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IN THE SUPREME COURT,
STATE OF NORTH DAKOTA

Brent Thompson, Plaintiff/Appellant, v. Jeanna Thompson, Defendant/Appellee,	Supreme Court No.: 20170063 Wells County District Court Civil No. 52-2015-DM-00040 Case Type: Divorce

APPEAL FROM THE
DISTRICT COURT OF THE SOUTHEAST JUDICIAL DISTRICT
THE HONORABLE JAMES D. HOVEY PRESIDING

BRIEF OF APPELLEE

August 11, 2017

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I. Whether the Court erred in awarding split residential responsibility of the parties' minor children.

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[¶4] NATURE OF CASE

This is an appeal from a determination of primary residential responsibility and spousal support in an action for divorce in Wells County. The trial court evaluated numerous complicated issues that were contested in the divorce. The Court considered and assessed the testimony and evidence presented and applied the best interest factors in awarding split residential with the Appellee ("Jeanna") to have residential responsibility for two minor children, and the Appellant, ("Brent") to have residential responsibility for one child. The district court also analyzed the circumstances of the parties in accordance with the Ruff-Fischer factors and concluded that a property distribution of 60/40 in favor of Brent was appropriate and finding that Jeanna is entitled to rehabilitative spousal support at $1000 per month for a period of four years.

[¶5] PROCEDURAL HISTORY

The Appellant ("Brent") began this action with a Summons and Complaint dated October 2, 2015. He requested a divorce on the grounds of irreconcilable differences, a fair and reasonable distribution of property and debts, primary residential responsibility of the children, child support to be paid by Jeanna, tax returns to be filed separately for 2015 and that each party

pay their own attorney fees and costs. Jeanna was served with a copy of the Summons and Complaint on October 15, 2015. She filed an Answer requesting a divorce with fair and equitable division of property and debt, primary or equal residential responsibility of the children and spousal support. Brent made a motion for an interim order dated October 6, 2015. At the time scheduled for the interim hearing the parties stipulated to equal residential responsibility of all three children. However, this parenting schedule was never implemented. The issue of spousal support was reserved at the interim. The child support order was separately entered June 21, 2016.

[¶6] STATEMENT OF FACTS

Brent Thompson, ("Brent") initiated this action for divorce from Jeanna. The parties were married May 29, 1999, more than 17 years. They resided together for several months prior to the marriage. They have three children together C.F.T. born 1999, C.M.T. born 2001, and C.L.T. born 2003. Despite an interim stipulation and an order for equal residential responsibility of all three, two of the children resided with Jeanna and one child resided with Brent. The equal responsibility arrangement that divided time between Jeanna and Brent by alternating certain days of the week and weekends was never implemented.

[¶7] For the first few months of the interim order, two children stayed with Brent and one child with Jeanna. Later, approximately late February or March 2016, six months before trial, the youngest child, C.L.T., did not want to return to Brent's home and from that time forward continuously resided with Jeanna and C.F.T., his oldest sibling. (Tr.2, Pg. 200). This change occurred after C.L.T. read Brent's diary book that was unintentionally left accessible to him at Brent's home. This diary contained observations and derogatory comments about Jeanna and descriptions of what the children were doing. (Tr.2, Pg 281). This diary book that C.L.T. read

made him uncomfortable. Additionally, he testified that his father's crying and other behavior contributed to him no longer wanting to stay at Brent's home. (Tr3, Pg185).

[¶8] This change to his mother's home also coincided with an incident where Brent searched through Jeanna's garbage at her home in Harvey and an occasion where Brent brought C.M.T., the middle child, to visit at Jeanna's home after 9:30 pm.. After this night visit and asking C.M.T. for a report, Brent requested a wellness check resulting in a social service investigation on Jeanna regarding her alcohol consumption. The investigation was eventually closed with no services required. (Tr.2, Pg. 274-278).

[¶9] Brent was 55 years old at the time of trial and Jeanna Thompson was 43 years old. (Tr.2, Pg. 220-221). The parties met, married and resided in Minnesota until 2012. (Tr.2, Pg. 75). The children were born in Minnesota and attended school there until moving to rural Harvey, North Dakota. (Tr.2, Pg. 74-75). Jeanna and the children moved to North Dakota in the middle of 2012 to join Brent when he relocated after a job change. (Tr.2, Pg. 230).

