

Supreme Court No. 20200258

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Mercer Co. Court No. 29-2019-DM-00050

**Jean Kaspari,
v.
Thomas Kaspari**

Plaintiff and Appellee

Defendant and Appellant

**APPEAL FROM JUDGMENT DATED SEPTEMBER 25, 2020 AND FINDINGS
OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT DATED
SEPTEMBER 10, 2020 OF THE MERCER COUNTY DISTRICT COURT, THE
HONORABLE PAMELA A. NESVIG**

APPELLEE'S BRIEF

ORAL ARGUMENT REQUESTED

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STATEMENT OF THE ISSUES

- 1) Based upon N.D.C.C. § 14-05-24.1 and the Ruff-Fischer Guidelines the award of permanent spousal support is appropriate.
- 2) Based upon N.D.C.C. § 14-05-24.1 and the Ruff-Fischer Guidelines the amount of the spousal support award is appropriate.

STATEMENT OF THE FACTS

¶1 Jean Kaspari (“Jean”) is 58 years old. T.5:17. Thomas Kaspari (“Thomas”) is 59 years old. T.77:25.

¶2 Jean attended NDSU and met Thomas who was pursuing ag courses at NDSU. T.6:3 and T.7:14-21. Jean had scholarships and did not incur debt for her nursing degree. T.6:13-21 and T.8:5-15. Jean became pregnant, and the parties married on April 30, 1983. T.8:7-25. Thomas stopped taking classes at NDSU and went to work as a mechanic. T.8:10-25 and T.9:12-25. Their daughter Danielle was born late in 1983 while Jean was still in school. T.8:16-22. Jean graduated with an associate degree, becoming a registered nurse in 1984. T.6:20-21.

¶3 Jean was employed as a nurse at St. Luke’s Hospital in Fargo from 1984 through 1996. T.7:4-12.

¶4 After the twins (Nicholas and Lee) were born in 1987, Thomas took a couple of courses at NDSU so he could apply to the nursing program at Concordia. T.10:5-15 and T.11:3-9. He worked part time as a nursing assistant while in nursing school and took out loans to secure his RN degree. T.11:10-25.

¶5 While Thomas was at Concordia, Jean worked full-time, and Thomas’s sister lived with them to help care for the children. T.12:5-10.

¶6 Almost immediately upon graduation from Concordia, Thomas worked towards applying to medical school. T.12:13-23. He applied to UND medical school, was accepted, and started school in September 1992 in Grand Forks when their eldest child was 9 and their twins were 5. T.14:10-23. The parties incurred significant loans for Thomas' medical schooling. T.16:1-8.

¶7 Thomas had a sleeping room in Grand Forks and returned to Fargo on weekends. T.13:18-22. Jean stayed in Fargo, worked nights at the hospital, took the children to day care and tried to sleep until it was time to pick up the children and take them to their activities. Jean's niece, who was attending NDSU, came and stayed with the children at night. T.14:1-9. After two years of medical school, Thomas came back to Fargo for his third and fourth years. Jean continued working nights and caring for the parties' children. T.15:8-24.

¶8 When Thomas finished his fourth year of medical school, he and Jean discussed where he should go for his residency. Thomas wanted a family residency that would include delivering babies, which was not available in Grand Forks or Fargo, but was available in Minot. Jean had concerns about moving to Minot where they would not have family who could help with the children like they had in Fargo. T.16:12-25. The parties purchased a small rambler home in Minot. T.18:7-9. The parties agreed Jean would not work as a nurse outside the home in Minot. T.17:4-12 and T.67:1-25.

¶9 The parties did not take out any loans during Thomas's residency. His three-year residency paid a small amount and Thomas did some ER moonlighting in small towns to supplement that income. T.17:15-24. Thomas was very busy during his residency and was rarely home. Jean cared for the children who were in the 7th and 3rd grades. T.18:7-25.

