

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Jeanette J. Mattern,)	
)	
Plaintiffs and Appellant,)	
)	
vs.)	Supreme Court File No.
)	20140296
Frank J. Mattern Estate, by and through)	
Anne M. Erickson, personal)	
representative,)	
)	
Defendant and Appellee.)	

Appeal from the Judgment, dated August 20, 2014, by the Burleigh County District Court, South Central Judicial District, Honorable Donald L. Jorgensen.

BRIEF OF APPELLEE

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STATEMENT OF THE ISSUES

- [¶1] I. Whether Jeanette Mattern’s contention that the Subject Property is not divisible due to a lack of estate creditors is reviewable on appeal.
- II. Whether the district court correctly determined that the “homestead” consists solely of the second-floor residence of the Subject Property (up to the statutory limit of \$100,000), and that Jeanette Mattern pay rent to the extent the value of the homestead exceeds this amount.

STATEMENT OF THE FACTS

[¶2] Frank J. Mattern (“Frank”) married Hermina Mattern (“Hermina”) in September 1957. (Tr. 6 at 12-16). Frank and Hermina raised four children together, namely Anne Erickson (“Anne”), Mary Mattern (“Mary”), Patricia Sitzer (“Pat”), and Tom Mattern (“Tom”). (Tr. 96 at 4-7, 18-25). In 1974, Frank and Hermina built a house located at 302 East Avenue F in Bismarck, North Dakota (“Subject Property”). The Subject Property, central to this dispute, consists of a main residence on the second floor (where Frank Mattern resided with his family) and two separate ground-level apartments. (Tr. 8 at 1-16). After 35 years of marriage, Frank and Hermina divorced in 1993. (Tr. 6 at 12-18; 100 at 2-5).

[¶3] In January 1995, Frank married Jeanette Flemmer (now Jeanette Mattern, hereinafter referred to as “Jeanette”). (Appx. 27 at ¶ 3). Jeannette moved into the second-floor residence of the Subject Property to live with Frank. (*Id.*) Shortly after their marriage, Jeanette sold her home and farm machinery keeping the proceeds (as well as most other funds) separate from Frank’s assets. (*Id.*) Frank and Jeanette agreed to keep their assets separate during the course of their marriage. (*Id.*) Jeanette does not

deny this arrangement. (Tr. 62 at 10-19). Over the next fifteen (15) years, Frank and Jeanette lived together in the second-story residence of the Subject Property, during which time the two ground-level apartments were rented out by Frank to paying tenants. (Appx. 27 at ¶ 5). Frank kept the income and paid for the expenses associated with the rental units. (Id.)

[¶4] In the fall of 2010, Frank began experiencing serious health issues. (Appx. 27 at ¶ 4). In February 2011, Frank had portions of his gall bladder removed; it was shortly determined that Frank's gall bladder was cancerous. (Tr. 10 at 10-17). By March 2011, Frank's cancer had spread and was inoperable. (Appx. 27 at ¶ 4). Frank's family, including Jeanette, began estate planning discussions. (Id.) Specifically, it was discussed between Frank, Jeanette, and several of Frank's children, whether or not Jeanette wanted to live in Frank's home following his death. (Id.) It is undisputed between the parties that Jeanette did not want to own the marital home. (Id.) Jeanette further indicated that she did not want to stay in the home after Frank's death due to its large size and number of steps. (Id.); (Tr. 105 at 22-24; 129 at 12-21; 145 at 2-13). Jeanette had suggested to Frank and his daughters that six (6) months would be a fair amount of time to remain in the residence after Frank's death. (Tr. 15 at 9-21; 106 at 3-13). However, it was eventually agreed upon by Jeanette that she would be permitted to live in the second-floor residence for eighteen (18) months after Frank's death, with the option to rent if she desired to stay longer. (Tr. 15 at 9-25; 16 at 1-9). Frank's last will and testament was consistent with this arrangement. (Tr. 17 at 3-5).

