

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

<p>Michael Pomarleau,                      Plaintiff                      <del>Michael</del> – Appellant                      and Cross-Appellee                      v.  Tanya Pomarleau,                      Defendant                      <del>Tanya</del> - Appellee,                      and     and Cross-Appellant  State of North Dakota,                      Statutory Real Party in Interest</p>	<p>Supreme Court Case No.: 20210083   District Court Case No.: 08-2018-DM-826</p>
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**Appeal from the Memorandum and Order (Docket #179) dated December 28, 2020, Judgment (Docket #199) dated January 20, 2021, Order on Post-Trial Motions to Amend the Court’s Memorandum and Order (Docket #228) dated May 13, 2021 and Amended Judgment (Docket #237), dated July 9, 2021 all issued and entered by the Honorable David Reich, District Court Judge for South Central Judicial District, Burleigh County, North Dakota.**

**APPELLANT’S REPLY BRIEF  
(Reply to Cross-Appeal of Tanya Pomarleau)**

**- ORAL ARGUMENT REQUESTED -**

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**TABLE OF CONTENTS**

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3
STATEMENT OF THE ISSUES.....	4
STATEMENT OF THE CASE.....	¶1
STATEMENT OF THE FACTS.....	¶3
ARGUMENT.....	¶4
A.    The District Court appropriately did not reduce the marital estate equity payment from Tanya to Michael by perceived differences in expenses the parties incurred for their children ...	¶4
B.    The District Court’s calculation of oil royalties received during separation was not clearly erroneous .....	¶9
CONCLUSION .....	¶17

**TABLE OF AUTHORITIES**

**Cases**

Fugere v. Fugere, 2015 ND 174, 865 N.W. 2d 407 ..... ¶15

**Statutes and Rules**

N.D. Cent. Code, § 31-11-05 ..... ¶4

## **STATEMENT OF THE ISSUES**

1. Did the District Court err when it declined to reduce the marital estate equity payment from Tanya to Michael by perceived differences in expenses the parties incurred for their children as presented by Tanya?
  
2. Did the District Court's err in it's calculation of oil royalties received during separation?

## STATEMENT OF THE CASE

¶1 This is an appeal / cross-appeal from the Memorandum and Order (Docket #179) dated December 28, 2020, Judgment (Docket #199) dated January 20, 2021, Order on Post-Trial Motions to Amend the Court's Memorandum and Order (Docket #228) dated May 13, 2021 and Amended Judgment (Docket #237), dated July 9, 2021 all issued and entered by the Honorable David Reich, District Court Judge for South Central Judicial District, Burleigh County, North Dakota.

¶2 Appellant has previously submitted his Appellant's Brief associated with his appeal and as such respectfully incorporates by reference his Statement of the Case as made therein.

## STATEMENT OF THE FACTS

¶3 As indicated above, Appellant has previously submitted his Appellant's Brief associated with his appeal. Michael respectfully incorporates by reference his Statement of the Facts as made therein.

## ARGUMENT

**A. The District Court appropriately did not reduce the marital estate equity payment from Tanya to Michael by perceived differences in expenses the parties incurred for their children**

¶4 Tanya's cross appeal issues are contained at pages 33-36 of her brief. In those cross-appeal arguments, she cites no case law of any nature to support her position and effectively cites no legal basis nor reasoning in support of her positions. She does cite to N.D.C.C. §31-11-05(12) and (14) as two maxims of jurisprudence which she asserts are the basis for her request for relief. N.D.C.C. §31-11-05(12) being the maxim that "One who takes the benefit must bear the burden" and (14) being the maxim that "For every wrong there is a remedy." N.D. Cent. Code, § 31-11-05. These maxims, among the 34 maxims cited by N.D.C.C. §31-11-15, do not support a basis upon which to overturn the District Court's decisions as to the areas of Tanya's appeal.

¶5 Tanya's initial appeal is that the District Court should have reduced the equity payment Tanya is required to make to Michael as a result of her getting the lion's share of the marital estate by the difference in the amount of money Tanya spent on the kids as compared to the amount of money Michael spent on the kids.

¶6 Tanya asserts that she spent \$6,089 more than Michael on the kids and thus her equity payment to Michael for purposes of property distribution should be reduced by \$3,044. Simply and directly stated, there is no law supportive of Tanya's position.

Furthermore, Tanya cites to no facts to establish why it was clearly erroneous for the court to not consider child-related expenses in the equitable distribution of the marital estate.

¶7 In fact, during cross examination on Tanya’s “child-related expenses”, Exhibit 78, she admitted that some of those expenses were not children-related expenses at all, even though she had testified and presented an exhibit, under oath, that these were “child-related expenses”. These expenses included a new security system for her house (T2 237:15-238:9) and the appraisal she obtained for Gold and Silver (T2 238:10-13). Clearly those were not “child-related expenses” and was demonstrated to be yet another money grab by Tanya.