¶10 In 1999, Thomas accepted employment in Hazen and the family moved to a rural home in Oliver County which they rented for a short time and then purchased 40 acres with the home. T.19:3-9 and T.19:20-24 and T.20:1-4.

¶11 Jean did most of the renovation work on their home (building walls, hanging sheet rock, tape and texturizing and painting), though Thomas helped with the electrical work T.22:11-24. Jean did not have help with the household duties. T.23:5-13.

¶12 Thomas purchased cattle and they were both involved in taking care of them. T.27:11-24. They had expenditures related to the cattle and they purchased a skid steer, backhoe, stock trailer and flatbed trailer. T.27:1-10.

¶13 Jean was busy following the children's activities and transporting them to school and extracurricular activities. T.20:13-25. Jean took care of the home and prepared the meals and at times chased after cows. T.23:8-18.

¶14 Jean saw their lives as normal. T.23:19-25 and T.24:1-14. Jean and Thomas travelled (business and pleasure) throughout their marriage, including a two-week trip to Scotland for their 25th anniversary, trips to New York, and trips with the children. T.24:1-14 and T.31:3-15. Jean was involved in charitable community activities in Hazen. Both followed their children's activities. T.30:1-23.

¶15 The parties had more debt than they would have liked and had discussions about their finances, but they did not have arguments. T.26:2-21 and T.125: 2-13. The parties' credit cards had high interest rates (28%) and they made minimum payments. T.90:2-10. They didn't use the credit cards very much. T.92:2-22. When their oldest daughter graduated from high school in 2002 and went to college, Thomas and Jean co-signed

student loans for her. T.25:4 and T.25:16-19. After Jean left their home in 2013, the parties refinanced their mortgage and paid off credit card debt. T.92:23-25 and T.93:1-19.

¶16 When the parties moved to Hazen, they discussed employment opportunities for Jean. T.21:11-24. In considering employment for Jean at the hospital, Thomas told her it would be better for her not to work there because the nurses did not really want her there, and they just didn't want Dr. Kaspari's wife telling them what to do. T.21:11-24. Both Thomas and Jean agreed that Jean would not work outside the home. T.22:3-9. Later during the marriage Jean's RN license had lapsed, and she took a refresher course to renew the license so she could return to work if needed. T.27:25 and T.28:1-19. The parties had discussions from time to time about Jean going to work. Thomas told Jean once that she would not want to work for the nursing home because the facilitator was "not a nice person". Nurses were not making very much in rural areas at that time. The minimal amount Jean would earn, at the parties' high tax rate didn't make sense. T.28:23-29:10. After renewing her license, Jean worked part-time for a short period at Coal Country Community Health Center in Center earning \$15.00 per hour. T.68:18-25 and T.69:1-7. In early 2013, Jean registered at Minot State University to get her bachelor's degree in nursing which would allow her to work in a hospital at a higher wage. T.58:21-25 and T.59:1-13.

¶17 In January 2013, Jean became concerned about Thomas; he stopped eating and lost a lot of weight very fast and he was distant. Jean saw text messages on Thomas's phone from a young woman at the hospital. On one occasion, Thomas and the young woman were texting about chapters in the book Fifty Shades of Grey. Thomas's personality changed, which was noticed also by their friends. T.32:13-25.

¶18] The parties had booked a trip to New York for their 30th anniversary. They still went on the trip and Jean described the trip as being bizarre. At a restaurant, Thomas conversed with people at a nearby table and when they left, he paid \$500 toward their meal. Thomas was on a shopping frenzy, buying extravagant suits, jeans—3 pairs of \$200 dollar jeans. T.43:7-25 and T.44:1.

¶19] Around Easter, Jean approached Thomas about her concerns about the situation, and Thomas told her that he never loved her, and they only got married because she was pregnant. T.33:1-25 and T.34:1-25.

