

NORTH DAKOTA SUPREME COURT

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E.R.J.,	)	
	)	
Plaintiff and Appellee,	)	
	)	
v.	)	Supreme Court No. 20220199
	)	
T.L.B.,	)	
	)	
Defendant/Appellant.	)	

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**BRIEF OF APPELLEE E.R.J.**

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Appeal from the District Court  
Northwest Judicial District  
Divide County, North Dakota  
The Honorable Benjamin J. Johnson, Presiding  
Divide County Civil No. 12-2021-DM-00006

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Note: Party names and names of minor(s) modified under N.D.R.App. P. 14

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## **STATEMENT OF THE ISSUES**

- ¶1 Whether the District Court correctly found that T.L.B. changed her surname to that of her new husband.
- ¶2 Whether the District Court decision correctly changed the child's surname to a hyphenated combination of both parents was correct.
- ¶3 Whether the District Court properly considered the name change request brought under the Uniform Parentage Act.
- ¶4 Whether the District Court properly considered emotional injury in changing the minor child's surname.

## **STATEMENT OF THE CASE**

- ¶5 Appellant T.L.B. (Tammi) and Appellee E.R.J. (Ed) are the biological parents of the minor child H.R.B. (the Child). Ed brought a Petition to Establish Paternity and for Primary Residential Responsibility of a Minor Child and to Change the Child's Surname. (R2). Ed's Petition requested, in relevant part, that Ed be adjudicated the natural father of the Child, for the Child to be awarded Ed's surname, for the birth certificate to be amended accordingly, and for such other and further relief as the Court deems just and equitable. (R2:2).
- ¶6 Tammi's answer simply denied Ed's allegation that it was in the best interest of the child to establish Ed's surname as that of the child. (R5:2;¶8). Tammi brought a Counterclaim seeking Ed's Petition be in all things dismissed, in addition to an Order for primary residential responsibility, parenting time, child support and "for such other and further relief as may be equitable and just." (R5:3:¶18;and ¶22). Tammi's request for relief was silent as to the issue of the child's surname. (R5:3).

¶7 With these clarifying points, Ed agrees with the remainder of Tammi's Statement of the Case.

### **STATEMENT OF THE FACTS**

¶8 Tammi's Statement of the Case without citations to the record is troublesome and requires a complete recitation of the facts as set forth on the record and properly considered by the lower Court.

¶9 Tammi and Ed share one child together, who was one year old at the time of the hearing on the name change. (R87:5:11-15). Tammi and Ed were never married, with Tammi testifying they have never been together. (R87:6:11-12). At the time of the child's birth Tammi gave the Child her surname. (R87:5:25).

¶10 Two weeks after the child was born Tammi and Ed met at a coffee shop in Crosby, the second time Ed had seen the child since her birth. (R87:9:24-25; 10:1-19; 17:4-25). Tammi presented Ed with an Acknowledgment of Paternity form to sign, which included the Child having Tammi's maiden name. (R87:23:22-25 and 24:1-5). Ed initially agreed to the Child having Tammi's last name to avoid a fight with Tammi so that he would be allowed to spend time with his daughter. (R87:24:6-25; 25:1-11; and 29:13-16). This all came at a time when Ed's time with the child was supervised and on Tammi's terms. (R87:12-19). Ed was not being allowed to see the Child without Tammi and wasn't allowed to take the child to introduce her to his family. When Tammi was reported to child services, Ed's parenting time ended and he and his family were not allowed to see the Child. (R87:24:12-19 and 31:2-21). Tammi never mailed the signed Acknowledgment of Paternity into the state of North Dakota to add Ed to the birth certificate and to confirm the Child's name. (R87:19:1-3).

