NORTH DAKOTA SUPREME COURT REVIEW

The North Dakota Supreme Court Review summarizes important decisions rendered by the North Dakota Supreme Court. The purpose of the Review is to indicate cases of first impression, cases of significantly altered earlier interpretations of North Dakota law, and other cases of interest. As a special project, Associate Editors assist in researching and writing the Review.* The following topics are included in the Review:

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TORTS – STATING A CLAIM FOR SLANDER, IIED, AND UNLAWFUL INTERFERENCE

Killoran v. Kaler

In *Killoran v. Kaler*, the North Dakota Supreme Court addressed the notice pleading standard under N.D.R.Civ.P. 8(a) and the application for a motion to dismiss under N.D.R.Civ.P. 12(b)(6).[1] Plaintiffs Joe and Lora Killoran ("the Killorans"), along with their enterprises Maple Valley Ag Products, LLC ("Company") and Maple Valley Ag Chemical, Inc. ("Corporation"), brought suit against Kip Kaler, attorney for the Maple Valley Oil Association Co-op ("Co-op"), for remarks made at Co-op board meeting.[2] The Killorans alleged three causes of actions against Kaler: slander, intentional infliction of emotional distress (IIED), and unlawful interference with business.[3] Kaler moved to dismiss the complaint under N.D.R.Civ.P. 12(b)(6), and the district court granted Kaler's motion.[4]

Joe Killoran was the manager of the Co-op, which faced economic uncertainty after the price of oil plummeted in 2020.[5] As a result of the price of oil dropping, the Co-op borrowed money from the Company to combat the impending losses the Co-op would suffer.[6] The transfer was approved by the board members of the Co-op, and a board meeting was called in April 2023.[7] In attendance at the April 2023 meeting were businesspersons from the local community, customers of the Corporation and Company, and the Co-op's attorney, Kaler.[8] Kaler spoke at the April 2023 meeting, calling Joe and Lora Killoran "crooks and thieves," and told the people in attendance not to do business with the Killorans.[9]

In June 2023, the Co-op held their annual meeting with the same attendees from the April meeting and the addition of Joe and Lora Killoran.[10] Kaler again spoke at the meeting and echoed the same sentiment from the April meeting.[11]

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1. *See* 2025 ND 64, ¶¶ 9-10, 18 N.W.3d 867, 872.
2. *Id.* ¶¶ 3-5.
3. *Id.* ¶ 2.
4. *Id.* ¶ 8.
5. *Id.* ¶ 4.
6. *Id.*
7. *Id.* ¶¶ 4-5.
8. *Id.* ¶ 5.
9. *Id.*
10. *Id.* ¶ 6.
11. *Id.*

Kaler told the attendees of the June 2023 meeting that Joe and Lora Killoran are "untrustworthy, crooks and thieves" and the attendees should "not do business with the Killorans."[12]

The Killorans operated their two enterprises in the small cities of Buffalo, North Dakota, and Tower City, North Dakota.[13] Given the small population in both cities, the reputations of the Killorans in the community were important to them.[14] Kaler's statements at the April and June board meetings were false, and, as a result, the Killorans' enterprises experienced a significant decrease in revenue and profits.[15] Because of this, the Killorans brought a three-count complaint alleging slander, IIED, and unlawful interference with business against Kaler in the District Court of Cass County, East Central Judicial District, in North Dakota.[16]

The district court dismissed all counts pursuant to Kaler's motion to dismiss under N.D.R.Civ.P. 12(b)(6).[17] The district court ruled that the claim for slander did not satisfy rule N.D.R.Civ.P. 8(a) in that the Killorans "failed to sufficiently plead any fact for any statement made by Kaler."[18] Further, the district court explained that the failure to provide factual support for the April 2023 statements coupled with the failure to adequately plead falsity for the June 2023 statements was fatal for the Killoran's claim.[19] Next, the district court discussed the dismissal of the IIED claim stating, "[t]he facts alleged [d]o not constitute conduct sufficiently extreme and outrageous to permit recovery."[20] Finally, the district court dismissed the unlawful interference with a business claim because "without the slander or IIED claim, the Killorans did not have an independent tort to support a claim for unlawful interference with a business."[21] The Killorans submitted a timely appeal to the North Dakota Supreme Court.[22]

12. *Id.*
13. *Id.* ¶ 3.
14. *Id.*
15. *Id.* ¶¶ 3, 7.
16. *See id.* ¶ 2.
17. *Id.* ¶ 8.
18. *Id.* ¶¶ 8-9 ("Under N.D.R.Civ.P. 8(a), a pleading that states a claim for relief must contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" (quoting Krile v. Lawyer, 2022 ND 28, ¶ 28, 970 N.W.2d 150, 158)).
19. *Id.* ¶ 8.
20. *Id.* (alterations in original).
21. *Id.*
22. *Id.* ¶ 1.

On appeal, the Killorans argued that the district court erred on two grounds.[23] First, the Killorans argued that the district court "erred in dismissing the complaint on grounds not raised by Kaler in his motion to dismiss."[24] Second, the Killorans argued the district court erred by improperly applying the notice pleading standard in granting Kaler's motion to dismiss.[25]

The North Dakota Supreme Court began its analysis by reviewing the notice pleading standard under N.D.R.Civ.P. 8(a).[26] The Court explained that a pleading need only be concise and contain "a short and plain statement of the claim showing that the pleader is entitled to relief."[27] A complaint "must be sufficient to inform and notify the adversary and the court of the pleader's claim."[28] The Court, calling upon caselaw, stated:

> Rule 8 does not require the complaint to have detailed factual allegations, but allegations that are merely conclusory statements unsupported by factual allegations are not sufficient to state a claim of action. Well-pleaded factual allegations are entitled to an assumption of truth, but conclusions unsupported by factual allegations are not.[29]

Next, the Court examined the requirements for a motion to dismiss under N.D.R.Civ.P. 12(b)(6).[30] The Court explained that the "legal sufficiency of a claim is tested by a motion to dismiss."[31] The Court further noted that motions to dismiss are viewed in the light most favorable to the plaintiff with well-pleaded allegations treated as true.[32] Motions to dismiss under Rule 12(b)(6) should only be granted when it appears impossible to prove a claim upon which relief could be granted.[33] A district court's decision to dismiss a complaint is reviewed de novo because motions under Rule 12(b)(6) are viewed with disfavor.[34] Thus, a district court's decision to dismiss a complaint will only be affirmed if the reviewing court cannot discern a possible avenue to prove the allegations.[35]