¶20] Jean was “falling apart” and left to see her family for a few days. T.34:5-21. Jean returned after a few days and worked part-time (20-25 hours per week) at Custer District Health in Mandan making \$19.00 per hour and driving 60 miles one way. T.34:16-25. It was a temporary position and Jean worked May and June. T.35:9-22.

¶21] Thomas liked to go riding on his motorcycle because the cycle was new to him. On a Sunday in July, he took his motorcycle to Bismarck. When he got back, he appeared happy and excited. Later, Jean found a motel receipt and Thomas told her he had intentions of meeting up with the woman whom he had texted with but thought better of it. After seeing more inappropriate text messages between the woman and Thomas, Jean confronted him. Thomas told her he no longer wanted to be married, that she could get an apartment or stay in the marital home. Jean had no family in Hazen and could not afford to maintain the home. T.36:5-37:15. Jean packed some things in a suitcase and left. T.37:17-25.

¶22] Jean stayed with her sister and brother-in-law in Bemidji for a year and secured employment at the local Sanford hospital. T.38:3-14. After 1½ years, Jean made a lateral move to Sanford in Fargo where her son and a daughter lived. She stayed with her son until

she found a townhouse to rent in West Fargo. T.38:17-25 and T.39:1-11. The parties' son has stayed with Jean intermittently and does not pay rent. Jean helps the children financially if she is able. T.46:1-9 and T.60:12-25. Jean has worked fulltime for Sanford since she was hired T. 44:6-21. She works all hours available. T.44:22-25 and T.45:2-9.

[¶23] Jean's health is good, though she takes a blood pressure medication. T.45:7-18.

[¶24] Jean does not believe it would be worthwhile for her to go back to school and invest money to get her bachelor's degree at her age. T.59:17-25 and T.60:1-9.

[¶25] Jean deposits all her wages into her West Fargo checking account and her combined net income for 2018 and 2019 was \$130,040.00. T.47:11-25, T.48:1-9 and Doc. Id. #44.

[¶26] Thomas deposits all his income into his Union State Bank checking account and his combined net income for 2018 and 2019 was \$868,562.00. T.98:10-25, T.99:10-24 and Doc. Id. #54;.

[¶27] Jean's net average annual income for 2018 and 2019 was \$65,020.00, and Thomas's net average annual income for 2018 and 2019 was \$430,000.00. Doc. Id. #44 and Doc. Id. #54.

[¶28] Jean's lifestyle has changed since she left the family home. T.56:5-9. Jean has been unable to pay the entire balance on her credit cards. T.58:4-17. Jean would like to purchase the townhome she rents; however, she does not have the resources to make a down payment. T.46:13-23. She would need approximately \$17,738.00 in closing costs if she were to purchase the town home. T.53:8-23 and Doc. Id. #47.

[¶29] Jean has gone on three trips since she left Thomas (Ireland (2018), Las Vegas (2018) and Florida (2019). T.57:3-25. Jean purchased the tickets for herself, her daughters,

and relatives for the trip to Ireland. Her daughters and others reimbursed Jean for the airline tickets. T.70:11-25.

[¶30] Thomas has taken their children on international trips (British Virgin Islands and Scotland) and paid all expenses for them. T.118:13-23. He also gives money to their children at various times and in varying amounts (from a couple hundred to \$2500). T.118:13-23 and T.116:8-16. Thomas has taken a hunting trip to New Mexico. T.118:1-9.

[¶31] Over 2018 and 2019, Thomas charged the sum of \$162,526.00 on his AMEX Platinum Sky Delta One credit card, averaging \$80,000.00 per year. (Doc. ID #49) T.100:1-23.

[¶32] Over 2018 and 2019, Thomas charged the sum of \$60,448.64 on his Chase Hyatt credit card (Doc. ID #50) averaging \$30,000.00 per year. T.101:3-25 and T.102:1-6.

[¶33] Thomas uses his checking account for monthly living expenses such as utilities and house payment. Doc. Id. #54.

