

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Erica Lynn Sims,)	
)	Supreme Court No. 20190248
Plaintiff/Appellant,)	
)	Grand Forks County District Court
v.)	Case No. 18-2017-DM-00812
)	
Larry David Sims,)	ORAL ARGUMENT
)	REQUESTED
Defendant/Appellee,)	
)	
and)	
)	
State of North Dakota,)	
)	
Statutory Real Party)	
In Interest and Appellee)	
)	

**APPEAL FROM THE DISTRICT COURT, COUNTY OF GRAND FORKS,
STATE OF NORTH DAKOTA, NORTHEAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE JAY KNUDSON PRESIDING**

**APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER FOR JUDGMENT DATED ON THE 24TH DAY OF JUNE 2019; AND
JUDGMENT DATED THE 9TH DAY OF JULY 2019.**

BRIEF OF APPELLANT

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11/24/2019
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STATEMENT OF ISSUES

[¶1] Whether the district court's findings of fact in determining a visitation schedule for Larry are clearly erroneous.

[¶2] Whether the district court's findings of fact in determining the valuation of the marital property and the resulting distribution, including a cash property distribution to Larry are clearly erroneous.

[¶3] Whether the district court erred in its analysis of the Ruff-Fischer factors in its determination for not awarding spousal support.

[¶4] Whether the district court clearly erred when it did not consider or include an indemnification clause in the Judgment necessary to protect Erica's interest in Larry's military retirement which could result in an inequitable effect on Erica post-divorce.

[¶5] Whether the district court erred when it did not consider or include the party's stipulation that Larry continue coverage for Erica as a former spouse under his Survivor Benefit Plan.

[¶6] Whether the district court abused its discretion by penalizing Erica by ordering her to reimburse Larry for airfare associated with Larry's missed parenting time despite the Court dismissing Larry's contempt motion for his missed parenting time and despite Larry receiving a child support deviation for transportation costs.

[¶7] Whether the district court abused its discretion by penalizing Erica without due process by ordering her to reimburse Larry for transportation costs if the children did not comply with their parenting time with Larry despite Larry receiving a child support deviation for transportation costs

STATEMENT OF THE CASE

[¶8] This proceeding is a divorce and custody action venued in the District Court of Grand Forks County, the Honorable Jay Knudson, presiding.

[¶9] Appellant, Erica Lynn Sims (“Erica”) commenced this proceeding by filing a Summons and Complaint on December 11, 2017. App. 9. Erica’s initial attorney for this proceeding was Karyn Novak. App. 9. On April 2, 2018, Kelsey L. Hankey became Erica’s trial attorney. App. 2.

[¶10] Appellee, Larry David Sims (“Larry”) filed his Answer and Counterclaim on December 12, 2017. App. 9. Erica filed her Reply to Counterclaim on December 18, 2017. App. 9. Larry’s initial attorney for this proceeding was Sarah Gereszek. App. 9. On December 10, 2018, Ward K. Johnson became Larry’s trial attorney. App. 15.

[¶11] On January 19, 2018, Erica moved for temporary relief and filed a supporting affidavit and financial statement. App. 1, 21-44. On February 16, 2018, Larry filed a response to Erica’s motion for temporary relief with a supporting affidavit and financial statement. App. 2, 45-74. A hearing was held on February 26, 2018, before the Honorable Donald Hager and an Interim Order was filed on March 8, 2018. App. 2, 75-90.

[¶12] On April 11, 2018, Erica filed an expedited motion to appoint guardian ad litem with a supporting affidavit. App. 2, 91-98. Larry filed his response to Erica’s expedited motion with a supporting affidavit on April 23, 2018. App. 10-11, 99-104. On April 25, 2018, Erica filed a response to Larry’s affidavit. App. 11, 105-109. The Court filed an Order denying the motion to appoint guardian ad litem on May 16, 2018. App. 3, 110-112.

[¶13] On May 24, 2018, Erica filed a letter from minor child, D.L.S.'s therapist and a letter from minor child, G.C.S. related to visitation with Larry. App. 11, 113-117. On May 29, 2018, Erica filed an application for emergency ex parte interim order with supporting affidavits by herself, G.C.S., D.L.S., and a letter from D.L.S.'s therapist. App. 11, 118-135. The Court filed an Order denying Erica's emergency request on June 1, 2018, and ordered the matter to be scheduled as a motion to modify the interim order. App. 11, 136-137. On June 4, 2018, Erica filed a motion in limine for child testimony. App. 11, 138-142. On June 11, 2018, Larry filed a motion for an order to show cause with a supporting affidavit. App. 12, 143-170. On June 12, 2018, Larry filed his response to amend the interim order with a supporting affidavit and a response to Erica's motion in limine for child testimony. App. 12, 171-180. On June 18, 2018, Erica filed her response to Larry's motion for an order to show cause with supporting affidavits and her response to Larry's response to amend the interim order. App. 12, 181-200. A hearing was held on July 18, 2018, on the motion to amend the interim order and the order to show cause. App. 12, 201. The Court filed its Order on July 20, 2018, and an Amended Interim Order was filed on July 23, 2018. App. 13, 202-216.

[¶14] On July 27, 2018, attorney Margaret Morley filed her appearance as counsel on behalf of the minor children, G.C.S. and D.L.S. App. 13, 217. On July 30, 2018, Larry filed his objection to attorney Morley's appearance on behalf of the minor children. App. 13, 218-224. On August 2, 2019, Attorney Morley filed a response to Larry's objection. App. 13, 225-226. On August 3, 2018, Larry filed a motion to release Attorney Morley as the minor children's counsel with a supporting affidavit. App. 5, 226-239. On August 15, 2018, Attorney Morley filed her response to Larry's motion to release her as counsel.

App. 14, 259-264. On August 17, 2018, Erica filed an affidavit in response to Larry's motion to release attorney Morley. App. 14, 264-270. On August 24, 2018, Larry filed his response to Erica and Attorney Morley's response to his motion to release counsel. App. 14, 292-294.

[¶15] On August 9, 2018, Erica filed a motion for an order to show cause with supporting affidavits. App. 13, 239-258. Erica then filed a supplemental motion for an order to show cause with a supporting affidavit on August 22, 2018. App. 14, 270-280. Larry filed his response to Erica's motion for an order to show cause on August 23, 2018, with a supporting affidavit. App. 6, 281-291.

[¶16] On September 5, 2018, Attorney Morley filed an affidavit of G.C.S. and D.L.S. App. 14, 295-310. On September 6, 2018, Larry filed an objection to G.C.S. and D.L.S.'s affidavit. App. 14, 311-312. On September 10, 2018, Erica filed an affidavit in response to Larry's motion to release counsel and an affidavit in response to Larry's affidavit responding to her motion for an order to show cause. App. 14, 313-317. On September 10, 2018, Larry filed his objection to Erica's affidavit in response to his motion to release Attorney Morley as counsel. App. 14, 318-319. On September 12, 2018, the Court filed an Order on the motion for an order to show cause and motion to release Attorney Morley as counsel for the minor children. App. 14, 320-326.