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23. *Id.* ¶ 11.
24. *Id.*
25. *Id.*
26. *See id.* ¶ 9.
27. *Id*. (quoting N.D.R.Civ.P. 8(a)).
28. *Id.* (quoting Krile v. Lawyer, 2022 ND 28, ¶ 28, 970 N.W.2d 150, 158).
29. *Id.* (quoting *Krile*, 2022 ND 28, ¶ 28, 970 N.W.2d 150); *see also id.* ("If the pleadings indicate generally the type of claim involved, they satisfy the spirit of Rule 8(a), N.D.R.Civ.P" (quoting Williams v. State, 405 N.W.2d 615, 621 (N.D. 1987)).
30. *See id.* ¶ 10.
31. *Id.* (quoting Severance v. Howe, 2023 ND 197, ¶ 8, 997 N.W.2d 99, 103).
32. *Id.* (citing *Krile*, 2022 ND 28, ¶ 16, 970 N.W.2d 150).
33. *Id.* (citing *Krile*, 2022 ND 28, ¶ 16, 970 N.W.2d 150).
34. *Id.* (citing *Krile*, 2022 ND 28, ¶ 16, 970 N.W.2d 150).
35. *Id.* (citing *Krile*, 2022 ND 28, ¶ 16, 970 N.W.2d 150).

The Court then addressed the first of three claims brought by the Killorans, the claim for slander.[36] Kaler moved to dismiss the comments made at both of the board meetings by claiming: "Kaler's comments were protected by qualified privilege; the Killorans are limited-purpose public figures; and the Killorans did not sufficiently plead malice."[37] However, the district court dismissed the complaint on grounds not raised by Kaler in his motion and declined to address whether Kaler's statements were privileged.[38] Instead, the district court dismissed the Killorans' complaint for failure to state a claim upon which relief can be granted.[39]

In examining this situation, the North Dakota Supreme Court turned to precedent that faced the issue of whether a district court has the authority to dismiss a complaint with prejudice sua sponte.[40] The Court also sought guidance from federal interpretations of the Federal Rules of Civil Procedure and North Dakota precedent applying federal interpretations.[41] Despite acknowledging that a district court may dismiss a complaint sua sponte, the Court notes that this act must be used sparingly and with great care to protect the rights of the respective parties.[42] The Court pointedly notes, sua sponte *does not mean* without notice.[43]

The notice requirement hails from North Dakota precedent citing federal interpretations, providing "when a court dismisses an action sua sponte, it is still required to give the parties notice of its intent to do so and an opportunity to respond."[44] Here, the district court was required to give notice to the parties before dismissing the complaint on grounds by not raised by Kaler.[45] Kaler did not contend that notice was given but urged the Court to affirm the district's court's ruling because the district court reached the correct result.[46] The Court rejected that argument and held that the district court may not dismiss a complaint sua sponte without notice to the parties and an opportunity to respond.[47]

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36. *See id.* ¶ 12.
37. *Id.*
38. *See id.*
39. *Id.*
40. *See id.* ¶ 13 (citing Albrecht v. First Fed. Sav. & Loan Ass'n of Grand Forks & Minot, 372 N.W.2d 893, 894 (N.D. 1985)).
41. *Id.* ("After looking to federal court's interpretations of the Federal Rules of Civil Procedure, 'we adopt[ed] the principle articulated by the federal courts that a court may, of it's own initiative, note the inadequacy of a complaint and dismiss it for failure to state a valid claim.'" (alteration in original) (quoting *Albrecht*, 372 N.W.2d at 894)).
42. *Id.* (citing *Albrecht*, 372 N.W.2d at 894-95).
43. *Id.*
44. *Id.* (quoting City of Jamestown v. Snellman, 1998 ND 200, ¶ 10, 586 N.W.2d 494, 496).
45. *Id.* ¶ 14.
46. *Id.*
47. *Id.* ¶ 15.

Next, the Court addressed the notice pleading standard under N.D.R.Civ.P. 8 after the district court addressed the motion to dismiss sua sponte.[48] The Court briefly recited the origin of slander before analyzing whether the Killorans sufficiently pled a claim for relief.[49] Under the North Dakota Constitution, every person "may freely write, speak, and publish his opinions on all subjects, being responsible for the abuse of that privilege."[50] Just the same, under North Dakota law, every person has the right of protection against defamation, including slander and libel.[51] The Court explained that slander is a false and unprivileged publication other than libel and that such publication must be false to be defamatory.[52]

The district court was persistent on a few purportedly defective aspects of the Killorans' complaint.[53] Namely, that the Killorans did not "specify the names, titles, roles, or duties of any other attendees" at the April 2023 or June 2023 Co-op board meetings.[54] Similarly, the district court opined that the alleged statements made by Kaler did not feature quotation marks, thus creating a question of ambiguity about what exactly was said.[55] However, the Supreme Court disagreed with the reasoning provided by the district court, stating that "Rule 8(a)(1) only requires a short plain statement of the claim; it does not require that the complaint contain detailed factual allegation."[56] The Supreme Court disagreed with the district court's reasoning concerning the absence of factual evidence to support the Killorans' short and plain statement.[57] The Court explained, "at this stage of the proceeding, the Killorans were not required to identify who was at the meetings, identify witnesses, or submit exhibits in support of their allegations."[58] Notably, had either party submitted evidence in the form of affidavits, letters, texts, emails, etc., then the motion to dismiss would have been treated as a motion for summary judgment under N.D.R.Civ.P. 56.[59]

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48. *See id.* ¶ 16.
49. *See id.* ¶ 17.
50. *Id.* (quoting N.D. CONST. art. I, § 4).
51. *Id.* (citing N.D. CENT. CODE §§ 14-02-01, 14-02-02).
52. *Id.* (citing N.D. CENT. CODE § 14-02-01).
53. *See id.* ¶¶ 18, 19.
54. *Id.* ¶ 18.
55. *Id.* ¶ 19.
56. *Id.* ¶ 27 (citation modified).
57. *Id.* ¶ 28.
58. *Id.*
59. *Id.* at n.1 (first citing Krile v. Lawyer, 2022 ND 28, ¶ 11, 970 N.W.2d 150, 154; and then citing Nanden, LLP v. City of Fargo, 2015 ND 37, ¶ 11, 858 N.W.2d 892, 895-96).

