

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20190402
Rolette County District Case No. 40-2018-CV-00050
ORAL ARGUMENT REQUESTED

LAWRENCE LAVALLIE,

Plaintiff and Appellee,

v.

LORNE JAY,

Defendant and Appellant

and

MICHAEL CHARETTE,

Defendant and Appellee.

APPEAL FROM THE JUDGMENT ENTERED ON OCTOBER 24, 2019
BY THE DISTRICT COURT, NORTHEAST JUDICIAL DISTRICT,
ROLETTE COUNTY, STATE OF NORTH DAKOTA

THE HONORABLE ANTHONY S. BENSON, DISTRICT JUDGE

BRIEF OF PLAINTIFF/APPELLEE

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STATEMENT OF THE ISSUES

- I. Whether the District Court Correctly Determined That It Had Jurisdiction Over the Present Case.
- II. Whether the District Court Erred In Its Findings of Fact.
- III. Whether the District Court's Actions/Inactions Prejudiced the Defendant.

STATEMENT OF THE CASE

[¶1] This action arises out of an accident that occurred on County Road 43 in Rolette County on the evening of December 26, 2016. Prior to the accident, Plaintiff Lawrence Lavallie (hereinafter “Lavallie”) was driving his snowmobile on the roadway and Defendant Charette (hereinafter “Charette”) was driving his suburban, on the roadway, some distance behind. Just before the accident, Lavallie came upon a tractor, operated by Defendant Lorne T. Jay (hereinafter “Jay”), stopped in the middle of road, without any reflectors or lights. Lavallie stopped his snowmobile and tried to get Jay’s attention in an effort to get him off of the road. Unfortunately, Jay did not see, or understand, and did not leave the road. As Charette approached the tractor he was unable to stop. As he slid, Charette attempted to go between the vehicles on the road but, unfortunately, struck Lavallie causing him serious injuries, including the loss of his leg.

[¶2] Lavallie later brought this personal injury action in the Northeast District Court. Defendant Jay never filed an Answer, but did file a Motion to Dismiss. Defendant Charette never appeared in this action.

[¶3] A Pretrial Conference was held on May 28, 2019. Jay failed to appear for the conference. Prior to the hearing, Lavallie had waived his demand for a jury trial and, in light of Jay’s absence, the District Court decided to cancel the jury trial and proceed with a bench trial.

[¶4] The court trial was held on June 4, 2019, and in a decision dated October 10, 2019, the District Court found Jay to be 50% at fault for the accident. Lavallie and Charette were both found to be 25% at fault. The District Court also found that Lavallie suffered damages

in the amount of \$1,892,843.04 and, ultimately, Judgment against Jay was entered in the amount of \$946,421.76.

[¶5] On December 23, 2019, Jay filed a timely appeal. On April 8, 2020 he submitted his appellate brief arguing that the District Court lacked jurisdiction, that the District Court's Finding of Facts are incorrect and that he was prejudiced by the proceedings.

STANDARD OF REVIEW

[¶6] Lavallie requests oral argument to assist the Court in its understanding of the trial testimony, the District Court's findings of facts and conclusions of law, and the legal issues at play.

[¶7] A district court's decision on jurisdiction is reviewed de novo when jurisdictional facts are not in dispute. Rolette Cnty. Soc. Serc. Bd. V. B.E., 2005 ND 101, 687 N.W.2d 333. When the underlying facts are disputed, though, a court is presented with a mixed question of law and fact. Schirado v. Foote, 2010 ND 136, ¶ 7, 785 N.W.2d 235. In that situation, the question of law is reviewed de novo while the findings of facts are reviewed under the clearly erroneous standard. Id. The Court's review of the findings of facts under the clearly erroneous standard is well establish:

In an appeal from a bench trial, the trial court's findings of fact are reviewed under the clearly erroneous standard of N.D.R.Civ.P. 52(a) and its conclusions of law are fully reviewable. Fargo Foods, Inc., v. Bernabucci, 1999 ND 120, ¶ 10, 596 N.W.2d 38. A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, after reviewing all the evidence, we are left with a definite and firm conviction a mistake has been made. Moen v. Thomas, 2001 ND 95, ¶ 19, 627 N.W.2d 146. "In a bench trial, the trial court is 'the determiner of credibility issues and we do not second-guess the trial court on its credibility determinations.'" Id. at ¶ 20.

