

Supreme Court No. 20210192

**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 AMENDED JUDGMENT DATED JULY 2, 2021, 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) The time of trial is the proper timeframe for application of the Ruff-Fischer guidelines as they relate to a spousal support determination, not the date of separation.**
- 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 withdrew from 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' 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 after school 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 with help from relatives. 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' 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 and Thomas separated 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 became distant. Jean saw text messages on Thomas' phone from a young woman who worked at the hospital. On one occasion, Thomas and the young

woman were texting about chapters in the book Fifty Shades of Grey. Thomas' 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 Thomas' changes, 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 for a few days to see her family. 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 didn't. 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. At the time of trial, the parties' son was living with Jean due to Covid-19 related loss of employment. 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' 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 sisters for the trip to Ireland. Her daughters and sisters 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 he 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 incurred \$162,526.00 of charges 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 incurred charges 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: The time of trial is the proper timeframe for application of the Ruff-Fischer guidelines as they relate to a spousal support determination, not the date of separation.

[¶35] N.D.C.C. § 14-05-24 (prior to the amendment and as is relevant to this case) specifically provides that “[w]hen a divorce is granted, the court shall make an equitable distribution of the property and debts of the parties...” and “...the valuation date for marital property is the date mutually agreed upon by the parties.”

[¶36] Absent an agreement by the parties, N.D.C.C. § 14-05-24 (at the time) provided the valuation date for marital property as being the earlier of the service of the summons or the date of the separation of the parties. The parties agreed the date for distribution of marital property would be the date of separation, August 2013, as shown on the stipulated property and debt distribution filed the day before the trial began. App. 20-24.

[¶37] An award of spousal support is governed by N.D.C.C. § 14-05-24.1 and provides, in relevant part, “[t]aking 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.” N.D.C.C. § 14-05-24.1 does not specifically state a “valuation date” for the court to use when considering the “circumstances of the parties” in making a spousal support determination.

[¶38] The well-established and only logical practice of the courts for determining spousal support has been to review the circumstances of the parties at the time of trial or at the time of hearing on a motion for modification on a prior spousal support award. There is no

significant case law to suggest otherwise. The trial court in this case appropriately applied the circumstances of the parties' as of the date of trial.

[¶39] Thomas seems to argue that the appropriate date/time for the trial court to examine the circumstances of the parties should be their date of separation, August 2013. However, Thomas' arguments also vacillate between utilizing the "circumstances of the parties" at the time of separation and utilizing the time of trial, whichever best suits his particular argument.

[¶40] N.D.C.C. § 14-05-01 provides that a marriage is only dissolved by the death of a party or court order. Thomas and Jean were married on April 30, 1983 and remained married until entry of the divorce judgment on September 25, 2020. N.D.C.C §§14-03-01 & 14-05-01. The parties informally separated in August 2013, however neither party filed for divorce until Jean commenced this action in November 2019. The only issue for trial on August 7, 2020 was for the court to determine spousal support. Both parties presented evidence of their current income, expenses and debts as of the date of trial, and included evidence of the changes thereof from August 2013 to the date of trial.

[¶41] The parties remained married until entry of the divorce judgment, and the evidence received at trial established the parties' current income, assets and debts. The trial court appropriately analyzed the circumstances of the parties as of the date of trial pursuant to the Ruff-Fischer guidelines in determining spousal support.

[¶42] The Court's ruling in *Estate of Haugen*, 2011 ND 28, 794 N.W.2d 448 lends further support to the position that the parties remained married until the judgment was entered in September, 2020. The *Haugen* Court ruled that the surviving spouse of decedent was entitled to receive the entire estate of decedent under N.D.C.C. § 30.1-04-02(1)(a) even

though the parties were separated at the time of decedent's death. Similarly, it is presumed that had either Jean or Thomas died during their period of informal separation preceding the trial held herein, the survivor of them would have been entitled to receive the decedent's entire estate as they remained husband and wife. This supports the argument that the parties' financial circumstances as of the date of trial is the appropriate timeframe for consideration in applying the Ruff-Fischer guidelines for the purpose of determining spousal support.

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.

Standard of Review

[¶43] “A decision about spousal support is subject to the clearly erroneous standard of review. 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. Property distribution and spousal support are interrelated and often must be considered together.” *Willprecht v. Willprecht*, 2020 ND 77, ¶40, 941 N.W.2d 556. (Internal citations omitted.)

Property Distribution

[¶44] “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. 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.” *Sims v. Sims, et al.* 2020 ND 110, ¶31, 943 N.W.2d 804. (Internal citations omitted.)

“North Dakota law does not mandate a set formula or method to determine how marital property is to be divided; rather, the division is based on the particular circumstances of each case.” *Holden v. Holden*, 2007 ND 29, ¶ 10, 728 N.W.2d 312.

