

N.D.A.G. Letter to Slorby (May 7, 1990)

May 7, 1990

Mr. Tom P. Slorby
Ward County State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Mr. Slorby:

Thank you for your April 17, 1990, letter asking whether the term "guardian" contained in N.D.C.C. § 27-20-26(1) includes a guardian ad litem. That statute provides, in part, that "[c]ounsel must be provided for a child not represented by his parent, guardian, or custodian." N.D.C.C. § 27-20-48 authorizes the court, in certain instances, to appoint a guardian ad litem for a child not represented by a parent, guardian, or custodian.

A basic rule of statutory construction contained in N.D.C.C. § 1-02-02 provides that words used in a statute are to be understood in their ordinary sense, but that "any words explained in this code are to be understood as thus explained." The terms "guardian" and "guardian ad litem" are not defined in N.D.C.C. ch. 27-20. However, guardian is defined in N.D.C.C. § 30.1-01-06(17), as follows:

17. "Guardian" means a person who or nonprofit corporation that has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, and includes limited guardians as defined in this section, but excludes one who is merely a guardian ad litem.

(Emphasis supplied.)

In Asendorf v. M.S.S., 342 N.W.2d 203 (N.D. 1983), the court noted:

[T]he terms "guardian" and "guardian ad litem" have distinct meanings. A guardian is a person who has, or is entitled to, the care and management of the person or property of another, or both. The person for whom a guardian is appointed is normally a minor or an incompetent. State v. Johnson, 88 N.W.2d 209,

216 (N.D. 1958). A guardian ad litem, on the other hand, is a special guardian appointed by the court to prosecute or defend in behalf of an infant or incompetent in a suit to which he is a part. Black's Law Dictionary 635 (5th Ed.1979). Despite their distinct meanings, the two words are often used interchangeably, albeit incorrectly.

Id. at 205.

Although, as the court pointed out in Asendorf v. M.S.S., 342 N.W.2d at 206, there may be instances where the guardian ad litem may be functioning like a guardian, the letter of N.D.C.C. § 27-20-26(1) is clear. Where the wording of a statute is clear and unambiguous, the letter of the law is not to be disregarded under the pretext of pursuing its spirit. N.D.C.C. § 1-02-05; Wills v. Shroeder Aviation, Inc., 390 N.W.2d 544 (N.D. 1986). Because the terms "guardian" and "guardian ad litem" have distinct meanings, and because the relevant statutory definition of the term "guardian" specifically excludes a "guardian ad litem," it is my opinion the term "guardian" contained in N.D.C.C. § 27-20-26(1) does not include a guardian ad litem.

I hope this discussion was of some assistance to you.

Sincerely,

Nicholas J. Spaeth

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