Fladeland v. Gudbranson, 2004 ND 118, ¶ 7, 681 N.W.2d 431.

STATEMENT OF THE FACTS

[¶8] This lawsuit involves an accident that occurred on County Road 43, in Rolette County, on December 26, 2016. All evidence in the record shows that County Road 43 is located outside the external boundaries of the Turtle Mountain Reservation. App. p. 7; Dist. Ct. No. 40-2018-cv-50, Index # 8, 9, 23. The incident occurred well after sunset on an evening that was dark and stormy, with wind-driven snow. FOF ¶ 4, App. p. 10; Tr. Tscpt p. 70, 78-79, App. p. 22, 30-31. Just before the accident, Lavallie was traveling on his snowmobile on County Road 43, a road that runs directly in front of Jay's residence. FOF ¶ 4, App. p. 9-10; Tr. Tscpt p. 69-71, 139-140, App. p. 21-23, 32-33. Charette was following Lavallie on the same roadway, driving his suburban some distance behind. FOF ¶ 4, App. p. 10; Tr. Tscpt p. 71-72, App. p. 23-24.

[¶9] As Lavallie was travelling down the roadway, he came upon a tractor, operated by Jay, in the middle of the road. FOF ¶ 4, App. p. 10; Tr. Tcspt p. 71, 73, App. p. 23, 25. The tractor had no lights and no reflective devices. *Id.* Jay acknowledged that, at the time of the accident, he was blowing snow to clear his driveway and, obviously, the flying snow further impaired visibility at the scene. FOF ¶ 6, App. p. 10; Tr. Tcspt p. 139, App. p. 32.

[¶10] Fortunately, Lavallie was able to see Jay's tractor and stopped his snowmobile short of the tractor. FOF ¶ 4, App. p. 10; Tr. Tcspt p. 71, App. p. 23. The situation concerned Lavallie as he was not sure that Charette would be able to stop in time to avoid a collision. FOF ¶ 4, App. p. 10; Tr. Tcspt p. 71-72, 75-76, App. p. 23-24, 27-28. In an effort to avoid a calamity, Lavallie stood up on his snowmobile and tried to get Jay's attention. FOF ¶ 4, App. p. 10; Tr. Tscpt p. 72, 77, App. p. 24, 29. Unfortunately, Jay did not see Lavallie and he remained on the roadway. FOF ¶ 6, App. p. 10; Tr. Tscpt p. 72, 77, App. p. 24, 29. After

the accident, Charette told Lavallie that he had been unable to stop his vehicle so he attempted to drive between Lavallie's snowmobile and Jay's tractor. FOF ¶ 5, App. p. 10; Tr. Tscpt p. 79, App. p. 31. Unfortunately, rather than going between the vehicles, Charette struck Lavallie on the snowmobile, causing very significant injuries to Lavallie's right leg, which ultimately required amputation. FOF ¶ 7, App. p. 11; Tr. Tscpt p. 79. App. p. 31; Tr Tscpt p. 90, 92-93.

[¶11] Lavallie initiated this action in Rolette County District Court against Jay and Charette. Neither Defendant ever answered the Complaint. However, Jay did appear and did file a motion to dismiss on jurisdictional grounds. Dist. Ct. No. 40-2018-cv-50, Index # 22. Jay did not request a hearing on the motion. Id. Lavallie filed a response and resistance to the motion. Dist. Ct. No. 40-2018-cv-50, Index # 7.

[¶12] Jay did not file a brief in support of his motion to dismiss. However, he did submit a number of documents in support of his motion. Dist. Ct. No. 40-2018-cv-50, Index # 23. One of the exhibits was a photograph/map identifying tribal trust land that is adjacent to County Road 43. Id. Of note, the diagram does not indicate, or suggest, that County Road 43 is on tribal land. In fact, to the extent it is decipherable, it shows otherwise.

[¶13] In his response to Jay's motion, Lavallie submitted North Dakota maps showing that County Road 43 is outside the external boundaries of the Turtle Mountain reservation. Dist. Ct. No. 40-2018-cv-50, Index # 8, 9. In addition, Lavallie asked the District Court to take judicial notice that the County Road, where the accident occurred, is outside the external boundaries of the reservation. Dist. Ct. No. 40-2018-cv-50, Index # 7 at ¶8.

