

NO. A12-0216

State of Minnesota  
In Court of Appeals

Mark A. VanGelder,

*Appellant,*

vs.

June M. Johnson,

*Respondent.*

APPELLANT'S BRIEF, ADDENDUM AND APPENDIX

MESSERLI & KRAMER, P.A.  
Malcolm P. Terry (#261117)  
Kristy A. Saum (#0346974)  
Benjamin J. Court (#319016)  
100 South Fifth Street  
1400 Fifth Street Towers  
Minneapolis, MN 55402  
(612) 672-3600

*Attorneys for Appellant*

QUINLIVAN & HUGHES, P.A.  
Michael J. Ford (#3082X)  
P.O. Box 1008  
St. Cloud, MN 56302-1008  
(320) 251-1414

*Attorneys for Respondent*

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF THE ISSUES

1. Whether the District Court erred in holding that Respondent was entitled to quasi-judicial immunity despite acknowledging Respondent had not been appointed by the Court.

2. Whether the District Court erred in holding that Respondent's authority was defined by the Judgment and Decree although Respondent was not a party to the Judgment and Decree but rather was engaged by private contract.

3. Whether the District Court erred in holding that no genuine issue of fact existed concerning whether Respondent acted within the scope of her authority.

## STATEMENT OF THE CASE

This action arises out of a private parenting consultant services agreement. Appellant Mark VanGelder commenced the present action alleging breach of contract and negligence against Respondent June Johnson. Respondent's motion for summary judgment was heard before Stearns County District Court Judge Vicki E. Landwehr on December 15, 2011. The Honorable Judge Landwehr granted Respondent's motion for summary judgment by Order dated January 18, 2012. Appellant filed its notice of appeal on February 6, 2012.

## STATEMENT OF THE FACTS

Appellant Mark VanGelder was married to Mary Catherine Clifford on October 17, 1992. (App. 3). Twelve years later, Appellant and Ms. Clifford were divorced by virtue of that certain Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree dated May 27, 2005, entered in Sherburne County (hereinafter “Judgment and Decree”). (App. 1-27).

On May 3, 2012, nearly five years after the Judgment and Decree, Appellant and Ms. Clifford entered into a private contract with Respondent. (App. 28-31). Pursuant to the terms of the Parenting Consultant Agreement (hereinafter “Agreement”), Appellant and Ms. Clifford agreed “to purchase Parenting Consultant services” from Respondent and Respondent agreed to perform such services as defined and outlined therein. Id. The Agreement described, among other things, the role of the parenting consultant, the duration of the appointment and the decision making process. (App. 28-29).

Respondent’s authority as a parenting consultant was described in the Agreement:

Role of the Parenting Consultant. The contracted consultant will serve as Parenting Consultant to the parties. The parties understand that the contracted consultant will assist them with issues involving their child(ren) including but not limited to access schedules, parenting styles, discipline of the chil(ren), extra-curricular activities, educational issues and any other issues surrounding the child(ren) that the parties agree to submit to the Parenting Consultant. The Parenting Consultant will not assist with financial issues unless both parties agree, in writing, to submit the issue(s) to the Parenting Consultant and the Parenting Consultant agrees to resolve the issue(s).

(App. 28).

The May 3, 2010 Agreement is the only agreement between Respondent, Appellant and Ms. Clifford. (App. 51). Additionally, Respondent admits the Agreement makes no reference to, nor incorporates in any way, the Judgment and Decree. (App. 44).

Although the Judgment and Decree entered in 2005 directed Appellant and Ms. Clifford to engage the services of a parenting consultant in the event of an impasse involving parenting time, it failed to appoint or specify the parenting consultant to be used. (App. 12-14). Moreover, the Judgment and Decree applies to Appellant and Ms. Clifford, but names no additional third-parties who are to be bound by the Judgment and Decree, and it fails to order any third-party to perform any acts or services whatsoever. (App. 1-27).