[¶5] Frank Mattern died on July 18, 2011. (Appx. 27 at ¶ 5). Frank's daughter Anne Erickson ("Anne") was appointed personal representative of his estate on July 28, 2011,

in Burleigh County Case No. 08-2011-PR-00171. On October 13, 2011, Jeanette filed a *Petition by Claimant for Allowance of Claim* seeking homestead exemption rights, exempt property in the sum of \$15,000, and family allowance in the amount of \$27,000. (Appx. 12-13). Jeanette's claims against the Estate of Frank J. Mattern were disallowed pursuant to N.D.C.C. § 30.1-19-06. (Appx. 15). In December 2011, Jeanette commenced a separate action against the Estate of Frank J. Mattern, seeking to enforce her claims. (Appx. at 5-9). On December 2, 2013, Ann filed an *Inventory and Appraisal* reflecting a \$350,000 total valuation of the Subject Property. (Tr. 114 at 17-19). This amount consists of a \$75,000.00 valuation for each of the two ground-level apartments and a \$200,000.00 valuation for the second-floor residence occupied by Frank and Jeanette during their marriage. (Tr. 114 at 17-25; 115 at 1).

¶6 Trial was held in this matter on January 6, 2014. (Appx. 26 at ¶ 1). Pursuant to its *Order*, dated April 14, 2014, the district court found that Jeanette had not waived her homestead allowance, and that she was entitled to the value of the second-floor residence of the Subject Property, proportionately to the value of the other units in the structure, up to \$100,000. (Appx. 28 at ¶¶ 6-7). As the district court explained:

[I]n light of the statutorily imposed limit on the homestead exemption, this Court orders the personal representative to obtain an individual appraisal of each of the three units in the structure in question as of the date of death of Frank J. Mattern, July 18, 2011. In addition thereto, said appraisal shall include the fair rental value of the unit occupied by Jeanette J. Mattern. Following this appraisal, Jeanette will be entitled to the value of the unit she currently resides in, proportionately to the value of the other units in the structure, up to \$100,000.00.

(Appx. 28 at ¶ 7).

¶7 A status conference was held on May 29, 2014, to clarify further action pertaining to the Subject Property. On July 2, 2014, an *Appraisal Report* was filed with the Court reflecting the market value and rental value of the Subject Property as of June 2014. (Appx. 37-61). On July 3, 2014, the district court entered an *Order* finding: (1) that the fair-market value of the Subject Property is \$335,000; the fair market value of the second-floor residence being \$175,000 with each of the ground-floor apartments having a value of \$80,000; (2) that the fair market rental value of the second-floor residence is \$1,700; (3) that the value of the second-floor residence exceeds the North Dakota allowed exemption limit of \$100,000 by \$75,000, and that the excess in rent above the exempt amount of \$971 is \$729; and (4) that Jeanette reimburse the Estate in the amount of \$729 retroactive to August 2011, and that Jeanette pay rent to the Estate (or the Estate's assigns) in the amount of \$729 per month for as long as she occupies the residence. (Appx. 62-63).

¶8 Also on July 3, 2014, Jeanette filed an *Objection to Proposed Order for Judgment* asserting that the 2014 appraisal of the Subject Property is contrary to the district court's *Order*, dated April 14, 2014, requiring an appraisal of the Subject Property as of the date of death of Frank J. Mattern. (Appx. 64-65). Due to the retirement of Judge Jorgensen, Judge Anderson was assigned to the case on July 17, 2014. (Appx. 3 at Doc. ID # 78). On July 18, 2014, Judge Anderson issued a *Memorandum* to the parties indicating that after the entry of the district court's *Order* on July 3, 2014, she was "in no position to make any rulings on [Jeanette's *Objection to Proposed Order for Judgment*]." (Appx. 67 at ¶ 4). Judge Anderson further indicated that she was "in no position to make any modification to the Order signed by Judge Jorgensen" as there was "no pending motion to

modify or change the Order for Judgment.” (Appx. 67-68 at ¶ 4). Jeanette made no attempt to obtain relief from the district court’s *Order*, dated July 3, 2014, based on the district court’s use of the 2014 appraisal of the Subject Property. (Appx. 1-4).

