

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF LAWRENCE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

3
4 DAVID SCHIED,)

5 Plaintiff,)

6 vs.)

7 DEPT OF SOCIAL SERVICES,)

8 Defendant.)

Motions Hearing

CIV. 22-116

9
10
11 BEFORE: **THE HONORABLE ERIC J. STRAWN**
12 Circuit Court Judge
13 Deadwood, South Dakota
14 October 7, 2022, at 9:30 a.m.

15 APPEARANCES:

16 For the Defendant: **MR. BOB MORRIS**
17 Morris Law Firm, Prof. LLC
18 P.O. Box 370
19 Belle Fourche, South Dakota 57717
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1 (WHEREUPON, the following proceedings were duly
2 had:)

3 **THE COURT:** This is the date and time set for a motions
4 hearing in the matter of David Schied versus Department of
5 Social Services.

6 Today, appearing on behalf of the Department of Social
7 Services, having made his notice of appearance, is Mr. Bob
8 Morris.

9 Mr. Schied has been provided an opportunity to appear
10 before this Court either in person or, upon request,
11 through telephonic appearance. Mr. Schied has not appeared
12 today.

13 The Court specifically address those motions that
14 would be considered regarding and relating to the appeal.
15 Number one, specifically, the request for an extension to
16 file the appellate brief as is required under statute.

17 I'm going to allow Mr. Morris to make his record with
18 regard to the three motions that are pending, as well as
19 the failure to appear by Mr. Schied and the resulting
20 impact of Mr. Schied's nonappearance today.

21 Mr. Morris, you may proceed.

22 **MR. MORRIS:** Thank you, Your Honor.

23 Mr. Schied has made a number of filings with the
24 Lawrence County Clerk of Courts, and for -- I mean, even if
25 you call it voluminous, that's probably an understatement,

1 but ultimately, the clerk of courts, on July 29, 2022, sent
2 Mr. Schied a letter outlining what he needed to do to bring
3 this matter before the Court.

4 In particular, paragraph 5 of that letter from Ms.
5 Latuseck, she indicated, "The Court has authorized a
6 hearing to be scheduled specifically and only for the
7 purpose of hearing your motion for waiver of costs and
8 motion to extend your time for filing a brief in the
9 matter. You will be provided that date through a notice of
10 hearing that will be mailed to you. You will need to
11 appear in person at that hearing unless otherwise allowed
12 by the Court to appear telephonically. You may make your
13 request once you receive the notice of hearing." That's
14 July 29th.

15 On September 19, 2022, the Court, on its own motion,
16 signed a notice of hearing, and that notice of hearing was
17 set on those particular issues for today's date, October 7,
18 2022, at 9:30 a.m. MST at the Lawrence County Courthouse.

19 According to the certificate of service, that was
20 served upon Mr. David Schied, sent certified mail, as
21 certified by the clerk, on the 19th day of September, 2022.
22 And I do not believe -- well, I don't know if he received
23 it.

24 **THE COURT:** Well, the Court will inquire with the Clerk of
25 Courts right now as to the delivery and acceptance of that

1 piece of mail.

2 Ms. Latuseck, did he receive or do you have
3 verification that he received the notice of hearing?

4 **MS. LATUSECK:** Yes, Your Honor. I received the certified
5 mail return on September 23rd. According to the post
6 office stamp, he received it on September 21st.

7 **THE COURT:** Ms. Latuseck, I'm going to have you raise your
8 right hand.

9 **CAROL LATUSECK,**

10 called as a witness, being first duly sworn, testified as
11 follows:

12 **THE COURT:** Ms. Latuseck, since the time of the delivery of
13 that notice of hearing, had, at any time, you received in
14 the clerk's office, or any of your deputies received any
15 form of notice or have you cleared any piece of mail that
16 has come from Mr. Schied to the Court that would request an
17 appearance telephonically or any other accommodations under
18 the Americans with Disabilities Act?

19 **MS. LATUSECK:** No, Your Honor.

20 **THE COURT:** Thank you.

21 Mr. Morris, you may continue with your -- let's
22 address the motions, themselves, as if he were here. I
23 would like to hear what your position is.

