

SOUTH DAKOTA  
LEGAL NOTES

JULY 2013 | INFO@SWIERLAW.COM | WWW.SWIERLAW.COM

## Swier Law Firm Obtains \$1.1 Million Award for Parkston Farmer

This story was featured in the Argus Leader, KSFY, KELO, and several other national and local media outlets.

OLIVET, SD - A Parkston farmer has been awarded \$1.1 million against a former Watertown cattle seller for fraudulently misrepresenting the origin of a shipment of cattle to his farm.

In what investigators from the State of South Dakota's Animal Industry Board described as one of the "most complex and wide-ranging schemes" they had confronted, Parkston farmer Curtis Huether accused David Bisson of fraudulently misrepresenting the origin of a shipment of cattle to his farm in 2008. Bisson's fraud resulted in Huether's cattle being quarantined for approximately eight months. Huether also claimed that Mihm Transportation Co., an Iowa trucking company, was involved in a conspiracy to further Bisson's fraud.

Huether was awarded approximately \$100,000 in damages and \$1,000,000 in punitive damages against Bisson. On Friday, after a week-long trial, a Hutchinson County jury also found that the Iowa trucking company committed civil conspiracy in the case.

Huether was represented by Scott Swier, Senior Partner at Swier Law Firm, Prof. LLC of Avon. "This was a complex case involving numerous 'moving parts,' so we are pleased for Curtis and his family," said Scott Swier.



# ATTORNEY SPOTLIGHT

Brooke Swier Schloss was recently featured in the May 2013 edition of the South Dakota Bar Newsletter (<http://www.sdbar.org/newsletters/may2013.pdf>)

## ***Congratulations Brooke!***

My name is Brooke Swier Schloss and I practice with the Swier Law Firm, Prof. LLC in Avon, Sioux Falls, and Winner. I graduated from Emery High School in 2000. In 2004, I received my undergraduate degree from Mount Marty College. I received my Educational Specialist Degree in School Psychology from the University of South Dakota in 2007. I then reevaluated what I wanted to be doing ten years down the road, and I decided to attend law school. I graduated from the University of South Dakota School of Law in May 2010. Upon graduation, I began working with my brother, Scott Swier (USD Law '97), at the Swier Law Firm, Prof. LLC.

Prior to my graduation from law school, Scott was presented with an opportunity to move his practice to Avon. I was lucky enough to have the chance to join his firm. At that time, our firm consisted of two attorneys and one office. Our firm is now expanding, recently purchasing Stan Whiting's practice in Winner and opening an office in Sioux Falls. We are also adding attorneys to our firm who want to practice in rural South Dakota. It is exciting to see the opportunities rural practice can offer and we look forward to expanding our practice and providing more rural communities with legal services.



## Five Tips for Motorcycle Safety in South Dakota

With warm weather and the Sturgis Rally approaching, there are several motorcycle safety tips which are important to remember to avoid accidents and enjoy your ride this summer.

- Tip #1:** Wear a properly fitted helmet. Helmets are one of the best protections you can use while riding.
- Tip #2:** Wear protective eyewear to ensure your eyes are properly protected while riding your motorcycle. This includes making sure your protective eyewear is clean, the proper shade of tint, and free from any scratches. Do not rely on only your motorcycle's windshield to protect your eyes.
- Tip #3:** Keep in mind that the front brake on your motorcycle provides the majority of the stopping power. Always use the front brake when slowing down or stopping and apply both brakes at the same time.
- Tip #4:** Use the "SEE" method when driving in traffic. S: search around you for potential hazards when riding. E: evaluate any potential hazards you may see such as turning vehicles, blind spots of other drivers, or railroad tracks. E: execute the needed action in order to avoid the hazardous condition identified.
- Tip #5:** Always perform a quick maintenance check of your motorcycle before riding. This includes checking the tire pressure, the lights, the controls, and the fluid levels. Before driving, check the brakes as well to make sure they are functioning properly.







