20220193
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
DECEMBER 12, 2022
STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Burleigh County Social Service Board as assignee for Heather Odden, n/k/a Heather Zins, Plaintiff/Appellee, v. Mark Rath Defendant/Appellant,	Supreme Court No.**20220193**; Civil Case No. **08-05-C-00073**

APPEAL FROM BURLIEGH COUNTY DISTRICT COURT ORDERS DATED July 26, 2021, November 18, 2021, November 23, 2021, unruled on application filed December 24, 2021, order dated April 29, 2022, and Order dated May 02, 2022

RESPONSE OF DEFENDANT-APPELLANT, MARK RATH

Mark Rath
1021 W. St. Benedict Dr
Bismarck, ND 58501
701-516-4142
Pro Se Litigant

Table of Contents

I. Statement of Issues for Review

[¶1] Jackson's arguments on timeliness of Rath's appeal regarding the due process violations associated with the second protective order, are without merit and frivolous, and not made in good faith. Orders regarding discovery generally are not appealable. Dietz v. Kautzman, et al. 2004 ND 164 686 N.W.2d 110. However, the due process violation, does make the order appealable with the final order of merit on the child support modification.

[¶2] The due process violation relating to Jackson's frivolous second request for a protective order, is manifest on the record without the need of a transcript. R553 R575, R577, R578, ROA Entry for 11/08/2021.

[¶3] Thomas Jackson's request for a second protective order was frivolous and abusive litigation as it was a request for an entirely unnecessary redundant order of law, without justifiable grounds, simply to abuse Rule 3.2.

[¶4] The states arguments relating to N.D.R.Civ.P 6, raise another valid constitutional argument of whether Rule 6 of the North Dakota Rules of Civil Procedure, comport to the well-established tenants of the 14th amendment of the United States requirement for procedural due process and Article 1 § 9 of the North Dakota constitution that every man, shall have remedy under law without sale, denial, or **delay,** by due process of law**. As-is-applied, attempting to be applied or facially Rule 6 N.D.R.Civ.P is unconstitutional.**

[¶5] Both the district court and the state of North Dakota, are unconstitutionally limiting the breadth of the freedom of association, that Since *Roberts v. United States*

Jaycees, 468 U.S. 609 (1984), has covered personal and private relationships outside of just clubs and organizations.

[¶6] A rational basis concerning the initial collection of child support, is not a rational basis for the usurpation of autonomy guaranteed under the first, fourth, tenth and fourteenth amendments of the United States as well as ND Constitution Article 1 §§ 1, 7, 8, 23, and 24. The rational basis "the best interests of the child" may be sufficient to warrant the collection of support, but not every intrusive collection method, at the discrimination of a particular group of individuals, that does not limit discrimination when more substantial or equal remedies are already in place. Moreno.

Law and Argument

A. Issue 1: Jackson's arguments on timeliness are baseless

[¶7] In accordance to Dietz v. Kautzman, et al. 2004 ND 164 686 N.W.2d 110, Judge Bahr's order on discovery by itself is not appealable, therefore; any frivolous argument Thomas Jackson attempts to spew out regarding timeliness is baseless. In summation of Jackson's arguments, apparently Rath was supposed to file a piece-meal appeal, which would have prejudiced Rath even further as a stay would have been conducted pending that appeal. However, the due process violation, is appealable with the final order on the matter.

B. Jackson's second request for a protective order was frivolous and Rath's due process rights were violated to entertain a frivolous and baseless motion.

[¶8] In respect to what Thomas Jackson was requesting oral arguments using Rule 3.2 N.D.R.Ct. which surmount to a flagrant abuse under Rule 11(b) and abusive misuse of rule 3.2 to force oral arguments on the seemingly apparent self-proclaimed "intertwined" nature of Rath's motion for additional tax information based on the inability to deduce Zins income from her 1040's, which only clearly showed her husbands. Leading any rational individual to conclude either Zins is claiming she has no income from her business, or she is reporting a fraudulent loss, as Rath does have enough from public record to conclude Zins made at least a gross revenue of $167,440 for 2016-2020.