[¶34] Thomas has made high dollar purchases since the parties separated: T.110:23-25 and T.110:10-18 and T.110:23-25 and T.111:1-8 and T.111:11-23 and T.112:2-10. Purchases: Tractor in November 2014 (Cost: \$25,000, cash down of \$2,427, and financed \$22,527); Cessna airplane in October 2015 (Cost: \$19,900, cash down of \$5,850 and financed \$14,050); 2018 CAT 236D on 02/22/2020 (Cost: \$42,000, cash down of \$21,000 and financed \$21,000); John Deere 6116 M on 6/28/2018 (Cost: \$85,000, cash down of \$25,000 and financed \$58,500). Doc. Id. #56. Thomas also purchased some bred cows in late 2017 or early 2018. T.112:21-24.

ARGUMENT

Issue: 1) Based upon N.D.C.C. § 14-05-24.1 and the Ruff-Fischer Guidelines the award of permanent spousal support is appropriate.

[¶35] N.D.C.C. § 14-05-24.1, governs spousal support and states:

1. Taking into consideration the circumstances of 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.
2. Unless otherwise agreed to by the parties in writing, spousal support is terminated upon the remarriage of the spouse receiving support. Immediately upon remarriage, the spouse receiving support shall provide notice of the remarriage to the payor spouse at the last known address of the payor spouse.
3. Unless otherwise agreed to by the parties in writing, upon an order of the court based upon a preponderance of the evidence that the spouse receiving support has been habitually cohabiting with another individual in a relationship analogous to a marriage for one year or more, the court shall terminate spousal support.
4. Subsections 2 and 3 do not apply to rehabilitative spousal support.

[¶36] “Prior to the 2015 amendment to N.D.C.C. § 14-05-24.1, the terms rehabilitative support and permanent support did not appear in the statutes but only in this Court’s opinions. The 2015 amendment introduced an important difference between rehabilitative support and all other support, including support our cases have referred to as ‘permanent’ and ‘temporary,’ which we will refer to here as non-rehabilitative support. After the amendment, rehabilitative support was not subject to termination upon cohabitation, but non-rehabilitative support, including what our opinions have often but not uniformly referred to as ‘permanent’ support, must be terminated upon a showing of cohabitation for one year. N.D.C.C. § 14-05- 24.1(3) and (4). We give the statute’s use of the term ‘rehabilitative spousal support’ its plain meaning, informed by prior interpretation of that

term in our opinions, which we presume the legislature has taken into account in drafting the statute.” *O’Keeffe v. O’Keeffe*, 2020 ND 201, ¶10, 948 N.W.2d 848 citing *Heck v. Reed*, 529 N.W.2d 155, 161 (N.D. 1995).

¶37] The 2015 amendment to N.D.C.C. § 14-05- 24.1 did not eliminate the ability of the trial court to award ‘permanent’ (or non-rehabilitative) spousal support, but merely created statutory authority for termination of a non-rehabilitative support award if the recipient was cohabiting or remarried.

¶38] “We have said permanent spousal support and rehabilitative spousal support are two distinct remedies. Rehabilitative spousal support is appropriate when it is possible to restore a spouse to independent economic status or to equalize the burden of the divorce by increasing that spouse’s earning capacity.” *O’Keeffe* at ¶ 11 (internal citations omitted).

¶39] The trial court found that it was not financially beneficial for Jean to secure additional education to increase her earning capacity as she lacks the funds to pay for the education, needs her current income to provide for herself, and her return on the investment would be minimal based on the limited number of work years Jean has left due to her age. App. 705 at ¶14.

¶40] “Permanent spousal support is appropriate when a spouse cannot be rehabilitated. Even when a spouse is capable of rehabilitation, permanent spousal support may be an appropriate remedy to equalize the burdens of the divorce. We have acknowledged that a ‘substantial disparity between the [spouses’] incomes that cannot be readily adjusted by property division or rehabilitative support’ may support an award of ‘indefinite permanent support to maintain the disadvantaged spouse.’ Such ‘permanent’ spousal support ‘may be appropriate when there is a substantial income disparity and a substantial disparity in

earning power that cannot be adjusted by property division or rehabilitative support.”
O’Keeffe at ¶ 11-12 (internal citations omitted).