¶8 Tanya has failed establish that these were child-related expenses and further failed to demonstrate anything that is clearly erroneous about the Court’s decision to not include these in any offset of an equity payment.

**B. The District Court’s calculation of oil royalties received during separation was not clearly erroneous**

¶9 Tanya next submits a one paragraph argument asserting that the Trial Court erred when it valued the oil royalties at \$18,782.

¶10 The \$18,782 value for the oil royalties was specifically accounted for by Michael in Exhibit 23D and 24D at trial. These exhibits detailed specifically all royalty income received and all expenses associated with the royalty income. 23D was specifically associated with Sparrow Investments, LLC and 24D was specifically associated with American Land Services, LLC.

¶11 Tanya’s “expert” Mr. Schick, testified that he specifically relied upon the General Ledgers prepared by Michael Pomarleau in arriving at an amount of the Royalty Income

(T2 66:6-12; 67:3-5). Further, Mr. Schick was utilizing an “average” tax rate for the oil royalty income rather than utilizing a tax rate of 32% which Michael argued applies to the oil royalties based on Michael’s income level. (T2 71:11-72:5). There was no clear error for the Trial Court to utilize this tax rate and value.

¶12 It is additionally noted that Michael objected to Tanya’s “expert”, Mr. Schick even being allowed to testify or present any evidence. (T1 9:14-11:2; T2 57:4-58:2). Mr. Schick had never been disclosed in Tanya’s discovery responses as being an expert she was intending to call and was not disclosed until very late in the game and in the 1-2 weeks prior to trial. (T1 9:14-11:2; T2 57:4-58:2). Additionally, even in the late disclosures, there was no disclosure by Tanya that Mr. Schick was going to testify upon tax rates. (T2 73:10-17).

¶13 As related to the royalty income, Mr. Schick admitted that the income situation and figures may change if Michael Pomarleau had updated information and testified and presented evidence upon that. (T2 74:17-20). This included changes to the royalty income (T2 75:6-11). As such, even by Mr. Schick’s own admission, his royalty income assessments were based on the ledgers and documentation which Mike Pomarleau provided and would need to change if Mr. Pomarleau provided updated statements, which is what Mr. Pomarleau had in fact done at trial.

¶14 The Trial court utilized Michael’s general ledgers and testimony upon those general ledgers as the basis for the royalty income. Frankly, the trial court had no other evidence upon which it could justifiably rely to base the royalty income other than the general ledges which Michael produced and which were introduced into evidence and

there was nothing to demonstrate that Michael's royalty income figures were not accurate (T1 190:25-191:22).

¶15 "A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, after reviewing all the evidence, we are left with a definite and firm conviction a mistake has been made" Fugere v. Fugere, 2015 ND 174, ¶7, 865 N.W. 2d 407.

¶16 Tanya has failed to demonstrate anything that is clearly erroneous about the Court's decision to base the royalty income on Michael's exhibits and his testimony. In fact, it would have been clearly erroneous to utilize Mr. Schick's testimony or figures given the fact that he had not been timely disclosed as an expert, that he relied upon Michael's figures for his evaluation of royalty income and given that Mr. Schick admitted that if Michael provided updates statements on income and expenses, that would be more accurate than the information Schick was relying upon.

### **CONCLUSION**

¶17 Based on the aforementioned law and reasoning, Michael respectfully requests this Court deny Tanya's appeal and, with respect to Michael's appeal, hold that the District Court's Memorandum and Order (Docket #179) dated December 28, 2020, Judgment (Docket #199) dated January 20, 2021, Order on Post-Trial Motions to Amend the Court's Memorandum and Order (Docket #228) dated May 13, 2021 and Amended Judgment (Docket #237), dated July 9, 2021 were clearly erroneous and this matter should be remanded back to the trial court as requested in Michael's appeal.

**ORAL ARGUMENT / CERTIFICATION OF COMPLIANCE**

¶18 Oral argument is requested and submitted to be of assistance to provide more detailed explanation of legal arguments and facts as relevant to this appeal.

¶19 The undersigned certifies that this Brief complies with the page limitations as provided by Rule 32.

Dated this 7<sup>th</sup> day of October, 2021.

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**IN SUPREME COURT  
STATE OF NORTH DAKOTA**

Michael Pomarleau

Michael - Appellant,

v.

Tanya Pomarleau

Tanya - Appellee,

And

State of North Dakota,

Statutory Real Party in Interest.

Supreme Court Case No.:  
20210083

District Court Case No.:  
08-2018-DM-00826

**Certificate of Service**

¶1 The undersigned certifies, pursuant to Rule 5 (f) of the North Dakota Rules of Civil Procedure, that on October 7, 2021, a true and correct copy of the following document(s):

- 1) Appellant's Reply Brief (Reply to Cross-Appeal); and
- 2) Certificate of Service.

was e-filed and served via the ND Supreme Court Filing Portal, and electronic mail service, upon the following:

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