

Dunn Co. Case No. 03-C-18
Supreme Court No. 20050405
IN THE SUPREME COURT
FOR THE STATE OF NORTH DAKOTA

BOB L. DVORAK,
Plaintiff-Appellee-Cross Appellant,

vs

KATHLEEN A. DVORAK,
Defendant-Appellant-Cross Appellee.

APPEAL FROM THE ORDER OF THE DUNN COUNTY
DISTRICT COURT DATED SEPTEMBER 27, 2005
THE HONORABLE ALLAN L. SCHMALENBERGER

BRIEF OF THE APPELLEE, BOB L. DVORAK

REICHERT LAW OFFICE
RONALD A. REICHERT
(ND ID # 03110)
218 South 3rd Street
Grand Forks, ND 58206-5758
701-787-8802
701-787-8460 (fax)
Attorney for Appellee, Bob L. Dvorak

TABLE OF CONTENTS

Table of Authorities..... ii

Statement of the Case 1

 I. Nature of the Case..... 2

 II. Course of Proceedings and Dispositions Below..... 5

 III. Statement of the Facts..... 6

Standard of Review..... 26

Argument 29

 A. THE DISTRICT COURT’S DETERMINATION IS
 SUPPORTED BY THE LAW AND THE RECORD..... 32

 B. THE PROSPECTIVE ADVANTAGES OF THE
 MOVE AND IMPROVING THE CUSTODIAL PARENT’S
 AND CHILDREN’S QUALITY OF LIFE..... 36

 C. PROPERTY DIVISION 62

 D. ATTORNEY’S FEES..... 71

Conclusion 72-76

TABLE OF AUTHORITIES

CASES

<u>Dvorak v. Dvorak</u> , 2005 ND 66; 693 N.W.2d 646	2, 17, 23, 67
<u>Stout v. Stout</u> , 1997 ND 61; 560 N.W.2d 903	2, 5, 27, 33
<u>Hawkinson v. Hawkinson</u> , 1991 ND 58; 591 N.W.2d 144.....	2, 5
<u>Ruff v. Ruff</u> , 52 N.W.2d 107 (N.D. 1952)	FOF, 11
<u>Fischer v. Fischer</u> , 139 N.W.2d 854, (N.D. 1966)	FOF, 11
<u>Dickson v. Dickson</u> , 2001 ND 157; 634 N.W.2d 76.....	27
<u>Maynard v. McNett</u> , 2006 ND 36; 701 N.W.2d 369	27
<u>Hogan v. Hogan</u> , 2003 ND105; 665 N.W.2d 672.....	28, 46
<u>Wald v. Wald</u> , 556 ND 20, 291 (N.D. 1966)	28
<u>Oppegard/Gessler v. Gessler</u> , 2004 ND 141; 681 N.W.2d 762	33
<u>Tischmack v. Tischmack</u> , 2000 ND 103; N.W.2d 204	41
<u>Tibor v. Tibor</u> , 1999 ND 150;598 N.W.2d 480.....	57
<u>Rothenberg v. Rothenberg</u> , 2006 ND 265; 711 N.W.2d 219.....	62
<u>Neidviecky v. Neidviecky</u> , 2003 ND 29; 657 N.W.2d 255	69

STATUTES

N.D.C.C. 14-05-24.1.....	69
--------------------------	----

1

STATEMENT OF THE CASE

I. Nature of the Case

2 This is the second appeal of this divorce/custody case by the Appellant, Kathleen A.
Dvorak. The first appeal, Dvorak v. Dvorak, 2005 ND 66, (Dvorak 1), this Court held that the
District Court did not sufficiently explain the equitable distribution and remanded the issue to the
District Court and, further held that the District Court did not analyze all the factors in Stout v.
Stout, 1997 ND 61, 560 NW2nd 903, and refined in Hawkinson v. Hawkinson, 1991 ND 58, 591
NW2nd 144, when it denied the Appellant's request to relocate the children to Albuquerque, New
Mexico.

3 The Trial Court analyzed the four factors regarding Kathy's request to relocate to
Albuquerque, New Mexico and determined that Kathy's move was not in the children's best
interest.

4 The District Court on remand increased Kathy's property distribution from \$122,715.92
plus \$48,000.00 spousal support to \$221,765.92 plus \$48,000.00 spousal support for a total of
\$269,765.92 and granted her one-half (1/2) of the minerals under the real property. The Trial Court
also granted Kathy her attorney's fees and requested that she prepare and submit her billing in
sufficient detail to determine the reasonable attorney's fees. Her costs of \$3,349.02 were also
granted.

II. Course of Proceedings and Disposition Below

5 After the Supreme Court Remand, neither party made a request of the Trial Court to receive
new evidence. The Trial Court expanded its rational and Findings of Fact and increased the
property division as mentioned above. The Court expanded it reasons and analyzed the appropriate

factors for denying Kathy's request to relocate the children to Albuquerque, covering all the required elements in Stout-Hawkinson. Bob cross-appealed however, that appeal is now moot.

III. Statement of the Facts

6 Kathy's Statement of the Facts contains an argumentative spin which we hope to correct. The operative facts for this appeal are the Findings of Facts issued by the Trial Court and consequently have included them in the Statement of Facts. The decision also incorporates the Memorandums issued in both cases and the previous Findings of Fact. The new Findings of Fact are as follows:

1 The Plaintiff was born on July 9, 1960 and currently lives in rural Dunn County, North Dakota. The Defendant was born on September 9, 1957 and currently lives in Albuquerque, Albuquerque.

2 The parties were married on September 8, 1990, and lived together for 2 ½ years prior to their marriage.

3 The children of this marriage are:

Cassidy Dvorak (age of majority);

Child 1. DOB: 8/89;

Child 2. DOB: 3/91;

Child 3. DOB: 8/92;

Child 4. DOB: 8/4/94; and

Child 5. DOB: 4/5/96

The children are living with the Defendant in Albuquerque. The Defendant is not pregnant.

4 The parties have been living separately since December 27, 2002. The parties have developed differences in their marriage which are irreconcilable.

5 The Plaintiff is and has been a resident of Dunn County for more than six months prior to the commencement of this act.

6 The total farm assets, as of April 7, 1988, were \$819,277.00, and on March 16, 2004, \$1,252,026.00. Total liabilities on April 7, 1988, were \$174,630.00, and on March 16, 2004, they were \$383,622.00. The increase in net farm worth from April 7, 1988 to March 16, 2004 is \$233, 757.00.

