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LAW AND ARGUMENT

I. REPLY TO BRIEF OF APPELLEES, GENERALLY.

¶ 1 The District Court's Order dated July 30, 2014 is clearly erroneous in that the District Court ignored evidence of utilization of joint marital funds to purchase real and personal property during the parties' marriage and ignored substantial testimony establishing that Marie made both financial and non-economic contributions to both the ranch and the home. Kevin's brief does nothing more than argue the Ruff-Fischer factors as applicable to this case. The brief fails to mention in any way the District Court's failure to address Marie's non-economic contributions both on the ranch and as a homemaker, which case law has shown can supplement the Ruff-Fischer analysis. See Routledge v. Routledge, 377 N.W.2d 542 (N.D. 1985) (holding that appreciated value of pre-marital property of one spouse may be included in the marital estate if the nonowning spouse contributed to the increase in value); Gegelman v. Gegelman, 342 N.W.2d 404 (N.D. 1984) (holding that the net increase in value of the husband's pre-marital assets was not to be included in the marital estate because the wife did not contribute to the increase in any manner to the increase in value); Svetenko v. Svetenko, 306 N.W.2d 607 (N.D. 1981) (holding that, while the husband brought the income-producing land into the marriage, the wife worked to grow the productivity of the farm, and therefore should receive some of the equity in it). Because Defendant, Marie Fugere, has shown that the District Court failed to consider her contributions to the marriage on the ranch and as a homemaker, the District Court's July 30, 2014 Memorandum Order and subsequent August 29,

2014 Judgment for Divorce is clearly erroneous and should be reversed and remanded.

II. THERE IS SUBSTANTIAL EVIDENCE THAT MARIE CONTRIBUTED TO THE HOME AND RANCH BOTH ECONOMICALLY AND NON-ECONOMICALLY, AND, THEREFORE, THE PROPERTY DIVISION IS CLEARLY ERRONEOUS.

¶ 2 During the parties' marriage, Kevin Fugere accumulated a significant amount of new real and personal property. Marie Fugere was awarded no part of that increase in property because the District Court reasoned that all of the property was brought into the marriage by Kevin and that the accumulation and appreciation of the property came as a result of no effort by Marie. This reasoning, however, is contrary to the testimony given by Kevin, Marie and other witnesses regarding the work that Marie did on the ranch as well as in the home.

¶ 3 Kevin's brief fails to address this issue entirely and, much like the District Court's July 29, 2014 Memorandum Order, focuses solely on what financial contributions Marie made to the ranching operation. This ignores the fact that additional consideration has historically been given to homemakers and ranch-wives, who are not traditionally employed, regarding the effort and labor they put into the home and ranch, as this analysis does not cleanly fit within the Ruff-Fischer factors. See Horner v. Horner, 2004 ND 165, 686 N.W.2d 131 (2004); Peterson v. Peterson, 1999 ND 191, ¶ 9, 600 N.W.2d 851, 854; Young v. Young, 1998 ND 83, ¶ 15, 578 N.W.2d 111; Kautzman v. Kautzman, 1998 ND 192, 585 N.W.2d 561; Svetenko, 306 N.W.2d at 613. A property distribution based solely on economic contribution to the marital estate is an erroneous view of the law and constitutes

reversible error. See Moilan v. Moilan, 1999 ND 103, 598 N.W.2d 81. To completely ignore the effort and labor that Marie put into the ranch and home as a homemaker and ranch wife is inequitable and unjust, and contrary to the existing state of the law in North Dakota.

¶ 4 Several of the cases that Plaintiff cites give credence to Defendant's argument. Plaintiff cites Routledge v. Routledge, 337 N.W.2d 542 (N.D. 1985) as support to his argument that a short term marriage militates that each party be awarded what they brought into the marriage. However, Routledge also stands for the proposition that "[t]he trial court is to consider the Ruff-Fischer guidelines and distribute the marital property in an equitable manner." Routledge, 337 N.W.2d at 548 (citations omitted). A part of the determination of whether a distribution is equitable or not is an examination of the non-economic contributions of a homemaker spouse. See Gegelman v. Gegelman, 342 N.W.2d 404 (N.D. 1984). In this case, Defendant has argued, not that the District Court has improperly considered the Ruff-Fischer factors, but that the District Court failed to consider other factors, such as Defendant's non-economic contributions to the marriage, in making the equitable distribution of property.

