

N.D.A.G. Letter to Riha (Dec. 31, 1987)

December 31, 1987

Mr. Richard J. Riha
Burleigh County Assistant
State's Attorney
511 East Thayer Avenue
Bismarck, ND 58501

Dear Mr. Riha:

Thank you for your letter of November 2, 1987. By that letter, you ask that I reevaluate the position which I took in Attorney General's Opinion 87-4, dated February 23, 1987, and issued in response to an inquiry by Stark County State's Attorney Owen K. Mehrer. Specifically, you ask that I review Section I of the opinion in light of the North Dakota Supreme Court's decision in State v. Patten, 353 N.W.2d 30 (N.D. 1984).

Your letter identifies that opinion as creating an obstacle to the enforcement of child support "orders," as distinguished from "decrees." The opinion is apparently relied upon by the Burleigh County Clerk of Court as a basis for declining to issue a citation for contempt of court against the person who has failed to make child support payments described in an interim order, as might otherwise be provided under N.D.C.C. § 14-08-07(1). You describe this as frustrating the duty of the state's attorney to assist the district court in all proceedings to enforce compliance with a decree or order of child support. N.D.C.C. § 11-16-01(15). You assert that if the clerk does not set a contempt hearing, then the state's attorney is prevented from carrying out his or her statutory obligation in these cases.

As you requested, I have reviewed Attorney General's Opinion 87-4 in light of State v. Patten. The Patten case turns upon the definition of the term "decree," as contained in N.D.C.C. § 1-01-46. That section provides: "The word 'decree,' unless otherwise provided, has the same meaning as the word 'judgment'." (Emphasis supplied.) The court held that the interim custody order was a "custody decree," as that term is defined in N.D.C.C. § 14-14-02(4). The subsection referred to specifically defines "custody decree" to include "a custody determination contained in a judicial . . . order." The Patten court specifically noted that this was an exception within the "unless otherwise provided" language of N.D.C.C. § 14-01-46. 353 N.W.2d at 34. No similar analysis could be made in Opinion 87-4 because no similarly helpful definition of the term "decree" appeared in N.D.C.C. § 14-08-07.

I also cannot agree that the analysis of Opinion 87-4 prevents the state's attorney from carrying out his or her obligation, under N.D.C.C. § 11-16-01(15), to "assist the district court in behalf of the recipient of payment for child support . . . in all proceedings instituted to enforce compliance with a decree or order of the court requiring such payments." The

remedy of seeking compliance with a court's order through a proceeding requiring a person, alleged to be in violation of the order, to appear and show cause why he should not be held in contempt, is not dependent upon the issuance of a citation by the clerk pursuant to N.D.C.C. § 14-08-07(1). That remedy is available to any party aggrieved by another party's refusal to obey a court order.

An enactment of the 1987 Legislative Assembly, however, appears to have effectively overruled the conclusion of Opinion 87-4. That enactment is now codified at N.D.C.C. § 14-08.1-05(1), which provides:

14-08.1-05. Support order to be judgment.

1. Any order directing any payment or installment of money for the support of a child is, on and after the date it is due and unpaid:
 - a. A judgment by operation of law, with the full force, effect, and attributes of a judgment of the district court, including the ability to be entered in the judgment book pursuant to Rule 58 of the North Dakota Rules of Civil Procedure and otherwise enforced as a judgment;
 - b. Entitled as a judgment to full faith and credit in any jurisdiction which otherwise affords full faith and credit to judgments of the district court; and
 - c. Not subject to retroactive modification.

Opinion 87-4 held that the term "court decrees," as used in N.D.C.C. § 14-08-07(1), does not refer to interim orders for support as provided in N.D.C.C. § 14-05-03 because interim orders were not, at the time the opinion was issued, regarded as judgments.

However, since March 23, 1987, the effective date of N.D.C.C. § 14-08.1-05, "[a]ny order . . . for the support of a child is, on and after the date it is due and unpaid . . . [a] judgment by operation of law" Since this change, the analysis presented in part I of Opinion 87-4 produces an opposite result. Simply put, an interim order is now a judgment.

Therefore, it is my opinion that, since March 23, 1987, the term "court decrees," as used in N.D.C.C. § 14-08-07(1), refers, among other things, to interim orders for support as provided for in N.D.C.C. § 14-05-23 and Rule 8.2 of the North Dakota Rules of Court.

Sincerely,

Nicholas J. Spaeth