PLADSON
LAW OFFICE

January 16, 2021

North Dakota House of Representatives
The Honorable Lawrence Klemin
State Capitol Building
Bismarck, North Dakota 58505

RE: HB 1121

Dear Representative Klemin:

I am writing this letter in opposition to HB 1121. **Attachment 1**. I have practiced family law in North Dakota since 1992, and I am also licensed in Minnesota. House Bill 1121 seeks to specifically define marital property so as to exclude property acquired as a gift or inheritance, acquired before the marriage, addressed by a premarital agreement, or acquired in exchange for or is an increase in value of these types of assets. This is a concept which has been rejected by our legislature many times over the last few decades. Most recently it was rejected in 2007 after receiving a "do not pass" recommendation out of committee and failing to pass the House with 78 legislators rejecting the concept. **Attachment 2**. At first blush, it may seem like a fairly simple distinction between marital and nonmarital property, which may assist parties in facilitating settlement. However, other jurisdictions, such as Minnesota, show us that this distinction is nothing more than a hot bed for contested cases and appeals.

The current law in North Dakota requires the district court to look at certain factors, known as the "Ruff-Fisher" guidelines, when determining property division. Under those guidelines, the origin of the property must be considered by the court. The court is able to look at all of the circumstances between the parties and make an equitable distribution of the property. In 1999, the North Dakota Supreme Court upheld a trial court decision in which the husband received 86 percent of a $355,000 estate and the wife received 14 percent. The trial court found that because the husband's worth was greater at the time of the marriage and that the marriage was relatively short in duration, this distribution was equitable. Wetzel v. Wetzel, 1999 ND 29. **Attachment 3**. Over the last two decades, this case has been cited by the North Dakota

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Supreme Court 16 times justifying unequal distributions of a marital estate, and addressing passive or active increases in the value of assets. The trial courts are already using their discretion to achieve fair results for litigants, and HB 1121 would only serve to complicate property division.

Additionally, under current law, gifted and inherited property are considered marital property and the burden to prove that the property should not be marital property is on the party who wants to keep it out. Under HB 1121, the burden would be shifted to the party *least able to financially bear that burden*. Further, it could be argued that under HB 1121, the trial court would have *no discretion* to consider any other circumstances, because the legislature does not permit the trial court to award any property other than marital property. Given the rural and agricultural nature of North Dakota, this could lead to extremely unfair and oppressive results.

As practitioners, we deal with many cases involving family farms. A common tradition in North Dakota is to pass the farming operation to the next generation. Most often, that land is put in the name of one spouse only even if the land is acquired during the marriage. Under HB 1121, land transferred to one spouse could not be divided by the court. This is true even if the parties were married over 30 years, if the parties jointly worked the farming operation, or if the parties used the land as security and paid off one mortgage after the other during the course of the marriage. House Bill 1121 leaves no room for the court to consider all of the circumstances of the parties and make an equitable distribution of the assets. The results can leave a spouse completely unable to maintain a standard of living, dependent on the State for support, or completely uncompensated for the work and efforts made to increase the value of the asset.

If HB 1121 passed, the courts will be dealing with the issue of how to address appreciation of assets, and whether or not the appreciation was active or passive. The distinction between marital and non-marital property was codified in 1979 in Minnesota and its citizens are still litigating this very issue, four decades later. In Minnesota the courts have found that if the appreciation is active, the increase is marital property and if the appreciation is found to be passive, the increase is nonmarital. Active appreciation was defined as an increase attributable to the efforts of one or both spouses and passive appreciation was defined as an increase in value due to inflation or market forces. The Minnesota courts analogize a marriage to that of a partnership agreement and have held that increases during the marriage in the value of nonmarital property as a result of the efforts of one or both spouses are treated as a return on the investment made by the marital entity. Under HB 1121, litigants could not successfully raise this argument because N.D.C.C. §

14-05-24 (1)(5) requires that the increase in value be treated as nonmarital and the law does not give the court the authority to divide nonmarital assets.

Imagine a situation where a young couple, Sue and John, start dating five months after Sue opens up her own small corporation, a screen print t-shirt shop. John finds that he enjoys the work and he begins helping her with developing creative concepts and marketing strategies. They marry before the business is even one year old and work tirelessly on building their business and the brand. They each bring something to the business and grow it until it is worth over two million dollars. After 25 years of marriage and being partners in business, John decides he would like a divorce. The parties did not change the corporate structure of the business and it has always been in Sue's name only. It was clearly started before they started dating each other, let alone before the marriage. Under HB 1121 the court would not have any authority to divide this asset between the parties because it is only in Sue's name and it is not subject to distribution according to the proposed N.D.C.C. 14-05-24 (1)(a)(2).