Appellant and Ms. Clifford elected to engage Respondent as a parenting consultant. (App. 43). Respondent was never appointed by any Court Order. Id. Similarly, Respondent was never directed by any Court Order to do anything relating to Appellant, Ms. Clifford or their minor daughter. Id. Respondent was not required to, and in fact did not, provide copies of any of her decisions made as a parenting consultant to the Court. (App. 45).

Respondent issued three decisions and provided those decisions to Appellant and Ms. Clifford. (App. 79-91). Respondent's decisions set forth a parenting time schedule. Id. In addition to the parenting time schedule, however, Respondent's May 31, 2010 decision also included a section entitled "Additional Recommendations". (App. 82). Despite the limited authority provided in the Agreement, Respondent's "Additional Recommendations" included the following mandates:

That neither parent smokes around the child, nor allows anyone else to smoke around her.

That, due to the nature of Mr. VanGelder's adult related business, age of the minor child and vulnerability to character association by peers; it is not in her best interest to be associated or on the premise at any time.

That Mr. VanGelder provides documentation of completing the mandated Co-Parenting Coursework to the Court within 30 days.

(App. 82).

Additionally, Respondent's November 22, 2010 decision included the following mandates:

1. That Mary C. Clifford completes a psychological evaluation at CORE Professional Services within 30 days, following all therapeutic recommendations.
  - CORE Professional Services is located at 110 14<sup>th</sup> Ave. East, Sartell, MN 56377. Their telephone number is (320) 202-1400.
2. That Mark A. Van Gelder completes a psychological evaluation which includes an anger assessment component at CORE Professional Services within 30 days, all follows all therapeutic recommendations. [sic]
  - CORE Professional Services is located at 110 14<sup>th</sup> Ave. East, Sartell, MN 56377. Their telephone number is (320) 202-1400.
3. *That as previously ordered;* that Mr. Van Gelder provides documentation of completing the mandated Co-Parenting coursework to the Court.
4. *That as previously ordered;* that due to the nature of Mr. Van Gelder's adult related business, age of the minor child and vulnerability to character association by peers; it is not in her best interest to be associated or on the premise at any time.

(App. 91).

Respondent admitted that she had no specific information that anyone was smoking around the child and that neither Appellant, Ms. Clifford nor the child raised a concern about smoking. (App. 73). Appellant never agreed to submit to Respondent any of the issues in Respondent's "Additional Recommendations" section. (App. 94).

Not only did Respondent exceed her contractual authority, she also performed her parenting consultant services in a negligent fashion. After entering into the Agreement, Respondent met separately with Appellant and Ms. Clifford and also sent a form to them both to complete with information for Respondent's use. (App. 67, 103-161). Respondent expressly requested that they "please list three persons you would like me to contact." (App. 123, 152). One of the individuals identified by Appellant was his mother, Lois VanGelder. (App. 123). Appellant asked Respondent in a number of e-mails to contact his mother, and attempted to facilitate the contact. (App. 162-163). However, despite Respondent's representations, she never contacted Appellant's mother. (App. 67, 162-163).

In fact, Respondent never contacted any of the individuals identified by Appellant or Ms. Clifford despite her statement that she was "accessing background information". (App. 67, 164). Respondent did not contact a single person identified by Appellant or Ms. Clifford. (App. 67). Additionally, other than a single meeting with Ms. Clifford, a single meeting with Appellant, a single communication with their minor daughter's therapist and a call to their daughter's school to verify attendance and grades, Respondent did not speak to anyone else prior to making her decisions. (App. 53, 63, 67). Respondent admitted that she did nothing to verify the information that was given to her

and did no independent investigation of the accounts told to her by Appellant or Ms. Clifford. (App. 62-63). Respondent even stated that it would not be important to her to determine if one of the parties was lying, despite the fact that she relied on their accounts in issuing her decisions. (App. 63).

