

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2022 ND 204

Jean Kaspari,

Plaintiff and Appellee

v.

Thomas Kaspari,

Defendant and Appellant

No. 20220141

Appeal from the District Court of Mercer County, South Central Judicial District, the Honorable Pamela A. Nesvig, Judge.

REVERSED AND REMANDED.

Opinion of the Court by Jensen, Chief Justice, in which Justices Crothers and Tufte joined. Justice McEvers filed an opinion dissenting.

Ann Christianson Mahoney, Center, ND, for plaintiff and appellee; submitted on brief.

Jennifer M. Gooss, Beulah, ND, for defendant and appellant; submitted on brief.

Kaspari v. Kaspari
No. 20220141

Jensen, Chief Justice.

[¶1] Thomas Kaspari appeals from an amended judgment entered following a reversal and remand of an award of spousal support. On remand, the district court supplemented its findings and confirmed its prior spousal support award. Thomas Kaspari asserts the court did not adequately explain its decision and its findings are clearly erroneous. Because we are left with a definite and firm conviction a mistake has been made in awarding spousal support, without adequate explanation, in an amount more than double the recipient’s expenses as found by the court and advanced by the recipient, by including within the recipient’s need expenses paid on behalf of adult children, and by finding the obligor had an ability to pay based upon a 70-80 hour work week, we reverse and remand this case for reconsideration of an appropriate amount of spousal support.

I

[¶2] Jean and Thomas Kaspari married in 1983 and share three adult children. Jean Kaspari is a registered nurse. Thomas Kaspari is a physician.

[¶3] Jean Kaspari moved out of the marital home in 2013, and in 2019, she filed for divorce. During the parties’ separation prior to the start of these proceedings, and after an interim order was entered in these proceedings, Thomas Kaspari paid Jean Kaspari \$2,000 monthly in spousal support. When these proceedings began, Jean Kaspari was 58 years old and Thomas Kaspari was 59 years old.

[¶4] The parties stipulated to a marital property allocation of their marital assets and liabilities, reserving for trial the issue of spousal support and a potential marital property equalization payment. Following a trial in August 2020, the district court ordered Thomas Kaspari to pay Jean Kaspari \$7,000 per month in permanent spousal support “until her death or remarriage.”

[¶5] We reversed the judgment in *Kaspari v. Kaspari*, 2021 ND 63, ¶ 7, 958 N.W.2d 139 (“*Kaspari I*”), holding the district court erred because the spousal support award was for an unlimited duration in violation of N.D.C.C. § 14-05-24.1. Although raised on appeal, we did not consider Thomas Kaspari’s arguments concerning the amount of spousal support ordered, and instead indicated the court could reconsider the appropriate amount on remand. *Kaspari I*, at ¶ 8.

[¶6] On remand following *Kaspari I*, the district court ordered Thomas Kaspari to pay \$7,000 monthly in spousal support until he turns 65. A majority of this Court again reversed in *Kaspari v. Kaspari*, 2022 ND 57, ¶ 14, 971 N.W.2d 846 (“*Kaspari II*”), holding the district court failed to adequately explain its reasoning for the amount of spousal support. The case was remanded with instructions to the district court for “further findings explaining its decision or to reconsider the amount of support.” *Id.*

[¶7] On remand following *Kaspari II*, the district court entered an order supplementing its findings and conclusions of law. The court incorporated its prior findings and made additional findings concerning the *Ruff-Fischer* factors. The court declined to modify the prior judgment and again imposed a spousal support obligation on Thomas Kaspari of \$7,000 per month until he turns 65.

II

[¶8] We review an award of spousal support as a finding of fact subject to the clearly erroneous standard of review. *Willprecht v. Willprecht*, 2021 ND 17, ¶ 7, 954 N.W.2d 707. A finding of fact is clearly erroneous only if it is induced by an erroneous view of the law, if there is no evidence to support a finding, or if, although there is some evidence to support it, on the entire evidence, we are left with a firm conviction a mistake has been made. *Berg v. Berg*, 2018 ND 79, ¶ 6, 908 N.W.2d 705.

[¶9] Section 14-05-24.1(1), N.D.C.C., provides for awards of spousal support:

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.

