

Supreme Court No. 20220141

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

Mercer Co. Court No. 29-2019-DM-00050

**Jean Kaspari,
v.
Thomas Kaspari**

Plaintiff and Appellee

Defendant and Appellant

**APPEAL FROM THE ORDER FOLLOWING REMAND DATED APRIL 22,
2022; THE AMENDED JUDGMENT DATED JULY 2, 2021; JUDGMENT
DATED SEPTEMBER 25, 2020, AND FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER FOR JUDGMENT DATED SEPTEMBER 10, 2020 OF THE
MERCER COUNTY DISTRICT COURT, THE HONORABLE PAMELA A.
NESVIG**

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUES

- 1) Based upon N.D.C.C. § 14-05-24.1 and the Trial Court's Findings under the Ruff-Fischer guidelines the amount of the spousal support award is appropriate.**

STATEMENT OF THE FACTS

[¶1] Jean Kaspari ("Jean") is 58 years old. (R:97:5:17). Thomas Kaspari ("Thomas") is 59 years old. (R:97:77:25).

[¶2] Jean attended NDSU and met Thomas who was pursuing ag courses at NDSU. (R:97:6:3 and R:97:7:14-21). Jean had scholarships and did not incur debt for her nursing degree. (R:97:6:13-21 and R:97:8:5-15). Jean became pregnant, and the parties married on April 30, 1983. (R:97:8:7-25). Thomas withdrew from NDSU and went to work as a mechanic. (R:97:8:10-25 and R:97:9:12-25). Their daughter Danielle was born late in 1983 while Jean was still in school. (R:97:8:16-22). Jean graduated with an associate degree, becoming a registered nurse in 1984. (R:97:6:20-21).

[¶3] Jean was employed as a nurse at St. Luke's Hospital in Fargo from 1984 through 1996. (R:97:7:4-12).

[¶4] After the twins (Nicholas and Lee) were born in 1987, Thomas took a couple of courses at NDSU so he could apply to the nursing program at Concordia. (R:97:10:5-15 and R:97:11:3-9). He worked part time as a nursing assistant while in nursing school and took out loans to secure his RN degree. (R:97:11:10-25).

[¶5] While Thomas was at Concordia, Jean worked full-time, and Thomas' sister lived with them to help care for the children. (R:97:12:5-10).

[¶6] Almost immediately upon graduation from Concordia, Thomas worked towards applying to medical school. (R:97:12:13-23). He applied to UND medical school, was

accepted, and started school in September 1992 in Grand Forks when their eldest child was 9 and their twins were 5. (R:97:14:10-23). The parties incurred significant loans for Thomas' medical schooling. (R:97:16:1-8).

[¶7] Thomas had a sleeping room in Grand Forks and returned to Fargo on weekends. (R:97:13:18-22). Jean stayed in Fargo, worked nights at the hospital, took the children to day care and tried to sleep until it was time to pick up the children and take them to their after-school activities. Jean's niece, who was attending NDSU, came and stayed with the children at night. (R:97:14:1-9). After two years of medical school, Thomas came back to Fargo for his third and fourth years. Jean continued working nights and caring for the parties' children with help from relatives. (R:97:15:8-24).

[¶8] When Thomas finished his fourth year of medical school, he and Jean discussed where he should go for his residency. Thomas wanted a family residency that would include delivering babies, which was not available in Grand Forks or Fargo, but was available in Minot. Jean had concerns about moving to Minot where they would not have family who could help with the children like they had in Fargo. (R:97:16:12-25). The parties purchased a small rambler home in Minot. (R:97:18:7-9). The parties agreed Jean would not work as a nurse outside the home in Minot. (R:97:17:4-12 and R:97:67:1-25).

[¶9] The parties did not take out any loans during Thomas' residency. His three-year residency paid a small amount and Thomas did some ER moonlighting in small towns to supplement that income. (R:97:17:15-24). Thomas was very busy during his residency and was rarely home. Jean cared for the children who were in the 7th and 3rd grades. (R:97:18:7-25).

[¶10] In 1999, Thomas accepted employment in Hazen and the family moved to a rural home in Oliver County which they rented for a short time and then purchased 40 acres with the home. (R:97:19:3-9 and R:97:19:20-24 and R:97:20:1-4).

[¶11] Jean did most of the renovation work on their home (building walls, hanging sheet rock, tape and texturizing and painting), though Thomas helped with the electrical work. (R:97:22:11-24). Jean did not have help with the household duties. (R:97:23:5-13).