[¶17] On November 29, 2018, Erica filed her notice of expert witnesses. App. 15, 327-336. On December 27, 2018, Larry filed an application for an order to show cause with a supporting affidavit. App. 15, 329-349. The parties entered into a partial marital settlement agreement and parenting plan that was filed with the Court on December 28,

2018. App. 15, 350-370. A Court trial was held on December 28, 2018, related to the remaining unresolved issues. App. 15; Tr. 10-12.

[¶18] On January 9, 2019, Erica filed her response to Larry's application for an order to show cause with supporting affidavits. App. 17-18, 1626-1655. On January 16, 2019, an amended rule 8.3 confidential joint property and debt listing was filed with the Court. App. 18, 1657-1659. On January 18, 2019, Erica filed her proposed findings of fact, conclusions of law, and order for judgment and confidential exhibit A. App. 18, 1660-1696. Larry filed his closing argument on January 18, 2019. App. 18. On March 15, 2019, the Court filed an Order for additional hearing to address parenting time and order to show cause. App.18, 1697-1699. On April 9, 2019, a hearing was held on Larry's application for an order to show cause and final trial on parenting time. App. 18, Tr. 180-181. On April 19, 2019, Larry and Erica filed their closing arguments with proposed parenting plans. App. 18, 1729-1749.

[¶19] On June 24, 2019, the court issued its findings of fact, conclusion of law, and order for judgment and confidential exhibit A. App. 18, 1750-1788. Judgment was entered on July 9, 2019. App. 19, 1789-1803. Notice of entry of judgment was filed on July 11, 2019. App. 19. Erica timely filed a notice of this appeal and statement of preliminary issues on August 20, 2019. App. 20, 1804-1806.

REQUEST FOR ORAL ARGUMENT

[¶20] Pursuant to N.D.R.App.P. 28(h), Erica requests oral argument in this case. Oral argument will be beneficial for the Court to help clarify the issues and elaborate on the facts of this case.

STATEMENT OF FACTS

[¶21] The parties married on February 18, 1999, on the Moody Air Force Base in the state of Georgia. Tr. 41. The parties were married just shy of nineteen (19) years, separating in late November of 2017. Tr. 62. The parties agreed to the valuation of their marital estate as of December 1, 2017. Tr. 62.

[¶22] At the time of trial, Erica was forty-four (44) years of age. Tr. 39. She is employed with the FAA in Grand Forks, ND, working thirty-two (32) hours per week. App. 82. In 2017, Erica's gross annual income was approximately \$35,896. App. 740. Erica's 2018 income as of her last pay stub, dated December 18, 2018, was \$37,1243.94. App. 744.

[¶23] Prior to marriage, Erica was an active duty member of the United States Air Force, joining in February of 1998. Tr. 39-40. Prior to her military career, Erica earned her associate's degree in criminal justice in December of 1997. Tr. 40. Erica had ambitions of becoming an officer in the United States Air Force. Tr. 40. Erica met Larry at the Air Force Base in Georgia in the fall of 1998. Tr. 40. Erica and Larry were married three (3) months later. Tr. 41. At the time of marriage, Erica was a new airman with the only asset being a poor-quality car. Tr. 41. Larry was a rank higher than Erica and a vehicle as his only asset. Tr. 42. Ten (10) days after marrying Erica, Larry deployed to Kuwait for several months. Thereafter, Erica then deployed to Kuwait and they were deployed in Kuwait together for several more months. Tr. 42. After their deployment in Kuwait, the parties returned to Moody Air Force Base where they remained for the next couple of years where they each had a couple stateside deployments. Tr. 42-43. Larry also had a yearlong deployment to Korea. Tr. 43. While at Moody Air Force Base, Erica

found out she was pregnant in early 2001. Tr. 43. In 2001, Erica obtained her associates degree from the Community College of the Air Force in communications and applications technology while she was pregnant. Tr. 43-44. Erica sought out this degree because she loved learning and needed to continue with her education in order to become an officer in the Air Force. Tr. 44. The parties' first child, G.C.S. was born in 2001. Tr. 44. While still being full-time active duty Air Force, Erica was the primary caretaker for G.C.S. and the household. Tr. 44-47. In the fall of 2003, Erica found out she was pregnant with D.L.S. Tr. 47. Erica and Larry discussed that if they were going to have two (2) children that it would be best that Erica separate from the military so that she could be a stable presence in the children's lives and that Larry would remain in the military. Tr. 47-48. Prior to D.L.S.'s birth, Erica separated from the Air Force in April of 2004, after six (6) years of service. Tr. 48. As a result of Erica's separation, she was not entitled to military retirement. Tr. 48. Erica became a full-time caregiver for the children and remained doing so for three (3) years before returning to the workforce. Tr. 48. Larry voluntarily deployed to Korea for one (1) year when D.L.S. was four (4) weeks old. Tr. 48.

[¶24] Erica reentered the workforce after three (3) years to work for the commissary on the base in Alaska. Tr. 49. Erica worked part-time, earning approximately \$10.00 per hour. Tr. 49. Erica had to resign from this position after a few months due to her wages not covering daycare costs. Tr. 49. Erica was then able to find full-time employment as a records management and privacy act officer, earning approximately \$18.00 per hour at on the baes in Alaska. Tr. 49-50. Erica worked in this position for approximately five (5) years until Larry received orders to the Grand Forks Air Force Base in 2011. Tr. 50-51.

After moving to Grand Forks, Erica was able to obtain employment with the Grand Forks County Sheriff's Office, earning approximately \$13.00 per hour. Tr. 51. Erica resigned from this position after a few months due to the lack of flexibility in her work schedule and that of the children's and Larry's inability to help with the children. Tr. 51-52. Erica then began working full-time for the Grand Forks Air Force Base in human resources, earning approximately \$10.00 per hour. Tr. 52. After approximately one (1) year, Erica accepted a position with the FAA in November of 2012 where she continues to be employed. Tr. 52-53.

[¶25] During the marriage, Erica also obtained her bachelor's degree in criminal justice in 2007 and a master's degree in communication and leadership in 2011. Tr. 53. Erica was able to obtain her degrees with the help of tuition assistance when she was active duty and then the GI Bill. Tr. 53. Larry did not help Erica in obtaining her educational endeavors absent one (1) time when he took the children to the park while she could defend her undergrad thesis. Tr. 54. Larry was not supportive of Erica's educational endeavors. Tr. 54. Erica missed out on job opportunities because of Larry's unwillingness to help with the children and because she was a military spouse. Tr. 55, 80. Erica was supportive of Larry's military career which allowed him several promotions and increase in ranks. Tr. 49, 55, 110, 161. During the course of the marriage, Larry deployed multiple times and traveled for temporary duty assignments frequently, leaving Erica to solely tend to the household and caretaking duties for the children. Tr. 44-47. After twenty-one (21) years, Larry retired from the Air Force on November 2, 2016 as an E-7, master sergeant. Tr. 55; App. 1755. At the time of trial, Larry had been receiving his military retirement without providing any to Erica. Tr. 55.

