

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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APPEAL NO. 31017

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In the Matter of the ESTATE  
OF MARTIN ALLEN WEBB,

Deceased.

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Appeal from the Circuit Court, Fourth Judicial Circuit  
Dewey County, South Dakota

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The Honorable Michelle K. Comer  
Circuit Court Judge

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APPELLANT'S BRIEF

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### PRELIMINARY STATEMENT

The Register of Actions will be denoted by “RA,” followed by the applicable citation(s); the trial transcript will be denoted by “TT,” followed by the appropriate page number(s) and/or exhibit number(s); the trial court’s Findings of Fact and Conclusions of Law will be denoted by “FF” or “CL,” depending on which abbreviation is applicable, followed by the appropriate paragraph number(s); and citations to the appendix to this brief will be denoted by “Appx.,” followed by the appropriate .pdf bookmark.

### JURISDICTIONAL STATEMENT

This matter is subject to this Court’s review under SDCL 15-26A-3(1). This is an appeal of the Order Denying Stephanie Webb’s Verified Petition for Spousal Elective Share and Approving Stephanie Webb’s Verified Petition for Family Allowance entered by Judge Comer on February 3, 2025. (*See* RA, 1301; Appx. Bkmk. 6). On February 5, 2025, a Notice of Entry of Order was served on all interested parties. (RA, 1302). Appellant Stephanie Webb (“Stephanie”) timely filed her Notice of Appeal on March 5, 2025. (*Id.*, 1304).

### STATEMENT OF THE LEGAL ISSUES

1. Whether the trial court erred in concluding that Stephanie voluntarily executed the prenuptial agreement waiving her spousal elective share.

*The trial court concluded that Stephanie voluntarily executed the prenuptial agreement.*

Most Relevant Authorities:

- SDCL 29A-2-213;
- SDCL 25-2-21;
- *In the Matter of the Estate of Eichstadt*, 2022 S.D. 78, 983 N.W.2d 572;
- *In re Estate of Smid*, 2008 S.D. 82, 756 N.W.2d 1.

2. Whether the trial court erred in concluding that the prenuptial agreement waiving Stephanie's spousal elective share was not unconscionable.

*The trial court concluded that the prenuptial agreement was not unconscionable.*

Most Relevant Authorities:

- SDCL 29A-2-213;
- SDCL 25-2-21;
- *In the Matter of the Estate of Eichstadt*, 2022 S.D. 78, 983 N.W.2d 572;
- *In re Estate of Smid*, 2008 S.D. 82, 756 N.W.2d 1.

#### STATEMENT OF THE CASE

This case once again calls upon this Court to determine what is meant by SDCL 29A-2-213's and SDCL 25-2-21's requirements that a prenuptial agreement waiving a spouse's elective share be "executed voluntarily" and not be "unconscionable" at the time of execution. On October 11, 2013, Stephanie and her fiancé, Martin Allen Webb ("Butch"), entered into a prenuptial agreement ("Prenuptial Agreement"), which presumably waived their spousal elective share rights. (FF, 115; TT, Ex. 2; RA, 1182; Appx., Bkmk. 3). When Butch died on December 9, 2021 (FF, 2), Stephanie petitioned for a formal probate of Butch's will, an adjudication of partial intestacy, a determination of heirs, and an appointment of personal representative. (RA, 2). She subsequently petitioned for the Court to award her an elective share of Butch's augmented estate under SDCL

29A-2-201 and to award her a family allowance from his estate under SDCL 29A-2-403, alleging that she did not waive her rights to her elective share because she did not voluntarily enter into the Prenuptial Agreement, and because the Agreement was also unconscionable at the time that it was signed. (Id., 168). Some, but not all, Butch's heirs or devisees objected to Stephanie's petitions. (RA, 160, 233).

A court trial on this matter was held before the Honorable Michelle K. Comer in the Fourth Judicial Circuit, Dewey County, on September 11, 2024. (TT, *supra*; RA, 978; Appx. Bkmk. 1). On December 30, 2025, Judge Comer issued her "Decision on Spousal Election." (RA, 1230; Appx. Bkmk. 4). On February 3, 2025, after receiving competing proposals and objections from the parties, Judge Comer entered Findings of Fact and Conclusions of Law. (RA, 1244, 1257, 1289; Appx. Bkmk., 5). On February 3, 2025, an Order Denying Stephanie Webb's Verified Petition for Spousal Elective Share and Approving Stephanie Webb's Verified Petition for Family Allowance was entered. (RA, 1301; Appx. Bkmk. 6). On February 5, 2025, a Notice of Entry of Order was served on all interested parties. (RA, 1302). Stephanie timely filed her Notice of Appeal on March 5, 2025. (Id., 1304).

## STATEMENT OF THE FACTS

### *Courtship & Engagement*

Stephanie and Butch met in 2007 when Butch became a client of Stephanie's employer, Royal Vista Equine, Inc. ("Royal Vista"), an equine

assisted reproduction facility in Colorado.<sup>1</sup> (FF, 11-12, 24, 142; TT, 17, 19-20, 85). At the time, Stephanie was living in Colorado and working as an office manager for Royal Vista. (FF, 11-12, 37; TT, 17). In that role, she was responsible for client communication, billing, and other office duties. (FF, 14; TT, 17, 82). She relied on the business's accountants and lawyers for tax matters and drafting or reviewing contracts or other legal documents.<sup>2</sup> (TT, 18-19, 83, 109, 124). In 2011, Royal Vista's owners retired and gifted Stephanie and her business partner each 45% of the business. (FF, 17-18, 37; TT, 17-18, 82). Even after Stephanie acquired that ownership interest in the business, her financial position did not substantially change. (FF, 22; TT, 21).

In January 2013, the nature of Stephanie and Butch's relationship began to change. (FF, 28; TT, 20, 22). Stephanie and her business partner were interested in purchasing a couple broodmares for their business, and they eventually purchased one from Butch. (FF, 27; TT, 20). At that time, Stephanie was living in Colorado, and Butch was living in Dewey County, South Dakota, where he was running his ranching operation. (FF, 50-51; TT, 22). They began exchanging text messages and talking on the telephone each day before and after work. (FF, 28;

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1. The trial court found that "Stephanie knew Butch had the financial means to afford high-end breeding because he was a client of Royal Vista Equine." (FF, 26). In fact, Stephanie testified that it was not a fair assumption that her employer's clients were wealthy. (TT, 86).

2. The trial court found that, "[a]s office manager, Stephanie also entered into contracts with clients for services provided by Royal Vista Equine" (FF, 15). In fact, Stephanie testified that she relied on her employer's attorneys to draft the contracts, that she merely filled in details such as names and prices, and that she understood those to be binding contracts "to some degree." (*See* TT, 19, 83, 109-10, 124).

TT, 22-23). When they began dating, Stephanie was twenty-nine years old, and Butch was fifty-six. (FF, 34; TT, 61).

A few weeks later, in February 2013, after a bull sale in Nebraska, Stephanie and Butch met for dinner together, and the relationship progressed over the next several weeks. (FF, 29; TT, 23). Stephanie explained that, despite their age difference, she and Butch “had so many similarities” and “looked at things the same way,” so that “[i]t was always just very easy,” that it “just flowed” for them, and that it “never felt uncomfortable.” (FF, 30, 32; TT, 23-24). But Stephanie also described Butch as private about his money, keeping everybody “on a need-to-know basis.” (TT, 25). She did not know his finances “down to specifics” and, given their age difference, was “hyper-sensitive” about not asking him about it. (FF, 35, 143; TT, 24-26, 59-60, 85-87, 99-102, 129-32).

Stephanie visited South Dakota four to six times before she and Butch married. (FF, 39, 53, 141; TT, 27, 33, 86). During those trips, she would “tag along” to help him with ranch chores and drive “around a little bit.” (TT, 34, 87). As a result, she saw some of his properties and cattle. (FF, 54; TT, 34, 87). But Stephanie also testified that, before their marriage, she did not have a detailed understanding of Butch’s property and business holdings. (FF, 35, 143; TT, 24-26, 59-60, 85-87, 99-102, 129-32).

In May 2013, Stephanie and Butch became engaged. (FF, 41; TT, 29, 110). By that time, Butch had shared with Stephanie that he had litigation pending in several jurisdictions related to his pay-day loan businesses. (TT, 30). Although

Stephanie did not know the specifics, she did know that these lawsuits could be detrimental to Butch's businesses. (Id.). With Butch frequently traveling between South Dakota and Colorado, and because Stephanie was not ready to move to South Dakota, Stephanie and Butch knew they wanted to have a family home in Colorado. (FF, 45-46, 51; TT, 30-33, 110-11, 126). Butch therefore purchased a property in Colorado and titled it in Stephanie's name. (FF, 47-48; TT, 31, 111). It was Stephanie's understanding that he titled the Colorado property in her name to protect it from the various pending lawsuits. (FF, 46; TT, 31, 92).

#### *Wedding Plans*

Later that summer, Stephanie and Butch began planning their wedding. (TT, 29, 32). When Stephanie indicated that Italy was her "dream place" to get married, Butch said, "If that's your dream place to go, then that's where we are getting married." (FF, 55-56; TT, 32). Stephanie worked with a travel agent to coordinate travel and plan the wedding, which was scheduled to take place on November 12, 2013. (FF, 57-58; TT, 32, 35, 88). But, in September 2013, Stephanie discovered that, due to a change in Italian law, documents needed to have been filed six months before the wedding date, and that it was not going to be possible for Stephanie and Butch to get legally married in Italy in November. (FF, 59-60; TT, 34-35). Although the intention had always been that Stephanie and Butch would be legally married in Italy, they decided to do a "legal mock



ceremony” in South Dakota followed by a ceremonial wedding in Italy.<sup>3</sup> (FF, 61; TT, 36).

In September 2013, Stephanie and Butch discussed the need for a prenuptial agreement. (FF, 44; TT, 37, 41, 92, 114-15). Stephanie characterized the conversation as “very brief” with Butch “almost brush[ing] it off a little bit to not have it seem like it was a big deal.” (TT, 37, 115). Butch indicated that the prenuptial agreement was needed to protect Stephanie’s assets, including the Colorado property, from any eventual judgment in the pending lawsuits. (Id., 38, 50-51, 53-54, 58, 67, 104-05, 108, 127). Stephanie always understood the purposes of the prenuptial agreement as protecting the Colorado property and controlling the division of their property upon divorce. (FF, 76; TT, 37-38, 50-51, 53-54, 58-59, 62, 67, 104-05, 108, 111). Stephanie and Butch did not discuss that it would also preclude her from receiving anything from his estate if he were to pass away. (TT, 38, 43-44, 58-59, 68, 108). Given Butch’s business acumen, Stephanie “completely trusted” and relied on him one “hundred percent” on business matters, and, when he indicated that the purpose of the Prenuptial Agreement was to protect the Colorado property, she “followed his lead.” (Id., 52-53, 58, 70-71, 74, 104-05, 124).

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3. The trial court found that “[i]t was Stephanie’s decision to do the ‘mock’ South Dakota ceremony” (FF, 62), and that she “directed” how that ceremony would proceed (FF, 64), but even its own findings are inconsistent (*see* FF, 61), and the evidence and testimony indicates that these were very much joint decisions (TT, 36, 102).

Stephanie and Butch had similar educational background. (FF, 6-8; TT, 81, 124). Stephanie had obtained a Bachelor's Degree in Equine Science from Colorado State University, and Butch had obtained a Bachelor's Degree from the University of Wyoming. (FF, 6-7; TT, 15, 81, 124). When it came to business experience, however, Stephanie testified that she and Butch were "[n]ot even in the same ballpark."<sup>4</sup> (TT, 124).

In early October 2013, South Dakota was impacted by the Atlas Blizzard. (FF, 66; TT, 38-39). When it hit, Stephanie and Butch were in Los Alamitos, California, for a sale. (TT, 38). They eventually made their way to Colorado, and Butch immediately left for South Dakota. (FF, 67; TT, 39). His ranch was significantly impacted by Atlas, causing significant cattle loss and damaging buildings and fences. (FF, 66, 68; TT, 39). Stephanie and Butch knew they needed to complete their legal marriage ceremony before they left for Italy in November, which was "going to be a tight time constraint anyways," and the Atlas Blizzard only made those time limitations "a thousand times worse." (FF, 69; TT, 40, 54, 68-69, 89).

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4. The trial court made several findings indicating that Stephanie was an experienced business woman (FF, 21, 36-38), but the evidence and testimony at trial does not support that conclusion and in fact highlights the inequality in the business experience. (*See, e.g.*, TT, 24, 76, 123-24, 144-45).

### *Prenuptial Agreement & Wedding*

Butch planned the legal marriage ceremony.<sup>5</sup> (TT, 41, 68, 137). After all, his schedule was much more constrained, and he knew who could conduct the ceremony and where it could take place. (Id., 41, 106). He decided that he and Stephanie would get married on October 11, 2013, in Faith, South Dakota, at the offices of Eric Bogue and Cheryl Bogue, who were Butch's long-time friends and attorneys. (FF, 95; TT, 41, 139-40, 151-52, 173-74). In the time that Stephanie had known Butch, she and Butch had dinners with the Bogues, she trusted them, and she considered them to be friends. (FF, 86; TT, 28-29, 34, 53-54, 58, 70, 74, 90-91, 154).

At some point, in the days or weeks leading up to the planned legal marriage ceremony, Butch asked Eric Bogue ("Attorney Bogue") to draft a prenuptial agreement. (FF, 96; TT, 153). On October 10, 2013, at 3:34 p.m., the day before Stephanie and Butch's planned marriage ceremony, Attorney Bogue sent a revised draft of the Prenuptial Agreement to Butch for his review. (TT, 45, 154-55, Ex. 1; RA, 1180; Appx. Bkmk. 2). At 4:40 p.m. that same day, while Butch was likely driving from South Dakota to Colorado,<sup>6</sup> Butch forwarded the draft to Stephanie. (FF, 72; TT, 43, 46, 50, 126-27, Ex. 1; RA, 1180; Appx.,

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5. The trial court found that "they" – meaning Stephanie and Butch – arranged for the legal wedding ceremony "to occur in Faith, South Dakota, on October 11, 2013," even though the evidence and testimony at trial made clear that Butch made these arrangements. (FF, 70; TT, 41, 68, 137).

6. The trial court found that Butch drove to Colorado on October 11, 2013, but this finding appears to be an error. (FF, 83; TT, 50, 54, 126-27).

Bkmk. 2). Nearly four hours later, at 8:20 p.m., after attempting to read the draft of the Prenuptial Agreement,<sup>7</sup> Stephanie responded, “Will you resend in English. Lawyer jargon is the quickest way for me to feel completely inept. I really don’t understand most of these points.” (FF, 80; TT, 46-47, 96, 105, 123, 127, Ex. 1; RA, 1180; Appx. Bkmk. 2). Stephanie went on ask about and make corrections to her financial disclosures. (TT, 47-49, 123, 127-29; Ex. 1; RA, 1180; Appx. Bkmk. 2). Stephanie maintains that she did not discuss the Prenuptial Agreement with Attorney Bogue before October 11, 2013, and that she did not see a draft of the Agreement before October 10, 2013. (TT, 46, 49, 75). In fact, before October 10, 2013, Stephanie maintains that she had only had the one brief conversation with Butch about the Prenuptial Agreement.<sup>8</sup> (Id., 37, 41).

Butch arrived in Colorado on the evening of October 10, 2013. (TT, 50). Early the next morning, Stephanie and Butch began driving to South Dakota to get married later that day in Faith, South Dakota. (Id., 51). After five or six hours of driving, they stopped at the Meade County Courthouse in Sturgis, South Dakota, to obtain a marriage license. (Id., 55). Stephanie and Butch did not discuss the

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7. The trial court found that Stephanie did not “even remember if she read the Prenuptial Agreement” (FF, 78, 82, 118), but she testified that she attempted to read the draft of the Agreement (TT, 47, 96, 105, 123, 127-29). Indeed, her October 10, 2013, email as well as her testimony (and the trial court’s finding) that she was confused by the Agreement’s language confirms that she did read it. (FF, 80; TT, 46-47, 96, 105, 123, 127-29, Ex. 1; RA, 1180; Appx. Bkmk. 2).

8. The trial court’s findings indicate that Stephanie and Butch had more than one conversation regarding the prenuptial agreement before it was sent to her on October 10, 2013, but this conflicts with the evidence and testimony at trial. (FF, 44; FF, 65 (“A couple of weeks before the ‘mock’ South Dakota ceremony, Butch *again* brought up the prenuptial agreement.”) (emphasis added); FF, 127; TT, 37, 41).

terms of the Prenuptial Agreement on the evening of October 10, 2013, or at any time during their eight- or nine-hour drive on October 11, 2013, from Colorado to Faith, South Dakota. (FF, 84; TT, 50, 55-56). Stephanie testified that neither Butch nor Attorney Bogue suggested that she seek independent legal advice regarding the Prenuptial Agreement; indeed, having received it in the late afternoon on October 10, 2013, and with their travel on October 11, 2013, there was not an opportunity for her to do so. (FF, 72; TT, 54-56, 70-71, Ex. 1; RA, 1180; Appx. Bkmk. 2; *but see* FF, 130 (finding that Stephanie did have opportunity to seek out legal advice)).