[¶10] Brent is employed as a road construction superintendent and has been with the same employer for approximately five years. He has held the same job title for several years with a prior employer and has worked in the same industry for more than 30 years. (Tr.2, Pg. 223-224). Jeanna is self-employed as a massage therapist in the Harvey area and has been certified for approximately 13 years. (Tr.3, Pg. 66-67, 69-71). She has also worked as a school aide, CNA home health care, waitress, and house cleaning. (Tr.2, Pg. 225-226). The parties separated sometime October 2015 when Jeanna found housing in Harvey and moved from the martial home. (Tr.2, Pg. 196-197; (Tr.3, Pg. 69-71).

[¶11] Jeanna was employed during the marriage but there were times when the children were very young were she was not employed or earning income. (Tr.39:7-15). During the marriage

Brent was employed in road construction earning increasing wages beginning at approximately $82,000. He testified that he plateaued in the last few years but admits to his employment income being an "over six-figure" salary. (Tr.2, Pg. 224). Brent's mother lives in Minot. Brent's father is deceased. (Tr.2, Pg. 237). Jeanna's parents live in Minnesota near Brent and Jeanna's former Minnesota home in the Twin Cities area. (Tr.3, Pg. 81).

[¶12] Jeanna has no chronic health conditions but has aches and pains from working as a massage therapist (Tr.3, Pg. 61). Brent's health is also good without any chronic conditions except high blood pressure controlled by medication. (Tr. 2, Pg. 221).

[¶13] Both Brent and Jeanna provided care for the children and they shared various responsibilities when the family was together. (Tr.3, Pg.229-230). However, Jeanna was primarily responsible for child-rearing, changing diapers, bottle feeding when they were young and cooking as they grew older. Jeanna also purchased the groceries, clothing and other things related to the basic needs of the children. (Tr.3, Pg. 77). Brent did not dispute that Jeanna was the parent who took the children to medical appointments and school. They shared responsibility for school decisions and generally did not have disputes about parenting issues while the children were young.

[¶14] Jeanna and Brent both have a history of having difficulties with alcohol consumption. Brent has ongoing concerns about Jeanna being an "alcoholic." Brent admits to regularly drinking with Jeanna and had two convictions in his youth. (Tr.2, Pg. 266-268, Tr.3 Pg. 197-199:12-25, 23:1-18).

[¶15] When Jeanna left the home October 2015, two of the children stayed with Brent. The oldest child left to live with Jeanna. They attended school in Harvey, North Dakota. All of the

children at times had trouble with schoolwork but for the most part received satisfactory grades in school (Tr.3, Pg. 221-222).

[¶16] During the interim until the first scheduled date for trial, child support was not withheld from Brent's paycheck nor did he volunteer to pay any amount of child support. At the time of trial in August 2016 Jeanna had received only three child support checks. (Tr.3, Pg. 231).

[¶17] SUMMARY OF ARGUMENTS

I. The Trial Court's decision to Award Split Residential Responsibility Was Supported by the Evidence and Was Not Clearly Erroneous.

II. The Court did not Err and did not Fail to make Findings on Plaintiffs/Appellant's Ability ..... to pay when Awarding Defendant/Appellee Spousal Support.

[¶18] ARGUMENT

I. The Trial Court's decision to Award Split Residential Responsibility Was Supported by the Evidence and Was Not Clearly Erroneous.

[¶19] Brent argues split custody was not supported in the ruling of the district court. Two of the cases he cites are actually opinions that are appeals of a change in custody motion and not an initial determination of primary residence. The burden in change of custody is greater and substantially different that in an initial determination although many aspects can be compared. Brent also argues the district court erred in its' analysis of the best interest factors. Specifically, he contends that factors in N.D.C.C. § 14-09-06.6(5)b and e were not sufficiently supported by or that they disregard the facts. Brent's arguments are neither supported by the cases he cites or the multitude of opinions on split custody that have been ruled upon in North Dakota.

[¶20] The standard for appeal is set forth in Wolt v. Wolt, 2010 ND 26, ¶ 7, 778 N.W.2d 786, "A district court's award of custody is treated as a finding of fact and, on appeal, will not be

reversed unless it is clearly erroneous under N.D.R.Civ.P. 52(a). citing Wessman v. Wessman, 2008 ND 62, ¶ 12, 747 N.W.2d 85. "Under the clearly erroneous standard, we do not reweigh the evidence nor reassess the credibility of witnesses, and we will not retry a custody case or substitute our judgment for a district court's initial [primary residential responsibility] decision merely because we might have reached a different result." A district court has substantial discretion in deciding primary residential responsibility, but the court must consider all of the applicable best interest factors. A court's findings of fact are sufficient if they afford a clear understanding of the court's decision and assist the appellate court in conducting its review. Topolski v. Topolski, 2014 ND 68, 844 N.W.2d 875.