7 The Plaintiff's annual average net income for child support purposes from 1999 through 2003 tax returns was \$16,413.40. The Plaintiff is a self-employed farmer-rancher with a 10th grade education with no other employment experience. The Defendant has worked at various jobs. The Defendant's last employment in North Dakota, was working part-time and earned \$17,000.00 to \$18,000.00 per year together with health insurance. The Plaintiff's income in Albuquerque, Albuquerque, is minimal.

8 As reflected on Plaintiff's Exhibit 54, and according to the summary, the Plaintiff owned 1,760 acres of land prior to the marriage and acquired 1, 640 after the marriage for a total marital estate of 3,400. Real estate has a current value of \$269.71 per acre. If that is applied to the property acquired during the marriage, the property would have a current value of \$442,324, without the debt. The marital share of the debt for the 1,640 acres would be \$176,021. Considering all the factors, findings and transfers, the Court awards total cash of \$213,000.00 to the Defendant; this considers the Defendant's contribution to the marital estate. Previously the Court awarded her \$114,000.00. This would be an additional \$98,981.00 to be paid within 90 days from the entry of the judgment. The Plaintiff's option,

the Plaintiff may pay of the off-setting monetary award in 24 equal monthly installments, together with interest thereon at the judgment rate. The unpaid balance shall become a judgment lien and therefore if the monthly payment is more than 10 days late, all the remaining unpaid balance and interest is immediately due and payable. Then the Defendant shall be able to execute on the judgment lien.

9 In 1986, the Defendant transferred to the Social Security office in Dickinson, North Dakota. In 1988, she moved in with the Plaintiff and continued to work at the Social Security office until 1991. Till the birth of Elizabeth in 1991 she stayed at home. While at home, she assumed the primary responsibilities of caring for the children, cooking, cleaning, shopping, laundry and bill paying. The Plaintiff was responsible for operating the farm and ranch.

10 The Defendant completed a six month massage therapy program in Albuquerque, Albuquerque. In December, 2002, she and the five children moved to Albuquerque. Upon completing the course she planned to return to North Dakota. But, when the Plaintiff filed for divorce, she decided to remain in Albuquerque with the children. She established her own massage therapy business in her home and her gross earnings were only \$1,500.00 in the past year.

11 In distributing property, the Court considers the factors described in Ruff v. Ruff, 52 N.W. 2d 107 (N.D. 1952) and Fischer v. Fischer, 139 N.W.2d 845 (N.D. 1966). These factors are:

(a) Length of the marriage. At the time of the divorce, the parties were married for 13 years.

(b) Age of the parties. At the time of the divorce, the Plaintiff was 43 years old, and the Defendant was 46 years old.

(c) Earning abilities of the parties. The Plaintiff is a self-employed farmer/rancher with a 10th grade education. He has had no other employment or experience, and based on his 1999-2003 tax returns, he had an average self-employment income for child support purposes of \$16,413.40 per year. The Defendant has worked at various jobs. Her last employment outside the home in North Dakota was a part-time position at Rosenbluth, and she earned about \$17,000.00 to \$18,000.00 per year, together with benefits. Currently, she is trying to establish herself as a massage therapist.

(d) Conduct of each during the marriage. Other than irreconcilable differences, the Court does not weigh any adverse conduct against either party.

(e) Station in life of the parties. Both parties have maintained and will continue to maintain an average to above-average station in life.

(f) Circumstances and necessities of each party. In Plaintiff's N.D.R.Ct. 8.3 pretrial statement, he sets forth the following monthly expenses:

House payment	N/A
Utilities (home)	\$ 130.00
Telephone	95.00
Food and household items	500.00
Clothing	200.00
Laundry	---
Life Insurance	24.00
Transportation (not farm related)	150.00
Unreimbursed medical, dental, optical	100.00
School expenses	150.00
Child care	400.00
Donations	25.00
Entertainment	50.00
Farm Expenses (varies)	<u>21,680.00</u>
TOTAL	\$23,504.00

In Defendant's N.D.R.Ct. 8.3 pretrial statement, she sets forth the following monthly expenses:

Rent payment	\$ 1,200.00
Gas and electricity	161.00
Water/sewer/garbage	59.00
Telephone	64.00
Cable/internet	83.00
Cellular phone	37.00
Food	1,000.00
Clothing	240.00
Laundry	included in misc.
Newspaper/periodicals	included in misc.
Miscellaneous	800.00
Life Insurance	0.00
Health Insurance	60.00
Automobile Insurance	108.00
Fire Insurance	0.00
Transportation	120.00
Medical/prescription expenses	330.00
Entertainment	160.00
Church, etc.	50.00
Dell financial	29.00
Discover credit card	300.00
Visa credit card	800.00
TOTAL	\$5,601.00

12 Health and physical conditions of the parties. The parties are in good health.

13 Financial circumstances of the parties as shown by property owned at the time of the divorce, its value, and its income-producing capacity. Previously, the Court found and incorporated in its previous findings all of the property and the value of the property owned by the parties at the time of the divorce, which the Court, again, adopts.

14 Since the marriage, the marital estate has increased by \$237,097.00. Exhibit 53 sets out the value of the property at the time the parties started living together. It is from this document the Court found Plaintiff's net worth at \$644,647.00. The balance sheet breaks down the assets and debts to arrive at the net worth in the above additional findings.

The following sets out the farm assets and liabilities before the marriage compared to the time of the divorce.

	<u>BALANCE SHEET</u> 4/7/1998	<u>BALANCE SHEET</u> 3/16/2004
Current Farm Assets	\$ 72,675.00	\$ 2,426.00
Intermediate Farm Assets	273,102.00	332,500.00
Farm Real Estate	469,000.00	917,100.00
Other	<u>4,500.00</u>	
TOTAL FARM ASSETS	\$819,277.00	\$1,252,026.00
Farm Liabilities	\$174,630.00	
Contract for Deed		\$ 29,454.00
FSA		65,500.00
Farm Credit Services		<u>288,668.00</u>
TOTAL FARM LIABILITIES	\$174,630.00	\$ 383,622.00
Net Worth	\$644,647.00	\$ 868,404.00
Increase in farm net worth from 4/7/1988 to 3/16/2004:		\$ 223,757.00

In addition, Defendant brought in retirement benefits from her position at Social Security, an inheritance, and additional assets.

15 Source of possession, including circumstance of inheritance, gift, or premarital acquisition. The Court covered this item previously.

