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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Brian Nieuwenhuis, Plaintiff and Appellant, vs. Lora N. Nieuwenhuis, Defendant and Appellant.	)	Supreme Court No. 20130394; Morton County Case No. 30-09-C-00912

APPEAL FROM THE MORTON COUNTY DISTRICT COURT AMENDED JUDGMENT DATED OCTOBER 2, 2013 AND ORDER AWARDING PARTIAL ATTORNEY FEES DATED FEBRUARY 25, 2014

SOUTH CENTRAL JUDICIAL DISTRICT

BRIEF OF PLAINTIFF-APPELLANT, BRIAN NIEUWENHUIS

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[1] The District Court had jurisdiction pursuant to N.D. Const. Art. VI, § 8 and N.D.C.C. § 27-05-06. This Court has jurisdiction under N.D. Const. Art. VI, §§ 2 and 6 and N.D.C.C. § 29-28-06.

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III. STATEMENT OF THE CASE.

[7] Appellant/Plaintiff, Brian Nieuwenhuis appeals the decision of the District Court granting Lora Nieuwenhuis Relief from Judgment, denying Brian's Motion for Contempt of Court, and denying Brian's request for attorney fees, but granting Lora's request for attorney fees.

IV. PROCEDURAL BACKGROUND.

[8] The parties to this matter originally stipulated to a divorce in July of 2009. *See* App. 12. The terms of the divorce were reduced to a Judgment by a signed Findings of Fact and Conclusions of Law by the District Court on November 19, 2009. App. 43. Judgment was entered on November 20, 2009. App. 64.

[9] As part of the Judgment, Lora was to pay Brian for costs of the continued habitation. App. 66. Lora failed to make the aforementioned payments. App. 104, Tr. June 19, 2013, 10:1-25, App. 230-233. Subsequently, Brian filed a motion for Enforcement of Judgment, for Finding of Contempt, and for Attorney's Fees and Sanctions to attempt to receive his payments. App. 96-108. Lora countered with a Motion for Relief from Judgment. App. 109-155. The court ordered a hearing held on the motions.

[10] A hearing was held on all of the motions on July 23, 2012. The court allowed the parties time for post-hearing summations or arguments, and also allowed additional time for submission of evidence, including an 8.3 Property and Debt Listing. The court issued its order on the pending motions on January 10, 2013. App. 220. The court granted Lora's motion pursuant to Rule 60(b) of the North Dakota Rules of Civil Procedure holding, in part, that the basis for said determination was that the settlement agreement was "prepared by the Plaintiff or his authorized agent…". App. 225-226. The court amended its order on January 25, 2013.

[11] The court left the issue of child support pending. On or about January 25, 2013 the court entered an order regarding the child support calculations. Lora, by and through counsel, submitted proposed child support through a letter filed with the court on January 25, 2013. App. 254-259. On that same day, Brian filed a second motion pursuant

to Rule 52(b) for amended and/or additional findings and a Motion in the Alternative for a New Trial based, in part, on the fact that the marital home had by then been sold. App. 234- 258.

[12] Additionally, on February 8, 2013 Plaintiff objected to the Defendant's Proposed Amended Judgment.

[13] The court granted Brian's motion filed January 25, 2013 for amended and/or additional findings and Motion for a New Trial on March 5, 2013. A motion hearing was thereafter held on June 19, 2013. The court again ordered Post-hearing briefing or summations. The court thereafter issued its second ruling on the motion on September 6, 2013. App. 302-309. Within that Order, the court left open the issue of attorney fees. Thereafter, Lora submitted documentation regarding the attorney fees for this matter. App. 310-316. Brian again objected to the second amended order and the attorney fees request. App. 317-319. On remand on the issue of attorney fees, the Court granted Lora $5,000.00 in attorney fees. App. 344-345.

[14] Brian now appeals the decisions of the district court regarding the amended order, to wit: the denial of Brian's Motion for Enforcement of Judgment or Contempt, the granting of Lora's Motion for Relief from Judgment, and the granting of attorney fees to Lora.

V. STATEMENT OF THE FACTS.

[15] Brian and Lora were married in Grand Rapids, Minnesota on September 24, 1994. The parties remained married until November 20, 2009. At that time the parties entered into a settlement agreement resolving their differences in the divorce.

