

TUESDAY, FEBRUARY 12, 2008  
11:00 A.M.

NO. 3

#24632

State of South Dakota  
Ex Rel. Loraina White,  
Plaintiff and Appellee,

vs.

Jeffrey B. Brandt a/k/a  
Jeffrey Brian Brandt,  
Defendant and Appellant.

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(FOR APPELLANT)

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(FOR APPELLEE)

The Honorable Kathleen K. Caldwell  
Second Judicial Circuit  
Minnehaha County

(CIV 93-1588)

## LEGAL ISSUES

I. Whether the Defendant is entitled to relief from the judgment by default entered in this action because it was obtained in violation of the Defendant's right to due process of law under the Fifth and Fourteenth Amendments of the United States Constitution and Article VI, Section II of the South Dakota Constitution in that the Plaintiff failed to give the Defendant written notice of its application for judgment as required by SDCL 15-6-55(b) (1).

The trial court found that the Defendant made an appearance in this action when he met with Ms. Johnson and they agreed to have DNA testing to determine if he was the father of the minor child. However, the court also found that the personal service of a second Summons and Complaint on the Defendant in CIV 93-1588 initiated a new action in which the Defendant did not make an appearance as he did not respond to the second Summons and Complaint. The trial court determined the Defendant was not entitled to written notice of the Plaintiff's application for judgment and the entry of the judgment without notice to the Defendant did not violate his right to due process of law. The Defendant's motion for relief from judgment was denied.

SDCL 15-6-55(b) (1); SDCL 15-6-60(b) (4);  
*Mullane v. Central Hanover Bank and Trust Co.*, 339  
U.S. 306, 70 S.Ct. 652, 94 L.Ed 865 (1950);  
*Kromer v. Sullivan*, 225 N.W.2d 591 (1971);  
*National Surety Corporation v. Shoemaker*, 195 N.W.2d  
134 (1972)