An analysis of the *Ruff-Fischer* factors is also required. *Berdahl v. Berdahl*, 2022 ND 136, ¶ 7, 977 N.W.2d 294. The 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.

Id. (quoting *Quamme v. Quamme*, 2021 ND 208, ¶ 14, 967 N.W.2d 452).

III

[¶10] “The district court must make spousal support awards ‘in consideration of the needs of the spouse seeking support and of the supporting spouse’s needs and ability to pay.’” *Willprecht*, 2021 ND 17, ¶ 11 (quoting *Overland v. Overland*, 2008 ND 6, ¶ 16, 744 N.W.2d 67). In *Willprecht*, we remanded an award of spousal support that failed to consider the recipient’s “estimated monthly living expenses or need for support[.]” *Id.* at ¶ 12. Similarly, in *Overland*, we remanded for further findings on a spousal support award ordered without evidence of need while noting the “court seemed to award spousal support as a method to award more property” to the recipient spouse. 2008 ND 6, ¶ 21.

[¶11] An award based on need will not be set aside when it falls within the range of the parties’ presented evidence. *Lynnes v. Lynnes*, 2008 ND 71, ¶ 16, 747 N.W.2d 93. In *Mertz v. Mertz*, 2015 ND 13, ¶¶ 11-12, 858 N.W.2d 292, this Court articulated the inverse of the rule found in *Lynnes*, reversing an award because the district court “awarded spousal support in excess of the amount

requested[,]” the findings were “inadequate” to justify such an amount, and the court “misapplied the law.” The requirement to limit spousal support to the need of the recipient was also noted by this Court in *Ingebretson v. Ingebretson*, 2005 ND 41, ¶ 20, 693 N.W.2d 1, where we recognized the following:

Where the evidence in the record does not support an award of permanent spousal support because the recipient testified she needed support for ten years, and the court has not articulated a reason for exceeding the duration of her request, we conclude the award of permanent spousal support was clearly erroneous. We reverse and remand for detailed findings or an amended award.

[¶12] Here, the district court found Jean Kaspari’s annual expenses following the divorce totaled \$94,000. The court found her annual income was \$57,000. The net difference between Jean Kaspari’s expenses and her income is \$37,000. The court also found Thomas Kaspari has an ability to pay, finding his annual income to be approximately \$400,000. Thomas Kaspari was then ordered to pay \$7,000 per month in spousal support, which amounts to an annual obligation of \$84,000. The result is an award that requires Thomas Kaspari to pay \$47,000 more each year than the net difference between Jean Kaspari’s income and expenses.

[¶13] The district court noted that Jean Kaspari’s requested spousal support in the amount of \$10,000 per month included a desire for a \$17,000 down payment to purchase the home she is currently residing in. The court also noted that Jean Kaspari had accrued \$37,133.56 in credit card debt since leaving the family home in 2013 and while receiving \$2,000 per month in spousal support. The court then provided the following explanation for continuing to order spousal support in the amount of \$7,000 per month:

The Court continues to conclude the additional \$7,000 each month in spousal support is appropriate in this case. It allows her to pay off her credit card debt and begin saving for the down payment for her home. Additionally, it would allow her to make her monthly mortgage payments on the property. With the additional support, Jean will have the ability to travel with her children, paying for the trips without accumulating additional debt. Jean will also be able to save additional money so she can retire, support herself and

attempt to maintain her standard of living. This is the “security” she requested during her testimony.

[¶14] The problem with the district court’s reasoning is that it adds additional expenses into the spousal support award that were already incorporated into the court’s original finding of \$94,000 as a total for Jean Kaspari’s needs. The expenses of \$94,000 included annual retirement contributions of \$7,200, annual travel expenses of \$7,200, and annual entertainment expenses of \$12,000, in addition to the cost of housing, utilities, clothing, personal care, food, household items, insurance, transportation, unreimbursed health care costs, charitable contributions, gifts, and miscellaneous items.