Stephanie and Butch arrived in Faith, South Dakota, sometime after dark on October 11, 2013. (TT, 56). Stephanie testified that, when they arrived, Butch and Attorney Bogue stepped into Attorney Bogue's office to talk, and that she asked to use the restroom to change into clothes that she had bought for the ceremony. (Id., 57, 105). She also testified that, when she came out of the restroom, she saw Butch come out of Attorney Bogue's office, and that she then went into Attorney Bogue's office for a "handful of minutes" to initial and sign the Prenuptial Agreement. (Id., 57-58, 71, 105). Stephanie testified that she does not remember having a conversation with Attorney Bogue about the Prenuptial Agreement, and that she was not provided any additional information regarding Butch's financial condition. (FF, 89; TT, 57-60). Even though she indicated in her email from the prior evening that she did not understand the Prenuptial Agreement, she testified that she did not ask any questions about it because Butch

had indicated that the purposes of the document were to protect the Colorado property and to control the disposition of their assets upon divorce, and that she believed and trusted that information. (FF, 76, 80, 82, 86-87; TT, 37-38, 50-54, 58-59, 62, 67, 70-71, 104-05, 108, 127, Ex. 1; RA, 1180; Appx. Bkmk. 2). According to Stephanie, it was not explained to her at any time that the Prenuptial Agreement would impact the disposition of assets upon death. (TT, 38, 43-44, 58-59, 68, 108). Stephanie also trusted the Bogues, thought that they were there to help both Butch and her, and thought that they had her best interests in mind and were also protecting her. (FF, 86; TT, 53-54, 58, 70, 74, 105). In fact, Stephanie even testified that she thought that Attorney Bogue was her attorney.<sup>9</sup> (TT, 90-91).

Attorney Bogue has a different recollection of events surrounding the execution of the Prenuptial Agreement. As an initial matter, Attorney Bogue testified that, although he could not recall the “number or context” of the conversations, it was his recollection that he did discuss the Prenuptial Agreement with Stephanie before the day that she signed it. (FF, 98, 104; TT, 153, 157, 167-68, 178, 184). Next, Attorney Bogue testified that, on October 11, 2013, he, Butch, and Stephanie “went through each paragraph together,” and that he “would have” explained the effect and consequence of each provision. (FF, 104, 106-07, 129; TT, 157-59, 163, 165, 168-69). He also testified that Stephanie and Butch

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9. The trial court nonetheless found that Stephanie “knew Eric Bogue and Cheryl Bogue were Butch’s lawyers.” (FF, 88).

both asked questions. (FF, 106; TT, 158, 163, 169-70). He does not, however, recall providing Stephanie or Butch any explanation of the meaning of the term, “elective share.” (TT, 190). He testified that the meeting took approximately half an hour. (Id., 160-61).

One point of sharp disagreement is Stephanie’s understanding regarding Attorney Bogue’s role. Attorney Bogue testified that, although he could not “recall exactly the nature of the conversation precisely,” “based on how he handled his practice,” he “would have said” that if Stephanie had any questions, she was encouraged to have her own counsel, and that he would have stressed that she be comfortable before signing because the document has important legal consequences. (FF, 105, 108; TT, 157-59, 171, 173). He testified that it was his standard procedure to be careful to designate who was the client in these types of situations. (FF, 101; TT, 159-60, 170-71). He also testified that, however, that he does not routinely have parties sign a document indicating that they understand that he is not representing them, and that he did not ask Stephanie to do so. (FF, 101; TT, 170, 182). Finally, once again, although Attorney Bogue insisted that he did not represent Stephanie and did not give her legal advice, he also testified that he answered her questions and would have explained the purpose and effect of the Prenuptial Agreement’s provisions. (FF, 100, 106-07, 111; TT, 157-60, 163, 165, 168-70, 183-84). Ultimately, even Attorney Bogue conceded that it was possible that Stephanie understood that he was acting with both her and Butch’s best interests in mind. (TT, 182).

Paragraph 8 of the Prenuptial Agreement is the operative provision for the purposes of this case:

Except as herein provided, both Butch and Stephanie do hereby forever waive, release, and quit claim to the other all of the property rights, and claims which he or she now has or may hereafter have as husband, wife, widower, widow, or otherwise by the marital relations which may exist in the future between the parties hereto by any present or future law in any state of the United States of America, or any other country, in and to, or against the property of the other party or his or her estate, whether now owned or hereafter acquired by such other party. Both Butch and Stephanie herein forever covenant and agree for himself and herself and their heirs, executors, administrators, and assigns for the purpose of enforcing any or either of the rights specified in an relinquished under this paragraph. In addition, both parties agree to complete Wills, Living Wills, and Durable Power of Attorney within in [sic] six (6) months of the date of this Agreement.

(FF, 115; TT, 66, Ex. 2; RA, 1182; Appx. Bkmk. 3).

Minutes after executing the Prenuptial Agreement, the legal marriage ceremony took place in the Bogues' law office. (FF, 91; TT, 71-73, 164, 174). Pastor Harold Delbridge, who was Butch's friend, presided over the ceremony, and Attorney Eric Bogue and Cheryl Bogue served as witnesses. (TT, 72-73, 136-37, 174, Ex. 3; RA, 1187). A handful of pictures were taken in the office with Pastor Delbridge and the Bogues, and then Stephanie and Butch had dinner in Faith with the Bogues before leaving to return to Colorado yet that evening. (FF, 117; TT, 73-74, 127, 163). Upon arriving in Colorado, Butch returned to South Dakota before traveling to Denver a few weeks later to fly to Italy for the couple's November wedding. (FF, 117; TT, 75).



In 2015, after a serious accident, Butch finally had a will prepared. (FF, 134; TT, 76-77). Stephanie had no role in the preparation of that will and did not have discussions with Butch about the will or what she might receive under it. (FF, 135; TT, 77). Stephanie did not learn of Butch's planned disposition of assets under the 2015 will until after Butch passed away on December 9, 2021. (FF, 2, 135; TT, 77). Under the 2015 will, Stephanie is to receive the furnishings at the Colorado property. (TT, 111-12).

### STANDARD OF REVIEW

This Court's standard of review is well-settled. The trial court's factual findings are reviewed under the clearly erroneous standard of review. *Matter of Estate of Eichstadt*, 2022 S.D. 78, ¶ 19, 983 N.W.2d 572, 580 (citing *In re Estate of Smid*, 2008 S.D. 82, ¶¶ 11, 23, 756 N.W.2d 1, 5-6, 9). "A finding of fact is clearly erroneous if [this Court is] left with a definite and firm conviction that a mistake has been made." *Id.* The trial court's conclusions of law are reviewed under the de novo standard of review. *Torgerson v. Torgerson*, 2024 S.D. 50, ¶ 13, 11 N.W.3d 50, 56. "Once the facts have been determined, however, the application of a legal standard to those facts is a question of law reviewed de novo." *Id.*

SDCL 29A-2-213(c) and SDCL 25-2-21(b) also make clear that the issue of unconscionability of a prenuptial agreement is decided by the trial court as a matter of law. *Eichstadt*, 2022 S.D. 78, ¶ 19 (quoting *Smetana v. Smetana*, 2007 S.D. 5, ¶ 7, 726 N.W.2d 887, 891 (quoting SDCL 25-2-21(b)); *see also* SDCL

29A-2-213(c)). Questions of law are reviewed under the de novo standard of review; thus, the trial court's determination of unconscionability is given no deference. *Id.*

### ARGUMENT

The applicable South Dakota statutes must be the beginning point for this analysis. First, SDCL 29A-2-213(b) provides as follows:

A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

- (1) The waiver was not executed voluntarily; or
- (2) The waiver was unconscionable when it was executed, and, before execution of the waiver, the surviving spouse:
  - (i) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;
  - (ii) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and
  - (iii) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

SDCL 25-2-21(a) similarly provides as follows:

A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

- (1) That party did not execute the agreement voluntarily; or
- (2) The agreement was unconscionable when it was executed and, before execution of the agreement, that party:
  - (i) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
  - (ii) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
  - (iii) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

Because both statutes impose the burden on the person seeking to invalidate the agreement, Stephanie, as the party seeking to avoid enforcement of the Prenuptial Agreement, bore the burden of proof at trial. *See* SDCL 29A-2-213(b); SDCL 25-2-21(a).

- I. The trial court erred in concluding that Stephanie voluntarily executed the Prenuptial Agreement waiving her spousal elective share.
  - A. The voluntariness of prenuptial agreements is closely scrutinized considering the totality of the circumstances due to the confidential relationship that exists between the parties.

Stephanie first challenges the Prenuptial Agreement on grounds that she did not voluntarily execute it. The difficulty in this case – and others like it – is SDCL 29A-2-213’s and SDCL 25-2-21’s lack of a definition of the term, “voluntary.” For a definition of that term, it is necessary to turn to South Dakota’s long line of precedents regarding the validity and enforceability of pre- and post-nuptial agreements.<sup>10</sup>

This Court has long pronounced consistent principles regarding the examination of pre- and post-nuptial agreements, even though the outcomes of those cases have varied depending on their particular facts. To begin, it is well-

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10. This brief discusses South Dakota case law regarding the validity of both pre- and post-nuptial agreements because this Court, “in keeping with most authorities,” has traditionally made no “distinction between premarital and postnuptial (marital) agreements,” and [n]one is made in [South Dakota’s] version of the Uniform Property Code, SDCL Title 29A, [or] the Restatement (Third) of Property. *See Smid*, 2008 S.D. 82, ¶ 46 n. 17, 756 N.W.2d at 16 n. 17 (Konenkamp, J., dissenting); *see also Eichstadt*, 2022 S.D. 78, 983 N.W.2d 572 (analyzing prenuptial agreement under the same standard as the post-nuptial agreement at issue in *Smid*).

settled that “[t]he validity of a [prenuptial] agreement is to be decided on the basis of the facts of each case.” *Smetana*, 2007 S.D. 5, ¶ 10, 726 N.W.2d at 892, *abrogated on other grounds by Liebel v. Liebel*, 2024 S.D. 34, ¶ 29, 9 N.W.2d 505, 515 (quoting *Ryken v. Ryken*, 461 N.W.2d 122, 125 (S.D. 1990)); *Schutterle v. Schutterle*, 260 N.W.2d 341, 348 (S.D. 1977), *superseded by statute on other grounds*, SDCL 19-13-3, *as recognized in State v. Catch the Bear*, 352 N.W.2d 640, 645 (S.D. 1984)). Indeed, this Court has stressed that “each decision involving the validity of [pre]nuptial agreements ‘depends upon the circumstances peculiar to the parties, factors such as the respective age of the parties, their prior marital status, the number and ages of children from prior marriages, [and] the nature and extent of the property owned by the parties[.]’” *Smetana*, 2007 S.D. 5, ¶ 10, 726 N.W.2d at 892 (quoting *Schutterle*, 260 N.W.2d at 348).

Furthermore, this Court has repeatedly recognized that the confidential relationship between husband and wife – or prospective spouses – warrants close scrutiny of these agreements. *See Schutterle*, 260 N.W.2d at 348 (recognizing that, consistent with the majority rule, “a confidential relationship exists between parties to [a pre]nuptial agreement as exists with respect to property transactions between a husband and wife) (quoting *Keith v. Keith*, 37 S.D. 132, 133, 156 N.W. 910, 911 (1916)); *In the Matter of the Estate of Gab*, 364 N.W.2d 924, 925 (S.D. 1985) (“[B]ecause of the confidential relationship which exists between husband and wife, postnuptial agreements are subjected to close scrutiny by the courts to insure that they are fair and equitable.”)); *Smid*, 2008 S.D. 82, ¶ 22, 756 N.W.2d at

8 (recognizing, in reliance on *Gab*, that “postnuptial agreements are subjected to close scrutiny because of the confidential relationship between husband and wife”). In fact, as early as 1916, this Court made clear that spouses (or prospective spouses) are not “dealing with each other as strangers at arm’s length.” *Keith*, 37 S.D. at 133, 156 N.W. at 911.

In *Smid*, however, this Court appeared to signal a shift in perspective. 2008 S.D. 82, 756 N.W.2d 1. Nearly four years after Ronald Smid’s marriage to Audrey Smid, Ronald’s son, Dale Smid, concerned about his father’s estate, scheduled a meeting between Ronald and attorney Roy Wise. Wise met with Ronald, Audrey, and Audrey’s brother on January 24, 2003. Wise wanted to conduct the meeting with Ronald alone, but Ronald insisted that Audrey be present. During the meeting, Ronald informed Wise – in Audrey’s presence – that he wanted the marital home to go to his children from a prior marriage, but that he wanted Audrey to be able to live in the home as long as she wished. Wise told Ronald and Audrey that the best way to fulfill this wish was to create a trust and transfer ownership of the marital home to the trust. Wise asked Ronald about any other important assets that should be considered. Audrey volunteered to complete change-of-beneficiary paperwork on Ronald’s IRA and savings bonds and also gave Wise a box containing other important documentation regarding his assets. Wise reviewed each document and Ronald’s list of assets with Ronald in Audrey’s presence. Three days later, on January 27, 2003, Audrey informed Wise that Ronald had decided to proceed with the trust. Wise drafted the trust documents

and met with Ronald and Audrey on January 29, 2003. Wise explained the trust documents, left the documents for their consideration, and returned later that day for Ronald and Audrey sign the trust documents and deed. Audrey did not obtain independent counsel before signing the documents. Ronald passed away early in the morning of January 30, 2003.

Audrey challenged the validity of the post-nuptial agreement, claiming that she did not voluntarily waive her rights as his surviving spouse. After a two-day bench trial, the circuit court concluded that she voluntarily waived her rights, and that the agreement was enforceable. On appeal, with no evidence that Audrey was “forced” to sign the post-nuptial agreement, and, because, in arm’s length transactions, “one who accepts a contract is conclusively presumed to know its contents and to assent to them, in the absence of fraud, misrepresentation, or other wrongful act by another contracting party,” this Court affirmed. *Id.* ¶¶ 15, 17, 27. But Justice Konenkamp dissented, arguing that the majority decision, by applying the same “primitive standard” courts apply to commercial contracts, “embrace[d] [a] bleak and mercantile view of marriage,” departed from prior precedent recognizing the fiduciary relationship between spouses, and put South Dakota in the extreme minority of jurisdictions who equate post-nuptial agreements with ordinary business contracts. *Id.* ¶¶ 42-46. He instead advocated that, as is done in other jurisdictions, an examination of the concept of voluntariness in the context of pre- and post-nuptial agreements consider numerous factors. *Id.* ¶ 47.

Fourteen years later, in *Eichstadt*, this Court was again called to pass upon the voluntariness of a marital agreement. 2022 S.D. 78, 983 N.W.2d 572. After Paul Eichstadt's wife passed away in 2001, he began calling Kathryn Bergeson, with whom he had previously had a long extramarital affair, and they soon began discussing marriage. In 2002, Kathryn agreed to marry Paul. One morning, Paul asked Kathryn to go for a drive. Kathryn did not know where he planned to take her or the purpose of the outing until they arrived at the office of Paul's attorney, Carl Haberstick. She then learned that Paul had hired Haberstick to draft a prenuptial agreement. She and Paul had not previously discussed a prenuptial agreement, and she saw the agreement for the first time that morning in Haberstick's office. At the beginning of the meeting, Haberstick provided Kathryn a letter, which she signed, confirming that he did not represent Kathryn, that she did not wish to have her own attorney review the agreement, and that he recommended that she consult with independent counsel. At some point, Paul offered to pay for a lawyer to look over the agreement for Kathryn, but she declined. In the 10- to 15-minute meeting, Haberstick obtained information from Kathryn to complete her financial disclosure and gave her a copy of Paul's financial disclosure. Kathryn testified that, during the meeting, Paul was pacing, and she was crying. Ultimately, after skimming through the prenuptial agreement and Paul's disclosure, Kathryn signed the agreement. She and Paul married one week later in a private ceremony. After Paul passed away, Kathryn petitioned the circuit court for her elective share, homestead allowance, exempt property, and

family allowance. The Estate challenged her petition, asserting that she waived her right to any part of Paul's estate when she executed the prenuptial agreement.

