

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

Jean Kaspari,)	
)	
Plaintiff/Appellee,)	
)	
vs.)	
)	Supreme Ct. Case No. 20210192
Thomas Kaspari,)	District Ct. Case No. 29-2019-DM-00050
)	
Defendant/Appellant.)	

APPELLANT’S BRIEF

APPEAL FROM THE 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

ORAL ARGUMENT REQUESTED

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STATEMENT OF ISSUES

¶ 1. Whether the district court erred in the amount of spousal support awarded.

STATEMENT OF THE CASE

¶ 2. This case was initiated by Jean Kaspari (hereinafter “Jean”) upon filing and serving her Complaint. App. 7. Thomas Kaspari (hereinafter “Tom”) filed an Answer thereto (App. 9), and Jean filed Plaintiff’s Reply to Defendant’s Counterclaim (App. 11).

¶ 3. An Interim Order was issued on March 25, 2020, by which Tom was ordered to pay spousal support in the amount of \$2,000 per month. App. 18.

¶ 4. The parties entered into a Stipulated Property and Debt Distribution on August 6, 2020. App. 20. Trial was held on August 7, 2020.

¶ 5. The district court issued its Findings of Fact, Conclusions of Law and Order for Judgment on September 10, 2020. App. 702. Thereafter, another Findings of Fact, Conclusion of Law and Order for Judgment was entered on September 24, 2020 (App. 710), and Judgment was entered that same day, by which Tom was ordered to pay spousal support in the amount of \$7,000 per month until Jean’s death or remarriage (App. 717). The Notice of Entry of Judgment was entered on September 25, 2020. App. 722.

¶ 6. Tom filed his first Notice of Appeal on September 29, 2020. App. 723.

¶ 7. This Court vacated the Judgment in part and remanded the case back to the district court. Specifically, this Court held “we vacate the portion of the judgment ordering Thomas Kaspari to pay Jean Kaspari spousal support until her death or remarriage. Because we have vacated the spousal support award, we do not consider Thomas Kaspari’s arguments concerning the amount ordered.” Kaspari v. Kaspari, 2021 ND 63, ¶ 8.

¶ 8. Following this Court vacating the Judgment and remanding the matter back to the district court, a hearing was held on June 17, 2021 to allow the parties to present arguments on remand.

¶ 9. The district court entered its Order Following Remand on June 18, 2021. App. 726. Thereafter, the Amended Judgment was entered on July 2, 2021, by which Tom was ordered to pay spousal support in the amount of \$7,000 per month until April 2, 2026, when he reaches the age of sixty-five (65). App. 731.

¶ 10. Tom filed his second Notice of Appeal on July 12, 2021. App. 737.

STATEMENT OF FACTS

¶ 11. The parties were married on April 30, 1983 (8/7/2020 Transcript 7:25) and separated the summer of 2013 (8/7/2020 Transcript 124:3-6).

¶ 12. The parties have three children; however all of the children are adults. Plaintiff is not now pregnant, and no minor children are expected of this marriage.

¶ 13. At the time of trial, Jean was 58 years old. 8/7/2020 Transcript 5:17.

¶ 14. At the time of trial, Tom is 59 years old. 8/7/2020 Transcript 77:25.

¶ 15. Jean graduated in 1984 with an associate degree as a registered nurse. 8/7/2020 Transcript 6:20-21. She worked at St. Luke's Hospital in the surgical unit from 1984 to 1996, working approximately 36 hours per week. 8/7/2020 Transcript 6:24-7:8.

¶ 16. Although Jean testified that it was agreed upon that she would cease working when the parties moved to Minot in 1996 (8/7/2020 Transcript 17:4-12), Tom testified that Jean told him that she wasn't going to work anymore and that he didn't agree with it from the financial standpoint (8/7/2020 Transcript 124:7-125:1). The children were approximately 8 and 12 at that time. 8/7/2020 Transcript 18:21-23.

¶ 17. Jean testified that after the move to Hazen, they “discussed [her working outside the home] a lot.” 8/7/2020 Transcript 28:20-23.

