

IN THE SUPREME COURT OF THE  
STATE OF NORTH DAKOTA

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Michael T. Bindas,	)	
	)	
Plaintiff - Appellee,	)	<b>APPELLEE'S PETITION</b>
	)	<b>FOR REHEARING</b>
vs.	)	
	)	Supreme Court File No.
Mari F. Bindas,	)	20180232
	)	
Defendant - Appellant.	)	

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Appeal from the Order entered April 18, 2018,  
issued by the Honorable Frank L. Racek,  
District Court Judge, Cass County, East Central Judicial District.

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## STATEMENT OF ISSUES

- I. **In 2009, did North Dakota law allow for termination of spousal support when the recipient cohabitated with another individual and the cohabitants were sharing living expenses.**

## STANDARD OF REVIEW

[¶1] A District Court’s determination regarding whether there has been a change of circumstances warranting termination of spousal support is a finding of fact which will not be reversed on appeal unless it is clearly erroneous. Wheeler v. Wheeler, 548 N.W.2d, 27, 30 (ND 1966).

## STATEMENT OF THE CASE

[¶2] Plaintiff/Appellee, Michael T. Bindas (“Michael”) and Defendant/Appellant, Mari F. Bindas (“Mary”) were divorced on November 6, 2009. (App. 21-30).

[¶3] On January 17, 2018, Michael brought a Motion to Modify Spousal Support. (App. 31).

[¶4] After a hearing on April 2, 2018 the District Court issued a decision terminating Michael’s spousal support obligation. (App. 48).

[¶5] On February 25, 2019 the North Dakota Supreme Court issued its decision reversing and remanding the District Court’s decision.

## STATEMENT OF THE FACTS

[¶6] Michael and Mari were divorced on November 6, 2009. (App. 21-30). The divorce Judgment incorporated a Marital Termination Agreement signed by the parties. (App. 7-17).

[¶7] Paragraph 6 of the Marital Termination Agreement governed spousal support. (App. 9). Paragraph 6 provided in part that Michael would pay spousal support to Mari in the amount of \$3,200 per month. Michael’s spousal support obligation was to continue until “the death of either party, Mari’s remarriage, or until the payment due on February 1, 2023 has been made, whichever occurs sooner.” The Marital Termination Agreement was silent regarding cohabitation. (App. 9).

[¶8] In August of 2012 Mary began dating Douglas. (App. 38). In October of 2014, Mari and Douglas jointly purchased a home. (App. 34-38).

[¶9] Mari and Douglas equally share the majority of costs associated with the home. Her Affidavit provides in part as follows:

Our bills remain separate with the exception of the mortgage, utilities, real estate taxes, homeowner’s insurance, groceries, and home maintenance, which we share equally.

(App. 39).

[¶10] In her Brief Mari conceded that she and Douglas are jointly obligated to pay the mortgage on the home and that she and Douglas divide the monthly utility expenses equally.

[¶11] On January 17, 2018, Michael brought a Motion to Modify Spousal Support. (App. 31). There had been a material change in circumstances since the divorce. The Legislature had enacted Section 14-05-24.1 which specifically provided that spousal support would terminate upon cohabitation. Furthermore, it was undisputed that Mari and Douglas were cohabitating and sharing expenses.

The sharing of expenses reduced her need for spousal support. After a hearing on April 2, 2018 the District Court issued a decision terminating Michael's spousal support obligation. (App. 48). On February 25, 2019 the North Dakota Supreme Court issued its decision reversing and remanding the District Court's decision.

### **LAW AND ARGUMENT**

**I. In 2009 did North Dakota law allow for termination of spousal support when the recipient cohabitated with another individual and the cohabitants were sharing living expenses.**

[¶12] In North Dakota spousal support is governed by Section 14-05-24.1 of the North Dakota Century Code. The statute specifically provides that the District Court retains jurisdiction to modify spousal support orders. The statute provides as follows:

Taking into consideration the circumstances the parties, the court may require one party to pay spousal support to the other party for a limited period of time in accordance with this section. The court may modify its spousal support orders.