After a one-day bench trial, the circuit court concluded that Kathryn did not voluntarily sign the agreement, and that it was therefore not enforceable. On appeal, the Estate, focusing on *Smid*, argued that Kathryn had the capacity to contract, that she knew the terms of the prenuptial agreement, and that, absent evidence of duress, fraud, undue influence, or mistake – the statutory grounds under which contracts are typically voidable, she could not establish that she signed the agreement involuntarily. *Id.* ¶ 27. But the *Eichstadt* Court rejected the notion that proof of one of these statutory grounds is required to invalidate a pre- or post-nuptial agreement. *Id.* ¶ 28. In fact, the *Eichstadt* Court confirmed, consistent with prior precedent, that pre- and post-nuptial “contracts are unique and require an examination of the totality of the circumstances surrounding the execution of the agreement.” *Id.* Indeed, the *Eichstadt* Court recognized that, although the *Smid* Court rejected Justice Konenkamp's suggestion that the list of factors identified by other courts be applied, a review of that Court's analysis reveals that it did consider some of those factors in determining whether that agreement was executed voluntarily – particularly, its discussion of the role of counsel and the spouse's knowledge and understanding of the agreement. *Id.* ¶ 31. Thus, not only did the *Eichstadt* Court ultimately affirm the trial court's conclusion that Kathryn did not voluntarily sign the prenuptial agreement, but it also confirmed this Court's fidelity to the long-standing principle that marital



agreements are to be closely scrutinized considering the “totality of the circumstances” given the nature of the relationship that exists between the contracting parties. *Id.* ¶¶ 28, 31-32, 37-39.

B. The totality of the circumstances reveals that Stephanie did not voluntarily sign the Premarital Agreement.

It is against this backdrop that the voluntariness of the Premarital Agreement at issue in this case is examined. First, although *Smid* is similar to the case at hand in that external factors – Audrey’s husband was dying, while weather and Stephanie and Butch’s tight schedules – hurried the preparation and execution of the agreement, *Smid* is also distinguishable from this case in a number of significant ways. (FF, 69; TT, 40, 54, 68-69, 89; *compare* 2008 S.D. 82, ¶ 8, 756 N.W.2d at 5.

First, this case is distinguishable from *Smid* in terms of timing and Stephanie’s knowledge of Butch’s financial condition. In *Smid*, Ronald and Audrey had been married for four years, and Audrey had a thorough understanding of Ronald’s financial condition, as demonstrated by her offer to change the beneficiaries for his assets and her review of and discussion with Wise about her husband’s finances. 2008 S.D. 82, ¶¶ 3, 7-8, 756 N.W.2d at 4-5. Here, by contrast, when the Premarital Agreement was discussed, Stephanie and Butch had only been dating for approximately eight months, Stephanie had only a “general understanding” of Butch’s financial condition, and Stephanie was first provided Butch’s financial disclosure the night before the Agreement was signed.

(FF, 28, 35, 72, 143; TT, 20, 22, 24-26, 43, 46, 49-50, 59-60, 75, 85-87, 99-102, 126-27, 129-32, Ex. 1; RA, 1180; Appx. Bkmk. 2). Additionally, in *Smid*, five days after their first meeting Wise provided Ronald and Audrey a draft of the document, left the documents for their consideration, and returned later that day to have them sign. 2008 S.D. 82, ¶¶ 5, 8, 756 N.W.2d at 4-5. In this case, Stephanie did not see a draft of the Prenuptial Agreement until the evening before it was to be signed, and she testified that she did not discuss the Agreement with Attorney Bogue or meet with him until the day that it was signed – just minutes before their planned wedding ceremony. (FF, 72, 91; TT, 43, 46, 49-50, 71-73, 75, 126-27, 164, 174; Ex. 1; RA, 1180; Appx. Bkmk. 2).

*Smid* did note the importance of the spouse's knowledge of the knowledge and understanding of the agreement. 2008 S.D. 82, ¶¶ 22-23, 756 N.W.2d at 8-9. In that case, Audrey – at Ronald's insistence – meaningfully participated in the meeting with Wise in which the purpose and effect of the agreement was plainly discussed, and Audrey indicated her consent. *Id.* ¶¶ 6, 22-23. In fact, three days after the initial meeting, it was Audrey who called Wise to let him know that Ronald had decided to proceed with the trust. *Id.* ¶ 8. By contrast, in this case, Butch told Stephanie that the purposes of the Prenuptial Agreement were to protect the Colorado property and to control the disposition of their assets upon divorce. (TT, 38, 50-51, 53-54, 58, 67, 104-05, 108, 127). And it was Butch who directed the preparation and drafting of the Agreement. (FF, 96; TT, 153). At trial, Stephanie testified that Attorney Bogue did not review the Agreement with

her, explain its consequences to her, or explain the meaning of the term, “elective share.” (FF, 89; TT, 57-59, 75). Although Attorney Bogue testified that he reviewed the Prenuptial Agreement with Stephanie and Butch “paragraph by paragraph,” he was only able to testify – eleven years later – that he “*would have* explained the broader impact as to pre-death, post-death issues.” (FF, 104, 106-07, 129; TT, 157-59, 163, 165, 168-69 (emphasis added); *compare* FF, 107 (“Eric Bogue testified he *certainly* would have explained paragraph 8 of the Prenuptial Agreement, which specified the post-death disposition of property, claims, and rights.”) (emphasis added)). Attorney Bogue does not recall providing Stephanie or Butch any explanation of the meaning of the term, “elective share.” (TT, 190). And yet, the trial court made no finding on that important fact. (*See* FF, CL, *supra*). *See Eichstadt*, 2022 S.D. 78, ¶ 7, 983 N.W.2d at 578 (acknowledging attorney’s testimony that ““the vast majority of individuals’ would not understand terms such as dower, curtesy, and elective share”). Thus, as compared to *Smid*, and on the factors that the *Smid* Court did find significant, this case presents a far more compelling picture of involuntariness.

Turning to *Eichstadt*, there are differences between that case and the case at hand that bear discussion. First, it is true that, unlike Kathryn in *Eichstadt*, Stephanie did not hear of or see the Prenuptial Agreement for the first time in Attorney Bogue’s office on October 11, 2013. (FF, 72; TT, 43, 46, 49-50, 126-27; Ex. 1; RA, 1180; Appx. Bkmk. 2; *compare* 2022 S.D. 78, ¶ 4, 983 N.W.2d at 577). But, contrary to the trial court’s factual findings, the evidence and testimony

established that, in the weeks leading up to the Prenuptial Agreement's execution, she and Butch had only one conversation about it. (TT, 37, 41; *but see* FF, 44, 65). During that conversation, Butch represented that the Prenuptial Agreement's sole purposes were to protect the Colorado property and to control the disposition of their assets upon divorce – which, as it turned out, was not true. (TT, 38, 50-51, 53-54, 58, 67, 104-05, 108, 127; *compare Eichstadt*, 2022 S.D. 78, ¶¶ 4-5, 37, 983 N.W.2d at 577, 586-87 (describing husband's deception in getting wife to attorney's office and telling attorney that wife had previously decided not to hire her own lawyer to review the prenuptial agreement)). And although Stephanie did see the draft of the Prenuptial Agreement and Butch's financial disclosure before it was to be signed, the circumstances of that disclosure – at 4:40 p.m. the evening before they were to embark on the eight- or nine-hour drive from Colorado to South Dakota to have the Agreement executed and to be legally married – prohibited her from any meaningful opportunity to have her own counsel review it. (FF, 72; TT, 43, 46, 49-51, 54-56, 70-71, 126-27; Ex. 1; RA, 1180; Appx. Bkmk. 2; *but see* FF, 130; *see Lutgert v. Lutgert*, 338 So.2d 1111 (Fla. Ct. App. 1976) (holding that prenuptial agreement was invalid when presented within twenty-four hours of wedding with passage booked on European cruise)). Finally, contrary to the trial court's findings of fact, while Stephanie does have a bachelor's degree, there was no dispute in the testimony that she had far less business experience and sophistication than Butch. (FF, 6; TT, 24, 76, 123-24,

144-45; *but see* FF 21, 36-38; *compare Eichstadt*, 2022 S.D. 78, ¶¶ 15, 25, 32, 983 N.W.2d at 580, 582, 585 (noting wife’s limited education)).

This case includes other facts quite similar to than those in *Eichstadt*. For example, both Stephanie and Kathryn indicated that they did not understand the terms of the prenuptial agreement. (FF, 80; TT, 46-47, 60-66, 96-98, 104-05, 123, 127, 131, Ex. 1; RA, 1180; Appx. Bkmk. 2; 2022 S.D. 78, ¶¶ 32, 37, 983 N.W.2d at 585, 586-87). Like Paul in *Eichstadt*, Butch directed his attorney to prepare the Prenuptial Agreement, Butch scheduled the date of their legal marriage ceremony when it was convenient for his schedule, and Butch was Stephanie’s means of transportation to her home in Colorado, which was nearly nine hours away. (FF, 96; TT, 41, 55, 68, 137, 106, 153; *compare* 2022 S.D. 78, ¶¶ 4, 32, 983 N.W.2d at 577, 586-87 (noting that husband was the “controlling person in the relationship and made all the decisions, including when they would get married”)). Like *Eichstadt*, if Stephanie wanted to visit another attorney or leave the meeting at Attorney Bogue’s office, there is no evidence that she had the ability to do so without reliance on Butch. (TT, *supra*; *compare* 2022 S.D. 78, ¶¶ 4, 32, 983 N.W.2d at 577, 586-87). Indeed, as Stephanie testified, Butch was one who was “going to tell you . . . what would happen,” and she understood that they would not be able to get married if the Prenuptial Agreement were not signed on October 11, 2013. (TT, 68, 106-07).

In many ways, the facts of this case are more compelling than those in *Eichstadt*. First, unlike Stephanie and Butch, the *Eichstadt* couple had been in a

relationship for decades, not months, and they were similar in age. (FF, 28, 34; TT, 20, 22, 61; *compare* 2022 S.D. 78, ¶¶ 2-3, 25, 983 N.W.2d at 576-77, 582). In fact, in *Eichstadt*, Kathryn had been helping Paul with the farm operation for decades, and, as his bookkeeper, understood his farm operation and knew his financial condition. 2022 S.D. 78, ¶¶ 2-3, 48 n. 8, 983 N.W.2d at 576, 589 n. 8. Stephanie, by contrast, did not have a detailed understanding of Butch’s property and business holdings. (FF, 35, 143; TT, 24-26, 59-60, 85-87, 99-102, 129-32). Additionally, the language of the *Eichstadt* prenuptial agreement included a disclaimer that clearly described its effect and the rights that were surrendered. 2022 S.D. 78, ¶ 6, 983 N.W.2d at 578. The Prenuptial Agreement in this case contained no such disclaimer or explanation and does not even contain the words, “elective share.” (FF, 115; TT, 66, Ex. 2; RA, 1182; Appx. Bkmk. 3). Furthermore, the *Eichstadt* couple was married one week – rather than minutes – after the execution of the premarital agreement. (FF, 91; TT, 71-73, 164, 174; *compare* 2022 S.D. 78, ¶ 11, 983 N.W.2d at 579).

But that is not all. The confusion regarding the role of Butch’s attorney, a factor that the *Smid* Court also found significant, is one of the most compelling facts of this case. Even in *Eichstadt*, at the very beginning of the meeting, Haberstick made it abundantly clear – in writing – that he did not represent Kathryn, that Paul was his only client, that he could not give Kathryn any advice or “really answer any questions” about the prenuptial agreement, and that he recommended that she consult with her own attorney. 2022 S.D. 78, ¶ 5, 983

N.W.2d at 577. In fact, during the meeting, Paul offered to pay for a lawyer to look over the agreement for Kathryn, but she declined. *Id.* ¶ 10.

This case presents no such lucidity. Attorney Bogue did not offer any definitive testimony that he told Stephanie that he was not her lawyer or that he specifically recalls recommending that Stephanie consult her own attorney. (TT, *supra*). Instead, Attorney Bogue testified that – eleven years having passed – he could not “recall exactly the nature of the conversation precisely,” but that “based on how he handled his practice,” he “*would have*” said that if Stephanie had any questions, she was “encouraged to have her own counsel,” and that he “*would have*” stressed that she be comfortable before signing because the document has important legal consequences. (FF, 105, 108; TT, 157-59, 166, 171, 173 (emphasis added)). He testified that it was his standard procedure to be careful to designate who was the client in these types of situations. (FF, 101; TT, 159-60, 170-71). He also testified that he does not routinely have parties sign a document indicating that they understand that he is not representing them, and that he did not ask Stephanie to do so. (FF, 101; TT, 170, 182).

Predictably, this set of facts caused much confusion, particularly in light of Stephanie and Butch’s relationship with the Bogues. At trial, Stephanie testified that she trusted Attorney Bogue, thought he was there to help both Butch and her, and thought he had her best interests in mind and was also protecting her. (FF, 86; TT, 53-54, 58, 70, 74, 105). In fact, Stephanie testified that she thought that Attorney Bogue was her attorney. (TT, 90-91; *but see* FF, 88 (finding that

Stephanie knew that the Bogues were not her attorneys)). While Attorney Bogue maintained that he did not represent Stephanie and did not give her legal advice, he also testified that he reviewed the Prenuptial Agreement with her “paragraph by paragraph” and answered her questions. (FF, 100, 106-07, 111; TT, 157-60, 163, 165, 168-70, 183-84). Ultimately, at trial, even Attorney Bogue conceded that it was possible that Stephanie understood that he was acting with both her and Butch’s best interests in mind. (TT, 182).

Other courts have recognized the importance of adequate legal representation in analyzing the voluntariness of a prenuptial agreement. For example, in *In the Matter of the Estate of Lutz*, Emanuel Lutz told Lavilla, his future wife, that a prenuptial agreement was needed before they could marry. 1997 N.D. 82, 563 N.W.2d 90. Emanuel contacted his attorney, who prepared a prenuptial agreement, consents to wills, and wills for both Emanuel and Lavilla. After Emanuel passed away, Lavilla argued that the prenuptial agreement was signed involuntarily. The trial court granted summary judgment for Emanuel’s children, but, on appeal, the North Dakota Supreme Court reversed, finding the confusion regarding the role of Emanuel’s counsel a significant question of fact. *See id.* ¶¶ 34-35 (“Unlike many private contracts, the state has an interest in every marriage contract. . . . [L]ack of adequate legal advice to a prospective spouse to obtain independent counsel is a significant factor in weighing the voluntariness of a premarital agreement. Indeed, adequate legal representation will often be the



best evidence that a spouse signed a premarital agreement knowledgeably and voluntarily”).

The trial court’s findings regarding the role of Attorney Bogue are erroneous in several ways. First, the trial court made no finding that Attorney Bogue did not tell Stephanie that he was not her lawyer and, as discussed above, clearly erred by finding that Stephanie knew that he was not her attorney. (TT, 90-91; *but see* FF, 88). Second, the trial court twice found that Attorney Bogue did not provide Stephanie legal advice. (*See* FF, 100, 111). But, if the trial court accepts Attorney Bogue’s testimony that he “went through each paragraph of the Prenuptial Agreement with” Stephanie and Butch, explained the purpose and effect of the Agreement’s provisions, and answered Stephanie’s questions – which it appears to do, then it is indisputable that he did in fact offer her legal advice, and the trial court’s findings are clearly erroneous. (FF, 106-07; TT, 157-59, 163, 165, 168-69). *See, e.g., Pucket v. Hot Springs Sch. Dist. No. 23-2*, 239 F.R.D. 572, 580 (D. S.D. 2006) (recognizing that attorney provided legal advice by explaining effect of contractual release and indemnification provision). Finally, the trial court found that Attorney Bogue “*always* makes it clear who he is representing despite not having a written disclosure,” when, in fact, he testified that it was his standard procedure to be careful to designate who was the client in these types of situations, but that he does not have any specific recollection of doing so in this case. (FF, 101; *but see* TT, 157-59, 171, 173). Ultimately, although the Court appears to accept Attorney Bogue’s testimony over Stephanie regarding the events of

October 11, 2013, it certainly appears that, eleven years later, it is Stephanie, as a party to the Prenuptial Agreement, who would have the clearer memory. Given the Court's discussion in both *Smid* and *Eichstadt* of the importance of the role of counsel, these errors, particularly when married with all the others, warrant reversal.

One additional error in the trial court's findings bears mentioning. In its findings, the trial court repeatedly states that Stephanie testified that the Prenuptial Agreement was a "non-factor," taking that to mean that Stephanie was "going to sign the Prenuptial Agreement regardless of what it said or meant," and that she was "determined to get married regardless of the Prenuptial Agreement." (FF, 79, 118-121). But Stephanie made that statement regarding the Prenuptial Agreement in the context of describing her limited discussions or conversations with Butch, who told her that the Agreement was needed to protect her assets, including her Colorado property, from eventual judgment in the pending lawsuits, and who did not tell her that it would also preclude her from receiving anything from his estate if he were to pass away. (TT, 38, 41, 43-44, 58-59, 50-51, 53-54, 58, 67-68, 104-05, 108, 127). In other words, the trial court took Stephanie's statement entirely out of context and gave it a meaning that it does not bear.