[¶15] The district court’s award of support in excess of Jean Kaspari’s identified expenses to allow Jean Kaspari to travel with her children ignores the \$19,200 already included within Jean Kaspari’s annual expenses specifically for travel and entertainment. The excess award to account for retirement savings ignores the \$7,200 already included within her expenses for retirement contributions and ignores the retirement contributions allocated as part of the stipulated property and debt allocation. Other than the \$17,000 down payment for a home and the credit card debt of \$37,000, the record and the court’s findings are devoid of any identification or quantification of additional expenses Jean Kaspari will incur in excess of her self-identified need of \$94,000. We conclude the court erred in applying the law by awarding spousal support exceeding the recipient’s deficit of income to expenses by more than double when the record and findings are devoid of any identification and quantification of the additional need in excess of the expenses. An award exceeding need is contrary to our law.

[¶16] Additionally, we have frequently recognized property division and spousal support are both interrelated and intertwined, and must be considered together. *Berg*, 2018 ND 79, ¶ 9. The parties stipulated to, and the district court accepted, the allocation of the parties’ assets and debts. The court also found the following regarding the need for an equalization payment:

The Court will not award an equalization payment to Jean. Neither party requested an equalization payment in their closing

argument briefs. The parties stipulated to property and debt distribution which included the values for the parties' property. Given the parties' agreed upon valuation, the Court does not find an equalization payment is required.

[¶17] At the time of the trial, only the amount of spousal support was left for the district court to consider. After citing this Court's decision in *O'Keeffe v. O'Keeffe*, 2020 ND 201, ¶ 12, 948 N.W.2d 848, the district court noted that "a substantial disparity between the parties' incomes that cannot be adjusted by property division, supports an award of spousal support to maintain a disadvantaged spouse." The district court then acknowledged this Court has not endorsed the equalization of income between divorcing spouses as a measure of support, but provided the following additional explanation for the award of \$7,000 in spousal support:

The difference between the parties' earning ability is significant. Jean earns approximately \$57,000 each year and Thomas earns over \$400,000 each year. An order for spousal support is appropriate even when a spouse has received an education, is employed, and self-supporting. Spousal support is appropriate for a disadvantaged spouse who has "forgone 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." *Moilan v. Moilan*, 1999 ND 103, ¶ 15, 598 N.W.2d 81. Following a divorce, both parties must equitably share the overall impact on their standard of living. *Woodward v. Woodward*, 2013 ND 58, ¶ 8, 830 N.W.2d 82.

The amount of spousal support ordered in this case is not the Court's attempt to equalize income. Thomas' payment of \$7,000 each month equates to an annual payment of \$84,000 each year. Subtracting this amount from Thomas' income amounts to an annual income for [sic] Thomas of \$316,000. Adding this amount to Jean's income results in an annual income of \$141,000. After payment of spousal support to Jean, the parties' incomes are not equal as Thomas will still earn over twice the annual income of Jean.

[¶18] While the district court is careful to separate the spousal support award from an equalization payment, it appears the court is attempting to do just that by providing money for additional expenses that were above the court's finding of Jean Kaspari's need. Our decisions in *Willprecht*, *Overland*, and *Lynnes*, require spousal support awards to be considered in the context of the need of the receiving spouse and the evidence in the record. Our rulings in *Mertz* and *Ingebretson* further confirm that awards of spousal support that exceed a recipient's need are clearly erroneous.

[¶19] Here, the district court found Jean Kaspari's annual income to be \$57,000 and her annual expenses to be \$94,000, an annual income to expense deficit of \$37,000. The court found that Jean Kaspari's post-divorce "need," in addition to her actual expenses, should include \$17,000 for a down payment on a home and \$37,133.56 for payment of debt accumulated after she left the family home. The court also found spousal support in excess of Jean Kaspari's expenses that provided additional support to travel with her children, pay for trips without accumulating debt, save additional money for retirement, and maintain her standard of living.

[¶20] On remand, we direct the district court to make specific findings, on the existing record, identifying and quantifying any expenses representing additional "need" in excess of Jean Kaspari's annual expenses of \$94,000. The court is directed to enter an annual spousal support award in an amount not to exceed the deficiency between Jean Kaspari's annual income of \$57,000 and her annual expenses of \$94,000, plus any additional need identified and quantified from evidence in the existing record.