The Court further explained, calling upon *Krile* to emphasize:

> [A] party need not present supporting evidence at the pleading stage. The quantum and admissibility of evidence is not to be considered at the motion to dismiss stage; rather, the court's "scrutiny of pleadings should be deferential to the plaintiff" and the complaint "construed in the light most favorable to the plaintiff."[60]

Thus, even though the Killorans did not use exact language in the complaint and relied on what the district court characterized as hearsay, the Killorans were entitled to all presumptions made in their favor.[61] Therefore, the Supreme Court ruled that the district court erred in the application of the appropriate standards when addressing the motion to dismiss.[62] In addition, the Court ruled that the Killorans did not fail to state a claim upon which relief may be granted because the complaint includes: (1) date of the publication; (2) the method of publication; (3) the publications were false and made with knowledge; and (4) damages as a result.[63] The Court concluded that the Killorans' complaint was concise, non-technical, that effectively put Kaler and the court on notice of the Killorans' slander claim.[64]

Next, the Court discussed Kaler's claims on appeal of a common-interest privilege and limited-purpose public figure doctrine as it pertains to the Killorans' defamation claim.[65] Kaler contended that the Killorans' pleading for slander fails because the Killorans did not allege Kaler made the statements with malice.[66] Despite common-interest privilege and public figure doctrine being valid affirmative defenses, the Killorans are not required to allege facts regarding affirmative defenses that Kaler is free to raise.[67] The Supreme Court thus reversed the district court's ruling regarding the dismissal of the slander claims on grounds that the Killorans were not required to allege facts in anticipation of an affirmative defense.[68]

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60. *Id.* ¶ 29 (quoting *Krile*, 2022 ND 28, ¶ 16, 970 N.W.2d 150).
61. *See id.* ¶¶ 29, 31.
62. *Id.* ¶ 35.
63. *Id.*
64. *Id.* ("The Killorans may be able to provide testimony, witnesses, exhibits, and other evidence in support of their allegations.").
65. *See id.* ¶ 36.
66. *Id.*
67. *Id.* ¶ 37.
68. *Id.* ¶¶ 38-39.

Turning to the Killorans claim of IIED, the Supreme Court examined "whether Kaler's comments constitute extreme and outrageous conduct."[69] North Dakota law authorizes a plaintiff to claim emotional distress arising out of tort actions.[70] To establish a claim for IIED, the plaintiff must establish: "(1) extreme and outrageous conduct that is. (2) intentional or reckless and that causes (3) severe emotional distress."[71] The North Dakota standard for "extreme and outrageous conduct" set out in *G.K.T. v. T.L.T.* is as follows:

> Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!" The liability does not extend to mere insults, indignities, threats, annoyances, pretty oppressions, and other trivialities.[72]

In all IIED cases, the district court makes the initial decision of whether the conduct rises to the level of extreme and outrageous.[73] "[I]f the district court determines that reasonable people could differ, the question of whether the defendant's conduct is sufficiently extreme and outrageous is left to the trier-of-fact."[74] The Court explained that extreme and outrageous conduct should be judged by "a case-by-case basis," taking into account "the context and background in which those words and conduct occurred."[75]

Here, the Court acknowledged its inability to conclude that reasonable people would differ as to whether Kaler's statements were extreme and outrageous in affirming the district court's ruling.[76] The Court focused on the fact that Kaler was the Co-op's attorney and that the statements were made at a board meeting.[77] Under these circumstances, the Court concluded that the statements allegedly made by Kaler do not rise to the level of extreme and outrageous, thus upholding the district court's ruling.[78]

69. *Id.* ¶ 40.
70. *Id.* ¶ 41 (citing Neppel v. Dev. Homes, Inc., 2021 ND 5, ¶ 16, 953 N.W.2d 642, 646).
71. *Id.* ¶ 42 (quoting G.K.T. v. T.L.T., 2011 ND 115, ¶ 9, 798 N.W.2d 872, 874).
72. *Id.* (quoting *G.K.T.*, 2011 ND 115, ¶ 11, 798 N.W.2d 872).
73. *Id.* (citing *Neppel*, 2021 ND 5, ¶ 16, 953 N.W.2d 642).
74. *Id.* (alteration in original) (quoting *Neppel*, 2021 ND 5, ¶ 16, 953 N.W.2d 642).
75. *Id.* ¶ 44 (quoting Swenson v. Northern Crop Ins., Inc., 498 N.W.2d 174, 185-86 (N.D. 1993).
76. *Id.* ¶¶ 47, 48.
77. *Id.* ¶ 47.
78. *Id.* ¶¶ 47, 48.

Finally, the Court reversed the district court's dismissal of the claim for unlawful interference of business.[79] The Court reasoned that because the slander claim was reinstated, there was now a potential independent tort to support the unlawful interference of business claim.[80]

Ultimately, the North Dakota Supreme Court reversed in part and affirmed in part the district court's ruling in *Killoran*.[81] The Court reversed the ruling dismissing the claim for slander and unlawful interference with business and affirmed the district court's ruling dismissing the claim for IIED.[82] The matter was remanded back to the district court for further proceedings.[83]

79. *Id.* ¶ 51.

80. *Id.* ("After dismissing the Killorans' claims for slander and IIED, the district court dismissed the Killorans' claim for unlawful interference with business because the Killorans, 'fail[ed] to adequately allege and independent tort or otherwise unlawful act of interference[.]" (alterations in original)).

81. *Id.* ¶ 52.

