

N.D.A.G. Letter to Slorby (Feb. 16, 1987)

February 16, 1987

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

Dear Mr. Slorby:

Thank you for your letter of January 13, 1987, concerning an execution on a judgment providing that a defendant in a divorce action shall pay the plaintiff's attorneys fees. I apologize for the delay in responding.

You specifically ask whether an execution can be issued on a judgment using the phrase "Order Adjudged and Decreed" rather than the phrase "plaintiff shall have judgment against the defendant for (a certain amount)" when the court ordered payment of attorney's fees. It is my opinion that the latter phrase is not required. "The absence of language commonly deemed especially appropriate to formal judgments, . . . is not fatal." 46 Am.Jur.2d, Judgments, § 64 (1969). If the judgment otherwise qualifies as a money judgment upon which an execution can issue, the use of the words "plaintiff shall have judgment against defendant" is not mandatory.

N.D.C.C. § 28-20-13 provides that judgments directing the payment of money in whole or in part shall be entered in the judgment docket and shall be a lien on the real property except the homestead of the judgment debtor. N.D.C.C. § 28-20-15 provides that money judgments shall not be docketed until an affidavit of identity is also provided. N.D.C.C. § 28-21-04 specifies that when a judgment requires the payment of money it may be enforced by execution. The copy of the judgment which you enclosed represents a judgment directing the payment of money. It requires the payment of money by defendant. If the other requirements for docketing a money judgment are met, the clerk should docket this judgment as a money judgment and issue an execution upon it if requested to do so.

Two cases recently interpreting N.D.C.C. § 14-05-24 (the statute concerning alimony, division of property, support, and other payments consequent to a divorce) each provide that a divorce judgment in which an identifiable money payment is required is enforceable by execution rather than by contempt proceedings. Dvorak v. Dvorak, 329 N.W.2d 868 (N.D. 1983); Seablom v. Seablom, 329 N.W.2d 868 (N.D. 1983). Neither case indicates any requirement of specific language being included in the divorce judgment. The debtor and creditor in the judgment about which you asked are identified, the amount is specific and is not payable in monthly installments. In my opinion the amount to be paid by defendant does constitute a money judgment upon which an execution may issue if the other requirements for docketing the money judgment and issuing the execution are met.

Sincerely,

Nicholas J. Spaeth

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