[¶12] Thomas purchased cattle and they were both involved in taking care of them. (R:97:27:11-24). They had expenditures related to the cattle and they purchased a skid steer, backhoe, stock trailer and flatbed trailer. (R:97:27:1-10).

[¶13] Jean was busy following the children's activities and transporting them to school and extracurricular activities. (R:97:20:13-25). Jean took care of the home and prepared the meals and at times chased after cows. (R:97:23:8-18).

[¶14] Jean saw their lives as normal. (R:97:23:19-25 and R:97:24:1-14). Jean and Thomas travelled (business and pleasure) throughout their marriage, including a two-week trip to Scotland for their 25th anniversary, trips to New York, and trips with the children. (R:97:24:1-14 and R:97:31:3-15). Jean was involved in charitable community activities in Hazen. Both followed their children's activities. (R:97:30:1-23).

[¶15] The parties had more debt than they would have liked and had discussions about their finances, but they did not have arguments. (R:97:26:2-21 and R:97:125:2-13). The parties' credit cards had high interest rates (28%) and they made minimum payments. (R:97:90:2-10). They didn't use the credit cards very much. (R:97:92:2-22). When their oldest daughter graduated from high school in 2002 and went to college, Thomas and Jean co-signed student loans for her. (R:97:25:4 and R:97:25:16-19). After Jean and Thomas

separated in 2013, the parties refinanced their mortgage and paid off credit card debt. (R:97:92:23-25 and R:97:93:1-19).

[¶16] When the parties moved to Hazen, they discussed employment opportunities for Jean. (R:97:21:11-24). In considering employment for Jean at the hospital, Thomas told her it would be better for her not to work there because the nurses did not really want her there, and they just didn't want Dr. Kaspari's wife telling them what to do. (R:97:21:11-24). Both Thomas and Jean agreed that Jean would not work outside the home. (R:97:22:3-9). Later during the marriage Jean's RN license had lapsed, and she took a refresher course to renew the license so she could return to work if needed. (R:97:27:25 and R:97:28:1-19). The parties had discussions from time to time about Jean going to work. Thomas told Jean once that she would not want to work for the nursing home because the facilitator was "not a nice person". Nurses were not making very much in rural areas at that time. The minimal amount Jean would earn, at the parties' high tax rate didn't make sense. (R:97:28:23-29:10). After renewing her license, Jean worked part-time for a short period at Coal Country Community Health Center in Center earning \$15.00 per hour. (R:97:68:18-25) and (R:97:69:1-7). In early 2013, Jean registered at Minot State University to get her bachelor's degree in nursing which would allow her to work in a hospital at a higher wage. (R:97:58:21-25 and R:97:59:1-13).

[¶17] In January 2013, Jean became concerned about Thomas; he stopped eating and lost a lot of weight very fast, and he became distant. Jean saw text messages on Thomas' phone from a young woman who worked at the hospital. On one occasion, Thomas and the young woman were texting about chapters in the book Fifty Shades of Grey. Thomas' personality changed, which was noticed also by their friends. (R:97:32:13-25).

[¶18] The parties had booked a trip to New York for their 30th anniversary. They still went on the trip and Jean described the trip as being bizarre. At a restaurant, Thomas conversed with people at a nearby table and when they left, he paid \$500 toward their meal. Thomas was on a shopping frenzy, buying extravagant suits, jeans—3 pairs of \$200 dollar jeans. (R:97:43:7-25 and R:97:44:1).

[¶19] Around Easter, Jean approached Thomas about her concerns about Thomas' changes, and Thomas told her that he never loved her, and they only got married because she was pregnant. (R:97:33:1-25 and R:97:34:1-25).

[¶20] Jean was “falling apart” and left for a few days to see her family. (R:97:34:5-21). Jean returned after a few days and worked part-time (20-25 hours per week) at Custer District Health in Mandan making \$19.00 per hour and driving 60 miles one way. (R:97:34:16-25). It was a temporary position and Jean worked May and June. (R:97:35:9-22).

[¶21] Thomas liked to go riding on his motorcycle because the cycle was new to him. On a Sunday in July, he took his motorcycle to Bismarck. When he got back, he appeared happy and excited. Later, Jean found a motel receipt and Thomas told her he had intentions of meeting up with the woman whom he had texted with but didn't. After seeing more inappropriate text messages between the woman and Thomas, Jean confronted him. Thomas told her he no longer wanted to be married, that she could get an apartment or stay in the marital home. Jean had no family in Hazen and could not afford to maintain the home. (R:97:36:5-37:15). Jean packed some things in a suitcase and left. (R:97:37:17-25).