[¶21] Brent reaches back to 1985 and cites Olson v. Olson, 361 N.W.2d 249 (N.D. 1985) in support of his contention that the district court erred in awarding split custody. However, in Olson, the facts do not even describe a split custody situation. The parties had only one child over which modification of residence was contested. Myrna, a professor at the University of North Dakota, and Richard, an attorney, had a 7-year-old son. The custody arrangement under the original decree was based upon a custody settlement agreement between Myrna and Richard. Less than one year after entry of the original decree each parent sought sole legal and physical custody, and Myrna also requested that the district court amend the decree to allow her to remove the child from North Dakota so that she could accept employment elsewhere. While this case addressed the issue of relocation as a post judgment modification, Brent's reliance on this case is mistaken at best. The case further discussed the effect of the parents' level of cooperation in joint custody arrangements. Id.

[¶22] In Olson, the trial court found that both Richard and Myrna had a "significant nurturing relationship" with the child that was important to each of them and that each was a "fit and proper parent to have custody of the child. Having made those findings and being cognizant of the agreement between Richard and Myrna that the failure of the original custody arrangement constituted a significant change of circumstances, the trial court determined that Richard and Myrna should continue to have joint legal custody with responsibility to participate in all major decisions affecting him but that Myrna should be the child's principal physical custodian. The opinion upheld the district court. "We are compelled to add, however, that unless Richard and Myrna are determined to cooperate, with the child's best interests at heart, neither this modified custody arrangement nor any other can succeed." Id at 251

[¶23] Brent also cites Johnson v. Schlotman, 502 NW2d 831 (ND 1993). This is an appeal of a post judgment motion to modify residential responsibility. It was not a challenge to an initial custody determination nor did it deal with split residential responsibility. In this case Dianne H. Schlotman appealed from an amended judgment which temporarily terminated her visitation rights with her two children and denied her motion for a change of custody, and also from an order which denied her motion for a new trial. The opinion affirmed the judgment of the trial court but remanded the case for further proceedings. The facts and discussion do not have a logical comparison to the issues faced by the district court in the present appeal.

[¶24] In Johnson v. Schlotman, after the divorce, Dianne moved in with Ella Huwe, her partner, and informed the children that she was a lesbian. Dianne's sexual orientation eventually became the center of continuing disputes between Dianne and her ex-husband Jon, with Jon alleging that it had an adverse effect upon the children's well-being, and Dianne alleging that Jon was turning the children against her due to his bias against homosexuals. The opinion states, "A parent does

have a duty to not turn a child away from the other parent by "poisoning the well." Notwithstanding the perceived imperfections in the other parent, a custodial parent should, in the best interests of the children, nurture the children's relationship with the noncustodial parent. Id at 834.

[¶25] It is difficult to understand how Brent supports his argument with Johnson v. Schlotman. Looking to the Dissenting Opinion of Justice Levine in this case foreshadows the change in attitude and decisions in cases to follow.

> "I certainly agree with Dianne that, if Jon, in fact, poisoned the children's minds and hearts with his unyielding, uncharitable intolerance of homosexuality, a change of custody would be required to protect the children's best interests. Preventing the unhealthy and, indeed, intolerable disruption of children's love and affection for their noncustodial parent, is an absolute duty of the custodial parent. Indeed, some members of this court have even condoned granting custody to a parent because his visitation was made "difficult" by the custodial parent. We have recognized a doctrinal aversion to changing the custody of a happy child who has been living with one parent, and the burden on a noncustodial parent seeking a change of custody is "'daunting'" and "'arduous.'" Lovin v. Lovin, 1997 ND 55, ¶¶ 16, 18, 561 N.W.2d 612 (quoting Alvarez v. Carlson, 524 N.W.2d 584, 590 (N.D. 1994)). In Lovin, at ¶ 17 (quoting Alvarez, at 589), we said "'[m]aintaining stability and continuity in the child's life, without harm to the child, is the most compelling factor when considering a motion for change of custody.'"