¶ 18. Although Jean testified that she didn’t go back to work until the parties started having problems in 2013 (8/7/2020 Transcript 34:20-35:7), she later admitted that she went back to work at Med Center One or Coal Country at the time she renewed her license prior to that time (8/7/2020 Transcript 68:17-69:3). In fact, in her Affidavit in Support of Motion for Interim Order, Jean swore under oath that she started this position in 2010, which was three years prior to their separation. App. 13 at ¶ 9.

¶ 19. Jean renewed her nursing license prior to working at Med Center One or Coal County in 2010 and prior to the deterioration of the marriage. 8/7/2020 Transcript 68:3-13.

¶ 20. Jean starting working at an anticoagulation clinic at Sanford in Bemidji in August 2013, and then later transferred to the same type of clinic in Fargo where she still currently works. 8/7/2020 Transcript 38:9-11.

¶ 21. Jean currently makes about 30 dollars an hour working approximately 40 hours a week. 8/7/2020 Transcript 38:16 and 44:6-8. In 2019 her total income was \$57,329. App. 222.

¶ 22. She currently lives in a twin home with her son, and sometimes her daughter, living with her no contributing to rent. 8/7/2020 Transcript 45:19-46-9. Jean wishes to purchase the twin home for \$209,000, and testified that she does not have the resources to make any type of down-payment. 8/7/2020 Transcript 46:13-23. She further provided a mortgage estimate showing a total down payment and closing costs of \$17,738.

App. 221. Purchasing the home would decrease her current rent of \$1,550 per month to a mortgage payment of \$1,227 per month. Id.

¶ 23. Tom received a nursing degree from Concordia, with a significant amount of the schooling be paid by grants and scholarships. 8/7/2020 Transcript 81:21-82:3.

¶ 24. Tom worked throughout attending school for his RN, medical degree, and residency. 8/7/2020 Transcript 14:23-15:14, 17:15-18.

¶ 25. Tom is currently employed through Thomas Kaspari, MD PC contracting with Basin Electric since 2000 (8/7/2020 Transcript 103:6-7 and 120:9-10), SMC since 1999 (8/7/2020 Transcript 120:11-12), and providing coroner services for Mercer County and Oliver County since 2008 and 2007, respectively (8/7/2020 Transcript 103:15-17 and 120:13-16). Tom does not receive any employee benefits.

¶ 26. During the parties' marriage, Tom worked an average of 45-50 hours per week; however after Jean left, he increased his hours to 70-80 hours per week. 8/7/2020 Transcript 121:3-14. Tom testified that he does not intend on continuing to work those hours because it is extremely stressful. 8/7/2020 Transcript 121:17-20.

¶ 27. The income that Tom is currently making is not what he was making when the parties were married. In 2012, the total income for Tom and the business was approximately \$230,000. 8/7/2020 Transcript 122:10-12. In 2013, the total income for Tom and the business was approximately \$300,000, which included an increase due to increase in hours the later part of the year. 8/7/2020 Transcript 123:11-16.

¶ 28. The parties moved to Hazen in approximately 1999. 8/7/2020 Transcript 19:10-12. The children were approximately 11 and 15 at that time. 8/7/2020 Transcript 19:13-17.

¶ 29. Both parties cared for the children throughout the marriage. 8/7/2020 Transcript 9:7-8, 10:16-23.

¶ 30. During the marriage, the parties incurred student loans for their children Nicholas and Danielle (8/7/2020 Transcript 25:16-19) and credit card debt (8/7/2020 Transcript 25:24-25).

¶ 31. Although the parties incurred some student loans while Tom was attending school, a good chunk of it was covered by scholarships, including 3 of his 4 years of medical school. 8/7/2020 Transcript 66:11-25. Tom received scholarships that covered his tuition and a thousand dollars a month stipend for the last three years of his medical schools; however the parties took out loans to meet their family financial obligations. 8/7/2020 Transcript 84:20-12. The total of the student loans and other loans was \$135,000. 8/7/2020 Transcript 85:12. Additionally, throughout Tom's residency the parties incurred approximately \$60,000 in credit card debt. 8/7/2020 Transcript 85:17-86:22.