[16] At the time of the divorce the parties had two minor children living with them. App. 27. In addition, although the parties were both gainfully employed, they had certain debts and obligations which were resolved in the settlement agreement. Among the debts was a home the parties were constructing. Based on the amount of debt the parties had pursuant to the home construction, the stipulated agreement provided that Brian would make all payments for the home, both parties would live in the home, and the parties would each be responsible for the living expenses in different manners. Within the settlement agreement the parties agreed to the monthly bills and expenses for the home at $3,810.00. App. 13, ¶ 3. The parties agreed that Lora would pay $1,600.00 per month for the bills directly to Brian, and that Brian would be responsible the remaining $2,210.00 per month for the bills. App. 13-14. The parties further agreed that Brian would pay numerous expenses until the home was sold. App. 14-15. There was no dispute that for several years Brian continued to pay the expenses he was responsible for pursuant to the settlement agreement. There was also no dispute that initially Lora made her $1,600.00 per month payments. However, after several missed payments and half-payments, Brian ultimately could not afford all the expenses.

[17] The Settlement Agreement was to stay in place until the home was sold. App. 13. By the settlement agreement, both parties did recognize and acknowledge by their signatures that it was possible that the home "may be on the market for quite awhile until it is sold." App. 13, ¶2. During all stages of the proceedings, the evidence revealed that Lora was taking an inequitable amount of the assets owned by the parties. App. 191-194. The inequitable allocation in the original settlement agreement was due in large part

to the agreement that provided that Lora take all of her teacher's retirement fund, which encompassed the bulk of the parties' assets at the time of the divorce.

[18] As noted herein, the court granted Lora an opportunity to present an 8.3 Property and Debt Listing. Within that document Lora conceded that she was receiving $160,000.00 in equity in the divorce settlement than Brian was receiving. App. 191-194. Brian concedes that the bulk of Lora's assets were contained in the state pension for Lora's retirement.

[19] In his Motion for Relief from Judgment and Contempt, Brian alleged that Lora failed to make the payments to him of $800.00 every other week, $1,600.00 per month as required pursuant to the divorce decree. App. 96-108. Brian further alleged that Lora had failed to fulfill the agreement as to payment of one-half of the medical expenses of the minor children and regarding her responsibilities for payment of the expenses for the children. Id. Lora did not deny that she had not been making all the payments, instead she alleged an inability to make the payments.

[20] Lora agreed that for the first year or so, she was able to make the $1,600.00 per month payments to Brian for the home expenses. Tr. 74:19-25. Lora further agreed that since 2009, when she had been able to make the payments, her salary has only increased since that time. Tr. 75:1-5. In Lora's cross-motion, she countered that she could not afford the payments because of the expenses for the girls. App. 148, ¶5. She also alleged that Brian had failed to make the car payments and pay the car insurance as required by the original settlement agreement. Id., ¶6. The testimony at trial revealed that in fact Brian had made the car payments and the insurance payments until the vehicle was involved in an automobile accident.

VI. LEGAL ARGUMENT.

A. Standard of Review.

[21] "'A finding of fact is clearly erroneous if it is 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 reviewing court is left with a definite and firm conviction a mistake has been made.'" Crandall v. Crandall, 2011 ND 136, ¶ 19, 799 N.W.2d 388 *citing* Lorenz v. Lorenz, 2007 ND 49, ¶ 5 729 N.W.2d 692.

[22] "'A [district] court's findings of fact are presumptively correct, and we view the evidence in the light most favorable to the findings.'" Lorenz, ¶ 5; *citing* Striefel v. Striefel, 2004 ND 210, ¶ 8, 689 N.W.2d 415 *quoting* Reineke v. Reineke, 2003 ND 167, ¶ 12, 670 N.W.2d 841.

[23] The standard of review in analyzing a question of law on appeal is fully reviewable by the Supreme Court. Hamilton v. Hamilton, 410 N.W.2d 508, 510 (N.D. 1987). Thus, questions of law are subject to the de novo standard of review. Kelly v. Kelly, 2011 ND 167, ¶ 12, 806 N.W.2d 133 *citing* Wigginton v. Wigginton, 2005 ND 31, ¶ 13, 692 N.W.2d 108.