Stephanie did not voluntarily execute the Prenuptial Agreement. In examining the various circumstances that this Court has considered in other cases – the age, education, and sophistication of the parties; the nature and length of their relationship; the presence of any deception or misconduct by the parties; the

parties' relative and historical decision-making power in the relationship; the nature of any conversations between the parties regarding the need for a prenuptial agreement; the timing of the disclosure of the draft of the prenuptial agreement and financial disclosures; the parties' knowledge and understanding of their relative financial conditions; the parties' knowledge and understanding of the terms of the prenuptial agreement – the totality of the circumstances surrounding the execution of the Prenuptial Agreement demonstrate that it cannot withstand this Court's close scrutiny. *See Eichstadt*, 2022 S.D. 78, ¶¶ 31-32, 983 N.W.2d at 585; *Gab*, 364 N.W.2d at 926; *Schutterle*, 260 N.W.2d at 348. Accordingly, the trial court erred in concluding that Stephanie voluntarily executed the Prenuptial Agreement.

- II. The trial court erred in concluding that the Prenuptial Agreement waiving Stephanie's spousal elective share was not unconscionable.

Stephanie next challenges the Prenuptial Agreement on grounds that it is unconscionable. South Dakota's applicable statutes do not provide a definition of the term, "unconscionable." *Johnson v. John Deere Co.*, 306 N.W.2d 231, 236 (S.D. 1981). In determining whether a contract is unconscionable, this Court looks "not only at the bargaining power between the parties but also at the specific terms of the agreement." *Nygaard v. Sioux Valley Hospitals & Health Sys.*, 2007 S.D. 34, 25, 731 N.W.2d 184, 194.

A similar analysis is employed as to the unconscionability of prenuptial agreements. Consistent with standard unconscionability analysis, a circuit court

tasked with determining whether a prenuptial agreement is unconscionable at the time it was executed, should consider “the circumstances surrounding the execution of the [a]greement” as well as the “actual terms of the [a]greement.” *Eichstadt*, 2022 S.D. 78, ¶ 42, 983 N.W.2d at 588. Rather than reiterate the discussion of the various facts that this case, Stephanie submits that, for the same reasons that her execution of the Prenuptial Agreement was not voluntary, it was also unconscionable. Stephanie does note, however, that, for purposes of this analysis, it is significant that the Premarital Agreement contains no language that clearly waives her spousal rights, and that, under the terms of the Agreement and Butch’s 2015 will, she is left with only the Colorado property and its furnishings, even though he was valued at approximately \$26 million at the time that the Agreement was signed. (FF, 75, 115, 145; TT, 66, 111-12, Exs. 1, 2; RA, 1180, 1182; Appx. Bkmks. 2, 3).

Under SDCL 29A-2-213 and SDCL 25-2-21, however, a prenuptial agreement must not only be unconscionable, but the prospective spouse must also have not been provided a “fair and reasonable disclosure” of the other party’s financial condition. In South Dakota,

[i]t is not necessary . . . for a spouse to provide a detailed and exact valuation of his or her net worth in a prenuptial agreement. It is sufficient for a spouse to provide, within the best of his or her abilities, a list of assets and liabilities with approximate valuations. The listing must be sufficiently precise to give the other spouse a reasonable approximation of the magnitude of the other spouse’s net worth.

*Smetana*, 2007 S.D. 5, ¶ 12, 726 N.W.2d at 893 (quoting *Sanford v. Sanford*, 2005 S.D. 34, ¶ 42, 649 N.W.2d 283, 294); see *Smid*, 2008 S.D. 82, ¶ 22, 756 N.W.2d at 8 (“[A] postnuptial agreement will be upheld if the extent and nature of the decedent’s property was revealed, and so long as the agreement was entered into freely and for good consideration.”). Ultimately, however, it “does not fall upon a spouse to assume the role of detective in an attempt to ferret out the existence and value of the other spouse’s assets.” *Smetana*, 2007 S.D. 5, ¶ 12, 726 N.W.2d at 893 (quoting *Sanford*, 2005 S.D. 34, ¶ 42, 694 N.W.2d at 294).

*Smetana* is instructive. Robert and Joyce Smetana were married in 1978. When Joyce filed for divorce, the circuit court found that the agreement, among other things, did not adequately disclose the nature and extent of either Joyce’s or Robert’s assets and liabilities, that Joyce did not have a reasonable approximation of Robert’s wealth, and that the agreement was therefore invalid as unconscionable. On appeal, this Court affirmed that finding. *Id.* ¶ 17. In so doing, it specifically rejected Robert’s claim that Joyce became aware of his assets during their fourteen-month courtship. *Id.* ¶ 13. Although Joyce admitted to knowing that Robert owned land, a home, grain bins, and farm machinery, this Court found it significant that she was not aware of Robert’s *net worth* and was not aware of any of Robert’s *liabilities*. *Id.*

And so it is here. As discussed above, Stephanie described Butch as private about his money, keeping “[e]verybody on a need-to-know basis.” (TT, 25). During their eight- or nine-month courtship, Stephanie did visit South Dakota four

to six times in 2013 and saw some of his properties and his cattle. (FF, 28, 39, 53-54, 141; TT, 20, 22, 27, 33-34, 86-87). But Stephanie also testified that, before their marriage, she did not have a detailed understanding of Butch's property and business holdings. (FF, 35, 143; TT, 24-26, 59-60, 85-87, 99-102, 129-32).

Nor did Butch make an adequate financial disclosure.<sup>11</sup> Stephanie was provided a draft of Butch's financial disclosure for the first time the night before the Prenuptial Agreement was to be signed – and they were to be married. (FF, 72; TT, 46, 49-50, 126-27, Exs. 1, 2; RA, 1180, 1182; Appx. Bkmks. 2, 3). Even then, neither that draft nor the final disclosure presented to her before execution clearly indicated Butch's liabilities or net worth, making it difficult for her to reasonably approximate his financial condition. (FF, 75; TT, 59-60, 99-102, 129-32, Exs. 1, 2; RA, 1180, 1182; Appx. Bkmks. 2, 3). *See Sanford*, 2005 S.D. 34, ¶ 44, 694 N.W.2d at 295 (repeating importance that financial disclosure provide values of both assets and liabilities in order to give other spouse a reasonable approximation of the magnitude of net worth). Indeed, after trial, Stephanie supplemented the record to demonstrate that his financial disclosures were substantially inaccurate and undervalued his assets by nearly \$2 million. (FF, 149; RA, 1205). Had Butch not waited until the last minute, perhaps he would have more fully satisfied his disclosure obligation. *See Schutterle*, 260 N.W.2d at 349 (“[T]he record evidence does not reveal the full, detailed disclosure . . . of the

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11. Butch's failure to make an adequate financial disclosure is also a factor for this Court to consider in evaluating the voluntariness of the Prenuptial Agreement.

exact nature and extent of this property that he undoubtedly would have made had the parties not waited until the last minute to have the necessary agreement drawn[.]”).

The Prenuptial Agreement is unconscionable. Considering “the circumstances surrounding the execution of the Agreement,” the Agreement’s failure to expressly and clearly waive Stephanie’s spousal elective rights, and Butch’s failure to adequately disclose his financial condition, the Agreement is invalid for unconscionability. *See Eichstadt*, 2022 S.D. 78, ¶ 42, 983 N.W.2d at 588. Accordingly, the trial court erred in concluding that Stephanie voluntarily executed the Prenuptial Agreement.

#### CONCLUSION

Stephanie respectfully requests that this Court reverse the trial court’s order and remand so that judgment may be entered accordingly.

Dated this 21<sup>st</sup> day of April, 2025.

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REQUEST FOR ORAL ARGUMENT

Stephanie respectfully requests the privilege of oral argument in this matter.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief does not exceed the number of words permitted under SDCL 15-26A-66(b)(2), said briefing containing 9,745 words and 49,857 characters without spaces. I have relied on the word and character count of the word-processing system used to draft this brief in preparing this certificate as permitted under SDCL 15-26A-66(b)(4).

/s/ Meghann M. Joyce  
Meghann M. Joyce



## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Brief of Appellant in the above-entitled action was duly served by serving a true copy thereof by Notice of Electronic Filing generated by the Odyssey File & Serve System, on the 21<sup>st</sup> day of April, 2025, to the following named persons at their last known post office addresses as follows:

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The undersigned further certifies that pursuant to SDCL 15-26A-79, the original of the Brief of Appellant in the above-entitled action was mailed to Ms. Shirley A. Jameson-Fergel, Clerk of the Supreme Court, State Capitol, 500 East Capitol, Pierre, SD 57501, by United States mail, first class postage thereon prepaid, on the date above written.

/s/ Meghann M. Joyce \_\_\_\_\_

Meghann M. Joyce

## APPENDIX

**APPENDIX**

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<p style="text-align: right;">Page 3</p> <p>1 INDEX  2 WITNESSES: PAGE  3 <b>STEPHANIE A. WEBB:</b>  4 Direct Examination by Mr. Collins 14  5 Cross-Examination by Mr. Nies 80  6 Cross-Examination by Mr. Rumpca 108  7 Cross-Examination by Ms. Cook 122  8 Cross-Examination by Mr. Chicoine 126  9 Redirect Examination by Mr. Collins 132  10 <b>HAROLD DELBRIDGE:</b>  11 Direct Examination by Mr. Nies 134  12 Cross-Examination by Mr. Rumpca 137  13 Cross-Examination by Mr. Collins 138  14 <b>CHERYL BOGUE:</b>  15 Direct Examination by Mr. Nies 139  16 Cross-Examination by Mr. Collins 144  17 <b>ERIC BOGUE:</b>  18 Direct Examination by Mr. Nies 150  19 Cross-Examination by Mr. Rumpca 165  20 Cross-Examination by Mr. Collins 166  21 Cross-Examination by Ms. Cook 182  22 Cross-Examination by Mr. Chicoine 187  23 <b>DEE HAUGEN:</b>  24 Direct Examination by Mr. Nies 191  25 Cross-Examination by Mr. Collins 193  26 Cross-Examination by Ms. Cook 195  27 Cross-Examination by Mr. Morris 196  28 Cross-Examination by Mr. Chicoine 197  29  30 <b>JOINT EXHIBITS: OFFERED RECEIVED</b>  31 Exhibit 1 43 43  32 Exhibit 2 59 59  33 Exhibit 3 72 72  34 Exhibit 5 84 84</p>	<p style="text-align: right;">Page 4</p> <p>1 (WHEREUPON, the following proceedings were  2 duly had beginning at 9 a.m.)  3 (Joint Exhibit Nos. 1, 2, 3, 5 were  4 previously marked for identification.)  5 <b>THE COURT:</b> All right, good morning. This is the time  6 and place set for a motion hearing in the matter of the  7 Estate of Martin Allen Webb, Probate File 22-01.  8 Let's see, I'm just going to have each party  9 announce themselves. We will start with Mr. Chicoine,  10 if you would state your name and who you are  11 representing today.  12 <b>MR. CHICOINE:</b> Good morning, Your Honor, Nathan  13 Chicoine. I am guardian ad litem for Lakin Webb.  14 <b>THE COURT:</b> Thank you.  15 <b>MR. MORRIS:</b> Good morning, Your Honor, Bob Morris,  16 guardian ad litem for Wynston Webb.  17 <b>THE COURT:</b> Thank you.  18 <b>MS. COOK:</b> Good morning, Your Honor, Katelyn Cook  19 appearing on behalf of both Kailee and Kenna Webb.  20 <b>THE COURT:</b> Thank you.  21 <b>MR. COLLINS:</b> Jeff Collins appearing on Stephanie Webb.  22 <b>MR. RUMPCA:</b> Your Honor, Jason Rumpca appearing on  23 behalf of interested party Deb Ducheneaux.  24 <b>THE COURT:</b> Thank you.  25 <b>MR. NIES:</b> Mr. Nies, Your Honor, representing Dee</p>

<p style="text-align: right;">Page 13</p> <p>1 same things. So it is difficult for me to, like, go</p> <p>2 with either one. So I'm going to not take a position on</p> <p>3 it. But I would indicate that if the Court does leave</p> <p>4 it open, that it is a finite time, not an indefinite</p> <p>5 time, for supplementing the record.</p> <p>6 <b>THE COURT:</b> Thank you. Mr. Chicoine.</p> <p>7 <b>MR. CHICOINE:</b> I take the same position as Mr. Morris.</p> <p>8 I don't have a position on the request to leave the</p> <p>9 record open but we would just ask, whatever the Court</p> <p>10 might decide, there be a definite time frame, whether</p> <p>11 that -- the record closes today or at a set date in the</p> <p>12 future.</p> <p>13 <b>THE COURT:</b> I'm going to grant the motion. I will give</p> <p>14 you a set date. I will order 45 days from today's date</p> <p>15 so there is a date certain. The reason I'm going to do</p> <p>16 that, even though there are vehicles to which the Court</p> <p>17 could undo any judgment or change, to the extent it</p> <p>18 might be necessary -- I don't even know that yet -- I'm</p> <p>19 not going to go through that whole process. I want all</p> <p>20 the facts before the Court makes one decision. So</p> <p>21 that's the only reason. It is not ideal, but the Court</p> <p>22 will allow that.</p> <p>23 Mr. Collins, you may call your first witness</p> <p>24 <b>MR. COLLINS:</b> Thank you, Your Honor. A question for the</p> <p>25 Court. I know we have a stand over there. We have</p>	<p style="text-align: right;">Page 14</p> <p>1 binders. Is it okay that we ask questions from counsel</p> <p>2 table.</p> <p>3 <b>THE COURT:</b> You have a microphone. As long as you have</p> <p>4 a microphone, I think the court reporter is okay. the</p> <p>5 reason I put the podium up is so that the court reporter</p> <p>6 could hear. So if you are speaking without -- maybe we</p> <p>7 can move the microphones around a little bit. Yes,</p> <p>8 that's fine.</p> <p>9 <b>MR. COLLINS:</b> I don't expect most people here will say</p> <p>10 anything other than me. I call Stephanie Webb, Your</p> <p>11 Honor.</p> <p>12 <b>THE COURT:</b> Ms. Webb, if you would come forward. I will</p> <p>13 swear you in.</p> <p style="text-align: center;"><b>STEPHANIE A WEBB,</b></p> <p>15 called as a witness, being first duly sworn, testified as</p> <p>16 follows:</p> <p style="text-align: center;"><b>DIRECT EXAMINATION</b></p> <p>18 <b>BY MR. COLLINS:</b></p> <p>19 <b>Q</b> You will have to pull the microphone over by you.</p> <p>20 Can you introduce yourself to the Court.</p> <p>21 <b>A</b> I'm Stephanie Webb.</p> <p>22 <b>Q</b> Where do you currently reside?</p> <p>23 <b>A</b> In Loveland, Colorado.</p> <p>24 <b>Q</b> Who did you live with?</p> <p>25 <b>A</b> Butch and my two kids, Lakin and Wynston.</p>
<p style="text-align: right;">Page 15</p> <p>1 <b>Q</b> How old are Lakin and Wynston today?</p> <p>2 <b>A</b> Lakin is nine almost ten and Wynston is four.</p> <p>3 <b>Q</b> And I'm going to just give the Court a little bit of</p> <p>4 background. I know you testified previously in this</p> <p>5 matter during the PR, appointment of the PR hearing, but</p> <p>6 just to give a refresher. Where did you grow up?</p> <p>7 <b>A</b> I grew up east of Colorado Springs and in Colorado</p> <p>8 Springs.</p> <p>9 <b>Q</b> Did you graduate from high school?</p> <p>10 <b>A</b> Yes.</p> <p>11 <b>Q</b> And where was that?</p> <p>12 <b>A</b> Ellicott Junior-Senior High School.</p> <p>13 <b>Q</b> When was that?</p> <p>14 <b>A</b> In 2002.</p> <p>15 <b>Q</b> Did you go to college?</p> <p>16 <b>A</b> Yes.</p> <p>17 <b>Q</b> Where did you go to college?</p> <p>18 <b>A</b> Colorado State University.</p> <p>19 <b>Q</b> Did you get a degree?</p> <p>20 <b>A</b> Yes, a bachelors of science.</p> <p>21 <b>Q</b> In what specialty?</p> <p>22 <b>A</b> Equine science.</p> <p>23 <b>Q</b> And what approximate year did that occur?</p> <p>24 <b>A</b> 2006.</p> <p>25 <b>Q</b> And did you -- there's going to be records here. You</p>	<p style="text-align: right;">Page 16</p> <p>1 were previously married; is that correct?</p> <p>2 <b>A</b> Correct.</p> <p>3 <b>Q</b> Who was your husband?</p> <p>4 <b>A</b> Chris Keplinger.</p> <p>5 <b>Q</b> When did you get married?</p> <p>6 <b>A</b> 2007.</p> <p>7 <b>Q</b> And then how long were you married?</p> <p>8 <b>A</b> Four years.</p> <p>9 <b>Q</b> And when were you divorced?</p> <p>10 <b>A</b> I believe it started in 2011 is when he left. I don't</p> <p>11 think it was finalized until 2012.</p> <p>12 <b>Q</b> And when you went through the divorce process with</p> <p>13 Chris, did you hire attorneys to assist you?</p> <p>14 <b>A</b> No.</p> <p>15 <b>Q</b> How did you get divorced? What process did you use?</p> <p>16 <b>A</b> Like for paperwork?</p> <p>17 <b>Q</b> Yes.</p> <p>18 <b>A</b> Thankfully Colorado made it pretty simple. We could</p> <p>19 just download the documents off the internet and they</p> <p>20 provided, like, a checklist of things you needed to</p> <p>21 provide and it was really just kind of a fill in the</p> <p>22 blank names and information. It was really pretty</p> <p>23 simple.</p> <p>24 <b>Q</b> Okay. Did you have many assets to divide at that time?</p> <p>25 <b>A</b> No.</p>