Respondent also failed to communicate with Appellant during the process. Respondent represented that “[a]s part of that process I try to reiterate what I have heard from the parties as to confirm what they were attempting to communicate.” (App. 164). Appellant repeatedly requested that Respondent help Appellant to understand Ms. Clifford’s decisions and positions as to parenting time in an attempt to identify the potential issues so they could be addressed and resolved. (App. 92-93, ¶ 6; 164). Instead of providing this information to Appellant and facilitating an agreement between him and Ms. Clifford, as required by the Agreement, Respondent chose to simply ignore Appellant’s requests. (App. 92-93, ¶ 6, 7). Respondent also ignored Appellant’s requests to see a copy of the initial forms and paperwork completed by Ms. Clifford in an attempt to gain insight into Ms. Clifford’s position. (App. 93, ¶ 7; 164). Appellant had specifically informed Respondent that it would be difficult for him to accommodate a change to the parenting schedule without information regarding the reasons and/or motives behind the change. (App. 93, ¶ 8). However, instead of providing this information, Respondent was silent, furthering the animosity and conflict between Appellant and Ms. Clifford. (App. 93, ¶ 9).

By her refusal to communicate with Appellant, Respondent exhibited a clear and continual bias in favor of Clifford. (App. 93-94, ¶ 11). Additionally, despite Appellant’s

constant communications with Respondent that many of Clifford's accusations were, in fact, false and that Appellant had information that would show their falsity, Respondent never considered this information, never looked into the issues, and, admitted that she was not concerned if one party was lying to her, despite the fact that she relied on the information from the parties in making her decisions. (App. 62-63).

Once Respondent's decisions had been issued, and Respondent's schedule was being implemented, Respondent created additional turmoil and animosity by failing to enforce the terms of her own schedule. (App. 94-95, ¶ 13, 15). As it became apparent that Respondent was disregarding both her contracted authority, Appellant's communications and requests, and her own parenting time schedule, Appellant elected to terminate Respondent's services. On December 23, 2010, Appellant sent a letter to Respondent informing her that her services were terminated, effective immediately. (App. 165). Respondent, however, continued to communicate with Ms. Clifford and act as a parenting consultant, interjecting herself into Appellant's affairs and causing additional distress and turmoil. (App. 95, ¶ 17).

#### **STANDARD OF REVIEW**

On appeal from summary judgment, an appellate court reviews *de novo* whether a genuine issue of material fact exists and whether the lower court erred in its application of the law. Peterka v. Dennis, 764 N.W.2d 829, 832 (Minn. 2009). A reviewing court accepts as true the factual allegations made by an appellant and views evidence in the light most favorable to the party against whom summary judgment was granted. Zagaros

v. Erickson, 558 N.W.2d 516, 520 (Minn. Ct. App. 1997). Immunity is a question of law which an appellate court reviews *de novo*. Peterka, 764 N.W.2d at 832.

### ANALYSIS

#### **I. THE DISTRICT COURT ERRED IN HOLDING THAT RESPONDENT WAS ENTITLED TO QUASI-JUDICIAL IMMUNITY.**

##### **A. Court Appointment is Required to Establish Quasi-Judicial Immunity.**

The District Court erred in granting quasi-judicial immunity to a parenting consultant engaged by private contract rather than appointed pursuant to a court order. The doctrine of quasi-judicial immunity does not extend to those professionals who are not directly appointed by the Court, and therefore provides no protection for Respondent in this action.

“Judicial immunity precludes judges from being held liable for acts done in the exercise of judicial authority.” Sloper v. Dodge, 426 N.W.2d 478, 479 (Minn. Ct. App. 1988). This rule, as first recognized in Minnesota in the case of Stewart v. Cooley, was clearly described therein by the Court:

Hence, the doctrine has become settled that, for acts done in the exercise of judicial authority, clearly conferred, an officer or judge shall not be held liable to any one in a civil action, so that he may feel free to act upon his own convictions, uninfluenced by any fear or apprehension of consequences personal to himself.