[24] "A district court's decision on a N.D.R.Civ.P. 60(b) motion for relief from judgment is within the court's sound discretion and will not be reversed on appeal absent an abuse of discretion." Laib v. Laib, 2008 ND 129, ¶ 16, 751 N.W.2d 228. (Citations omitted.) "We do not determine whether the district court was substantively correct in entering the judgment from which relief is sought, but determine only whether the court abused its discretion in ruling that sufficient grounds for disturbing the finality of the judgment were not established." Id., *citing* Knutson v. Knutson, 2002 ND 29, ¶ 7, 639

N.W.2d 495. "When it is disclosed that a judgment is so blatantly one-sided or so rankly unfair under the uncovered circumstances that courts should not enforce it, N.D.R.Civ.Pro. 60(b)(vi) provides the ultimate safety valve to avoid enforcement by vacating the judgment to accomplish justice." Id., *citing* Kopp v. Kopp, 2001 ND 41, ¶ 10, 622 N.W.2d 726. "The moving party bears the burden of establishing sufficient grounds for disturbing the finality of the judgment, and relief should be granted only in exceptional circumstances." Id., ¶ 16.

B. The Court Erred in Granting the Defendant's Rule 60(b) Motion.

[25] The District Court erred in granting Lora's Rule 60(b) Motion. Lora's motion pursuant to N.D.R.Civ.Pro. 60 (b) was brought under subsection (vi) of the motion. Rule 60 (b)(6) states:

> **(b) Grounds for Relief from a Final Judgment or Order.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> (6) any other reason that justifies relief.

In this case, Lora argued that she should be granted relief from the judgment based on this court's decisions in First Bank of Crosby v. Bjorgen, 389 N.W.2d 789 (N.D. 1986) and Gepner v. Fujicolor Processing Inc. of Sioux Falls, South Dakota, U.S.A., 2001 ND 207, 637 N.W.2d 681. First Bank of Crosby and Gepner are cases involving contract disputes which proceeded to conclusion through default proceedings pursuant to either summary judgment or default judgment.

[26] However, those cases are distinguishable from domestic relations cases. In Gepner, this Court analyzed cases where the Supreme Court had concluded that a District Court abused its discretion in denying a Rule 60(b)(iv) motion. Gepner, 795-796. As part of its legal reasoning this Court noted that, "[w]hen addressing this issue we keep in

mind the several relevant factors a district court may consider when exercising its discretion, 'bearing always in mind that the principle of finality of judgment serves a most useful purpose for society, the courts, and the litigants--in a word, for all concerned.'" Id., 796, *citing* In re Estate of Jensen, 162 N.W.2d, 861 at 875, *quoting* 7 J. Moore, Federal Practice p. 60.19, at 225-26 (2d ed. 1955).

[27] Brian submits that the court should have analyzed the Rule 60(b) motion through the line of domestic relations cases in which this court has asserted that settlement is preferred. This court has long held that "[i]n granting a divorce, a district court is required to equitably distribute the parties' property and debts, which includes recognizing valid settlement agreements." Eberle v. Eberle, 2009 ND 107, ¶15, 766 N.W.2d 477, *citing* Kramer v. Kramer, 2006 ND 64, ¶ 6, 711 N.W.2d 164. The court further explained its rationale "[t]his Court encourages peaceful settlements of disputes in divorce matters, and the strong public policy favoring prompt and peaceful resolution of divorce disputes generates judicial favor of the adoption of a stipulated agreement of the parties." Id., *citing* Knutson v. Knutson, 2002 ND 29, ¶ 8, 639 N.W.2d 495. This court continued in Eberle by concluding that "a court should not blindly accept settlement agreements. The court has a duty to make an equitable distribution of the property and that duty includes the authority to decide whether an agreement was executed as a result of mistake, duress, fraud, menace, or undue influence." Id., citations omitted.

[28] The facts of Eberle differ significantly from the undisputed facts of this matter. In Eberle, Heidi Eberle had only days if not one day, in which she was to sign the settlement agreement and did not feel as though she had had sufficient time to meet with an attorney. Eberle, ¶ 4. (Contrast Vann v. Vann, 2009 ND 118, 767 N.W.2d 855

("…[I]nvolvment of only one attorney is troubling. However, that fact alone does not conclusively establish the parties' agreement was unconscionable." (Internal citations omitted)). Heidi further claimed she had been intimidated by John, that she had been on medication which affected her judgment, and that she had not had sufficient time to contact an attorney. Eberle, ¶ 21.