<p style="text-align: right;">Page 17</p> <p>1 Q Following college in 2007, '06, what did you do for a 2 job? 3 A I was the office manager at what was then Royal Vista 4 Equine in Fort Collins. 5 Q What does Royal Vista Equine do? 6 A They specialize in equine reproduction. 7 Q As an office manager what was kind of your function? 8 A Client communication, billing, paying bills, things like 9 that. 10 Q We know from previous testimony that you eventually 11 acquired an ownership. But in 2007, you were simply an 12 employee? 13 A Correct. 14 Q How many employees did Royal Equine have? 15 A Royal Vista Equine probably had around 10 to 12 would be 16 my guess. 17 Q In '07? 18 A Yeah. 19 Q Okay. And at some point, your status as just an 20 employee changed. What year was that? 21 A 2011. 22 Q And tell me about what happened in 2011. 23 A The previous owners, Ron and Jill Cook, were wanting to 24 retire but they didn't want to see the business that 25 they had spent their lives developing just go away. So</p>	<p style="text-align: right;">Page 18</p> <p>1 they turned it over to my business partner Jake Dahl and 2 I. 3 Q Do you remember when they turned it over, did you buy 4 it? Did they gift it? 5 A I guess you would say more gifted. There wasn't a 6 purchase price on the business entity, no. 7 Q Do you have a recollection back in that time frame about 8 what you were getting paid? 9 A I don't. Sorry. 10 Q Per year, I mean, do you have -- 50,000, 100,000? 11 A No, like the 35 to 40 thousand per year. 12 Q And so you didn't -- did you say that there was a buy-in 13 or it was more of a gift? 14 A More of a gift. 15 Q And how much interest did you acquire? 16 A 45%. 17 Q And this is 2011, correct? 18 A Yes, that's correct. 19 Q And did your duties substantially change when that 20 occurred in 2011? 21 A No. I pretty much still kept the same role. I think we 22 all did because that was our specialty, if you will. So 23 I kept running the office so, no, nothing really 24 changed. 25 Q And so for taxes, things of that nature, were you doing</p>
<p style="text-align: right;">Page 19</p> <p>1 the tax returns for the business? 2 A Like the year-end tax returns? 3 Q Yes? 4 A Oh, no. 5 Q Did you have a CPA who would do that? 6 A Yes. 7 Q Were you involved in drafting legal documents or 8 reviewing legal documents for the business? 9 A Like our client contracts? 10 Q Correct. 11 A No, we had a lawyer that did those and they just were 12 like a form-style so we could fill in mare names, client 13 names. That was it. The lawyer did the actual 14 contract. 15 Q Did you have any input in drafting those? 16 A Other than what our prices would be or things that we 17 were concerned about to protect ourselves from, no. 18 Q So let's jump ahead to what year did you meet Butch? 19 A I think I originally met him around 2007 when he became 20 a client of Royal Vista Equine. 21 Q What did you know about Butch when you first met him or 22 those initial years? 23 A Early on, I didn't know very much about him other than 24 he bred some horses and that was my connection to him 25 that way, was through the breeding side. But that's all</p>	<p style="text-align: right;">Page 20</p> <p>1 I knew, other than he was from South Dakota. 2 Q In high-level terms, can you tell me what the business 3 model is for the Royal Vista Equine? 4 A Uh-huh. Like, services we do? 5 Q Yep. 6 A So it is all assisted reproduction. So we specialize in 7 embryo transfers. At the time, it was embryo transfers, 8 breeding mares, standing stallions, freezing semen. It 9 has changed a little bit since then. But at that time, 10 that's what the focus would have been. 11 Q And so the clients that hire you to assist in high-end 12 breeding of horses; is that fair? 13 A Yes. 14 Q At some point the -- your relationship, Butch being a 15 client, changed. Is that fair? 16 A Yes. 17 Q Can you tell me -- tell us approximately when that was. 18 A It wouldn't have changed until 2013. And that was when 19 my business partner and I were looking to buy a couple 20 broodmares for the business for ourselves. Butch had 21 one in the sale we were interested in, the January sale 22 at Heritage Place. Jake and I ended up buying her. And 23 kind of through a bunch of circumstances, we had a lot 24 of clients that also bought horses and we didn't have 25 enough room on the trailer to bring everything home. We</p>

<p style="text-align: right;">Page 21</p> <p>1 left our own in Oklahoma, and he knew that, so we</p> <p>2 started talking -- he got my number and he just started</p> <p>3 texting me, asking if we had got her home, trying to</p> <p>4 help find a ride for her and that was really just how we</p> <p>5 started talking.</p> <p>6 <b>Q</b> You say "he". You are talking about Butch?</p> <p>7 <b>A</b> Yes. I'm sorry.</p> <p>8 <b>Q</b> Okay. From 2011 to that time in 2013 when you first</p> <p>9 started talking to Butch and your relationship began to</p> <p>10 change, did you -- did your financial position change</p> <p>11 substantially when you became an owner of the business?</p> <p>12 <b>A</b> Substantially, no.</p> <p>13 <b>Q</b> What do you think you were making back then?</p> <p>14 <b>A</b> Probably more along the lines of around 45,000 per year</p> <p>15 would be my guess. We tried to keep as much in the</p> <p>16 business, since it was a young, growing business, as we</p> <p>17 could.</p> <p>18 <b>Q</b> And you didn't have any kids at the time?</p> <p>19 <b>A</b> No.</p> <p>20 <b>THE COURT:</b> Can I interrupt. The 45,000, was that in</p> <p>21 2013 or back when you became an owner?</p> <p>22 <b>THE WITNESS:</b> Back when I became an owner.</p> <p>23 <b>THE COURT:</b> Thank you.</p> <p>24 <b>MR. COLLINS:</b> Thank you, Your Honor.</p> <p>25 <b>Q (BY MR. COLLINS, continuing)</b> In 2013, was that</p>	<p style="text-align: right;">Page 22</p> <p>1 substantially different? Are we still in the same --</p> <p>2 <b>A</b> No, I think it would have been around the same.</p> <p>3 <b>Q</b> You were trying to build the business?</p> <p>4 <b>A</b> Yes.</p> <p>5 <b>Q</b> At some point, did you change the name of the business?</p> <p>6 <b>A</b> When we took over in 2011, it went from Royal Vista</p> <p>7 Equine Incorporated and we changed it to Vista Equine</p> <p>8 Colorado, LLC.</p> <p>9 <b>Q</b> When I talk about the business today, Vista Equine, we</p> <p>10 are talking about that business?</p> <p>11 <b>A</b> The new one, correct.</p> <p>12 <b>Q</b> In approximately 2013, when did you start talking to</p> <p>13 Butch and having what I would say is a relationship?</p> <p>14 <b>A</b> It would have been toward the end of January 2013.</p> <p>15 <b>Q</b> And kind of describe to the Court the courting process</p> <p>16 or things that you did together, where he lived, things</p> <p>17 of that nature.</p> <p>18 <b>A</b> He was living at the homeplace, the ranch in South</p> <p>19 Dakota. I had a place in Eaton, Colorado. And I guess</p> <p>20 the courting process, lots of phone calls and texts. He</p> <p>21 was really good at calling. It is not like today's</p> <p>22 texting. He was more direct. It was -- he was living</p> <p>23 in the calving barn area at the time. There was an</p> <p>24 apartment there. And he would even have to sit in the</p> <p>25 window because there was poor service in the middle of</p>
<p style="text-align: right;">Page 23</p> <p>1 January to talk on the phone. But we would talk a lot</p> <p>2 before work, after work. And then it got to the point</p> <p>3 that there was a bull sale in Nebraska after a couple</p> <p>4 weeks in February.</p> <p>5 <b>THE COURT:</b> Of which year?</p> <p>6 <b>THE WITNESS:</b> 2013.</p> <p>7 <b>THE COURT:</b> Thank you.</p> <p>8 <b>A</b> There was a bull sale that he wanted to go to, since it</p> <p>9 was Nebraska, and he was most of the way down. He asked</p> <p>10 me if I wanted to join him for supper. That was our</p> <p>11 first date, was him waking up at about 2 or 3 in the</p> <p>12 morning to go to a bull sale in Nebraska and then</p> <p>13 driving the rest of the way to Colorado.</p> <p>14 <b>Q</b> And so for clarification purposes, the Court asked the</p> <p>15 question, the prenuptial agreement we are here to talk</p> <p>16 about and wedding was in 2013, correct?</p> <p>17 <b>A</b> Correct.</p> <p>18 <b>Q</b> When we talk today things that occurred, unless we talk</p> <p>19 otherwise, we are talking about the year 2013?</p> <p>20 <b>A</b> Yes.</p> <p>21 <b>Q</b> Did things progress from there?</p> <p>22 <b>A</b> They did. I guess since we had so many similarities and</p> <p>23 we looked at things the same way, we had interest of the</p> <p>24 horses. We had the interest of the racehorses</p> <p>25 specifically. Honestly, both of us had been married</p>	<p style="text-align: right;">Page 24</p> <p>1 before, so we just both knew what we wanted from a</p> <p>2 relationship more and what we looked for in a partner.</p> <p>3 It was always just very easy. So I know it looked</p> <p>4 really fast but things just flowed for us. It never</p> <p>5 felt uncomfortable. We just kind of kept going and</p> <p>6 everything -- we agreed on everything. We looked at</p> <p>7 things the same way. So it was a pretty fast dating</p> <p>8 relationship.</p> <p>9 <b>Q</b> And I never had an opportunity to meet Butch. Can you</p> <p>10 kind of tell the Court what he was kind of like?</p> <p>11 <b>A</b> I think how I looked at him was different than maybe how</p> <p>12 other people looked at him. He was a very -- he was a</p> <p>13 presence. You knew when he was in the room. He was</p> <p>14 very smart, very savvy. He could read somebody in an</p> <p>15 instant. He just seemed to know everything. He is</p> <p>16 probably one of the smartest people that I knew. Very</p> <p>17 confident, very sure of himself. I saw a softer side of</p> <p>18 him. I know a lot of people would have said he was more</p> <p>19 of a bull. I guess I didn't see that as much. He was</p> <p>20 softer when I was around. But he was a heck of a</p> <p>21 businessman. He knew what he was doing. He wasn't</p> <p>22 scared to take a risk. He was brilliant.</p> <p>23 <b>Q</b> So when you initially were dating in early 2013, did he</p> <p>24 talk a lot about his business or his ranch or his</p> <p>25 holdings to you?</p>

<p style="text-align: right;">Page 25</p> <p>1 A Like in a broad sense, yes. So I knew of his 2 businesses, and I knew, like, of the lending things that 3 he did. I know of the cattle ranch and obviously of the 4 horses, but not down to specifics. I think everything 5 was more broad. It wasn't things that I asked and 6 nitpicked about details. So I guess I had a general 7 understanding. 8 Q Would it be fair to say he was kind of private about 9 some of those things? 10 A Yeah, yeah. He was private with everybody. 11 Q He didn't like to talk about his money or his holdings 12 and things of that nature? 13 A No. Everybody was on a need-to-know basis. His family 14 members, even his lawyers, they were on a need-to-know 15 basis with him. 16 Q And, you know, while you guys were dating and this was 17 getting more serious, did you have concerns about the 18 age difference? 19 A I didn't. I know what it looked like. But, like I said 20 earlier, just because we were so similar and we were 21 just so sure of each other, it just wasn't a factor with 22 us. Us, I guess, as a couple, but we knew people looked 23 at us in a certain way. But as some of those people, 24 especially like in our industry, as they got to see us 25 as a couple and knew what we were like, then it just</p>	<p style="text-align: right;">Page 26</p> <p>1 didn't even become a factor with them. They knew it was 2 a genuine relationship. 3 Q What was the age difference? 4 A 28 years. 5 Q Did it make you more conscientious about things in any 6 way? 7 A Yes. I was very gun-shy at the gold digger image. I 8 probably was hypersensitive about not asking things 9 about money or what he had or things like that. I 10 always tried to avoid things like that to, I guess, be 11 hypersensitive about playing into that role in any 12 degree. 13 Q At some point did you travel and meet his family? 14 A Yes. 15 Q Do you remember approximately when that was? 16 A It would have been the spring of 2013. 17 Q Okay. And did you come to South Dakota? 18 A I had known some of his kids from prior, but we did a 19 trip to Disneyland in California that spring because it 20 was Kenna's birthday. That, at the time, was his 21 youngest daughter. He wanted to do a trip for her and 22 it just kind of morphed into this idea of that being a 23 way to meet the whole family. So it went just from, 24 like, her and Kailee to her and all the kids and then it 25 was, well, we are just going to bring everybody. It was</p>
<p style="text-align: right;">Page 27</p> <p>1 the kids and their spouses and grandkids and the whole 2 thing. 3 Q How did that go? 4 A I thought it went well but awkward. I thought I got 5 along well with Kenna once she opened up a little bit. 6 But I knew it was going to be awkward. I mean, it was, 7 I guess, a chance to have them hopefully see that I was 8 genuine and interested in him and that our age 9 difference didn't bother us and that they could at least 10 just start to get the chance to know me. 11 Obviously, it was not going to be something that 12 was going to make everybody love me overnight. Like, I 13 didn't go into that with false pretenses. But 14 unfortunately now after the fact, I think maybe it was 15 sold to some of the kids as maybe a different idea for 16 the trip. I think it unfortunately caught some of them 17 off guard. But I only went into it with the 18 expectations of them hoping to get to know me and us as 19 a couple. So it was just a stepping stone. 20 Q Did you travel to South Dakota, his properties? 21 A Yes. 22 Q Is that in the spring of 2013 also? 23 A Yes. 24 Q Who was living in the homeplace? 25 A The homeplace would have been Sue, Kenna and Kailee.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q Is that why Butch was living, I think you said, in some 2 apartment? 3 A Yeah. There was a cabin barn apartment in one of the 4 barns. He started there and then kind of went to what 5 we call the west place house, kind of go back and forth. 6 Q And Sue is who? 7 A Kailee and Kenna's mom. 8 Q Were she and Butch married? 9 A They were not married, no. 10 Q In your trip to South Dakota, at some point in the 11 spring of 2013, did you have a chance to meet the 12 Bogues, the attorneys? 13 A Yes. 14 Q Do you remember where that was? 15 A I get foggy on where it was. We ended up having 16 meetings, not meetings, dinners, casual, friendly-type 17 things. I want to say that the first time I met Cheryl 18 was actually in Colorado Springs, which I know sounds 19 strange but she had a connection there with her son 20 being in the Air Force Academy. So I really think that 21 that was the first place I met her. I don't remember 22 the first time I met Eric but I think that had to be in 23 South Dakota. 24 Q And that would have been at a dinner with the Bogues and 25 Butch?</p>