24 **MR. MORRIS:** Sure. Thank you, Your Honor.

25 Mr. Schied filed a notice of appeal on June 10, 2022,

1 from an Office of Administrative Hearings' order -- final
2 order of dismissal dated May 12, 2022. So he filed the --
3 the case was dismissed on May 12, 2022.

4 Pursuant to the Chapter 1-26, he then filed his notice
5 of appeal.

6 On June 30, 2022, I made a notice of appearance as a
7 special assistant attorney general on behalf of the South
8 Dakota Department of Social Services.

9 In 1-26, there is the appellate rules, administrative
10 rules for appellate procedure under 1-26.

11 First of all, under 1-26-31.4, the appellant is to
12 file a statement of issues within ten days. None has been
13 filed.

14 Pursuant to 1-26-32.2, request for a transcript must
15 be made within ten days. None was requested.

16 Subsequently, subsequent to the notice of appeal, the
17 South Dakota Department of Social Services, from the
18 hearing examiner of the record, there was a record -- the
19 record was transmitted on June 27, 2022. Pursuant to
20 1-26-33, the record must be transmitted to the clerk of
21 courts in the county where the appeal is venued within
22 30 days, so that was complied with.

23 Once the record of -- is transmitted, then SDCL
24 1-26-33.2 sets forth the briefing schedule. The
25 appellant's brief is due 30 days after the record is

1 transmitted. Just using a true 30 day, since the record
2 was filed on June 27, 2022, July 27, 2022, would have been
3 the date his brief was due.

4 Now, I know that there were pending -- there are
5 pending motions. One was a motion for waiver of fees. He
6 has not paid the fees, so part of, you know, my argument
7 would be he's not here today to address the waiver of fees,
8 so the Court -- the question is: Are you going to waive
9 the fees and give the Court jurisdiction, or is the fact
10 that he hasn't paid any fees do away the jurisdiction of
11 the Court? I really don't know the answer to that.

12 Second thing is a motion to extend time for filing and
13 the motion to -- what his -- the reasons for his request.
14 And I would point out to the Court, the irony here is that
15 Mr. Schied asked for an extension of time to file the
16 brief, which would normally do -- be due July 27th, and I
17 would point out to the Court, and the record would reflect
18 this if you went through all the pages, but since
19 July 29th, Mr. Schied has filed over 800 pages of documents
20 in this case that, for lack of a better term, do not appear
21 to be relevant to any of the issues because we really don't
22 know what the issue is -- that he believes are because he
23 hasn't filed a statement of issues, but it's just a lot of
24 repetitive information that is just clogging the clerk of
25 court's docket in this case.

1 But even though he's had the ability and time to file
2 over 800 pages of documents since July 29th, he has not
3 filed an appellant brief, and so he has -- I think the
4 Court attempted to make accommodations for him, gave him
5 the opportunity for a telephonic hearing. He received
6 notice, but he's not here today, and so ultimately,
7 naturally I would defer to the Court as the ultimate
8 decision-maker of this, but although Mr. Schied is pro se,
9 the pro se rules of liberally construing it go to the --
10 say the materials, the arguments, and those sorts of
11 things, pro se people, pro se litigants still have to
12 follow the rules of civil procedure just like an attorney
13 does.

14 And so there -- in my view, there's been a total lack
15 of following the rules of civil procedure. The Court has
16 given Mr. Schied every opportunity to do so, and I believe
17 the only appropriate remedy under the circumstances is a
18 motion to dismiss for, essentially, failing to follow
19 through with his pending motions by his lack of appearance.

20 **THE COURT:** Thank you, Mr. Morris.

21 This Court has considered this matter. When it first
22 arose, there was an issue regarding how the clerk shall
23 receive these documents, and the normal process is they
24 should be filed through Odyssey, which is required for pro
25 se litigants. We do accept filings through regular mail,

1 and the Court was working with the clerks when they were
2 trying to inform Mr. Schied of that.