16 Fault of the parties for the breakup of the marriage, whether economic or non-economic fault. The fault of the breakup appears to be equally divided between the parties, and it would be of a non-economic fault.

17 Other matters that are material. Plaintiff has a 10th grade education, and his only occupation has been farming and ranching. A substantial part of the assets and land were acquired prior to the marriage. It would be inequitable to divide the assets equally because it would destroy his ability to earn a living and provide the necessary support to Defendant

and the children. As set forth in his testimony, it has been difficult for him to earn a living from this farm/ranch operation, and his living expenses have come from the equity in the property. Although he clearly needs the farm assets to continue his farm and ranch, consideration must be given to Defendant for the 13 years of marriage and assets brought to the marriage, including her inheritance from her Grandmother. In addition, 1,640 acres of land were acquired during the marriage.

18 The farm income figures clearly show that the Plaintiff has very little financial power to service more debt much less the child support, spousal support, and increased property division he is ordered to pay.

19 That the Defendant temporarily moved to Albuquerque, Albuquerque in December, 2002.

22 That the Defendant has interfered with the Plaintiff's visitation by not allowing the Plaintiff to have the children stay with him overnight in Albuquerque, preventing the Plaintiff from driving with the children while he had visitation in Albuquerque.

21 The Defendant stayed in Dickinson for the month that Plaintiff had extended visitation with the children, even while ostensibly starting a new massage practice in Albuquerque.

22 Defendant would not let Plaintiff talk to the children on the phone without her listening in, in direct contravention of paragraph 5 of the Court's Interim Order date August 13, 2003.

23 That the Defendant blocked out phone calls from the Plaintiff for two weeks claiming she received over 200 phone calls in the evening from telemarketers.

24 Plaintiff was not able to contact the children and about 500 times while the Defendant had caller identification on the telephone.

25 That the Defendant took the children out of town on the second day of a four day visit the Plaintiff was exercising in Albuquerque.

26 Defendant insisted she have one day per week visitation during the one month extended visitation with the Plaintiff in North Dakota.

27 The Defendant at times did not allow the Plaintiff to come in her house in Albuquerque; she instructed him to wait outside.

28 The Defendant retrieved a letter that Jason had mailed to the Plaintiff, out of the mailbox, read it, and gave it to the children's counselor.

29 The Defendant has consistently stayed in the area of conversation when the children speak to their father on the phone.

30 The Defendant is deficient in informing the Plaintiff about the children's activities.

31 As a result of her actions, the Defendant's motive for the relocation is suspect and is designed to frustrate the Plaintiff's visitation, including the fact that she decided to relocate after the divorce was filed.

32 Further evidence that the relocation is a negative impact of the relationship between the non-custodial parent and the children is evidenced by:

- (a) the Defendant enrolled the three youngest children in counseling, ostensibly to cure their desire to return to North Dakota;
- (b) criticizing the Plaintiff in front of the children;
- (c) by not insisting that the children's counselor contact Plaintiff;
- (d) that Betsy and Tracy have a difficult time with their father as a result of the move to Albuquerque;
- (e) the Defendant took the children out of school in North Dakota in December, 2002 against Plaintiff's wishes;
- (f) the decision to take the children to Albuquerque was not discussed with the Plaintiff before the decision was made;

- (g) the Defendant would not sign loan papers unless he consented to allow the children to leave North Dakota in 2002 and move temporarily to Albuquerque;
- (h) the Defendant was going to file a separate tax return without consulting with the Plaintiff, indicating a break in the family's financial practices and indicating to Plaintiff a permanent residency in Albuquerque; and
- (i) that to encourage the move, the Defendant stated that her mother was paying for her expenses and that while in Albuquerque attempted to withdraw money from the farm operating account without consulting the Plaintiff.

33 The Defendant has not sustained her burden of proof that there are non-economic advantages of the children living in Albuquerque. The evidence shows that there are different activities in Albuquerque than in North Dakota. However, the activities on the farm, including horseback riding, four-wheel riding, working with livestock, gardening, and working with everyday farm problems, carpentry, the opportunity to learn honesty and trustworthiness through those farm experiences are as valuable as the suggested cultural advantages in Albuquerque.

34 The Defendant's position that raising the children in Albuquerque, Albuquerque is superior to North Dakota is not supported by the evidence or any other rationale.

35 The fact that the three minor children are in counseling in Albuquerque concerns the Court regarding the mental health of those children due to their relocation.

36 The children have relationships with neighbors, friends, and family in North Dakota.

37 The Defendant suggested that when the children are visiting with the Plaintiff, they attend the Farmer's Union Camp, further interfering with the Plaintiff's visitation.

38 The Defendant has taken responsibility for the alienated relationship between the Plaintiff and her step-daughter, Cassidy, and it appears that alienation of the other children has begun.

39 That the Defendant informed this Court that she had a job offer for \$35,000.00 at the commencement of this divorce so she could stay in Albuquerque, but did not take the job. Instead, she started her own business, grossing \$1,500.00 with \$1,500.00 in expenses. The Defendant had her job in North Dakota working part-time and full time for a portion of the year and earned \$18,000.00 with health insurance.

40 The Defendant had previously talked to Attorney Nordsven regarding custody of the children and getting a written agreement prior to leaving for Albuquerque without informing the Plaintiff.

41 The Defendant contends that she spent \$70,000.00 in Albuquerque, but did not disclose the source of the funds.

42 The Defendant contends that she would not drive to North Dakota because of the road conditions, but indicates that the Plaintiff should drive to Albuquerque for visitation.

43 The Defendant stated that the Plaintiff's visitation schedule was subject to change without notice, a practice not acceptable for equitable visitation.

44 The Defendant told the children that the Plaintiff would kidnap the children, causing the children to disrespect their father.

45 There is no evidence in the transcript of relatives' proximity or how much time the Defendant's relatives spend with the children.

46 When the Plaintiff was asked if he missed his children, he replied "very much...it's like a nightmare right now. I guess it is more than horrible", indicating his motive to oppose Defendant's move.

47 The Defendant's testimony evidenced questionable credibility.

48 The custody investigator realized that life for the parties and the children would be easier if they lived closer together.

49 Given the past history, the Defendant's financial condition would probably be much better if she returned to North Dakota.

50 The Plaintiff's financial position and the preservation of the assets would be much stronger if the Defendant relocated to North Dakota.