<p style="text-align: right;">Page 29</p> <p>1 A Yeah. Everything was always more of a friendly basis.</p> <p>2 Q So was it your impression that Butch was friends with</p> <p>3 Eric and Cheryl Bogue?</p> <p>4 A Yes.</p> <p>5 Q So not only that they were the attorneys, he was</p> <p>6 friendly, have dinners with them?</p> <p>7 A Yes.</p> <p>8 Q At some point you were involved in some of those?</p> <p>9 A Yes.</p> <p>10 Q Okay. So let's fast-forward. At some point you became</p> <p>11 engaged?</p> <p>12 A Yes.</p> <p>13 Q Do you know when that was?</p> <p>14 A In May of 2013.</p> <p>15 Q Was it unexpected or had the relationship been leading</p> <p>16 to that?</p> <p>17 A Both. It was definitely leading in that direction but</p> <p>18 he definitely surprised me with the engagement. I</p> <p>19 didn't know it was coming then or necessarily that</p> <p>20 quick, but I knew that's the direction we were headed.</p> <p>21 Q Did you instantly start talking about marriage plans or</p> <p>22 was it – what was your recollection of what the</p> <p>23 discussion after engagement was?</p> <p>24 A I don't remember exactly when we started talking about</p> <p>25 marriage plans. It would have been early that summer.</p>	<p style="text-align: right;">Page 30</p> <p>1 I don't remember exact time frame.</p> <p>2 Q Let's – there's an important event that we will be</p> <p>3 talking about that happens in May of 2013 which is the</p> <p>4 purchase of Colorado property.</p> <p>5 A Yes.</p> <p>6 Q Prior to the purchase of that property, you indicated</p> <p>7 that Butch was private with his business stuff, kind of</p> <p>8 on a need-to-know basis. Had he shared with you or were</p> <p>9 you aware of his litigation in several jurisdictions</p> <p>10 over his payday loan businesses?</p> <p>11 A I knew of the lawsuits. I didn't know exactly what or</p> <p>12 why, but I know there was a lot of lawsuits, or at least</p> <p>13 there was some initial ones and then it could turn into</p> <p>14 a lot of them because it turned out it was starting to</p> <p>15 come in on a state-by-state basis. But, yeah, I knew it</p> <p>16 was not good and looking like it could be detrimental to</p> <p>17 that company.</p> <p>18 Q Was Butch worried about that, in your opinion?</p> <p>19 A Yes.</p> <p>20 Q What it could do financially to him?</p> <p>21 A Yes.</p> <p>22 Q So in 2013, tell me about how it came to be that there</p> <p>23 was a two-million-dollar property purchased?</p> <p>24 A I guess it was two-fold. There was always the want for</p> <p>25 us to have a place in Colorado because I wasn't ready to</p>
<p style="text-align: right;">Page 31</p> <p>1 move to South Dakota. So we wanted some form of a</p> <p>2 family place, place where he felt more comfortable. I</p> <p>3 had a small house on an acre, and he is obviously used</p> <p>4 to a lot more wide-open spaces. He didn't like to be</p> <p>5 close to town, so he wanted something to be more</p> <p>6 comfortable with. We needed a family home; something</p> <p>7 where we could start together. But then it was always</p> <p>8 with the caveat that there is a chance that he could</p> <p>9 lose everything in South Dakota and that that would all</p> <p>10 be gone and he would need a place to go to, our family</p> <p>11 would need a place to go to.</p> <p>12 Q Did you find a place?</p> <p>13 A Yes.</p> <p>14 Q And so when he purchased the place, he purchased it</p> <p>15 in – it was titled in your name, correct?</p> <p>16 A Yes, that's correct.</p> <p>17 Q Did you understand why it was titled in your name?</p> <p>18 A Because of those lawsuits and if those went bad and he</p> <p>19 did lose everything, that they couldn't go after that</p> <p>20 property and that we would still have a place to live.</p> <p>21 Q So in your opinion, it just wasn't here's a gift of a</p> <p>22 house. It was, this is a place to protect us if things</p> <p>23 go bad?</p> <p>24 A Right.</p> <p>25 Q So the house was purchased for both of you?</p>	<p style="text-align: right;">Page 32</p> <p>1 A Correct.</p> <p>2 Q So take me through summer of 2013. I think you</p> <p>3 indicated the next kind of relevant issue for the Court</p> <p>4 to hear about was discussions about planning a wedding.</p> <p>5 Is that fair?</p> <p>6 A Yeah.</p> <p>7 Q What plans did you have or what did you guys decide on?</p> <p>8 A We knew that we wanted a destination wedding, just to</p> <p>9 try and keep it small, as far as the number of people</p> <p>10 that attended. We just wanted to try and keep it really</p> <p>11 close knit. Family and closest friends is all we really</p> <p>12 wanted to be involved. So my dream place to go to was</p> <p>13 always Italy and so he said if that's your dream place</p> <p>14 to go to, then that's where we are getting married. I</p> <p>15 hadn't ever been anywhere outside the country. So I</p> <p>16 didn't know how to start going about planning something</p> <p>17 like that. We did hire a travel agent that was a client</p> <p>18 of mine. And she helped, thankfully, kind of piece most</p> <p>19 of that together. So she is the one that came up with</p> <p>20 the location to go to and coordinated travel and things</p> <p>21 like that for us.</p> <p>22 Q What were your living arrangements back in the summer of</p> <p>23 2013 after you purchased the house. Is Butch full time</p> <p>24 in Colorado or is he going back and forth?</p> <p>25 A He was still going back and forth.</p>

<p style="text-align: right;">Page 33</p> <p>1 Q How often would he be in Colorado versus South Dakota?</p> <p>2 A It would depend on the time of year and what he had</p> <p>3 going on. But he always made a really big effort to</p> <p>4 probably be down there at least once to twice a month.</p> <p>5 Yeah, I mean, he spent a lot of time on the road. He</p> <p>6 was back and forth a lot, so he made a big effort.</p> <p>7 Q Once or twice a month when he would come, how many days</p> <p>8 would he stay in Colorado?</p> <p>9 A Sometimes it could be just a day or two. Depending on</p> <p>10 what we had going on, it could be a couple weeks.</p> <p>11 Sometimes he would tie his trip to Colorado to then we</p> <p>12 could go to a sale in Oklahoma, something like that. So</p> <p>13 it wouldn't necessarily just be a hundred percent</p> <p>14 dedicated time in Colorado. But he still had a lot of</p> <p>15 traveling that he did even outside of just coming to see</p> <p>16 me or then me and the kids.</p> <p>17 Q You didn't have kids at that point.</p> <p>18 A At that point, no.</p> <p>19 Q And that's the hard part about this hearing today. We</p> <p>20 have to try and confine it to 2013.</p> <p>21 A Okay.</p> <p>22 Q How often in 2013 were you traveling to South Dakota?</p> <p>23 A In '13, more. I was probably up there probably</p> <p>24 somewhere between four and six times during that year.</p> <p>25 Q Prior to the marriage?</p>	<p style="text-align: right;">Page 34</p> <p>1 A Yes, prior.</p> <p>2 Q And what would you do when you would go to South Dakota?</p> <p>3 A I guess it would depend. I would tag along if he had</p> <p>4 ranch things, working calves that they would need to do.</p> <p>5 I wasn't experienced in that at the time. But I liked</p> <p>6 to try and help out where I could. So I went with him</p> <p>7 on some of those trips. Selling calves, but I guess</p> <p>8 usually it was more spending time, just closer around</p> <p>9 the ranch. Visit with Eric and Cheryl if they were</p> <p>10 available for dinner, something like that. But we</p> <p>11 weren't, like, go out on the town people by any means.</p> <p>12 We would always be homebodies.</p> <p>13 Q Did you spend more time with his family?</p> <p>14 A At that time, probably not.</p> <p>15 Q Let's jump to kind of September, I think, is the next</p> <p>16 time when there's a significant issue that arises. Can</p> <p>17 you tell me what happened in 2013 with regards to your</p> <p>18 wedding?</p> <p>19 A In September, you're talking about?</p> <p>20 Q Yes.</p> <p>21 A So throughout the wedding planning, the intention was</p> <p>22 always that we would actually get legally married in the</p> <p>23 country we were going to, which we were talking about</p> <p>24 Italy. We didn't like the idea of a legal marriage and</p> <p>25 then just a ceremonial thing. It was very much supposed</p>
<p style="text-align: right;">Page 35</p> <p>1 to be one thing.</p> <p>2 Q Let me stop you there. Did you eventually settle on a</p> <p>3 date for your wedding in Italy?</p> <p>4 A Yes.</p> <p>5 Q And when was that?</p> <p>6 A In Italy, it was November 12th.</p> <p>7 Q Okay. And so go ahead, back in September you had set</p> <p>8 the date and tell us what happened.</p> <p>9 A Yeah. So the date has been set and then we discover</p> <p>10 from the travel agent that the laws in Italy changed and</p> <p>11 since it is predominantly a Catholic country, and we</p> <p>12 weren't Catholic, there was always loops we were going</p> <p>13 to have to jump through, hoops we would have to jump</p> <p>14 through, but they always seemed doable. And then</p> <p>15 sometime in August or September, and we found out in</p> <p>16 September, they changed the laws and there was documents</p> <p>17 that needed to be filed and it would have had to have</p> <p>18 been around six months prior to the wedding date. And I</p> <p>19 guess through those technicalities, it basically became</p> <p>20 evident there is no way we would be able to get legally</p> <p>21 married in Italy. We did entertain the idea of</p> <p>22 switching countries. But I didn't realize it, but</p> <p>23 apparently it is really next to impossible to get</p> <p>24 married outside of the country unless you go through</p> <p>25 extra steps, potentially spend a lot of time in the</p>	<p style="text-align: right;">Page 36</p> <p>1 country before you even get married. So it just really</p> <p>2 became where it wasn't possible.</p> <p>3 Q So what did you and Butch decide to do?</p> <p>4 A Decided to do a legal mock ceremony, I guess you would</p> <p>5 say, improvised ceremony in the States and then do -- I</p> <p>6 guess it is technically a ceremonial wedding in Italy,</p> <p>7 but to us it was still very much the wedding.</p> <p>8 Q Okay. So when you were having discussions about this</p> <p>9 legal wedding in the States, did you want to make a big</p> <p>10 deal out of it? What were you kind of envisioning?</p> <p>11 A No, still wanted it to be very improvised. We wanted to</p> <p>12 be more than just, like, signing paperwork at a counter,</p> <p>13 but I didn't want it to feel like a wedding. We didn't</p> <p>14 want to take you way from what we were doing in Italy</p> <p>15 and what the point of that was. So I guess we wanted to</p> <p>16 keep it very small, very private. Secretive is maybe</p> <p>17 not a nice word, but really it was pretty secretive. It</p> <p>18 is just not what we wanted to be the wedding. It was</p> <p>19 just kind of what we were pushed into or forced into.</p> <p>20 Q Did you immediately upon learning you couldn't go there</p> <p>21 and making that decision, set a date, make a plan?</p> <p>22 A No. I don't remember when the October date came about.</p> <p>23 We were really busy that time of year. I don't remember</p> <p>24 when that came about.</p> <p>25 Q Let me ask this question, kind of to lead into this.</p>

<p style="text-align: right;">Page 37</p> <p>1 After you are engaged and having discussions about the</p> <p>2 marriage and stuff, at what point did the idea of a</p> <p>3 prenuptial agreement come up?</p> <p>4 A I don't remember exactly when it came up. It would have</p> <p>5 been shortly before that October wedding, but I don't</p> <p>6 remember exactly when.</p> <p>7 Q Can you recall what the conversation or the context of</p> <p>8 the conversation with Butch was about a prenuptial</p> <p>9 agreement and the reason it was needed.</p> <p>10 Q It was very brief. It was really kind of, I think, he</p> <p>11 almost brushed it off a little bit to not have it seem</p> <p>12 like it was a big deal. But he just said this is</p> <p>13 something we need to do to protect your assets and what</p> <p>14 we have together in Colorado, that it is really to</p> <p>15 protect the house for a place for us to live. It was</p> <p>16 just protection is all that it was presented to me as.</p> <p>17 Q Okay. Was there a conversation that he wants to keep</p> <p>18 the ranch separate in South Dakota for the kids or</p> <p>19 anything of that nature?</p> <p>20 A No.</p> <p>21 Q So your conversations with Butch were more about, in</p> <p>22 recognition of the lawsuit, we need to protect this</p> <p>23 piece of property?</p> <p>24 A Yeah. That was the only way it was presented to me was</p> <p>25 sheer protection from the lawsuits.</p>	<p style="text-align: right;">Page 38</p> <p>1 Q And, you know, what was your understanding of the</p> <p>2 purpose of the prenuptial agreement?</p> <p>3 A If we were to get divorced, it would tell me how things</p> <p>4 were to be split up, if we got divorced.</p> <p>5 Q Okay. And were you okay with that, upon divorce, that</p> <p>6 the assets would be controlled by the terms of the</p> <p>7 prenuptial agreement?</p> <p>8 A Yeah. I was fine with that. We just really – divorce</p> <p>9 wasn't in our future.</p> <p>10 Q In your conversations with him, was there ever any</p> <p>11 conversation leading up to when the prenup was actually</p> <p>12 done, discussions about that it would also potentially</p> <p>13 preclude you from receiving anything from his estate if</p> <p>14 he should pass away?</p> <p>15 A That was in the prenup?</p> <p>16 Q That was part of the prenup and that was why the prenup</p> <p>17 was being signed?</p> <p>18 A No.</p> <p>19 Q Let's talk about early October 2013, a fairly</p> <p>20 significant event happens in South Dakota. What was</p> <p>21 that?</p> <p>22 A The Atlas blizzard.</p> <p>23 Q Where were you and Butch when Atlas hit?</p> <p>24 A We were in a sale in Los Alamitos, California, when that</p> <p>25 hit.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q Do you know the approximate date that Atlas hit?</p> <p>2 A I don't remember. It would have been in that first</p> <p>3 week, first few days, I believe.</p> <p>4 Q I think it was October 3rd.</p> <p>5 A Okay.</p> <p>6 Q 2013. What did you guys do at that point?</p> <p>7 A He was desperate to get back. That feeling of being</p> <p>8 completely helpless and wanting to help but it was</p> <p>9 impossible to get back. Even if he wanted to, there was</p> <p>10 no way to get in, get to the ranch. So everything there</p> <p>11 to be taken care of was left on the crew who was there.</p> <p>12 So we made our way back to Colorado when the sale was</p> <p>13 over, and then I think he immediately left. I don't</p> <p>14 remember exactly but I'm sure he basically immediately</p> <p>15 left and went to South Dakota to try and dig out and</p> <p>16 see -- try and recover.</p> <p>17 Q Was his ranch significantly impacted by Atlas?</p> <p>18 A Yes.</p> <p>19 Q Cattle loss, significant cattle loss?</p> <p>20 A Yeah, yeah. Cattle loss, the fences, buildings damaged.</p> <p>21 I mean, it was terrible for everybody.</p> <p>22 Q Do you remember at that point when you were in</p> <p>23 California and Atlas hit that if you had picked a date</p> <p>24 for your wedding at that point?</p> <p>25 A I don't recall.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q Do you remember if you picked a place?</p> <p>2 A No, I don't recall that.</p> <p>3 Q So as you sit here today, you are not sure if you had</p> <p>4 set a place for the wedding?</p> <p>5 A For the legal wedding, that's what you are talking</p> <p>6 about? No, I don't know that it was really set or</p> <p>7 planned at that point.</p> <p>8 Q This was really in flux?</p> <p>9 A Yes.</p> <p>10 Q And you indicated that you weren't making a big deal out</p> <p>11 of it, just something that had to get done before you</p> <p>12 went to Italy?</p> <p>13 A Right. It had to fit in somewhere. We were very busy</p> <p>14 and then this whole thing, you get blindsided by this</p> <p>15 blizzard that makes everything that needed to be done,</p> <p>16 and was going to be a tight time constraint anyways, a</p> <p>17 thousand times worse.</p> <p>18 Q And so when you got back in early October, did you stay</p> <p>19 in Colorado?</p> <p>20 A Yes.</p> <p>21 Q And Butch came to South Dakota?</p> <p>22 A Correct.</p> <p>23 Q And then it appears, because the wedding was October 11,</p> <p>24 at some point you guys discussed or set a date?</p> <p>25 A Yes.</p>

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1 Q And tell me what you recall about that?

2 A I don't recall a whole lot other than Butch had it

3 pretty well planned and set up for us, thankfully. He

4 arranged all of it. I mean, he knows the people; he

5 knows the places. That was really something he did.

6 His schedule was much more constraining than mine was.

7 I kind of followed suit with him. So he had a day or

8 small window where he could make this work. He knew

9 where to get the marriage license up here. He knew the

10 people that could be witnesses, our friends, and he had

11 a pastor that he really thought a lot of. So everything

12 really just kind of fell into place, but thankfully more

13 through his connections.

14 Q And that place, those friends were the Bogues?

15 A Correct.

16 Q It was determined you would get married at their office?

17 A Yes.

18 Q You must have, again, had a conversation about the

19 prenup and it would be coming or something of that

20 nature. Do you recall that?

21 A I think trying to pull back in memory, I really feel

22 like it was brought up one single time. And then

23 knowing that this date is coming up, it came in email.

24 But I do not remember discussions or specifics about it

25 at all. It was just kind of a non-factor.

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1 rather than the whole thing, then I will just wait to

2 make any objection as to a particular exhibit. I have

3 no objection.

4 THE COURT: I think that is a clearer record. Exhibit

5 No. 1 will be received. Mr. Chicoine to you first?

6 MR. CHICONE: No objection to Exhibit 1.

7 THE COURT: 1 is received.

8 Q (BY MR. COLLINS, continuing) In front of you is Exhibit

9 1. You mentioned an email that you received where the

10 agreement was sent to you. Is that what you testified

11 to?

12 A I'm sorry, can you repeat that?

13 Q Sure. You just testified that the prenuptial agreement

14 was sent to you in an email. Is this the email chain

15 that you were talking about?

16 A Yes, that's correct.

17 Q There's been some conversations and briefing, things of

18 this nature, how you found this email. I will ask you

19 about how this email was located.

20 Originally in this case, we were trying to get you

21 appointed as PR, correct?

22 A That's correct.

23 Q And there was not any discussions at that time – was

24 there any discussions that you recall about you

25 receiving an elective share or anything like that?

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1 Q I will have you open the binder in front of you to

2 Exhibit 1.

3 MR. COLLINS: And for the record, Your Honor, we may

4 want all the attorneys to agree to this, but Mr. Nies

5 and myself have agreed to the exhibits that you were

6 provided and to the witness that those would be

7 admitted, stipulated to foundation and admissible.