¶ 32. Jean testified that the parties had purchased necessary machinery for the snow removal and cattle, including a skid steer, tractors, backhoe, stock trailer, and a flatbed trailer. 8/7/2020 Transcript 26:22-27:10. She further testified that it was a team effort taking care of their cows. 8/7/2020 Transcript 27:17-22.

¶ 33. Thomas replaced some of the farm equipment throughout the years following the parties' separation with loans, including a tractor (8/7/2020 Transcript 108:6-15), skid steer (8/7/2020 Transcript 109:11), and John Deere Tractor (8/7/2020 Transcript 109:14) which is used for his farm and cattle.

¶ 34. The parties had money problems throughout their marriage. 8/7/2020 Transcript 89:11-13. Even when Tom's income was increasing, they were not catching up

on expenses or debt. 8/7/2020 Transcript 89:25-90:10. While they occasionally used credit cards for purchases, they did not use them excessively because the balances were high and the interest rates were high. 8/7/2020 Transcript 92:2-12. Jean confirmed that they had significant debts during the marriage and didn't have extra money to go out and make expensive purchases. 8/7/2020 Transcript 140:16-25.

¶ 35. Tom testified that Jean's lack of working caused financial stress throughout the marriage beginning when he was in medical school, explaining that there were times when they were a month away from bankruptcy and the financial struggles continues until the time of separation. 8/7/2020 Transcript 125:2-126:1.

¶ 36. Tom testified that whenever he would bring up the financial problems, Jean would get very defensive and didn't want him questioning her about how she was paying the bills. 8/7/2020 Transcript 90:16-91:18.

¶ 37. In 2013, Tom refinanced the mortgage on the marital home and paid off the credit cards. 8/7/2020 Transcript 92:25-93:4.

¶ 38. Tom testified that his monthly expenses are approximately \$8,200 per month. 8/7/2020 Transcript 133:23-134:1.

¶ 39. After their separation Jean received spousal support from Tom through their joint bank account. 8/7/2020 Transcript 39:21-25. Approximately two years later, the parties agreed that Tom would pay spousal support of \$2,000 per month. 8/7/2020 Transcript 40:21-25. Tom testified that he made similar payments to Jean in 2013, but doesn't recall what the amounts were, and that he made payments of \$2,000 per month to her for the months of April through August, 2019, and then again starting March 2020 for a total of just over \$114,000 in spousal support since January 2014. 8/7/2020 Transcript

128:1-25. Of that, at least \$25,210 was given to her children. App. 425-427. In 2014 alone, of the \$14,000 in spousal support that Jean received from Tom, she gave \$9,950 of that to their adult son. App. 425.

¶ 40. Jean testified that without the \$2,000 spousal support she would not be able to travel, and she may need to find a cheaper home, but provided no evidence to support the need for a cheaper home. 8/7/2020 Transcript 55:20-24.

¶ 41. The only change in lifestyle that she testified to is that she is living paycheck to paycheck and that she has no security, with very little retirement of approximately \$45,000. 8/7/2020 Transcript 56:5-9.

¶ 42. Jean testified that she did not give up any job opportunities or education opportunities to support Tom's career. 8/7/2020 Transcript 74:7-12.

¶ 43. In examining Jean's spending, it is clear that Jean's spending includes a large amount of unnecessary spending. For example, as a single person, she spends approximately \$1,000 per month on food and household items. 8/7/2020 Transcript 78:13-18.

¶ 44. Jean testified that she took a 10 day trip to Ireland in 2018, and a 4-day trip to Las Vegas and a 5-day trip to Florida in 2019. 8/7/2020 Transcript 57:4-11. Although she testified that she did not pay for her daughters to go on the Ireland trip (8/7/2020 Transcript 57:12-16), her American Express Credit Card shows airline ticket purchases for herself, both of her daughters, and two other individuals at a price of \$744.11 each. App. 42. There was no evidence provided to show that she was ever reimbursed for any of those charges. She further testified that she paid for the trip to Las Vegas outright without putting it on a credit card. 8/7/2020 Transcript 57:21-24.

