

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

SUPREME COURT NO. 20050006

20050006

FRANCES M. REINEKE, APPELLANT

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

VS.

MAY 10 2005

RONALD REINEKE, APPELLEE

STATE OF NORTH DAKOTA

ANSWER TO APPELLANT'S BRIEF CONSISTING OF:
APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FOR SECOND AMENDED JUDGEMENT, AND SECOND AMENDED JUDGEMENT
ENTERED ON NOVEMBER 10, 2004, IN THE DISTRICT COURT OF
BURLEIGH COUNTY, NORTH DAKOTA
SOUTH CENTRAL JUDICIAL DISTRICT
CIVIL NO. 02-C-01329
THE HONORABLE BRUCE A. ROMANICK, PRESIDING

APPELLEE'S BRIEF

RONALD REINEKE
APPELLEE
411 12TH ST. NW
MANDAN, ND 58554
(701)-220-8362

BRENDA A. NEUBAUER
ATTORNEY FOR APPELLANT
PO BOX 1015
BISMARCK, ND 58502-1015
(701)-355-1078
ID#05210

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SUPREME COURT MAY 11 2005

Ronald Reincke and Fran Michels were divorced on October 31, 2002. Fran was awarded primary custody of the minor children. Fran was ordered to pay for the home mortgage and we were to split the second mortgage. Ron appealed the courts ruling. The appeal was unsuccessful. In January of 2004 Ron filed for Chapter 7 Bankruptcy as his legal fees alone were over \$25,000.

Fran has worked at Mid Dakota Clinic for 29 years, yet she only made \$20,331.00 in 2003. I know throughout the years that we were married Fran would always complain that she was not making enough money, however, she never attempted to find another job that would pay her what she felt she was worth. My earnings have increased over the years, but not as substantially as they say it has. In 2001 I was out of work for 9 weeks due to surgery on my left arm, and again in 2002, I had surgery on my right shoulder, with which I was out for 6 weeks. That's why there is a difference in my earnings over that period. We do get yearly raises based on how well our productivity is and how well we perform our other duties.

Appellee's Answer to Appellant's Issues on Appeal

The trial court was clearly erroneous in it's findings in raising the spousal support. They raised it so Fran could collect on the half payment of the second mortgage that I wasn't making, due to the bankruptcy filing. By letting Fran collect on the second mortgage they are saying she has the same rights as a creditor to collect on a debt. By giving her the right to collect on a debt as a creditor puts her in the same category as a creditor when it comes to the Federal Bankruptcy Code. It is my understanding that a creditor can not collect on a debt once it has been discharged in bankruptcy court.

The duration the court gave Fran for spousal support was more than generous

based on the second mortgage payment which is \$433.22, half of it being \$216.61. By raising the support to \$650.00 per month, it equals 3 half payments per month. That means the increased support is making 36 months of my share of the second mortgage per year or equaling a total of 144 months or 14 years of one half of the second mortgage payment over a four year period.

I don't understand how Fran's wages could have decreased from \$21,727 in 2002, to \$20,331 in 2003. I am unclear as to how her wages could be decreasing from one year to another considering the cost of living increases and raises she has received as stated in the October, 2004 court hearing.

I am not knowledgeable about the guide lines that Fran's lawyer is using for permanent spousal support. I am unaware of what makes Fran incapable of rehabilitation and would like to know what standards are used for this determination. The brief also states that I put Fran at a disadvantage in our marriage using the example that I controlled the finances and everything else. We made all of our decision together during the years we were married. We may not have always agreed upon purchases but the decisions were still made together. For as long as Fran and I were married we were able to support ourselves and our children on the budget we had created. I budget my income to pay for the lifestyle I have now. How can I be held accountable for Fran's inability to budget for her lifestyle, considering the amount of spousal and child support she receives and has received for the past 2 ½ years and will continue to receive for the next 3 ½ years. As far as caring for our children, our oldest son works a full-time job as he graduated from high school in 2004 and is capable of helping out with the finances as he lives at home with his mother and is not attending any other schooling at this time. I am also aware at this time that our youngest daughter Robin has been expelled from school for the rest of the school year.

Whatever school expenses Fran was incurring has stopped for the rest of this school year.

It is also my understanding that Robin is staying in Goodrich, ND with her boyfriend and his family for an undetermined amount of time.

Fran's financial statement reads that she is at a serious disadvantage, however, she is able to afford a lawyer and continues to question the courts rulings and findings related to this divorce. I am representing myself because I cannot afford to hire a lawyer without putting myself into debt again. My take home pay after all the deductions is roughly \$1,200 and I am not able to save money either due to the expenses incurred along with paying my share of the expenses included in everyday life. I have had to stop taking my diabetes medication and am not able to afford my blood monitoring supplies as the expense was above and beyond what I could afford since the increase of the spousal support. At any given time my diabetes could become unmanageable and I would need to be on insulin. I would then lose my position at my current place of employment, as I would not be able to carry a CDL license and would not be able to make the same amount of money that I am making now. I am also getting up there in the years and would be at a greater disadvantage due to not having the schooling and college education that Fran has.

Fran also states Robin is in need of more counseling because of my behavior and Fran is not able to afford the visits. However, Robin did not start going to counseling until May of 2003 due to an incident that occurred in Fran's home that has not been brought about as to protect Robin. My insurance covers 5 free sessions per year and then there is only a co-pay of twenty dollars per session after the first five. I am aware that there are other options out there for someone in need of counseling even if they may not be able to afford it.

The trial court did address the issue of the indemnification. The indemnification clause

was voided when the court raised my spousal support. The support has already been raised more than enough to cover my half of the second mortgage.

CONCLUSION

The bankruptcy was caused by the length and cost of the divorce, and it might have caused a disparity between our financial situations, however, my retirement account is all that I have left and the trial court determined the amount in the account would not have made a difference. In order for the Indemnification to be enforced the spoual support would have to be decreased to the original divorce Judgment amount. The trial court has not abused its discretion, Fran was awarded an amount that was deemed appropriate for both parties. Justice is not being served by continuing to waste the courts time with the litigations that keep taking place. Fran`s entitlement to everything that was part of the marriage ended when the divorce proceedings were final and she needs to accept what has happened and move on with her life. Fran is capable of maintaining a lifestyle that is within her means considering the amount of money she makes and the support she has been awarded.

Dated this 9 day of May, 2005



Ronald Reineke
Appellee
411 12th St. NW
Mandan, ND 58554
701-667-5900