Linder v. Foster, 295 N.W. 299 (Minn. 1940); *citing* Stewart v. Cooley, 23 Minn. 347 (1877). Judicial immunity has been extended, in limited circumstances, to parties that are integrally involved in the judicial process. *See e.g.* Dziubak v. Mott, 503 N.W.2d 771 (Minn. 1993)(extended to public defenders); Tindell v. Rogosheske, 428 N.W.2d 386

(Minn. 1988)(extended to court appointed guardian ad litem); Myers v. Price, 463 N.W.2d 773 (Minn. Ct. App. 1990)(extended to court appointed therapist).

This extension of judicial immunity applies only where the individual or entity was directly appointed by a court order specifically identifying the entity and/or person to provide the services. Zagaros, 558 N.W.2d at 523-24; Sloper v. Dodge, 426 N.W.2d at 479. Individuals acting in a private capacity are not entitled to judicial immunity. Hoppe v. Klapperich, 28 N.W.2d 780, 788 (Minn. 1947). This is consistent with the original expression of judicial immunity in Minnesota in 1877, whereby the Court in Stewart v. Cooley explained that judicial immunity applies to those acting “in the exercise of judicial authority, **clearly conferred**”. Linder, 295 N.W. at 300; *citing* Stewart, 23 Minn. 347 (1877)(emphasis added).

In Sloper v. Dodge, the Court of Appeals held that court appointment is dispositive on the issue of quasi-judicial immunity. 426 N.W.2d at 479. Sloper pled guilty to fifth degree assault, and as part of his suspended sentence, he was ordered to pay for and complete Dr. Dodge’s therapy program. Id. at 478. Sloper completed the program but was later arrested when neither Sloper nor Dodge reported his completion to the probation officer. Id. at 478. Sloper sued Dodge for negligence in causing his arrest. Id. at 478-79. The Court of Appeals described Dodge as only “indirectly appointed” as the order, which directed the behavior of Sloper, did not, in fact, order or require Dodge to do anything. Id. at 479. The Court of Appeals held that the record “if not conclusive against court appointment, at least raises a fact issue” to be resolved in favor of the nonmoving party.” Id.

Following Sloper, the Court of Appeals in Zagaros v. Erickson held that a custody evaluator was not entitled to immunity without court appointment. 558 N.W.2d at 523-24. “For now, the doctrine of judicial immunity protects those who are **appointed by the court** to perform judicial or quasi-judicial functions.” Id. (emphasis added) The custody evaluator in Zagaros, as here, had been selected by the parties and had entered into a private contract with the parties regarding services and payment. Id. at 519. The Court, rejecting the request to extend immunity without appointment on the basis of protecting professionals from fear of liability, refused to extend judicial immunity to professionals absent court appointment. Id. at 523-524.

Both Sloper and Zagaros are controlling as to the application of judicial immunity to Respondent in this matter. Respondent is akin to the custody evaluator in Zagaros in that Respondent was selected by the Appellant and Ms. Clifford, entered into a private contract with them regarding services and payment, and was never appointed by Court Order. The District Court erred as a matter of law by ignoring the legal precedent and extending quasi-judicial immunity contrary to the clear language of Zagaros.

In addition to the absence of a court order appointing Respondent as a parenting consultant, no such order required Respondent to provide any services to Appellant, Ms. Clifford, or their minor child. Respondent never reported to the Court, nor gave copies of any of her decisions to the Court, or interacted with any Court official in any way relating to the contractual services she provided. (App. 44-45). Respondent even testified that she normally prefers to get an order from the Court formally appointing her as the parenting consultant, but admits that she failed to do so in this case. (App. 43). The

documents submitted by Respondent in support of her summary judgment motion that define and describe the various roles in family court proceedings, even recognize that a parenting time consultant requires court appointment to be protected by immunity. (App. 98).

The relationship between Plaintiff, Ms. Clifford and Defendant was purely private and contractual. The District Court even recognized this key deficiency: “the only thing that Johnson did not have was an express court appointment.” (Add. 7). Despite this recognition, the District Court, without explanation or justification, disregarded the precedent of Sloper, Zagaros and other cases, and erroneously granted immunity to Respondent.

