In the Supreme Court
State of North Dakota

No. 20120319

In Re: Matthew Larson Trust Agreement Dated May 1, 1996 and
In Re: Matthew Larson Irrevocable Retirement Trust II Agreement
Dated December 1, 2009

William E. and Patricia A. Clairmont,
Petitioners/Appellants

vs.

Greg Larson, parent and guardian of N.J.L. and L.M.L.,
Respondent/Appellee

and

Sean Smith as Trustee of the Elizabeth H. Larson Trust Agreement Dated May 1, 1996; Jared D. Larson Trust Agreement Dated May 1, 1996; and Samuel G. Larson Trust Agreement Dated May 1, 1996,
Respondents/Appellees

Appeal from Memorandum Opinion, Findings of Fact, Conclusions of Law and Order for Judgment entered on May, 24 2012, and Judgment dismissing with prejudice Petitioners' Petition entered on July 3, 2012,
Civil No. 09-2011-CV-00922
Cass County Courthouse, East Central Judicial District
The Honorable Steven L. Marquart, Presiding

BRIEF OF APPELLANTS

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I. STATEMENT OF ISSUE

[1] Whether the district court erred in determining that the Clairmonts failed to prove by clear and convincing evidence a mistake of law at the time of the creation of the trusts, when it is undisputed the Clairmonts' intent was for the trusts to benefit only their lineal descendants, the Clairmonts did not understand the legal effect of the trusts, and none of their lawyers or advisors informed them their ex-son-in-law's children from a subsequent marriage could potentially receive trust assets.

II. STATEMENT OF THE CASE

[2] This is an appeal from the district court's Judgment on July 3, 2012, dismissing with prejudice Petitioners' Petition for Interpretation or Reformation of Trusts. (App. at 31-32). This case concerns living settlors who provided undisputed testimony that their intent at the time of creating the trusts in dispute was for the trusts to only benefit their lineal descendants. The settlors believed the terms of the trusts had the legal effect of ensuring that only their lineal descendants would benefit from the trusts. (Tr. at 35, 82). Subsequently, the settlors were informed their ex-son-in-law's children from a subsequent marriage could potentially receive trust assets under the terms of the trusts. The settlors petitioned the district court to reform the trusts to conform with the settlors' undisputed original intent.

[3] William E. Clairmont and Patricia A. Clairmont have a daughter named Cindy Clairmont-Larson. (Tr. at 20). Cindy married Greg Larson in 1979. (Tr. at 176). Cindy and Larson have four children together. (Tr. at 169). Cindy and Larson divorced in 2001. (Tr. at 176). Larson subsequently remarried and had twin girls in 2004, with his new wife. (Tr. at 23, 169). One of Cindy and Larson's children is Matthew Larson. Matthew tragically died on March 4, 2011, leaving no will, spouse or descendants. (Tr. at

22, 48, 72). Larson's children with his second wife are Matthew's half-siblings, but they are of no blood relation to the Clairmonts. (Tr. at 23, 169).

[4] Over the years, the Clairmonts have established two trusts, which are in effect today, that designate Matthew as the beneficiary. The two trusts are known as the "40-Year Trust" (labeled Trust 1 by the district court), and the "Retirement Trust" (labeled Trust II by the district court). (App. at 50-62, 285-321). Each trust contains language that states that in the event Matthew dies without a wife of the age of at least sixty years old and with no descendants, the trust assets are to be distributed to Matthew's brothers and sisters. (App. at 53-54, 293). It is undisputed that the Clairmonts intended "brothers and sisters" to encompass only their lineal descendants (i.e., not their ex-son-in-law's children from a subsequent marriage who have no blood relation to the Clairmonts). (Tr. at 35, 82).

[5] Upon learning that Larson believed that his children from his subsequent marriage were beneficiaries under the Clairmonts' trusts, the Clairmonts filed a Petition for Interpretation or Reformation of Trusts. (App. at 6-9). The Clairmonts sought a declaratory judgment interpreting the term "brothers and sisters" as including only full-blood siblings who are lineal descendants of the Clairmonts, or in the alternative, reforming the trusts to comply with the Clairmonts' clear intent. (App. at 6-9).

[6] This case proceeded to trial on April 4, 2012. State Bank & Trust ("State Bank"), now known as Bell State Bank & Trust, as trustee of one of the trusts in question, joined the Clairmonts' Petition and appeared at trial. (App. at 10-13). Although not formally responding to the Petition or filing any written response, Sean Smith, as trustee of the other trust in question, also appeared at trial. (Tr. at 74). Larson, as parent and

guardian for N.J.L and L.M.L, the minor half-siblings of Matthew, responded to the Petition and asked the district court to determine that N.J.L and L.M.L, who are Larson's children with his second ex-wife and have no blood relation to the Clairmonts, are equal beneficiaries to Matthew's full-blood siblings under both trusts. (App. at 16-17).

[7] After a one day trial, the district court entered Judgment on July 3, 2012, dismissing Petitioners' Petition with prejudice. (App. at 31-32). The Clairmonts filed their notice of appeal on August 9, 2012. (App. at 33-34).

III. STATEMENT OF FACTS

A. Background

[8] William E. Clairmont and Patricia A. Clairmont ("The Clairmonts") have four children together. (Tr. at 18). One of their children is a daughter named Cindy Clairmont-Larson ("Cindy"). (Tr. at 20). Cindy married Greg Larson ("Larson") in 1979. (Tr. at 176). Cindy and Larson had four children together named Samuel, Matthew, Elizabeth and Jared. (Tr. at 169). Cindy and Larson divorced in 2001. (Tr. at 176). Larson subsequently remarried and had twin girls in 2004, with his second wife. (Tr. at 23, 169). Matthew tragically died on March 4, 2011, leaving no spouse or descendants. (Tr. at 22, 48, 72). There is no evidence that Matthew ever signed a will. (Tr. at 32, 91).

[9] The Clairmonts had a very successful construction business and later a successful real estate development business. (Tr. at 17, 18). Not surprisingly, the Clairmonts desired to use their accumulated wealth to secure a better life for their children and grandchildren. (Tr. at 78). As part of the Clairmonts' comprehensive estate plan, they established various trusts to benefit their children and grandchildren over the years, using several different attorneys. (Tr. at 23, 31, 36, 44, 57).