IV

[¶21] Because it is likely to arise on remand, we will also address the district court's finding on Thomas Kaspari's ability to pay. This Court has affirmed a district court's denial of spousal support even when the *Ruff-Fischer* factors supported an award, but the obligor did not have the ability to pay. *Schmuck v. Schmuck*, 2016 ND 87, ¶¶ 20-21, 882 N.W.2d 918. *See also Knudson v. Knudson*, 2018 ND 199, ¶ 21, 916 N.W.2d 793. In *Schmuck*, this Court

acknowledged that an “overarching finding” by the district court was that the obligor was already responsible for the majority of the marital debt, taxes, and child support, and the “realities” of the obligor’s financial situation would not allow for an additional award of spousal support. 2016 ND 87, ¶ 21.

[¶22] During the marriage Thomas Kaspari worked 40-50 hours per week, earning approximately \$230,000 annually. Since the parties’ separation, Thomas Kaspari has increased his workload to 70-80 hours per week, resulting in a gross annual income of approximately \$400,000 per year. The district court found Thomas Kaspari’s ability to pay was based on his income of \$400,000 per year. Like the obligor’s situation in *Schmuck*, the reality of Thomas Kaspari continuing to work 70-80 hours per week is likely unsustainable, and not a fair measure of his ability to pay. The court did not provide an explanation as to why Thomas Kaspari’s post-separation income is a fair measure of his ability to pay. We conclude the findings are inadequate to support a finding that Thomas Kaspari has an ability to pay when that ability is based on requiring him to work double the number of hours typically associated with full-time employment. On remand, we direct the district court to reconsider its finding regarding Thomas Kaspari’s ability to pay based upon the existing record and, if it determines the increased work schedule to be the appropriate measure of the ability to pay, provide specific findings supporting that determination. Absent specific findings on this issue, we direct the court to find Thomas Kaspari’s ability to pay based on his earnings during the marriage.

V

[¶23] “In a divorce action, the court has authority to order payment of post-minority support, including college expenses, under appropriate circumstances.” *Donarski v. Donarski*, 1998 ND 128, ¶ 19, 581 N.W.2d 130. This Court has limited post-minority awards and required “full consideration of the particular circumstances[.]” *Id.* at ¶ 20. This Court has never been asked to consider whether it is appropriate to include within the “need” of a spouse, when awarding spousal support, expenses associated with the parties’ adult children.

[¶24] Included within Jean Kaspari's \$94,000 of annual expenses were cash transfers to, and expenses paid on behalf of, the parties' self-supporting adult children. Jean Kaspari admits to providing her children with financial assistance. She paid vacation expenses for the children, including a trip to Ireland. Her son lives with her rent free while she pays all utilities, food, household, and telephone expenses for the home. Remand is necessary where we are unable to discern the basis for a district court's spousal support decision. *Willprecht*, 2021 ND 17, ¶ 11. "[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*, 2018 ND 79, ¶ 11 (citing *Ulsaker v. White*, 2009 ND 18, ¶ 9, 760 N.W.2d 82). The inclusion of the cash transfers and expenses paid on behalf of the parties' adult children requires specific findings with respect to why they should be included within the recipient spouse's need. We remand and direct the district court to make specific findings regarding the amount of cash transfers to, and expenses paid on behalf of, the parties' adult children and why it is appropriate to include those amounts within Jean Kaspari's need. Absent findings supporting the inclusion of those costs within Jean Kaspari's need, the costs should be excluded from her need.

VI

[¶25] The district court erred in applying the law by ordering an award of spousal support in excess of the recipient's deficit of income over expenses without identification and quantification of the additional need. We conclude the court's findings are inadequate to support a determination Thomas Kaspari has an ability to pay based on double the number of hours typically associated with full-time employment without providing specific findings on why the use of the increased work schedule is appropriate. We conclude the court's findings are inadequate to support a determination Jean Kaspari's need for support includes cash transfers to, and expenses paid on behalf of, adult children without specific findings on why those costs should be included within the recipient's need. We reverse and remand this case to the district court for findings consistent with this opinion, and we limit the court's review to the existing record.

[¶26] Jon J. Jensen, C.J.
Daniel J. Crothers
Jerod E. Tufte

[¶27] The Honorable Gerald W. VandeWalle recused himself subsequent to oral argument and did not participate in this decision.

McEvers, Justice, dissenting.

[¶28] I respectfully dissent. As noted in my dissent in *Kaspari II*, 2022 ND 57, ¶¶ 17-27, I did not, and do not, agree the district court's findings are clearly erroneous. I am not left with a definite and firm conviction a mistake has been made because the district court's award of spousal support is supported by the evidence.