7 The land ownership data was and is confusing because Bob started farming with his brother-in-law and father in 1979. Bob's father gifted s land to Bob and his brother-in-law (Tr.9, 11-12.). The land ownership was not documented formally in the beginning, but was transferred by verbal agreement (Tr.10, 20.). It was formalized in 1994 (Tr.11, 5). Kathy admits that the land ownership is not clear from the record. It is not what Kathy has set out in her brief. The record shows net worth (assets – liabilities) from 1988 to 2004 increased by \$223,757.00. Bob Dvorak had a net worth of \$644,647.00 (App. 339.), when they began living together in 1998 and on January 27, 2004, the net worth was \$993,319.00. These figures were prepared by Farm Credit Services and its predecessors, and those reports have been consistent over the years. The parties were married on September 8, 1990.

8 The assertion in Kathy's paragraph 12 of her brief that the full range of farm and ranch equipment had been acquired throughout the marriage is not supported by the transcript. Bob had a full range of farm and ranch equipment before and after the marriage, and there is no indication as to when any equipment was acquired.

9 Child 1 has never been diagnosed with allergies (Tr.249, 4-5.) and the record does not indicate any treatment for the same. This was an exaggeration by Kathy, unsupported by any objective evidence, as was her claim of migraine headaches.

10 The children were involved in numerous activities in North Dakota and were enrolled in 4-H activities. (Tr.267,20-21.) They were involved in CCD classes, including Farmer's Union Camp, (Tr.268, 7.) Farmer's Union activities, (Tr.271, 4-6.) piano recitals, (Tr. 95) and basketball (Tr. 96).

11 As to Kathy contention to not having job opportunities in North Dakota, the Court found she was working at Rosenbluth International making \$17,000.00 a year with health insurance, working part-time (Tr.281, 7-13.) (App. 367) while her income in Albuquerque was minimal.

12 Kathy managed the household and Bob was responsible for the ranch operation, and it was Kathy's choice because she refused to assist with the ranch chores and discouraged the children from participating in the ranch chores. (Tr.97, 16-21.)

13 The impression left by Kathy's brief that the parties had a meaningful discussion regarding the children's move to Albuquerque is not a fact. Bob was opposed to the children leaving for Albuquerque. Bob found out that Kathy was moving to Albuquerque late November (Tr.38, 8-10.) and Kathy never discussed with Bob the fact that she was going. (Tr.39,12-14.) Kathy was blackmailing Bob into allowing her to leave with the children by refusing to sign loan papers necessary for the ranch operation. (Tr.41, 10-25.) This fact was a finding made by the Court, (32 (e)), "The Defendant took the children out of school in North Dakota, in December of 2002, against the Plaintiff's wishes", and "The Defendant would not sign loan papers unless he consented to allow the children to leave North Dakota in 2002 and move temporarily to Albuquerque. (32 (9)).

14 Kathy's promise to Bob that her mother was going to take care of her expenses while she was in massage therapy school is bolstered by the fact that Kathy's mother signed a lease agreement for the house the children were to stay in while in Albuquerque. Yet the Court found that she attempted to withdraw monies from the farm account while in school without Bob's knowledge. (32 (i)).

15 Kathy's contention that she did not have a home to move into upon returning to North
Dakota is not supported by the evidence in that the family home would have been available to her
had she requested the home or made application for the same. In fact, Kathy states that the house is
still her house and she would not be out of line to stay in that house when she is in North Dakota
(App.62.) a later statement that directly contradicts her previous position.

16 The Court addressed the issue of unlimited telephone calls between the parents and the
children in the Findings of Fact and found that Kathy was restricting telephone calls between Bob
and the children.

17 The issue of child support is argued but not an issue in this case; this Court in Dvorak 1
determined that the child support ordered by the Trial Court was appropriate. (2005 N.D. 66, p30.)

18 The Trial Court set out in its Findings of Fact that she grossed \$1,500.00 income and
incurred \$1,500.00 in expenses. The massage therapy business did not provide her with any net
income (App. 375), a fact that Kathy admitted when she stated she did not make any money and that
"she is financially in the hole" (Tr. p. 275, l 16-17).

19 Bob's visit in Albuquerque before Memorial Day weekend, 2003, Bob left North Dakota on
Wednesday. Bob was told upon arrival that he could not go anywhere with the children unless
Kathy or Kathy's mother accompanied them. (App. 38.) Bob rented a motel room and when he
visited with the children, Kathy insisted on being present. (App.39.) On the Saturday of that
visitation period, Kathy took the children out of town for the weekend, denying Bob the last two
days of visitation. (App. 39.) This fact was amplified by the Court in Findings, (25), and the fact
that she interfered with him in Albuquerque, (Findings, 20). Kathy claims she reported Bob's
alleged threats to the custody investigator and the custody investigator recommended that the

children not stay overnight with Bob at the hotel, however, it appears that this visit was in May of 2003, at least three months before the custody investigator was appointed.

20 Kathy's brief states that "Kathy never prohibited the children from seeing Bob", however, the Trial Court found that to be untrue. Kathy contended she never denied visitation, an untruthful statement, which was part of credibility problem.

21 There were more credibility problems when Kathy stated that she allowed unlimited telephone contact between the children and Bob is also contradicted by the Findings of Fact, (23, 24) and acknowledged that she had shut down her phone and that Bob was unable to contact the children approximately 500 times. Kathy had caller identification on her telephone, so she could see that Bob was calling and refuse to answer his calls.

22 Neither party requested that the District Court take any new evidence before making its decision, nor did the Supreme Court require, request, or suggest that the District Court take in additional testimony or receive additional evidence, so any criticism of the Trial Court in that regard is unfounded.

23 The Court acknowledges in the Findings of Fact that the total farm liabilities in 2004 were \$383,622.00 as compared to \$174,630.00 in 1988 when the parties began living together. This is an increase of \$208,992.00 during the marriage. In addition, the Court recognized that in awarding Kathy \$213,000.00 that there were limited financial assets from which to pay the obligation and that the judgment would mean more than likely be financed and consequently, the debt would rise from \$383,622.00 to \$596,622.00. This is supported by paragraph 18 of the Findings of Facts, which states "The farm income figures clearly show that the Plaintiff has very little financial power to service more debt much less the child support, spousal support, and increased property division he is ordered to pay." The Plaintiff's income for child support purposes was \$16,413.40 a year and that

finding was approved by this Court in Dvorak 1. The additional interest on \$213,000.00 at 7.5% would be \$15,975.00 per year without any reduction of the loan principal, leaving Bob less than \$1,000.00 yearly income on the average if the historical trend continues. Child and spousal support would need to come from depreciation cash flow or a much more profitable ranch operation. It has been said that one of the sure things in life is that history will repeat.