## Leave It How You Intended It: How to Avoid Family Disputes with Guidance from an Estate Planning Lawyer in South Dakota

After the death of a loved one, emotions are running higher than normal—something that can bring people closer together, or drive them further apart.

The division of the deceased's assets is one of the most difficult, emotional and controversial periods following the death of a loved one. This is when many families begin to bicker and argue over what they believed their loved one would have wanted.

To help, many people plan prior to their death for how their assets will be divided with the help of an estate planning attorney in South Dakota. Here is how to prepare your will in a way that will help your family avoid disputes and stay cordial as they grieve their loss:

- Don't let anyone be surprised. Everyone has his own idea about what you should give away and who should receive specific items or money from your will. After your passing, you will not be able to explain your decision to give away (or not to give away) specific items from your estate. If you are concerned that there may be any surprises, talk to your loved ones while you are still with them to explain your decision so that they can have peace after your passing.
- Meet with your South Dakota estate planning lawyer alone. You are the only one who knows what you want done with your assets after you have passed. If you bring a family member with you to meet with the estate planning attorney in South Dakota, then you risk being influenced in a way that may not be truly what you want. Working independently with your attorney can help.
- Keep your will current. Life changes quickly and unpredictably. If you fail to keep your will up-to-date and in line with what you want after your passing, you risk your assets being given to the wrong person, and other family members feeling slighted or forgotten. Always keep your will current so that there are never any regrets or disagreements after your death.

Thinking about death is never easy, but it is necessary if you are to help your family prepare. Contact Swier Law Firm, Prof. LLC, today for more information on how we can help you create a simple and straightforward will, so that you can be confident your wishes are honored after your passing.

# Law considers what's best for the children in Native American adoptions

In an effort to preserve Native American families, tribal members from across the state, Bureau of Indian Affairs representatives, and the country's top official on tribal issues are gathering this week to hear testimony, and work to stop violations.

The accusations are nothing new, but this week at a three day summit in Rapid City, tribal members and government officials are addressing the issue head on.

The summit was organized, in part, because of a National Public Radio broadcast in 2011, which slammed the state for improperly taking Native American children out of their homes and violating the law.

People attending the summit are giving and listening to testimony regarding the abuse and maltreatment of Native American children in state placed non-Indian foster homes.

But what happens when there isn't anyone within the tribe willing or able to take a child in?

Can Native American kids get the same care and cultural knowledge living in a non-Indian household?

KSFY News met one family that's staying mindful of their adopted daughters' cultural heritage

We spoke with someone who's part of our own KSFY family.

He and his wife recently adopted two Native girls.

But the girls also have a grandmother who lives in town.

And they make sure she's part of their girls' lives to keep their girls aware of their Native culture.

Jason Mitchell has no plans to deny his kids their heritage.

"We never want them to forget that. just because they're not living in a tribal home, that doesn't mean that they're not Native American," Mitchell said.



But having a big family wasn't always his plan.

"They were only supposed to be with us for six weeks, then six weeks eventually became two years. then me and my wife kind of decided here, let's start the adoption process," Mitchell said.

The Indian Child Welfare Act was meant to preserve native culture by keeping them with other Natives, but South Dakota has many foster families just like Mitchell's.

Scott Swier, Senior Partner Swier Law Firm, said "when you look at the make up of foster families in South Dakota, predominantly, they are not Indian

families. They are predominantly non-Indian families who are willing to go through the process to open up their house to a child."

And while most natives may prefer Native children stay with Native families, Mitchell heard nothing but silence from the tribe.

"It was almost two years before we even heard anything from the tribe and that's when we found out there was a grandmother who lived here in town," Mitchell said.

Mitchell's girls are here to stay. He just finalized the adoption process three weeks ago.

"We have nothing but the best intention for our 2 girls, Angel and Janae, and that we love them . We just couldn't imagine our lives without them," Mitchell said.

Swier's worked on different cases involving native adoptions.

And while the law sets out to keep Native children within their culture, he says the courts look at what's best in the child's interest.

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