82. *Id.*

83. *Id.*

CRIMINAL LAW – UNIFORM MANDATORY DISPOSITION OF DETAINERS ACT

State v. McCleary

In *State v. McCleary*, the North Dakota Supreme Court addressed a question concerning the application of the Uniform Mandatory Disposition of Detainers Act ("UMDDA").[84] Namely, the Court considered whether a defendant that is subject to any custody of the State triggers the ninety-day period of the UMDDA for a defendant's motion to dismiss.[85] The Court also addressed the district court's procedural compliance in granting habitual offender status and a clerical error in the judgment entered against the defendant.[86] Ultimately, the Supreme Court affirmed the conviction of the defendant, Joshua McCleary.[87]

McCleary was charged with sixteen counts of various theft and conspiracy-related crimes on November 29, 2023.[88] These crimes stem "from a string of thefts occurring between December 2020 and January 2021."[89] At the time of the charges, McCleary was incarcerated in a North Dakota Department of Corrections and Rehabilitation ("DOCR") facility for previous, unrelated convictions.[90] On January 22, 2024, McCleary filed a notice and request of disposition of detainer under Chapter 29-33 of the North Dakota Century Code.[91] By filing a disposition of detainer, McCleary's trial was to happen before April 21, 2021.[92]

On the same day McCleary filed for a disposition of detainer, an initial appearance was held, attended virtually by McClearly from the James River Correctional Center.[93] McCleary's bail was set at $5,000, which McCleary did not post.[94] However, on February 15, 2024, McCleary was paroled from the DOCR, but McCleary was transferred to the Barnes County Correctional Center to await trial due to his unposted bail.[95] On April 4, 2024, based on

84. 2025 ND 24, ¶ 1, 16 N.W.3d 445, 447.
85. *Id.* ¶¶ 1, 7.
86. *Id.* ¶ 1.
87. *Id.*
88. *Id.* ¶ 2 (noting the charges included "theft of property, burglary, criminal mischief, and conspiracies to commit the same").
89. *Id.*
90. *Id.* ¶¶ 2-3.
91. *Id.* ¶ 2 ("Under the UMDDA [N.D. CENT CODE § 29-33-03 (1971)], a case must be brought to trial within ninety days, unless good cause is shown.")
92. *See id.*
93. *Id.* ¶ 3.
94. *Id.*
95. *Id.*

past felony convictions, the State filed a notice requesting habitual offender status for McCleary in the pending charges.[96] At a motion hearing and status conference on April 15, 2024, McCleary objected to the habitual offender status and requested time to submit a response before the court ruled on the matter, but a response was never submitted.[97]

Four days later, "McCleary filed a brief in support of a speedy trial request under the UMDDA," asserting that the charges must be brought to trial by April 22, 2024.[98] The basis for McCleary's argument stems from his incarceration in DOCR and subsequent detention in Barnes County Correctional Center.[99] Essentially, McCleary argues that because he was in custody of the State, no matter the type of State custody, the UMDDA applies and the clock on the ninety-day window began when he filed the notice and remained in custody.[100] Then, on April 24, 2024, McCleary and his counsel both moved for dismissal, both arguing that the ninety-day statutory timeline under the UMDDA was violated when the case was not brought to trial by April 22.[101] The State responded, contending that the UMDDA does not apply because McCleary was paroled on February 15, 2024.[102] The district court denied the motions on May 23, 2024, concluding that the UMDDA, "no longer applied upon [McCleary's] release from the state penitentiary."[103] "McCleary, representing himself, filed a subsequent motion to dismiss on May 30, 2024, arguing his right to a speedy trial was violated."[104] McCleary's motion was denied by the district court.[105]

McCleary entered into a conditional plea on June 4, 2024.[106] The plea agreement set out that McCleary would not contest the habitual offender status and would plead guilty to only seven out of sixteen counts of the complaint.[107] Part of the plea agreement included McCleary's "right to appeal from the motions to dismiss."[108] McCleary filed a timely appeal after the district court entered judgment.[109]

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96. *Id.* ¶ 4.
97. *Id.*
98. *Id.* ¶ 5.
99. *Id.*
100. *See id.*
101. *Id.*
102. *Id.*
103. *Id.* (alteration in original).
104. *Id.*
105. *Id.*
106. *Id.* ¶ 6.
107. *Id.* ¶¶ 2, 6 ("The remaining counts were dismissed.").
108. *Id.*
109. *Id.*

On appeal, McCleary argued the State was required to bring the charges against him to trial within the ninety-day period under the UMDDA because he "remained in custody, just not the DOCR custody, but custody, nonetheless."[110] Under the UMDDA, "[a]ny person who is imprisoned in a penal or correctional institution of this state may request final disposition of any untried indictment, information, or complaint pending against that person in this state."[111] Moreover, "*[w]ithin ninety days after the receipt of the request* and certificate by the court and prosecuting official or within such additional time as the court for good cause shown in open court may grant . . . ."[112]

The Court explained that the "clear purpose of the [UMDDA] is to require prompt disposition of criminal charges against inmates."[113] In addition, the application of the UMDDA "is limited to those instances where a detainer has been filed against a person imprisoned in a penal or correctional institution in the State of North Dakota."[114] "The UMDDA, 'is intended to apply only to prisoners already incarcerated within the state on other charges.'"[115] The UMDDA only creates a "conditional procedural statutory right" that "is not the equivalent to a fundamental constitutional right requiring the personal waiver or consent of the defendant to be effective."[116]

However, whether the UMDDA applies even after a defendant is paroled from the DOCR and is transferred to a different jurisdictions correctional center after a notice of detainer is filed is a matter of first impression for the North Dakota Supreme Court.[117] The UMDDA is a uniform law, so the Court looked to other states that have adopted the UMDDA for guidance in maintaining the law's uniformity.[118] To this end, the UMDDA, "must be so applied as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the states which enact it."[119] The Court "may seek guidance from decisions in other states which have interpreted similar provisions of uniform laws."[120] The *McCleary* court sought guidance

110. *Id.* ¶ 7.

111. *Id.* ¶ 9 (alteration in original) (quoting N.D. CENT. CODE § 29-33-01(1)).

112. *Id.* (emphasis added) (quoting N.D. CENT. CODE § 29-33-03).

113. *Id.* (alteration in original) (quoting State v. Ripley, 548 N.W.2d 24, 26 (N.D. 1996).

114. *Id.* ¶ 10 (quoting State v. Hinojosa, 2011 ND 116, ¶ 7, 798 N.W.2d 634, 638); *see also id.* ("By definition, a detainer is a notification filed with the institution in which a prisoner is serving a sentence, advising that he faces pending criminal charges in another jurisdiction and requesting the institution to hold the prisoner or give notice when his release is imminent. A detainer may only be filed when the prisoner is serving a sentence on another charge, not when he is being held on the pending charge" (quoting State v. Moe, 1998 ND 137, ¶ 20, 581 N.W.2d 468, 473)).