[¶9] Judgment was entered by the district court on August 20, 2014. (Appx. 69-70). Therein, the district court found: (1) the homestead consists solely of the second floor of the house owned by the decedent, which value exceeds the statutory homestead exemption amount by approximately \$75,000.00, as determined by the Estate’s June 17, 2014 appraisal; (2) the fair-market value of rent on the homestead is \$1,700.00; (3) Jeanette J. Mattern shall pay \$729.00 per month in rent to the Estate or the Estate’s assigns, which represents the proportionate fair market value of rent on the homestead to the extent the homestead exceeds the statutory exemption amount based upon the June 17, 2014 appraisal, for as long as she occupies the homestead; and (4) Jeanette J. Mattern shall also pay the Estate rent of \$729.00 retroactive from August 2011. (Appx. 70 at ¶¶ 3-7). Jeanette made no attempt to obtain relief from the district court’s *Judgment*, dated August 20, 2014, based on the district court’s use of the 2014 appraisal of the Subject Property. (Appx. 1-4). Rather, Jeanette filed a *Notice of Appeal* in this case on August 21, 2014. (Appx. 71). Jeanette continues to reside in the second-floor residence of the Subject Property without paying rent as required by the district court’s *Judgment*, dated August 20, 2014, and has not asked for a stay of judgment. (Appx. 27 at ¶ 5; 69-70). Anne, as the personal representative of her father’s estate, takes care of the ground-floor apartments. (Tr. 111 at 3-5).

LAW AND ARGUMENT

I. JEANETTE MATTERN’S CONTENTION THAT THE SUBJECT PROPERTY IS NOT DIVISIBLE DUE TO A LACK OF ESTATE CREDITORS WAS NOT PRESENTED TO THE DISTRICT COURT, AND THIS IS NOT REVIEWABLE ON APPEAL.

[¶10] In this appeal, Jeanette identifies three seemingly distinct arguments, namely that the district court abused its discretion by: (1) dividing the Subject Property when no creditors of the estate exist; (2) ordering Jeanette to pay rent to the extent the homestead value exceeds \$100,000; and (3) not awarding Jeanette rents from the Subject Property. *See* Appellee’s Brief at pages 6, 7, 10 (App. Br. at 6, 7, 10). However, each of these contentions is grounded in the same underlying argument: that the Subject Property should not be divided because there are no creditors of the Estate of Frank J. Mattern. (App. Br. at ¶ 15, 22, 26-27). This argument has not been previously raised by Jeanette, and is not reviewable on appeal.

[¶11] It is well established that this Court does “not address issues raised for the first time on appeal.” Niles v. Eldridge, 2013 ND 52, ¶ 7, 828 N.W.2d 521 (citing Heng v. Rotech Medical Corp., 2006 ND 176, ¶ 9, 720 N.W.2d 54). “Issues or contentions not adequately developed and presented at trial are not properly before this Court.” Id. “The purpose of an appeal is to review the actions of the trial court, not to grant the appellant the opportunity to develop new theories of the case.” Id. (citing In Interest of A.G., 506 N.W.2d 402, 403 (N.D. 1993)).

[¶12] First, in support of her argument that the district court abused its discretion in dividing the Subject Property (and ordering individual appraisals for each separate unit), Jeanette relies upon N.D.C.C. § 30-16-09 as providing that “[t]he homestead cannot be

divided unless...division is necessary to satisfy a judgment on a debt.” (App. Br. at ¶ 14-15). However, as discussed in Section II.A. below, the existence of estate creditors is not a prerequisite to finding a decedent’s homestead divisible under North Dakota law. In any event, Jeanette argues that the Subject Property is not divisible because “no judgment or debt exists wherein the homestead would need to be set aside and the excess sold.” (Id. at ¶ 16). This argument has not been previously raised by Jeanette, and is not reviewable on appeal.