[¶26] At the time of trial, Larry was forty-two (42) years of age and had been employed with Northrup Grumman since June of 2017. Tr. 113, App. 82. He was living in Palmdale, California. Tr. 113. Larry's annual gross income, to include his military pension, is approximately \$104,101. App. 741-743, 745-779, 780-803. Larry's employment with Northrup Grumman took him to California for work where he would be gone from the marital home for a month to two (2) months at a time. Tr. 163. Larry returned to the marital home on November 19, 2017, and told Erica that he met someone else, wanted a divorce, and was moving to California permanently. App. 24. Larry testified he did not want to work and travel and be away from his family and would rather have chosen to work a lower paying job at Lowes to be able to see his family yet he then testified that he intends to continue living in California. Tr. 163-164. Larry testified that he did not have an affair on Erica despite the evidence provided of his frequent text message and lengthy call log communication with a Jennifer McCormick a.k.a. Jennifer Ellwood. App. 661-737; Tr. 149. During the early morning hours of November 20, 2019, the morning after Larry came home to Erica and the children to tell them he wanted a divorce, he coincidentally is messaging and having lengthy phone conversations with Jennifer McCormick a.k.a. Jennifer Ellwood. App. 715-718, 732-733. Larry testified at the December 28, 2018 trial that Jennifer McCormick a.k.a. Jennifer Ellwood was just a roommate but during the trial on April 9, 2018, he was now engaged to this roommate. Tr. 149, 266.

[¶27] At the time of trial, G.C.S. was seventeen (17) years old, almost eighteen (18). Tr. 44, 204; App. 373. At the time of trial, D.L.S. was fourteen (14) years old, almost fifteen (15). Tr. 219; App. 436. Both children suffer from mental health disorders. App. 373-432,

436-471. G.C.S.'s therapist is Julie Riddle with Agassiz Associates. Tr. 183-184. She has been treating G.C.S. since September of 2013. Tr. 184. Ms. Riddle was recognized by the Court as an expert witness in the field of children and family therapy and mental health. Tr. 183; App. 371-372. D.L.S.'s therapist is Andrea Walker with Assessment and Therapy Associates. Tr. 195. She has been treating D.L.S. since March of 2018. Tr. 195. Ms. Walker was qualified as an expert witness in the field of mental health therapy, trauma work, and child and adolescent therapy. Tr. 195; App. 433-435.

[¶28] At the time of trial, G.C.S. had been diagnosed with generalized anxiety disorder and post-traumatic stress disorder. Tr. 185. G.C.S. was diagnosed with post-traumatic stress disorder, acute, after she had a visit with her father in California during the summer of 2018. Tr. 184-188. After her visit with her father in California, G.C.S. began developing triggers that she did not have prior to her visit with her father. Tr. 193. G.C.S. had to resign from her employment with Hugo's because she was triggered by any man that resembled her father, which caused her great panic. Tr. 193; App. 1647. She does not like to be around certain students in school who are loud and resemble some of her father's features. Tr. 193. She will refuse to get in to a vehicle without the garage door closed, in fear of someone sneaking up on her. Tr. 193. She will lock the door when she lets the dog out. Tr. 193. She is afraid of loud noises. Tr. 193.

[¶29] Ms. Riddle described G.C.S. as being a substantially mature young adult. Tr. 193-194. Ms. Riddle recommended that G.C.S.'s visitation with her father be at G.C.S.'s discretion. Tr. 193. Ms. Riddle's communications with Larry have been difficult and she does not believe he understands G.C.S.'s mental health needs. Tr. 190-192. Ms. Riddle

believes that Erica has not interfered with or alienated Larry's relationship with G.C.S., rather, Erica is very respectful of G.C.S. and the therapeutic process. Tr. 188-189.

[¶30] At the time of trial, D.L.S. had been diagnosed with adjustment disorder with mixed disturbances of anxiety and depression. Tr. 196. Ms. Walker increased D.L.S.'s diagnosis due to a significant increase in symptoms and panic attacks after D.L.S. returned from a visit with her father in California. Tr. 196.

[¶31] Ms. Walker had no concerns that Erica was alienating Larry's relationship with D.L.S. Tr. 198. She testified that Erica had initially brought D.L.S. in to work on anxiety, difficulty with sleep, and difficulty with adjusting to the divorce. Tr. 197. Ms. Walker indicated that Erica was really hoping that D.L.S. would be able to maintain a relationship with her father and D.L.S. was really struggling with whether she wanted to do that or what that meant. Tr. 197. Ms. Walker described Erica as being very warm and supportive to D.L.S. and that she consistently indicated that she wants D.L.S. to have a healthy relationship with her dad. Tr. 198. Ms. Walker has had two (2) interactions with Larry with the first interaction being described as "really, really rough" and "pretty painful." Tr. 198. Ms. Walker had to end the first session early because D.L.S. was crying, sobbing to the point where she couldn't communicate. Tr. 199. Larry talked negatively about Erica in this session which significantly upset D.L.S. Tr. 199. During the second session in November of 2018, it was discussed and agreed that Larry would return D.L.S.'s journal diary to her. Tr. 199. Larry had agreed to mail D.L.S.'s journal to her the following Saturday but as of the date of trial, over four (4) months later, Larry had failed to return D.L.S.'s journal to her. Tr. 199. Ms. Walker was concerned that in order for D.L.S. to build trust with Larry he would need to follow through with his agreements

and he has not been doing so. Tr. 199-200. Larry was also very rude and disrespectful to Ms. Walker's office staff to the point that her staff member ended up in tears. Tr. 200-201. Larry was described as being belligerent and his significant other was yelling in the background which made it difficult to communicate. Tr. 200-201. Ms. Walker has concerns that Larry is not able to help D.L.S. with her mental health needs. Tr. 201. While D.L.S. was visiting her father in California during the summer of 2018, Ms. Walker received three (3) phone calls from D.L.S. where she was crying, really upset, and having a difficult time breathing and coping. Tr. 201-202.

[¶32] Ms. Walker believes D.L.S. to be mature and advanced for her age. Tr. 203. D.L.S. is able to articulate what she wants, is an excellent academic student, and does a wonderful job caring for others and her pets. Tr. 203. Ms. Walker believes that D.L.S.'s horses are a form of therapy and primary coping skill for her. Tr. 203. Ms. Walker further explained that therapy animals for people help calm them, help self-soothe and ground them so that they can focus on something positive and move ahead. Tr. 203-204. D.L.S.'s time with her horses is very therapeutic for her. Tr. 203. Based upon Ms. Walker's therapy sessions with D.L.S. and in her professional opinion, she recommended that D.L.S. be able to have a say in when and for how long she visits her father when she is therapeutically ready. Tr. 204. D.L.S. does not feel safe calling her father and would prefer to text message him, which he adamantly opposes. Tr. 204.

[¶33] Additional facts will be discussed below.

STANDARD OF REVIEW

[¶34] A district court's decision on visitation is a finding of fact which is subject to a

clearly erroneous standard of review. Wolt v. Wolt, 2010 ND 26, ¶ 38, 778 N.W.2d 786.