¶ 45. Jean testified that most of her credit card debt is travel expenses, entertainment and eating out, and that she does not typically pay for her monthly expenses on credit cards. 8/7/2020 Transcript 70:8-13.

¶ 46. Jean admits that she helps her children financially, allowing her son to live with her rent free, along with paying all utilities, food and household items, and telephone, and sending her adult children money. 8/7/2020 Transcript 60:12-25.

¶ 47. The only debt that Jean has are her three credit cards, which have a combined balance of \$34,126.14, all of which was accumulated after the parties' separation. App. 25, 103, and 155.

¶ 48. Jean asked for \$10,000 per month in spousal support, but admitted that she doesn't need that amount. 8/7/2020 Transcript 75:25-76:3. She further testified that she felt that she should have the lifestyle that Tom has now (8/7/2020 Transcript 62:4-7), although she admitted that is not the way the parties lived at any time during their marriage (8/7/2020 Transcript 139:23-25).

¶ 49. The parties stipulated to the valuation and distribution of the marital estate. App. 20. The total value of the marital estate is \$168,606.89. App. 22. Of this, Jean is receiving \$110,095.80, which is 65.3% of the marital estate, and Tom is receiving \$58,511.09, or 34.7%. Id.

¶ 50. Jean received the full balance of Tom's 401k, at the time of separation, of over \$110,000, along with the retirement she personally has of approximately \$45,000. App. 20. Additionally, Thomas must continue to maintain his North Western Mutual Life Insurance with Jean and sole beneficiary of the \$600,000 death benefit. App. 21. Conversely, the only retirement Tom will have is his 401k, valued at \$24,298.75. App. 20.

ARGUMENT

A. Introduction

¶ 51. This case is being back to this Court on the issue of whether the district court's award of spousal support was clearly erroneous. Specifically, the Appellant respectfully requests that the spousal support award be vacated and remanded back to the district court for an appropriate spousal support award. The district court's award of spousal support was clearly erroneous, as the court failed to properly consider the property and debt distribution, there was no evidence of need presented, and it improperly attempted to equalize the parties incomes.

B. Standard of Review

¶ 52. "A district court's finding of spousal support is a finding of fact subject to review under the clearly erroneous standard." Woodward v. Woodward, 2013 ND 58, ¶ 5, 830 N.W.2d 82, 84. "A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, no evidence exists to support the finding, or this Court is convinced, based on the entire record, a mistake has been made. Becker v. Becker, 2011 ND 107, ¶ 6, 799 N.W.2d 53.

¶ 53. In determining if an award of spousal support is appropriate, the court must consider the relevant factors under the Ruff-Fischer Guidelines. Overland v. Overland, 2008 ND 6, ¶ 6, 744 N.W.2d 67. Those factors include:

The 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.

Krueger v. Krueger, 2008 ND 90, ¶ 8, 748 N.W.2d 671. The court must also consider the

needs of the spouse seeking the support, as well as the needs and ability of the other spouse to pay. Overland v. Overland, 2008 ND 6, ¶ 16, 744 N.W.2d 67

C. The District Court Erred in the Amount of Spousal Support Awarded

¶ 54. The court erred in the amount of spousal support awarded. In awarding spousal support, the district court failed to properly consider the property and debt division. Further, the court erred as there was a lack of showing a need for such support. Finally, the court improperly attempted to equalize the incomes, considering the lifestyle Tom has now, rather than the lifestyle the parties had during the marriage. As such, the district court's ruling on spousal support is clearly erroneous and should be remanded.

1. The district court failed to properly consider the distribution of assets and debts in its award of spousal support.

¶ 55. The district court's initial findings and judgment regarding spousal support are clearly erroneous as they contain no consideration regarding the division of the assets and debts in determining the spousal support award. Those findings were incorporated into the Order Following Remand. App. 727, ¶ 4. Although the district court also included some analysis of the property and debt distribution in its Order, it improperly considered assets after the date of separation.