115. *Id.* (quoting *Moe*, 1998 ND 137, ¶ 20, 581 N.W.2d 468).

116. *Id.* (quoting State v. Carlson, 258 N.W.2d 253, 258 (N.D. 1977)).

117. *Id.* ¶ 11.

118. *See id.* ¶¶ 11-12.

119. *Id.* ¶ 12 (quoting N.D. CENT. CODE § 29-33-07).

120. *Id.* (citing Gooss v. Gooss, 2020 ND 233, ¶ 7, 951 N.W.2d 247, 250).

from its own precedent, along with that of Minnesota, Kansas, Missouri, and Nebraska.[121] The Court first turned to a North Dakota case which previously presented an opportunity to interpret the UMDDA.[122] Citing *State v. Moe*, the Court noted that "the certificate requirement of N.D.C.C. § 29-33-02(1) indicates the [UMDDA] is intended to apply only to prisoners *already incarcerated within the state on other charges*."[123]

The Court then looked to the Minnesota case *State v. Vonbehren*, which held that "the UMDDA did not apply to those released from physical custody of the state."[124] In *Vonbehren*, the defendant filed a UMDDA request for charges filed while he was incarcerated, but he was released seven days later when his sentence expired.[125] "The defendant was re-arrested and on subsequent charges," where he posted bail.[126] The Minnesota Court of Appeals concluded that the statutory language of the UMDDA "strongly supports the UMDDA's application only to defendants in the physical custody of the state, before concluding the UMDDA's speedy trial right was inapplicable."[127] The Court then turned to a Kansas case that interprets the UMDDA in a similar manner as the North Dakota Supreme Court in *Moe.*[128] In *State v. Julian*, the Kansas Supreme Court held that "the UMDDA did not apply to a defendant placed on probation or parole" because they are longer in the physical custody of the state, and therefore are not prisoners.[129] The Kansas Supreme Court examined the terms "prisoners" and "imprisoned" to conclude that "the Act is intended to apply to prisoners, those who are in the custody of the Secretary of Corrections."[130]

Perhaps the case most on point to the issue in *McCleary* took place in Missouri.[131] In *State ex rel. In Haynes v. Bellamy*, the Missouri Court of Appeals held that "a defendant [who was] released from custody and placed on parole before the statutory timeframe expired" was not entitled to the benefits

121. *See id.* ¶¶ 13-17.
122. *See id.* ¶ 13.
123. *Id.* (alteration in original) (quoting State v. Moe, 1998 ND 137, ¶ 20, 581 N.W.2d 468, 473).
124. *Id.* ¶ 14 (citing State v. Vonbehren, 777 N.W.2d 48, 50-52 (Minn. Ct. App. 2010)).
125. *Id.* (citing *Vonbehren*, 777 N.W.2d at 49).
126. *Id.* (citing *Vonbehren*, 777 N.W.2d at 49).
127. *Id.* (citing *Vonbehren*, 777 N.W.2d at 51-53).
128. *See generally id*. ¶¶ 13, 15.
129. *Id.* ¶ 15 ("[p]ersons who are on parole or probation are no longer in physical custody; they are not prisoners. No adverse consequences flow to a probationer or a parolee from a detainer." (alteration in original) (quoting State v. Julian, 224 Kan. 101, 765 P.2d 1104, 1107 (1988))).
130. *Id.* (quoting *Julian*, 765 P.2d at 1107).
131. *See generally id.* ¶¶ 5, 16.

of the UMDDL, Missouri's version of the UMDDA.[132] The Missouri Court of Appeals reasoned that the plain language of the UMDDL referring to "confined persons and inmates" signals, "the assumption that the parties using the statute would be serving their prison terms *before and after* the statute was utilized."[133] Thus, the Missouri Court of Appeals held, "[o]nce a prisoner is released, his rights regarding the right to a speedy trial are the same as those of any other individual."[134] Therefore, the defendant in *Haynes* lost his ability to utilize the UMDDL when he was paroled.[135]

Finally, the North Dakota Supreme Court turned to Nebraska caselaw, where the Nebraska Supreme Court examined the UMDDA in *State v. Yzeta*.[136] The Nebraska Supreme Court determined that "the plain language of the statutory terms of 'prisoner' and 'imprisoned'" support a finding that, "[t]his terminology speaks to the status of the defendant as a 'prisoner' *at the time of trial*."[137] Further, the court in *Yzeta* explained that once a person is discharged from the Department of Corrections, that person would either be "released from custody or be held as pretrial detainee by the prosecuting jurisdiction subject to posting bail."[138]

McCleary rebuts this construction by calling upon the Kansas case *State v. Burnett*, in which a pretrial detainee being kept at a county jail was considered "in custody of the Kansas Department of Corrections for UMDDA purposes."[139] In *Burnett*, the Kansas Supreme Court noted that the UMDDA's goal is to "prevent indefinite suspension of pending criminal charges while a prisoner is incarcerated on other charges."[140] However, the North Dakota Supreme Court was able to distinguish *Burnett* from the case at hand by noting the defendant in *Burnett* was serving his initial sentence in the county jail and "was incarcerated on other charges throughout the entirety of the UMDDA statutory timeframe."[141] In addition, despite McCleary invoking his right to a speedy trial under the UMDDA, he was released from the DOCR on parole

132. *Id*. ¶ 16 (citing State ex rel. Haynes v. Bellamy, 747 S.W.2d 189, 190-91 (Mo. Ct. App. 1988)); *see also id.* at n.2 (noting that Missouri's adoption of the UMDDA "[m]erely replac[es] "Act" with "Law.").

133. *Id.* (quoting *Haynes*, 747 S.W.2d at 190).

134. *Id.* (alteration in original) (quoting *Haynes*, 747 S.W.2d at 190-91).

135. *Id.* (citing *Haynes*, 747 S.W.2d at 190-91).

136. *See id.* ¶ 17 (citing State v. Yzeta, 313 Neb. 202, 983 N.W.2d 124, 134 (2023)); *see also id.* at n.3 ("Nebraska's intrastate detainer statutes are based on the UMDDA" (citing *Yzeta*, 983 N.W.2d at 133)).

137. *Id.* (quoting *Yzeta*, 983 N.W.2d at 130-31).

138. *Id.* (alteration in original) (quoting *Yzeta*, 983 N.W.2d at 131).