[29] This case is in strict contrast with the facts in Eberle. Unlike in Eberle, Lora did not indicate that she had been on any medication. Furthermore, Lora conceded at the second motion hearing that in fact she did discuss the settlement agreement with an attorney, but had decided not to retain an attorney for the negotiations. Tr. June 19, 2013, 53:2-54:3. Brian testified, and Lora did not dispute, that the negotiations in this case lasted several months and that Lora made several changes to the agreement. Tr. June 19, 2013, 34:17-35:6. Finally, Brian submits there was insufficient evidence to show intimidation on his or his lawyer's part as there was in Eberle.[1] Additionally, in Eberle the terms of the agreement involved John Eberle receiving nearly *all* of the marital estate. See Eberle, ¶ 34. Based on John receiving nearly all the marital estate, this Court concluded that "[t]he terms of the agreement were so one-sided no rational, undeluded person would make this agreement, and no honest and fair person would accept it. The agreement is substantively unconscionable." Eberle, ¶36. However, in this case Lora received more than 75% of the marital assets.

[30] Based on the foregoing, Brian urges this Court to find that the district court abused its discretion in granting Lora's Rule 60(b) motion. The facts of this case are distinguishable from the facts of Eberle and other cases where this Court has concluded

[1] Brian must concede, however, that this fact is in dispute.

that the settlement agreement should be set aside based on unconscionability. *See also* Weber v. Weber, 1999 ND 11, 589 N.W.2d 358. In this case, Lora admitted that she did consult an attorney, the evidence revealed that the negotiations for the final settlement lasted several months, and that Lora had sufficient time to read the document. Finally, and perhaps most notably, the terms of the settlement agreement were not so one-sided as to have left the District Court with the impression that the agreement was such that no rational, undeluded person would make the agreement and no honest and fair person would accept it because Lora received the majority of the assets.

[31] Based on the foregoing, Brian submits that the District Court abused its discretion in granting Lora's Rule 60(b) motion that the same should be reversed, and the original settlement between the parties should remain in full force and effect.

C. The District Court Erred in Finding that Brian's Net Monthly Income is $42,747.00 and that His Child Support Should Continue until the Youngest Child Attains the Age of Eighteen.

1. The Facts Do Not Support a Finding that Brian's Net Monthly Income is $42,747.00.

[32] In its final determination, the court found that Brian's net monthly income is $42,747.00. App. 328, ¶11. It is unclear whether this is an actual finding by the court or a scrivener's error in the final judgment. Whether finding by the court or scrivener's error, Brian submits that this court has the authority pursuant to Rule 35 of the North Dakota Rules of Appellate Procedure to modify the Judgment of the District Court to reflect that $42,747.00 is Brian's net *yearly* income.

[33] The facts in regard to this matter do not appear to be in dispute. Brian's net yearly income is $42,747.00. That record is devoid of any evidence that Brian's income reaches the level of $42,747.00 per month. Therefore the decision of the District Court

that Brian's net monthly income is $42,747.00 is in error and should be in all things reversed.

[34] Because the court erred in concluding that Brian's net income is $42,747.00 the decision should be reversed with instructions to correct the calculated amount to a yearly income for Brian.

2. The Court Erred in Determining that Brian's Child Support Shall Continue Until the Youngest Child Attains the Age of Eighteen.

[35] The District Court erred in further concluding that child support "shall continue in like manner until the youngest child attains the age of eighteen (18) or through the month in which that child graduates from high school, whichever occurs later, but in no event beyond the age of nineteen (19)." App. 328, ¶11.

[36] The finding by the court that the child support remain $1,017.00 until the youngest child reaches the age of eighteen is in direct contravention to the law in North Dakota. North Dakota law provides for payment after a child reaches the age of majority in limited circumstances.

> Support for children after majority - Retroactive application.
> 1. A judgment or order requiring the payment of child support until the child attains majority continues as to the child until the end of the month during which the child is graduated from high school or attains the age of nineteen years, whichever occurs first, if:
> a. The child is enrolled and attending high school and is eighteen years of age prior to the date the child is expected to be graduated; and
> b. The child resides with the person to whom the duty of support is owed.
> 2. A judgment or order may require payment of child support after majority under substantially the circumstances described in subsection 1.

N.D.C.C. §14-09-08.2. In this case the District Court determined that the child will remain in place until the youngest child reaches the age of 18 or graduates from high school. The child support guidelines further provide that:

> **Child support amount.** The amount of child support payable by the obligor is determined by the application of the following schedule to the obligor's monthly net income and the number of children for whom support is being sought in the matter before the court.