North Dakota citizens already have the ability to exclude gifts, inheritances, separate property and premarital property through the use of properly drafted premarital agreement under N.D.C.C. Chapter 14-03.2. **Attachment 4**. If it is important to a soon to be husband or wife to keep certain assets separate, then they are free to enter into contracts which permit this and are enforceable under North Dakota law.

To impose a rigid definition of nonmarital property on parties without any meaningful discretion for a judge, will produce extremely unfair results and will result in increased litigation in family law. Most family law practitioners try to keep clients out of the courtroom. House Bill 1121 will have the opposite effect and will require parties to litigate this issue to uncover the true intent of the law and to prevent absolutely disparate results.

I thank you for your time and consideration of my thoughts and would invite you to call me should you have any further questions or concerns.

Very truly yours,

PLADSON LAW OFFICE, P.L.L.C.

DeAnn M. Pladson

CC: Anna Wischer, President SBAND Family Law Section

21.0086.01000

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1121

Introduced by

Representative D. Anderson

Senator Kreun

A BILL for an Act to amend and reenact sections 14-05-24 and 14-05-27 and subsection 3 of section 29-15-21 of the North Dakota Century Code, relating to division of marital property debts; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-05-24 of the North Dakota Century Code is amended and reenacted as follows:

14-05-24. Division of marital property and debts.

1. As used in this section, "marital property" means all property held jointly or individually by the divorcing party. The term does not include:
   a. Real or personal property acquired by either spouse before, during, or after the existence of the marriage which is:
      (1) Acquired as a gift, bequest, devise, or inheritance made by a third party to one but not to the other spouse;
      (2) Acquired before the marriage;
      (3) Excluded by a valid premarital agreement;
      (4) Acquired by a spouse after the valuation date; or
      (5) Acquired in exchange for or is the increase in value of property described in paragraph 1, 2, 3, or 4; or
   b. Income from property described in subdivision a which is derived during the marriage unless the income was treated, used, or relied upon by the parties as marital property.
2. When a divorce is granted, the court shall make an equitable distribution of the marital property and debts of the parties. Except as may be required by federal law for specific property, and subject to the power of the court to determine a date that is just

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and equitable, the valuation date for marital property is the date mutually agreed upon between the parties. If 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.

~~2.~~3. If one party to the divorce is covered by the civil service retirement system or other government pension system in lieu of social security and is not entitled to receive full social security benefits and the other party is a social security recipient, in making an equitable distribution award, the court shall compute what the present value of the social security benefits would have been to the party with the government pension during the covered period and subtract that amount from the value of the government pension in order to determine the government pension's marital portion.

~~3.~~4. The court may redistribute marital property and debts in a postjudgment proceeding if a party has failed to disclose property and debts as required by rules adopted by the supreme court or the party fails to comply with the terms of a court order distributing marital property and debts.

SECTION 2. AMENDMENT. Section 14-05-27 of the North Dakota Century Code is amended and reenacted as follows:

14-05-27. Separation - Spousal support - Division of marital property.

Upon the granting of a separation, the court may include in the decree an order requiring a party to pay for spousal support and for the support of any minor children of the parties. Subject to section 14-05-24, the decree may also provide for the equitable division of the marital property and debts of the parties. As used in this section, the term "marital property" has the same meaning as provided under section 14-05-24.

SECTION 3. AMENDMENT. Subsection 3 of section 29-15-21 of the North Dakota Century Code is amended and reenacted as follows:

3. Any party who has been added, voluntarily or involuntarily, to the action or proceeding after the date of any occurrence in subsection 2 has the right to file a demand for change of judge within ten days after any remaining event occurs or, if all of those events have already occurred, within ten days after that party has been added. ~~In any event, no~~A demand for a change of judge may not be made after the judge sought to

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be disqualified has ruled upon any matter pertaining to the action or proceeding in which the demanding party was heard or had an opportunity to be heard. ~~Any~~A proceeding to modify an order for alimony, ~~property~~ division of marital property, or child support ~~pursuant to~~under section 14-05-24 or an order for child custody ~~pursuant to~~under section 14-05-22 must be considered a proceeding separate from the original action and the fact ~~that~~ the judge sought to be disqualified made any ruling in the original action does not bar a demand for a change of judge.