[¶13] Second, in support of her argument that the district court abused its discretion by ordering Jeanette to pay rent to the extent the homestead value exceeds \$100,000, Jeanette argues that “N.D.C.C. Chapter 30-16...only applies to divide a homestead if there are creditors” and that because no creditors exist, the trial court “misinterpreted or misapplied the law by limiting Jeanette’s homestead estate to \$100,000.00 and ordering her to pay rent for the remainder.” (App. Br. at ¶ 22). Again, this argument has not been previously raised by Jeanette, and is not reviewable on appeal.

[¶14] Lastly, in support of her argument that the district court abused its discretion by not awarding her rents from the ground-floor apartments, Jeanette argues that “[a]s this case does not involve creditors of the Estate...the entire building constitutes the homestead” and that “Jeanette, as the surviving spouse, is entitled to...all the rents from the homestead.” (App. Br. at ¶ 26). Yet again, this argument has not been previously raised by Jeanette, and is not reviewable on appeal.

[¶15] Each of Jeanette’s contentions on appeal is grounded in the same underlying argument: that the Subject Property should not be divided because there are no creditors of the Estate of Frank J. Mattern. (App. Br. at ¶ 15, 22, 26-27). Because this contention

was not presented to the district court, it is not properly before this Court and is not reviewable on appeal. Furthermore, as discussed in Section II.A. below, the existence of estate creditors is not a prerequisite to finding the Subject Property divisible under North Dakota law.

II. THE DISTRICT COURT CORRECTLY DETERMINED THAT THE “HOMESTEAD” CONSISTS SOLELY OF THE SECOND-FLOOR RESIDENCE OF THE SUBJECT PROPERTY (UP TO THE STATUTORY LIMIT OF \$100,000) AND THAT JEANETTE MATTERN PAY RENT TO THE EXTENT THE VALUE OF THE HOMESTEAD EXCEEDS THIS AMOUNT.

A. The “homestead” consists solely of the second-floor residence of the Subject Property up to the statutory homestead limit of \$100,000.

[¶16] As previously mentioned, Jeanette argues that the district court abused its discretion in dividing the Subject Property, and by ordering individual appraisals for each of the three separate units. (App. Br. at ¶ 14). Jeanette relies upon N.D.C.C. § 30-16-09 in support of her position that a “homestead cannot be divided unless...division is necessary to satisfy a judgment on a debt.” (App. Br. at ¶ 15). However, the existence of estate creditors is not a prerequisite to finding a decedent’s homestead divisible under North Dakota law. Furthermore because the Subject Property is divisible without material injury to Jeanette, the district court correctly determined that the homestead consists solely of the second-story residence of the Subject Property, up to the statutory homestead limit of \$100,000.

[¶17] Under N.D.C.C. Chapter 30-16, the term “homestead” is defined as “[t]he land upon which the claimant resides, and the dwelling house on that land *in which the homestead claimant resides*, with all its appurtenances, and all other improvements on the land, *the total not to exceed one hundred thousand dollars in value*, over and above

liens or encumbrances or both.” See N.D.C.C. § 47-18-01 (emphasis added); see also N.D.C.C. § 30-16-01(1) (Under N.D.C.C. Chapter 30-16, the term “homestead” has the same meaning as set forth by N.D.C.C. § 47-18-01). Pursuant to N.D.C.C. § 30-16-05, the personal representative of an estate is required to set off the homestead in such form as to exclude any excess in value above the statutorily imposed \$100,000 limit, unless the personal representative finds that the property cannot be divided without material injury:

The personal representative of an estate must procure from the person or persons to whom real property subjected to a homestead estate has descended a description of such property and must appraise the same at its value at the time of the death of the decedent. If necessary, the personal representative shall cause the boundaries thereof to be ascertained and marked in the personal representative’s presence by a competent surveyor. If the personal representative finds that it has been selected in such form as will materially diminish the value of any remaining part of the property, the personal representative may modify its boundaries so as to avoid such injury if it can be done without material injury to the homestead property. ***Should the personal representative find that the property selected as a homestead exceeds in value any limitation in value fixed by law, the personal representative in like manner shall set off the homestead in such form as to exclude the excess unless the personal representative further finds that the property cannot be divided without material injury.***