[¶26] Later in Damron v. Damron, 2003 ND 166, 670 N.W.2d 871, which was also a change of residential responsibility case, we actually see the evolution of the position that actually supports

the decision of the district court's findings in the appeal now argued. Valerie Damron conceded she was involved in a homosexual relationship, and she lived with her partner in a house with the two children. She resisted Shawn Damron's motion for a change of custody, asserting she was providing "a safe, loving, happy and nurturing environment" for the children and "taking the children out of a current happy, loving, family environment would not be in the best interests of either child." Valerie was successful in her appeal. Similarly for Brent and Jeanna's circumstances, the district court's findings discuss this issue in the context of Jeanna's request to relocate, while further supporting the split custody award by stating,

> "Keeping the children where they are will further the children's best interests in maintaining a stable relationship with the parent they are currently with, as well as allow an opportunity to rebuild their relationships with each other and both parents. The parties themselves came to this arrangement. For better or worse it is the stability they have created. The Court finds that neither parent willfully alienated any of the children from the other parent, but did negligently allow it to happen by their unwillingness to cooperate. "(Appendix Pg. 53-54.).

[¶27] Jeanna acknowledges and does not dispute that Courts should be cautious about dividing custody of children. Brouillet v. Brouillet , 2016 ND 40, 875 N.W.2d 485 . In this case with facts more comparable to those of Jeanna and Brent, Marsha Brouillet argued the district court erred in granting Bradley Brouillet primary residential responsibility, because it was in the children's best interest to be with her. She argued the court erred by splitting the primary residential responsibility of the three minor children between the parents, awarding the oldest to her and the younger two children to the father. She also contends the court erred in giving

inadequate weight to the testimony of the oldest daughter. Id at 24. However the opinion disagreed with her holding the district court did not misapply the law or improperly consider the best-interest factors in making its residential responsibility determination., stating,

> "The district court, however, explicitly considered and made findings on the factors under N.D.C.C. § 14-09-06.2(1). In its analysis based on the evidence from trial, the court found that factors (b), (c), (e), (g), and (h) weighed evenly between the parties; factors (a), (d), (f), and (m) weighed in favor of Bradley Brouillet; factor (k) weighed in favor of Marsha Brouillet, and factors (i), (j), and (l) did not apply. The court also gave heightened consideration to factor (k) based on the separation of the oldest child from her siblings. The district court found that the impact of the separation would be lessened by a parenting plan which provides continuing interaction of the children and that the father demonstrated stability and willingness to provide appropriate guidance, as opposed to the mother's poor judgment. The (district) court found that, "while not ideal," the father should have primary residential responsibility for the younger two children. Id at 11.

[¶28] Further describing its' rationale, in Brouillet, the Court reminded us, "We have said a district court generally does not need to do a "line-by-line best-interest analysis" for each individual child. Schlieve v. Schlieve , 2014 ND 107, 846 N.W.2d "When the factors are in fact different for each child, then such an analysis is permissible and under some circumstances may be necessary; nevertheless, courts should be cautious about dividing custody of children." Id. (citing Gravning v. Gravning, 389 N.W.2d 621, 622-23 (N.D. 1986) ("courts are cautious about

dividing custody of children"); Stoppler v. Stoppler, 2001 ND 148, ¶ 7, 633 N.W.2d 142 ("split custody of siblings is generally disfavored")). Here the court explained, while it weighed factor (k) in favor of Marsha Brouillet, that weight was tempered by several facts. While the district court's decision in this case divides custody of the children, the court thoroughly explained its decision and acknowledged the difficulty in light of the oldest child's different paternity. We also understand the court's award of parenting time for the oldest child to maintain and facilitate the oldest child's relationship with the two younger children and with Bradley Brouillet.

[¶29] Even in cases where the issue on appeal was a request to relocate, split custody has been upheld and can be considered an appropriate resolution. The effect of the separation of siblings is a consideration in the trial court's analysis of the best interests of the child and whether to grant a motion to relocate a child out of this state. Schmidt v. Bakke, 2005 ND 9, 691 N.W.2d 239. In the Bakke case the mother had original custody of all four of the parties' children. In her motion to relocate, she requested that all three minor boys be allowed to relocate with her. After her motion, the second-eldest boy, who was then 15 years old, stated a preference to remain with his father so that he could finish high school. The trial court recognized the preference of the 15-year-old to live with his father, which is in accordance with case law regarding separation of siblings and preferences of a mature child. The opinion upheld the split, stating, “Although perhaps, we would prefer to have more of an analysis than the trial court made on this particular issue, it is clear that the trial court did consider the fact that relocation would separate the siblings and the effect it would have on them. The trial court gave the effect of separation of siblings proper consideration in the context of a relocation motion and on the record of this case. Id at 23.