24 The number of acres acquired before and after the marriage is difficult to determine because of gifts and trades. The relevant issues for property distribution are not the volume of assets, but the net worth of the marital estate. The Court did not distribute acres between the parties. The Court distributed money.

25 The issue of attorney's fees has been considered by the Trial Court, but we do not see how this is an issue on Appeal as Kathy's brief was filed before the Court issued its Order.

26 **STANDARD OF REVIEW**

27 The Trial Court's decision whether a proposed move to another state is in the best interests of the child is a Finding of fact, which will not be reversed on appeal unless it is clearly erroneous. Dickson v. Dickson, 2001 ND 157, p.18; 634 N.W.2d 76. A Finding of Fact is clearly erroneous if it induced by an erroneous view of the law, if there is no evidence to support it, or if, although there is some evidence to support it, on the entire evidence the Court is left with a definite and firm conviction that a mistake has been made. Stout v. Stout, 1997 ND 61 p. 7; 560 N.W.2d 903. The request to relocate the children has the burden of proof by a preponderance of the evidence, Maynard v. McNett, 2006 ND p. 18; 710 N.W.2d 369, 376.

28 A Trial Court's findings on matters of property division will not be set aside on appeal unless they are clearly erroneous under N.D.R.Civ.P. 52(a); where they are induced by an erroneous

view of the law. Hogan v. Hogan, 2003 ND 105 p. 18; 665 N.W.2d 672, citing Wald v. Wald, 556 N.W.2d 291, 294 (N.D. 1966).

29

ARGUMENT

30 Kathy contends that she was living in Albuquerque with Bob's permission for three months prior to Bob commencing the divorce. The Court found that Kathy obtained Bob's permission to allow the children to go to Albuquerque, New Mexico by inappropriate behavior when she refused to sign the loan papers, which the loans were necessary to operate the ranch. (App. 374.)

31 The fact that the Trial Court allowed the children to remain in Albuquerque for the interim was a clear showing that the Court had not pre-judged the issue. It also allowed the Court to more fully analyze the consequences of the move. If the Court had ordered the children to return to North Dakota and decided that they should be allowed to remain in Albuquerque, Kathy would have had to move twice whereas, allowing them to remain in Albuquerque pending the final outcome of the case.. This good judgment should not be interpreted in any way as supporting Kathy's contention that the Court committed clearly erroneous error when ordering the children and the mother to return to North Dakota because they were allowed to stay in Albuquerque pending appeal. The use of the Court Order should not be used as a shield and a sword.

THE DISTRICT COURT'S DETERMINATION IS SUPPORTED BY THE LAW AND

THE RECORD

32 Other than Kathy's self-serving contention and testimony, there is no objective evidence that Kathy and the children would have a better life in Albuquerque than in North Dakota. There is clear and convincing evidence that the move to Albuquerque and the actions of Kathy were not, and probably will not, maintain a meaningful parental relationship with the non-custodial parent. Bob strongly desires to have and maintain a meaningful relationship with his children and under the

present circumstances cannot maintain this relationship as enumerated in the Judgment that allows visitation every second weekend an impossibility. In addition, there is substantial evidence that the children were alienated from their father by Kathy's actions. Requiring the children to attend counseling when they expressed an interest to be with their father is subtle evidence of alienation by the Kathy. The Court was shown the unpardonable behavior of Kathy in restricting Bob's visitation, which only changed when the custody investigator suggested it would not be advantageous to her custodial request. Once Kathy is not subject to court scrutiny, the alienation of the children will continue and her request to relocate the children gives her the ability to defeat or deter visitation. Her integrity in this regard is more than suspect. It was obvious to the Court.

33 The Findings of Facts and the Court's Memorandum clearly show that the Court considered the factors in Stout v. Stout, 1997 N.D. 61; 560 N.W.2d 903, and Oppegard/Gessler v. Gessler, 204 N.D. 141; 681 N.W.2d 762 (N.D. 2004), and applied those factors to the instant case. (App. 352-354) The Court considered;

- a) the prospective advantages of the move and improving the custodial parent's and child's quality of life;
- b) the integrity of the custodial parent's motive for relocation;
- c) whether Kathy's action is to defeat or deter visitation by Bob;
- d) the integrity of the non-custodial parent's motives for opposing the move; and
- e) the potential negative impact on the relationship between the non-custodial parent and the children, including whether there's a realistic opportunity for visitation which can provide an adequate basis for preserving and fostering the non-custodial parent's relationship with the child if relocation is allowed, and the likelihood that each parent will comply with such alternate visitation. A review of the past

Memorandum, Findings, present Memorandum and Findings support an analysis of the relevant elements.

34 The likelihood that Kathy will comply with adequate visitation has not been demonstrated by her previous actions in not allowing Bob's phone calls to reach the children, removing the children from Albuquerque while Bob was in Albuquerque to exercise visitation, or insisting that she be with Bob at all times while he was in Albuquerque. Even when Bob had visitation in the summer, Kathy insisted on being present in North Dakota for that month and interrupting the visitation all the while when she was supposedly "growing her business in Albuquerque" but could shut it down for a month.

35 The Trial Court recognized existing severe negative impacts on the quantity and quality of the visitation afforded Bob when the children are in Albuquerque. The financial burden to exercise the visitation and the fact that Bob would have to spend approximately (2) days and 2200 miles round trip traveling for each day of visitation must be a consideration.

**THE PROSPECTIVE ADVANTAGES OF THE MOVE AND IMPROVING THE
CUSTODIAL PARENT'S AND CHILDREN'S QUALITY OF LIFE**

36 The advantages for Kathy's move are only in her own mind and her own testimony is scant with supporting evidence. The financial data regarding her business could not in any way support a move and contradicted Kathy's contention that she was growing the business and that somehow the business would provide income for her and the children. This coupled with the fact that Kathy had a part-time \$17,000-\$18,000.00 a year job in North Dakota complete with health insurance, did not support the Kathy's position that no jobs were available in North Dakota. In fact, Kathy did not expend any effort to obtain employment in North Dakota or review North Dakota opportunities for her new occupation.