¶45] Before trial, the parties stipulated to a property/debt distribution, in accordance with N.D.C.C. § 14-05-24 (at the time), based on their marital estate at the time of separation (August 2013). Jean’s share of the stipulated property distribution was a retirement account valued at \$110,095.80 and her vehicle that had no equity (Jean’s Net Award: \$110,095.80). 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, the parties joint checking account valued at \$5,045.83, business interest in the S-Corp valued at \$2,000, along with various vehicles, tractors, trailers and other equipment with equity of \$12,050. Thomas also assumed his student loan debt from medical school in the amount of \$69,829 and credit card debt of \$5,724.96. (Thomas’ Net Award: \$58,511.09). App. 20-24.

¶46] “The district court’s choice between two permissible views of the evidence is not clearly erroneous. On appeal, we do not reweigh conflicts in the evidence and will not reverse because we may have viewed the evidence differently. We give ‘due regard’ to the district court’s opportunity to judge the witnesses’ credibility.” *Rebel v. Rebel*, 2016 ND 144, ¶9, 882 N.W.2d 256. (Internal citations omitted.)

¶47] In its initial order (September, 2020) the trial court stated that it “will not award an equalization payment to Jean...The parties stipulated to property and debt distribution which included values for the parties’ property. Given the parties’ agreed upon valuation, the Court does not find an equalization payment is required. The parties shall each be

responsible for their own attorneys' fees. Both parties have an ability to pay their own fees in light of the property distribution and spousal support ordered." App. 709 at ¶21-22.

¶48] On remand, the trial court stated "[t]he parties' property and debt stipulation reflects an award to [Jean] of \$110,095.80 in assets and no debt. [Thomas] was awarded \$326,944.58 in assets and responsible for the debt associated with some of the assets in the amount of \$268,433.58. The debts [Thomas] is responsible for include his outstanding student loan, mortgage, his credit card, and a vehicle." App. 728 at ¶8. On remand, the trial court analyzed the property/debt distribution of the parties, as related to spousal support. The court stated "[i]n this case, the property has been divided by the parties through stipulation. Although [Thomas] bears the debt associated with his assets, he maintains assets including the marital home and ranch, cattle, vehicles, an airplane, tractors, retirement and stocks." App. 728 at ¶10.

¶49] The trial court properly considered the property distribution of the parties when it made its spousal support determination.

Spousal Support

¶50] "The goal of spousal support in North Dakota is not minimal self-sufficiency, but adequate self-support after considering the standard of living established during the marriage, the duration of the marriage, the parties' earning capacities, the value of the property and other Ruff-Fischer factors." *Woodward v. Woodward*, 2013 ND 58, ¶8, 830 N.W.2d 82 (citing *Moilan v. Moilan*, 1999 ND 103, ¶15, 598, N.W.2d 81).

¶51] "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.)

¶52] The trial court found that Jean was in need of spousal support from Thomas. In its initial order, the trial court stated that “Jean no longer lives in an owned residence, is unable to pay for her reasonable monthly expenses without acquiring credit card debt, owns one vehicle, and is unable to provide financial support to their adult children.” App. 708 at ¶19. The evidence relied on by the trial court was that “[a]s a nurse at Sanford, Jean earns \$30.00 an hour....Jean’s income in 2019 was \$57,329....Thomas has been providing Jean approximately \$2,000 each month, however, Jean has been unable to purchase a home and has accumulated debt. Jean has spent under \$10,000 annually by credit card each of the last two years and carries a substantial balance on her account. Jean’s monthly income does not meet her expenses for food, rent, clothing and utilities. Jean currently rents a twin home and resides with the parties’ son.” App. 706 at ¶13-14. These findings were incorporated into the trial court’s order on remand. On remand the trial court also found that “[Jean] testified she was unable to purchase a condo, nor do the things she enjoyed during the marriage on her salary.” App. 728 at ¶7.

¶53] The trial court’s finding that Jean was in need of spousal support was supported by the evidence and the overall analysis of the circumstances of the parties at trial.

¶54] Thomas relies on *Knudson v. Knudson*, 2018 ND 199, 916 N.W. 2d 793, arguing that Jean has failed to present a need for spousal support as she has the ability to support herself. Thomas misrepresents the ruling of *Knudson* by omitting a significant part of the findings. The *Knudson* court finding was not solely about one spouse’s need, but about both one party’s need and the other party’s ability to pay. “We have previously affirmed a court’s denial of spousal support when many of the Ruff-Fischer factors supported an award of spousal support but the requesting spouse had the ability to adequately address her current needs and the other spouse did not have the ability to pay.” *Knudson* at ¶21 (emphasis added).