SECTION 4. APPLICATION. This Act applies to divorce and separation actions for which a summons has been served after July 31, 2021.

HB 1254 lost.

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SECOND READING OF HOUSE BILL

HB 1271: A BILL for an Act to amend and reenact sections 14-05-24 and 14-05-27 of the North Dakota Century Code, relating to property division in divorce and separation.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 12 YEAS, 78 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

YEAS: Boehning; DeKrey; Griffin; Hawken; Johnson, N.; Keiser; Kelsch, R.; Kretschmar; Onstad; Pinkerton; Porter; Speaker Delzer

NAYS: Aarsvold; Amerman; Bellew; Belter; Boe; Boucher; Brandenburg; Carlisle; Carlson; Charging; Clark; Conrad; Dahl; Damschen; Delmore; Dietrich; Dosch; Drovdal; Ekstrom; Froelich; Froseth; Glassheim; Grande; Gruchalla; Gulleson; Haas; Hanson; Hatlestad; Headland; Heller; Herbel; Hofstad; Hunskor; Johnson, D.; Kaldor; Karls; Kasper; Kelsh, S.; Kempenich; Kerzman; Kingsbury; Klein; Klemin; Koppelman; Kreidt; Kroeber; Martinson; Meier, L.; Metcalf; Meyer, S.; Monson; Mueller; Myxter; Nelson; Nottestad; Owens; Pietsch; Pollert; Potter; Price; Ruby; Schmidt; Skarphol; Sukut; Svedjan; Thoreson; Thorpe; Uglem; Vig; Vigesaa; Wald; Wall; Weiler; Weisz; Wieland; Williams; Wolf; Wrangham

ABSENT AND NOT VOTING: Berg; Schneider; Solberg; Zaiser

Engrossed HB 1271 lost.

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SECOND READING OF HOUSE BILL

HB 1364: A BILL for an Act to amend and reenact section 20.1-03-12.2 of the North Dakota Century Code, relating to antlered deer license application fees; and to declare an emergency.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 40 YEAS, 52 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

YEAS: Berg; Boe; Boucher; Carlisle; Clark; Damschen; DeKrey; Delmore; Dosch; Ekstrom; Glassheim; Griffin; Gruchalla; Haas; Hanson; Hatlestad; Hofstad; Kaldor; Keiser; Kelsch, R.; Kelsh, S.; Klemin; Kretschmar; Kroeber; Martinson; Mueller; Nelson; Onstad; Pietsch; Pinkerton; Pollert; Porter; Potter; Price; Schmidt; Schneider; Thorpe; Weiler; Weisz; Wieland

NAYS: Aarsvold; Amerman; Bellew; Belter; Boehning; Brandenburg; Carlson; Charging; Conrad; Dahl; Dietrich; Drovdal; Froelich; Froseth; Grande; Gulleson; Hawken; Headland; Heller; Herbel; Hunskor; Johnson, D.; Johnson, N.; Karls; Kasper; Kempenich; Kerzman; Kingsbury; Klein; Koppelman; Kreidt; Meier, L.; Metcalf; Meyer, S.; Monson; Myxter; Nottestad; Owens; Ruby; Skarphol; Sukut; Svedjan; Thoreson; Uglem; Vig; Vigesaa; Wald; Wall; Williams; Wolf; Wrangham; Speaker Delzer

ABSENT AND NOT VOTING: Solberg; Zaiser

Engrossed HB 1364 lost.

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SECOND READING OF HOUSE BILL

HB 1388: A BILL for an Act to create and enact a new section to chapter 39-13 of the North Dakota Century Code, relating to a logo sign program.

ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 18 YEAS, 74 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

Filed 2/23/99 by Clerk of Supreme Court

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

1999 ND 29

Clyde C. Wetzel, Plaintiff, Appellee and Cross-Appellant

v.

Patricia M. Wetzel, Defendant, Appellant and Cross-Appellee

Civil No. 980252

Appeal from the District Court for Burleigh County, South Central Judicial District, the Honorable Donald L. Jorgensen, Judge.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Opinion of the Court by Kapsner, Justice.