[¶41] Jean’s share of the property distribution was a retirement account valued at \$110,95.80 and her vehicle that has no equity. Thomas retained the parties’ marital home with \$83,171 in equity, a retirement account valued at \$24,298.75, a life insurance account valued at \$7,500, along with various vehicles tractors, trailers and other equipment with equity of \$12,050. Thomas also is responsible for his student loan debt from medical school. The parties had no other property at the time of separation (the date agreed to for valuation) to be distributed between them. App. 19-23.

[¶42] Jean works as a registered nurse earning \$30/hr with annual income of approximately \$57,300. App. 705 at ¶13. Thomas works as an M.D. earning over \$400,000 annually. App. 704-705 at ¶12. There is no question a substantial income disparity and earning ability disparity exist that cannot be adjusted through property division.

[¶43] “[O]ur Court has recognized permanent spousal support as an appropriate remedy to ensure the parties equitably share the overall reduction in their separate standards of living.’ *Sommer v. Sommer*, 2001 ND 191, ¶ 14, 636 N.W.2d 423...” *Mertz v. Mertz*, 2015 ND 13 ¶ 9, 858 N.W.2d 292.

[¶44] The trial court found that since the parties’ separation, Jean, with the interim spousal support of \$2,000 and despite a relatively frugal lifestyle (spending under \$10,000 annually on credit cards the last two years), had been unable to purchase a home and was accumulating debt. Jean’s income was not sufficient to meet her living expenses. App. 705 at ¶13. In contrast, since the parties’ separation, Thomas has made several large purchases of tractors, equipment and an airplane, he has taken the parties’ children on all-expense

paid trips and been spending approximately \$140,000 annually on credit cards. App. 705 at ¶14. Jean’s standard of living has substantially declined, while Thomas’ has remained the same or even improved.

[¶45] “...‘A district court may award permanent spousal support ‘when the economically disadvantaged spouse cannot be equitably rehabilitated to make up for the opportunities and development she lost during the course of the marriage.’ *Gustafson v. Gustafson*, 2008 ND 233, ¶ 6, 758 N.W.2d 895 (quoting *Wagner v. Wagner*, 2007 ND 33, ¶ 8, 728 N.W.2d 318). ‘A disadvantaged spouse is one who has foregone opportunities or lost advantages as a consequence of the marriage and who has contributed during the marriage to the supporting spouse’s increased earning capacity.’ *Sommer*, at ¶ 10 (citations and quotation marks omitted). This Court has ‘dispose[d] of the ‘disadvantaged spouse’ doctrine and reemphasize[d] the importance of a comprehensive analysis under the Ruff-Fischer guidelines.’ *Sack v. Sack*, 2006 ND 57, ¶12, 711 N.W.2d 157; *Ruff v. Ruff*, 78 N.D. 775, 52 N.W.2d 107 (1952); *Fischer v. Fischer*, 139 N.W.2d 845 (N.D. 1966).” *Mertz*, at ¶9.

[¶46] The trial court found that while Thomas was in medical school, Jean continued to work to support their family, while continuing to care for their children – foregoing advancing in her career to support Thomas in obtaining his medical degree and increasing his earning capacity. App. 707 at ¶18. Jean testified that she viewed Thomas’ education as an investment and believed his income would fund their retirement. T. 59:1-6.

[¶47] “Under N.D.C.C. § 14-05-24.1, the district court may order spousal support after taking the parties’ circumstances into consideration. The court must consider the needs of the spouse seeking support and the ability of the other spouse to pay. Additionally, the district court must consider the Ruff-Fischer guidelines, including:

[T]he respective ages of the parties, their earning ability, the duration of the marriage and conduct of the parties during the marriage, their station in life, the circumstances and necessities of each, their health and physical condition, their financial circumstances as shown by the property owned at the time, its value at the time, its income-producing capacity, if any, whether accumulated before or after the marriage, and such other matters as may be material.