[¶14] On May 16, 2019, Lavallie filed a waiver of his request for a jury trial. Dist. Ct. No. 40-2018-cv-50, Index # 29. The document was properly served upon both defendants.

Dist. Ct. No. 40-2018-cv-50, Index # 30. On May 28, 2019 the District Court held the Pretrial Conference in this matter. App. p. 18. The conference had been properly noticed to all parties. App. p. 18; Dist. Ct. No. 40-2018-cv-50, Index # 26, 28. Lavallie's counsel appeared at the hearing, but defendant Jay failed to appear. App. p. 18. At the hearing, the District Court advised that the matter would proceed by bench trial. Id.

[¶15] On May 29, 2019 the District Court issued a ruling denying Jay's motion to dismiss for lack of jurisdiction. In its order, the District Court noted that Jay had not submitted a brief to support his argument and that, accordingly, denial of the motion was appropriate. App. p. 7. In addition, the District Court determined that the accident appears to have occurred on the roadway and that, as a matter of law, the District Court retains jurisdiction over the accident. Id.

[¶16] On June 4, 2019 the court trial proceeded in this matter. Jay appeared at trial, cross examined witnesses, and provided testimony. Tr. Tscpt p. 137-144. Jay did not, during any point of the trial, advise the District Court or Lavallie's counsel that he objected to proceeding with a bench trial. After hearing all of the evidence, the District Court directed the parties to submit post-trial briefs. Tr. Tscpt p. 148. Lavallie and Jay both filed post trial briefs. Dist. Ct. No. 40-2018-cv-50, Index. # 66, 68. Jay's brief made no reference, or argument, to suggest that it was improper to proceed with the bench trial or that he had been prejudiced. Dist. Ct. No. 40-2018-cv-50, Index. # 66

LAW AND ARGUMENT

I. The District Court Had Jurisdiction Over This Action.

[¶17] In his brief, Jay contends the District Court lacked subject matter jurisdiction over this action. While his arguments are not entirely clear, his argument appears to be based on

two theories: 1) the accident occurred on tribal land, and 2) all parties in this action are enrolled members of the Turtle Mountain Band of Chippewa. Both theories are offered without supporting evidence. In fact, as to the location of the accident, all evidence submitted by all parties (including Jay) is, actually, contrary.

[¶18] Jay also contends the District Court lacked personal jurisdiction. However, in review of his brief, Lavallie believes Jay is actually alluding to subject matter jurisdiction as his arguments are the same. Regardless, there is no question that personal jurisdiction is satisfied as Jay was properly served, and he has appeared and defended this action. Dist. Ct. No. 40-2018-cv-50, Index # 3.

A. The Accident in this Action Occurred Outside the External Boundaries of the Turtle Mountain Reservation.

[¶19] Jay first contends that the District Court lacked subject matter jurisdiction over the present claim because the accident occurred on tribal land. Appellant's Br. p. 2, 4-5. In reality, though, nearly all evidence that was presented to the court, by both parties, showed otherwise.

[¶20] In response to Jay's motion to dismiss, Lavallie presented North Dakota roadmaps showing that County Road 43 is entirely outside the external boundaries of the Turtle Mountain Reservation. In addition, Lavallie encouraged the District Court to take judicial notice of the fact that County Road 43 is outside the external boundaries of the reservation as it is a generally known fact that can be readily determined by reliable sources. N.D.Evid.E. 201(b). Perhaps more importantly, the evidence offered by Jay included a photo/map of tribal trust land. Dist. Ct. No. 40-2018-cv-50, Index # 23 at p. 1. A quick review of the exhibit shows that Jay's farm, adjacent to the roadway, may be on tribal land but it confirms that County Road 43 is not tribal land. Id.