Thomas M. Tuntland, of Tuntland and Hoffman, P.O. Box 1315, Mandan, ND 58554, for plaintiff, appellee and cross-appellant.

William D. Schmidt, of Schmitz, Moench & Schmidt, P.O. Box 2076, Bismarck, ND 58502-2076, for defendant, appellant and cross-appellee.

Wetzel v. Wetzel

Civil No. 980252

Kapsner, Justice.

[¶1] Patricia Wetzel appealed from a divorce judgment, claiming the trial court erred in awarding child custody, setting the amount of child support, and dividing the marital property. Clyde Wetzel cross-appealed, claiming the trial court erred in dividing the marital property and awarding spousal support. We hold the trial court's award of child custody to Clyde Wetzel, division of the marital property, and award of spousal support are not clearly erroneous. We further hold the court's sixteen-month transition custody placement and award of child support during that transitional period are clearly erroneous. We affirm in part, reverse in part, and remand for a redetermination of the transitional custody placement and child support.

[¶2] The parties met in 1990 and began living together in 1991 at the farmstead of Clyde's parents north of Ashley. In 1994 the parties married and had a daughter, Carly. The marriage irretrievably broke down in September 1996, and Patricia moved to Bismarck with Carly.

[¶3] Clyde filed for divorce in September 1997. Patricia filed an answer and counterclaim for divorce. In an amended

judgment, dated June 19, 1998, the trial court awarded both parties a divorce on the grounds of irreconcilable differences. The court awarded custody of Carly to Clyde with liberal visitation for Patricia. The court also set a sixteen-month custody transition period in which each of the parties would have custody of Carly about one-half of the time in two-week intervals. The court ordered Patricia to pay child support of $168 per month, but reduced her child support obligation to $84 per month during the sixteen-month custody transition. The trial court awarded Patricia $50,358.80 of the net marital estate valued at $355,000, and awarded the balance to Clyde. The court also awarded Patricia rehabilitative spousal support of $350 per month for 24 months. Patricia appealed from the judgment and Clyde cross-appealed.

Motion to Dismiss

[¶4] Clyde moved to dismiss Patricia's appeal, asserting she accepted substantial benefits under the judgment and thereby waived her right to appeal from it. The trial court, in dividing the marital estate, awarded Patricia personal property and ordered Clyde to pay Patricia a lump sum of $36,000 in three annual installments. After the judgment was entered, Clyde paid the entire $36,000 to Patricia in one payment. We conclude Patricia's acceptance of the lump sum

payment did not, under the circumstances of this case, constitute a waiver of her right to appeal from the judgment.

[¶5] The general rule is that one who accepts a substantial benefit of a divorce judgment waives the right to appeal from the judgment. See, e.g., Davis v. Davis, 458 N.W.2d 309, 311 (N.D. 1990). This court has sharply limited the rule in domestic cases to promote a strong policy in favor of reaching the merits of an appeal. Spooner v. Spooner, 471 N.W.2d 487, 489 (N.D. 1991). Before a waiver of the right to appeal can be found, there must be an unconditional, voluntary, and conscious acceptance of a substantial benefit under the judgment. Grant v. Grant, 226 N.W.2d 358, 361 (N.D. 1975). The party objecting to the appeal has the burden of showing the benefit accepted by the appealing party is one which the party would not be entitled to without the decree. Hoge v. Hoge, 281 N.W.2d 557, 563 (N.D. 1979). There must be unusual circumstances, demonstrating prejudice to the movant, or a very clear intent on the part of the appealing party to accept the judgment and waive the right to appeal, to keep this court from reaching the merits of the appeal. Spooner, 471 N.W.2d at 490. We find no such circumstances in this case.

[¶6] Clyde voluntarily paid the entire $36,000 lump sum award to Patricia soon after the judgment was entered, even though the trial court had ordered it paid in three annual

installments. Under these circumstances, it is inconsistent for Clyde to argue he was prejudiced or Patricia accepted something to which she was not entitled. Generally, acceptance of a property award in a divorce case does not constitute waiver of the right to appeal from the divorce judgment where the accepting party is claiming a right to a larger share of the marital estate. Sanford v. Sanford, 295 N.W.2d 139, 142 (N.D. 1980). The trial court found the parties had a net worth of $355,000, but only awarded Patricia about $50,000 or 14 percent of the marital estate. Under these circumstances, we are not convinced her acceptance of that small percentage of the estate demonstrated an intent by her to be bound by the judgment. We hold Patricia did not waive her right to appeal from the judgment, and we deny the motion to dismiss.