¶55] The facts in *Knudson* are substantially different from the case here. In *Knudson* the obligee received a large distribution of marital property which included income producing property. Further, the obligor’s income on average was higher than the obligee, but that income was sporadic, and occasionally obligee was the higher income earner. Obligee was also finishing school to become a massage therapist and had not yet secured her degree; her income earning ability after securing her degree was a factor.

¶56] Conversely, in this case, Jean received the greater share of the parties’ marital estate, but it was a retirement account and not income producing. Thomas’ income has always been and will continue to be substantially larger than Jean’s income. Jean is not able to be rehabilitated by further education and has maximized her earning potential based on her age, education, and work experience.

[¶57] The trial court found that Thomas has the ability to pay spousal support as ordered. In its initial order the court found that “Thomas remains at the parties’ homestead which he owns, subject to a mortgage. Thomas has the ability to spend approximately \$140,000 in a year on credit card purchases outside of his necessities. He has the ability to provide money to the children and pay for vacations with the children. Thomas can purchase tractors, trucks and an airplane. Thomas has the ability to pay this amount to Jean with an annual income of approximately \$400,000.” App. 708-709 at ¶19. The trial court relied on evidence presented at trial that “Thomas’ income has consistently increased since 2013 with the parties’ joint tax return reflecting an income of almost \$400,000 in 2014, \$416,000 in 2015, \$417,000 in 2016, and \$447,000 in 2017.” App. 706 at ¶12.

[¶58] The trial court’s finding that Thomas has the ability to pay spousal support was supported by the evidence and the overall analysis of the circumstances of the parties at trial. The evidence was clear that Thomas’ current income was over \$400,000, that he had approximately \$140,000 in disposable annual spending, that his income had been steadily increasing over the last several years and that he had been making large purchases of personal property.

[¶59] In *Innis-Smith v. Smith*, 2018 ND 34, 905 N.W.2d 914, the court determined an award of spousal support was appropriate where the trial court found that the obligor’s earning ability was significantly higher than obligee. Obligee was awarded \$4,000 per month in spousal support and had a lesser standard of living since the parties had separated. Meanwhile obligor enjoyed the same or greater standard of living since separation.

[¶60] Similarly, Thomas’ income earning ability is and always will be significantly higher than Jean’s. Jean has suffered a reduced standard of living, while Thomas’ standard

of living has improved. The spousal support awarded to Jean was appropriate and is supported by the evidence.

¶61 “The district court is not required to complete a calculation to ensure each party’s assets, debts, and expenses are accounted for in determining spousal support; however, a clear description of the financial situation of each party is helpful for this Court in understanding the district court’s rationale in awarding spousal support.” *Berg v. Berg*, 2018 ND 79, ¶11, 908 N.W.2d 705. The trial court meticulously analyzed the financial circumstances of the parties at the time of trial in its analysis of the Ruff-Fischer guidelines.

¶62 The trial court found that “[a]t the time of the parties’ divorce, [Jean] was 58 and [Thomas] was 59 years old.” App. 727 at ¶4.

¶63 The trial court made detailed findings of the parties’ earning abilities. “The difference between the parties’ earning ability is significant. [Jean] earns \$57,000 each year and [Thomas] earns over \$400,000 each year working as a physician.” App. 729 at ¶11. Further “Jean would suffer from a lack of income if she were to pursue further education and training, but, given her age and current resources, she would never approach her husband’s earning ability.” App. 708 at ¶18. The trial court took note of the fact that “[Thomas] is not likely to continue to earn his current income into the next thirty years...Income disparity will persist through their careers, therefore the Court will order the duration of spousal support in this case to cease when the Defendant reaches the age of 65 years old, a standard and widely accepted retirement age. The Court finds this is an appropriate remedy to equalize the burdens of divorce.” App. 727-728 at ¶11.

¶64 In regards to the duration of the marriage and conduct of the parties during the marriage the trial court found that “Jean left the parties’ 30 year marriage after issues

surfaced surrounding infidelity and affection.” App. 708 at ¶19. “The parties were married in 1983. Both parties worked at the outset of the marriage until [Thomas] attended medical school....After completion of medical school in Grand Forks, [Thomas] obtained a residency position in Minot, moving the family from Fargo to Minot. After the parties moved to Minot they agreed [Jean] should stop working to raise their children. From 1996 until shortly before the party’s separation, [Jean] no longer gained any additional work experience as a nurse.” App. 727-728 at ¶4. “Jean worked to support the family while Thomas attended medical school, became a caretaker for the children, forgoing employment to further her husband’s career and earning capacity.” App. 708 at ¶18. “During the course of the parties’ marriage, they accumulated significant debt stemming from [Thomas’] return to school to receive his medical degree. With [Thomas’] increased earning potential as a physician, the parties were making their way out of debt and beginning to enjoy life. [Thomas] had wanted to farm from a young age and with the parties’ home and land, they were able to begin ranching. They started to enjoy trips together with the last trip occurring to celebrate the parties’ thirtieth wedding anniversary. The parties flew to New York City, spending a large amount of money on food and clothing.” App. 728 at ¶5.