37 Kathy maintains that the continuity and stability of the custodial family is rooted in Albuquerque. At the time of trial, the children had temporarily resided in Albuquerque for a short period of time, compared to the amount of time they had a stable and continuing relationship in North Dakota. Their Albuquerque experiences were minimal. There was minimal evidence other than Kathy's testimony that the children are doing well. The fact that the family has no income, the children are going through counseling and three of the children want to spend more time with their father contradicts Kathy's self-serving assumptions that the children are comfortable with the present situation. The evidence for the children's adaptation comes from Kathy and the Court found she lacked credibility. There was uncontroverted evidence that the children were well established in their home, schools, church, and activities in North Dakota, and that they participated in extra-curricular activities.

38 Kathy's argument that Bob has not taught to the children honesty, trustworthiness, and experiences on the farm, are not supported by any evidence. Extended visitation in this case is not a reasonable substitute for regular, year round visitation. Extended visitation is like a vacation, which is not conducive to establishing a meaningful parental relationship. The non-custodial home is not a dude ranch, but a working ranch operation which has different activities going on at different times of the year. To obtain a complete education of ranch life, it is necessary to experience it at all times during the year.

39 Kathy is supported by her mother, which fact was camouflaged by Kathy at the trial. The 8.3 Property and Debt Listing show a \$20,000.00 debt to her mother yet she contends that it took \$70,000.00 to support the children for a year. There was no evidence as to the source of the \$70,000.00, which was one of the items that created a credibility problem for Kathy; spending \$70,000.00 while earning no income is not conducive to a stable family environment.

40 The children were doing well in North Dakota and had considerable support from the North Dakota relatives and friends. The children have grandparents nearby in North Dakota, and have close uncles, aunts, and cousins as neighbors. Kathy attempts to create an argument for family member support, by a sister who lives 732 miles away in Ft. Worth, and her mother, who lives in another state. It is clear that the network of close family members supports the children's residence in North Dakota rather than Albuquerque. Kathy's mother spent the summers in North Dakota (Tr. 204, L 8, 9), and conceivably she could continue that pattern when the Kathy returns to North Dakota. Kathy's attempt to claim family proximity is a benefit to the move and the children's best interest is unsupported and contrary to the facts presented.

41 A child's preference is also a factor the Court should consider, and was considered by the Trial Court. See Tischmack v. Tischmack, 2000 N.D. 103, p. 21/22; 611 N.W.2d 204. The children's preference is essential in considering the factors for the best interests of the child. Children are an integral part of a divorcing family and the Court should give considerable deference to the children's preference and not ignore their wishes. Children must feel that they have at least some consideration in the divorce process and the issues of where they will live, what activities they will be allowed to utilize, and the visitation they will be receive with each of their parents. This Court did consider the children's preference as an element in the children's best interests.

42 Kathy's lack of income significantly affects Bob's and the children's financial position. If Kathy continues to stay in Albuquerque and making the limited income described to the Court, there will be increased pressure on Bob to support the non-custodial family. This may destroy Bob's ability to keep up the ranch operation or create any estate for the children. There will be increased pressure for spousal support, and Bob cannot allow his children to be destitute. Kathy's choice to not support the family income is not in the children's best interests.

43 The health argument is bogus. The evidence regarding the eldest child's allergies come only from Kathy's testimony. There was no description or mention of her allergies prior to leaving North Dakota and no medical evidence presented regarding the child's allergies in North Dakota or in Albuquerque. The statement that one of the children had a speech problem and is doing exceptionally well is again self-serving evidence by Kathy, a non-credible witness. There was also no evidence that Kathy had migraine headaches prior to leaving North Dakota. The fact that the children are in counseling demonstrate mental health issues arose in Albuquerque and was not present when the children were living in North Dakota. The minimal evidence regarding the health issues with the children was insignificant. This is especially true when the only evidence presented was from Kathy, continually tried to "guild the lilly" with her conclusions.

The lack of health issues was further demonstrated when the custody investigator stated that she had reviewed the medical records relating to the family (App. 168.), and there were no significant issues regarding physical health of the children. (App. 169.) There was no mention regarding physical health of Kathy by anyone but Kathy and no mention of history of migraine headaches prior to the divorce.

Most of the health information was presented by Kathy's affidavit, and the Court stated it would not consider Affidavits as evidence. (Tr. p. 27, L 15-18) All Affidavit evidence was not considered so the sixteen (16) Affidavits contained in the Appendix should not be considered by this Court. The ruling to not consider the Affidavit was not contested.

The child custody investigator didn't recall which one of the children had allergies or if it was presumed that they had allergies, which did not support the mystifying health problems issue. (Tr. 140, L 12-15.) Kathy testified that the child was not diagnosed with allergies and the testimony regarding the younger child's speech problems is "... has speech problems, and he has all of his life

(which contradicts Kathy's position). He is currently in speech, and he's doing exceptionally well, also." (Tr. 249, L 6-9.) It was also later acknowledged that he was in speech while they were in North Dakota, so there is not advantage to the move by the alleged health issue.

44 Kathy's argument that she has close family contact is not credible. A brother living in Virginia, when he has never visited them cannot support the move to Albuquerque. A sister living in Dallas/Ft. Worth without evidence that she has visited the children in Albuquerque is insignificant. In fact, to take the children away from their numerous relatives in North Dakota, who live close to the family home, and relocate them to Albuquerque, where for all intents and purposes they will not be able to visit Bob's relatives and their former friends was and is a detriment. When you compare the relatives in North Dakota to the relatives and their distance in Albuquerque, this factor strongly favors the return to North Dakota.

45 The custody investigator stated that Kathy and Bob agreed that she would attend school in Albuquerque and take the children to live with her, (App. 167) however, the custody investigator did not consider or discuss the pressure placed on Bob to obtain his agreement.

Bob filed the divorce because he was concerned that after watching a television episode dealing with custody issues of the children, he became convinced that Kathy was not coming back to North Dakota and that she would file for divorce in Albuquerque. (App. 172.)

46 The custody investigator's only focus was on Albuquerque and did not acknowledge that the children had a satisfactory environment while residing in North Dakota and did not acknowledge that given Kathy's financial circumstances, independent living was impossible. The custody investigator stated that Kathy was gainfully employed, which was a conclusion completely unfounded by any evidence, which did not support her conclusion. She did not see the lack of income as a problem. The Court need not accept the recommendations of the custody investigator.

“It is within the Trial Court’s discretion to assign the weight given to such evidence (Hogan v. Hogan, 203 ND 105, p. 1; 665 N.W.2d 672).