[¶30] The opinion in Schmidt also discussed other decisions upholding split custody by reference and reasoned, “It is true that "[a]s a general rule the courts do not look favorably upon separating siblings in custody cases." Beaulac v. Beaulac, 2002 ND 126, ¶ 16, 649 N.W.2d 210. We have not prohibited, however, the separation of children in every case and have affirmed the separation of siblings in a number of cases where children of sufficient maturity have stated preferences. See id. (affirming the trial court's decision to have the daughter remain in her father's custody and the son in his mother's custody, even though the mother moved with the son from Minot to Bismarck); Loll v. Loll, 1997 ND 51, 561 N.W.2d 625 (affirming the trial court's decision to split custody of twins, based upon the children's preferences, where one parent lived in North Dakota and one lived in Missouri); Freed v. Freed, 454 N.W.2d 516 (N.D. 1990) (affirming a trial court's decision to separate two children primarily because the 15-year-old son stated a strong preference to live with his father). Schmidt v. Bakke, 2005 ND 9, 691 N.W.2d 239.

[¶31] In Bladow v. Bladow, 2005 ND 142, 701 N.W.2d 90, the appellant, Bladow argued the trial court clearly erred in awarding split custody of the children. He claims that although the court arguably found a "persistent and willful denial or interference with visitation" under N.D.C.C. § 14-09-06.6(5), the court did not exhaust all remedies regarding visitation and should have resorted to a more rigid visitation schedule. The Court in Bladow held “Although split custody of siblings is not preferred, (citation omitted) under these circumstances, we are not left with a definite and firm conviction the trial court made a mistake in splitting custody of these children and setting a visitation schedule. We, therefore, conclude the court did not clearly err in splitting custody and in implementing the visitation schedule.”

[¶32] Brent complains the district court failed to make adequate findings on the factors b and e N.D.C.C. § 14-09-06.6(5). Although a separate finding is not required for each statutory best interest factor, the court's findings must contain sufficient specificity to show the factual basis for the residential responsibility decision. Seibold v. Leverington, 2013 ND 173, 837 N.W.2d 342. The district court in Seibold the holding also discussed and included that "Parents are required to submit a parenting plan to the district court to be included in the court's decree, but when the parents are unable to agree on a parenting plan, the court shall issue a parenting plan considering the best interests of the child." Brent complains no specific parenting time schedule was allotted and that the parties were directed to work that issue out amongst themselves.

[¶33] Brent attacks factor b suggesting the Court did not appropriately weigh the testimony describing Jeanna's home when comparing it to Brent's home. On both complaints Brent ignores the language he claims was lacking. "The Court will reserve setting a parenting time schedule and instead order that all three children begin family counselling to start to mend their relationships with each other and their parents. If the counselor recommends, the parties shall also participate in the counselling." Further it orders, "Once the counselor has recommended that parenting time commence, either party may request a Court order if an agreement is not made. "Appendix Pg. 52. This does not leave the parties to fend for themselves but rather directs them to the counselling that they had briefly begun together at the commencement of the proceeding.

[¶34] In respect to factor b, the district court states" The two children with Jeanna acknowledge the house is not as nice as their former house, but they understand the circumstances are temporary. Brent makes much of the physical differences in the parties living arrangements, lauding the benefits of the marital home…..as opposed to Jeanna's "run-down two bedroom

apartment" with a leaky roof, mold and stench. Despite knowing of the living arrangements of two of his three children, he has not offered to assist or make any child support until the Court ordered months after separation." Appendix Pg. 46.

[¶35] As for Brent's parental alienation argument, the record shows he is more likely the parent actively engaging in this type of behavior with his diary book and garbage digging. However, as earlier discussed the district actually made specific findings that neither parent willfully alienated any of the children . Appendix 53-54. It has been long held "A parent who willfully alienates a child from the other parent may not be awarded custody based on that alienation." McAdams v. McAdams, 530 N.W.2d 647, 650 (N.D. 1995). However, that is not the case with Brent and Jeanna as is indicated by the district court's findings.

[¶36] Difficult residential responsibility cases may present a district court with "no other option." Loll v. Loll, 1997 ND 51, ¶ 14, 561 N.W.2d 625. It appears that may have been the position the district court was in with regard to Brent and Jeanna and the children.