¶ 56. The "questions of property division and spousal support cannot be considered separately or in a vacuum, but must be examined and dealt with together." Fox v. Fox, 1999 ND 68, ¶ 22, 592 N.W.2d 541. The valuation date for marital property and debt in this case is the date of separation, which was the summer of 2013. Although N.D.C.C. § 14-05-24 has been amended since this case was initiated, both versions state that "the valuation date for marital property and debt is the date mutually agreed upon between the parties," and the version in place at the time this case was initiated provided

that, “[i]f the parties do not mutually agree upon a valuation date, the valuation date for marital property is the date of service of a summons in an action for divorce or separation or the date on which the parties last separated, whichever occurs first.” The parties agreed in this case that the valuation date would be the date of separation.

¶ 57. The parties stipulated to the valuation and distribution of the marital estate. App. 20. The total value of the marital estate is \$168,606.89. 21. Of this, Jean is receiving \$110,095.80, which is 65.3% of the marital estate, and Tom is receiving \$58,511.09, or 34.7%. Id.

¶ 58. The only debt that Jean has are her three credit cards, which have a combined balance of \$34,126.14, all of which was accumulated after the parties’ separation. App. 25, 103, and 155. Conversely, Tom took on all of the marital debt (App. 22), and currently has outstanding vehicle loans, a loan on his tractor, a mortgage balance of approximately \$133,000, and student loans of approximately \$53,000. 8/7/2020 Transcript 132:3-133:17. The district court’s findings state that the student loans are Tom’s outstanding student loan. App. 728 at ¶ 8. However, this also included student loans for their children, Nicholas and Danielle. 8/7/2020 Transcript 25:16-19.

¶ 59. Jean received the full balance of Tom’s 401k, at the time of separation, of over \$110,000, and also has the retirement she personally has of approximately \$45,000. App. 20. Additionally, Thomas must continue to maintain his North Western Mutual Life Insurance with Jean and sole beneficiary of the \$600,000 death benefit. App. 21. Conversely, the only retirement Tom will have is his 401k, valued at \$24,298.75, merely 15% of the amount Jean received. App. 20. At 60 years old, and being close to retirement, Tom will need to rebuild his retirement accounts in order to have any hopes of retiring, a

fact that the district court did not consider. This is simply not going to be possible with the amount of spousal support that was ordered and his monthly obligations.

¶ 60. Finally, the district court also improperly considered the property that Tom accumulated after the date of separation in its analysis of the property division. App. 728 at ¶ 10. This includes the cattle, vehicles, airplane, tractor, and stocks. This in contrary to N.D.C.C. § 14-05-24 and the agreement of parties that the valuation be at the time of separation.

¶ 61. Based on the above, the complete lack of any analysis or explanation regarding how spousal support was considered in light of the property distribution in the initial findings, and the improper analysis and explanation of the property distribution, the district court's findings are clearly erroneous. As such, Appellant respectfully requests that the decision be reversed and remanded.

2. The evidence presented does not support a finding of a need for spousal support.

¶ 62. In this case, Jean failed to show her need for spousal support. This Court has held that spousal support is not warranted, even where many Ruff-Fischer factors support an award of spousal support, when the “requesting spouse had the ability to adequately address her current needs.” Knudson v. Knudson, 2018 ND 199, ¶ 21, 916 N.W.2d 793. Further, this Court has held that when there is no evidence regarding need for spousal support “we are left with a firm conviction a mistake has been made” in awarding spousal support. Overland v. Overland, 2008 ND 6, ¶ 21, 744 N.W.2d 67.

¶ 63. In this case, Jean has a professional career, including full benefits, wherein she makes approximately \$60,000 per year working 35-40 hours per week. She has become re-established in her career for nearly a decade. Although the district court found

that Jean did not go back to work until shortly before the party's separation (App. 727 at ¶ 4), Jean admitted at trial that she went back to work at Med Center One or Coal Country at the time she renewed her license prior to that time (8/7/2020 Transcript 68:17-69:3). In fact, in her Affidavit in Support of Motion for Interim Order, Jean swore under oath that she started this position in 2010, which was three years prior to their separation. App. 13 at ¶ 9. Jean renewed her nursing license prior to working at Med Center One or Coal County in 2010 and prior to the deterioration of the marriage. 8/7/2020 Transcript 68:3-13.

