

Overruled by N.D.C.C. § 14-08.1-05(1) (see N.D.A.G. Letter to Riha (Dec. 31, 1987))

Date Issued: February 23, 1987 (AGO 87-04)

Requested by: Owen K. Mehrer, Stark County State's Attorney

- QUESTION PRESENTED -

I.

Whether the term "court decrees" as used in N.D.C.C. section 14-08-07(1), refers to interim orders for support as provided for in N.D.C.C. section 14-05-23 and Rule 8.2 of the North Dakota Rules of Court.

II.

Whether the phrase "judgment or order," as used in Section 2 of House Bill No. 1903, as enacted by the Fiftieth Legislative Assembly in special session, includes interim orders for support as provided for in N.D.C.C. section 14-05-23 and Rule 8.2 of the North Dakota Rules of Court.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that the term "court decrees" as used in N.D.C.C. section 14-08-07(1), does not refer to interim orders for support as provided for in N.D.C.C. section 14-05-23 and Rule 8.2 of the North Dakota Rules of Court.

II.

It is my further opinion that the phrase "judgment or order," as used in Section 2 of House Bill No. 1903, as enacted by the Fiftieth Legislative Assembly in special session, includes interim orders for support as provided for in N.D.C.C. section 14-05-23 and Rule 8.2 of the North Dakota Rules of Court.

- ANALYSES -

I.

In pertinent part, N.D.C.C. section 14-08-07(1) provides:

1. In any action wherein a court decrees that payments for child support or alimony combined with child support be made, the court shall provide in its decree that such payments be paid to the clerk of court as trustee for remittance to the recipient or person or public agency

providing support for such recipient. The clerk of court shall maintain records listing the amount of the payments, the date when the payments shall be made, the names and addresses of the parties subject to the decree and any other information necessary for the proper administration of the decree. The parties subject to the decree shall immediately inform the clerk of court of any change of address or change of any other condition which may affect the proper administration of sections 14-08-07 through 4-08-10. . . . (Emphasis supplied.)

The phrase "court decrees" appears in a sentence where the word "court" is the subject and the word "decrees" is the verb. The appearance of the word "decree" in the remaining portions of the subsection demonstrates a legislative intent to use the verb form of "decrees" to refer exclusively to the issuance of a "decree." The word "decree" has the same meaning as the word "judgment." N.D.C.C. section 1-01-46. An interim order of support entered in a manner consistent with Rule 8.2 of the North Dakota Rules of Court and N.D.C.C. section 14-05-23 may be accomplished ex parte and is superseded by the entry of any final order in the proceeding. The interim order may lead to a final order and the final order may lead to a judgment, but neither order is a judgment.

Therefore, it is my opinion that the term "court decrees" as used in N.D.C.C. section 14-08-07(1), does not refer to interim orders for support as provided for in N.D.C.C. section 14-05-23 and Rule 8.2 of the North Dakota Rules of Court.

## II.

Section 2 of House Bill No. 1903 adds a new section to N.D.C.C. chapter 14-09 to read as follows:

Income withholding order. When a judgment or order requires the payment of child support, or the payment of alimony and child support, it may be enforced by an income withholding order, as provided in this act, in addition to any of the remedies provided by law.

House Bill No. 1903 was enacted by the special session of the Fiftieth Legislative Assembly in an effort to comply with requirements imposed by the congress through section 3(b) of the Child Support Amendments of 1984, Pub. L. No. 98-378, 42 U.S.C. section 666(b). The federal law requires that each state have in effect laws requiring that "in the case of each absent parent against whom a support order is or has been issued or modified in the state . . . so much of such parent's wages . . . must be withheld . . . as is necessary to comply with the order . . . ." (Emphasis supplied.)

The Legislature's intent to comply with the federal law must have intended that the term "order" as used in Section 2 of House Bill No. 1903, include interim orders.

Further, were the term "order" as used in section 2, to have the same meaning as the term "decree" the word would be mere surplusage. That is so because "judgment," a term equivalent to the "decree," is identified in Section 2 of House Bill No. 1903 as an alternative to the term "order." Our Supreme Court has held that statutory words may not generally be considered useless rhetoric or surplusage.

State v. Nordquist 309 N.W. 2d. 109 (N.D. 1981); Hermanson v. Morrell 252 N.W. 2d. 884 (N.D. 1977). In light of the alternative use of the terms "order" and "decree" and the statutory rule of construction prohibiting the interpretation of statutory words as useless surplusage, the terms "order" and "decree" do not have the same meaning.

Therefore, it is my opinion that the phrase "judgment or order," as used in Section 2 of House Bill No. 1903 includes interim orders for support as provided for in N.D.C.C. section 14-05-23 and Rule 8.2 of the North Dakota Rules of Court.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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