139. *Id.* ¶ 18 (citing State v. Burnett, 297 Kan. 447, 301 P.3d 698, 704 (2013)).

140. *Id.* (quoting *Burnett*, 301 P.3d at 702).

141. *Id.*

within ninety days.[142] Unlike the defendant in *Burnett*, McCleary's new charges had nothing to do with the charges he was serving time on in the DOCR.[143] Once McCleary was paroled, he was no longer serving a sentence of imprisonment; rather, he was merely a pretrial detainee of Barnes County Correctional Center.[144]

The North Dakota Supreme Court held that by the express terms of the UMDDA, the statute "does not apply to prisoners who have been released on parole."[145] The Court explained that "because a person is no longer imprisoned serving a sentence for a term of commitment" when they are paroled, the UMDDA does not apply.[146] Thus, the UMDDA applied to McCleary when he initially filed notice on January 22, 2024; however, once McCleary was paroled on February 15, 2024, the UMDDA no longer applied.[147]

The North Dakota Supreme Court addressed two remaining issues.[148] Starting with the issue that the district court failed to follow the proper procedures in categorizing McCleary as a habitual offender, the North Dakota Supreme Court affirmed the district court.[149] Reciting the requirements under chapter 12.1-32 of the North Dakota Century Code, the Court discussed that McCleary has been convicted of more than two class C felonies as an adult, McCleary agreed the statutory requirements were met, and McCleary waived any procedural defects by stipulating that all requirements were met.[150]

Lastly, the North Dakota Supreme Court addressed McCleary's final argument, that the judgment featured a clerical error that failed to reflect that the plea was conditional.[151] The Court turned to N.D.R.Crim.P 11(a)(2), stating "if the court accepts a conditional plea, the resulting judgment must specify it is conditional."[152] However, despite the judgment not using the word "conditional," the Court noted that, "it is clear on the face of the judgment McCleary's guilty pleas were entered subject to his right to appeal."[153] With all issues dispensed, the North Dakota Supreme Court affirmed the criminal judgment of McCleary.[154]

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142. *Id.* ¶ 19.
143. *See id.* ¶¶ 18-19.
144. *Id.* ¶ 19 ("McCleary was paroled from the DOCR and transferred to the Barnes County Correctional Center, because he had not posted bail on the new charges.").
145. *Id.* ¶ 20.
146. *Id.*
147. *Id.* ¶¶ 3, 20.
148. *See generally id.* ¶¶ 21-25.
149. *See id.* ¶ 21-23.
150. *See id.* ¶¶ 22-23.
151. *Id.* ¶¶ 1, 24.
152. *Id.* ¶ 25 (citing N.D.R.Crim.P. 11(a)(2)).
153. *Id.*
154. *Id.* ¶ 26.

CRIMINAL LAW – DUI TESTING REQUIREMENTS

Gackle v. N.D. Dep't of Transp.

In *Gackle v. N.D. Dep't of Transp.*, the North Dakota Supreme Court analyzed whether a deviation from the approved method of wait time between breath testing sequences when using the Intoxilyzer 8000, Breath Alcohol Testing Instrument, invalidated an incriminating test result.[155] In February 2024, the Defendant was arrested for a DUI.[156] After an officer conducted the first breath test sequence, the Intoxilyzer 8000 showed a "Difference Too Great" message.[157] The officer began the second breath test sequence eighteen minutes after concluding the first test sequence.[158] This was two minutes short of the approved testing method for the Intoxilyzer 8000.[159] The approved method required the test operator to wait twenty minutes between testing sequences "after receiving a 'Difference Too Great' result."[160] During this wait period, the test operator must "ensure the subject has had nothing to eat, drink, or smoke before repeating the Intoxilyzer 8000 test."[161]

The officer who tested the Defendant sought to submit the test results to the North Dakota Department of Transportation ("Department") to suspend the Defendant's driver's license.[162] The Defendant submitted a request for an administrative hearing, which was granted.[163] At the administrative hearing, the Department attempted to introduce an exhibit which included the Defendant's incriminating Intoxilyzer 8000 test results.[164] The Defendant objected to this admission, arguing the test operator failed to comply with the approved testing methods—waiting only eighteen minutes after the first test sequence before starting the second, rather than the prescribed twenty minutes.[165] The administrative hearing officer overruled the Defendant's objection; the test results were admitted and the Defendant's driver's license was suspended.[166] The Defendant appealed and the district court affirmed the

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155. *See* 2025 ND 37, ¶¶ 1-2, 6, 17 N.W.3d 610, 613.
156. *Id.* ¶ 2.
157. *Id.* ¶ 3.
158. *Id.* ¶¶ 3, 5.
159. *Id.* ¶ 5.
160. *Id.*
161. *Id.*
162. *See id.* ¶ 4.
163. *Id.*
164. *Id.*
165. *Id.* ¶¶ 4, 5.
166. *Id.* ¶ 5.

administrative court's decision.[167] The Defendant then appealed to the North Dakota Supreme Court.[168]

"The Department has the burden to prove that an Intoxilyzer test was fairly administered."[169] Even if an Intoxilyzer test operator deviates from the approved method of administration and the test results are questioned for scientific accuracy, the test results may still be admitted as evidence if accompanied by expert testimony asserting the test was fairly administered.[170] Under North Dakota caselaw, when test results are called into question due to deviations from the approved testing method and no expert testimony is provide, it is impossible to prove "that the officer's [deviation from the approved method] did not affect the test results."[171]

The Department argued that the waiting period was satisfied and that the Intoxilyzer test was fairly administered.[172] Specifically, the Department asserted that the evidence and the test operator's testimony adequately established the Intoxilyzer's approved testing method was satisfied, including the required twenty-minute waiting period.[173] However, the Defendant disagreed with the Department's stance on when the twenty-minute waiting period should start and end.[174] "The start and end points for the [twenty]-minute waiting period required by the approved method in this context is an issue of first impression before the [c]ourt."[175] Thus, the Court had to decide whether the wait period for a "Difference Too Great" result is twenty minutes between testing sequences, as the Defendant suggested, or twenty minutes between the collection of breath samples, as the Department suggested.[176]

Ultimately, the Court focused on the meaning of the term "Intoxilyzer 8000 test," as the approved method required the twenty-minute waiting period "before repeating the Intoxilyzer 8000 test."[177] Importantly, the Court reasoned that the term "test" would provide more specific qualifying language if the approved method was referring to the time between samples