[¶9] Yet through the submitted tax information, Zins is reporting it appears an averaged $7,000 loss for those four years. No home daycare has expenses of $174,440. Which concludes, that Zins is not properly reporting her losses and expenses as required under the Federal Tax code, and with the inclusion of Jeff Zins income, there are two very reasonable arguments to be made why, as Zins alleged "losses" allow Jeff Zins to reduce those losses from his own taxes, which then in turn brings his gross annual income down, which is a hefty tax cut for the Zins and motive to commit fraud. And as admitted, Zins testified she herself chooses to throttle her earning capacity to continue to mooch off Government benefits, instead of becoming self-reliant without aid of those benefits.

[¶10] Rath has had a lot of problems with Heather and Jeff Zins, in the past, becoming narcissistically abusive through "posturing" of their financial situation to degrade and insult Rath. Whereas; Jeff, as in all textbook abuse, minimizes his abusive tendencies by trying to justify the unwarranted posturing in that by bragging to Rath he

was trying to educate “AJO to be a responsible adult” (See R194:2:7), at which it is no wonder the now 18 year old child is in the care of DJS and YCC, he had Jeff and Zins as his primary role models. This is nonetheless, textbook narcissism from Jeff Zins; however, even despite all of that posturing and bragging, Heather Zins in basic functions, is not gainfully employed, could not possibly be providing her level of support for Aidan. Operating a “daycare” at a significant loss of over $170,000 the past four out of five, years, in accordance with N.D.A.C 75-02-04.1-05 and IRC 183; in all accounts, her “job” must be declared a hobby activity at which standard losses and deductions are prohibited from being considered. Making Zins, 1040s incomprehensible for calculation and Rath had a guideline based supported right to know exactly what Zins’ annual income was and a way to be able to efficiently calculate that income. Whereas; Rath admits, given the situation with his sister, her fees have increased given her propensity to just disappear, not return at the agreed upon time and Rath did provide free childcare to his sister for years, until she kept taking advantage of that and started lying about even going to work and just forcing Rath to become responsible for her kid. Rath charges $40 for every 7 hours of childcare ($5 /hr). If Rath only watched T.R 35 hours a week. He would only make $200 a week. So, his fees are standard with Heather’s just taking into consideration Rath watches T.R 56 hours M-W-F-Sat-Sun. That extra $20, more Rath makes is based on appropriate factors. (Provided Zins has increased her fees only $20 in the past 6 years.)

[¶11] Regardless, the question of law, is whether Jackson filing for a “second protective" order, was baseless and harassing litigation that should not have been

condoned by the district court, and whether the two motions were so substantially "intertwined" (1) No new discovery requests were made by Rath, so Rule 26(c) wouldn't even apply to Jackson disagreeing with Rath's request, the primary issue, is that Rath's motion was pursuant authorization of R553, not rule 26 or Rule 33 N.D.R.Civ.P. As such, pursuant N.D.R.Civ.P 26, getting into the merits of Rath's request, was not required at all pursuant Rule 12(b)(6), as Jackson stated no situation in which he nor Zins were entitled filing a second motion for a redundant protective order.

[¶12] Next, the states arguments involving whether the district court erred in not giving Rath the appropriate time to respond to the states motion, is well settled in law. "'[T]o comport with due process, a fair hearing requires reasonable notice or opportunity to know of the claims of opposing parties, along with the opportunity to rebut those claims.'" Rath v. Rath 2014 ND 171 852 N.W.2d 377 (2014), as the state admits, they complied with N.D.R.Civ.P 5, servicing requirements in mailing Rath a copy of the requested extension as Rath as a pro se litigant is exempt from accepting electronic service, which in accordance with the Record, was mailed the same day the district court granted its order. R486-493, the motion itself was brought pursuant Rule 3.2, not Rule 6 N.D.R.Civ.P, because the motion was strictly brought pursuant Rule 3.2, the courts failure to adhere to the time limit, this court even stated in *Davis v. Davis, et al. 2021 ND 24 955 N.W.2d 117,* was a prejudicial misapplication of the law as it deprived Rath any chance to rebut the claims of the state that they needed an "extension" thus delaying the proceedings. It is an interesting argument Keller makes, that Rath exercising his right to forego electronic service, somehow forfeits his other rights. Drawing logical concern to

the states continued infringement of its intended victims' rights. The states argument in that capacity is violative of constitutional safeguards. Rath cannot be penalized or forced to forfeit other rights for exercise of a legal right.

