

SUPREME COURT OF NORTH DAKOTA

Matter of Emelia Hirsch Trust

2022 ND 89 (2022) · No. No. 20210324 · Decided April 28, 2022

SUMMARY

The North Dakota Supreme Court addresses appeals from an order designating Allen Betz and Timothy Betz as vexatious litigants and imposing pre-filing restrictions. The court holds that the district court judge lacked authority under North Dakota Supreme Court Administrative Rule 58 to issue the order against Allen Betz because she was not the presiding judge, while Timothy Betz remained subject to an earlier pre-filing order. The court affirms in part, vacates in part, dismisses in part, remands for further proceedings, and awards attorney’s fees and double costs.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Lisa Fair McEvers, Justice; Daniel J. Crothers, Acting Chief Justice; Gerald W. VandeWalle, Justice; Jerod E. Tufte, Justice; Daniel D. Narum, District Judge
JURISDICTION	North Dakota
DECIDED	April 28, 2022
DOCKET	No. 20210324
DISPOSITION	other
PROCEDURAL POSTURE	Allen and Timothy Betz appealed from a district court order declaring them vexatious litigants and requiring them to obtain leave before filing new litigation or documents in existing litigation. They also attempted to challenge an earlier order reforming the trust.
STANDARD OF REVIEW	Pre-filing orders issued under N.D. Sup. Ct. Admin. R. 58 are reviewed for abuse of discretion. A court abuses its discretion when it acts arbitrarily, unconscionably, or unreasonably, misinterprets or misapplies the law, or fails to reach its decision through a rational mental process.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Timothy Betz, Allen Betz v. Emelia A. Hirsch, aka Emelia Hirsch, aka Emilia Hirsch, Carolyn Twite, Duane Hirsch

TOPICS

trusts probate procedure sanctions appellate procedure civil procedure

PRACTICE AREAS

trusts probate civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the Betzes could challenge the district court's 2008 order reforming the trust in this appeal from the 2021 pre-filing order.
2. Whether Judge Weiler had authority under N.D. Sup. Ct. Admin. R. 58 to issue a pre-filing order when she was not the presiding judge of the judicial district.
3. Whether the district court's failure to expressly rule on Allen Betz's N.D.R.Civ.P. 60(b) motion constituted a denial of that motion.
4. Whether denial of Timothy Betz's request for leave to file was appealable.
5. Whether the Trustees were entitled to attorney's fees and double costs for a frivolous appeal.

HOLDINGS

1. The Betzes could not challenge the 2008 order because their notices of appeal identified only the September 30, 2021 order; in any event, an appeal from the 2008 order would have been untimely.
2. A pre-filing order under N.D. Sup. Ct. Admin. R. 58 must be issued by the presiding judge of the judicial district. Because Judge Weiler was not the presiding judge, the district court abused its discretion by issuing the pre-filing order against Allen Betz.
3. The district court's failure to expressly rule on Allen Betz's Rule 60(b) motion constituted a denial, which the Supreme Court affirmed.
4. The denial of leave to file was not appealable, so Timothy Betz's appeal on that issue was dismissed.
5. The Trustees were awarded \$500 in attorney's fees against Timothy Betz and double costs against both appellants because the relevant arguments were frivolous.

KEY QUOTATIONS

“Under N.D. Sup. Ct. Admin. R. 58, a pre-filing order must be issued by the presiding judge.” (¶ 12)

“Denial of leave to file is not appealable.” (¶ 16)

FACTUAL BACKGROUND

The Betzes repeatedly filed motions and requests challenging the reformation of the Emelia Hirsch Irrevocable Trust and related matters. Allen Betz sought relief from the 2008 trust-reformation order, while Timothy Betz sought leave to file additional documents and litigation. The district court found that both had persistently filed motions without reasonable legal grounds, harassed or injured other parties, and imposed an unacceptable burden on the parties and judicial resources.

PROCEDURAL HISTORY

The district court had previously entered a 2008 order reforming the trust, which the North Dakota Supreme Court had repeatedly affirmed. In 2020, Allen Betz sought to vacate the reformation order, and Judge Gail Hagerty issued proposed pre-filing materials but did not enter a final pre-filing order before retiring. In 2021, Judge Bobbi Weiler entered an order declaring both Betzes vexatious litigants and restricting their filings. The Supreme Court affirmed the deemed denial of Allen's Rule 60(b) motion, vacated the pre-filing order as to Allen, dismissed Timothy's appeal concerning denial of leave to file, and remanded for further proceedings.

DISPOSITION

other

REMAND INSTRUCTIONS

The matter was remanded to the presiding judge for further consideration of the pre-filing order against Allen Betz. The Court also remanded for further proceedings consistent with its opinion.

CASES CITED

- Matter of Emelia Hirsch Trust, 2021 ND 142, 963 N.W.2d 259
- Matter of Emelia Hirsch Trust, 2020 ND 129, 944 N.W.2d 334
- Matter of Emelia Hirsch Trust, 2019 ND 264, 935 N.W.2d 255
- Matter of Emelia Hirsch Trust, 2017 ND 291, 904 N.W.2d 740
- Matter of Emelia Hirsch Trust, 2016 ND 217, 888 N.W.2d 205
- Matter of Emelia Hirsch Trust, 2014 ND 135, 848 N.W.2d 719
- Matter of Emelia Hirsch Trust, 2013 ND 63, 832 N.W.2d 334
- Matter of Emelia Hirsch Trust, 2009 ND 135, 770 N.W.2d 225
- Meier v. Meier, 2014 ND 127, ¶ 5, 848 N.W.2d 253
- Desert Partners IV, L.P. v. Benson, 2014 ND 192, ¶ 6, 855 N.W.2d 608
- Alerus Fin., N.A. v. Erwin, 2018 ND 119, ¶ 12, 911 N.W.2d 296
- Wheeler v. State, 2021 ND 182, ¶ 9, 965 N.W.2d 416