[10] In creating various trusts over the years, it is undisputed the Clairmont's intent has always been to benefit their lineal descendents (i.e., their children, grandchildren, so on). (Tr. at 35, 63, 73, 74, 78, 82, 89, 97). The only non-descendant they ever intended to include as a beneficiary is a surviving spouse of a deceased grandchild, but only if the wife was at least sixty years old (i.e., likely a long-term successful marriage) and even then only as a contingent beneficiary. (Tr. at 88). There is no testimony indicating the Clairmonts ever intended to create any trusts that benefited anyone who was not a lineal descendant. As the Clairmonts testified to several times, they did not believe the trust language could possibly be construed to include children of an ex-son-in-law with a subsequent wife as beneficiaries of any trust. (35, 63, 78). None of their attorneys, including Larson, or advisors ever considered or explained that the trusts could be interpreted in such a fashion. (Tr. at 108, 115, 128, 136, 166, 179).

B. <u>First Trust for Grandchildren – 1991 Clairmont GC Trust</u>

[11] The first trust the Clairmonts created for the benefit of their grandchildren was the Clairmont GC Trust dated December 28, 1991 ("1991 GC Trust"). (App. at 35-49; Tr. at 25). The 1991 GC Trust was drafted by Carol Ronning Kapsner, who also served as the initial trustee. (Tr. at 24). The 1991 GC Trust was a pooled trust that created separate shares for each of the Clairmonts' eight grandchildren alive at the time of creation. (Tr. at 25-26). Those eight grandchildren are specifically named in Article III, Paragraph (1) and defined as the "beneficiaries" of the trust. (App. at 35-36; Tr. at 25).

[12] The 1991 GC Trust provided for discretionary distributions of income and principal until each named grandchild of the Clairmonts turned 40 years old. (App. at 39-40). Upon turning 40, each grandchild would receive specified percentages of principal

upon reaching certain ages (43 and 46), until the age of 50, when the grandchild would receive his/her entire share outright. (App. at 41-42; Tr. at 27). Notably, Article VI, Paragraph B(3) of the 1991 GC Trust states:

> If such grandchild shall die before receiving complete distribution of his or her trust share, the Trustee shall distribute the balance of his or her share to his or her surviving issue by right of representation; or, if such grandchild should die without issue, then to the other living grandchildren named above and to the issue of any deceased grandchild of mine named above by the right of representation.

(App. at 42)

Thus, if the 1991 GC Trust were still in place, Matthew's share would go to the Clairmonts' other grandchildren (i.e., not Larson's children of no blood relation from a subsequent marriage). This is consistent with the Clairmonts' intent to keep the assets in the family and benefit their grandchildren/lineal descendants. (Tr. at 28, 35, 73, 78).

[13] After the 1991 GC Trust was created and funded, a ninth Clairmont grandchild was born, Samantha Carr ("Samantha'). (Tr. at 29). The Clairmonts' established a separate trust that was identical to the 1991 GC Trust to benefit Samantha. (Tr. at 29). By this time, Carol Ronning Kapsner was appointed to the North Dakota Supreme Court. (Tr. at 29). The Clairmonts appointed Bismarck attorney, Sean Smith, who they knew through their church, as the successor trustee of the 1991 GC Trust. (Tr. 29).

C. <u>Creation of Separate 1996 40-Year Trusts</u>

1. Separate 40-Year Trusts Created

[14] By 1996, the Clairmonts had one additional grandchild who was not part of the 1991 GC Trust. (Tr. at 29). As noted above, a separate trust had been created for

Samantha in order that she would be treated the same as the Clairmonts other grandchildren specifically named in the 1991 GC Trust. (Tr. at 29). In order to address a technical GST tax issue and to make the administration of additional gifts to the Clairmonts' grandchildren easier to manage and account for, the Clairmonts decided to create separate trusts for each grandchild. (Tr. at 80, 105). The Clairmonts hired Larson, at the time the Clairmonts' son-in-law, to draft the 40-Year trusts for Matthew and the other grandchildren. (Tr. at 31). The 40-year Trust for Matthew was created on May 1, 1996, along with identical 40-year Trusts for the other Clairmont grandchildren then living. (App. at 50-62; Tr. at 30, 106). The Clairmonts named Sean Smith as the trustee of all of the 40-year Trusts. (App. at 58; Tr. at 151). As the dispositive terms of the individual 40-year Trusts were essentially identical to the 1991 GC Trust, the 1991 GC Trust was "merged" with the individual 40-year Trusts for the oldest eight Clairmont grandchildren. (Tr. at 106). Matthew is the primary beneficiary of the 40-year Trust (App. at 50).

[15] Although the 40-year Trusts have the same mandatory distributions starting at age 40 and the trusts terminate at age 50, the terms are somewhat changed from the 1991 GC Trust with respect to distributions upon a grandchild's death. (App. at 53-54). Article VI, Paragraph C, of the 40-year Trusts now includes a general power of appointment to address the GST tax issue. (App. at 53-54; Tr. at 105). Viewing the 40-year Trusts as a whole, and particularly the restrictive distribution provisions, the 40-Year Trusts exemplify the Clairmonts' intent to restrict access to the assets in each 40-year Trust to their own lineal grandchildren.

[16] Article VI, Paragraph C of the 40-year Trust further provides that if the grandchild has no will or does not specifically exercise this power of appointment, the assets would go to his/her "surviving issue by right of representation." (App. at 54). This is the same as the 1991 GC Trust. However, "if the Beneficiary [grandchild] leaves no surviving issue, then equally to Beneficiary's *brothers and sisters* and the issue of a deceased brother and sister by right of representation." (emphasis added)(App. at 54). This is a change from the 1991 GC Trust, which distributed the share of a deceased grandchild who left no issue to the other Clairmont grandchildren named in the 1991 GC Trust. (App. at 43; Tr. at 26) The clear intent of this change was to keep Matthew's or any deceased grandchild's share within his immediate family, rather than splitting it between his siblings *and his cousins*. (Tr. at 140).

[17] Ironically, the 1996 40-year Trusts were drafted by Larson. (Tr. at 31). At the time of drafting, Larson was still married to Matthew's mother/the Clairmonts' daughter. (Tr. at 176). When the 40-year Trusts were signed, the Clairmonts had no knowledge of any marital problems and never gave any thought to the possibility that Larson would divorce Matthew's mother, remarry, have more children with his second wife, and make a claim that these half-siblings of Matthew should be considered beneficiaries as "brothers and sisters" of Matthew under the 40-year Trusts. (Tr. at 35, 90). As repeatedly and clearly stated by the Clairmonts at trial, if they had been informed that using the term "brothers and sisters" could be interpreted to include half-siblings who are not their own grandchildren and have no family relation to them, they would have used different language. (Tr. at 35, 73, 82). Such an interpretation or result was

never their intent and would be a clear mistake in the expression of the Clairmonts' intended beneficiaries. (Tr. at 35, 63, 73, 74, 78).