167. *Id.*
168. *Id.* ¶ 1.
169. *Id.* ¶ 9.
170. *Id.* ¶ 10 (citing Keller v. N.D. Dep't of Transp., 2015 ND 81, ¶ 8, 861 N.W.2d 768, 771).
171. *Id.* ¶ 11 (alteration in original) (quoting *Keller*, 2015 ND 81, ¶ 10, 861 N.W.2d 768).
172. *Id.* ¶¶ 13-14 ("The Department argues that the 20-minute waiting period is satisfied when there are 20 minutes between obtaining the second breath sample of the first invalid test and obtaining the first breath sample of the second test.").
173. *See id.* ¶ 13.
174. *Id.* ¶ 5 ("[The Defendant] argued that because only 18 minutes elapsed between the end of the first test sequence (2:36 a.m.) and the start of the second test sequence (2:54 a.m.), [the test operator] failed to comply with [the approved testing method].").
175. *Id.* ¶ 14.
176. *Id.* ¶¶ 14, 18.
177. *See id.* ¶ 20.

within a test rather than the time between entire test sequences.[178] The Court concluded that under the approved method, the wait time in relation to the "Intoxilyzer 8000 test" was meant to transpire between the test sequences, not between the collection of the test samples.[179] Further, the Court ruled that since the deviation could have "affected the scientific accuracy or reliability of the test, and there was no expert testimony on the likely effect of the deviation, the Department failed to show the test was fairly administered."[180] Therefore, the Court reversed the district court ruling and remanded back to the Department for reinstatement of the Defendant's driving privileges.[181]

178. *See id.* ¶ 21.
179. *Id.* ¶ 22.
180. *Id.* ¶ 24.
181. *Id.* ¶ 25.

CIVIL/CONTRACTS – PERSONAL JURISDICTION OVER NONRESIDENT DEFENDANTS

Nelson v. Pine View First Addition Ass'n

In *Nelson v. Pine View First Addition Ass'n*, the North Dakota Supreme Court assessed whether personal jurisdiction should have been extended to a Minnesota-based business.[182] The Plaintiff is a North Dakota resident who owns and operates a snow and ice removal business.[183] The Defendant "is a Minnesota non-profit corporation and homeowners' association that oversees fifty-two residential properties in Moorhead, Minnesota."[184] The Defendant hired a North Dakota limited liability company—not a party to this case—as an agent tasked with serving as a property manager.[185]

The winter of 2022-2023 produced large amounts of snow that created a build-up of ice on the Defendant's residential properties.[186] The Defendant's agent, who had the authority to act in emergency situations without the prior approval of the Defendant, contacted the Plaintiff for his ice removal services to remove the ice build-up on 50 out of the Defendant's 52 residential properties.[187] The Plaintiff provided these services and sent an invoice of $79,695, discounted to $57,756, to the Defendant.[188] The Defendant did not pay the billed amount, claiming they were waiting on insurance to cover the amounts.[189] Since the Defendant did not pay, the Plaintiff removed the discount and filed suit, alleging breach of contract and unjust enrichment.[190] Plaintiff sought full payment of services provided plus interest and attorney's fees and costs.[191]

The Defendant responded with a motion to dismiss, claiming lack of personal jurisdiction.[192] The Defendant also moved for sanctions pursuant to Rule 11 because "jurisdiction and venue were so obviously improper in North Dakota as to render the complaint frivolous."[193] The district court granted the Defendant's motion to dismiss for lack of personal jurisdiction but denied the Rule 11 sanctions, as well as the Plaintiff's request for attorney's fees as the

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182. 2025 ND 9, ¶¶ 6, 8, 16 N.W.3d 172, 175-76.
183. *Id.* ¶ 2.
184. *Id.*
185. *Id.*
186. *Id.* ¶ 4.
187. *Id.* ¶¶ 3-4.
188. *Id.* ¶ 5.
189. *Id.*
190. *See id.*
191. *Id.*
192. *Id.* ¶ 6.
193. *Id.*

prevailing party under Rule 11.[194] The Plaintiff appealed to the North Dakota Supreme Court, contesting the district court's decision to dismiss the case and deny the request for prevailing party attorney's fees.[195]

The Court noted that "[a] district court's order ruling on personal jurisdiction is fully reviewable on appeal" under a de novo standard of review.[196] Further, "[w]hen a defendant challenges a court's jurisdiction, the plaintiff has the burden to prove that personal jurisdiction exists."[197] To satisfy this burden, the Plaintiff argued that the Defendant should have been subject to specific personal jurisdiction in North Dakota under N.D.R.Civ.P. 4(b)(2)(A) because the Defendant initiated the contact.[198]

When analyzing cases concerned with the application of personal jurisdiction to a non-resident, North Dakota district courts apply a two-part test.[199] This first involves a determination of "whether the requirements of North Dakota's long arm provision, N.D.R.Civ.P. 4(b)(2), are satisfied."[200] If satisfied, the next step requires an analysis of whether the application of personal jurisdiction complies with due process.[201] The Rule provides:

> (2) Personal jurisdiction based on contacts. A court of this state may exercise personal jurisdiction over a person who acts directly or by an agent as to any claim for relief arising from the person's having such contact with this state that the exercise of personal jurisdiction over the person does not offend against traditional notions of justice or fair play or the due process of law, under one or more of the following circumstances:
>
> (A) transacting any business in this state[.][202]

On review, the North Dakota Supreme Court referenced both Rule 4(b)(2)(A) and the *Bolinske* decision.[203] In *Bolinske*, the Court recognized that contact in regard to Rule (4)(b)(2) is generally satisfied "when a nonresident initiates contact, by telephone or other electronic medium, with a resident seeking a product or service."[204] Based on Rule 4(b)(2) and the *Bolinske* decision, the Court ruled that the Defendant's actions when contracting for