[¶13] This Court, in Cermak v. Cermak, 569 N.W.2d 280 (1997) addressed whether spousal support should terminate upon cohabitation. In Cermak, the North Dakota Supreme Court held that cohabitation alone did not serve as the basis for termination of spousal support. Id. at ¶9. The Court in Cermak stated:

We adopt the modern view that cohabitation cannot be the **sole** basis for termination of spousal support at least where cohabitation is not included as a condition for termination in the divorce decree.

Id. at ¶14. (emphasis added)

[¶14] The decision in Cermak was also based upon the fact that often times cohabitants had no legal obligation to continue to pay each other's expenses. In Cermak, the Supreme Court stated as follows:

Though unmarried cohabitants may voluntarily contribute to each other's support, *they have no legal obligation to pay*. Id. (Emphasis added) ... On this record, any support Loretta may receive from her cohabitant is provided from his benevolence and comes with no reciprocal or continuing obligation.

Id. at ¶10.

[¶15] Spousal support is based upon need and ability to pay. In Cermak, the North Dakota Supreme Court stated as follows:

Duane concludes the change is material because Loretta is sharing expenses with her cohabitant. This argument assumes a decrease need automatically occurs when a recipient spouse cohabits. We are not prepared to make such an assumption without evidence establishing a material change in financial needs has actually occurred.

Id. at ¶19.

[¶16] The law of the land in 2009 was that cohabitation alone could not be the sole reason for terminating spousal support. This was based upon the fact that cohabitation alone would not automatically result in a decrease in the recipient's living expenses. Even though cohabitation could not be the sole reason for termination of spousal support, cohabitation could be a factor in termination of spousal support if evidence were presented that the recipient's needs were decreased based upon the cohabitants sharing living expenses. That is exactly what occurred in this case.

[¶17] In this case, Mari and Douglas jointly purchased a home. (App. 34).

Mari and Douglas equally share the majority of costs associated with the home.

Her Affidavit provides in part as follows:

Our bills remain separate with the exception of the mortgage, utilities, real estate taxes, homeowner's insurance, groceries, and home maintenance, which we share equally Mari and Douglas are both on the mortgage.

(App. 39). Unlike Cermak, both Douglas and Mari have a contractual, legal, obligation to continue to pay the mortgage on the home.

[¶18] In this case, the District Court, in its Order Terminating Spousal

Support found as follows:

Mari has been cohabitating with her boyfriend Douglas Fair ("Douglas"), since 2014. Mari and Douglas began dating in August of 2012. They purchased a home together in the Fall of 2014. They share the mortgage, utilities, real estate taxes, homeowner's insurance, groceries, and home maintenance. They are in an exclusive relationship.

(App. 41-42).

[¶19] The District Court's Order Terminating Spousal Support was based not only on cohabitation but was also based upon the fact that Douglas was paying a portion of the expenses associated with the parties' home. (App. 41). His payment of expenses was more than benevolent. He had a contractual legal obligation to pay the mortgage. As such the District Court's Order Terminating Spousal Support must be affirmed.



**CONCLUSION**

[¶20] For the reasons stated above, this Court should grant Michael Bindas' Petition for Rehearing.

Dated this 7<sup>th</sup> day of March 2019.

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ATTORNEYS FOR  
PLAINTIFF/APPELLEE

**CERTIFICATE OF SERVICE  
BY ELECTRONIC MEANS**

I, BOBBI SKARPHOL, hereby certified that on the 7<sup>th</sup> day of March 2019, I served the following documents on appellant by electronic means by forwarding them to appellant's attorney at deann@pladsonlaw.com.

**APPELLEE'S PETITION FOR REHEARING**

/s/ Bobbi Skarphol  
Bobbi Skarphol

#

**CERTIFICATE OF SERVICE  
BY ELECTRONIC MEANS**

I, BOBBI SKARPHOL, hereby certified that on the 8<sup>th</sup> day of March 2019 I served the following document on Wayne Stenchjem, Attorney General, Matthew A. Sagsveen, Solicitor General, and Courtney R. Titus, Assistant Attorney General, State of North Dakota, by electronic means by forwarding them to [masagsve@nd.gov](mailto:masagsve@nd.gov) and [ctitus@nd.gov](mailto:ctitus@nd.gov).

**APPELLEE'S PETITION FOR REHEARING**

/s/ Bobbi Skarphol \_\_\_\_\_  
Bobbi Skarphol