Custody Award

[¶7] Patricia claims the trial court erred in awarding custody of their daughter, Carly, to Clyde. A trial court's determination of child custody is a finding of fact and will not be set aside on appeal under N.D.R.Civ.P. 52(a) unless it is clearly erroneous. Goter v. Goter, 1997 ND 28, ¶ 8, 559 N.W.2d 834. A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if there is no

evidence to support it, or if, although there is some evidence to support it, the reviewing court, on the entire evidence, is left with a definite and firm conviction a mistake has been made. Severson v. Hansen, 529 N.W.2d 167, 168 (N.D. 1995).

[¶8] The trial court found both Clyde and Patricia are fit and able parents who genuinely love Carly and have strong emotional ties with her. The court found each parent is genuinely devoted to Carly's health and well-being and each is committed to providing the essentials of life for Carly. The trial court concluded the factor which tipped the scales in favor of placing custody with Clyde was Patricia's inability "to appropriately manage her anger towards other persons." The court was expressly bothered by Patricia's refusal "to recognize the need for anger management and seek professional help" in resolving the problem. The trial court has a difficult choice to make in deciding custody between two fit parents, and in such a case we will not substitute our judgment if the court's determination is supported by evidence. Hogue v. Hogue, 1998 ND 26, ¶ 9, 574 N.W.2d 579. The record evidence supports the trial court's custody award.

[¶9] Patricia argues the trial court gave inadequate consideration to the fact Carly has resided with her since the parties separated in 1996. The trial court found each parent

has provided daily care for Carly and each has "the support of extended family." Clyde lives on the family farmstead where the parties resided when Carly was born and where Clyde continues farming and ranching. The record evidence shows both parties are capable of providing continuity and stability in Carly's life, and we are not convinced the trial court gave inadequate consideration to this factor. We conclude the trial court's award of custody to Clyde with liberal visitation for Patricia is not clearly erroneous.

Custody Transition Period

[¶10] The trial court scheduled a sixteen-month custody transition in which each parent was essentially awarded custody of Carly for one-half of each month. Patricia's child support, which the court calculated to be $168 per month, was reduced to one-half, or $84 per month, during this sixteen-month transition period. Patricia asserts the trial court's child support award during the transition is clearly erroneous. She argues the trial court should have calculated her support during this sixteen-month period in the same manner support is calculated for split custody arrangements by the child support guidelines under N.D. Admin. Code § 75-02-04.1-03.

[¶11] Split custody under the guidelines is defined as a situation in which the parents have more than one child in common and each parent is awarded custody of at least one child. N.D. Admin. Code § 75-02-04.1-01(11). Under the split custody formula, a support amount is determined for the child or children in each parent's custody, and the lesser amount is subtracted from the greater, resulting in the difference being paid by the parent with the greater obligation. Shared custody of one child does not constitute split custody as defined by the child support guidelines, and, consequently, it is inappropriate to use the split formula in a shared custody situation. See Dalin v. Dalin, 545 N.W.2d 785, 789 n.5 (N.D. 1996). More importantly, however, we have clearly noted our disfavor with shared custody arrangements in which a child is bandied back and forth between parents. In Interest of Lukens, 1998 ND 224, ¶ 15, 587 N.W.2d 141. While a shared custody arrangement is not per se clearly erroneous, the trial court must make specific findings demonstrating shared custody is in the best interests of the child. Id.

[¶12] Here, the trial court made no explanation for the shared custody arrangement other than to indicate it was important the custody transition "be accomplished with a minimum of difficulty" and equally important Carly "have frequent contact with both parents due to the child's age."

We conclude this explanation is inadequate to support the trial court's shared custody arrangement for a sixteen-month transition period. The trial court can accomplish frequent contact between the child and both parents by awarding custody to one parent with frequent visitations to the other. Furthermore, the trial court could surely accomplish transition of custody from one parent to the other without forcing the child to be shuttled back and forth between the parent's homes once every two weeks for sixteen months.