8 THE COURT: Thank you. Mr. Nies?

9 MR. NIES: Yes, Your Honor.

10 THE COURT: Mr. Rumpca?

11 MR. RUMPCA: Yes, Your Honor, no objection.

12 THE COURT: I don't know that –

13 MS. COOK: No objection, Your Honor.

14 THE COURT: Mr. Morris?

15 MR. MORRIS: Your Honor, the only concern I have is –

16 what is the will?

17 MR. NIES: I'm not going to offer that. So –

18 MR. COLLINS: Exhibit 4.

19 MR. MORRIS: He is offering?

20 MR. NIES: He put it in because I wanted it. I don't

21 think Jeff is planning on offering it.

22 MR. MORRIS: Okay.

23 MR. NIES: I wasn't sure but I'm not so that is not

24 going to come in.

25 MR. MORRIS: Your Honor, if we can offer each exhibit

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1 A At that time, early on, no.

2 Q Do you recall when the issue of the prenup came about in

3 this case?

4 A It was in a discussion with you on the phone, I believe

5 all the lawyers had had –

6 Q All lawyers talk. Don't talk about what we talked

7 about.

8 A Okay.

9 Q You learned that there was an issue for a prenuptial

10 agreement from Cheryl Bogue?

11 A Yes, in something that she stated. So I corrected her

12 statement to you and I think I could hear your jaw hit

13 the floor. You said that there's a prenup and I

14 confirmed that there was and sent it to you.

15 Q So you had a copy of the actual document or is this

16 where you found it?

17 A This is where I had to find it. I didn't have a copy of

18 it. But I was sure I could find something in email so I

19 just did a search in my email.

20 Q So you put in search terms to your email to locate a

21 prenup or what other terms would you put in there?

22 A I think I would have either put prenup or Bogue just to

23 be as general as possible.

24 Q And you located this email chain where?

25 A In the sent items, I think, is where it came up in.

<p style="text-align: right;">Page 45</p> <p>1 But, yeah, it was just in that – those search results.</p> <p>2 <b>Q</b> And your sent items, would you have routinely went into</p> <p>3 sent items and deleted those?</p> <p>4 <b>A</b> No.</p> <p>5 <b>Q</b> So you located this and provided it?</p> <p>6 <b>A</b> Correct.</p> <p>7 <b>Q</b> Let's talk about this email a little bit. Understanding</p> <p>8 you are not the drafter of all of it, only portions of</p> <p>9 it, at the bottom it appears there is email exchange</p> <p>10 between Eric Bogue, Cheryl Bogue and Butch; is that</p> <p>11 correct?</p> <p>12 <b>A</b> Yes.</p> <p>13 <b>Q</b> And this is in reference to the prenuptial agreement?</p> <p>14 <b>A</b> Correct.</p> <p>15 <b>Q</b> They can talk about what they are talking about here,</p> <p>16 but it looks like they are talking about the asset</p> <p>17 disclosure portion?</p> <p>18 <b>A</b> I believe so, yes.</p> <p>19 <b>Q</b> Were you told that you would have to provide your assets</p> <p>20 as part of the prenu?</p> <p>21 <b>A</b> I don't remember that specifically. I know Butch would</p> <p>22 have asked me for it but I don't remember that</p> <p>23 conversation.</p> <p>24 <b>Q</b> Was Butch aware of what you had?</p> <p>25 <b>A</b> Pretty well, yes.</p>	<p style="text-align: right;">Page 46</p> <p>1 <b>Q</b> Prior to seeing this document on October 10th, 2013.</p> <p>2 <b>MR. COLLINS:</b> And for the Court's verification, the top</p> <p>3 email address should be ignored. It is in our office,</p> <p>4 when we forwarded the email, it gets saved, it will save</p> <p>5 that exchange.</p> <p>6 <b>THE COURT:</b> Thank you.</p> <p>7 <b>Q (BY MR. COLLINS, continuing)</b> Prior to this, did you ever</p> <p>8 have a conversation or meeting with Eric Bogue to</p> <p>9 discuss the prenuptial and what was going in it?</p> <p>10 <b>A</b> No, I did not.</p> <p>11 <b>Q</b> And so if you look at the email from the Bogues to</p> <p>12 Butch, it then asks, are you going to send it to</p> <p>13 Stephanie or do you want us to. Is that what it says at</p> <p>14 the second page?</p> <p>15 <b>A</b> Second page?</p> <p>16 <b>Q</b> Yes, at the top.</p> <p>17 <b>A</b> Yes, that's correct.</p> <p>18 <b>Q</b> And then it was sent at what time from Butch to you?</p> <p>19 <b>A</b> 4:40 p.m. on October 10th.</p> <p>20 <b>Q</b> 2013?</p> <p>21 <b>A</b> Yes.</p> <p>22 <b>Q</b> And he sends a little note and says –</p> <p>23 <b>A</b> I love you.</p> <p>24 <b>Q</b> And so you send a responsive email which is why it was</p> <p>25 in your sent emails; correct?</p>
<p style="text-align: right;">Page 47</p> <p>1 <b>A</b> Correct.</p> <p>2 <b>Q</b> And can you read what your response was?</p> <p>3 <b>A</b> I said, Will you resend in English. Lawyer jargon is</p> <p>4 the quickest way for me to feel completely inept. I</p> <p>5 really don't understand most of these points.</p> <p>6 <b>Q</b> Okay. So you had read the agreement, do you believe, at</p> <p>7 that point?</p> <p>8 <b>A</b> I think I tried to read it and I didn't understand it.</p> <p>9 <b>Q</b> Okay. But and you made that clear in your response,</p> <p>10 correct?</p> <p>11 <b>A</b> Yes.</p> <p>12 <b>MR. RUMPCA:</b> Your Honor, I will just note, I believe the</p> <p>13 response was significantly longer than just what was</p> <p>14 read.</p> <p>15 <b>MR. COLLINS:</b> I will ask some more questions.</p> <p>16 <b>MR. RUMPCA:</b> Thank you.</p> <p>17 <b>Q (BY MR. COLLINS, continuing)</b> Then you indicated there's</p> <p>18 a next line, there's a few things to correct?</p> <p>19 <b>A</b> Yes.</p> <p>20 <b>Q</b> And that was on your financial statement?</p> <p>21 <b>A</b> Yes, that's correct.</p> <p>22 <b>Q</b> In October 10th of 2013, did you know what percentage of</p> <p>23 ownership you had in Visa Land &amp; Cattle, LLC?</p> <p>24 <b>A</b> I did know?</p> <p>25 <b>Q</b> Yes.</p>	<p style="text-align: right;">Page 48</p> <p>1 <b>A</b> Yes.</p> <p>2 <b>Q</b> Did you know what percentage you had in Vista Equine</p> <p>3 Colorado?</p> <p>4 <b>A</b> Yes.</p> <p>5 <b>Q</b> So if the original draft you had the wrong percentages,</p> <p>6 what do you think happened there?</p> <p>7 <b>A</b> That Butch relayed that information to Eric, not me.</p> <p>8 <b>Q</b> So Butch was providing the information about your</p> <p>9 financial disclosures to Eric is your belief?</p> <p>10 <b>A</b> Yes.</p> <p>11 <b>Q</b> And Vista Equine Colorado, that's a business that you</p> <p>12 acquired in 2011, an interest in?</p> <p>13 <b>A</b> Vista Equine Colorado is, yes.</p> <p>14 <b>Q</b> What is Visa Land &amp; Cattle, LLC?</p> <p>15 <b>A</b> Kind of a nothing entity. It was really just used as</p> <p>16 the name that real estate was purchased under. And that</p> <p>17 was on the advice of our accountant. I don't really</p> <p>18 know why she wanted it done that way. That's the only</p> <p>19 thing that was ever in that.</p> <p>20 <b>Q</b> So is the land that your business operates on, is that</p> <p>21 owned by Visa Land &amp; Cattle, LLC?</p> <p>22 <b>A</b> No. That gets a little confusing. Where the business</p> <p>23 operates is actually leased from the previous owners.</p> <p>24 We don't own any of that. The real estate that this is</p> <p>25 referencing is a property that Jake and I purchased in</p>



<p style="text-align: right;">Page 49</p> <p>1 Greeley and where he resides.</p> <p>2 Q And does that entity still own that land?</p> <p>3 A Yes.</p> <p>4 Q And then you asked some additional questions; correct?</p> <p>5 A Yes.</p> <p>6 Q What are those questions?</p> <p>7 A I asked, What about checking, savings, 401(k), does that</p> <p>8 need to be included? My personal horses are in my</p> <p>9 personal name and not a ranch name, what about them.</p> <p>10 Q Go ahead and finish.</p> <p>11 A And then it says, I can't think of anything else right</p> <p>12 now. I love you.</p> <p>13 Q And so when you were making that -- when you are saying,</p> <p>14 what about checking, savings, 401(k), are you talking</p> <p>15 about your statement or are you asking where is your</p> <p>16 information on your statement with Butch?</p> <p>17 A I'm asking if I need to provide mine because he has</p> <p>18 obviously asked me for assets or some sort of reporting</p> <p>19 and I'm trying to be as thorough as I can, and I</p> <p>20 honestly just don't know what to include.</p> <p>21 Q Okay. To your recollection, based on this email, is</p> <p>22 this the first time you have seen the prenuptial</p> <p>23 agreement?</p> <p>24 A Yes, that's the first time.</p> <p>25 Q Do you recall if Butch -- let me ask this question. Do</p>	<p style="text-align: right;">Page 50</p> <p>1 you know where Butch was when he sent this or what was</p> <p>2 going on at that time?</p> <p>3 A So at this time would have probably still been some form</p> <p>4 of recovery from the blizzard. I don't know</p> <p>5 specifically what he was doing but he would have been in</p> <p>6 South Dakota.</p> <p>7 Q Since you were going to travel together back to</p> <p>8 Colorado, potentially was he on the road to pick you up?</p> <p>9 A Could have been. I don't exactly remember when he got</p> <p>10 there.</p> <p>11 Q Sometime in this frame of that evening, that day of</p> <p>12 October 10th, Butch was driving to Colorado to pick you</p> <p>13 up?</p> <p>14 A Yeah. It would have been sometime in this general time</p> <p>15 frame, yes.</p> <p>16 Q So did you have -- do you recall specific conversations</p> <p>17 you would have had about Butch in response to this or</p> <p>18 about the prenup or things of that nature, that evening,</p> <p>19 the next morning, the drive up?</p> <p>20 A Conversations, no. I mean this email was just</p> <p>21 corrections. No other discussions.</p> <p>22 Q Did you ask questions to him that you recall about the</p> <p>23 prenup?</p> <p>24 A Not that I recall, no.</p> <p>25 Q Again, what was your understanding of why Butch wanted</p>
<p style="text-align: right;">Page 51</p> <p>1 to do this?</p> <p>2 A To protect what was in Colorado and if those lawsuits</p> <p>3 went bad.</p> <p>4 Q So let's turn to October 11th, 2013, what happens that</p> <p>5 morning?</p> <p>6 A I don't remember the details of the morning but at some</p> <p>7 point we get on the road to go to South Dakota.</p> <p>8 Q Okay. And why were you going to South Dakota?</p> <p>9 A To get married, get marriage license and get married.</p> <p>10 Q So did you tell a bunch of people, hey, we are traveling</p> <p>11 to South Dakota to get married?</p> <p>12 A No. Before we left, I don't think anybody knew. At</p> <p>13 some point along the way, I was feeling guilty, feeling</p> <p>14 like we were being -- it was intentionally secretive but</p> <p>15 I didn't like being secretive, especially to my family.</p> <p>16 We are very close and so I did talk to him about, if it</p> <p>17 was okay if I brought -- told them that we were getting</p> <p>18 legally married so they didn't feel completely excluded</p> <p>19 from that. So it was sometime along the drive that I</p> <p>20 texted my parents and my sister to let them know that</p> <p>21 that's what we were doing.</p> <p>22 Q And you kept it secret not to deceive people, but it was</p> <p>23 secret because of the planned big ceremony in Italy.</p> <p>24 You wanted that to be --</p> <p>25 A It is just not how we wanted it to go. We didn't want</p>	<p style="text-align: right;">Page 52</p> <p>1 that to be the wedding. It wasn't really supposed to be</p> <p>2 how it was -- how it went.</p> <p>3 Q So which date did you and Butch celebrate as your</p> <p>4 anniversary?</p> <p>5 A We celebrated in November on the 12th.</p> <p>6 MR. COLLINS: This is probably an okay time, Your Honor,</p> <p>7 if we want to take a quick break.</p> <p>8 THE COURT: Sure. We will take a 15-minute recess.</p> <p>9 (A brief recess was taken 10:09 a.m. and the</p> <p>10 hearing resumed at 10:26 a.m.)</p> <p>11 THE COURT: Mr. Collins, you may proceed.</p> <p>12 MR. COLLINS: Thank you, Your Honor.</p> <p>13 Q (BY MR. COLLINS, continuing) Stephanie, let's fill in a</p> <p>14 few holes here. We were on the road from Colorado to</p> <p>15 South Dakota for your wedding but want to back up and</p> <p>16 ask a couple follow-up questions to some previous</p> <p>17 answers you had. So you had indicated that Butch was</p> <p>18 one of the smartest people you met. Is that your</p> <p>19 testimony?</p> <p>20 A Yes.</p> <p>21 Q Did you talk to Butch? Did he advise you on business</p> <p>22 stuff?</p> <p>23 A Oh, yes, many times.</p> <p>24 Q Did you trust and rely on him?</p> <p>25 A Hundred percent.</p>

<p style="text-align: right;">Page 53</p> <p>1 Q When he asked questions or said we need to do the prenup 2 to protect the property in Colorado, did you question 3 that? 4 A No. I always took his guidance on stuff like that. He 5 was a lot more experienced than I was. Honestly, he's 6 smarter than I was. He was just really savvy that way. 7 He knew those things. I just followed his lead. 8 Q When you purchased the property in Colorado in May of 9 2013 and put it in your name as a way to try to protect 10 assets, did you go out and independently verify with an 11 attorney that you would actually own that or anything 12 like that? 13 A No, just what he told me. 14 Q You trusted him? 15 A Yes. 16 Q And likewise, when this prenuptial agreement is – when 17 you saw that and had questions about it that night, you 18 responded to Butch, correct? 19 A Correct. 20 Q Did you call the Bogues? 21 A No. 22 Q Did you trust and rely that Butch would relay that 23 information to the Bogues? 24 A Yes. I mean, I completely trusted him. I trust the 25 Bogues. I think they were – I think they had my best</p>	<p style="text-align: right;">Page 54</p> <p>1 interests in mind too. They were friends and I think 2 they were there to help both of us. 3 Q Your understanding, this is being done to help protect 4 that property in Colorado for both of you? 5 A Yes. 6 Q So at 8 o'clock at night between the time you got that 7 at 4:40 and whenever you may have read it and responded 8 at 8:20, did you have an opportunity to go seek 9 independent legal advice? 10 A No. Unfortunately at that time it would have been 11 impossible. 12 Q Butch was on the road to come pick you up to take you to 13 South Dakota to get married the next day? 14 A Yeah, some time in there. 15 Q You had talked about your time constraints here was that 16 Butch is dealing with all the business stuff going on 17 with Atlas and the damage to the ranch. You have the 18 November 12th date where you have to be in Italy to have 19 your ceremonial wedding. So you had a pretty small 20 window to get this all done; is that right? 21 A Yeah, yeah, it was very small. 22 Q Did Butch or anybody suggest to you that you should call 23 your own lawyer to review this? 24 A Not that I recall. 25 Q So the next day, your recollection is that you were on</p>
<p style="text-align: right;">Page 55</p> <p>1 the road from Colorado to South Dakota; is that correct? 2 A That's correct. 3 Q About how long a drive is it? 4 A To get all the way to the homeplace is going to be 5 somewhere between eight and nine hours. To where we 6 initially stopped – I think that was Sturgis area – is 7 probably more like five or six. 8 Q And why did you need to stop in Sturgis? 9 A To get a marriage license. We hadn't gotten one yet. 10 Q So there had been such a lack of planning, you hadn't 11 even obtained a marriage license yet? 12 A Yeah. It was kind of a race against time to make sure 13 we weren't late. 14 Q To get to the courthouse or the office, county office, 15 to get the license? 16 A Yeah. 17 Q Okay. And so you obtained a marriage license in Sturgis 18 on October 11, 2013? 19 A Yes. 20 Q Do you recall much about that? 21 A No, very brief. Just into a typical, I guess, 22 government-type building, fill out paperwork. I don't 23 remember a whole lot about it. 24 Q Anything else you did in Sturgis? 25 A In kind of that general area, I didn't even have clothes</p>	<p style="text-align: right;">Page 56</p> <p>1 that I guess I wanted to wear to something like this. 2 So went to a department store and bought something to 3 wear. And then we went – continued driving up toward 4 Faith. 5 Q Any time along that trip or when you were in Sturgis, 6 did you have an opportunity to stop and seek independent 7 counsel? 8 A On the road, no. 9 Q Did Butch ever suggest in that drive that you should 10 have someone review it? 11 A No. 12 Q And I think your testimony was he is the one that I 13 think actually provided information regarding your 14 financial assets to the Bogues? 15 A Yes. 16 Q He did all the communications with the Bogues to the 17 drafting of that document; is that correct? 18 A That's what I remember. 19 Q Let's talk about, do you recall, I mean, it is – I 20 understand it is 11 years ago now. Do you recall when 21 you arrived, what time of day in Faith? 22 A I don't remember a time of day but I remember it was 23 dark. 24 Q Had you ever been to the Bogues' office in Faith? 25 A Before that, no.</p>