¶ 64. Jean's testimony established that she is able to pay her monthly expenses, but that she desires spousal support so that she can go on vacations without having to put it on a credit card. In examining Jean's spending, it is clear that Jean's spending includes a large amount of unnecessary spending. For example, as a single person, she spends approximately \$1,000 per month on food and household items. 8/7/2020 Transcript 78:13-18. Jean testified that she took a 10 day trip to Ireland in 2018, and a 4-day trip to Las Vegas and a 5-day trip to Florida in 2019. 8/7/2020 Transcript 57:4-11. Although she testified that she did not pay for her daughters to go on the Ireland trip (8/7/2020 Transcript 57:12-16), her American Express Credit Card shows airline ticket purchases for herself, both of her daughters, and two other individuals, at a price of \$744.11 each. App. 44. There was no evidence provided to show that she was ever reimbursed for any of those charges. She further testified that she paid for the trip to Las Vegas outright without putting it on a credit card. 8/7/2020 Transcript 57:21-24. Further, Jean admits that she helps her children financially, allowing her son to live with her rent free, along with paying all

utilities, food and household items, and telephone, and sending her adult children money.
8/7/2020 Transcript 60:12-25.

¶ 65. Jean further testified that she was seeking spousal support because she should have the same lifestyle as Tom has now. At trial, Jean admitted that she doesn't need the spousal support she was seeking. 8/7/2020 Transcript 75:25-76:3. She further testified that she felt that she should have the lifestyle that Tom has now (8/7/2020 Transcript 62:4-7), although she admitted that is not the way the parties lived at any time during their marriage (8/7/2020 Transcript 139:23-25).

¶ 66. As explained above, the standard is to look at the lifestyle the parties had during the marriage. Woodward v. Woodward, 2013 ND 58, ¶ 8, 830 N.W.2d 82, 85. Notably, the parties both testified that they did not have an extravagant standard of living during the marriage. The parties had money problems throughout their marriage. 8/7/2020 Transcript 89:11-13. Even when Tom's income was increasing, they were not catching up on expenses or debt. 8/7/2020 Transcript 89:25-90:10. While they occasionally used credit cards for purchases, they did not use them excessively because the balances were high and the interest rates were high. 8/7/2020 Transcript 92:2-12. Jean confirmed that they had significant debts during the marriage and didn't have extra money to go out and make expensive purchases. 8/7/2020 Transcript 140:16-25. Tom testified that Jean's lack of working caused financial stress throughout the marriage beginning when he was in medical school, explaining that there were times when they were a month away from bankruptcy and the financial struggles continues until the time of separation. 8/7/2020 Transcript 125:2-126:1. Despite this, Jean refused to work for a significant portion of it. Even so, she testified that she never lost any employment opportunities or educational opportunities,

and has no health concerns. This is in contrast to the majority of cases where the Supreme Court upheld awards of spousal support. See for example Stock v. Stock, 2016 ND 1, 873 N.W.2d 38 (spousal support awarded when wife was disadvantaged in the job market by forgoing employment opportunities to support her husband's legal career) and Friesner v. Friesner, 2019 ND 30, ¶ 14, 921 N.W.2d 989 (non-rehabilitative spousal support awarded where wife's disability prevented her from obtaining meaningful employment).

¶ 67. The district court considered Tom's income and standard of living at the present time, but that is not the standard established by the court. As explained in detail above, the parties struggled financially throughout their marriage, having significant credit card debt, and struggling to pay their bills at times. At the end of the marriage, Tom's income was approximately \$230,000. This is the standard that the court should have considered in determining any amount of spousal support. Further, the increase in his income since their separation is solely due to him working double-time, which he does not intend to continue to do, given his age. Jean would also have the ability to significantly increase her income if she was willing to work 70-80 hours a week, as Tom has been doing. There is always a need for RNs, and constant jobs available. In fact, there are a significant number of RN positions available throughout North Dakota at this time, most of which include sign on bonuses and/or would result in higher wages.