[18] It should be noted that each of the 40-year Trusts were amended effective November 28, 2009, to provide for a successor trustee and add a "Trustee Advisory Board." (App. at 325-331; Tr. at 58, 114). None of the dispositive language was changed, and the amendment is irrelevant to the issues being decided in this case.

2. GST Tax Issue and General Power of Appointment

[19] After the 1991 GC Trust was created, the Clairmonts discovered a potential tax issue with the 1991 GC Trust. In simple terms, as drafted, gifts by the Clairmonts to the GC Trust would be subject to the Generation Skipping Transfer Tax ("GST Tax"). (Tr. at 105). The Clairmonts were advised to add a "general power of appointment" for each grandchild in order to avoid the GST tax issue. (Tr. at 105). A general power of appointment would give each grandchild the power to direct through his/her will where his/her share of the trust assets would go if the grandchild died before receiving his/her entire share. (Tr. at 143). Including the general power of appointment language would allow any gifts to the trust to be exempt from the GST tax. (Tr. at 105).

[20] As explained by attorney, William Guy, a "general power of appointment" does not need to be drafted so broadly as to give the holder/grandchild the power to give the assets to anyone he/she chooses. (Tr. at 144). A general power of appointment can be limited to giving the holder/grandchild only the power to appoint the assets to the creditors of his or estate and still qualify under the tax code as a "general power of appointment." (Tr. at 144). Notably, this is how William Guy drafted the Retirement Trust (discussed below) to address the GST tax issue. (Tr. at 144).

[21] There was no testimony at trial showing that Larson specifically discussed or explained the difference between a broad general power of appointment and a limited general power of appointment to the Clairmonts. Further, there was no explanation given by Larson why a limited general power of appointment was not used, as William Guy did in the Retirement Trust. Tellingly, Patricia Clairmont did not understand that Matthew had the power to distribute the trust assets through his will. (Doc. #95, Dep. of Patricia Clairmont page 34, lines 13-14). Use of a limited general power of appointment would have fixed the GST tax issue while also being consistent with the Clairmonts' intent to limit the possible beneficiaries of the trust to their grandchildren and lineal descendants.

D. 1997 Revocable Living Trusts

[22] Shortly after creating the 1996 40-year Trusts, the Clairmonts decided to meet with Attorney William Guy to do more complete estate planning. (Tr. at 108). As part of their estate planning, the Clairmonts each signed Revocable Living Trust Agreements dated November 11, 1997. (App. at 63-135, 136-212). As William Guy stated, these Revocable Living Trusts are the "foundation" of the Clairmonts' estate plan. (Tr. at 133). As such, although not directly at issue in this case, these trusts do show the Clairmonts' overall estate planning intent.

[23] The Clairmonts' Revocable Living Trusts demonstrate that their clear overall intent was to leave their assets and estate to their lineal descendants (i.e., children, grandchildren and so on). (Tr. at 82). Article Two, Section 15 clearly defines "descendants" and "issue" as persons who are "lineally descended" from the named person. (App. at 66, 139). When both William and Patricia Clairmont have died, Articles Eight and Nine of each trust create separate trusts for the Clairmonts' children,

and upon a child's death, that share would go to "my descendants" or "descendants of mine," referring to William and Patricia Clairmonts' lineal descendants. (App. at 82-91, 153-162). It is clear under the Clairmonts' Revocable Living Trusts that Larson's children with his second wife would never be beneficiaries and never receive any part of the Clairmonts' estate, as is the Clairmonts' overriding intent with respect to any of the trusts they have created. (Tr. at 63, 74, 82).

E. Creation of Separate Retirement Trusts

1. Initial 1998 Retirement Trusts

[24] After funding the 40-year Trusts, and as part of their continuing estate planning with William Guy, the Clairmonts decided to create additional trusts for Matthew and their grandchildren. (Tr. at 44). As William Clairmont stated, he felt he had sufficiently funded the 40-year Trusts and now wanted to make sure his grandchildren were taken care of when they reached retirement age. (Tr. at 44). The Clairmonts created the Matthew J. Larson Irrevocable Retirement Trust dated December 23, 1998, as well as identical trusts for each of Matthew's brothers and sisters and their other grandchildren (the "1998 Retirement Trusts"). (App. at 213-252). The 1998 Retirement Trusts were drafted by Attorney William Guy and named Norwest Bank as the original trustee of the trust. (App. at 251-252, Tr. at 110). Norwest Bank later became Wells Fargo, who was then replaced by State Bank as trustee in 2006. (App. at 253-254, Tr. at 112).

2. 2009 Retirement Trusts

[25] In order to achieve estate/tax planning benefits, the 1998 Retirement Trusts included specific powers retained by the Clairmonts as grantors/settlors which made the trusts "defective grantor trusts" for income tax purposes. (Tr. at 115, 116.)

This made the Clairmonts personally responsible for paying the tax on any income earned by the Retirement Trusts, and thus allowed the trusts to grow and accumulate "tax free," but still be outside of the Clairmonts' taxable estate. (Tr. at 116). However, these "grantor powers" were set to expire under the terms of the trusts on December 31, 2009. (Tr. at 115).

[26] In order to continue the tax benefits and maintain the Retirement Trusts as "defective grantor trusts," new "replacement" trusts were created to continue these powers. (Tr. at 46) The Clairmonts created the Matthew J. Larson Irrevocable Retirement Trust II dated December 1, 2009, and identical "Retirement Trusts" for Matthew's brothers and sister, as well as their other grandchildren. (App. at 285-321). The 2009 Retirement Trusts were drafted by attorney Brian Bergeson, who essentially copied the 1998 Retirement Trust drafted by William Guy. (Tr. at 71, 115). The only change was the technical change explained above to extend the "defective grantor trust" powers in Article Five, Paragraph 1(a)(1)(b). (App. at 291-292, Tr. at 115). The dispositive terms of the 2009 Retirement Trusts and the 1998 Retirement Trusts remained the same. (Tr. at 115). Similar to the GC Trust and the 40-year Trusts, because the distributive terms were identical, the 1998 and 2009 Retirement Trusts were merged for each grandchild. (Tr. at 164). The 2009 Retirement Trust is the current operative trust agreement for Matthew at issue in this case.