N.D.Admin.Code §75-02-04.1-10. Brian submits that the District Court made an error of law regarding when modification of the child support should occur. Thus, he urges this Court to review the error pursuant to a de novo standard of review. Brian submits that the statute provides that a child support order may be amended once the older child reaches the age of 18 or graduates from high school. Therefore, the Order by the District Court should be modified to allow for a change in child support once the oldest child reaches the age of majority and has graduated from high school.

[37] Because the court erred as a matter of law as to when child support can be modified, the decision of the court should be modified as a matter of law to allow for modification once the older child has reached the age of eighteen and graduated from high school.

D. <u>The Facts Do Not Support a Conclusion that Lora Satisfied her Payments for Expenses While the Parties were Living Together and Thus Should be Held in Contempt</u>.

[38] Similar to the arguments set forth in VI., B., supra, Brian submits that the District Court erred in concluding that Lora made all her payments to him. The court concluded that it was simply going to amend the judgment to remove the payment of $1,600.00 per month as part of the Rule 60(b) motion.

[39] Brian's original motion was for contempt and to reduce the judgment of the court to a money judgment. The District Court denied the request by granting Lora's request.[2]

[40] North Dakota Century Code section 27-10 sets forth the power of courts to hold persons in contempt and the sanctions which may be imposed. Contempt is defined as:

> 1. "Contempt of court" means:
> a. Intentional misconduct in the presence of the court which interferes with the court proceeding or with the administration of justice, or which impairs the respect due the court;
> b. Intentional nonpayment of a sum of money ordered by the court to be paid in a case when by law execution cannot be awarded for the collection of the sum;
> c. Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer, including a referee or magistrate;
> d. Intentional refusal of a witness to appear for examination, to be sworn or to affirm, or to testify after being ordered to do so by the court;
> e. Intentional refusal to produce a record, document, or other object after being ordered to do so by the court;
> f. Intentional behavior in derogation of any provision of a summons issued pursuant to rule 8.4 of the North Dakota Rules of Court; or
> g. Any other act or omission specified in the court rules or by law as a ground for contempt of court.

N.D.C.C. § 27-10-01.1. This Court has carved out exceptions to contempt finding "[a]n inability to comply with an order is a defense to contempt proceedings based on a violation of that order…". Holkesvig v. Welte, 2012 ND 14, ¶9, 809 N.W.2d 323; *see also* Giese v. Giese, 2004 ND 58, ¶ 8, 676 N.W.2d 794 ("Civil contempt requires a willful and inexcusable intent to violate a court order.").

[2] In its opinion, the court does not address the motion made by Brian, however, by granting Lora's motion Brian submits that the District Court in essence denied his motion.

[41] Having reached a settlement in 2009, the parties submitted the same to the District Court for approval. The District Court approved the settlement agreement by issuing its Findings of Fact, Conclusions of Law and Order for Judgment. App. 64. Judgment was subsequently entered in the same manner as the settlement agreement between the parties. The Judgment, which was negotiated between the parties and approved by the court, provided that Lora was to pay $1,600.00 per month to Brian while they were living together. Brian testified, and Lora did not dispute, that Lora had not made the payments to him as required by the divorce settlement agreement. Tr. June 19, 2013; 10:1-11:19, App. 230-233. Thus, Brian was able to establish a prima facie case of contempt of court through his testimony and exhibits.

[42] Lora did not claim that she had made the payments as required, instead Lora's defense then concentrated on showing that she did not have the ability to pay Brian. However, Brian submitted, and Lora admitted, that Lora had made nearly all of the payments for the first twenty (20) months after the divorce. App. 230-233. Indeed, at the second motion hearing, Lora admitted that she was initially able to pay the $1,600.00 per month and also admitted the fact that she had only been receiving increases in salary. June 19, 2013 Tr. 75:1-5. There was insufficient evidence presented by Lora during the course of the hearings to prove that her expenses somehow increased between November of 2009 and July of 2011 when she began to limit her payments to Brian. Lora does appear to maintain that her expenses increased by virtue of having to pay the Cenex bill, but that bill was one for which she was already responsible. In any event, there was not sufficient evidence to show that the Cenex bill reached such levels that Lora could pay as little as one-quarter of her agreed payment to Brian. Furthermore, Lora admitted that she

had not really looked for summer employment to satisfy her obligations to Brian, instead choosing to "just get a break." Tr. June 19, 2013, 73:21-74:2. On the other hand, Brian submitted evidence that he had maintained his payments and his obligations pursuant to the terms of the settlement agreement.