[¶21] Generally, state courts have jurisdiction over claims against tribal member for torts that arise outside of the reservation boundaries. Roe v. Doe, 2002 ND 136, ¶ 28, 649 N.W.2d 566. See also State v. B.B., 2013 ND 242, ¶ 10, 840 N.W.2d 651, 654. The tribal courts have exclusive jurisdiction in only two cases:

There are two categories of claims over which the United States Supreme Court has held tribal courts have exclusive civil jurisdiction under the infringement test. Included in the first category are those claims in which a non-Indian asserts a claim against an Indian for conduct occurring on that Indian's reservation. See WILLIAMS v. LEE, 358 U.S. 217, 223 (1959). In the second category, are those claims in which all the parties are members of the same Indian tribe and the claim involves conduct occurring on that tribe's reservation.

Roe, at ¶8.

[¶22] Jay, now, asserts his tractor was not on the highway at the time of the accident, presumably arguing the accident occurred on his driveway. Appellant Br. p. 9. Jay's testimony at trial, though, appears to have acknowledged that the accident occurred on the roadway. App. p. 32. Similarly, Defendant Jay's closing argument brief seems to acknowledge that the accident occurred on the roadway, as he argues that the accident happened on the left side of the road but never suggests it occurred off of the roadway. Dist. Ct. No. 40-2018-cv-50, Index # 66. On the other hand, the trial transcript is replete with testimony that the accident occurred on the road. Lavallie testified that the accident was on the road. Lavallie drew a picture on the roadway identifying where the tractor was located. Dist. Ct. No. 40-2018-cv-50, Index # 61. Jay's testimony, albeit confusing, suggests the accident took place on the road. In fact, even Jay's photos, taken the day after the accident, are of the roadway. Dist. Ct. No. 40-2018-cv-50, Index # 64. It is hard to imagine why Jay would have taken a photo of the road, other than the fact the accident occurred there.

[¶23] After hearing all evidence, the District Court found the accident occurred on Country Road 43. The District Court's Findings of Fact is reviewed under the clearly erroneous standard that can be overturned only if there is no evidence to support it or if, after reviewing all the evidence, the Court is left with a definite and firm conviction a mistake has been made. Moen v. Thomas, 2001 ND 95, 627 N.W.2d 146. Jay's bald assertion that the accident did not occur on County Road 43 is without merit. In reality, there is virtually no evidence in the record to support that the accident occurred anywhere but the roadway whereas there is a significant amount that it occurred on the roadway. Therefore, the District Court's findings of fact are not clearly erroneous and should not be disturbed.

B. There is a Lack of Evidence of the Tribal Member Statuses of the Parties in this Action and, Moreover, the Parties Tribal Member Status is Inconsequential.

[¶24] Jay next asserts the District Court lacked jurisdiction because the parties were enrolled members of the Turtle Mountain Band of Chippewa. Appellant's Br. p. 2-4. Of note, Jay failed to submit any evidence to support the notion that all parties of the case are enrolled members. Notwithstanding, according to the North Dakota Supreme Court, state courts retain jurisdiction over tribal members outside of the Indian country, even when the conduct involves only tribal members. State v. BB., 2013 ND 242, ¶ 10, 840 N.W.2d 651, 654; Roe v. Doe, 2002 ND 136, ¶ 28, 649 N.W.2d 566.

[¶25] As set out earlier, there can be no reasonable dispute that County Road 43 is outside the external boundaries of the Turtle Mountain Indian Reservation. Here, the District Court found in its unassailable Findings of Facts that the accident happened on the roadway. Since the District Court clearly retains jurisdiction over tribal members outside the external boundaries of the reservation, Jay's argument should be rejected.

II. The District Court Did Not Err In Its Findings of Facts.

A. The District Court Is Granted Discretion In Determining Credibility Of Witnesses.

[¶26] Jay also argues in his brief that the District Court erred in its Findings of Facts. Boiled down, he appears to contend that there was conflicting testimony and the District Court erred weighing the credibility of the testimony provided. Appellant's Br. p. 6-9. Of course, this court has repeatedly stated that it does not reweigh evidence or reassess credibility, nor does it re-examine findings of fact made upon conflicting testimony. Wachter v. Gratch Co., 2000 ND 62, ¶ 17, 608 N.W.2d 279. Instead, this Court gives due regard to the trial court's opportunity to determine the credibility of the witnesses. Id.