A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, there is no evidence to support it, or, although some evidence supports it, on the entire record, there is a definite and firm conviction a mistake has been made. Rustad v. Baumgartner, 2018 ND 268, ¶ 4, 920 N.W.2d 465. The district court may not “wholly ignore and fail to acknowledge or explain significant evidence clearly favoring one party.” Id. (quoting Law v. Whittet, 2014 ND 69, ¶ 10, 844 N.W.2d 885).

[¶35] A district court's valuation and distribution of marital property is treated as a finding of fact, which is reviewed under the clearly erroneous standard of review. Wold v. Wold, 2008 ND 14, ¶ 6, 744 N.W.2d 541; Lynnes v. Lynnes, 2008 ND 71, ¶ 16, 747 N.W.2d 93.

[¶36] Spousal support decisions are findings of fact that will be set aside only if they are clearly erroneous. Solem v. Solem, 2008 ND 211, ¶ 5, 757 N.W.2d 748.

[¶37] A district court abuses its discretion when it acts in an arbitrary, unreasonable, or capricious manner, or misinterprets or misapplies the law. State v. Lemons, 2004 ND 44, ¶ 18, 675 N.W.2d.

LAW AND ARGUMENT

I. The district court's findings of fact in determining a visitation schedule for Larry are clearly erroneous.

[¶38] “In awarding visitation to the non-custodial parent, the best interests of the child, rather than the wishes or desires of the parents, are paramount.” Wolt v. Wolt, 2010 ND 26, ¶ 38, 778 N.W.2d 786 (quoting Bertsch v. Bertsch, 2006 ND 31, ¶ 5, 710 N.W.2d 113). “A non-custodial parent's visitation may be ‘curtailed or eliminated entirely if it is likely to endanger the child's physical or emotional health.’” Wolt, at ¶ 38 (citing

Marquette v. Marquette, 2006 ND 154, ¶ 9, 719 N.W.2d 321. “However, a restriction on visitation must be based on a preponderance of the evidence and be accompanied by a detailed demonstration of the physical or emotional harm likely to result from visitation.” Marquette, at ¶ 9. This Court has held that a district court may not wholly ignore and fail to acknowledge or explain significant evidence clearly favoring one party. Law v. Whittet, 2014 ND 69, ¶ 10, 844 N.W.2d 885; see also Datz v. Dosch, 2013 ND 148, ¶¶ 12-19, 836 N.W.2d 598; see also State v. Nelson, 488 N.W.2d 600, 604 (N.D. 1992) (“While credibility of witnesses is normally the province of the trial court, a trial court cannot disregard testimony that is uncontradicted and unchallenged where no basis for doing so appears in the record.”)

[¶39] In awarding Larry visitation, the Court found, in pertinent part:

. . . Erica’s testimony regarding the relationship between Larry and the children was not fully honest. The Court has previously found Erica in contempt for failure to comply with the terms of visitation outlined in interim orders in this case. Erica continues to state that Larry has destroyed the relationship with his children, yet she seems to take no responsibility for the breakup of this marriage and the difficulty of the continuing relationship between Larry and the children. Erica seems to insist on the importance of keeping horses by the family, yet seems to have no comprehension of the inordinate burden the expenses of those animals have put on the marital estate.

. . . G.L.S. [sic] cried during her initial testimony but was fine when recalled for some more information. Only after being recalled did she admit that Larry spent time with her and took her and her sister to a number of sights and experiences in California. When confronted about the fact that these occurrences did not support her earlier testimony, G.C.S. simply began to cry so that she would not have to answer any more questions. The crying did not appear to be genuine.

. . . D.L.S. stated it was too hard for her to be away from her mom’s home for the summer.

. . . Larry testified that when he came to North Dakota for the trial in December, he asked Erica if he could spend time with the children and she did not reply.

It was brought up that [D.L.S.] had been told that she will be allowed to go to France for a summer trip for three months. This was confirmed by Erica. The Court finds it hard to comprehend how [D.L.S.] has such anxiety that she cannot see her father in California for a few weeks, but yet can travel to a foreign country without parental supervision for a full three months. This is indication to the Court that the testimony about the girls not being emotionally able to spend time with their father is not entirely truthful.

With all due respect to the opinion of Ms. Riddle and Ms. Walker, the Court notes that their opinions are based primarily on the information given to them by the children and their experiences with the children. Earlier in this case, the therapists wrote letters indicating that it would be appropriate for the girls to have a two week visit with Larry instead of a four week visit. Now they recommend no visit. They clearly want what is best for the children, but it is apparent to the Court that they have not been given the opportunity to consider all the circumstances in this case. It appears to the Court that Erica, despite outward appearances, is not fully supporting a relationship between Larry and the girls. The Court has previously found her in contempt in this case for not following through with parenting time clearly directed in the Interim Order. The Court does not find the testimony of the girls to be particularly forthcoming, and, in fact, it appears that much of the testimony, including the crying, was contrived. . . . However, the Court simply does not come to the conclusion that parenting time with their father is likely to endanger the children's physical or emotional health. Parenting time between Larry and the children is appropriate. . . .

App. 1767-1771.

[¶40] The court found Erica dishonest at the time of trial because she was found in contempt of court when the children refused to travel to the airport and get on the plane to visit their father during the summer of 2018. The record is replete with evidence that Larry has solely caused the deterioration of his relationship with the children. There was not a shred of credible evidence that Erica was responsible for the corrosion of Larry's relationship with the children, rather, the evidence reflects that Erica has exhaustively tried

to foster a relationship between Larry and the children. App. 31-41, 96-98, 105-109, 113-114, 115-117, 122-135, 184-200, 247-258, 264-271, 313-317, 334-349, 371-432, 436-471, 472-510, 511-560, 560-635, 657-658, 660, 738-739, 1299-1307, 1626-1655, 1702-1728. The court made it a point to find that Erica doesn't take responsibility for the difficult relationship Larry has with the children, but failed to address the fact that Larry testified he was not responsible in any way for why his children do not want to see him. Tr. 278.

[¶41] This matter is similar to Datz and Law when the court ignored significant evidence that was favorable to Erica and detrimental to Larry. It is also similar to State v. Nelson when the court disregarded testimony that was uncontradicted and unchallenged where no basis for doing so appeared in the record. Erica's testimony was corroborated by testimony from the children, the children's therapists, and Ms. Tierney. In addition, Erica's testimony was corroborated by the children's therapy notes, the text messages, the email correspondence, and all the affidavits filed by Erica, the children, and the children's therapists. App. 31-41, 96-98, 105-109, 113-114, 115-117, 122-135, 184-200, 247-258, 264-271, 313-317, 334-349, 371-432, 436-471, 472-510, 511-560, 560-635, 657-658, 660, 738-739, 1299-1307, 1626-1655, 1702-1728. Larry did not provide testimony to corroborate his self-serving testimony. Larry's testimony was, for the most part, based upon his paranoia and animosity, which led to assumptions and speculations. The record was replete with credible evidence addressing Larry's incredibility and dishonest character, yet the Court failed to address it. For example, Larry testified he sent an email to Erica a few days before he was to show for the court trial asking to see the children. Tr. 262. He did not provide the email to corroborate his testimony. Erica provided her email correspondence with Larry and nowhere in the correspondence is Larry requesting

visitation with his children prior to the December trial. App. 472-510. Larry testified that his fiancé, Jennifer, did talk with the girls when they were there for the summer visitation, yet in his email to G.C.S. he states that Jennifer never did talk to them. App. Tr. 251, 266. Because the court relied upon Larry's dishonest and speculative testimony in its findings and ignored the overwhelming evidence in Erica's favor, the court clearly erred.