[¶22] Jean stayed with her sister and brother-in-law in Bemidji for a year and secured employment at the local Sanford hospital. (R:97:38:3-14). After 1½ years, Jean made a lateral move to Sanford in Fargo where her son and a daughter lived. She stayed with her son until she found a townhouse to rent in West Fargo. (R:97:38:17-25 and R:97:39:1-11). The parties' son has stayed with Jean intermittently and does not pay rent. At the time of trial, the parties' son was living with Jean due to Covid-19 related loss of employment. Jean helps the children financially if she is able. (R:97:46:1-9 and R:97:60:12-25). Jean has worked fulltime for Sanford since she was hired (R:97: 44:6-21). She works all hours available. (R:97:44:22-25 and R:97:45:2-9).

[¶23] Jean's health is good, though she takes a blood pressure medication. (R:97:45:7-18).

[¶24] Jean does not believe it would be worthwhile for her to go back to school and invest money to get her bachelor's degree at her age. (R:97:59:17-25 and R:97:60:1-9).

[¶25] Jean deposits all her wages into her West Fargo checking account and her combined net income for 2018 and 2019 was \$130,040.00. (R:97:47:11-25, R:97:48:1-9 and R:44:1).

[¶26] Thomas deposits all his income into his Union State Bank checking account and his combined net income for 2018 and 2019 was \$868,562.00. (R:97:98:10-25, R:97:99:10-24 and R:54:1).

[¶27] Jean's net average annual income for 2018 and 2019 was \$65,020.00, and Thomas' net average annual income for 2018 and 2019 was \$430,000.00. (R:44:1 and R54:1).

[¶28] Jean's lifestyle has changed since she left the family home. (R:56:5-9). Jean has been unable to pay the entire balance on her credit cards. (R:58:4-17). Jean would like to purchase the townhome she rents; however, she does not have the resources to make a

down payment. (R:97:46:13-23). She needs approximately \$17,738.00 in closing costs if she were to purchase the town home. (R:97:53:8-23 and R:47).

[¶29] Jean has gone on three trips since she left Thomas (Ireland (2018), Las Vegas (2018) and Florida (2019). (R:97:57:3-25). Jean purchased the tickets for herself, her daughters, and sisters for the trip to Ireland. Her daughters and sisters reimbursed Jean for the airline tickets. (R:97:70:11-25).

[¶30] Thomas has taken their children on international trips (British Virgin Islands and Scotland) and he paid all expenses for them. (R:97:118:13-23). He also gives money to their children at various times and in varying amounts (from a couple hundred to \$2500). (R:97:118:13-23 and R:97:116:8-16). Thomas has taken a hunting trip to New Mexico. (R:97:118:1-9).

[¶31] Over 2018 and 2019, Thomas incurred \$162,526.00 of charges on his AMEX Platinum Sky Delta One credit card, averaging \$80,000.00 per year. (R:49) (R:97:100:1-23).

[¶32] Over 2018 and 2019, Thomas incurred charges of \$60,448.64 on his Chase Hyatt credit card (R:50) averaging \$30,000.00 per year. (R:97:101:3-25 and R:97:102:1-6).

[¶33] Thomas uses his checking account for monthly living expenses such as utilities and house payment. (R:54).

[¶34] Thomas has made high dollar purchases since the parties separated: (R:97:110:23-25 and R:97:110:10-18 and R:97:110:23-25 and R:97:111:1-8 and R:97:111:11-23 and R:112:2-10). Purchases: Tractor in November 2014 (Cost: \$25,000, cash down of \$2,427, and financed \$22,527); Cessna airplane in October 2015 (Cost: \$19,900, cash down of \$5,850 and financed \$14,050); 2018 CAT 236D on 02/22/2020 (Cost: \$42,000, cash down

of \$21,000 and financed \$21,000); John Deere 6116 M on 6/28/2018 (Cost: \$85,000, cash down of \$25,000 and financed \$58,500). (R:56). Thomas also purchased some bred cows in late 2017 or early 2018. (R:97:112:21-24).

ARGUMENT

Issue 1: Based upon N.D.C.C. § 14-05-24.1 and the Trial Court’s Findings under the Ruff-Fischer guidelines the amount of the spousal support award is appropriate.