[¶29] A detailed analysis of the district court's findings is warranted because the issue of spousal support is a question of fact. After our remand in *Kaspari I*, the district court incorporated its prior findings and made additional findings concerning the parties and their more than thirty-year marriage. The court found Jean Kaspari supported Thomas Kaspari while he attended medical school. After he graduated, the parties agreed she would work in the home caring for their children. Their decision required her to forego employment opportunities. The court also considered the amount of time Jean Kaspari spent out of the workforce while raising the children. They acquired substantial debt early in their marriage. A large amount of the debt was accumulated while Thomas Kaspari was in medical school and during his residency. As he continued to work, his earning capacity increased and they began to pay off their debt and enjoy life. They began ranching and took various trips. In 2013, he told her he did not love her and he only married her because she was pregnant. After issues surfaced concerning his infidelity, she left the ranch and moved in with her sister. In 2015, she moved to Fargo and began renting a twin home. The district court examined the parties' ages, their health, their earning capacity, their standard of living, their education levels, and whether further education would benefit Jean Kaspari. The court also considered their property and debt stipulation, as well as Jean Kaspari's needs versus Thomas Kaspari's ability to pay spousal support. The court also

considered the reason Jean Kaspari left the thirty-year marriage, which was because of Thomas Kaspari's lost affection and infidelity. The court amended its judgment to require Thomas Kaspari to pay \$7,000 monthly in spousal support until he turns 65. The court explained "this is an appropriate remedy to equalize the burdens of the divorce."

[¶30] After a majority of this Court again reversed in *Kaspari II*, the district court entered an order supplementing its findings and conclusions of law. The court again incorporated its prior findings and made additional findings concerning the *Ruff-Fischer* factors. The court found Jean Kaspari's long absence from the workforce negatively impacted her earning ability, her ability to work was limited because of Thomas Kaspari's employment as a physician, and he discouraged her from working. The court also considered the parties' ages; their proximity to retirement; their standard of living during the marriage, including their ability to travel and engage in large amounts of discretionary spending; their property and debt stipulation; their earning capacity; and Jean Kaspari's level of need versus Thomas Kaspari's ability to pay. The court explained the spousal support amount would equitably share the overall impact on the parties' standard of living, and it was not an attempt to equalize income.

[¶31] Now, again reversing the district court's findings, the majority cites *Willprecht v. Willprecht*, 2021 ND 17, ¶ 11, 934 N.W.2d 707 and *Overland v. Overland*, 2008 ND 6, ¶ 16, 744 N.W.2d 67, for the premise that the district court must take into consideration the needs of the spouse seeking support. Majority, at ¶ 10. However, unlike the cases cited by the majority, the district court here did consider Jean Kaspari's living expenses. The majority focuses on the court's finding that Jean Kaspari's Rule 8.2, N.D.R.Ct., Financial Statement and Affidavit shows her annual expenses total \$94,000. Majority, at ¶ 14. In the Rule 8.2 Financial Statement, Jean Kaspari budgeted for \$600 per month for a contribution toward retirement. This budget was made in recognition that she was requesting permanent spousal support, not spousal support ending when Thomas Kaspari turns age 65. What the majority does not consider is that Jean Kaspari's annual expenses do not end when Thomas Kaspari's spousal support obligation ends at age 65. At that time, Jean Kaspari

will still have a house payment, household expenses, and likely inadequate retirement savings for her own retirement.

[¶32] This Court has adopted the equitable doctrine for spousal support and rejected the minimalist doctrine, which is meant to educate and retrain to minimal self-sufficiency. *Fox v. Fox*, 2001 ND 88, ¶ 24, 626 N.W.2d 660. “[S]pousal support may be appropriate to ensure that one party does not bear the brunt of the overall reduction in standard of living” caused by the divorce. *Woodward v. Woodward*, 2013 ND 58, ¶ 8, 830 N.W.2d 82. The goal is “adequate self-support” based on, among other factors, the standard of living established during the marriage, the duration of the marriage, and the parties’ earning capacities. *Id.* When the parties cannot maintain the same standard of living apart as they could together, the need to balance the burdens caused by the divorce is a valid consideration. *Innis-Smith v. Smith*, 2018 ND 34, ¶ 22, 905 N.W.2d 914; *see also Shields v. Shields*, 2003 ND 16, ¶ 8, 656 N.W.2d 712.