¶ 68. Finally, at the time of trial, Tom had already paid Jean \$114,600 in spousal support, since their separation. This has allowed her to establish her career and adequately become self-supportive. Notably, Jean has given her children nearly ¼ of this, which evidences the fact that additional spousal support is not warranted, especially not at a rate of over 3 times what he has been paying her over the last 7 years. App. 425-427.

¶ 69. Based on the above, the district court's award of spousal support is clearly erroneous given the lack of evidence to support the requirement of Jean's "need" for such support. As such, the Appellant respectfully requests that the issue of spousal support be reversed and remanded.

3. The Court erred in attempting to equalize the income of the parties.

¶ 70. Finally, the court erred, as it appears to have attempted to equalize the income of the parties. "Equalization of income between divorcing spouses is not a goal or measure of spousal support..." Christian v. Christian, 2007 ND 196, ¶ 11, 742 N.W.2d 819. "A court's arbitrary equalization of income between spouses would be questionable." Glander v. Glander, 1997 ND 192, ¶ 18, 569 N.W.2d 262, 266.

¶ 71. In this case, the court's order for spousal support seems to attempt such arbitrary equalization in incomes. As explained in detail above, the district court used Tom's current income, rather than the income at the time of separation. At the time of separation, Tom's income was approximately \$230,000 per year. 8/7/2020 Transcript 122:10-12. At the time of trial, Tom's income was approximately \$400,000 per year. Approximately \$130,000 of this goes strictly to taxes, leaving him an actual income of approximately \$270,000. The Court's order has him provide \$84,000 of this to Jean, leaving him approximately \$186,000, before other expenses and obligations, while working approximately 80 hours per week. In comparison, Jean would have \$144,000 in yearly income, most of which is tax free, while working approximately 35 hours per week. There is nothing equitable about this. As such, Appellant respectfully requests that the spousal support order be reversed and remanded.

CONCLUSION

¶ 72. The district court's spousal support was clearly erroneous. The court failed to properly consider the distribution of the marital estate in its award of spousal support, there was insufficient evidence to find Jean has a need for the spousal support awarded, and the district court erroneously attempted to equalize the parties' incomes. As such, the Appellant respectfully requests that the spousal support award be reversed and remanded.

ORAL ARGUMENT REQUESTED

¶ 73. Appellant respectfully requests oral argument. Oral argument would be helpful to the court as it would allow further clarification of the facts and legal issues, as well as provide the ability for the parties to answer any questions that the Court may have.

CERTIFICATE OF COMPLIANCE

¶ 74. The undersigned, as the attorney representing Appellant, Jeffrey Gooss and the author of this Brief hereby certifies that said brief complies with Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, in that it contains 20 pages.

DATED this 22nd day of October, 2021.

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IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

Jean Kaspari,)	CERTIFICATE OF SERVICE
)	
Plaintiff/Respondent,)	
)	Supreme Ct. Case No. 20210192
vs.)	
)	Mercer County District Court
Thomas Kaspari,)	Case No. 29-2019-DM-00050
)	
Defendant/Appellant.)	

[¶ 1] I hereby certify that on October 22, 2021, a true and correct copy of the following documents were served the North Dakota Supreme Court E-Filing Portal:

- 1. Appellant’s Brief**
- 2. Appendix**
- 3. Certificate of Service**

[¶ 2] A copy of the foregoing was sent to the following email address:

Ann Mahoney	Clerk of the Supreme Court
Mahoney & Mahoney	<u>supclerkofcourt@ndcourts.gov</u>
<u>service@mahoney-legal.com</u>	

[¶ 3] To the best of this affiant’s knowledge, the email addressed above given are the actual email address of the parties intended to be so served. That the above documents were duly served in accordance with the provisions of the North Dakota Rules of Civil and Appellate Procedure.

Dated this 22nd day of October, 2021.

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