[¶42] Nowhere in the record does Erica confirm D.L.S. would be allowed to go to France for a summer trip for three (3) months, yet the court considered this alleged "confirmation" when it found that the children's testimony was not entirely truthful. There was no evidence to support the court's finding that G.C.S. began to cry because she did not want to answer any more questions. The times that G.C.S. cried during her testimony were when she was testifying about her father barraging her with questions when they got to California and when she would have panic attacks in class after receiving text messages from her father during school hours. Tr. 210, 306. Furthermore, there is nothing in the record that supports the court's finding that D.L.S. stated it was too hard for her to be away from her mom's home for the summer.

[¶43] The record is also clear that the children's therapists had been given the opportunity to consider all the circumstances in this case. App. 113-114, 373-432, 470-471, 1651-1656. It is unclear what circumstances the court is alleging the children's therapists have not had the opportunity to consider? The record is replete with evidence that Larry's conduct and treatment of the children has negatively affected them emotionally and physically. Both children have missed excessive amounts of schooling due to their anxiety and stress. Tr. 233-234; App. 640-656, 1670-1701. While with Larry, the children have cried themselves to sleep and had erratic sleep schedules. Tr. 311.

[¶44] The record reflects that Larry has consistently placed the children in the middle of the divorce conflict. For example, during the onset of the divorce, G.C.S. requested that she did not want to be the middleman between her father and mother when it came to setting up schedules as it caused her much stress. She requested this of her father on several occasions and told him how much she was stressed by it, yet Larry refused and continued to place the children in the middle. App. 1638-1639. Additionally, when the children were with their father in California, he would ask them about their mother and divorce related issues. He would ask them if their mother would cry, and say that the court was already mad at their mother, and the court might give him the horses or have the horses sold. Larry also would discuss child support and how he wouldn't be able to pay it and then Erica would not be able to afford the horses. The children expressed how uncomfortable they are when their father discussed divorce related issues with them. App. 1629-1648. The children and their therapists recommend that until Larry can show progress in understanding the children's emotional and mental well-being and the children feel comfortable to have visitation with their father, his visitation with the children should be suspended App. 1629-1648, 1651-1655. G.C.S. and D.L.S. were adamant in their position that they cannot have any visitation with their father at this time.

[¶45] While the children were visiting their father in California during the summer of 2018, the children were in distress the majority of their visit. Tr. 185-188, 201-202, 213-214, 236, 311; App. 1626-1656. G.C.S. expressed concern for D.L.S. and her previous thoughts of suicide. App. 1645. G.C.S. also had a brief thought of jumping out the window. App. 1645. D.L.S. was stress eating and was not as happy as she used to be. She has had suicidal thoughts and expressed that if she had to see her father again before she is ready,

she is afraid those suicidal thoughts will come back. App. 1633. The children were told by their father that they better not call their mother while they were there with him. App. 1633. He threatened to take their phones away if they kept calling their mother. App. 1634, 1643. Larry would talk over the children, yell at them, be dismissive and condescending. App. 1643. When Larry received Erica's affidavit in response to Larry's contempt motion, he confronted G.C.S. and read parts of Erica's affidavit. Larry read the allegations of verbal abuse and interrogation of the children and aggressively responded with, "I don't interrogate you, that's when there is a light in your face!" He then shoved his hand in G.C.S.'s face like it was a light and said, "THIS IS INTERROGATION!" Larry also said he doesn't verbally abuse the children because he, "doesn't call us [G.C.S. and D.L.S.] f*****g stupid!!" App. 1643.

[¶46] Also, while in California, G.C.S. and D.L.S. had to make emergency calls to their therapists due to the negative affects their father and his fiancé, Jennifer's treatment had on them. Tr. 185-188, 201-202, 213-214; App.1633, 1643. G.C.S. also experienced physical health problems from the stress and anxiety. She experiences stomach and bowel issues, headaches, poor appetite, and insomnia. App. 1643.

[¶47] During the visit in California, the police showed up twice to check on the children's welfare. Tr. 292. Larry was convinced it was done to interfere with his parenting time. Tr. 292-293. At trial, Larry testified that Ms. Riddle told him that it was Erica that had called social services. Tr. 279. On rebuttal, Ms. Riddle testified she never told Larry that it was Erica that had called social services, rather, it was herself that called social services. Tr. 296. When reviewing the entire record, it is clear that Larry is less credible than Ms. Riddle.

[¶48] After the first time the police came, Larry told the children that social services would take them away for over three (3) months and they wouldn't be allowed to see either parent because there would be a no contact order. The second time the police showed up, Larry and Jennifer said Erica was going to get in trouble for calling. Jennifer told the children that their mother would get in trouble because she already had trouble with the judge in court. Jennifer told them that social services wasn't going to listen to their mother because they will think she's crazy. Jennifer also told the children that their dad would lose his security clearance at work and lose his job because of social services being involved. Tr. 212-213; App. 1643-1645. Larry also called Erica crazy and told the children that social services could put them in a foster home in the Badlands of North Dakota, an area where the children are terrified of. He told the children that people in foster homes would be mean to them. App. 1643-1645.

[¶49] Jennifer also discussed with the children things that were going on with the divorce and offered to show them an alleged proposal to settle the divorce that Erica allegedly turned down. Jennifer would continuously question the children to the point they felt like they were being interrogated. She would ask the same question over and over until she got the answer she wanted. App. 1645-1646. Jennifer also tried to get the children to call their mother on speakerphone and to tell her to stop doing this to them. She said that their mother would cry a lot but they need to keep telling her to stop doing this over and over, no matter how much she cries. Jennifer told the children that when her parents got divorced, she sided with the wrong parent, insinuating that G.C.S. and D.L.S. were doing the same. Jennifer told the children that their mother was like her crazy ex-husband that had kidnapped her

daughter. App. 1646. G.C.S. felt as though Jennifer was trying to brainwash her. App. 1647.

[¶50] After the children returned from California, D.L.S. had a consult with an orthodontist. When D.L.S. and Erica showed up for the appointment they were told that Larry had called in and cancelled the appointment. Erica rescheduled her appointment but was unable to get in until a couple months later. Because of Larry cancelling the initial appointment, D.L.S. had to miss a state music competition that she was prepared to perform a solo at. She also couldn't perform in her flute recital. App. 1635. D.L.S. had a journal she would write her thoughts in. When she returned from California after the summer visitation in 2018, she realized she had forgotten her journal behind. Tr. 238-239; App. 1634. Larry was contacted and asked that he please return the journal and he agreed to return it. Tr. 238-239; App. 1634. Larry has refused to return it even though D.L.S. could use it in her therapy sessions. Tr. 199-200, 238-239; App. 1635-1636.