[27] The Retirement Trust does not distribute any income or principal until the grandchild reaches age 65. (App. at 291). Upon the grandchild reaching age 65, the trust then provides for annual distributions of income and principal based on the grandchild's life expectancy. (App. at 292).

[28] Upon the death of the grandchild prior to distribution of all trust assets, the Retirement Trust grants the grandchild a limited general power of appointment. (App. at 293; Tr. at 144). As noted above, this limited general power of appointment addresses the technical requirement to keep any gifts to the Trust exempt from GST tax. (Tr. at 144). The limited general power of appointment in the Retirement Trusts, originally drafted by William Guy, only allows Matthew or any other grandchild to give the trust assets "to the creditors of his estate" if exercised through a will. (App. at 293, Tr. at 144). Common sense says it is very unlikely that any grandchild would exercise the limited power of appointment to give assets to creditors, so this power is really for tax purposes only. (Tr. at 144).

[29] If the power of appointment is not exercised, then any remaining trust assets remain in trust for the benefit of the grandchild's "descendants." (App. at 293). If the grandchild dies with no descendants, Article Five, Paragraph 1(b)(2)(b)(i) of the Retirement Trust provides that the assets remain in trust for the benefit of any surviving spouse who has reached age 60. (App. at 293). As stated by William Clairmont, the intent was to include a grandchild's spouse as a contingent beneficiary, but only if the wife was at least sixty years old. (Tr. at 88). William Clairmont believed that by requiring a spouse to reach age 60, it would mean there likely was a long-term marriage and it would be extremely unlikely any divorce would occur at that age. (Tr. at 88). Essentially, the Clairmonts believed a long-term spouse was "part of the family" at that age and intended to treat such a spouse as a family member.

[30] However, if there is no surviving spouse, subparagraph (ii) of that section then provides the trust assets are to be held in trust "for the *brothers and sisters* of

Matthew [or each respective grandchild] then living. . . ." (App. at 293). Thus, the same language is in dispute in both the Retirement Trust and the 40-year Trust.

[31] It is important to note that by 2009, N.J.L and L.M.L were born. (Tr. at 169). The Clairmonts knew that Larson had remarried and had these two children with his second wife, but had never met or had any contact with them since they were in no way part of the Clairmont family. (Tr. at 23). They never believed or intended the term "brothers and sisters" used in the 2009 Retirement Trusts could be interpreted to include half-siblings who were not their own grandchildren. (Tr. at 35). Moreover, none of the Clairmonts' attorneys, trustees or advisors at that time ever considered that "brothers and sisters" could be interpreted as including these half-siblings. (Tr. at 108, 115, 128, 136, 166, 179). This language was carried forward from the 1996 40-year Trust and the 1998 Retirement Trust when Larson was still married to Matthew's mother and there was no belief or consideration given that "brothers and sisters" could somehow now include Larson's children from a second marriage. (Tr. at 74, 89).

[32] The testimony at trial was clear and undisputed. The Clairmonts never intended to include unrelated half-siblings by using the term "brothers and sisters." (Tr. at 35, 74, 82). All of the witnesses confirmed that they knew the Clairmonts never intended such an interpretation. (Tr. at 103, 115, 124, 126, 128, 137-38, 152, 154, 166). Moreover, common sense dictates that the Clairmonts would never intend to include Larson's children with his second ex-wife as beneficiaries of any trust. As William Guy stated, based on his many years of experience, if the Clairmonts had intended to do so, it would have been a first for him, and he would have used different language in the Retirement Trust to accomplish such an unusual intent. (Tr. at 137-38).

[33] Larson admitted that he never discussed or raised the issue with the Clairmonts that he is now arguing regarding the term "brothers and sisters." (Tr. at 178-79). The prior 1991 GC made it clear that if a grandchild died, his/her share would stay within the Clairmont descendants. (App. at 42). If Larson had raised this issue of half-siblings being "brothers and sisters" with the Clairmonts, they would have clearly directed him to use different language in the trust. (Tr. at 35, 82). Based on Larson's current position, he changed the dispositive terms of the GC Trust in the 40-year Trust without discussing this change with the Clairmonts and knowing it was contrary to their intent. (Tr. at 35, 82, 178-79).

[34] In sum, Matthew currently has a 40-year Trust and a Retirement Trust. As Matthew passed away with no issue/descendants and no spouse, the contingent beneficiaries of his trusts are his "brothers and sisters." The Clairmonts respectfully request the Court find the district court erred in refusing to reform the trust agreements under N.D.C.C. § 59-12-15 to conform with their clear and undisputed intent.

IV. STANDARD OF REVIEW

[35] Findings of fact are subject to the clearly erroneous standard of review. Hill v. Weber, 1999 ND 74, ¶ 12, 592 N.W.2d 585. A finding of fact is clearly erroneous "if, although there is some evidence to support it, a reviewing court, on the entire record, is left with a definite and firm conviction that a mistake has been made, or if it was induced by an erroneous view of the law." Id. In North Dakota, "questions law [are] fully reviewable on appeal." Moran v. North Dakota Dept. of Transp. 543 N.W.2d 767, 769. A mixed question of fact and law is "fully reviewable by this Court without the strictures imposed by Rule 52(a), NDRCivP." Earth Builders, Inc. v. State, for and on

Behalf of State Highway Dept., 325 N.W.2d 258, 259 (N.D. 1982). The interpretation and application of a statute is a question of law which is reviewed de novo and hence fully reviewable. Johnson v. Taliafero, 2011 ND 34, ¶ 9, 793 N.W.2d 804. This case concerns a mixed question of fact and law as the only dispute in this case is the interpretation and application of N.D.C.C. § 59-12-15.

V. LAW AND ARGUMENT

A. The district court erred in determining that the Clairmonts failed to prove by clear and convincing evidence a mistake of law at the time of the creation of the trusts.

[36] A court's primary objective in construing a trust instrument is to ascertain the settlor's intent." Langer v. Pender, 2009 ND 51, ¶ 13, 764 N.W.2d 159. Accordingly, courts have authority to reform the terms of an unambiguous trust to conform to the settlor's intent. Agnes M. Gassmann Revocable Living Trust v. Reichert, 2011 ND 169, ¶ 7, 802 N.W.2d 889. N.D.C.C. § 59-12-15 provides:

> The court may reform the terms of a trust, even if unambiguous, to conform the terms of the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

In 2007, the legislature enacted N.D.C.C. § 59-12-15, as part of the adoption of the Uniform Trust Code. N.D.C.C. § 59-12-15 is identical to Section 415 of the Uniform Trust Code. Section 415 of the Uniform Trust Code "copies" its language from the Restatement (Third) of Property: Wills & Other Donative Transfers § 12.1. See UTC 415 cmt.