- ¶11 Tammi testified that she assumed Ed is a good dad. (R87:7:10-11). She admitted that the Child spends equal time with both parents (R87:7:4-6), the Child has a good relationship with both of her families (R87:7:7-9), and Ed has been encouraging of an equal parenting plan without restricting her parenting time. (R87:20:18-25). Finally, Tammi testified that Ed exercises his parenting time, showing up when he is supposed to and does all of the things that a dad is supposed to do. (R87:7:112-16). Despite all of this, Tammi testified that Ed's request for a name change is an attempt to shut her out of the child's life, an attempt to wipe her, her name, and her family from the Child's life. (R87:20-16-17). All testimony that was refuted by Ed. (R87:26:20-25 and 27:1-2).
- ¶12 Prior to the hearing on the surname for the Child, Tammi was married to Zeke. (R.4:17). While Tammi testified that she has not changed her name (R13:15-16) Tammi admitted her marriage license contains her hyphenated legal name, which includes her maiden name and her husband's surname. (R87:4:25 – 5:11). Tammi further admitted to using her hyphenated last name in social settings, so people know that she is married to Zeke. (R87:20:1-7).
- ¶13 Tammi has one other child, DMO (Drake). (R87:7:22-24). At the time of Drake's birth, Tammi gave him the surname of a gentleman who was not his biological father. (R.8:5-20). Drake's surname was changed to that of his biological father approximately one year before the hearing for the Child's surname pending before Court. (R.8:4). At the time of the hearing Tammi, Zeke, Drake and the minor child lived in the same home, all utilizing different last names. (R12:13-15).

- ¶14 Ed has requested a name change due in part to the fact that the Child does not share the exact same name as anyone in his household and he would like her to have that family connection with others in the house, in addition to extended family members, including grandparents, cousins, aunt and uncle who all live nearby. (R87:25:12—21 and 26:1-8). Pride, family heritage and sharing that heritage through a common name is also important to Ed. (R87:25:22-24 and 26:9-11).
- ¶15 Ed also testified to the importance of sharing a name with siblings and the family around you, to ensure the Child always has a sense of belonging with her family and so she always knows she is family through the namesake. (R87:26:15-19). Ed also testified that the Child will be less confused and growing up with people having the same name as her will be easier for her. (R87:27:7-9). Despite Tammi's fears, Ed's testimony was clear this action has nothing to do with his fiancé, but this is about what he believes is best for his daughter. (R87:27:3-8).
- ¶16 Tammi opposed the name change for a number of reasons. First, they have never been married and have never been together. (R87:6:11) Second, she believes it is important for her daughter to carry her mother's maiden name since she was born out of marriage. (R87:6:13-14; 25 and R7:1). Tammi believes it is important to carry on her maiden name because "it's really important to me." (R87:6:15-17). Also because her maiden name "is almost gone." (R87:6:18-19; 13:21-23). Tammi offered testimony that it is more important for the child to carry on Tammi's maiden name than Ed's. (R87:6:20-22). Tammi has a fear that her daughter is being taken away from her if her name is changed. (R87:14:24-25 and

15:1). Ed offered testimony disputing this fear, testifying that Tammi is the child's mom and always would be and this was not an attempt to change that. (R87:26:20-25 and 27:1-2).

¶17 In addition to the rationale listed above, Tammi alleges she has not been able to sleep just thinking about the Child's surname being changed. (R87:15:13-14 and 16:4-8). She allegedly has had daily panic attacks just thinking about the name change. (R87:16:9-13). Tammi's husband, Zeke, admitted that the breakdowns he and Tammi testified to took place during a time when there was a contested custody dispute between the parties, and shortly after the parties began exercising an equal parenting schedule. (R87:34:24-25 and 35:1-14).

¶18 Ed requested in his testimony that the child be awarded his surname, but in the alternative, he requested the Child's name to be a hyphenated last name. (R87:28:3-10). Tammi testified she did not want a hyphenated last name. (R87:35:20-25).

### **STANDARD OF REVIEW**

¶19 While the general standard of review for name change petitions under N.D.C.C. Ch. 32-28 remains the abuse-of-discretion standard, the Court has recognized that whether there is "proper and reasonable cause" for a proposed name change of a minor child includes consideration of the best interests of the child. . Hartleib v. Simes, 2009 ND 205, 776 N.W.2d 217 (N.D. 2009), Grad v. Jepson, 2002 ND 153, ¶7, 652 N.W.2d 324. An examination of the best interests of the child is a factual process best suited for clearly erroneous review under N.D.R.Civ.P. 52(a). Edwardson v. Lauer, 2004 ND 218, ¶5, 689 N.W.2d 407 (N.D. 2004).