[¶27] At trial, Lavallie testified that Jay's tractor was in the middle of County Road 43 without lights or reflectors. A picture of the road just off Jay's property was admitted into evidence and Lavallie drew where the tractor was at the time of the accident. The exhibit depicted Jay's tractor in the middle of the road. At best, Jay offered ambiguous testimony relating to the location of the tractor he was operating at the time of the accident. In addition, Jay only offered one exhibit, a picture he took of the road morning after the accident. Again, the fact that he took that picture supports the fact that it occurred on the road. Tr. Tscpt p. 117. Finally, in his closing argument brief Jay does not argue that the accident occurs on the road. Dist. Ct. No. 40-2018-cv-50, Index # 66. In fact, it appears to acknowledge that it happened on the left side of the road. Id.

[¶28] After considering all of the evidence, the District Court determined in its Finding of Fact that Jay's tractor was blowing snow on the roadway of County Road 43 at the time of the accident. In finding the tractor was on the road, the District Court accepted Lavallie's testimony as more credible and better supported than Jay's, alleged, evidence. Under

controlling case law, the District Court's Findings of Fact should not be disturbed in this action.

B. The District Court Correctly Assessed And Apportioned Negligence Among The Parties.

[¶29] After hearing all of the evidence the District Court found Jay 50% at fault for the accident. Jay contends that 50% is unfair and inconsistent with the evidence. Appellant's Br. p. 8-9. As set out above, this court has indicated that the findings of facts are reviewed under the clearly erroneous standard. Coughlin Constr. Co. v. Nu-Tec Indus., 2008 ND 163, ¶ 9, 755 N.W.2d 867. The burden to meet that standard is the obligation of the requesting party.

[¶30] Lavallie provided the District Court with testimony regarding the accident and presented exhibits that, he believed, assisted the court in finding Jay negligent. Jay, of course, had the right to cross examine, testify and present evidence. After hearing all evidence, by both parties, the District Court found that Jay was negligent in the operation of his tractor while blowing snow on County Road 43. In finding Jay responsible for 50% of the fault, the District Court stated that if Jay's tractor was not in the middle of County Road 43 and had proper lights, or reflectors, the accident would not have occurred.

[¶31] In making that decision, The District Court took into the consideration all the evidence presented from both parties, weighed the credibility of the parties, and entered its Findings of Fact. The decision by the District Court is eminently reasonable and, in fact, consistent with a vast bulk (if not all) of the evidence. Accordingly, the District Court did not clearly err in its determination of fault and Jay's 50% fault apportionment should not be disturbed.

III. The District Court Did Not Prejudice The Defendant By Holding A Bench Trial Or By Ruling On Defendant's Motion To Dismiss Without A Hearing.

A. The District Court Did Not Prejudice The Defendant By Holding A Bench Trial.

[¶32] Jay argues that he was not prepared on the day of trial because he thought *voir dire* would take place on June 4, 2019. Appellant's Br. p. 3. In making this argument, it appears that Jay is arguing the District Court prejudiced his defense in some way; however, his Appellant Brief does not explicitly make that argument. Of course, the Court should "not consider an argument that is not adequately articulated, supported, and briefed." Hale v. State, 2012 ND 148, ¶ 40, 818 N.W.2d 684, 697. More importantly, though, Jay fails to present any evidence, or even explain his rationale, to support this new argument. That argument should be rejected as this court should not address new issues raised for the first time on appeal. Coughlin Constr. Co. v. Nu-Tec Indus., 2008 ND 163, ¶ 9, 755 N.W.2d 867.

[¶33] Jay argues in his brief he was not given notice that the jury trial had been waived. Appellant's Br. p. 3. That is inaccurate. In reality, Jay was sent a Waiver of Jury Demand by Lavallie via mail on May 16, 2019. An Affidavit of Service by Mail on Defendants was filed with the court on the same day. Jay was free to object to the waiver or make his own demand for a jury at the final Pretrial Conference (which he missed) or at the trial itself. This argument should not be raised for the first time an appeal.

[¶34] As Jay admitted in his brief, there is no record that he objected to a bench trial. Appellant's Br. p. 3. In reality, the record shows he had a number of opportunities. First, of course, he could have appeared for the properly scheduled Pretrial Conference. Next, on the day of trial, the Honorable Judge Benson specifically asked Jay if he had any questions

about the procedure of trial. App. p. 19. Jay responded, “no.” *Id.* A short time later Judge Benson asked if there was “anything to address before we get into it Mr. Jay?” App. p. 20. Once again, Jay responded “no.” *Id.* Finally, in his closing argument brief, Jay never referenced any concern regarding the lack of a jury trial.