[¶37] II. The Court did not err by failing to make findings on Plaintiffs/Appellant's ability to pay when awarding Defendant/Appellee spousal support.

[¶38] A spousal support determination is a finding of fact, which will not be reversed on appeal unless it is clearly erroneous. Woodward v. Woodward, 2013 ND 58, 830 N.W.2d 82. Williams v. Williams, 2015 ND 129, 863 N.W.2d 508 [¶8 McCarthy v. McCarthy, 2014 ND 234, ¶ 16, 856 N.W.2d 762. 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 we are left with a definite and firm conviction a mistake has been made. Peterson v. Peterson, 2010 ND 165, ¶ 13, 788 N.W.2d 296. We view the

evidence in the light most favorable to the findings, and the district court's factual findings are presumptively correct. McCarthy, at ¶ 8.

[¶39] The basis for the decision regarding spousal support must be articulated. Schiff v. Schiff, 2013 ND 142, 835 N.W.2d 810. "Each spousal support determination is fact specific." Christian v. Christian, 2007 ND 196, ¶ 13, 742 N.W.2d 819.However, It is not a requirement to make a detailed or explicit statement if it can be reasonably inferred or deduced. An award of spousal support is finding of fact which will not be set aside on appeal unless clearly erroneous. "We will not set aside the trial court's determinations on property division or spousal support for failure to explicitly state the basis for its findings if that basis is reasonably discernable by deduction or inference. "Pearson v. Pearson , 2009 ND 154, 771 N.W.2d 288; "The district court must adequately explain the basis for its decision, but 'we will not reverse a district court's decision when valid reasons are fairly discernable, either by deduction or by inference." Lorenz v. Lorenz, 2007 ND 49, ¶ 9, 729 N.W.2d 692.

[¶40] "Spousal support and property distribution are interrelated and intertwined and must be considered together." Krueger, v. Krueger 2008 ND 90, ¶ 9, 748 N.W.2d 671. In awarding spousal support, the district court must consider the relevant factors of the Ruff-Fischer guidelines. In doing so, a court may properly recognize a spouse's role in contributing to the other spouse's earning capacity which was developed and enhanced during the course of the marriage. Peterson v. Peterson, 2010 ND 165, 788 N.W.2d 296; Hanson v. Hanson, 404 N.W.2d 460, 466 (N.D. 1987). The Ruff-Fischer guidelines apply to both property division and spousal support, which ordinarily must be considered together. Striefel v.Striefel, 2004 ND 210, 689 N.W.2d 415.

[¶41] The district court must consider all of the parties' assets in making an equitable distribution of marital property. Rebel v. Rebel, 2016 ND 144, ¶ 7, 882 N.W.2d 256. In making this distribution, the court considers the Ruff-Fischer guidelines which include:[T]he respective ages of the parties, their earning ability, the duration of the marriage and conduct of the parties during the marriage, their station in life, the circumstances and necessities of each, their health and physical condition, their financial circumstances as shown by the property owned at the time, its value at the time, its income-producing capacity, if any, whether accumulated before or after the marriage, and such other matters as may be material. Id

The district court is not required to make specific findings on each factor, but it must explain the rationale for its decision. Id. at ¶ 8. Generally, long-term marriages support an equal distribution of property. Kosobud v. Kosobud, 2012 ND 122, ¶ 6, 817 N.W.2d 384. "[F]inancial misconduct and dissipation of assets are grounds for an unequal property distribution." Id.

[¶42] The secreting of assets in a divorce action is a clear and blatant form of economic misconduct, and it also implicates economic misconduct in the form of intentional non-disclosure of substantial marital assets. Walstad v. Walstad, 2013 ND 176, 837 N.W.2d 911. Brent was apathetic and not forthcoming about his obligation to disclose inherited land from his father. The District Court states directly “The Court find that Brent has intentionally tried to hide and/or obfuscate his interests in real property.” Appendix pg. 35.