¶20 This Court has held that while the general standard of review for name change petitions under N.D.C.C. Ch. 32-28 remains the abuse-of-discretion standard, a district court's findings on the best interests of a child when deciding a petition to change the name of a minor child are subject to the clearly erroneous standard of review.

### **LAW AND ARGUMENT**

1. Whether the District Court properly found that T.L.B. changed her surname to that of her new husband.

¶21 Tammi testified her marriage license sets forth her hyphenated legal name, which includes her maiden name and her husband's surname. (R87:4:25 – 5:11).

Tammi further admitted to using her hyphenated last name in social settings, so people know that she is married to Zeke. (R87:20:1-7). While Tammi testified she had not taken the steps to change her maiden name, the testimony paints another picture. Further, Tammi testified that the Child did not share the same exact name of anyone in Tammi's home. (R:87:25:12-14). Tammi alleges she rehabilitated herself by correcting her testimony, however, the district court is in the best position to weigh the credibility of a witness and this Court will not reweigh the evidence or reassess the credibility of witnesses, nor will the Court substitute their judgment for a district court's on appeal. Koble v. Koble, 743 N.W.2d 797, ¶6, 2008 ND 11 (N.D. 2008).

¶22 The credibility of witnesses and the weight to be given their testimony is a question of fact for the trier of fact to determine. Kresel v. Giese, 231 N.W.2d 780, 784 (ND 1975). The district court has the opportunity to judge a witnesses'

credibility. A choice between two permissible views of the evidence in a case is not erroneous if the trial court's findings are based either on physical or documentary evidence, or inferences there from other facts, or on credibility determinations. Gabaldon-Cochran v. Cochran, 2015 ND 214, ¶20, 868 N.W.2d 501, 507. In bench trials, the credibility of witnesses and the weight that is given to their testimony are both **exclusively** functions of the trial court. Weber v. Weber, 512 N.W.2d 723, 727 (ND 1994). (*emphasis added*). Despite what Tammi would have the Court believe, there is evidence in the record to support the district court's findings of fact. A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support the finding, or if, on the entire record the Court is left with a definite and firm conviction a mistake has been made. Guardianship of M.H. v. M.H., 965 N.W.3d 874, ¶9 (ND 2021).

¶23 There was testimony from Tammi that her marriage license changed her surname to a hyphenated surname, that is all the court needed to consider. Whether she has taken the steps to change it anywhere else is not relevant, what is relevant is that her marriage license lawfully changed her surname. Pursuant to N.D.C.C. 14-03-20.1, a person's surname does not automatically change upon marriage, however, a person can elect to change the surname by which they wish to be known after the solemnization of the marriage by entering the new surname on the application, which has the effect of providing a record of the surname change. The marriage certificate containing the new surname constitutes proof that the use of the new surname is lawful. *See id.*

2. Whether the District Court decision properly changed the child's surname to a hyphenated combination of both parents was correct.

¶24 Under North Dakota's enactment of the Uniform Parentage Act, N.D.C.C. Ch. 14-17, district courts are implicitly granted the authority to change a minor child's surname, assuming such a change is in the minor's best interest. Interest of C.J.C., 2000 ND 27, ¶ 5, 606 N.W.2d 117. The specific statutory authority for this comes from N.D.C.C. § 14-17-14(3), which provides, “[t]he judgment or order [of the district court in an action brought under the Uniform Parentage Act] may contain any other provision... concerning ... any other matter in the best interest of the child....” Edwardson, 2004 ND 218 at ¶3. “A decision to order a surname change under N.D.C.C. § 14-17-14(3) is driven by an examination of the best interests of the child, which is a factual process best suited for clearly erroneous review under N.D.R.Civ. P. 52(a).” *See Edwardson* at ¶5.

¶25 It is clear the district court heard testimony from both parties regarding the name change and proceeded to contemplate the Child's best interests before issuing its judgment. The district court found that both parents have an appropriate parental relationship and emotional ties with the child, noting that adding Ed's last name to the child's would increase the emotional ties and that having a surname different than her mother and half-brother could be confusing to the Child. (R84:15:¶53 and R84:16:¶56). The district court recognized that Tammi holds herself out with her maiden name, recognizing she legally assumed her husband's last name. (R84:16:¶55). It is also noted that Ed has significant family contacts in the area, while Tammi offered no testimony concerning extended family activities.

