

STATEMENT OF LEGAL ISSUES

1. Is other acts evidence admissible to show intent, a plan, or the relationship of the parties when such evidence is the testimony of a similarly situated victim who suffered from similar acts of the defendant?

The trial court held that such other acts evidence was not admissible.

2. Does the party objecting to the admission of other acts evidence have the burden of proof to show that the unfair prejudice of such evidence substantially outweighs its probative value?

The trial court did not require the party objecting to such evidence to meet such burden of proof.

If so, has the party objecting to the admission of other acts evidence met his burden of proof when he puts forward no evidence on the subject, and in argument, makes no explanation of what the prejudice would be or how it would substantially outweigh probative value, but simply states this in conclusory terms?

The trial court did not require the party objecting to the evidence to meet any burden of proof whatsoever.

3. Has the trial court failed to justify its use of discretion in ruling on the admissibility of evidence of other acts when it makes no analysis on the record, issues no memorandum opinion, makes no findings of fact or conclusions of law, does not receive any testimony, and in fact refuses to hear testimony offered by the plaintiff?

The trial court made no analysis on the record as to why it failed to admit the evidence of other acts.

If so, has the trial court applied incorrect legal standards, constituting both an abuse of discretion and an error of law, when the only hints of its reasons for excluding other acts evidence are that it would "create a mini trial within the trial", that "there is always that danger that's there" that such evidence might contain an inference as to character, and that the general trend of the law is that "this type of evidence is being less and less received"?

4. Has the trial court applied an incorrect legal standard, constituting both an abuse of discretion and an error of law, when in making a decision regarding the admission of other acts evidence, it fails to consider the necessity of such evidence and whether there was other evidence of equally probative value?

The trial court failed to consider the necessity of such other acts evidence and failed to consider whether there was other evidence of equally probative value.

5. Is the trial court allowed to modify an order issued under SDCL 15-6-16 only upon a showing of good cause?

The trial court allowed an order issued pursuant to SDCL 15-6-16 to be modified without a showing of good cause.

6. Is good cause for modification of an order issued under SDCL 15-6-16 shown when the only cause offered for modification by defendant's counsel is that he wanted to bring up "something that I thought of over the weekend"?

The trial court held this to be good cause for modification.

7. Has the trial court abused its discretion in failing to grant a continuance when no prejudice to the opposing party is shown, the continuance motion was not motivated by procrastination, bad planning, dilatory tactics, or bad faith, the moving party was prejudiced by the failure to grant a continuance, and there have been no prior continuances or delays?

The trial court denied the request for a continuance.

8. Does a continuing tort exist when sexual harassment consists of a series of actions which took place over several years?

The trial court held that an action of sexual harassment occurring in 1995 was beyond the statute of limitations for sexual harassment and excluded the jury from hearing such evidence.

If so, is the running of the statute of limitations suspended by virtue of a continuing tort when no discrete occurrence in continually wrongful conduct can be singled out as the principal cause of damage, but rather the damage persists over a substantial period of time?

The trial court held that the statute of limitations was not suspended in such a case.