[¶43] Brent argues there was no effort to discredit his budget by Jeanna. Brent also argues that he was operating at a monthly deficit when monthly expenses were taken in to account by the District Court in its’ decision. Many of the arguments presented by Brent were recently discussed in Lizakowski v. Lizakowski , 2017 ND 91, 893 N.W.2d 508 holding that where the appellant, Chad Lizakowski’s arguments were focused on the weight the district court gave to

certain testimony and evidence presented, the district court's decision was not to be reversed. Stating "the district court noted the disparity in earning ability between the parties; concluded based upon the testimony, demeanor of the parties, and the record Chad Lizakowski was not disadvantaged by moving to Wisconsin for Laura Lizakowski's career; noted Chad Lizakowski's skills as a finish carpenter; noted Chad Lizakowski's work history includes newspaper delivery, carpentry work, general construction, handyman work, and floor installation; and determined Chad Lizakowski's earning ability based upon wage reports. Acknowledging Kosobod, the decision in Lizakowski repeated the position that a district court's choice between two permissible views of the weight of the evidence is not clearly erroneous. Kosobud at 384.

[¶44] Continuing in its' support of the district court's decision, the opinion in Lizakowski states "It also considers the financial stability which he will obtain from the property division set forth herein." "Spousal support and property distribution are interrelated and intertwined and must be considered together." Krueger, 2008 ND 90, ¶ 9, 748 N.W.2d 671. "[W]e will not reverse a district court's decision when valid reasons are fairly discernable, either by deduction or by inference." Lorenz v. Lorenz, 2007 ND 49, ¶ 9, 729 N.W.2d 692.

[¶45] Under N.D.C.C. § 14-05-24.1, a district court in a divorce case may require one party to pay spousal support to the other party for any period of time. Pearson v. Pearson, 2009 ND 154, ¶ 5, 771 N.W.2d 288. An award of spousal support is a "finding of fact which will not be set aside on appeal unless clearly erroneous." Solem v. Solem, 2008 ND 211, ¶ 5, 757 N.W.2d 748.

[¶46] In Parisien v. Parisien , 2010 ND 35, 779 N.W.2d 130, the holding was clear about a district court's discretion on spousal support. A district court may award spousal support to a party in a divorce action for any period of time. Spousal support determinations are findings of fact and will not be set aside unless clearly erroneous. Spousal support awards must be made in

consideration of the needs of the spouse seeking support and of the supporting spouse's needs and ability to pay. A greater property distribution does not necessarily eliminate the need for spousal support. Ronald Parisien contended the district court did not properly consider his ability to pay spousal support. He argued the district court failed to properly consider the already lopsided marital property distribution before making the spousal support award. He did not challenge the property distribution itself, but instead contended that because Jill Parisien was already awarded nearly twice as much property, spousal support is not appropriate. The opinion stated, "Property division and spousal support are not to be considered separately or in a vacuum. " Id at 6, ¶ 15, 16; Solem v. Solem, 2008 ND 211, ¶ 11, 757 N.W.2d 748.

[¶47] CONCLUSION

The testimony and evidence submitted by both Brent and Jeanna was sufficient and was relied upon in the district courts detailed decision. The trial court's findings regarding the issue of split residential responsibility and the evaluation of the evidence in analyzing the best interest factors were supported and were not clearly erroneous. Further the trial court's decision to award spousal support was specific and reflected the consideration given to Brent's ability to pay Jeanna rehabilitative support. The trial court's decision regarding split residential responsibility and determination of spousal support should be upheld.

August 11, 2017

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STATE OF NORTH DAKOTA IN THE SUPREME COURT

Brent Thompson,
Plaintiff,
v.
Jeanna Thompson,
Defendant.

AFFIDAVIT OF SERVICE

Supreme Court No. 20170063

Wells Co. Case No. 52-2015-DM-00040

[1] I, Dariel Bohm, being duly sworn, deposes and says that I am of legal age and not a party to this action, and that I served the following document(s):

1. **Appellee's Brief; and**
2. **Affidavit of Service.**

[2] On August 11, 2017, by sending a true and correct copy thereof by electronic means only to the following email addresses, to wit:

Kyle R. Craig
kcraig@ackrelaw.com

[3] To the best of affiant's knowledge, the email address above given is the actual email address of the party intended to be served. The above documents were emailed in accordance with the provision of the Rules of Civil Procedure.

[4] I further certify that copy of the foregoing documents will be mailed first class mail, postage paid, to the following non E-filing participants:

None

[5] The addresses of each party served are the last reasonably ascertainable post office address of such party.

Dated this 11th day of August, 2017.

Dariel Bohm
Dariel Bohm

Subscribed and sworn to before me this 11th day of August, 2017.

Notary Public

DENISE C. HAYS-JOHNSON
Notary Public
State of North Dakota
My Commission Expires October 23, 2020