(R84:16:¶54-55). There was specific concern for Tammi's willingness to facilitate a relationship with Ed and the child based upon the lack of parenting time Ed had prior to filing this matter, as well as Tammi's refusal to reach an agreement with regard to Ed's surname. (R84:16:¶58). Clearly the district court considered the best interests of the Child when making its determination. As stated previously, a choice between two permissible views of the evidence is not clearly erroneous and will not be disturbed by this Court on appeal. *See Edwardson* at ¶8.

¶26 Tammi would have the Court believe a hyphenated name was an alternative never raised or requested, however, both parties requested such other and further relief as the Court deemed just and equitable, opening the door to consideration of any combination of options. (R2:2) and (R5:3:¶18;and ¶22). The focus of the testimony centered around the best interests of the child and while a hyphenated surname was not the first choice of either parent, there was nothing preventing the district court from considering a hyphenated name and ultimately making the decision it did. Upon a consideration of the best interest factors the district court had the ability to make any determination it saw appropriate so long as the decision was in the best interests of the Child, and as requested in the plea for relief of both parties.

3. Whether the District Court properly considered the name change request brought under the Uniform Parentage Act,

¶27 The district court has the authority to change the name of a child for good cause shown under N.D.C.C. § 14-20-57(7), also known as the Uniform Parentage Act

(UPA). The UPA applies only to paternity actions. *See id.* The district court also has the authority to change a person's name under N.D.C.C. § 32-28-01. Chapter 32 applies to all name changes in North Dakota.

¶28 Statutory interpretation is a question of law. Statutes must be construed as a whole and harmonized to give meaning to related provisions and are interpreted in context to give meaning and effect to every word, phrase, and sentence. In construing statutes, it is necessary to consider the context of the statutes and the purposes for which they were enacted. When a general statutory provision conflicts with a specific provision in the same or another statute, the two must be construed, if possible, so that effect may be given to both provisions. When statutes relate to the same subject matter, this Court makes every effort to harmonize and give meaningful effect to each statute. State v. Castleman, 969 N.W.2d 169, ¶8, (N.D. 2022).

¶29 The district court has discretion when reviewing a petition for a name change under N.D.C.C. Ch. 32-28-02. Edwardson at ¶ 5; Grad, 2002 ND 153 at ¶ 5. Any person requesting a name change may file a petition in the district court, providing that the petitioner is a citizen or permanent resident alien, the petitioner has been a resident of the county for at least six months, and the petitioner provides the reason for the name change and the name requested. N.D.C.C. § 32-28-02(1). Proper and reasonable cause does not exist if the court determines that the request for a name change is made to defraud or mislead, is not made in good faith, will cause injury to an individual, or will compromise public safety. *See id.* In re Yates, 969 N.W.2d 195, ¶4, (N.D. 2022). When a minor is involved, the

requirement in N.D.C.C. § 32-28-02 that the court determine whether there is “proper and reasonable cause” for the proposed name change must include consideration of the best interest of the child. Hartleib, 2009 ND 205 at ¶40 *citing Edwardson*, at ¶ 5; Grad, at ¶ 7.

¶30 Ed’s request for a name change is due in part to the fact that the Child does not share the exact same name as anyone in his household and he would like her to have that family connection with others in the house, in addition to extended family members, including grandparents, cousins, aunt and uncle who all live nearby. (R87:25:12—21 and 26:1-8). Pride, family heritage and sharing that heritage through a common name is also important to Ed. (R87:25:22-24 and 26:9-11). Ed also testified to the importance of sharing a name with siblings and the family around you, to ensure the Child always has a sense of belonging with her family and so she always knows she is family through the namesake. (R87:26:15-19). Ed also believes that the Child will be less confused and growing up with people having the same name as her will be easier for her. (R87:27:7-9). Despite Tammi’s fears, Ed’s testimony was clear this action has nothing to do with his fiancé, but this is about what he believes is best for his daughter. (R87:27:3-8).

¶31 Tammi opposed the name change for a number of reasons. First, they have never been married and have never been together. (R87:6:11) Second, she believes it is important for her daughter to carry her mother’s maiden name since she was born out of marriage. (R87:6:13-14; 25 and R7:1). Tammi believes it is important to carry on her maiden name because “it’s really important to me.” (R87:6:15-17).

