

WEDNESDAY, OCTOBER 1, 2008  
10:00 A.M.

NO. 2

#24675, 24677

KEITH CLOUGH,  
Plaintiff and Appellee,

vs.

LORRAINE NEZ,  
Defendant and Appellant.

Mr. Dana L. Hanna  
Hanna Law Office  
PO Box 3080  
Rapid City SD 57709-3080  
Ph: 791-1832

(FOR APPELLANT)

Ms. Patricia A. Meyers  
Mr. Stephen C. Hoffman  
Costello, Porter, Hill,  
Heisterkamp, Bushnell & Carpenter  
Attorneys at Law  
PO Box 290  
Rapid City SD 57709-0290  
Ph 343-2410

(FOR APPELLEE)

The Honorable John J. Delaney  
Seventh Judicial Circuit  
Pennington County

(CIV 06-993)

NOTICE OF REVIEW FILED OCTOBER 17, 2007

20-20-10

## STATEMENT OF ISSUES

The Appellant-Defendant Lorraine Nez will present the following legal issues on appeal:

1

**Whether the trial court's order granting rights of visitation to the non-relative Plaintiff over the objection of a fit parent was an unconstitutional infringement on the Appellant-mother's fundamental Due Process right to make decisions concerning the care, custody, and control of her daughter?**

While conceding that the mother was a fit parent, the Court awarded visitation rights to the non-parent without addressing the parent's fundamental right to the care, custody, and control of her child.

2

**Whether the non-parent Plaintiff met his burden under SDCL § 25-5-29 of proving by clear and sufficient evidence that the Appellant's child would suffer serious detriment if the trial court did not award visitation rights to the Plaintiff?**

The trial court found as a fact that "rupturing the connection with the only father the child knows would be extremely harmful to the child and detrimental to her welfare." On the basis of that finding, the court made a conclusion of law that: "Pursuant to SDCL §§ 25-5-29 and 25-5-30 extraordinary circumstances exist which require the relationship between Plaintiff and the child be continued" and awarded visitation rights to the non-parent Plaintiff.

The cases and the statute most directly relevant to this issue are:

Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054 (2000);

Medearis v. Whiting, 695 N.W.2d 226 (S.D., 2005); and

SDCL § 25-5-29.

STATEMENT OF THE LEGAL ISSUE

1. Whether Clough's paternity could be questioned in an action to determine custody brought more than 60 days after Clough's paternity became presumptive?

The trial court allowed Nez to pursue a DNA test, and found on that basis that Clough was not C's father and that Nez was entitled to custody.

In re Support Obligation of Do Rego, 2001 SD 1, 620 N.W.2d 770.

Department of Social Services ex rel. Wright v. Byer, 2004 SD 41, 678 N.W.2d 586.

Department of Social Services ex rel. Wright v. Byer, 2005 SD 37, 694 N.W.2d 705.

Chapman v. Chapman, 2006 SD 36, 713 N.W.2d 572.

SDCL 25-8-59.

2. Whether Clough was entitled as a non-parent to visitation with C?

The trial court held in the affirmative.

Meldrum v. Novotny, 2002 SD 15, 640 N.W.2d 460.

Troxel v. Granville, 530 U.S. 57 (2000).

Matter of Midwest Motor Exp. Inc.. Bismark, 431 N.W.2d 160 (S.D. 1988)

Crosby v. State Dept. of Budget & Finance, 876 P.2d 1300 (Hawaii 1994).

SDCL 25-5-29

SDCL 25-5-30