47 The custody investigator also determined that the moral fitness of the parents favored Kathy, however, she related entirely upon circumstances that were relayed to her by Kathy and Cassidy and did not consider Bob’s explanation. There is absolutely no credible evidence that Bob installed a young woman to service his sexual needs on the farm. This argument only surfaced in the divorce and was not an issue prior to the divorce. This was a fake allegation. The custody investigator did not consider that the home, school, and community record of the children was excellent in North Dakota, but only assumed because the children were in Albuquerque with their mother that the move was a “fait accompli”.

48 The custody investigator stated that all of the children expressed a desire remaining with their mother during the week and being with their father on the weekends. Of course this is impossible in Albuquerque and she acknowledged that the three younger children wanted to live in North Dakota. This was their express intention but she stated that this factor weighed in Kathy’s favor, although the children wanted sufficient visitation with their father. The custody investigator found that there were no false allegations of harm, however, there were lies told by Kathy that Bob had installed a woman for sexual favors and indicated that Bob had knowingly hired a sex offender to work on the farm, all of which were disproved and so marginal as to be a false allegation, when used as a character assassination in a divorce action. The custody investigator never had the opportunity to visit with the children when they were with Bob.

49 The custody investigator’s duties under Rule 8.6 do not allow her to advise parties as to what they should do or how they should act, i.e., should not stop the children from being called by Bob. Kathy testifies that the custody investigator told her not to block Bob’s phone calls and this is

beyond her duties and shows a bias to help Kathy. She was acting as an advocate when she gave advice to Kathy.

50 It is evident that Cassidy turned against Bob. Her attitude and actions supported and encouraged by her mother shows that there was parental alienation in the past which, when combined with Kathy's actions regarding visitation in this case, present a clear and present danger that alienation will continue once the Court is not present. Kathy used Cassidy to force entry into the farm home when Bob was living there alone.

51 Kathy contends that there are cultural activities that are available in Albuquerque that are not available in North Dakota. She implies that the pages describing North Dakota in the book of "desirable places to live" are blank. The children are involved in horse riding lessons in Albuquerque when in North Dakota, they lived on a ranch. There are a number of other things that are available in North Dakota and on a ranch operation that are not available to the custodial family in Albuquerque. These assertions do not demonstrate non-economic benefits to Kathy which would require the finding of clearly erroneous. The Court found that the children were disadvantaged in Albuquerque by the poor income, counseling, and alienation from their father fostered by Kathy. A position that Albuquerque is a better place to raise children and North Dakota does not offer children comparable life lessons and activities is wrong. North Dakota has ice fishing, hockey, cross-country skiing, skating, curling, hunting and fishing opportunities, 4-H Farmer's Union activities, and many, many more activities not available in Albuquerque.

52 The custody investigator stated her emphasis was either living with Mom or living with Dad. "... the issue I was assigned to recommend and help in the decision-making process, is living with Mom or living with Dad." (Tr. p 116, L 8-12.) It is obvious from this testimony that the custody investigator did not consider the question of whether the children should live in North

Dakota or Albuquerque, but whether the children should live with the mother or the father. The Court and the custody investigator were on the same page as far as the custodial parent, but the custody investigator did not consider the move back to North Dakota an issue.

53 The custody investigator stated that the only way she would make a recommendation that the children live closer to one parent or the other would be if only one of the children had a medical issue that they needed to be closer to a facility that would provide medical care for them (Tr. page 124.). The Court did not dispute what the custody investigator had done, in fact, the custody investigator had not considered the issues in the move from North Dakota to Albuquerque.

54 There is much argument about the continuity and stability of the children, however, the mother chose to remove the children from their continuity and stability in North Dakota and transport them in the middle of the school year to Albuquerque in 2002. If it was not a problem then to move the children in the middle of the school year, it should not be a problem now to return the children to North Dakota at the end of the school year.

55 As regards to counseling, testimony was

“... After two visits with all of the children, it was his decision that ... and ... didn't really need substantial counseling. They were handling the situation quite well. They were mature enough to understand what was going on. He did have concerns about the three younger children, so then we made arrangements where every other week the three younger children go for an hour each.”(Tr. p 252, L 8-14.)

The problem with the three younger children was that they wanted to spend more time with their father, and consequently the Kathy determined they needed some counseling to overcome their desire to be with their father. This is parental alienation and a subtle form of brainwashing.

56 Jason wrote a letter to his father and neglected to put a stamp on it. Kathy removed it from the mailbox and gave it to the counselor. It was never mailed to his father. Kathy knew about the letter as she was monitoring the children's phone calls to their father. The interruption of the mail is

a serious and significant alienation item. (Tr. page 254.) If the children live in Albuquerque there will be much greater opportunity for alienation than if they live in North Dakota with frequent visitation with their father.

57 The facts in Tibor v. Tibor, 1999, N.D. 150; 598 N.W.2d 480, argued by Kathy differ from this case in that the Court found in Tibor, that (1) the custodial parent offered a generous alternative visitation schedule and (2) also offered to split the cost of transportation for the visitations and (3) further offered to cooperate with visitations anytime. The Trial Court in this case did not find any cooperation on behalf of the custodial parent and in fact, found the reverse, that the custodial parent had significantly frustrated visitation. Given the Court's Findings of Fact and the numerous problems there have been with the custodial parent's view to visitation, the Trial Court was correct in finding that visitation could not be restructured to preserve and foster the children's relationship given the historical experience with Kathy and her lack of credibility.

58 The children lived on the ranch Bob worked prior to the move to Albuquerque so to imply that he had limited contact and interest with his children is wrong. He was with the children every day. When the children moved to Albuquerque for the temporary period, given that the move was temporary and the pressing workload on the ranch, Bob did not see the children from January to May. Although it is true that Bob did not attend many off the farm activities, it is also significant that Kathy did not attend or support the children's activities when they were with Bob.

59 When a divorce occurs, it is obvious that the parents must change their schedules to accommodate the children. Bob acknowledges that there would have to be changes if he would obtain custody and also there would be changes when he exercised visitation in North Dakota. There is no evidence to support the proposition that Bob could not accommodate the visitation schedule of every other weekend and six weeks in the summer if the children were in North Dakota.

There was substantial evidence that he could not accomplish meaningful visitation if the children lived in Albuquerque, regardless of the children's wishes.

60 The Trial Court's decision to require the custodial parent to move back to North Dakota or relinquish custody of the children is strongly supported by the evidence and considered by the Court.

61 All factors required by the law were considered by the Court and fully explained. There is a clear indication that if the children are allowed to stay in Albuquerque with their mother, her past mischief would continue and a significant possibility that Bob's relationship with the children will be destroyed. The children's best interests are served by significant time with their father, which cannot be achieved if they live in Albuquerque.