N.D.C.C. § 30-16-05 (emphasis added). Furthermore, N.D.C.C. § 30-16-09 provides that “[i]f the court finds that the homestead selected in an estate exceeds in value any limitation fixed by law and that the property cannot be divided without material injury, the order setting it apart must determine the amount of such excess, and thereafter the property to the extent of the excess so determined *may* be subjected, after all of the other available property has been exhausted, to the payment of debts in the same manner as other property.” N.D.C.C. § 30-16-09 (emphasis added).

[¶18] As it pertains to Jeanette’s homestead exemption claim, the district court found that the “homestead consists solely of the second floor of the house owned by the decedent” and that Jeanette is entitled to “the value of the unit she currently resides in, proportionately to the value of the other units in the structure, up to \$100,000.00.” (App. 28 at ¶ 7; 70 at ¶ 4). In support of her argument that the district court abused its discretion in dividing the Subject Property (and by ordering individual appraisals for each of the three separate units), Jeanette asserts that the Subject Property is not divisible because “no judgment or debt exists wherein the homestead would need to be set aside and the excess sold.” (App. Br. at ¶ 16). However, Jeanette incorrectly cites N.D.C.C. § 30-16-09 as standing for the position that a “homestead cannot be divided unless...division is necessary to satisfy a judgment on a debt.” (*Id.* at ¶ 15). Based on the plain language of this statute, the existence of estate creditors is not a prerequisite to finding the Subject Property divisible. N.D.C.C. § 30-16-09 merely provides that to the extent a homestead exceeds the statutorily imposed value limitation of \$100,000, any excess in value *may* be subjected to the payment of debts after all of the other available property has been exhausted. *See* N.D.C.C. § 30-16-09 (emphasis added).

[¶19] Jeanette further argues that the homestead cannot be divided without material injury. (App. Br. at ¶ 16). However, the Subject Property is absolutely divisible without material injury to Jeanette. Throughout the duration of their fifteen (15) year marriage, Frank and Jeanette resided in the second-story residence, during which time the two ground-level apartments were leased out by Frank; he kept all of the income and paid for all of the expenses with regard to these rental properties. (Appx. 27 at ¶ 5). Each of the ground-floor apartments has separate electricity, water, and gas. (Tr. 51 at 21-25; 52 at

1-4). It is undisputed between the parties that Frank and Jeanette had agreed to keep their assets separate during the course of their marriage. (Appx. 27 at ¶ 3); (Tr. 62 at 10-19). Jeanette continues to reside in the second-floor residence with the two ground-floor apartments occupied by long-term tenants. (Appx. 27 at ¶ 5); (Tr. 8 at 17-25; 9 at 1-7). Anne, as personal representative of the Estate of Frank J. Mattern, currently takes care of these apartments (Tr. 111 at 3-5).

[¶20] At trial, Jeanette was unable to present any indication that she would be materially injured by limiting the homestead to the second-floor residence of the Subject Property. To the contrary, treatment of the second-floor residence as the homestead is the status quo: Jeanette continues to occupy the second-floor residence while the Estate of Frank J. Mattern maintains the ground-floor apartments. (Tr. 8 at 17-25; 9 at 1-7; 111 at 3-5). No physical division or partition needs to occur to maintain this current arrangement. Accordingly, the Subject Property is divisible without material injury to Jeanette.

[¶21] Because the existence of estate creditors is not a prerequisite to finding a decedent's homestead divisible under North Dakota law, and because the Subject Property is divisible without material injury to Jeanette, the district court correctly determined that the homestead consists solely of the second-story residence of the Subject Property, up to the statutory homestead limit of \$100,000.