The court is not required to make specific findings on each factor, but this Court must be able to determine the reasons for the court's decision." *Tarver v. Tarver*, 2019 ND 189, ¶15, 931 N.W.2d 187. (Internal citations omitted.)

[¶48] The trial court found Jean is 58 and Thomas is 59 years old, that neither party planned to retire and that they were both in good health. The trial court found that if Jean pursued additional education/training she would suffer a loss of income, also given her age and current resources, she would never approach [Thomas'] earning ability. App. 707 at ¶18. The trial court found that the circumstances of the parties are drastically different. After issues of infidelity and affection by Thomas arose, Jean left the parties' 30-year marriage. Since then, she has not owned a home and has been unable to meet her reasonable monthly expenses without incurring debt; she owns one vehicle and is unable to provide financial support to the parties' children. Thomas, however, remains in the parties' marital residence, which he owns subject to a mortgage, has the ability to spend approximately \$140,000 annually over and above his necessities, provides financial assistance and vacations for the parties' children, and purchases tractors, trucks and an airplane. App. 707-708 at ¶19.

[¶49] The trial court meticulously analyzed the parties' financial circumstances and appropriately applied the facts of the case to the Ruff-Fischer guidelines, considering

Jean's need and Thomas' ability to pay, while also factoring in the stipulated property division.

Issue: 2) Based upon N.D.C.C. § 14-05-24.1 and the Ruff-Fischer Guidelines the amount of the spousal support award is appropriate.

[¶50] “A district court’s choice between two permissible views of the weight of the evidence is not clearly erroneous.” *Kosobud v. Kosobud*, 2012 ND 122, ¶6, 817 N.W.2d 384. “[T]his Court will not reverse the district court merely because it may have viewed the evidence differently.” *Berg v. Berg*, 2018 ND 79, ¶9, 908 N.W.2d 705. “A decision about spousal support is subject to the clearly erroneous standard of review. *Schmuck v. Schmuck*, 2016 ND 87, ¶ 6, 882 N.W.2d 918. In deciding whether spousal support is appropriate, the court must consider the Ruff-Fischer guidelines, the needs of the spouse seeking support, and the ability of the other spouse to pay. *Id.* Property distribution and spousal support are interrelated and often must be considered together. *Id.*” *Willprecht v. Willprecht*, 2020 ND 77, ¶40, 941 N.W.2d 556.

[¶51] “This Court has encouraged parties to reach peaceful settlements of disputes in divorce matters because there is strong public policy favoring prompt and peaceful resolution of divorce disputes. *Vann v. Vann*, 2009 ND 118, ¶ 12, 767 N.W.2d 855 (quoting *Knutson v. Knutson*, 2002 ND 29, ¶ 8, 639 N.W.2d 495). We have said [t]o the extent that competent parties have voluntarily stipulated to a particular disposition of their marital property, a court ordinarily should not decree a distribution of property that is inconsistent with the parties’ contract. *Eberle v. Eberle*, 2009 ND 107, ¶ 15, 766 N.W.2d 477 (quoting *Kramer v. Kramer*, 2006 ND 64, ¶ 6, 711 N.W.2d 164).” *Sims v. Sims, et al.* 2020 ND 110, ¶31, 943 N.W.2d 804. (Internal quotation marks omitted.)

¶52] The parties stipulated to the distribution of the marital estate. App. 19-23. The trial court appropriately applied the Ruff-Fischer guidelines App. 706-708 at ¶17- ¶19. The trial court considered the parties stipulated property distribution, awarding permanent spousal support of \$7,000 to Jean, but denying an equalization payment and attorney fees for either party. The trial court cited the property distribution and spousal support award as factors in denying an equalization payment and attorney fees. App. 708 at ¶20 - ¶22.