[¶13] In fact, the state admits that they used the U.S Postal services to service Rath, meaning Rath's time to respond to the states motion did not even begin to toll until the three day grace period for delivery expired, which was April 18th, 2019, by the time Rath had received the courts order giving the time frame to respond, Rath had less than 24 hours to respond. It was a denial of due process for the state not to adhere to the well established rules of our court. Because due process at a bare minimum requires notice and chance to respond Id. The states arguments regarding N.D.Civ.P 6 draw into constitutional question whether the district court can violate ND Con. Art 1 § 9 and delay the administration of Justice without meeting the well-established tenants of due process.

[¶14] However, Rath believes that the state is pseudo-misinterpreting Rule 6, in that yes for some unknown reason the court has given itself discretion to without due process required notice and response delay proceedings in violation of N.D Con. Art. 1 § 9, Rule 6 only states the district court may do so if on its own action, not request of a moving party. On request of a moving party, Rule 6 does not bypass Rule 3.2 and its time requirements.

C. **Further Constitutional Arguments**

[¶15] As argued in principle brief, Monroe, lays president that not every action of the government permits discrimination against a non-suspect class of citizen. One of the principal arguments Rath was limited from thoroughly exploring is the argument raised in

the district court on the intentional sub classification of parents into “obligor” and “obligee” with the intent to clearly disenfranchise the “obligor”. Though Rath further explores this in the subclassification of “residential” vs “non-residential” parentage. The overall concern is the same, even if the state has a “reasonable basis” for the collection of child support. Such as the government has a “rational basis” on the limitation of TANF and SNAP benefits, that rational basis under the due process clause of the United States cannot permit the blatant intentional discrimination of any class, not just suspect classes, when equal or more powerful remedies are already available.

[¶16] In this regard, child support already has contingencies in the event. (1) One parent refuses to just work to support their children, the state can impute income against them. (2) A parent **willfully and intentionally** takes a lower paying job for **the purpose of not paying child support,** the state may impute income against them, though a strong argument exists that the state attempts to unconstitutionally shift the burden onto the defendant to show they did not intentionally reduce their income as that should be a burden the state bares as they want to penalize the obligor in that event. As such, it is safe to say under the law, that child support has equal enforcement tactics in place to where, under Monroe, the state infringing upon a parent’s exercise of their freedom of choice in employment for reasons outside child support itself, something that far exceeds the function of our government as a capitalistic democracy and serves no rational basis that other provisions of child support do not already cover. Because Rath never intentionally or willfully quit his painting Job and was laid enough until he had no choice to seek alternative employment, trying to tell Rath that he has to maintain ungainful and

unbeneficial employment is an unconstitutional violation to his rights under the first, fourth, tenth and fourteenth amendments of the United States as well as a unconstitutional act violative of North Dakota Constitution Article 1 § 7, in that no agency or individual may infringe upon an individual enjoying their right to freely choose their exercise of this legal right. Imposing a "penalty" against the targeted parent, not only acts counter to the best interests of the child, as whatever you do to the parent you subject the children to the same treatment, saying a parent has to "burden" their choice, is using the coercive power of the state to impose penalty and because failure to pay the full ordered amount opens an obligor to not only loss of licensures and other civil liberties, contempt of court, but felonious criminal accusations which would destroy that individuals rights further, cannot be tolerated. Just because the state has an alleged rational basis in the collection of child support, does not mean all collection methods are therein covered under that same rational basis, because child support is a governmental benefit, the doctrine of Colourable would then dictate, that the state is over-extending its rational basis and because child support is government benefit. Even if one paid by one parent to the other, the state may not condition that benefit upon forfeiture of constitutional protections. Because the freedom of choice is so ingrained in the first amendment's freedom of religion, freedom of speech and expression and freedom of association, there is no other non-tyrannical interpretation.

[¶17] Our law has long recognized that the right to be free from governmental influence and coercion through state power in our private and even public relationships may not merely be infringed upon a merely through a rational basis, it requires a

compelling governmental interest. The freedom of choice is also a fundamental right to human nature and a free society, therefore; Rational Basis would be unconstitutional and Strict Scrutiny must be used to determine the constitutionality of the states actions that seek to infringe upon a citizens right to autonomy in their everyday lives.

Dated this 12th day of December 2022

/s/Mark Rath

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Defendant – Appellant and, was on the 12th day of December, served electronically to the following:

Thomas Jackson – thomas@bismanlaw.com
Sheila Keller - bismarckcse@nd.gov

/s/Mark Rath
Mark Rath