[¶13] We conclude the trial court's award of shared custody for the sixteen-month transition is clearly erroneous. The trial court, having concluded it is in Carly's best interest to award custody to Clyde, can effect a proper transition by placing custody with Clyde and scheduling frequent liberal visitations for Patricia. Upon remand, the trial court must redetermine the transitional custody arrangement and recompute child support during the transitional period, in accordance with the child support guidelines.[1]

[1] "The guidelines contemplate one parent is the custodial parent, who is the primary caregiver for a proportionately greater time than the other parent, and the noncustodial parent pays child support. Dalin v. Dalin, 545 N.W.2d 785, 789 (N.D. 1996). Using the definitions in N.D.A.C. § 75-02-04.1-01, it is nearly impossible to determine whether Clyde or Patricia is the "custodial parent" for child support purposes during the sixteen-month transition, in which each parent has custody of Carly for basically an equal amount of time.

Property Division

[¶14] The trial court found Clyde entered the marriage with property valued at $330,000 and debt of between $15,000 and $20,000 for rent of real property from his father. The court found Patricia came into the marriage with property valued at about $4,500 and with indebtedness of $7,000. The court determined the net value of the marital estate at the time of the divorce was $355,000. The court awarded Patricia personal property valued at $14,367.80 and a lump sum cash award, payable in three annual installments, of $36,000, for a total award of $50,367.80, or about 14 percent of the total net marital estate. Clyde received the balance of the marital property. Patricia and Clyde have both appealed from the trial court's property division.

[¶15] Patricia asserts Clyde essentially acquired his assets over a 14-year period and she resided with him for about six years or 43 percent of that time. She argues the court should have awarded her 43 percent of the value of the marital estate. Clyde argues Patricia should have been entitled to only about one-half of the net increase in the value of the parties' assets during the marriage which, according to Clyde's figures, would have resulted in Patricia receiving a total property award of $23,400.

[¶16] Upon granting a divorce, the trial court is required under N.D.C.C. § 14-05-24 to make such equitable distribution of the real and personal property of the parties as may seem just and proper. The trial court's distribution of the marital property is a finding of fact and will not be reversed on appeal unless it is clearly erroneous. Young v. Young, 1998 ND 83, ¶ 11, 578 N.W.2d 111. When the parties have lived together and then married, it is appropriate for the court to consider all of the parties' time together in making an equitable distribution of the marital estate. Nelson v. Nelson, 1998 ND 176, ¶ 7, 584 N.W.2d 527. There is no rule the trial court must equally divide an increase in the net worth of the parties which occurred during the marriage, but all property, including separate property, is subject to distribution to either spouse when an equitable distribution requires it. Spooner v. Spooner, 471 N.W.2d 487, 491 (N.D. 1991). In distributing the property in an equitable manner the court should consider the Ruff-Fischer guidelines,[2] and

[2]In awarding spousal support or dividing marital property the court should "consider the respective ages of the parties to the marriage; their earning ability; the duration of and the conduct of each 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 that time, its income-producing capacity, if any, and whether accumulated or acquired before or after the marriage; and from all such elements the court should determine the rights of the parties and all other matters pertaining to the case." Fischer v. Fischer, 139 N.W.2d 845, 852 (N.D. 1966); Ruff v. Ruff, 78 ND 755, 52 N.W.2d 107, 111 (N.D. 1952).

duration of the marriage and source of the property are two important considerations under those guidelines. See Routledge v. Routledge, 377 N.W.2d 542, 548 (N.D. 1985).

[¶17] The parties lived together for about six years and during that time both contributed to increasing their net worth. The trial court recognized this, but also recognized the marriage was of relatively short duration and Clyde brought considerable assets into the marriage, while Patricia began the marriage with a negative net worth. The court considered these factors in dividing the marital property and explained why it rejected both parties' views of how the property should be split:

> [Clyde] argues to the Court that [Clyde] should retain all property brought to this marriage, and that the Court should only be concerned with an equitable division of the assets acquired during marriage. [Patricia] argues to the Court that an equitable division of the assets of the parties is an equal division of the assets. To adopt the position of [Clyde] would be to impose a prenuptial agreement on the parties which does not exist. To adopt the position of [Patricia] would ignore the substantial estate brought to this marriage by [Clyde], and would ignore the brief term of said marriage.

[¶18] Although there is substantial disparity in the property split, the court's explanation and the underlying circumstances justify the unequal property division. The record evidence supports the trial court's distribution of the

marital estate, and we are not left with a definite and firm conviction the trial court made a mistake in dividing the property. We conclude, therefore, the trial court's property division is not clearly erroneous.

