partial Satisfaction of Judgment was entered on March 22, 2022. (R44).

LAW AND ARGUMENT

[¶ 7] Cheryl does not dispute the case law in Appellee’s Brief as it relates to a party waiving his/her right to appeal by voluntarily paying a judgment against him/her. Further, Cheryl agrees generally with the recitation of State ex rel. Storbakken v. Scott’s Electric, Inc., except to correct the seemingly typographical error so that it states that the Court elected not to resolve the issue because cases addressing the question generally involve situations where the partially satisfied portion of the judgment remains undisputed on appeal. 2014 ND 97, ¶ 6, 846 N.W.2d 327, 329. In Scott’s Electric the Court found that Scott “acknowledged throughout the course of the proceedings that wages were due the wage claimants, however, as of the date of trial such wages remained unpaid.” Id. at ¶ 7.

[¶ 8] The instant case is similar to Scott’s Electric. Cheryl testified at trial that she had \$20,000 in savings for Ashley, which was funds produced from Ashley’s portion of the land. (R53:50:19-25). Shortly after trial, Appellee’s counsel asked that such funds be released to Ashley. (R37). After entry of judgment, Cheryl did so. (R44). As in Scott’s Electric, the \$20,000 is an undisputed amount. As such, it would be contrary to this Court’s prior ruling to dismiss Cheryl’s Appeal in its entirety. Rather, the appropriate remedy, in following Scott’s Electric would be to allow the appeal to proceed as to the disputed amount.

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DATED this 6th day of September, 2022.

By: /s/ Jennifer M. Gooss
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