[¶51] The children feel their father lies to them and about them. App. 1630. G.C.S. testified that their father does not call them. Tr. 305-306. G.C.S. testified that in speaking with her therapist and at her therapist's recommendation, she should have a different phone that her father could call her on which would eliminate the stress and anxiety she was experiencing. Tr. 309-310. Because of Larry's manipulation and need for control, he has refused to call G.C.S. and D.L.S. on their trac phone.

[¶52] The court's findings are clearly erroneous because it failed to address any of the children's documented mental health needs and diagnoses and wholly ignored the children's therapy records, the testimony of Erica, Ms. Tierney, the children and their therapists, and the text messages, affidavits, and email communications, which provide

overwhelming evidence that visitation with Larry endangers the children's physical or emotional health.

II. The district court's findings of fact in determining the valuation of the marital property and resulting distribution, including a cash property distribution to Larry are clearly erroneous.

[¶53] The court found that Erica, for the most part, undervalued her property and overvalued Larry's property. The court also found that Larry had consistently valued the property at a more appropriate price and then found that neither party did a compelling job of providing evidence or documentation to support valuation of the marital property. App. 1753.

[¶54] The record does not support the court's finding that Larry had "consistently" valued the property at a more appropriate price. In fact, Larry changed his valuations for most of the marital assets during the trial. Tr. 125-133. When describing the valuations, he used words like: "probably", "maybe", "I think we spent." Tr. 125-133. Even though Larry was able to provide some testimony related to values, though incredible and inconsistent, on the entire record, there is a definite and firm conviction the court made a mistake.

A. Household Goods

[¶55] As it relates to the valuation of the household goods, Erica testified she believed the household goods already were divided because Larry told her he had everything he wanted from the home. Tr. 64. Erica testified that the furniture she had was basic furniture and falling apart or torn. Tr. 64 She had a table that was glued back together, couches that no longer reclined, and furniture with tears and rips and stuffing coming out. Tr. 64. She testified it was worn down old stuff that she doesn't believe she would even

be able to sell at a garage sale. Tr. 64. Larry valued the household goods at \$15,000 but his testimony revealed that he had no ability to provide the court with an accurate value. Tr. 123-124. The court found the household goods had a value of \$2,000. App. 1788.

B. Larry's Tools, Guns, Hunting and Fishing Gear

[¶56] Erica and Ms. Tierney testified Larry's tools, guns, hunting and fishing gear was approximately \$20,000. Tr. 24, 66. Ms. Tierney's valuation was based upon her online research for items that had been sold used on eBay and Google, as well as receipts Larry kept and a notebook Larry journaled in listing the values of his equipment. Tr. 24-25, 66; App. 1222-1230. Ms. Tierney took pictures of Larry's items which accounted for approximately 300 pages. Tr. 23-25; App. 951-1250. Ms. Tierney's valuation was also based upon her experience and knowledge in the business of buying and selling used goods for thirteen (13) years. Tr. 37-38. Erica testified that Larry spent a lot of money on nice, high quality things for himself. Tr. 66. There were items that were not yet out of the package, still had price tags on, and other items had receipts. Tr. 66. Larry had a backpack and a sleeping bag that still had price tags of \$500 each attached. Tr. 66.

[¶57] Larry valued his tools, guns, hunting and fishing gear at \$9,000. App. 1658. The only testimony Larry provided in support of his valuation was as follows:

Larry: Most things I have are older. There's no way that I would actually be able to get that amount of money. I mean if they want to write me a \$20,000 check, sure, I would be able to purchase a lot more because there's no way what I have is worth nine grand. A lot of the firearms were my dad's or my grandfather's that were given to me when I was younger, I mean.

Mr. Johnson: Okay. So is it your position that the several firearms that were inherited by you, that came from your father and your grandfather, are not appropriate to be calculated into these?

Larry: They are not -- I'd rather give them back to my dad if they're --

Mr. Johnson: And they did include those, didn't they?
Larry: They did include those.

Tr. 125.

C. Erica's Horse Tack

[¶58] Erica testified that her horse tack is valued at \$825. Tr. 64. Horse tack is defined as the items that go along with the horse, to include, saddle, saddle pads, blankets, and spurs. Tr. 65. Erica testified she has two (2) saddles, a head stall, a saddle pad, and a pair of spurs. Tr. 65. Erica believes Larry included the children's horse tack when he valued Erica's horse tack at \$8,000. Tr. 65. Erica testified that the majority of the children's horse tack was their Christmas and birthday gifts, or items that the children purchased themselves. Tr. 65. Erica testified that she does not use the children's horse tack. Tr. 65.

[¶59] Larry initially valued Erica's horse tack at \$8,000 but upon examination, it changed to \$3,500. He claimed that Erica uses the children's horse tack and a lot of the horse related items were charged on her credit cards. Tr. 125-127, 135-136, 156. The credit card statements do not support Larry's valuation. App. 806-936, 1308-1620.

D. Erica's Tools, Guns and Bow

[¶60] Erica valued her tools, guns and bow at \$750. Tr. 65. Erica's valuation was based upon her online research for the guns that she owns. Tr. 65. Erica testified that a couple years ago she had gifted her bow to G.C.S. because G.C.S.'s bow had become too small for her and Erica never used it. Tr. 65-66. Erica owns basic tools like a drill, screwdrivers, and a hammer. Tr. 66. Larry initially claimed that Erica's tools and guns had a value of \$5,500 but as his testimony went on, he changed the value to \$3,500. Tr. 125-133. His testimony was inconsistent and not supported by evidence. He made

numerous assumptions as to values and testified that things were either “missing” or “spirited away.” Tr. 125-133.

E. Larry’s Share of the Mortgage Payment Pursuant to the Interim Order

[¶61] Larry was ordered to be responsible for one-half (1/2) of the marital home mortgage payment pursuant to the interim order. App. 89. It was undisputed Larry’s last contribution to the mortgage was in May of 2018. Tr. 76, 140-141. Trial was held on December 28, 2018. Tr. 1. As such, Larry failed to make seven (7) payments towards the mortgage (June through December). Larry was responsible for \$630.30 per month towards the home mortgage. Tr. 167. Therefore, Larry’s obligation for seven (7) months should have been \$4,223.10. The court’s findings were clearly erroneous.

F. Larry’s Share of the Household Repairs Pursuant to the Interim Order

[¶62] Larry was ordered to be responsible for one-half (1/2) of the household repairs pursuant to the interim order. Tr. 73-74; App. 89. The parties agreed to the expenses of the household repairs and Larry agreed that he is equally responsible. Tr. 136-137; App. 1650. The household repair expenses were \$6,246.13; therefore, it was agreed that Larry’s equal share was \$3,123.06. App. 937-950, 1664. Because the court failed to address the household repair expenses in its findings, nor did it include said expenses in its order for judgment, the court clearly erred.

[¶63] The court’s findings as it relates to the valuation of the marital estate is not supported by the record. Larry’s testimony was speculative and incredible. Because the record does not support the court’s finding that Larry had “consistently” valued the property at a more appropriate price, the court’s findings are clearly erroneous.