Spousal Support

[¶19] The trial court awarded Patricia rehabilitative spousal support of $350 per month for a period of 24 months. Clyde asserts the court's award of spousal support is clearly erroneous.

[¶20] Upon granting a divorce, the trial court may compel either of the parties to make such suitable allowances to the other for support as the court may deem just. N.D.C.C. § 14-05-24. A trial court's determination on spousal support is a finding of fact and will not be set aside on appeal unless it is clearly erroneous. Orgaard v. Orgaard, 1997 ND 34, ¶ 5, 559 N.W.2d 546. While the duration of a marriage is a relevant factor, spousal support may be appropriate regardless of the length of the marriage. Id. at ¶ 11. The purpose of rehabilitative spousal support is to provide a disadvantaged spouse the opportunity to become self-supporting through additional training, education, or experience. Wiege v. Wiege, 518 N.W.2d 708, 711 (N.D. 1994). A relevant factor in setting the amount of support for a disadvantaged spouse is

the distribution of marital property and the liquidity or income-producing nature of the property distributed to the disadvantaged spouse. Id.

[¶21] The trial court specifically found Patricia was disadvantaged by the divorce and in need of rehabilitative spousal support. While Clyde entered the marriage with a college degree in animal science, Patricia had only a high school diploma and one year of business college. Patricia did not receive additional education during the marriage. After Carly was born, Patricia spent a considerable period of time being a homemaker and caring for Carly rather than advancing her own career. At the time of trial, Patricia was employed as a cook earning approximately $825 per month. While Patricia received some personal property and a $36,000 cash settlement, Clyde received the entire farm and ranch operation, which was the parties' primary income-producing resource during the marriage. Under these circumstances, we are not convinced the trial court's finding Patricia was disadvantaged by the divorce and in need of rehabilitative spousal support was clearly erroneous. Nor are we left with a definite and firm conviction the trial court made a mistake in setting the amount of support at $350 per month for 24 months.

[¶22] The judgment is affirmed in part, reversed in part, and remanded for a redetermination of the transitional custody and child support. Clyde's request for attorney fees is denied.

[¶23] Carol Ronning Kapsner
Mary Muehlen Maring
William A. Neumann
Dale V. Sandstrom
Gerald W. VandeWalle, C.J.

CHAPTER 14-03.2
UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT

14-03.2-01. Definitions.

In this chapter:

1. "Amendment" means a modification or revocation of a premarital agreement or marital agreement.
2. "Marital agreement" means an agreement between spouses who intend to remain married which affirms, modifies, or waives a marital right or obligation during the marriage or at separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term includes an amendment, signed after the spouses marry, of a premarital agreement or marital agreement.
3. "Marital dissolution" means the ending of a marriage by court decree. The term includes a divorce, dissolution, and annulment.
4. "Marital right or obligation" means any of the following rights or obligations arising between spouses because of their marital status:
   a. Spousal support;
   b. A right to property, including characterization, management, and ownership;
   c. Responsibility for a liability;
   d. A right to property and responsibility for liabilities at separation, marital dissolution, or death of a spouse; or
   e. Award and allocation of attorney's fees and costs.
5. "Premarital agreement" means an agreement between individuals who intend to marry which affirms, modifies, or waives a marital right or obligation during the marriage or at separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term includes an amendment, signed before the individuals marry, of a premarital agreement.
6. "Property" means anything that may be the subject of ownership, whether real or personal, tangible or intangible, legal or equitable, or any interest therein.
7. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
8. "Sign" means with present intent to authenticate or adopt a record:
   a. To execute or adopt a tangible symbol; or
   b. To attach to or logically associate with the record an electronic symbol, sound, or process.
9. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

14-03.2-02. Scope.

1. This chapter applies to a premarital agreement or marital agreement signed after July 31, 2013.
2. This chapter does not affect any right, obligation, or liability arising under a premarital agreement or marital agreement signed before August 1, 2013.
3. This chapter does not apply to:
   a. An agreement between spouses which affirms, modifies, or waives a marital right or obligation and requires court approval to become effective; or
   b. An agreement between spouses who intend to obtain a marital dissolution or court-decreed separation which resolves their marital rights or obligations and is signed when a proceeding for marital dissolution or court-decreed separation is commenced.
4. This chapter does not affect adversely the rights of a bona fide purchaser for value to the extent that this chapter applies to a waiver of a marital right or obligation in a transfer or conveyance of property by a spouse to a third party.