Standard of Review

[¶35] “An award amount is clearly erroneous where the amount unduly burdens the payor spouse by leaving the spouse in a nearly impossible financial position.” *Berg v. Berg*, 2018 ND 79, ¶19, 908 N.W.2d 705 citing *Stock v. Stock*, 2016 ND 1, 873 N.W.2d 38.

[¶36] “A finding of fact is clearly erroneous only if it is induced by an erroneous view of the law, if there is no evidence to support a finding, or if, although there is some evidence to support it, on the entire evidence, we are left with a definite and firm conviction a mistake has been made. We will not reverse the trial court merely because we may have viewed the evidence differently.” *Lizakowski v. Lizakowski*, 2017 ND 91, ¶19, 893 N.W.2d 508. (Internal citations omitted.)

[¶37] “On appeal, we do not reweigh conflicts in the evidence and will not reverse because we may have viewed the evidence differently. We give ‘due regard’ to the district court’s opportunity to judge the witnesses’ credibility.” *Rebel v. Rebel*, 2016 ND 144, ¶9, 882 N.W.2d 256. (Internal citations omitted.)

Spousal Support

[¶38] “Under N.D.C.C. § 14-05-24.1, the district court may order spousal support after taking the parties’ circumstances into consideration. The court must consider the needs of

the spouse seeking support and the ability of the other spouse to pay. Additionally, the district court must consider the Ruff-Fischer guidelines, including:

[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.

The court is not required to make specific findings on each factor, but this Court must be able to determine the reasons for the court's decision." *Tarver v. Tarver*, 2019 ND 189, ¶15, 931 N.W.2d 187. (Internal citations omitted.)

[¶39] "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 v. Woodward*, 2013 ND 58, ¶8, 830 N.W.2d 82 (citing *Moilan v. Moilan*, 1999 ND 103, ¶15, 598, N.W.2d 81) (emphasis added).

[¶40] Thomas is asking for minimal self-sufficiency rather than adequate self-support. Thomas seeks the bare minimum Jean could get by on while he enjoys a relatively lavish standard of living.

[¶41] Following the second remand, the trial court incorporated its previous findings and provided further explanation of its reasoning for the amount of spousal support awarded. From the trial court's previous findings and the explanation in the Order subject to this appeal, there is certainly a discernible basis shown for the \$7,000 spousal support award.

[¶42] The trial court provided the following on the second remand regarding the effect the award of \$7,000 would have on the parties' finances, including the equalization of the parties' income:

Jean earns \$57,000 and Thomas earns \$400,000. Jean's annual spousal support award is \$84,000. Thomas' annual income (\$400,000) reduced by Jean's spousal support award (\$84,000) leaves Thomas with an annual income of \$316,000. Jean's annual income (\$57,000) increased by the support award (\$84,000) results in an annual income of \$141,000. Thomas' annual income (\$316,000) is still two times more than Jean's annual income (\$141,000) after the spousal support award.

(R116:5:¶¶14-15)

[¶43] The trial court findings are clear that Thomas' income after payment of Jean's spousal support award, is more than two times Jean's income after she receives the spousal support award. Clearly, the amount of Jean's spousal support award is not an attempt to equalize the incomes of the respective parties. Additionally, it shows that Thomas is more than capable of making spousal support payment awarded to Jean without financial burden to himself; it comes nowhere near to placing Thomas "in a nearly impossible financial position". *Berg* at ¶12.

[¶44] Thomas makes an unsupported and erroneous argument that the trial court should have considered his income at the time of the parties' separation (\$230,000) and not his income at the time of trial (\$400,000). Further, Thomas' argument that his increased income is due to increased work hours is irrelevant – in the event Thomas reduces his work hours thereby reducing his income, he may move to amend the support award. Thomas

failed to present any evidence of his income tax obligation at the time of trial and the trial court properly excluded any such argument. The trial court properly evaluated the circumstances of the parties at the time of trial based on the evidence provided and it made findings accordingly.