1. There is clear and convincing evidence the Clairmonts made a mistake of law in inducement.

[37] Under N.D.C.C. § 59-12-15, a court first must determine whether there is clear and convincing evidence of a mistake of fact or law in expression or inducement. Clear and convincing evidence is a higher standard of proof than preponderance of evidence. Restatement (Third) of Property: Wills & Other Donative Transfers § 12.1, cmt e. While clear and convincing evidence defies quantification, it does not rise to the level of absolute certainty or beyond a reasonable doubt. Id.

[38] A "mistake of expression" is a mistake which "occurs when the terms of the trust misstate the settlor's intention, fail to include a term that was intended to be included, or include a term that was not intended to be excluded." Id., at cmt i. A "mistake of inducement" is a mistake which "occurs when the terms of the trust accurately reflect what the settlor intended to be included or excluded but this intention was based on a mistake of fact or law. Id. This dispute concerns a mistake of inducement.

[39] The terms of the trust reflect the terms the Clairmonts intended to be included. The Clairmonts intended to use the term "brothers and sisters," as they believed brothers and sisters would only include their own lineal descendants. (Tr. at 35, 82). None of the Clairmonts' attorneys or advisors informed the Clairmonts that "brothers and sisters" could be construed to include the children of their ex-son-in-law from a subsequent marriage. (Tr. at 108, 115, 128, 136, 166, 179).

[40] In North Dakota, neither the legislature nor the courts have determined what constitutes a mistake of law under N.D.C.C. § 59-12-15.[1] The plain meaning of a word may be determined through reliance on the dictionary definition. See Wanner v. N.D. Worker's Comp. Bureau, 2002 ND 201, ¶ 25, 654 N.W.2d 760. Black's Law Dictionary defines a mistake of law as "a mistake about the legal effect of a known fact or situation." Black's Law Dictionary, 1092 (9th ed. 2009). This definition of "mistake of law" is in line with what courts have found to constitute a mistake of law in the context of reforming trusts. In re Luin Gyle Atterberry Revocable Trust, 2012 WL 4839866, *2 (defining a mistake of law as "a mistake by one side or the other regarding the legal effect of an agreement" in interpreting a Michigan statute identical to N.D.C.C. § 59-12-15); Holdren v.Garrett, 2011 WL 825637, *7 (defining a mistake of law as a mistake that "occurs where a person is truly acquainted with the existence or nonexistence of facts, but is ignorant of, or comes to an erroneous conclusion as to, their legal effect" in interpreting an Ohio statute identical to N.D.C.C. § 59-12-15).

[41] Here, there is no dispute that the Clairmonts were mistaken as to the legal effect of the trusts. (Tr. at 35, 82). The district court found that the legal effect of the term "brothers and sisters" encompassed giving trust assets to Matthew's half-blood brothers and sisters (i.e., the Clairmonts' ex-son-in-law's children from a subsequent marriage, who are of no blood relation to the Clairmonts). (App. at 29). The Clairmonts believed that the language "brothers and sisters" would ensure the trust assets were only distributed to their lineal descendants (i.e., grandchildren, great-grandchildren, etc). (Tr.

[1] The North Dakota Century Code defines "mistake of law" for two specific Titles, neither of which is applicable in this case. See N.D.C.C. § 12.1-5-09 (defining mistake of law under the criminal code (Title 12)); N.D.C.C. § 9-03-14 (defining mistake of law for purposes of Title 9).

at 35, 82). As the Clairmonts' undisputed testimony demonstrates they were mistaken to the legal effect of the trusts, the Clairmonts have shown by clear and convincing evidence that they have made a mistake of law in inducement.

[42] Despite the fact it is undisputed the Clairmonts did not understand the trusts could be construed to distribute trust assets to non-lineal descendants, the district court found that the Clairmonts did not make a mistake of law. (App. at 28). The district court found the Clairmonts did not make a mistake of law because (1) the Clairmonts are presumed to know the law and hence ignorance of the law is not a mistake of law, and (2) the Clairmonts did not know of N.D.C.C. § 30.1-04-07 and therefore the Clairmonts could not misapprehend the law. (App. at 24-25). The district court relied on a footnote in Hovden v. Lind, case concerning a contracts dispute, in finding the Clairmonts were not mistaken to the law. See Hovden v. Lind, 301 N.W.2d 374, 379 n. 2 (N.D. 1981). In Hovden, this Court stated in a footnote that under N.D.C.C. § 9-03-14, the courts differentiate between a party claiming ignorance of the law and misapprehension of the law. Id. This Court held only a party claiming misapprehension of the law could find relief under N.D.C.C. § 9-03-14. Id. The district court's reliance on Hovden is misplaced for three reasons.

[43] First, the footnote in Hovden cites N.D.C.C. § 9-03-14 for its legal authority. Id. N.D.C.C. § 9-03-14 defines a mistake of law *exclusively* for the purposes of Title 9 of the North Dakota Century Code. See N.D.C.C. § 9-03-14. N.D.C.C. § 9-03-14 states its definition of mistake of law "constitutes a mistake within the meaning of this title *only*." Id. (emphasis added). N.D.C.C. § 9-03-14 has no applicability to the current case which revolves around a statute found in Title 59 ("Trusts").

[44] Second, the reformation of a trust is different than other instruments. A settlor does not usually receive consideration for making a trust which benefits someone else. Where in contract law courts are concerned about parties pleading mistake of law to *nullify* their contractual obligations (i.e., void the contract under N.D.C.C. 9-03-04 for mistake), under N.D.C.C. § 59-12-15, a settlor can only ask a court to *reform* the trust to meet the settlor's original intent which must be proved by clear and convincing evidence. See N.D.C.C. § 9-03-04; N.D.C.C. § 59-12-15. N.D.C.C. § 59-12-15 does not allow a settlor to attempt to nullify the trust by pleading mistake of law.