14-03.2-03. Governing law.

The validity, enforceability, interpretation, and construction of a premarital agreement or marital agreement are determined:

1. By the law of the jurisdiction designated in the agreement if the jurisdiction has a significant relationship to the agreement or either party and the designated law is not contrary to a fundamental public policy of this state; or
2. Absent an effective designation described in subsection 1, by the law of this state, including the choice-of-law rules of this state.

14-03.2-04. Principles of law and equity.

Principles of law and equity may not:

1. Supplement an agreement executed in accordance with this chapter; or
2. Be used to alter a material term in an agreement executed in accordance with this chapter.

14-03.2-05. Formation requirements.

A premarital agreement or marital agreement must be in a record and signed by both parties. The agreement is enforceable without consideration.

14-03.2-06. When agreement effective.

A premarital agreement is effective on marriage. A marital agreement is effective on signing by both parties.

14-03.2-07. Void marriage.

If a marriage is determined to be void, a premarital agreement or marital agreement is enforceable to the extent necessary to avoid an inequitable result.

14-03.2-08. Enforcement.

1. A premarital agreement or marital agreement is unenforceable if a party against whom enforcement is sought proves:
   a. The party's consent to the agreement was involuntary or the result of duress;
   b. The party did not have access to independent legal representation under subsection 2;
   c. Unless the party had independent legal representation at the time the agreement was signed, the agreement did not include a notice of waiver of rights under subsection 3 or an explanation in plain language of the marital rights or obligations being modified or waived by the agreement; or
   d. Before signing the agreement, the party did not receive adequate financial disclosure under subsection 4.
2. A party has access to independent legal representation if:
   a. Before signing a premarital or marital agreement, the party has a reasonable time to:
      (1) Decide whether to retain a lawyer to provide independent legal representation; and
      (2) Locate a lawyer to provide independent legal representation, obtain the lawyer's advice, and consider the advice provided; and
   b. The other party is represented by a lawyer and the party has the financial ability to retain a lawyer or the other party agrees to pay the reasonable fees and expenses of independent legal representation.
3. A notice of waiver of rights under this section requires language, conspicuously displayed, substantially similar to the following, as applicable to the premarital agreement or marital agreement:

   "If you sign this agreement, you may be:

   Giving up your right to be supported by the person you are marrying or to whom you are married.

Giving up your right to ownership or control of money and property.

Agreeing to pay bills and debts of the person you are marrying or to whom you are married.

Giving up your right to money and property if your marriage ends or the person to whom you are married dies.

Giving up your right to have your legal fees paid."

4. A party has adequate financial disclosure under this section if the party:
   a. Receives a reasonably accurate description and good-faith estimate of value of the property, liabilities, and income of the other party;
   b. Expressly waives, in a separate signed record, the right to financial disclosure beyond the disclosure provided; or
   c. Has adequate knowledge or a reasonable basis for having adequate knowledge of the information described in subdivision a.
5. If a premarital agreement or marital agreement modifies or eliminates spousal support and the modification or elimination causes a party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, on request of that party, may require the other party to provide support to the extent necessary to avoid that eligibility.
6. A court may refuse to enforce a term of a premarital agreement or marital agreement if, in the context of the agreement taken as a whole:
   a. The term was unconscionable at the time of signing; or
   b. Enforcement of the term would result in substantial hardship for a party because of a material change in circumstances arising after the agreement was signed.
7. The court shall decide a question of unconscionability or substantial hardship under subsection 6 as a matter of law.

14-03.2-09. Unenforceable terms.

1. In this section, "parental rights and responsibilities" means all the rights and responsibilities a parent has concerning the parent's child.
2. A term in a premarital agreement or marital agreement is not enforceable to the extent that it:
   a. Adversely affects a child's right to support;
   b. Limits or restricts a remedy available to a victim of domestic violence under law of this state other than this chapter;
   c. Purports to modify the grounds for a court-decreed separation or marital dissolution available under law of this state other than this chapter; or
   d. Penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution.
3. A term in a premarital agreement or marital agreement which defines the rights or duties of the parties regarding parental rights and responsibilities is not binding on the court.

14-03.2-10. Limitation of action.

A statute of limitations applicable to an action asserting a claim for relief under a premarital agreement or marital agreement is tolled during the marriage of the parties to the agreement, but equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

14-03.2-11. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].