3 Mr. Schied continued to request that his filings be
4 made through e-mail, which is not a good medium to receive
5 because of the digital process that may result in bad
6 timings, if you will, for the receipt of those e-mails.
7 They may get caught up in the clerk's e-mail chain or
8 inside of their e-mail box and not be seen for sometime.
9 So e-mail is not a medium or a means by which people or pro
10 se litigants normally are allowed to file their documents.

11 Nonetheless, having received information that he is a
12 quadriplegic, at least based on prima facie on his
13 representation of that, this Court then made accommodations
14 with the clerk of courts to receive these documents, and
15 for filing purposes, to receive them in e-mail.

16 As Mr. Morris correctly stated, they were voluminous.
17 Many documents were very difficult to tab and to place a
18 proper heading in Odyssey. The clerks did a sufficient
19 job, and in some aspects they did an incredible job of
20 trying to isolate what exactly the filing was. And credit
21 is due to the clerks attempting that.

22 Initially, this was being produced through our deputy
23 clerk, who then brought in the actual Clerk of Courts, and
24 Ms. Latuseck began taking over the entirety of the filings.

25 This Court, upon review of the requests that are made

1 inside of the preliminary filings made by Mr. Schied, did
2 everything it could to accommodate Mr. Schied believing
3 that he was quadriplegic.

4 Someone must have been filing these documents or was
5 assisting him in filing these if he's truly quadriplegic,
6 or he has an ability to use a computer with only his mouth
7 and to get this paperwork into the mail system. And the
8 Court is not sure if he had any assistance, but
9 nonetheless, we allowed as many accommodations as possible.

10 And so Mr. Schied, after numerous filings, was given
11 an opportunity by this Court, who did it sua sponte,
12 calling this matter on for a motions hearing because Mr.
13 Schied, even though acting pro se, had failed to comply
14 with the basic procedures in requesting motions to be
15 heard; namely, he had not noticed it for hearing for the
16 Court to hear.

17 And under normal circumstances, I would wait until the
18 attorney notices that motion for hearing, and that could
19 lapse over the time frame by which that individual be
20 requesting particular relief. And in this instance, Mr.
21 Schied, acting as his own attorney, and still giving him
22 deference, had failed to file a notice of hearing, and so
23 the Court, making sure that I was trying to accommodate him
24 as best as I could, and in some ways going over and beyond
25 what the Court should do, filed a sua sponte notice of

1 hearing, which the Court believes that would have been the
2 responsibility of Mr. Schied.

3 In so doing, I accommodated his claim that he was
4 disabled by ensuring that Mr. Schied had an ability to
5 appear in person, and if not in person, granting him access
6 to the record by allowing him to appear telephonically if
7 he made the request for a telephonic appearance.

8 No request was made, and so he has not appeared today
9 and is not able to champion his claims.

10 Even with that, the Court allowed Mr. Morris to make
11 his record regarding those motions that were pending.
12 Specifically the motion for the waiver of filing fees and
13 also the motion for extension to file the brief.

14 Mr. Morris is correct. The Court has not previously
15 ruled on those, and Mr. Schied has not made an attempt to
16 get this before the Court on either one of these motions.
17 The Court called on for this hearing, and he has failed to
18 appear today.

19 The Court has a limit upon which it may intercede on
20 behalf of a pro se litigant, and the Court has met that
21 wall. I cannot, in good faith and under the laws of our
22 state, intercede when a clear violation of the law,
23 specific to failing to make an appearance and champion your
24 case, has been made. And here Mr. Schied cannot speak to
25 the request for his waiver of filing fees; and so,

1 therefore, the Court will deny the request for filing fees,
2 thereby lacking jurisdiction.

3 But even if at the appellate level the Supreme Court
4 believes that I should have accommodated him, I will take
5 into consideration the request for an extension brief.

6 Mr. Schied, again, has failed to appear and champion
7 his request to have this.

8 The Court notes that Mr. Morris made a good record
9 regarding the time length -- correction, the length of time
10 that has transpired since this appeal began in June. He
11 has had every opportunity to prepare his brief, and he has
12 failed to do so.