[45] Third, this Court stated that misapprehension was a rational basis to allow a defense for mistake of law because "[the parties] intent can be deduced and used to reconstruct an effective argument." Hovden, at 379, n. 2. Here, the Clairmonts' intent can be easily deduced. This case involves living settlors who have given undisputed testimony as to their intent in creating the trusts. There is no testimony or evidence that shows the Clairmonts intended non-lineal descendants to benefit from the trusts, but later changed their mind and claimed ignorance of law. The Clairmonts original intent and continuing intent has always been for only their lineal descendants to benefit from the trusts. (Tr. at 35, 74, 82). The Clairmonts have never intended for children from a subsequent marriage of an ex-in-law to serve as beneficiaries under the trusts.

[46] Furthermore, the district court's reasoning that the Clairmonts are presumed to know the law and yet did not misapprehend the law is contradictory. On the one hand, the court opined the Clairmonts are held to presume to know all of the laws in North Dakota and hence, cannot plead ignorance. On the other hand, the district court held the Clairmonts cannot misapprehend N.D.C.C. § 30.1-04-07 because they were not

aware of the statute which they are presumed to know. In sum, as the Clairmonts were mistaken to the legal effect of the terms of their trust, the district court erred in finding the Clairmonts were not mistaken to the law.

2. The Clairmonts' intent and the terms of the trust were affected by the Clairmonts' mistake of law in inducement.

[47] In order for a court to reform the terms of a trust under N.D.C.C. § 59-12-15, a court must find by clear and convincing evidence that (1) the settlor's intent was affected by the mistake, and (2) the terms of the trust were affected by a mistake. See N.D.C.C. § 59-12-15. Here, the Clairmonts' intent was affected by their induced mistake of law. The Clairmonts' undisputed intent was for the trusts to benefit only their lineal descendants. (Tr. at 35, 82). The Clairmonts never intended that children from a subsequent marriage of their ex-son-in-law, who have no blood relation to the Clairmonts, would receive trust assets. (Tr. at 35, 82). The Clairmonts' intent was affected by their mistake of law in that they did not understand the legal effect of their trusts.

[48] The terms of the trust were also affected by the Clairmonts' mistake, because the Clairmonts did not understand the legal effect of the term "brothers and sisters." (Tr. at 88). The Clairmonts believed that "brothers and sisters" only meant "whole-blood brother and sisters" and would not be construed to encompass the children of a subsequent marriage of their ex-son-in-law. (Tr. at 88). Had the Clairmonts understood the legal effect of the trusts, they would have used language that ensured that the trust assets would never be distributed to anyone who was not a lineal descendant of the Clairmonts. (Tr. at 35, 82).

3. The Restatement (Third) of Property and case law in other jurisdictions support reformation.

[49] As stated above, N.D.C.C. § 59-12-15 is identical to Section 415 of the Uniform Trust Code, which "copies" its language from Restatement (Third) of Property: Donative Transfers § 12.1. The Restatement sets out two illustrations which demonstrate when a court should reform a trust due to a mistake of law in inducement.

Illustration 7 provides:

> 7. G created an inter vivos trust. The trust document did not contain a clause reserving to G a power to revoke the trust. Controlling law provides that a trust is irrevocable in the absence of an expressly retained power to revoke. After G signed the document, G's financial condition changed and G sought to revoke the trust. Extrinsic evidence shows that G intended to create a revocable trust and *did not understand the need* for a revocation clause. If this evidence satisfies the clear-and-convincing-evidence standard of proof, the trust document is reformed to insert a power to revoke.

Id. at cmt i. (emphasis added).

Illustration 8 provides:

> 8. G created an inter vivos trust of the bulk of his assets. The trust document did not contain a clause reserving to G a power to revoke the trust. Controlling law provides that a trust is irrevocable in the absence of an expressly retained power to revoke. After G signed the document, G sought to revoke the trust. Extrinsic evidence shows that G established the trust when he was in line for a high-level position in the federal government. From the press reports he had read, he mistakenly believed that he had to place all of his assets into an irrevocable trust in order to comply with federal policies on public-service conflicts of interest. G liquidated much of his property, and placed the bulk of his assets into the irrevocable trust. Subsequently, G learned that federal policies did not require him to transfer his assets to an irrevocable trust. If this evidence satisfies the clear-and-convincing evidence standard of proof, the trust document is reformed to insert a power to revoke.

[50] Illustration 7 involves a settlor who does not understand the legal effect of his trust and is "ignorant of the law." Since the settlor did not understand the legal effect of his trust, the illustration states the court should reform the trust. Illustration 8 involves a settlor who is aware of the law but fails to properly apprehend the law. Illustration 8 states a court should grant reformation due to misapprehension of law as well. The illustrations demonstrate a party does not need to be aware of the specific law in order to have a court reform the trust to conform to the settlor's original intent.

[51] Illustration 7 is identical to this case. Here, the Clairmonts intended to have the language "brothers and sisters" included in their trusts. The Clairmonts believe that the term "brothers and sisters" would ensure that only their lineal descendants would benefit from the trusts. (Tr. at 35, 82). The Clairmonts did not understand the need for language in the trusts that stated only whole-blood brothers and sisters would receive trust assets. (Tr. at 82, 88). The Clairmonts satisfy the clear-and-convincing standard, as it is undisputed that the Clairmonts intended only lineal descendants to benefit from the trusts. (Tr. at 35, 82). In accordance with illustration seven of the Restatement, which N.D.C.C. § 59-12-15 finds its origins in, the trusts should be reformed to insert language that specifies that only whole-blood brothers and sisters of the grandchildren can benefit from the trusts.

[52] Case law in other jurisdictions also demonstrates reformation is appropriate in this case. In In re O'Donnell, the deceased had met with an attorney to create a will to dispose of her property at her death. In re O'Donnell, 696, 815 N.W.2d 640, 643 (Neb. 2012). At the meeting with the attorney, the deceased stated that she wished to leave $50,000 in trusts respectively to John, Ruby and Sanwick. Id. When

asked what the deceased wanted to happen to the money in the trusts if either John or Ruby died before the money was fully paid out, the deceased replied that the money should go to Sanwick. Id. For whatever reason, the attorney never sent the draft of the will to the deceased. Id. Subsequently, the deceased drafted her own valid will which was nearly identical to the draft will the attorney had prepared. Id. at 641-42.The actual will left $50,000 in trusts-funds to both John and Ruby, $50,000 cash to Sanwick and the residue of the estate to Beachler. Id. The will was silent on what was to happen to the money in the trusts if either John or Ruby died before the money was paid out. Id. at 647.