III. The district court erred in its analysis of the Ruff-Fischer factors in its determination for not awarding spousal support.

[¶64] The district court must consider all the relevant factors under the Ruff–Fischer guidelines in determining spousal support. Woodward v. Woodward, 2013 ND 58, ¶ 4, 830 N.W.2d 82. This Court must understand the basis for the district court's decision before it can decide whether the findings of fact are clearly erroneous. Pearson v. Pearson, 2009 ND 154, ¶ 13, 771 N.W.2d 288. “The district court must adequately explain the basis for its decision, but if valid reasons are fairly discernable, either by deduction or by inference, the district court’s decision will not be reversed. Id. The district court must consider the “supporting spouse's needs and ability to pay as well as the receiving spouse's income and needs.” Gustafson v. Gustafson, 2008 ND 233, ¶ 6, 758 N.W.2d 895. In Woodward, this Court held that “even when a spouse can be rehabilitated, spousal support may be appropriate to ensure that one party does not bear the brunt of the overall reduction in standard of living.” Woodward v. Woodward, 2013 ND 58, ¶ 8, 830 N.W.2d 82 (citing Becker v. Becker, 2011 ND 107, ¶ 30, 799 N.W.2d 53. “The goal of spousal support in North Dakota is not minimal self-sufficiency, but “adequate self-support after considering the standard of living established during the marriage, the duration of the marriage, the parties' earning capacities, the value of the property and other Ruff–Fischer factors.” Woodward, at ¶ 8 (citing Moilan v. Moilan, 1999 ND 103, ¶ 15, 598 N.W.2d 81). “This court has not adopted the ‘minimalist doctrine’—one where the only determination is whether the recipient of support is merely ‘self-supporting.’ We have upheld rehabilitative spousal support where the recipient is already working full time.” Van Klootwyk v. Van Klootwyk, 1997 ND 88, ¶ 16, 563 N.W.2d 377.

[¶65] Throughout their marriage, the parties had established a standard of living which

included owning four (4) dogs, one (1) cat, and three (3) horses. Tr. 104-105, 111. It was undisputed that the children are actively involved with their horses and participate in horse shows. Tr. 26-27; App. 127, 184-185, 189. Furthermore, the horses are a form of therapy and coping mechanism for G.C.S. and D.L.S. Tr. 27, 203. It was undisputed that owning horses was an expense the family was accustomed to.

[¶66] The court found that much of the parties' debt was from the upkeep of the horses the parties possessed during their marriage. App. 1764. The court then stated, "Larry accused Erica of spending money on horses and horse shows and accused Erica of paying for unnecessary expenses with credit cards. This seems to be supported by the testimony and documents provided." App. 1764. Erica was the only one that offered credit card statements at trial. A review of Erica's Capital One and Citi credit card statements reveal that from January of 2012 through November 2017, the charges related to the horses and family pets, to include veterinary bills, were as follows:

Capital One Credit Card

Jan/Feb 2012: Pets R Inn	\$ 395
Sept/Oct 2013: Grand Valley Animal Hospital	\$ 432.55
Aug/Sept 2014: Grand Valley Animal Hospital	\$ 146.43
Petco	\$ 37.29
Oct/Nov 2014: Grand Valley Animal Hospital	\$ 156.57
Treat Play Love	\$ 81.11
Feb/March 2015: Hobby Horse Clothing	\$ 433.75
March/April 2015: Hobby Horse Clothing (Credit)	-\$ 99.95
Dec/Jan 2016: Boot Barn	\$ 25.60
In 4 More Tack & Feed	\$ 74.43
Jan/Feb 2016: Smart Pak	\$ 300.90
	\$ 588.95
	\$ 314.40
Smart Pak (Credit)	-\$ 289.95
Ariat International	\$ 268.75
Feb/March 2016: Ariat International (Credit)	-\$ 256.15
Smart Pak (Credit)	-\$ 588.95
Myler Bits	\$ 208

April/May 2016: In 4 More Tack & Feed	\$ 138.54
May/June 2016: Golden Valley Veterinary	\$1,495.36
Sept/Oct 2016: Blairview Saddle Shop	\$ 189.69
Grand Valley Animal Hospital	\$ 487.35
Nov/Dec 2016: Statelinetack.com	\$ 123.01
Aug/Sept 2017: Showtimesho	\$ 774
Showtimesho (Credit)	<u>-\$ 750</u>
Total:	\$4,686.68

App. 1369, 1370, 1425, 1428, 1431, 1438, 1441, 1453, 1459, 1480, 1483, 1547, 1590, 1605.

Citi Credit Card

Nov 2016: Brassy Bit Tak	\$1,069.63
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App. 812. The evidence does not support Larry's allegation and the court's findings that Erica was an unnecessary spender on the family horses over 5 years. Furthermore, the record does not support that the majority of the parties' debt was from the upkeep of the horses. The courts findings are clearly erroneous.

[¶67] Despite the evidence Erica provided outlining her monthly expenditures at \$6,100, the court deducted \$1,500 of her monthly expenses because "[r]aising horses is not a necessary monthly expense." App. 1765. As a result, the court found that Erica's financial needs per month were reduced to \$4,600 and her gross monthly income was \$2,860.82. App. 1765. In addition, the court found that Erica would be receiving \$1,614 in child support and \$1,013 as a Bullock formula share of Larry's military retirement for a total gross income of \$5,487.82. App. 1765. The court then found that if Erica was to work full-time at her current position, she would increase her total monthly income to approximately \$6,237.82 which would then fully cover her monthly expenses. App. 1765. The court erred when it did not consider what Erica's net monthly income would be. Furthermore, there was no evidence to support the finding that Erica would be allowed to

work full-time at her current position. The court misapplied the law when it did not consider the standard of living that was established during the marriage.

[¶68] Erica testified that she needs \$1,000 per month to cover her necessary living expenses. Tr. 80. She has monthly living expenses in the approximate amount of \$6,100. App. 1251. Erica's net monthly income from the FAA is approximately \$1,992.58. App. 744. She also receives \$1,278 in disability payments. App. 43. Erica will receive \$1,614 from Larry in child support for a short period of time and \$1,013 per month in a Bullock formula share of Larry's military retirement, so long as he does not reduce his share by claiming disability. In total, Erica's current net monthly income is approximately \$5,897.58. G.C.S. is currently eighteen (18) years of age and D.L.S. will be of majority in a few years, reducing Erica's net monthly income to \$4,283.58. Additionally, because the Court did not include an indemnification clause preventing Larry from reducing Erica's share of his military retirement, there is the potential that Erica's monthly income will be reduced even more.

[¶69] The court found that Larry had a total monthly expenditure of \$3,264. App. 1840. The court then "assumed" Larry's cost of housing in California at \$1,500 per month, making his total monthly expense in the range of \$4,775. App. 1766. The court found that Larry's monthly income was \$7,618.46. App. 1766. The court clearly erred when it "assumed" an expense of \$1,500.