13 But in the interim, he was able to file 800-plus pages
14 of documents all looking as if he was trying to make some
15 form of argument with regard to the jurisdiction of this
16 Court, regarding appeal to the Americans with Disabilities
17 Act, and several other arguments, but at no time has he
18 made a direct response to the appeal inside the brief that
19 is required under statute.

20 The Court finds that he has failed to, number one,
21 file his brief in the time that is required under statute;
22 and, number two, even with the Court accommodating this
23 hearing sua sponte, he has failed to appear and champion
24 the request for the extension.

25 There are several other motions that were found in the

1 first filing. Mr. Schied wanted the Court to take motion
2 for immediate consideration. This Court was concerned that
3 at the time it received this notice of appeal and the
4 underlying e-mail chain that arose from that between the
5 clerk of courts and Mr. Schied, and actually accommodated
6 an immediate consideration of this matter, although the
7 Court does not understand Mr. Schied's desire for the
8 relief under a motion for immediate consideration, it
9 should be noted the Court took this matter seriously and
10 began moving quickly, as best as it could, to accommodate
11 Mr. Schied.

12 The second motion was for declaratory statements, and
13 these, I think, related to the clerk of court's authority
14 to conduct its proceedings. These motions, both one and
15 two, are denied because Mr. Schied has failed to appear
16 today.

17 There was a motion for service upon one constitutes
18 service upon many. This is the first time this Court has
19 run into this form of motion, and, again, by failing to
20 appear today and to champion this motion, the Court must
21 dismiss this for lack of prosecution.

22 There was a fourth request, or put in the alternative
23 to the service upon one motion, a motion for publication or
24 posting in combination with e-mail constitutes third-party
25 medium for verified service. This Court has considered

1 this as well, and not fully understanding what this motion
2 was requesting, because it mentioned "e-mail," essentially
3 the Court allowed Mr. Schied to present his filings through
4 e-mail, and that's all the Court can glean from what that
5 motion was, but nonetheless, even though the Court had
6 accommodated him, the motion was and is still pending, has
7 not been properly championed, he has failed to appear, and
8 as a result, I will deny the motion for publication for
9 lack of prosecution.

10 There were several issues raised inside of his initial
11 pleadings, including the Bates stamps that are provided by
12 Odyssey, upon which Bates stamps normally occur at the
13 bottom of the document. Mr. Schied had made issue with
14 that, claiming that the bottom page he currently had
15 writing or text that the Bates stamp covered.

16 Number one, text normally does not appear at the very,
17 very bottom of the page, and there usually is a one-inch
18 margin in most of the filings. At least at the appellate
19 level there are 1-1/2-by-1-by-1-by-1 margins that are
20 required.

21 This circuit court doesn't have the same stringent
22 requirements, but at a minimum, the Court's not going to
23 adjust the Odyssey system and ask IT to change the position
24 of the Bates stamps to a different location on the page,
25 because any other location, based on the Court's review,

1 would have also covered up text because it appears that, on
2 the majority of these filings, the Bates stamp would not be
3 convenience in any one or any respect for consistency
4 purposes.

5 There was also an issue with regard to the Bates
6 stamps only appearing on the first page of the filed
7 document. Again, this is something that is done by
8 Odyssey, and the Court is not going to request that IT
9 modify every -- or the entire program so that it would
10 place the Bates stamps at the discretion or at the request
11 of a litigant.

12 We're off the record.

13 (An off-the-record discussion was held.)

14 **THE COURT:** With regard to the Bates stamp issue, also, my
15 understanding is, is that in this particular case, the
16 clerk of courts, in accommodating these numerous and
17 voluminous e-mail submissions, had to take these documents
18 and to Bates stamp them directly with their own, and so in
19 that instance, there at least was some argument that it
20 could have been done elsewhere, but it did not impact the
21 subject matter of the filing; so, therefore, the Court
22 finds that this is a nonissue.

23 There was a request by Mr. Schied that the clerk
24 submit the rules of the Court to him. This Court is
25 governed by the rules of civil procedure. Those are

1 readily available on the Internet. Mr. Schied has ample
2 opportunity to review all of the rules of the Court, and
3 the clerk is not responsible for submitting an entire
4 section of the code to Mr. Schied.

