

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

Ashley Feickert,)
)
 Plaintiff and Appellee,)
)
 vs.)
)
 Cheryl Feickert,)
)
 Defendant and Appellant.)

Supreme Ct. Case No. 20220102
District Ct. Case No. 52-2021-CV-00017

APPELLANT’S REPLY BRIEF

APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FOR JUDGMENT AND JUDGMENT ENTERED ON FEBRUARY 16, 2022 OF THE
WELLS COUNTY DISTRICT COURT, THE HONORABLE JAMES D. HOVEY

ORAL ARGUMENT REQUESTED

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ARGUMENT

A. The District Court Erred in Failing to Consider the Amounts Appellant Paid to, or on behalf of, Appellee to Reduce the Amount of Damages.

¶ 1. The district court erred in failing to consider the amounts Cheryl paid to, or on behalf of, Ashley to reduce the amount of damages. Ashley's arguments against this issue should be disregarded by the Court, as they are without any merit.

¶ 2. Ashley first argues that these amounts should not have been considered because Cheryl failed to cite relevant authorities; however, her reasoning is flawed. As Ashley acknowledges, "a party waives an issue by not providing supporting argument and, without supportive reasoning or citations to relevant authorities, an argument is without merit." Riemers v. O'Halloran, 2004 ND 79, ¶ 5, 678 N.W.2d 547 (emphasis added). Cheryl provided supporting argument and reasoning regarding the amounts she paid to, or on behalf of, Ashley being used to reduce the amount of damages in this case. As such, her argument is with merit and should be considered by this Court.

¶ 3. Ashley next argues that the evidentiary issue of certain evidence not being allowed by the Court is not properly before this Court because she did not make an offer of proof. Ashley's argument is non-sensical. As Ashley admits in her brief, the evidence sought to be admitted was regarding Cheryl providing care for Ashley's son, A.F. and Ashley living at Cheryl's hotel, as well as the expenses related thereto. Pursuant to North Dakota Rules of Evidence Rule 103(2), a party can claim error in an evidentiary ruling "if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context." (Emphasis added). In this case, the substance of the evidence sought to be admitted was apparent from the context. It was objected to when Ashley was asked how long her mother had been providing for her son

A.J.W. (R53:110:24-25). Counsel for Cheryl specifically indicated to the Court that the expenses for A.J.W. had been put on the record and are relevant to the proceeding (R53:111:1-3) and explained that Cheryl paying expenses for Ashley's child would be appropriate as an offset for monies Cheryl collected for land rent during that same period (R53:111:22-112:5). There was a similar exchange related to the expenses of Ashley living at Cheryl's hotel and Cheryl expending the land rent received on Ashley's behalf to pay those expenses (R53:112:18-113:6). As such, the Court was provided the substance of the testimony sought to be elicited, as well as it being apparent from the context. Therefore, the issue is properly before this Court.

¶ 4. Based on the above, Cheryl respectfully requests that the Court consider all of the arguments brought in this Appeal. Cheryl further respectfully requests that this Court reverse the Judgment and remand this case for further proceedings to determine the full amounts paid to, or on behalf of, Ashley for a reduction to the amount of damages ordered.

CERTIFICATE OF COMPLIANCE

¶ 5. The undersigned, as the attorney representing Appellant, Cheryl Feickert and the author of this Brief hereby certifies that said brief complies with Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, in that it contains 4 pages.

DATED this 6th day of Septemebr, 2022.

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IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

Ashley Feickert,)
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Plaintiff/Appellee,)
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vs.)
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Cheryl Feickert, individually and in)
her capacity as Conservator for)
Ashley Feickert,)
)
Defendant/Appellant.)

Supreme Ct. Case No. 20220102
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[¶ 1] I hereby certify that on September 6, 2022, a true and correct copy of the following documents were served the North Dakota Supreme Court E-Filing Portal:

- 1. Appellant’s Reply Brief**
- 2. Response to Motion to Dismiss Appeal**
- 3. Certificate of Service**

[¶ 2] A copy of the foregoing was sent to the following email address:

Micheal A. Mulloy
mike@mulloylaw.com

Clerk of the Supreme Court
supclerkofcourt@ndcourts.gov

[¶ 3] To the best of this affiant’s knowledge, the email addresses above are the actual email address of the parties intended to be so served. That the above documents were duly served in accordance with the provisions of the North Dakota Rules of Civil and Appellate Procedure.

Dated this 6th day of September, 2022.

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