[¶45] The trial court provided the following on the second remand regarding Jean's earning ability, expenses, and standard of living before and after the parties' separation:

Jean earns \$57,000 annually, her annual expenses are \$94,000 (based on her Rule 8.2 financial statement). Jean needs \$17,000 as a down payment to purchase a home. Jean was unable to meet her basic needs on her income and had incurred \$37,133.56 in credit card debt to support herself, despite the \$2,000 per month in spousal support she had been receiving. Jean testified she was living paycheck to paycheck, which is supported by her bank statements. After separation, Jean's standard of living changed significantly - she did not own a home, she had accumulated credit card debt, could not assist her children financially and was unable to take trips without incurring debt. Prior to the parties' separation they traveled to see children at college, spent two weeks in Scotland, spent time in New York and Washington D.C. and were spending more on household items etc. The spousal support award will assist Jean in being able to pay off credit card debt, purchase a home and make her monthly mortgage payments, while providing some security for retirement, which she would have had if the divorce had not occurred.

(R116:2-¶¶5, 6, 8, 9, 10, 11, 14).

[¶46] At the hearing on remand Jean requested monthly spousal support of \$10,000 for 30 years. (R115:5:1-4). Thomas requested monthly spousal support of \$7,000 for 24 months or alternatively a lower amount to last no longer than the time Thomas reached age 65. (R115:7:22-8:2). The trial court awarded Jean \$7,000 per month until Thomas reached 65, his age of retirement (72 months).

[¶47] Jean has a monthly budget shortfall of \$3,100 for her minimum monthly expenses after utilizing her full wages. Jean was accruing debt and had not been able to save a down payment to purchase a home, while receiving \$2,000 of interim support. To purchase a home, Jean needs an additional \$17,738.32 cash for closing. (R.47) Additionally, Jean has accumulated debt of \$37,133.00. It will take Jean 14 months to save for the down payment for a house and to pay off her accrued debt, assuming she is able to apply the balance of the spousal support award (\$3,900) toward those expenses. Jean's spousal support award is for 72 months – 14 of which will be utilized to reduce her debts and allow her to return to a level of minimum self-sufficiency. Once Jean achieves minimal self-sufficiency, the balance of her monthly support award (\$3,900.00) times the remaining term (58 months) amounts to an award of \$226,200 which will serve to mitigate the effects of the divorce on Jean's financial situation. Jean will be able to utilize this amount to bring her closer to adequate self-support, rather than minimal self-sufficiency.

[¶48] Thomas has failed to present any evidence that he is unable to make the monthly spousal support payment of \$7,000 or that it would be an undue burden to him. Thomas acknowledges that Jean supported him while he acquired his medical degree. (R115:5:13-14). Thomas does not dispute that Jean's standard of living has decreased as was supported by the evidence. Meanwhile, the evidence showed that Thomas' standard of living

increased. Thomas' only argument seems to be that Jean isn't entitled to share in the fruits of their labors. Thomas seeks to provide Jean with spousal support to provide her with minimal self-sufficiency rather than adequate self-support. This is a direct contradiction to the overriding sentiment of this Court.

[¶49] "...[S]pousal 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. "While both parties will likely experience a decline in their standards of living post-divorce, we have held that courts should equitably balance the burdens of the divorce by forcing both parties to share in that decline." *Pearson v. Pearson*, 2009 ND 154, ¶26, 771 N.W.2d 288.

CONCLUSION

[¶50] The amount of spousal support awarded by the trial court is supported by the evidence presented at trial, is clearly reflected in the trial court's findings, and is aimed at providing Jean with adequate self-support. Based on the parties' stipulated property distribution, the trial court's thorough application of the Ruff-Fischer guidelines, and the evidence presented at the time of trial, Jean is clearly in need of and entitled to spousal support in the amount determined. Thomas is able to pay the amount of the spousal support award without an undue burden to himself. Thomas has failed to show the trial court's findings to be clearly erroneous based on the evidence presented at trial.

[¶51] The amount of spousal support was properly awarded, and Jean respectfully requests that the Judgment be affirmed.

¶52] Dated this 21st day of July, 2022.

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Supreme Court No. 20220141

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

Mercer Co. Court No. 29-2019-DM-00050

**Jean Kaspari,
v.
Thomas Kaspari**

**Plaintiff and Appellee

Defendant and Appellant**

CERTIFICATE OF COMPLIANCE

[¶1] This Appellee's Brief complies with the page limit of 38 for the Brief set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, as the Brief consists of 18 pages.

[¶2] Dated this 21st day of July, 2022.

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Jean Kaspari,

v.

Thomas Kaspari

Plaintiff and Appellee

Defendant and Appellant

CERTIFICATE OF SERVICE

[¶1] The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the following documents:

a. Appellee's Brief

by email at the below address(es) upon:

Jennifer Gooss
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[¶2] Dated this 21st day of July, 2022.

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