B. The district court did not abuse its discretion by not awarding Jeanette Mattern rents from the ground-floor apartments; this rental income is beyond the scope of the homestead estate.

[¶22] Jeanette also argues that the district court abused its discretion by not awarding her rents from the ground-floor apartments of the Subject Property. (App. Br. at ¶ 26). As previously discussed, Jeanette argues that because no creditors of the Estate exist, the

Subject Property is not divisible. (App. Br. at ¶ 26). Jeanette further argues that, pursuant to N.D.C.C. §§ 30-16-01(2), she is entitled to the possession, use, control, income, and rents from the entire Subject Property. (App. Br. at ¶ 25-26). However, because the “homestead” as contemplated by N.D.C.C. Chapter 30-16 consists solely of the second-floor residence limited in value to \$100,000 (as discussed in Section II.A. above), the rental income from the ground-floor apartments is beyond the scope of Jeanette’s homestead estate.

[¶23] N.D.C.C. § 30-16-02 provides that “[u]pon the death of a person in whom the title to real property constituting a homestead is vested, a homestead estate shall survive, and, until otherwise disposed of according to law, shall be set over to...the surviving spouse for life or until the surviving spouse again marries.” N.D.C.C. § 30-16-02(1). Under N.D.C.C. Chapter 30-16, the “homestead estate” is defined as a surviving spouse’s right to the possession, use, control, income, and rents of the decedent’s homestead. N.D.C.C. § 30-16-01(2). Again, the “homestead” is limited in size and value by its statutory definition:

The homestead...consists of the land upon which the claimant resides, and the dwelling house on that land *in which the homestead claimant resides*, with all its appurtenances, and all other improvements on the land, *the total not to exceed one hundred thousand dollars in value*, over and above liens or encumbrances or both.

N.D.C.C. § 47-18-01 (emphasis added). As previously explained by this Court:

Read together, N.D.C.C. §§ 30-16-01 and 30-16-02 provide that the surviving spouse of a decedent occupying real property as a homestead receives a limited estate: the right to the possession, use, control, income, and rents of the real property held or occupied by the decedent as a homestead at death...for life or until the surviving spouse again marries. *That estate is limited in size and value by*

N.D.C.C. § 47-18-01 to the land and the dwelling house with all its appurtenances, and all other improvements on the land, the total not to exceed [\$100,000] in value, over and above liens or encumbrances or both.

In re Estate of Kimbrell, 2005 ND 107, ¶ 10, 697 N.W.2d 315 (internal citations omitted) (emphasis added).

[¶24] For the reasons discussed in Section II.A. above, the “homestead” as contemplated by N.D.C.C. Chapter 30-16 consists solely of the second-floor residence of the Subject Property up to the statutory limit of \$100,000. It therefore follows that pursuant to N.D.C.C. §§ 30-16-01(2) and 30-16-02(1), Jeanette’s homestead estate consists of the right to possession, use, control, income, and rents of the second-floor residence of the Subject Property (up to the statutory homestead limit) for life, or until she re-marries. The rental income from the ground-floor apartments is beyond the scope of Jeanette’s homestead estate. Accordingly, the district court did not abuse its discretion by not awarding Jeanette the rents therefrom.

C. The district court did not abuse its discretion by ordering Jeanette Mattern to pay rent to the extent the value of the homestead exceeds the statutory limit; the excess in value of the second-floor residence is beyond the scope of the homestead estate.

[¶25] Jeanette also argues that the district court abused its discretion by requiring her to pay rent to the extent the second-floor residence exceeds the statutory exemption limit. (App. Br. at ¶ 19). Again, Jeanette asserts that because no creditors of the Estate exist, the Subject Property is not divisible (App. Br. at ¶ 22), and further that she is entitled to the entire Subject Property, including the rents from the ground-floor apartments, as part of the homestead estate pursuant to N.D.C.C. §§ 30-16-01(2) and 30-16-02(1). (App. Br. at ¶¶ 18, 22). However, because the “homestead” as contemplated by N.D.C.C. Chapter

30-16 consists solely of the second-floor residence limited in value to \$100,000 (as discussed in Section II.A. above), the excess in value of the second-floor residence above the statutory homestead limit is beyond the scope of Jeanette's homestead estate.