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194. *Id.* ¶ 7.
195. *Id.* ¶¶ 1, 8, 33.
196. *Id.* ¶ 9 (citing Wilkens v. Westby, 2019 ND, ¶ 4, 931 N.W.2d 229, 232).
197. *Id.* ¶ 10 (citing Bolinske v. Herd, 2004 ND 217, ¶ 7, 689 N.W.2d 397, 400).
198. *Id.* ¶ 11.
199. *Id.* ¶ 12 (citing Solid Comfort, Inc. v. Hatchett Hosp., Inc., 2013 ND 152, ¶ 10, 836 N.W.2d 415, 420).
200. *Id.*
201. *Id.*
202. *Id.* ¶ 13 (alteration in original) (quoting N.D.R.Civ.P. 4(b)).
203. *See id.* ¶¶ 13-14 (citing Bolinske v. Herd, 2004 ND 217, ¶¶ 10-11, 689 N.W.2d 397, 401).
204. *Id.* ¶ 14 (quoting *Bolinske*, 2004 ND 217, ¶ 10, 689 N.W.2d 397).

the Plaintiff's services satisfied the contacts requirement for personal jurisdiction over a non-resident.[205]

Next, the Court analyzed the second prong of the two-part test, which was geared toward ensuring the extension of personal jurisdiction to a non-resident did "not offend traditional notions of fair play and substantial justice."[206]

> [This court has] identified five factors for assessing personal jurisdiction over a nonresident defendant: (1) the nature and quality of a nonresident defendant's contacts with the forum state; (2) the quantity of the nonresident defendant's contacts with the forum state; (3) the relation of the cause of action to the contacts; (4) the forum state's interest in providing a forum for its residents; and (5) the convenience of the parties. While the first three factors are of primary concern, the fourth and fifth factors are of only secondary importance and are not determinative.[207]

Considering these five factors, the Court first determined that the Defendant's contact with the Plaintiff satisfied the first factor of the five-factor test.[208] Specifically, the Court explained that due process may have been violated had the Defendant's only contact been one singular phone call with the Plaintiff.[209] However, since the Defendant had additional ongoing ties to North Dakota via their North Dakota resident agent, due process was not threatened.[210]

Second, the Court considered the quantity of the Defendant's contacts with the state and noted that this factor weighed against exerting jurisdiction over the Defendant, who only had two identified contacts with the state and much more with Minnesota.[211]

Third, the Court explained that the third factor favored of extending North Dakota jurisdiction because the Defendant's agent, a North Dakota resident, contacted the Plaintiff, another North Dakota resident, making the contacts directly related to the issue.[212]

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205. *Id.* ¶ 16.
206. *Id.* ¶ 17 (quoting Solid Comfort, Inc. v. Hatchett Hosp., Inc., 2013 ND 152, ¶ 10, 836 N.W.2d 415, 420).
207. *Id.* (quoting Beaudoin v. S. Texas Blood & Tissue Ctr., 2005 ND 120, ¶ 11, 699 N.W.2d 421).
208. *Id.* ¶ 23.
209. *Id.*
210. *Id.*
211. *Id.* ¶ 24.
212. *Id.* ¶ 25.

Fourth, the Court stated that "North Dakota has an obvious interest in providing a forum to its residents."[213] Moreover, the Court differentiated personal jurisdiction and choice of law determinations, explaining that "[e]ven if Minnesota law were to govern resolution of this action, our determination of whether North Dakota has personal jurisdiction over [the Defendant] does not depend on the choice of law determination."[214]

Fifth, the Court quickly analyzed the Defendant's claim that it would "greatly inconvenience" them to defend themselves in North Dakota compared to Minnesota.[215] The Court rationalized that since the location of the legal proceedings would have been in Cass County, North Dakota, and the Defendant's residential properties—the subject of this controversy—were located a short distance across the Minnesota border, the "argument [was] not persuasive."[216] In all, the Court determined that the five factors weighed in favor of determining that "North Dakota's exercise of personal jurisdiction over [Defendant] comport[ed] with due process."[217] Therefore, the extension of personal jurisdiction over the Defendant was proper.[218]

Lastly, the Court had to assess the Plaintiff's claim that "the district court abused its discretion in denying his request for prevailing party attorney's fees under N.D.R.Civ.P. 11(c)(2)."[219] According to the Rule, a district court may award attorney's fees incurred as a result of the filing of a Rule 11 motion for sanctions to the prevailing party.[220] "A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, it misinterprets or misapplies the law, or when its decision is not the product of rational mental process leading to a reasonable determination."[221]

Here, the Defendant's attorney filed a Rule 11 motion in district court against both the Plaintiff and his attorney, "arguing that jurisdiction and venue were so obviously improper in North Dakota as to render the complaint frivolous."[222] The Plaintiff's attorney argued in his opposing brief that the motion was "directly contrary" to the plain language of the rule.[223] The district court agreed, listing the Plaintiff as the prevailing party over the motion,

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213. *Id.* ¶ 26 (citing Hebron Brick Co. v. Robinson Brick & Tile Co., 234 N.W.2d 250, 258 (N.D. 1975)).
214. *Id.* ¶ 28.
215. *See id.* ¶ 29.
216. *Id.*
217. *Id.* ¶ 30.
218. *See id.*
219. *Id.* ¶ 33.
220. *Id.* ¶ 34.
221. *Id.* (quoting Puklich v. Puklich, 2022 ND 158, ¶ 16, 978 N.W.2d 668, 674).
222. *Id.* ¶ 35.
223. *Id.*

but the lower court erroneously believed that the Plaintiff also filed a Rule 11 motion for sanctions.[224] In the district court transcript, the Plaintiff's attorney explained that "the Court may award, to the prevailing party, the reasonable expenses, including attorney fees incurred for the motion."[225] The North Dakota Supreme Court agreed with the Plaintiff that the district court had abused its discretion in not awarding attorney's fees because "it relie[d] on a misinterpretation of the law."[226] Specifically, the Court explained that "the district court must explain why an award of prevailing party attorney's fees is not warranted."[227] Since the district court's explanation was based on a misinterpretation of the law, the order was "reverse[d] and remand[ed] with instructions to reconsider whether prevailing party attorney's fees are warranted under a correct application of the rule."[228]

Ultimately, the Court reversed the district court's dismissal for lack of personal jurisdiction and remanded the case for reconsideration of any award of attorney's fees under Rule 11.[229]

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224. *Id.* ¶ 37 ("In denying both parties' requests for attorney's fees, the district court explained: 'I don't find that either attorney or claim for relief or defense was frivolous in regards to this matter, so no attorney's fees.'").

225. *Id.*

226. *Id.* ¶ 38.

227. *Id.*

228. *Id.*

229. *Id.* ¶ 39.