¶ 5 Plaintiff miscites Svetenko v. Svetenko, 306 N.W.2d 607 (N.D. 1981) for the proposition that even in long term marriages, it is an equitable property distribution to award each party the property they came into the marriage with. However, Plaintiff fails to note that Svetenko, actually supports Defendant's argument that the District Court erroneously labeled real and personal property that was acquired during the marriage as property that Kevin came into the marriage

with. Id. at 611. This Court reversed and remanded, finding that the equipment that the husband came into the marriage with was not equivalent in value to the newer equipment the parties acquired during the marriage, and the wife should share in the value of the equipment which was purchased during the marriage that exceeded the value of the equipment the husband brought into the marriage. Id. This is the same exact argument that Marie is making. The parties' equipment did not increase in value on its own; the parties together invested and purchased newer equipment; this is not the equipment Kevin came into the marriage with.

¶ 6 Plaintiff's brief further argues that the Defendant's position is asking the Court to substitute its judgment for the District Court's. This is patently false. The Defendant is merely requesting the Court to consider a point of view and facts that appear to have been overlooked by the District Court in its analysis and Order.

¶ 7 During the course of this marriage, Plaintiff's real and personal property holdings increased both in value and in number. Plaintiff's income also increased exponentially from the beginning of the marriage to the end of the marriage. Plaintiff's argument infers that it is merely coincidental that during his twenty years of ranching, the years during the parties' marriage just so happen to be those years during which his income and assets increased, and it comes of no assistance from the Defendant. Defendant's contributions to the marriage obviously had a positive impact on Plaintiff's financial situation, while it had a negative impact on Defendant's. To completely deny this and award Defendant zero part of what her efforts helped build is inequitable and unjust, and because the testimony and

evidence clearly support her position, it is also clearly erroneous, and should be reversed.

III. THE DISTRICT COURT SIGNED A JUDGMENT FOR DIVORCE CONTRARY TO ITS OWN MEMORANDUM ORDER, AND THEREFORE, IS CLEARLY ERRONEOUS.

¶ 8 Plaintiff's argument regarding the reduction of Marie's lump sum cash award by \$24,000.00 is without merit. Plaintiff does not address the plain language of the Interim Orders and the Memorandum Order dated July 30, 2014. Instead, Plaintiff merely argues that Defendant should have known what the District Court's intent was, even though the plain language said otherwise. This flies in the face of plain language interpretation, and sets a perilous standard that allows attorneys to infer what the District Court meant instead of what the District Court actually ordered.

¶ 9 It is indisputable that the District Court's Memorandum Order dated July 30, 2014 states that Marie's \$105,000.00 cash award was to be reduced only by "amounts paid by Kevin to Marie for her costs in attorney's fees associated with this case and referenced in prior Orders." Appellant's Appendix, Doc. No. 11, ¶ 36. The Interim Order dated February 26, 2013 specifically states "[Marie] is herein awarded \$12,000.00 for emergency living expenses . . ." This award was not for attorney's fees; the Interim Order dated February 26, 2013 explicitly states that it is for emergency living expenses. Therefore, it should not have been taken from Marie's \$105,000.00 cash award pursuant to the plain language of the Memorandum Order dated July 30, 2014.

¶ 10 Further, Plaintiff's argument merely strengthens Defendant's position. Plaintiff argues that the District Court informed both attorneys, at the Interim Order hearings, that "it would take into consideration the lump sum payment of \$12,000.00 it required Kevin to pay Marie . . . and make whatever reduction it found appropriate after trial, if any. . ." Brief of Appellee, ¶ 94. This statement in no way guaranteed or made any other type of suggestion that the District Court absolutely would be reducing Marie's award at trial by the value of both Interim Orders. This said the District Court would consider it. Pursuant to the Memorandum Order dated July 30, 2014, the District Court did just that, and decided to only reduce Marie's award by "costs [and] attorney's fees."

