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**IN THE SUPREME COURT**

**STATE OF NORTH DAKOTA**

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Thomas D. Varty,	)	
	)	
Plaintiff, Appellee,	)	Supreme Court No. 20180279
	)	
vs.	)	Williams County Civil No.
	)	53-2011-DM-00565
Kathleen A. Varty,	)	
	)	
Defendant, Appellant.	)	

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**REPLY BRIEF OF DEFENDANT/APPELLANT, KATHLEEN A. VARTY**

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Appeal from the Findings of Fact, Conclusions of Law and Order for Amended Judgment, dated May 11, 2018, and Amended Judgment dated May 18, 2018,  
District Court of Williams County  
Northwest Judicial District  
The Honorable Josh B. Rustad

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## **I. LAW AND ARGUMENT**

**[¶1] 1. The Parties Stipulated Agreement Requires the Plaintiff to prove a Material Change in Circumstances.**

[¶2] The Plaintiff argues that the spousal support clause in the parties' stipulated divorce does away with the requirement that the Plaintiff prove a material change in circumstances in order to receive a modification of spousal support. However, the plain language of the District Court's Judgment only states that spousal support "may be reduced" by a reduction of the Plaintiff's income. The Judgment does not state anything about doing away with the burden imposed on the Plaintiff. The parties certainly could have done so, but the reality is, they didn't. The marital termination agreement entered by the parties set out that the Plaintiff's spousal support obligation could be reduced based on several circumstances, but without any further instruction from the parties' agreement, the Court should have applied the appropriate standard for modification of the parties' spousal support. As the Defendant has previously argued, the District Court's decision in this matter is clearly erroneous, as it is not based on the actual record, and no justification for the reduction in spousal support to \$500 is ever actually explained.

**[¶3] 2. The District Court's Findings are not based on the Record.**

[¶4] The District Court's decision to reduce spousal support is not based on the record in this matter. As the Defendant has previously argued, the \$500 spousal support figure was never mentioned at the hearing in this matter, and appeared for the first time in the

Plaintiff's proposed order, filed after the hearing. See Appellant's Brief at ¶65. If the District Court's findings are truly based on the record in this matter, shouldn't the District Court have made some explanation of why this figure was appropriate, or even mentioned it in the findings at all? In scrambling to somehow justify the District Court's decision in this matter, the Plaintiff argues that, "There was testimony that Kathleen's monthly health insurance payment was \$494.62. It can be deduced that the District Court came to the amount of \$500 because at least Kathleen's health insurance would be paid." If the District Court's decision was truly based on the record, why would the Supreme Court need to deduce anything? The North Dakota Supreme Court has stated that,

"The trial court's findings of fact and conclusions of law should be stated with sufficient specificity to assist the appellate court's review and to afford a clear understanding of the trial court's decision." Rothberg v. Rothberg, 2006 ND 65, ¶ 14, 711 N.W.2d 219.

The Court's \$500 figure is not discussed with any specificity in the District Court's Amended Judgment, nor is it discussed in the Plaintiff's original motion. The Plaintiff's invented rationale for the District Court's decision, that it was made to pay for the Defendant's health insurance, is in direct contrast to the Court's findings of fact, which were written entirely by the Plaintiff, and which dismiss and denigrate the Defendant's medical condition at length. Doc Id. 92 at ¶20-23.

[¶5] The District Court has failed to explain why this figure is appropriate, and as such, the Supreme Court cannot have a clear understanding of the District Court's decision. The District Court's decision is clearly erroneous.

[¶6] The District Court's decision in this matter also appears to unfairly shift the burden of proof from the Plaintiff to the Defendant. The District Court's decision states

that, “Defendant has failed to show that she had a need for spousal support at anything close to the current levels.” Id. at ¶40. However, the burden to prove that the Defendant’s need for spousal support had been reduced was on the Plaintiff, and the parties stipulated agreement was entered based on the Defendant’s existing medical needs. The District Court actually heard evidence establishing that the Defendant still has medical needs justifying spousal support. See Tr. at 80-83. At the hearing in this matter it was the Plaintiff, not the Defendant, who failed to prove that the Defendant’s medical condition had changed in a way which indicates a reduced need for support. In placing the burden on the Defendant to establish that she had a continued need for spousal support, the District Court committed a clear error.

¶7] For these reasons, and for the reasons set forth in the Appellant’s Brief in this matter, the Defendant requests that the Court reverse the District Court’s Findings of Fact, Conclusions of Law and Order for Amended Judgment and Decree, dated May 11, 2018, and Amended Judgment, dated May 18, 2018.

¶8] RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of November, 2018.

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**WORD COUNT CERTIFICATE**

The undersigned certifies that this Brief contains 2000 words or less, as required by N.D. R. App. P. 32(a)(8)(A).

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**CERTIFICATE OF SERVICE**

[¶9] I hereby certify that a true and correct copy of the foregoing Reply Brief of Defendant/Appellant, Kathleen Varty, was served electronically on this 29<sup>th</sup> day of November, 2018, addressed to:

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