[¶35] Jay had multiple opportunities to alert the court to his lack of readiness for trial, suggest that he was unprepared, or claim that he was prejudiced. Instead, he raises this issue for the first time on appeal. The argument is without merit and should be rejected.

B. The Defendant Did Not Request A Hearing For His Motion To Dismiss; Therefore, Was Not Given A Hearing.

[¶36] Jay also argues that he “deserved” to have a hearing on his Motion to Dismiss. Appellant’s Br. p. 4. Of importance, though, Jay never requested a hearing. Under clear rules governing the District Court, when a party files a motion he or she is required to request a hearing on the motion or the motion will be decided on the briefs. North Dakota Rules of Court, Rule 3.2. Gleason v. Magers (In re Estate of Amundson), 2015 ND 253, ¶ 14, 870 N.W.2d 208. Even if a pro-se litigant lacks understanding of the applicable rules of procedure, this Court has consistently held that a pro-se litigant is bound by the rules just like an attorney. State v. Fischer, 2007 ND 22, ¶ 24, 727 N.W.2d 750. Here, Jay must be held to that standard.

[¶37] Jay is, obviously, aware of his right to a hearing as his appeal brief states that, “if he had requested a hearing on his Motion, it would be granted under N.D.R.Civ.P. 3.2(a)(3).” Appellant’s Br. p. 4. It is also clear that Jay had opportunities to present and argue his position. For example, if he had appeared at the Pretrial Conference, he would have had an opportunity to argue his position effectively at the hearing. App. p. 18. Similarly, he could have made his argument before the trial evidence began. He could have,

even, made the argument on either of the two occasions that the District Court asked him if he had questions or if had anything else to address.

[¶38] Finally, and perhaps most important, Jay fails to articulate, in his brief, how a hearing on the jurisdiction motion would have helped, or furthered, his position. The reality is that the substantive law supports that the District Court's ruling on the jurisdiction issue. This court should reject, as precedent dictates, any argument that is not supported or explained. Hale, 2012 ND 148 at ¶ 40.

[¶39] Ultimately, an argument that Jay deserved, or should have been awarded a hearing on the jurisdiction motion is without merit.

CONCLUSION

[¶40] The District Court correctly determined, as a matter of law and as a matter of fact, that it had jurisdiction over this matter. Equally clear, the District Court's Findings of Facts and Conclusions of Law, on all issues, are abundantly supported by the record. Finally, the District Court did not prejudice the Defendant, in any way, by holding a bench trial and by deciding the jurisdiction question on brief.

[¶41] Based on the foregoing argument, Lawrence Lavallie respectfully requests that this court uphold all decisions and rulings by the District Court.

Respectfully submitted this 8th day of May, 2020.

McGEE, HANKLA & BACKES, P.C.

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CERTIFICATE OF COMPLIANCE

[¶42] The undersigned hereby certifies that the foregoing Brief of Plaintiff/Appellee complies with the page limit requirements imposed by Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure. The Brief of Plaintiff/Appellee contains Nineteen (19) pages.

DATED this 8th day of May, 2020.

MCGEE, HANKLA & BACKES, P.C.

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CERTIFICATE OF SERVICE

[¶43] I hereby certify that on May 8, 2020, I served the foregoing Brief of Plaintiff/Appellee on the following parties by U.S. Mail:

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DATED this 8th day of May, 2020.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

<p>Lawrence Lavallie, Plaintiff-Appellee,</p> <p>vs.</p> <p>Lorne Jay, Defendant-Appellant,</p> <p>Michael Charette, Defendant-Appellee</p>	<p style="text-align:center">Supreme Court No. 20190402 Barnes County No. 40-2018-CV-00050</p>
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CERTIFICATE OF SERVICE

[¶1] I hereby certify that on May 8, 2020, the following document(s):

- 1. Plaintiff/Appellee’s Appendix to Supreme Court Brief;**
- 2. Plaintiff/Appellee’s Supreme Court Brief**

was/were filed electronically with the Clerk of the Supreme Court through ECF, and served by mail upon the following parties:

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[¶2] Dated this 8th day of May, 2020.

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