The key factor in this case is that June Johnson was never appointed by the Court to perform any services relating to the Plaintiff. Defendant’s involvement was instead solely contractual in nature. The Judgment and Decree dissolving the marriage of Plaintiff and Mary VanGelder was entered on May 27, 2005. (App. 1). It was not until May 3, 2010, nearly five years later, that Plaintiff and his ex-wife contracted with Defendant to provide services. (App. 28-31). No subsequent Order appointing Defendant as a parenting consultant, or appointing Defendant to any position exists. As Defendant was clearly not court-appointed, under the precedent of Sloper and Zagaros she is not entitled to quasi-judicial immunity.

**B. Quasi-Judicial Immunity is Intended to Protect the Judicial Process Itself, Not Private Contractual Agreements.**

As set forth above, the district court erred in altering precedent and expanding the well-defined scope of quasi-judicial immunity to include Respondent. In addition to lacking a basis for its expansion of the doctrine, such an extension of quasi-judicial immunity to Respondent would not support the purpose and policy behind the doctrine and should therefore be denied.

Judicial immunity is intended to protect individuals from liability for acts performed in the exercise of judicial authority, and has been extended to court-appointed physicians and experts who submit evaluations relating to judicial proceedings. Koelln v. Nexus Res. Treatment Facility, 494 N.W.2d 914, 920 (Minn. Ct App. 1993). “The reason for the rule is to encourage full disclosure in court proceedings so the truth may be determined.” Id. The defendant in Koellen, a private residential treatment center, tried to argue that its services and decisions regarding treatment and supervision of an offender were within the “judicially delegated responsibilities” and therefore “continue to be an integral part of the judicial process.” Id. at 921. However, this argument was rejected by the Court. Id. The Court held that the extension of immunity would not further the rule by granting immunity to a private party when the actions in dispute arose after the judicial process was completed and therefore were not an integral part of the judicial process itself, but rather a separate process. Id.

As in Koellen, Respondent’s involvement as a parenting consultant was a private and separate process and the actions in dispute arose after Judgment and Decree had been

entered. Respondent was engaged as a parenting consultant by private contract entered into nearly five years after the Judgment and Decree dissolving Appellant's marriage. Moreover, Respondent admitted that she was not appointed by the court, was not required to report to the court, and, in fact, did not provide any of her decisions to the Court. Accordingly, Respondent's role cannot be considered a vital part of any judicial proceeding. Respondent's role was private, contractual, and completely distinct from the judicial process. Unlike public defenders or guardian ad litem, Respondent was not providing a service for the court, but instead was performing services privately for the parties. Therefore, extending the already defined scope of quasi-judicial immunity to apply to Respondent in this action is inconsistent with the policy and purpose underlying the doctrine.

If Respondent desired immunity for her actions, it was available had she sought court appointment. Respondent's failure to follow the procedures required to be entitled to immunity, which she admitted she understood and typically followed, does not justify extending the immunity doctrine beyond its present scope.

## **II. THE DISTRICT COURT ERRED IN HOLDING THAT RESPONDENT'S AUTHORITY WAS DEFINED BY THE JUDGMENT AND DECREE.**

The District Court, without analysis or explanation, began its discussion of whether or not Respondent acted within the scope of her authority by defining Respondent's authority as set by the terms of the 2005 Judgment and Decree. Respondent's relationship with Appellant and Ms. Clifford, however, was contractual and her authority was strictly defined by the terms of the 2010 Agreement. Accordingly, the

district court erred in defining Respondent's authority as arising from the Judgment and Decree.

Respondent's involvement with Appellant and Ms. Clifford is exclusively governed by the terms of the Agreement executed by the parties. Respondent was not a party to the divorce proceeding at any time, and was not involved with the matter at all when the Court issued the Judgment and Decree. Additionally, Respondent concedes that she was never court appointed, and there is no court order requiring Respondent to act within the confines of the Judgment and Decree. The Judgment and Decree binds only Appellant and Ms. Clifford. The Agreement binds Respondent.