¶53] In the present case, the parties agreed that the valuation date for distribution of the marital estate should be the date of their separation in accordance with N.D.C.C. § 14-05-24(1). This has no bearing or effect on the trial court's determination regarding spousal support based on the circumstances existing at trial. There is strong precedence that the trial court is to consider the parties' circumstances at the time of trial when applying the Ruff-Fischer guidelines.

¶54] "... **Current evidence** supports both the amount and the duration of David Snyder's support obligation, and that portion of the district court's judgment is affirmed. *See Krueger*, 2008 ND 90, ¶ 12, 748 N.W.2d 671 (**awarding spousal support based on circumstances existing at trial**).” *Snyder v. Snyder*, 2010 ND 161, ¶11, 787 N.W.2d 727. **(emphasis added.)**

¶55] Thomas testified that his monthly living expenses were approximately \$8,200/mo. T.133:24. Thomas further testified that he pays himself \$12,000/mo. from his S Corporation. T.120:20-22. Additionally he receives wages from other entities of at least \$120,000. T.122:25. However, the parties' 2017 income tax return depicts net S Corporation income of \$273,392 and Thomas' wages of \$145,039¹, showing Thomas' total

¹ Form 1040, Line 7 \$202,763 minus Jean's wages \$57,724.

income of \$418,431. App. 405. The trial court found that Thomas is earning \$400,000 annually. App. 704-705 at ¶12. After his expenses Thomas would have \$304,000 of disposable annual income.

¶56] Jean testified that she had monthly living expenses of \$7,855, including some estimates as she did not have actual amounts. T.74:24-75:12. She further testified that she was living paycheck to paycheck. T.140:5. The trial court found that Jean was accumulating credit card debt to cover her expenses. App. 707 at ¶19. Jean's annual income at the time of trial was approximately \$57,300. App. 705 at ¶13. Jean cannot meet her monthly expenses.

¶57] After consideration of the parties' stipulated property distribution, the evidence of the parties' income and expenses and the circumstance of each of the parties as of the time of trial, the trial court properly found that Jean is in need of spousal support and that Thomas has the ability to pay \$7,000 per month.

CONCLUSION

¶58] The trial court properly applied the law awarding permanent (non-rehabilitative) spousal support to Jean. Thomas has failed to show the trial court's findings to be clearly erroneous based on the evidence presented at trial. Based on the parties' stipulated property distribution, the trial court's thorough application of the Ruff-Fischer guidelines and the evidence presented at the time of trial, Jean is clearly in need of and entitled to spousal support and Thomas is able to pay the same.

¶59] Spousal support was properly awarded, and Jean respectfully requests that the Judgment be affirmed.

REQUEST FOR ORAL ARGUMENT

¶60] Jean does not believe oral argument is necessary. In the event oral argument is granted, she requests the opportunity to appear to answer any questions the Court may have and to further clarify her position on the issues.

¶61] Dated this 5th day of January, 2021.

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**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Mercer Co. Court No. 29-2019-DM-00050

**Jean Kaspari,
v.
Thomas Kaspari**

**Plaintiff and Appellee
Defendant and Appellant**

CERTIFICATE OF COMPLIANCE

[¶1] This Appellee’s Brief complies with the page limit of 38 for the Brief set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, as the Brief consists of 20 pages.

[¶2] Dated this 5th day of January, 2021.

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Supreme Court No. 20200258

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Mercer Co. Court No. 29-2019-DM-00050

**Jean Kaspari,
v.
Thomas Kaspari**

**Plaintiff and Appellee
Defendant and Appellant**

CERTIFICATE OF SERVICE

[¶1] The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the following documents:

a. Appellee's Brief

by email at the below address(es) upon:

Jennifer Gooss
beulaw3@westriv.com

North Dakota Supreme Court
supclerkofcourt@ndcourts.gov

[¶2] Dated this 5th day of January, 2021.

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