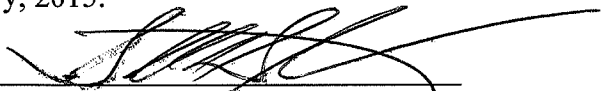
¶ 11 Lastly, while the District Court may have clarified what its intent was in the August 29, 2014 Order, that intent is completely different from the plain language of what was ordered in the Memorandum Opinion dated July 30, 2014. For the District Court to completely change, midstream, what was ordered is an improper amendment of its own Order. It did not appear to be a clerical error, oversight, or omission, but rather a substantive issue which must be amended by motion of a party, not on the District Court's own accord. See N.D.R.Civ.P. 60. Therefore, the Divorce Judgment should have embodied the plain language of the Memorandum Order dated July 30, 2014, not something completely different.

IV. CONCLUSION.

¶ 12 The Plaintiff's brief reiterates the District Court's analysis of the Ruff-Fischer factors, however, the District Court's analysis of the Ruff-Fischer factors is not the core of Defendant's argument. Defendant is arguing that the District

Court's Judgment and Memorandum Order are clearly erroneous because they failed to take into account facts that inherently change the equitable nature of the property disposition. The District Court failed to take into account the origin of pieces of real and personal property, and instead erroneously credited Kevin as having brought all of the property of the marriage in. The District Court also failed to take into account the non-economic contributions of Marie Fugere to the marriage both on the ranch and as a homemaker prior to making the equitable distribution of property. Lastly, the District Court issued a Memorandum Order stating that Plaintiff's cash award should be reduced by "costs [and] attorney's fees," yet the Judgment for Divorce signed by the District Court reduces Plaintiff's cash award not only by attorney's fees and costs, but also by emergency living expenses. Because there are incontrovertible facts and testimony in evidence supporting these claims, the District Court's Judgment for Divorce and Memorandum Opinion are clearly erroneous and should be reversed.

Respectfully submitted this 3rd day of February, 2015.



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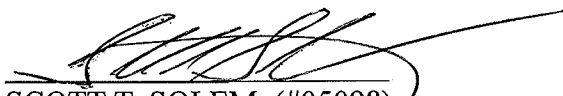
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CERTIFICATE OF COMPLIANCE

¶ 13 The undersigned, as the attorney representing Appellant, Marie E. Fugere and the author of this Brief hereby certifies that said brief complies with Rule 32(a)(7)(A) of the North Dakota Rules of Appellate Procedure, in that it contains 1,987 words from the portion of the brief entitled "Law and Argument " through the signature block of the Certificate of Compliance. This word count was done with the assistance of the undersigned's computer system, which also counts abbreviations as words.

DATED this 3rd day of February, 2015.



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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

MARIE E. FUGERE,)
)
Defendant and Appellant,) Supreme Court Case No. 20140334
)
vs.)
)
KEVIN E. FUGERE,)
)
Plaintiff and Appellee.)

AFFIDAVIT OF SERVICE BY ELECTRONIC SERVICE

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

ALLYSON M. HICKS, being first duly sworn, does depose and state that she is of legal age and not a party to the above entitled matter and on February 3, 2015, the following documents:

- A. Reply Brief of Appellant Marie E. Fugere
- B. Affidavit of Service by Electronic Service

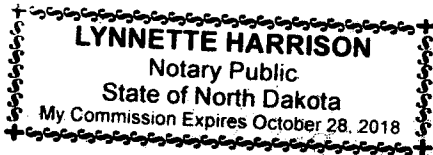
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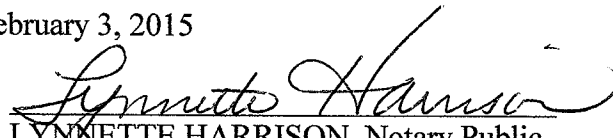
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Signed and sworn to before me on February 3, 2015




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