[53] Beachler argued she was entitled to the money as she was entitled to residue of the estate. Id. at 642. Sanwick asked the court to reform the trust provisions of the will to conform with the settlor's intent under a statute identical to N.D.C.C. § 59-12-15. Id. The court found clear and convincing evidence that the deceased's original intent was for the trust proceeds to go to Sanwick in the event John or Ruby died before the trust was extinguished and accordingly reformed the trust to meet the deceased's original intent. Id. at 647. The court found the deceased to be mistaken to the law even though it appears the deceased was ignorant of the law in regard to how trust proceeds are distributed if the beneficiaries were to pass away before all of the trust assets had been distributed. Id.

[54] The district court erred in determining that the Clairmonts failed to prove by clear and convincing evidence a mistake of law at the time of the creation of the trusts, as the Clairmonts did not understand the legal effect of the trusts and both the Clairmonts' intent and terms of the trusts were affected by their induced mistake of law. The Clairmont's respectfully request the Court find that the district court's determination

was in error and order the trusts reformed to match the Clairmonts' undisputed original intent.

4. Other sections of the Trust Code favor reformation of the trust to conform to the Clairmonts' original intent.

[55] Under N.D.C.C. § 59-12-16, "[t]o achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention." See N.D.C.C. § 59-12-16. In 2007, the legislature enacted N.D.C.C. § 59-12-16, as part of the adoption of the Uniform Trust Code. N.D.C.C. § 59-12-16 is identical to Section 416 of the Uniform Trust Code. Section 416 of the Uniform Trust Code "copies" its language from the Restatement (Third) of Property: Wills & Other Donative Transfers § 12.2. See UTC 416 cmt.

[56] The Restatement (Third) of Property and case law in other jurisdictions are clear that "ignorance of the law" does not prohibit a court from modifying a trust to achieve a settlor's tax objectives. See Restatement (Third) of Property, Wills & Other Donative Transfers § 12.2, cmt e ("failure to achieve tax objectives need not be related to post-execution change in tax law"); Pellegrini v. Breitenbach, 926 N.E.2d 544, 547 (Mass. 2010)(reformation is justified "w*hen a settlor has been mistaken about the tax consequences of a trust provision.*")(emphasis added).

[57] The district court's holding that ignorance of the law (understanding the legal effects of the trust) is never grounds for the reformation/modification of a trust is in direct conflict with N.D.C.C. § 59-12-16. Following the district court's reasoning, a settlor (or anyone else) is not able to modify a trust under N.D.C.C. § 59-12-16 on the grounds the settlor did not understand the legal tax effects of his trust. The district court's

holding is contrary to established law which allows a court to modify the trust when the trust does not achieve the tax objectives of the settlor.

[58] Furthermore, the settlor's intent is the overriding consideration throughout Title 59 ("Trust Code). Under N.D.C.C. § 59-12-16, a trust which does not achieve a settlor's tax objectives can only be modified if the modification is *not contrary to the settlor's probable intention*. Therefore, under N.D.C.C. § 59-12-16, the most important consideration is whether the modification is in line with the settlor's probable intent. The doctrines of cy pres (codified as N.D.C.C. § 59-12-13) and doctrine of deviation for unanticipated circumstances (codified as N.D.C.C. § 59-12-12) also look to the settlor's original intent as the primary consideration.

[59] In short, it makes no rational sense to allow a party who is ignorant of the law to modify a trust to achieve tax objectives but not to allow a party who is ignorant of the law to modify a trust to achieve the settlor's undisputed original intent.

5. This case does not involve settlors attempting to modify a trust to give effect to the settlors' post-execution change of mind or to compensate for other changes in circumstances.

[60] In his post-trial brief, the Appellee argued the Clairmonts should not be able to reform the trusts under N.D.C.C. § 59-12-15 because a subsequent event happening after the creation of a trust cannot constitute a mistake for reformation of a trust. (Doc #91). Tellingly, the district court did not rely on the appellee's argument in holding the Clairmonts could not reform the trusts.

[61] This case does not involve settlors who are attempting to reform a trust to give effect to a post-execution change of mind or to compensate for other changes in circumstances. Instead, it is undisputed the Clairmonts' original intent at the time they

created both trusts was for only their lineal descendants to benefit from the trusts. (Tr. at 35, 82). Further, the births of N.J.L and L.M.L did not trigger a change of mind on the part of the Clairmonts, because the Clairmonts' intent at the time of creating both trusts was for only their lineal descendants to benefit. (Tr. at 35). In fact, the births of N.J.L and L.M.L cannot even be argued as a subsequent event for the Retirement Trust, as the Retirement Trust in effect today was created after their births. (Tr. at 89). This case simply concerns settlors whose trusts do not conform to their original intent because the settlors did not understand the legal effect of the term "brothers and sisters," and none of their attorneys or advisors informed them that "brothers and sisters" could potentially constitute children who were of no blood relation to the Clairmonts.

[62] All of the cases Appellee relied upon in his post-trial brief, and likely to argue in his appellate brief, are distinguishable from the present case. See In re Estate of Cayo, 342 N.W.2d 785 (Wis. App. 1983); Willis v. Willis, 714 S.E.2d 857 (N.C. App. 2011); Penn Mut. Life Ins. Co. v. Abramson, 530 A.2d 1202 (D.C. App. 1987). None of these three cases concern a statute identical or similar to N.D.C.C. § 59-12-15. In fact, none of the cases even concern a petition for reformation of a trust. More importantly, all three cases concern a party attempting to modify different instruments due to a change of circumstances. None of the cases concern a court refusing to modify an instrument to the settlor/grantor/testator/etc's undisputed original intent.

[63] In Estate of Cayo, Linda Cayo executed a revocable living trust naming her son as the sole beneficiary. In re Estate of Cayo, 342 N.W.2d 785, 786. Cayo subsequently gave birth to a daughter. Id. Cayo was warned numerous times by her attorney to make changes to her will or trust if she wanted to include her daughter as a

beneficiary. Id. at 788. Cayo never made any changes to her will or trust. Id. The court refused to impose a constructive trust in favor of the daughter. Id. Cayo is distinguishable for three reasons.

[64] First, Cayo deals with a request to impose a constructive trust, not a request for reformation under the Uniform Trust Code. Cayo does not involve a statute identical or similar to N.D.C.C. § 59-12-15. In Cayo, the standard for imposing a constructive trust was (1) the legal title had to be held by someone who in equity and good conscience should not be entitled to beneficial enjoyment, and (2) the title must have been obtained by means of actual or constructive fraud, duress, arose of confidential relationship, mistake, commission of wrong, or any form of unconscionable conduct. Id. at 787. Conversely, the standard for modifying a trust in the present case is only that the settlor's intention and the terms of a trust be affected by a mistake of fact or law. See N.D.C.C. § 59-12-15. The Clairmonts' request for a reformation of the trusts is held to a less rigid standard than the request for the creation of a constructive trust in Cayo.