[43] Therefore, the District Court erred by failing to find that Lora did not intentionally avoid making payments to Brian. Brian testified that he was responsible for all expenses directly to the creditors. Tr. June 19, 2013; 21:25-22:23. Brian also articulated at trial, through his exhibits and testimony, other expenses he paid that Lora had agreed to pay through the settlement agreement. Tr. June 19, 2013; 76:24-77:12, App. 230-233. On the other hand, Lora admitted that she really didn't have any additional expenses from the time period after she stopped paying that were necessary expenses. Id., 75:14-22. Thus, Brian submits to this Court that Lora made a fundamental choice not to make her payments to Brian. Such disobedience meets the definition of contempt of court and therefore the District Court was clearly erroneous in determining that Lora was not in violation of the Judgment of Divorce.

E. The Court Erred in Awarding Attorney Fees to Lora.

[44] "A district court's award of attorney fees 'will not be disturbed on appeal unless the appealing party establishes the court abused its discretion.'" Walstad v. Walstad, 2013 ND 176, ¶ 29, 837 N.W.2d 911, *citing* Hoverson v. Hoverson, 2013 ND 48, ¶ 24, 828 N.W.2d 510. The abuse of discretion standard is set forth above in VI., A., supra. In this case, the District Court awarded $5,000.00 in attorney fees to Lora.

[45] Typically the North Dakota Supreme Court "'applies the 'American Rule,' which requires parties to bear their own attorney's fees' unless the fees are 'expressly

authorized by statute.'" Walstad, ¶ 30, *quoting* In re Guardianship of D.M.O., 2008 ND 100, ¶ 14, 749 N.W.2d 517. Generally, in divorce actions, N.D.C.C. § 14-05-23 governs attorney fees and costs. *See* Walstad, ¶ 31. However, in this case, the settlement agreement signed by both parties and approved by the court, provides that each party shall indemnify the other against any debts that are owed and will pay the attorney fees for having to enforce the same. App. 20, ¶ 16. Therefore, Brian submits that the general rule regarding attorney fees is secondary to the contract signed by the parties.

[46] Based on the indemnity provision in the contract, Brian urges this court to recognize that the general rule regarding attorney fees should not apply, and that the indemnity clause requiring the party that is not in compliance with the contract pay attorney fees. In this case, Brian has been forced to file suit to enforce a debt owed to him by Lora. The parties had agreed in the settlement agreement, pursuant to the indemnity clause, that the other party would be responsible for the attorney fees of the other if associated with enforcing the indemnity provision. Therefore, based on the clear language of the contract between the parties, Lora should be responsible for Brian's attorney fees.

[47] Even if this Court determines that the indemnity clause does not apply, then the remedial sanctions pursuant to the contempt rules should apply. *See* N.D.C.C. § 27-10-01.4. As noted in VI., B. and D., supra, Brian submits to this court that the District Court erred in not holding Lora in contempt of court. Based on Brian's contention that the District Court erred in granting the relief from the judgment and failing to hold Lora in contempt of court, Brian submits a reversal on those issues also allows for attorney fees to be entered in his favor pursuant to the contempt statute.

[48] Because the District Court erred in applying either the indemnity clause of the settlement agreement, or, in the alternative, remedial sanctions pursuant to the contempt provisions, the District Court's order regarding attorney fees should be in all things reversed and attorney fees should be ordered in Brian's favor.

VII. CONCLUSION.

[49] For the foregoing reasons, the decision of the District Court regarding Lora's Motion for Relief from Judgment should be in all things *reversed*, the decision of the District Court regarding the child support issues should be in all things *reversed*, with instructions to amend the Judgment to reflect the appropriate law, the decision of the District Court denying Enforcement of the Judgment or Contempt should be *reversed*, and the decision of the District Court regarding the award of attorney fees should be *reversed* with instructions to enter attorney fees in favor of Brian.

Dated this 2nd day of April, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Plaintiff-Appellant, Brian Nieuwenhuis was on the 2nd day of April, 2014, served electronically to the following:

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/s/Thomas M. Jackson
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