Also because her maiden name “is almost gone.” (R87:6:18-19; 13:21-23).

Tammi offered testimony that it is more important for the child to carry on Tammi’s maiden name than Ed’s. (R87:6:20-22). Tammi has a fear that her daughter is being taken away from her if her name is changed. (R87:14:24-25 and 15:1). Ed offered testimony disputing this fear, testifying that Tammi is the child’s mom and always would be and this was not an attempt to change that. (R87:26:20-25 and 27:1-2).

¶32 Tammi would have the Court believe Ed entered into the Acknowledgment for Paternity in bad faith because he believed that an action for a name change could be brought at a later time and that in of itself precludes him from bringing a petition for a name change at some point in the future. This argument is nonsensical. The document is nothing more than a piece of paper that both parties signed and did nothing with. Tammi did not file the document and can’t now rely upon the content of the document because it suits her needs. Neither party acted under the Acknowledgment of Paternity and while Tammi would argue bad faith on Ed’s behalf, she has not proven an intent to mislead or deceive another in bringing the name change action. A clear reading of the statute indicates the petition for the name change cannot be made if the petition is brought in bad faith. It has nothing to do with the Acknowledgment, what the parties set forth in that document, or what the intent was at that time. Despite Tammi’s allegation that the district court did not consider the Acknowledgment of Paternity being signed by Ed, she is wrong. The Findings of Fact clearly refers to the Acknowledgment

of Paternity signed by Ed. (R:84:13:¶42). The fact is, the document did not control Ed's ability to bring this action.

¶33 Similar to the facts in Hartleib, applying either the clearly erroneous standard or the abuse-of-discretion standard, the district court did not err in ordering a change of the Child's surname in this case. A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support it, or if the reviewing court is left with a definite and firm conviction a mistake has been made. Edwardson at ¶ 6." In re Berger ex rel. K.C.F., 778 N.W.2d 579, ¶8, 2010 ND 28 (N.D. 2010). The district court clearly stated its reasons for granting the name change, a proper analysis was done, and the district court did not err in ordering the name change. Upon review, this Court can't be left with a definite and firm conviction a mistake has been made. Again, a choice between two permissible views of the evidence in a case is not erroneous if the trial court's findings are based either on physical or documentary evidence, or inferences from other facts, or on credibility determinations. Gabaldon-Cochran, 2015 ND 214 at ¶20.

4. Whether the District Court properly considered emotional injury in changing the minor child's surname.

¶34 Tammi alleges the emotional injury she allegedly suffered should preclude the district court from changing the surname. Again, the district court is in the best position to weigh the credibility of a witness and the Court will not reweigh the evidence or reassess the credibility of witnesses, nor will the Court substitute their judgment for a district court's on appeal. Koble, 743 N.W.2d at ¶6. The district

court acknowledged Tammi’s testimony regarding her emotional state and clearly did not find the alleged injury rose to that of an injury that would preclude the name change.

¶35 N.D.C.C. § 32-28-02 explains proper and reasonable cause does not exist if the court determines that the request “will cause injury to an individual...”

Unfortunately, the statute does not define injury. In addition, the legislative history is silent as to what would be considered injury for this Chapter. SL 2015 Ch. 243 HB 1305 §1 eff. 8/1/2015.

¶36 The term “mental injury” is not a term in common use or for which dictionaries provide definitions consistent with common understanding. State v. O’Toole, 773 N.W.2d 201, ¶12, 2009 ND 174. Black’s Law Dictionary contains no definition of “mental injury.” Neither does Webster’s Dictionary. If broken up into its component parts, “mental” and “injury,” the combined term potentially encompasses any harm relating to the mind, whether brief or lasting, and whether mild or severe. This Court has concluded that “mental injury” is not among the commonly used words or phrases for which a jury may apply whatever definition it deems reasonable. Castleman, 969 N.W.2d 169 at ¶12. Unless defined or explained in the code, a word in a statute is “understood in [its] ordinary sense, unless a contrary intention plainly appears.” N.D.C.C. § 1-02-02; O’Toole, 773 N.W.2d at ¶11.