[65] Second, in Cayo, the settlor was deceased. Id. at 786. The Cayo court had to weigh the evidence to try to ascertain the settlor's original intent. In Cayo, the fact that Cayo failed to modify her trust or will was proof of Cayo's intent not to include her daughter. Unlike in Cayo, the present case deals with settlors who are alive and well and have testified that their original intent was not to allow half-blood brother and sisters of their grandchildren to benefit from the trusts. (Tr. at 35). There is no dispute as to the Clairmonts' original intent, as the Clairmonts always intended for only their lineal descendants to benefit from the trusts. (Tr. at 35-82).

[66] Third, and most importantly, Cayo was warned numerous times by her attorney to make changes to her will if she wanted her daughter to serve as a beneficiary to the will. Id. at 788. Cayo never modified her will or trust to include her daughter. Id. The fact that Cayo failed to change her will or trust to include her daughter after numerous reminders from her attorney goes to show that Cayo's intent was to not have her daughter benefit under her will or trust. Here, as soon as the Clairmonts were informed of the need to reform their trust in order to have only their lineal descendants benefit from the trusts, the Clairmonts' filed a Petition for Interpretation or Reformation of Trusts.

[67] In Willis, Ms. Willis had a warranty deed drafted conveying her house to her son Eddie and reserving a life estate for herself. Willis v. Willis, 714 S.E.2d 857, at 858-59. Eddie then died without a will and the house was passed intestate to Eddie's children. Id. Ms. Willis then attempted to reform the deed claiming that her intent was to leave the house to her children, not Eddie's children. Id. at 859. In short, Ms. Willis claimed that she intended to give only a life estate to Eddie. The court refused to reform the deed. Willis is also distinguishable from the present case.

[68] First, Willis deals with a warranty deed, not a trust, and therefore Willis does not involve a statute that is identical or even similar to N.D.C.C. § 59-12-15. Second, in Willis, the court held there was not a "scintilla of evidence" to support Ms. Willis's claim that her original intent was to only give Eddie a life estate in the house. Id. The court stated that the evidence established that Ms. Willis fully understood that the deed conveyed a fee simple title to Eddie and left herself only a life estate. Id. Unlike in Willis, the evidence in the present case is clear and convincing that the Clairmonts'

original intent was to have their trusts only benefit their actual grandchildren and lineal descendants, with only a long-term spouse as the only contingent "outside" beneficiary. (Tr. at 35, 82, 87). Further, it is undisputed that the Clairmonts did not understand that the trusts they created could ever benefit the children of a subsequent marriage of their ex-son-in-law. (Tr. at 74, 78, 88). This is not a case in which the settlors have changed their mind about who they want to benefit from a trust. It is undisputed that the Clairmonts' primary intent since the inception of the trusts was to have their grandchildren benefit from the trusts.

[69] Finally, in Penn, a father purchased a life insurance policy naming his three living children as beneficiaries. Penn Mut. Life Ins. Co. v. Abramson, 530 A.2d 1202, at 1203. After the father passed away, a fourth child of his was born. Id. at 1204. The fourth child requested the court to reform the insurance policy to include him as a beneficiary. Id. at 1211-12. The district court reformed the insurance policy to include the fourth child, but the appellate court overturned the district court's decision. Penn is also distinguishable from the present case. Id. at 1212.

[70] First, Penn deals with the reformation of a life insurance policy, not a trust. Penn does not deal with an interpretation and application of a statute identical or similar to N.D.C.C. § 59-12-15. Second, in Penn, the father who created the life insurance policy was deceased and the court had no way of knowing what the father's original intent was. In the present case, the Clairmonts are alive and well and have testified that their original intent was for the trusts to only benefit their lineal descendants. (Tr. at 35). Third, and most importantly, the Penn court made clear that its decision was not based on the law of trusts. Id. The court held that the district court was

in error because the district court based its decision on reforming the insurance policy using principles applied by courts in exercising their power over testamentary wills and trusts. Id. Had the case actually concerned a trust, the court even stated that the district court had based its relief on "accepted doctrine" that "the interest of equity allows the court to modify the trust to prevent the impairment of the trust's primary purpose resulting from a change of circumstances unanticipated by the deceased." Id. If anything, Penn stands for the proposition that a subsequent event happening after the creation of a trust can constitute a mistake sufficient for reformation of a trust.

[71] In sum, this case does not present settlors who are asking the courts to reform trusts they created due to a post-execution change of mind or a subsequent change in circumstances. It is undisputed that the Clairmonts' original intent was for only their lineal descendants to benefit from the trusts. This case simply presents settlors who made a mistake as to the legal effect of the term "brothers and sisters" and are asking the court to conform the trusts to their original intent.

VI. CONCLUSION

[72] The Clairmonts respectfully request this Court find the district court erred in determining that the Clairmonts did not make a mistake of law and reverse and remand this case back to the district court so that the Clairmonts can reform the trusts in order to conform with their original intent of having only their lineal descendants benefit from the trusts.

Dated this 7th day of November, 2012.

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CERTIFICATE OF COMPLIANCE

The undersigned, as attorneys for the Appellants in the above matter, and as the authors of the above brief, hereby certify, in compliance with Rule 32 of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with proportional typeface and the total number of words in the above brief, excluding words in the table of contents, table of authorities, signature block, certificate of service and this certificate of compliance, totals 9,274.

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AFFIDAVIT OF SERVICE BY EMAIL

In Re: Matthew Larson Trust Agreement Dated May 1, 1996 and In Re: Matthew Larson Irrevocable Retirement Trust II Agreement Dated December 1, 2009

William E. and Patricia A. Clairmont
vs.
Greg Larson, parent and guardian of N.J.L. and L.M.L., et al.
District Court Civil No. 09-2011-CV-00922
Supreme Court No. 20120319

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The undersigned, being first duly sworn, deposes and says that she served the attached:

BRIEF OF APPELLANTS; and
APPELLANTS' APPENDIX

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/s/ Katie Rudnick
Katie Rudnick

Subscribed and sworn to before me this 7th day of November, 2012.

/s/ Lacey A. Hallsten
Notary Public, Lacey A. Hallsten
Cass County, North Dakota
My Commission Expires: 9-21-16

(SEAL)