5 But in this essence, technically the State of South
6 Dakota has provided those rules in the entire code to Mr.
7 Schied because they submit the same on and freely
8 accessible on the Internet.

9 The fifth motion on his initial pleading was a motion
10 for extension of time, and this Court has already dealt
11 with that.

12 And finally, number six, there was a motion for forma
13 pauperis, f-o-r-m-a p-a-u-p-e-r-i-s, waiver of costs, fees,
14 and transcript fees. This Court has already addressed
15 those.

16 **MR. MORRIS:** Your Honor, may I, I guess, make an
17 observation --

18 **THE COURT:** You may.

19 **MR. MORRIS:** -- to you?

20 I agree with you that it's difficult to really label
21 the filings, but I would refer the Court to the August 9,
22 2022, filing that we have labeled as "Formal Objection and
23 Leave for Interlocutory Appeal," and I believe the Court --
24 at first it was difficult for me to really understand what
25 his disability was. The Court referenced him as a

1 quadriplegic, but Mr. Schied, throughout the documentation,
2 referenced himself as a, quote, "totally and permanently
3 disabled quad-amputee," unquote.

4 And in this particular filing on August 9, 2022, on
5 page 22, he embedded a photograph of himself in a
6 wheelchair, and, of course, the file -- the copy I have is
7 in black and white, but the -- I did see a color copy
8 somewhere, and he is -- his lower extremities are amputated
9 at the knees, and then it does appear that in his hands
10 perhaps some of the digits have been -- have been
11 amputated. So he is not a quadriplegic. He is, according
12 to his definition or representation, a totally and
13 permanently disabled quad-amputee.

14 And I have no reason to believe that anyone other than
15 Mr. Schied is the -- is the originating author and creator
16 of these documents. Perhaps he has someone to help him,
17 but whether it be him or someone helping him, he has filed
18 over 800 pages of documents since July 29th, so it does
19 appear he's fully capable of setting forth and briefing the
20 particular issues. So I never understood the necessity for
21 the extension of time brief or the brief.

22 So I just wanted to address the record on that
23 particular issue.

24 **THE COURT:** And I appreciate that, Mr. Morris. It does
25 appear that, based on the picture that we've received, he

1 is -- at least has his upper arms and his lower arms.
2 There is at least one digit the Court can see, maybe two in
3 his picture. He does have thighs, but it does appear that
4 maybe the -- at the knee, those are amputated. So I
5 appreciate that.

6 I guess the main point is that the Court draws the
7 attention that it has done everything it can within reason
8 to accommodate Mr. Schied, and he has still failed to make
9 his appearance today.

10 As a result, the Court is going to dismiss this action
11 for failure to prosecute for the reasons that have been
12 previously set forth on the record.

13 Mr. Morris, if you'd prepare an order highlighting the
14 reasons why the dismissal has been made, incorporating this
15 Court's ruling, and also provide notice of appeal to Mr.
16 Schied if one exists, I'd appreciate it.

17 **MR. MORRIS:** Thank you, Your Honor.

18 **THE COURT:** We'll be in recess.

19 (Hearing recessed at 10:08 a.m.)

20 -----

21 9:30am began

22 10:08 recess = 38 minutes

23 They must have been talking
24 "off the record" for a very
25 long time!

1 STATE OF SOUTH DAKOTA.)
2 COUNTY OF LAWRENCE) SS. CERTIFICATE

3
4 I, LYNNEL R. BRUEMMER, an Official Court Reporter and
5 Notary Public in the State of South Dakota, Fourth Judicial
6 Circuit, do hereby certify that I reported in machine
7 shorthand the proceedings in the above-entitled matter and
8 that Pages 1 through 17, inclusive, are a true and correct
9 copy, to the best of my ability, of my stenotype notes of
10 said proceedings had before the HONORABLE ERIC J. STRAWN,
11 Circuit Court Judge.

12 Dated at Deadwood, South Dakota, this 7th day of
13 October, 2022.

14
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16
17
18 /s/ Lynnel R. Bruemmer
19 LYNNEL R. BRUEMMER
20 My Commission Expires: 8/12/25
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