[¶33] The district court’s finding of Jean Kaspari’s annual expenses is not an ultimate finding of her need. The court found with the additional money, she would be able to retire, support herself, and maintain a standard of living. The court found the \$7,000 a month in spousal support would minimally give Jean Kaspari the security she needs in retirement, a security she would have had if the divorce had not occurred.

[¶34] At trial, Jean Kaspari testified her current expenditures were not indicative of her need:

I am living paycheck to paycheck. And I’m just – I just have no means of really – I don’t know. I can only describe it as living paycheck to paycheck. That’s – I have no security.

[¶35] The court explained:

At trial, Jean testified she and Thomas traveled together when the children moved out. They would travel to see their children at college, spent two weeks in Scotland for their wedding anniversary, spent time in New York, and Washington, D.C. The

parties were now able to spend larger amounts of money for clothing, food, and vehicles. In one example of spending, Jean stated Thomas purchased a stranger's meal, spending \$500 for the meal.

Jean's life and standard of living has significantly changed after the parties' separation. Jean was fifty eight years old at the time of the trial, had little retirement, and no security. Jean was working as many hours as she could and Thomas paid her \$2,000 each month. Despite payment of this amount each month, in addition to Jean's salary, she was unable to purchase her own home, accumulated credit card debt, was unable to help her kids, and could not take trips without undertaking debt. She was renting a twin home.

The court found, in its first order incorporated by reference, Thomas Kaspari has continued to spend money following separation, including more than \$150,000 on three different tractors and an airplane. The court further found he has enjoyed trips to the British Virgin Islands and Scotland with his children, and he paid all of their expenses. The district court's findings are supported by the record.

[¶36] In *Fox*, 2001 ND 88, ¶ 24, we affirmed a similar award of spousal support under comparable circumstances. In that case, the parties divorced after 32 years of marriage. *Id.* The husband, who was 60 years old at the time of trial, was a retired physician with disability income amounting to \$206,400. *Id.* at ¶ 12. The wife, who was 59 years old, had completed some college but did not work outside the home. *Fox v. Fox*, 1999 ND 68, ¶ 2, 592 N.W.2d 541. The wife presented evidence of monthly expenses of \$4,700 per month. *Fox*, 2001 ND 88, ¶ 12. The husband was ordered to pay \$6,000 per month in spousal support until he turned 65. *Id.* at ¶ 13. This Court noted that spousal support may be awarded to provide the income necessary to live a life comparable to the one prior to the divorce or comparable to the higher earner's post-divorce reduced standard of living. *Id.* at ¶ 24.

[¶37] Although each divorce case must be decided on its own unique facts, it is worth noting that the Kaspari's marriage is similar in length to the marriage in *Fox*. The duration of support is also similar. Thomas Kaspari's income is

double the husband's income in *Fox*. Yet the amounts awarded—\$6,000 in *Fox* and \$7,000 here—are similar. As in *Fox*, the court found Jean Kaspari's need to be more than her actual expenses. Even assuming a reduction in Thomas Kaspari's income should he choose to work fewer hours, he was earning \$230,000 in previous periods during the marriage, significantly more than the annual income of the obligor in *Fox*.

[¶38] The district court was faced with conflicting evidence on the issue of Jean Kaspari's need. Thomas Kaspari claimed she lives beyond her means. Jean Kaspari claimed she could not make ends meet. "This Court defers to the district court's ability to judge the credibility of witnesses, and resolves contradictory testimony in favor of affirmance." *City of West Fargo v. Medbery*, 2021 ND 81, ¶ 15, 959 N.W.2d 568; *see also Stoddard v. Singer*, 2021 ND 23, ¶ 18, 954 N.W.2d 696 (deference is given to the district court's credibility determinations when the court is presented with disputed evidence); *Schaffner v. Schaffner*, 2017 ND 170, ¶ 10, 898 N.W.2d 428 ("We defer to the district court's weighing of the evidence and assessment of witness credibility.").

[¶39] For these reasons, I would hold the district court's decision is not clearly erroneous and affirm the judgment.

[¶40] Lisa Fair McEvers