In State v. Tapia, 468 N.W.2d 342 (Minn. Ct. App. 1991) the Minnesota Court of Appeals addressed the authority of a bail bondsman. The Court of Appeals identified three sources of authority for the bondsman: common law, statutory authorization and contractual authority. Id. at 343. Ultimately, the Court held that none of the three sources gave the bondsman the authority for the acts alleged.

In this action, the Agreement between Appellant, Respondent and Ms. Clifford is the sole source of Respondent's authority. There is no statutory authority for Respondent's actions. "The term 'parenting consultant' is not used in the Minnesota statutes." Szarzynski v. Szarzynski, 732 N.W.2d 285, 293 (Minn. Ct. App. 2007). As described by the Minnesota Court of Appeals, parenting consultant "refers to a creature of contract or of an agreement of the parties which is generally incorporated into (or at least referred to in) a district court's custody ruling." Id. There is similarly no common law authority for parenting consultants.

The Agreement between Appellant, Respondent and Ms. Clifford clearly set forth the authority granted to Respondent. Respondent admits that there were no other contracts or agreements with Appellant. She also admits that she was not a party to the Judgment and Decree and was never directed by the Court to perform any services. The sole source of Respondent's authority stems from the Agreement. The District Court, therefore, erred by concluding that Respondent's authority was defined by the terms of the Judgment and Decree.

**III. THE DISTRICT COURT ERRED IN HOLDING THAT THERE WAS NO GENUINE ISSUE OF FACT THAT RESPONDENT ACTED WITHIN THE SCOPE OF HER AUTHORITY.**

The District Court erred by disregarding evidence submitted by Appellant demonstrating a genuine issue of material fact as to whether or not Respondent exceeded the scope of her authority. On appeal from summary judgment, an appellate court must address two questions: 1) whether there are genuine issues of material fact, and 2) whether the lower court erred in its application of the law. Cummings v. Koehnen, 568 N.W. 2d 418, 420 (Minn. 1997). Summary judgment is inappropriate if viewing all facts in the light most favorable to the non-moving party and finding all inferences in the non-moving party's favor, facts exist such that a reasonable juror could find for the non-moving party. Hunt v. IBM – Mid America Employees Federal Credit Union, 384 N.W.2d 853, 855 (Minn. 1986). Appellant presented clear evidence of mandates issued by Respondent that exceeded her scope of authority. Accordingly, the District Court's grant of summary judgment was in error.

As an initial matter, the District Court's analysis on this issue was flawed because, as stated above, the District Court used the Judgment and Decree as the basis for Respondent's authority instead of the Agreement. This improper definition of Respondent's authority alone requires, at the least, a remand to the District Court to evaluate the argument based upon the proper scope of authority.

The proper scope of Respondent's authority is set forth in the Agreement between Respondent, Appellant and Ms. Clifford:

The contracted consultant will serve as a Parenting Consultant to the parties. The parties understand that the contracted consultant will assist them with issues involving their child(ren) including but not limited to access schedules, parenting styles, discipline of the child(ren), extra-curricular activities, educational issues and any other issues surrounding the child(ren) that the parties agree to submit to the Parenting Consultant. The Parenting Consultant will not assist with financial issues unless both parties agree, in writing, to submit the issue(s) to the Parenting Consultant and the Parenting Consultant agrees to resolve the issue(s).

(App. 28).

A correct determination of Respondent's scope of authority pursuant to the Agreement is vital in this analysis, as any immunity argument proffered by Respondent cannot be sustained for actions outside of the scope of Respondent's authority. Myers, 463 N.W.2d at 776.

Respondent's decisions included a number of mandates that exceed the scope of her authority as stated above. Those mandates include:

That neither parent smokes around the child, nor allows anyone else to smoke around her.

That, due to the nature of Mr. VanGelder's adult related business, age of the minor child and vulnerability to character association by peers; it is not in her best interest to be associated or on the premise at any time.