[¶70] The district court in Van Klootwyk v. Van Klootwyk denied the wife's request for spousal support, finding the wife was not disadvantaged by the divorce because she "received education during the marriage, has an adequate salary and is self supporting." 1997 ND 88, ¶¶ 11, 14, 563 N.W.2d 377. This Court reversed the denial of spousal

support and remanded for the district court to award spousal support, explaining that it had consistently rejected the minimalist doctrine, and it is not enough that “the recipient of support is merely ‘self-supporting.’” Id. at ¶ 16. This Court concluded the wife had contributed during the marriage to the husband's increased earning capacity by moving frequently, caring for the children, and working odd jobs. Id. at ¶17.

[¶71] Additionally, in Moilan v. Moilan, this Court found that the district court had “clearly applied the minimalist view of spousal support when it rejected [the husband's] request for support on the basis he had received an education, was working, and was self-supporting.” 1999 ND 103, ¶16, 598 N.W.2d 81. This Court explained that the district court clearly erred and had “failed to take into consideration other factors, including the considerable disparity in earning capacity, [the husband's] foregone opportunities and contributions to [the wife's] earning ability, and the unequal burdens which this divorce has created upon the parties.” Id. This Court reversed and remanded, directing the district court to award spousal support in accordance with the Ruff–Fischer factors. Id. at ¶ 17.

[¶72] As in Van Klootwyk and Moilan, the court clearly erred when it applied the minimalist view of spousal support in rejecting Erica’s request for spousal support. The court clearly erred when it failed to take into consideration other factors, including the considerable disparity in earning capacity, Erica’s foregone opportunities and contributions to Larry’s earning ability, and the unequal burdens which the divorce had created upon the parties.

- IV. The district court clearly erred when it did not consider or include an indemnification clause in the Judgment necessary to protect Erica’s interest in Larry’s military retirement which could result in an inequitable effect on Erica post-divorce despite the parties stipulating to said language.

[¶73] The parties stipulated that Larry would take no action that would reduce Erica's share of his military retired pay. App. 363. Erica argued that the indemnification clause was necessary to protect her interest in Larry's retirement so that there was not an unfair effect on her post-divorce. App. 1685.

[¶74] As noted in the American Journal of Family Law article:

Veterans have a dual incentive for receiving as much retired pay in the form of disability as possible. Not only is it nondivisible in the case of divorce, but VA disability compensation is not counted as taxable income by the federal government. When the disability waiver comes after divorce, reducing the share available to the former spouse, it can have an unfair effect on the former spouse.

See <http://www.pensionanalysis.com/CM/Articles/The-Disability-Issue-in-the-Distribution-of-Military.html>; App. 1685.

[¶75] This court has held that stipulations can be contractual in nature. Wagner v. Wagner, 1999 ND 169, ¶ 9, 598 N.W.2d 855. A contractual stipulation is a contract that is entitled to all the sanctity of a conventional contract. Id. The parties stipulated to the indemnity clause, therefore, the court erred by not including it in the judgment. Furthermore, it is imperative to include an indemnity clause to prevent Larry from reducing Erica's share of his military retirement, resulting in an inequitable effect on Erica.

V. The district court erred when it did not consider or include the party's stipulation that Larry continue coverage for Erica as a former spouse under his Survivor Benefit Plan.

[¶76] The parties stipulated to the following language:

Larry will elect to continue coverage for Erica as a former spouse under his Survivor Benefit Plan and she will be named as the beneficiary of the Survivor Benefit Plan. Any cost of the Survivor Benefit Plan will be deducted from Erica's monthly payment.

App. 363. Erica also argued to include the Survivor Benefit Plan language. App.

1685. The court erred by not including the Survivor Benefit Plan language in the

judgment despite the parties stipulating to said language. See Wagner at ¶ 9.

- VI. The district court abused its discretion by penalizing Erica by ordering her to reimburse Larry for airfare associated with Larry's missed parenting time despite the Court dismissing Larry's contempt motion for his missed parenting time and despite Larry receiving a child support deviation for transportation costs.

[¶77] As it related to Larry's contempt motion, the court made the following findings:

The court finds there is not sufficient evidence to find Erica in contempt for a violation of the Interim Order. Testimony to the Court indicated that the children snuck off the plan, [sic] apparently on their own accord, after Erica put them on the plane to travel to California for a visit. However, as a result, it is also not appropriate for Larry to bear the full cost of the visitation expenses for visits with the children that never happened, regardless of whether or not the children were behind the denial of parenting time.

App. 1771. The court then ordered Erica to reimburse Larry 50% of the expenses for the visit, in the amount of \$981. App. 1771-1772. The court further ordered that the order to show cause be dismissed. App. 1785.

[¶78] Pursuant to N.D.C.C. Section 27-10-01.1, "contempt of court" is defined, in pertinent part as: "c. Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer, including a referee or magistrate[.]"

[¶79] Despite finding there was insufficient evidence that Erica committed contempt and dismissing the order to show cause, the court sanctioned Erica. This was an abuse of discretion.

- VII. The district court abused its discretion by penalizing Erica without due process by ordering her to reimburse Larry for transportation costs if the children did not comply with their parenting time with Larry despite Larry receiving a child support deviation for transportation costs.

[¶80] The court ordered the following, in pertinent part:

Larry shall be solely responsible for all costs and providing transportation for his parenting time. Larry is receiving a child support deviation based upon him being solely responsible for transportation costs. Should Erica or the children not comply with the parenting time as ordered, Erica shall reimburse Larry for the full cost any transportation related expenses associated with the parenting time within seven (7) days. This section does not preclude Larry from seeking an order to show cause with the Court for violations of the Judgment.

App. 1781-1782.

[¶81] Pursuant to N.D.C.C. Section 27-10-01.3(1)(a), a district court may impose a remedial sanction for contempt only “after notice and hearing.” Lawrence v. Delkamp, 2006 ND 257, ¶ 7, 725 N.W.2d 211. A finding of contempt is based on a finding that the contemnors actions are “willful and inexcusable.” In re Spicer, 2006 ND 79, ¶11, 712 N.W.2d 640.

[¶82] The court abused its discretion by ordering Erica, without first notice and hearing, to be responsible for the full cost of transportation related expenses if the children do not comply with the court order in addition to awarding Larry a child support deviation based upon him being solely responsible for transportation expenses.

CONCLUSION

[¶83] For the foregoing reasons, Erica Sims respectfully requests that this Court REVERSE the district court’s Findings of Fact, Conclusions of Law, and Order for Judgment, dated June 24, 2019, and Judgment, dated July 9, 2019, and REMAND the same with instructions.

CERTIFICATE OF COMPLIANCE

[¶84] I, Kelsey Hankey, attorney for the Plaintiff/Appellant, and officer of the court, hereby certify that the Brief of Appellant is thirty-eight (38) pages in length and in compliance with N.D.R.App.P. 32(a)(8)(A).

Erica Lynn Sims,)	
)	
Plaintiff and Appellant,)	
)	Supreme Court No.: 20190248
vs.)	
)	
Larry David Sims,)	Grand Forks County District
Defendant and Appellee,)	Court No.: 18-2017-DM-00812
)	
)	

Date