¶65 “We have recognized a spouse who remains out of the workforce to provide child care has foregone opportunities and has lost advantages that accrue from work experience and employment history. We have further recognized a difference in earning power can be considered when determining spousal support. This foregoing of employment opportunities, and the attendant decreased earning capacity resulting therefrom, supported the district court concluding permanent support was appropriate under these

circumstances.” *Stock v. Stock*, 2016 ND 1, ¶12, 873 N.W.2d 38. (Internal citations and quotations omitted.)

¶66] In *Stock*, obligor was in the early stages of establishing his legal career and obligee had supported and furthered his career by moving multiple times and caring for the parties’ children while he worked. The court found that obligee, even after retraining, would never have an income comparable to obligor.

¶67] Similarly, Jean worked while Thomas attended school. Jean then quit her job to move multiple times in furtherance of Thomas’ medical career. Jean took care of the parties’ children while he worked. Despite Jean being gainfully employed she will never have an income comparable to Thomas.

¶68] As to the parties’ station in life, the circumstances and necessities of each, and the parties’ financial circumstances as shown by property owned, the trial court stated in its initial order that “Jean has had a significant lifestyle change after her separation from Thomas. Jean has little retirement, is now 58 years old, cannot travel without accumulating debt, does not have the means to do much for her adult children, lives paycheck to paycheck, and plans to work as long as she can to afford her necessities. Jean has an associate’s degree in nursing which limits her wages and opportunities. Jean could go back to school to obtain her bachelor’s degree but she doesn’t have the ability to pay for the education, she needs to work to earn an income to pay bills, and the return on investment would likely not be beneficial with Jean’s limited number of work years based upon her age.” App. 706 at ¶14. The trial court further stated that “Thomas refinanced the home and consolidated their credit cards. He has since paid the credit cards in full. Thomas has continued to spend money on a tractor for \$26,000, F-150 with a \$40,000 loan, an airplane

for \$19,900, CAT tractor for \$42,000, and a John Deere Tractor for \$85,000. Thomas has enjoyed trips to the British Virgin Islands and Scotland with his children, paying all expenses for the trips. Thomas is able to provide the children with money when they need it and has access to cash and funds. Thomas spent approximately \$140,000 by credit card each year in 2018 and 2019 for reasons including personal expenses, airplane maintenance, gas and food.” App. 705 ¶12.

¶69] “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 v. O’Keeffe*, 2020 ND 201, ¶12, 948 N.W.2d 848. (Internal citations and quotations omitted.)

¶70] Similarly in this case, the trial court findings clearly indicate that a substantial income disparity exists and the same will continue between the parties. Jean does not have the ability to be “rehabilitated” to increase her earning ability any higher than her current income. The stipulated property division was equitable between the parties and there was no asset/debt that could be reallocated between the parties to address this issue. Jean has presented a need and Thomas has the ability to pay. Further, the findings by the trial court under the Ruff-Fischer guidelines support the spousal support award determined by the trial court.

Equalization of Income

[¶71] “[W]e have not endorsed the equalization of income between divorcing spouses as a measure of spousal support, especially if a disadvantaged spouse may be adequately rehabilitated. A court’s arbitrary equalization of income between parting spouses would be questionable, although it would not necessarily warrant reversal.” *Stock v. Stock*, 2016 ND 1, ¶22, 873 N.W.2d 38. (Internal citations and quotations omitted.) (Emphasis added.)

[¶72] Thomas’ income remains significantly higher than Jean’s even with the spousal support award. The trial court’s findings under the Ruff-Fischer guidelines show the basis for the determination of the spousal support amount awarded, which is not an attempt to equalize incomes, but rather an analysis of the facts of this case and applying them to the guidelines to determine a spousal support award.

[¶73] The trial court’s spousal support determination is supported by analysis of the parties’ circumstances as of the date of trial under the Ruff-Fischer guidelines and was not an attempt to equalize incomes. The evidence supports that Jean is in need of support and Thomas has the ability to pay the amount of spousal support determined by the court.

[¶74] 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

[¶75] 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 in the amount determined, and Thomas is able to pay the same.

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

REQUEST FOR ORAL ARGUMENT

¶77 Jean respectfully requests oral argument to appear to answer any questions the Court may have and to further clarify her position on the issues.

¶78 Dated this 22nd day of November, 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 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 25 pages.

[¶2] Dated this 22nd day of November, 2021.

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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 22nd day of November, 2021.

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