

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT)

SDCL 15-6-52(a)

)

RULE 06-52

A hearing was held on February 16, 2006, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-52(a), and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-6-52(a) be and it is hereby amended to read in its entirety as follows

SDCL 15-6-52(a). Effect of findings by the court-Proposals-When unnecessary.

In all actions tried upon the facts without a jury or with an advisory jury, the court shall, unless waived as provided in § 15-6-52(b), find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to § 15-6-58. In granting or refusing temporary restraining orders or preliminary injunctions, the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Findings of fact, whether based on oral or documentary evidence, may not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a referee, to the extent that the court adopts them, shall be considered as the findings of the court. Findings of fact and conclusions of law need not be made if a temporary restraining order or preliminary injunction is entered in an action arising under chapters 25-3 and 25-4.

It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence, or appear in an opinion or memorandum of decision filed by the court. Alternatively, the court may direct counsel for the

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prevailing party to prepare findings; and counsel shall, within ten days after announcement of the decision, unless otherwise ordered, prepare, serve, and submit to the court with copies to opposing counsel, or to the parties of record to the action if not represented by counsel, proposed written findings of fact and conclusions of law together with the proposed judgment or decree.

The court may not sign any findings therein prior to the expiration of five days after service of the proposed findings during which time the parties may in writing submit to the court and serve on their adversaries their objections or additional proposals. Thereafter the court shall make or enter such findings and conclusions as may be proper.

Any action or decision of the court in making or modifying findings of fact or conclusions of law shall be deemed excepted to, but the failure of the court to make a finding or conclusion on a material issue is not to be deemed excepted to unless such finding or conclusion has been proposed to or requested from the court.

If an opinion or memorandum of decision is filed, the facts and legal conclusions stated therein need not be restated but may be included in the findings of fact and conclusions of law by reference.

Findings of fact and conclusions of law are unnecessary on decisions of motions under § 15-6-12 or 15-6-56 or any other motion except as provided in § 15-6-41(b).

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2006.

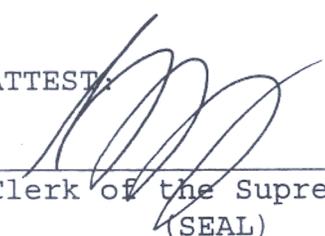
DATED at Pierre, South Dakota, this 17th day of March, 2006

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAR 17 2006


Clerk