¶37 Section 14-09-22(1), N.D.C.C. refers to both “mental injury” and three variations of “bodily injury.” Unlike the undefined term “mental injury,” “bodily injury” is defined by reference to the criminal code definition in N.D.C.C. § 12.1-01-04(4).

The definition of “bodily injury” expressly includes any impairment of physical condition including physical pain. *See id.* The Court found the examination of this parallel definition of bodily injury to be inconclusive in determining the plain meaning of “mental injury.” Castleman, 969 N.W.2d 169 at ¶13. The Court in Castleman ultimately concluded the ordinary meaning of ‘mental injury’ as used in § 14-09-22(1) requires mental suffering and trauma that has some lasting, non-transitory effect. This may be shown by evidence of a medical diagnosis, counseling, behavioral changes, or other lasting effects of psychological, emotional, or other mental trauma. Castleman, 969 N.W.2d 169at ¶16 (N.D. 2022).

¶38 While it is understood the definition adopted in the abuse of child situation is not binding, it certainly can be instructive to provide a definition of mental injury. Tammi alleges she has suffered emotional injury as a result of the petition for the name change and further alleges the district court did not consider this. However, the district court indicated in the Judgment that Tammi testified to the emotional distress associated with the name change, clearly indicating the court considered this testimony. (R:84:13:¶44, ¶52) Tammi did not show a medical diagnosis, counseling, or other lasting effects of this alleged emotional distress. She and her husband simply testified to Tammi having an emotionally difficult time. Tammi’s husband, Zeke, admitted that the breakdowns he and Tammi testified to took place during a time when there was a contested custody dispute between the parties, and shortly after the parties began exercising an equal parenting schedule. (R87:34:24-25 and 35:1-14). Simply put, the district court considered the

testimony and did not find it compelling enough to preclude a name change, as evidenced in the ruling.

### **CONCLUSION**

¶39 The District Court's findings with regard to the minor child's surname were not clearly erroneous. A review of the District Court's order and the record as a whole do not lead to a firm conviction that a mistake has been made in this case. It is Ed's respectful request that this Court affirm the district court's Findings, Order and Judgment as to modification of the Child's surname.

### **CERTIFICATION**

¶40 I certify that this Brief is in compliance with North Dakota Rule of Appellate Procedure 32 and consists of 19 pages.

Dated this 8<sup>th</sup> day of November, 2022.

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NORTH DAKOTA SUPREME COURT

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E.R.J., )  
 )  
 Plaintiff and Appellee, )  
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 v. ) Supreme Court No. 20220199  
 )  
 T.L.B., )  
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 Defendant/Appellant. )

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**CERTIFICATE OF SERVICE**

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Appeal from the District Court  
Northwest Judicial District  
Divide County, North Dakota  
The Honorable Benjamin J. Johnson, Presiding  
Divide County Civil No. 12-2021-DM-00006

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¶1. I the undersigned attorney, do hereby certify that a true and correct copy of the above and foregoing: **BRIEF OF APPELLEE E.R.J.** was electronically served and filed via the North Dakota Supreme Court Odyssey File and Serve on the following:

Thomas J. Corcoran  
[tjc@corcoranlaw.com](mailto:tjc@corcoranlaw.com)

Dated this 8<sup>th</sup> day of November, 2022.

*/s/ Carrie L. Francis*  
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NORTH DAKOTA SUPREME COURT

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E.R.J.,	)	
	)	
Plaintiff and Appellee,	)	
	)	
v.	)	Supreme Court No. 20220199
	)	
T.L.B.,	)	
	)	
Defendant/Appellant.	)	

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**CERTIFICATE OF SERVICE**

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Appeal from the District Court  
Northwest Judicial District  
Divide County, North Dakota  
The Honorable Benjamin J. Johnson, Presiding  
Divide County Civil No. 12-2021-DM-00006

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¶1. I the undersigned attorney, do hereby certify that a true and correct copy of the above and foregoing: **BRIEF OF APPELLEE E.R.J. (corrected)** was electronically served and filed via the North Dakota Supreme Court Odyssey File and Serve on the following:

Thomas J. Corcoran  
[tjc@corcoranlaw.com](mailto:tjc@corcoranlaw.com)

Dated this 8<sup>th</sup> day of November, 2022.

*/s/ Carrie L. Francis*  
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