[¶26] Again, N.D.C.C. § 30-16-02 provides that “[u]pon the death of a person in whom the title to real property constituting a homestead is vested, a homestead estate shall survive, and, until otherwise disposed of according to law, shall be set over to...the surviving spouse for life or until the surviving spouse again marries.” N.D.C.C. § 30-16-02(1). Under N.D.C.C. Chapter 30-16, the “homestead estate” is defined as a surviving spouse's right to the possession, use, control, income, and rents of the decedent's homestead. N.D.C.C. § 30-16-01(2). The “homestead” is limited in size and value by its statutory definition. *See* N.D.C.C. § 47-18-01; *see also* In re Estate of Kimbrell, 2005 ND 107, ¶ 10, 697 N.W.2d 315.

[¶27] For the reasons discussed in Section II.A. above, the “homestead” as contemplated by N.D.C.C. Chapter 30-16 consists solely of the second-floor residence of the Subject Property up to the statutory limit of \$100,000. It therefore follows that pursuant to N.D.C.C. §§ 30-16-01(2) and 30-16-02(1), Jeanette's homestead estate consists of the right to possession, use, control, income, and rents of the second-floor residence of the Subject Property (up to the statutory homestead limit) for life, or until she re-marries. The excess in value of the homestead above \$100,000 is beyond the scope of Jeanette's homestead estate. Accordingly, the district court did not abuse its discretion by requiring Jeanette to pay rent to the extent that the value of the second-floor residence exceeds the statutory homestead limit.

D. In the event this Court finds the district court erred by incorporating the June 17, 2014 appraisal of the Subject Property in its *Order* and subsequent *Judgment*, the proper remedy is to remand to correct the specific issue of valuation only.

[¶28] Lastly, Jeanette argues that the district court erred in relying upon the June 17, 2014 appraisal, and that a 2014 valuation of the Subject Property is contrary to the district court's April 14, 2014 *Order* requiring an appraisal of the Subject Property as of the date of death of Frank J. Mattern. (App. Br. at ¶ 23-24). However, after entry of the district court's *Order* on April 14, 2014, Jeanette made no attempt to obtain appropriate relief under Rule 60(b) of the North Dakota Rules of Civil Procedure. *See* N.D.R.Civ.P. 60(b) (permitting a party to motion the court for relief from a final judgment or order). Judge Anderson specifically informed the parties after Judge Jorgensen's retirement, that she was "in no position to make any modification to the Order signed by Judge Jorgensen" as there was "no pending motion to modify or change the Order for Judgment." (Appx. 67-68 at ¶ 4). Furthermore, Jeanette made no attempt to obtain relief under Rule 60(b) after entry of the district court's *Judgment* on August 20, 2014. Rather, Jeanette filed an immediate *Notice of Appeal* on August 21, 2014 without first resolving the appraisal issue. (Appx. 71). Accordingly, in the event this Court finds that the district court erred by incorporating the June 17, 2014 appraisal into its order and subsequent judgment, the proper remedy is to remand for correction of the specific issue of valuation only.

CONCLUSION

[¶29] For the reasons explained, Jeanette Mattern's contention on appeal that the Subject Property is not divisible due to a lack of estate creditors is not reviewable by this Court. Furthermore, the district court correctly determined that the "homestead," as defined by N.D.C.C. Chapter 30-16 consists solely of the second-floor residence of the

CERTIFICATE OF SERVICE

[¶30] I hereby certify that a true and correct copy of the forgoing brief was electronically filed with the Clerk of the North Dakota Supreme Court on the 26th day of November, 2014, and e-mailed to the following:

Clark J. Bormann (cbormann@bmmelaw.com)

Sophie Y. Morgan (smorgan@bmmelaw.com)

By: /s/ Sheldon A. Smith
Sheldon A. Smith