PROPERTY DIVISION

62 The District Court's division of the marital property is not clearly erroneous. This Court stated in Dvorak 1, paragraph 23...

In the Findings of Facts and Conclusions of Law, however, the District Court did not enunciate the financial hardship to the farm. When we cannot discern from the Findings of Fact or the record before us whether or not the property distribution is clearly erroneous, we must remand the case for further specific findings on the issue.

The Court distributed the marital property severely impacting the ranching operations as equitable as was possible give the financial picture. The fact that spousal support was granted would allow the Court to adjust the equitable nature of the financial distribution should the financial condition change as the Court retains jurisdiction over spousal support (Rothenberg v. Rothenberg, 2006 ND 265, p. 10; 711 N.W.2d 219, N.D.C.C. 14-05-24.1).

63 The District Court re-examined the property distribution and awarded a total cash award of \$213,000.00 to Kathy, an equal division of the mineral estate, \$1,000.00 a month spousal support for 48 months, child support, attorney's fees, and costs. The child support, which was based upon

the farm income was affirmed by the Supreme Court in Dvorak 1. The District Court in its Findings of Fact found that based upon the 1999-2003 tax returns, which were in evidence, Bob had an average self-employment income for child support purposes of \$16,413.40. Since this was his income it is difficult to explain how Bob will now on an income of approximately \$16,000.00 per year pay an additional \$12,000.00 per year in spousal support, \$6,000.00 per year in child support, pay her and his attorney fees, costs of the Court ordered in the amount of \$3,349.00, and then, find a way to pay \$213,000.00 ordered for property division.

64 The Court determined that there was an increase in net worth during the marriage and the time they lived together of \$223,757.00. This was determined from financial statements approved by both parties to this action, independently prepared, and utilized by the Farm Credit Services from 1988 through the present. The farm debt from 1988 to the time of the divorce more than doubled increasing by \$208,992.00. The increase in net worth from the time the parties started living together until the divorce was \$223,757.00. The judge has granted that entire amount to the Defendant in property division and spousal support and other fees, which leaves Bob with no portion of the property acquired during the marriage, but credits him with the assets he had when they were married with consideration to each party for the gifts both parties received from their parents.

65 The Court did not divide up the farm as it considered that Bob has a 10th grade education and his only experience has been farming and ranching and that a substantial portion of the assets and land were acquired prior to the marriage (App. 369-372). The Court found that the farm income figures clearly show that Bob has very little financial power to service more debt much less the child support, spousal support and increased property division payments he is ordered to pay.

66 The evidence in the record is voluminous regarding the financial shape of the farm, balance and income sheets, (App. 127), the interim balance sheet, (App. 137), income and expenses, Exhibits 1-11, 1990-2003 income tax returns.

67 This Court has recognized in Dvorak 1 that the liquidation of an on-going ranching operation is a last resort. (Dvorak 1, p 23). Preserving the ranching operation is important in this case since a majority of the land was inherited and traded with family members. Bob has been farming and ranching all his life, he has only a 10th grade education and he was farming and ranching for a considerable time before the parties were married.

68 The income tax returns clearly show the net income from the farm. Although the net income for child support purposes and cash flow purposes may not be parallel, they are significantly close enough to analyze income, and Bob's ability to pay the Court award. Exhibit 56, a summary of Bob's income from the years 1990 to the year 2002, evidences a total income for 13 years of \$37,000.00. There was no evidence to rebut these figures and these are supported by the Federal tax returns. Given the fact that over a period of 13 years the farm had only made \$37,000.00 clearly shows to the Court that there is little income available to pay the interest on the additional debts ordered by the Court. \$37,000.00 total income divided by the 13 years would be \$2,846.00 per year. This amount of income would be able to finance \$37,946.00 at 7.5%. That would only be paying the interest and not any of the principal. The Court has awarded \$213,000.00 plus spousal support of \$1,000.00 per month plus \$510.00 per month child support, plus costs and attorney's fees for both parties. Clearly, the court-ordered payments cannot be financed by the present income unless income increases and it will be necessary to utilize depreciation cash flow to finance the additional award. The use of depreciation cash flow does not allow for equipment replacement.

69 There is much discussion about the number of acres that were acquired before and after the marriage. What is not explained is that many acres acquired after the marriage were acquired by trade and gifts to Bob, consequently it is very confusing. What is not confusing is the value of the farm as evidenced by the independent financial statements that had been prepared over the years. It is not relevant how much land was acquired but the value of the entire marital estate. “In making an equitable distribution, justice requires the use of the elementary accounting equation assets minus liabilities to determine the net worth of the marital estate, Neidviecky v. Neidviedky, 2003, ND 29, p. 11; 657 N.W.2d, 255.

70 The fact that the cash flow for the farm may not be reflected in the income will allow some additional funds to be available for financing the asset distribution to Kathy. It will however still be a financial hardship for Bob to operate under the present judgment. The depreciation of existing farm assets without replacement by the use of depreciation cash flow to pay the monetary awards will mean that the farm assets will diminish in value as a result of capital neglect and replacement.

ATTORNEY’S FEES

71 Bob should be awarded his attorney’s fees as Kathy continues to litigate the issue that her and the children can stay in Albuquerque, denying Bob any significant contact with his children for nearly three years. The majority of the legal work in this case revolves around the relocation issue. Kathy’s use of the court system to circumvent the court order for relocation is a significant reason for the award of attorney’s fees to Bob.

CONCLUSION

72 This Court in Dvorak 1 remanded the case to the District Court to further explain its rationale for the Judgment.

73 The District Court not only fully explained its rationale in accordance with the law, but increased the open reconsideration of the property distribution to Kathy.

74 The distribution is more than fair and equitable and leaves Bob only with the hope that the farm/ranch economy will significantly improve so he can pay his obligations.

75 The Court clearly made the correct decision to refuse Kathy's request to move so both parents can have a meaningful parental relationship with the children and continually receive the love and joy children and parents provide. The children will benefit from the presence of two loving parents, learning lessons from each parent and enjoying the many benefits of living in North Dakota.

76 Bob also requests that he be awarded his attorney's fees on Appeal.



RONALD A. REICHERT
(ND ID # 03110)
218 South 3rd Street
Grand Forks, ND 58206-5758
701-787-8802
701-787-8460 (fax)
Attorney for Appellee, Bob L. Dvorak