That Mr. VanGelder provides documentation of completing the mandated Co-Parenting Coursework to the Court within 30 days.

That Mary C. Clifford completes a psychological evaluation at CORE Professional Services within 30 days, following all therapeutic recommendations.

That Mark A. Van Gelder completes a psychological evaluation which includes an anger assessment component at CORE Professional Services within 30 days, all follows all therapeutic recommendations. [sic]

*That as previously ordered;* that Mr. Van Gelder provides documentation of completing the mandated Co-Parenting coursework to the Court.

*That as previously ordered;* that due to the nature of Mr. Van Gelder's adult related business, age of the minor child and vulnerability to character association by peers; it is not in her best interest to be associated or on the premise at any time.

(App. 82, 91).

Appellant never agreed to submit any the issues identified above to Respondent, as provided by the Agreement. (App. 94, ¶ 12). Moreover, these issues are outside of the scope of authority as defined by the Agreement. For an example, while neither Appellant nor Ms. Clifford smoked, Respondent's mandate required neither parent smoke around the child nor allow anyone else to smoke around the child. A parent's choice to smoke does not involve access schedules, parenting styles, discipline, extra-curricular activities nor educational issues of the child. Appellant presented clear examples of conduct by

Respondent that exceeded the limited scope of authority provided by the Agreement. The District Court only addressed in detail one of the instances offered by Appellant. The District Court, with little analysis, held that “all of Johnson’s recommendations related to parenting issues” (Add. 8). However, “parenting issues” is not the scope of authority granted to Respondent by the Agreement. Respondent’s authority per the Agreement involves access schedules, parenting styles, discipline, extra-curricular activities and educational issues of the child. (App. 28). None of the six mandates listed above relate to this limited scope of authority as agreed by the parties and defined in the Agreement. As such, it was error for the District Court to hold that there was no genuine issue of fact that Respondent acted within the scope of her authority.

### CONCLUSION

The District Court acknowledged that Respondent was not appointed by the Court. Accordingly, under the clear precedent of Sloper and Zagaros, Respondent is not entitled to immunity, and the District Court’s Order granting immunity to Respondent should be reversed. Additionally, the District Court erred in defining Respondent’s authority by the terms of the Court’s Judgment and Decree and not the private contract that gave rise to Respondent’s involvement. The District Court’s improper use of the Judgment and Decree to define Respondent’s authority combined with the District Court’s disregard of material facts evidencing that Respondent exceeded the scope of her authority, warrant a reversal of the District’s Court Order. Appellant hereby requests that the District Court’s Order and Judgment granting Respondent’s motion for summary

judgment be reversed, and that the matter be remanded to the District Court for further proceedings.

MESSERLI & KRAMER

Dated: March 8, 2012

A handwritten signature in black ink, appearing to read 'Kristy A. Saum', written over a horizontal line.

Malcolm P. Terry (#261117)

Benjamin J. Court (#319016)

Kristy A. Saum (#0346974)

1400 Fifth Street Towers

100 South Fifth Street

Minneapolis, MN 55402

(612) 672-3600

ATTORNEYS FOR APPELLANT

## CERTIFICATE OF COMPLIANCE

This brief complies with the requirements of Rule 132.01 of the Minnesota Rules of Civil Appellate Procedure as to word count. This brief contains 4,618 words, excluding the parts of the brief exempted by Rule 131.01, subd. 5(d)(7)(C), and the brief meets the type face requirements of Rule 131.01, subd. 5(d)(7)(C).

The word processing software utilized to prepare this brief is Microsoft Word 2007.

MESSERLI & KRAMER

Dated: March 8, 2012



Malcolm P. Terry (#261117)

Benjamin J. Court (#319016)

Kristy A. Saum (#0346974)

1400 Fifth Street Towers

100 South Fifth Street

Minneapolis, MN 55402

(612) 672-3600

ATTORNEYS FOR APPELLANT

948796.2