<p style="text-align: right;">Page 57</p> <p>1 Q So this is your first time?</p> <p>2 A Yes.</p> <p>3 Q Do you recall who was there when you got to Faith?</p> <p>4 A I know that Eric and Cheryl were there. I can't</p> <p>5 remember if the pastor, Harold Delbridge, was there yet</p> <p>6 or not. I kind of think he was but I don't remember</p> <p>7 that part for sure.</p> <p>8 Q Okay. And so what happened when you got there?</p> <p>9 A I remember just kind of pleasantries when you get there.</p> <p>10 Eric had Butch go into his office, and they talked. I</p> <p>11 asked Cheryl if I could use the restroom to change into</p> <p>12 the clothes that I had brought -- bought. So I did</p> <p>13 that. And then I remember shortly after I came out of</p> <p>14 the bathroom, I saw Butch and Eric come out at least</p> <p>15 what I will call Eric's office and then I went into</p> <p>16 Eric's office and signed the prenup and --</p> <p>17 Q Let's stop there. So you go in Eric's office to sign</p> <p>18 the prenup. Is that your testimony?</p> <p>19 A Correct.</p> <p>20 Q And Butch is not in there?</p> <p>21 A Not in there.</p> <p>22 Q Tell me what you recall about the conversations that you</p> <p>23 may have had with Eric Bogue.</p> <p>24 A I don't remember there being conversation. We were</p> <p>25 there a very short amount of time. All I really</p>	<p style="text-align: right;">Page 58</p> <p>1 remember is initialing and signing. I mean, it was very</p> <p>2 quick. The entire evening was very quick.</p> <p>3 Q Did you have questions, because you indicated in your</p> <p>4 email before that you didn't really understand what was</p> <p>5 in the document. Did you have questions you wanted to</p> <p>6 ask or that you --</p> <p>7 A Not that I recall then, no.</p> <p>8 Q And why is that, if you didn't understand it?</p> <p>9 A Because I relayed -- I was told what the document was</p> <p>10 for by Butch and I trusted that information. I took</p> <p>11 that at face value. The corrections that I had I gave</p> <p>12 to Butch and I presume he relayed whatever needed to be</p> <p>13 relayed. So I just kind of trusted in him for the whole</p> <p>14 thing.</p> <p>15 Q And you indicated that you trusted that Eric Bogue was</p> <p>16 also protecting your interest?</p> <p>17 A Yes.</p> <p>18 Q You understood that the document, upon divorce, that you</p> <p>19 would not have access to assets other than what was in</p> <p>20 the document. Is that fair?</p> <p>21 A Upon divorce, yes.</p> <p>22 Q Do you recall anybody ever explaining to you or having a</p> <p>23 conversation with you about what would happen upon the</p> <p>24 death of one of you?</p> <p>25 A No. In regard to the prenup?</p>
<p style="text-align: right;">Page 59</p> <p>1 Q Yes.</p> <p>2 A No. Even until all of this, to me a prenup was strictly</p> <p>3 for divorce and that was it.</p> <p>4 Q Okay. So you don't recall having a conversation with</p> <p>5 Eric and asking questions and walking through this</p> <p>6 document a paragraph at a time?</p> <p>7 A No, absolutely not.</p> <p>8 Q Did anybody provide to you any additional information</p> <p>9 regarding Butch's financial information?</p> <p>10 A Can you tell me what you mean by additional information?</p> <p>11 Q In regards to Butch's financial disclosure, Exhibit B,</p> <p>12 were you provided any additional information or</p> <p>13 documentation to support any of the numbers or what's on</p> <p>14 this single page?</p> <p>15 A Can you tell me where I find that, please.</p> <p>16 Q Sure. Let's look at Exhibit 2.</p> <p>17 MR. COLLINS: Again, Your Honor, this is the prenuptial</p> <p>18 property distribution document marked as Exhibit 2 that</p> <p>19 I will offer at this time.</p> <p>20 MR. NIES: No objection.</p> <p>21 MR. RUMPCA: No objection, Your Honor.</p> <p>22 MS. COOK: No objection, Your Honor.</p> <p>23 MR. MORRIS: None, Your Honor.</p> <p>24 MR. CHICOINE: No objection.</p> <p>25 THE COURT: 2 is received.</p>	<p style="text-align: right;">Page 60</p> <p>1 MR. COLLINS: Thank you.</p> <p>2 Q So looking at Exhibit No. 2, which is the prenuptial</p> <p>3 agreement in this matter that is at issue, and Exhibit B</p> <p>4 is on page 5 or Bates stamped 0067 at the bottom. Do</p> <p>5 you see that?</p> <p>6 A Yes.</p> <p>7 Q Did you have a chance to look at that as part of the</p> <p>8 prenuptial documents that were sent to you?</p> <p>9 A I don't remember if that was included in the original</p> <p>10 email or not. But I don't recall these numbers.</p> <p>11 Q But you did initial it at some point, correct?</p> <p>12 A Yes.</p> <p>13 Q At some point you did see that document?</p> <p>14 A That evening, yes.</p> <p>15 Q For sure that evening, maybe the night before?</p> <p>16 A Correct.</p> <p>17 Q Were you given any other information, a tax return, any</p> <p>18 supporting documents or any explanation as to where any</p> <p>19 of these numbers came from?</p> <p>20 A Oh, no.</p> <p>21 Q Did you ask?</p> <p>22 A No.</p> <p>23 Q And why not?</p> <p>24 A I would have just trusted what was on here. I wouldn't</p> <p>25 have known otherwise.</p>



<p style="text-align: right;">Page 61</p> <p>1 Q So let's take a look at the actual agreement itself and</p> <p>2 turn to page 1 in that agreement. We will walk through</p> <p>3 some points on this. In the first paragraph it states</p> <p>4 your ages at the time; is that correct?</p> <p>5 A Yes.</p> <p>6 Q And Martin Webb, what was his age?</p> <p>7 A 56.</p> <p>8 Q And you were?</p> <p>9 A 29.</p> <p>10 Q And you were still, at this time, employed or working</p> <p>11 for the equine business in Colorado?</p> <p>12 A Correct.</p> <p>13 Q And if you drop to the first whereas paragraph and I'm</p> <p>14 going to –</p> <p>15 A Can I make a correction?</p> <p>16 Q Sure.</p> <p>17 A I think he had just turned 57 at this point. So that's</p> <p>18 not correct.</p> <p>19 Q What was his birth date?</p> <p>20 A 10/8.</p> <p>21 Q We drop to the middle of this next paragraph. It talks</p> <p>22 about, can you read this portion into the record, starts</p> <p>23 and whereas both persons?</p> <p>24 A Whereas Butch and Stephanie have decided.</p> <p>25 Q Down to the next one?</p>	<p style="text-align: right;">Page 62</p> <p>1 A Whereas Butch and Stephanie consider.</p> <p>2 Q No, next one.</p> <p>3 A Sorry. In consideration, that one?</p> <p>4 Q And whereas both persons desire.</p> <p>5 MS. COOK: Your Honor, can I approach.</p> <p>6 THE COURT: Yes.</p> <p>7 THE WITNESS: I'm sorry. I don't see it.</p> <p>8 A And whereas both persons desire that in the event of a</p> <p>9 divorce or separation that each person would receive in</p> <p>10 a property distribution or settlement only such property</p> <p>11 which is specifically stated within this agreement and.</p> <p>12 Q And so you testified that you believe that this</p> <p>13 prenuptial agreement was to address property and any</p> <p>14 issues upon divorce; is that correct?</p> <p>15 A Correct.</p> <p>16 Q Anything in that paragraph that would change that</p> <p>17 opinion you had?</p> <p>18 A No.</p> <p>19 Q In fact, it reinforces it, doesn't it?</p> <p>20 A Correct.</p> <p>21 Q Anywhere in that paragraph does it talk about what</p> <p>22 happens upon death?</p> <p>23 A No.</p> <p>24 Q To drop you down to the first numbered paragraph 1 on</p> <p>25 that document.</p>
<p style="text-align: right;">Page 63</p> <p>1 A Okay.</p> <p>2 Q Starts in the event, do you see that?</p> <p>3 A Yes.</p> <p>4 Q Can you read that paragraph, that first sentence, first</p> <p>5 couple sentences.</p> <p>6 A That in the event a Court sees fit to award either party</p> <p>7 a divorce or separation from the other upon the evidence</p> <p>8 of precedent, it is the intent of the parties that this</p> <p>9 agreement shall be incorporated by reference in the</p> <p>10 final judgment or decree of divorce and shall thereafter</p> <p>11 be binding and conclusive on the parties hereto.</p> <p>12 Q Again, anything in that paragraph – or, what does that</p> <p>13 paragraph mean to you?</p> <p>14 A Very little other than I know it talks about divorce and</p> <p>15 separation.</p> <p>16 Q Anywhere that you see that it talks about what happens</p> <p>17 upon death of a party?</p> <p>18 A No.</p> <p>19 Q No. 2, can you read that one into the record.</p> <p>20 A Is the intent of the parties that this agreement creates</p> <p>21 a contractual relationship and shall be enforceable</p> <p>22 without regard to any final judgment or decree of</p> <p>23 divorce or subsequent modification of such judgment or</p> <p>24 decree.</p> <p>25 Q Okay. Again, does that paragraph, in your opinion,</p>	<p style="text-align: right;">Page 64</p> <p>1 apply to divorce?</p> <p>2 A To divorce, yes.</p> <p>3 Q Anything in that paragraph that would lead you to</p> <p>4 believe that may apply to what happens upon death of a</p> <p>5 party?</p> <p>6 A No, none.</p> <p>7 Q Turn the page to paragraph 4. And you can just read the</p> <p>8 first sentence there.</p> <p>9 A In the event of a divorce or separation Stephanie –</p> <p>10 Q Stop there. So this paragraph talks about in the event</p> <p>11 of a divorce or separation, correct?</p> <p>12 A Correct.</p> <p>13 Q You can read through it and let me know if you see any</p> <p>14 mention of anything about – that would lead you to</p> <p>15 believe that may apply to what happens upon death.</p> <p>16 A Out loud?</p> <p>17 Q Nope.</p> <p>18 (Witness complying.)</p> <p>19 A Can you re-ask me your question.</p> <p>20 Q Sure. Was anything when you read that paragraph that</p> <p>21 indicated that this paragraph or what would happen in</p> <p>22 this paragraph has anything to do if someone dies?</p> <p>23 A No, only divorce.</p> <p>24 Q Okay. In fact, this paragraph appears to provide you</p> <p>25 with payments upon divorce or separation; correct?</p>

<p style="text-align: right;">Page 65</p> <p>1 A Correct.</p> <p>2 Q Paragraph 5, go ahead and read the first sentence again?</p> <p>3 A In the event of divorce or separation.</p> <p>4 Q Okay. And it is probably easy just to read it all.</p> <p>5 A Butch shall retain all the property listed on Exhibit B</p> <p>6 attached hereto and incorporated herein by this</p> <p>7 reference as his sole separate property and Stephanie</p> <p>8 waives any right or claim to such property.</p> <p>9 Q Again, same question. Does it appear to you to apply</p> <p>10 only to the event of divorce?</p> <p>11 A Yes, only divorce.</p> <p>12 Q Any language or words in there talking about death or</p> <p>13 inheritance?</p> <p>14 A No.</p> <p>15 Q Paragraph 6, go ahead and read that.</p> <p>16 A Both parties agree to share as marital property and</p> <p>17 further agree that there is no property which will be</p> <p>18 considered in the marital estate in the event of divorce</p> <p>19 or separation.</p> <p>20 Q Again, same question. Does this paragraph appear to you</p> <p>21 to apply to what?</p> <p>22 A Just divorce or separation.</p> <p>23 Q No mention of inheritance or death?</p> <p>24 A No.</p> <p>25 Q Let's go ahead and move to paragraph 8.</p>	<p style="text-align: right;">Page 66</p> <p>1 A Okay.</p> <p>2 Q And I think, can you read paragraph 8 into the record</p> <p>3 because I think it is important.</p> <p>4 A Okay. Except as herein provided, both Butch and</p> <p>5 Stephanie do hereby forever waive release and quitclaim</p> <p>6 to all other – to the other all the property rights and</p> <p>7 claims which he or she now has or may hereafter have as</p> <p>8 husband, wife, widow, widower, and otherwise, by the</p> <p>9 marital relations that may exist in the future between</p> <p>10 the parties hereto by any present or future law in any</p> <p>11 state of the United States of America or any other</p> <p>12 country in and unto or against the property of the other</p> <p>13 party or his or her estate, whether now owned or</p> <p>14 hereafter acquired by such a party. Both Butch and</p> <p>15 Stephanie herein forever covenant and agree for himself</p> <p>16 and herself that their heirs, executors, administrators</p> <p>17 and assigned for the purpose of enforcing any or either</p> <p>18 of the rights specified in an relinquished under this</p> <p>19 paragraph. In addition, both parties agree to complete</p> <p>20 wills, living wills, and durable power of attorney</p> <p>21 within six months of the date of this agreement.</p> <p>22 Q So what does that paragraph mean to you?</p> <p>23 A Absolutely nothing. I get the very end of it, I</p> <p>24 understand. But there's just so -- I don't understand</p> <p>25 it.</p>
<p style="text-align: right;">Page 67</p> <p>1 Q Okay. So your testimony has been -- well, did you ask</p> <p>2 Mr. Bogue about this?</p> <p>3 A Not that I recall, no.</p> <p>4 Q Your testimony has been that you were told and you</p> <p>5 understood that this document applied in the event of</p> <p>6 divorce, correct?</p> <p>7 A Correct.</p> <p>8 Q And at the bottom, the last two paragraphs -- last two</p> <p>9 sentences of that paragraph talk about entering into</p> <p>10 wills; correct?</p> <p>11 A Correct.</p> <p>12 Q So was it your understanding that you and Butch were</p> <p>13 going to enter into wills to determine what would happen</p> <p>14 upon death?</p> <p>15 A Yes.</p> <p>16 Q And that those wills you would take care of each other</p> <p>17 through the property distribution. Is that your</p> <p>18 understanding what was going to happen?</p> <p>19 A Yes, yes, that's my understanding.</p> <p>20 Q Did you ever have a will?</p> <p>21 A I did not, no.</p> <p>22 Q Why not?</p> <p>23 A I guess kind of two reasons. I guess, I was never led</p> <p>24 by him to do that. That to me would be something we</p> <p>25 would do together. And then secondly, all of my stuff</p>	<p style="text-align: right;">Page 68</p> <p>1 would just go to him. I was fine with that. I mean, I</p> <p>2 don't feel like I necessarily needed one.</p> <p>3 Q Did you have discussions with you that he wanted</p> <p>4 everything -- back in this time frame, that he wanted</p> <p>5 everything to go to his kids or anything of that nature?</p> <p>6 A He did not discuss the specifics at that time, no.</p> <p>7 Q And you have talked about his personality. Was Butch</p> <p>8 one that you would say, hey, let's go do this business</p> <p>9 deal, let's do the wills or was he the one that was</p> <p>10 going to tell you that was what would happen?</p> <p>11 A That would have been him. He would have had somebody</p> <p>12 arranged for it and let's go.</p> <p>13 Q Similarly, to the way this whole process went down,</p> <p>14 sending you the prenup, getting the date, coming to get</p> <p>15 you, driving to Faith and signing this and getting</p> <p>16 married that same day in the Bogues' office, was that</p> <p>17 your decision or was that his decision?</p> <p>18 A His.</p> <p>19 Q Was Butch one you just usually say, No, I don't want to</p> <p>20 do that, to?</p> <p>21 A No. I mean, I guess I didn't feel like I needed to say</p> <p>22 no, but he was the planner. He orchestrated it.</p> <p>23 Q And in the context of everything that was going on with</p> <p>24 Atlas, your wedding trip, did you feel like you could</p> <p>25 have just kind of stopped and say, No, we want to take a</p>

<p style="text-align: right;">Page 69</p> <p>1 few weeks to figure this out?</p> <p>2 <b>A</b> No. We had to do this. There was no other time. It</p> <p>3 just had to get done.</p> <p>4 <b>Q</b> And so in your opinion, were you going to the Bogues'</p> <p>5 office to sign the prenup or were you going to get</p> <p>6 married?</p> <p>7 <b>A</b> We were doing both.</p> <p>8 <b>Q</b> What was the main focus that you had?</p> <p>9 <b>A</b> Getting married.</p> <p>10 <b>Q</b> This was your wedding day?</p> <p>11 <b>A</b> Yes.</p> <p>12 <b>Q</b> I know it wasn't the one you want to recognize, still</p> <p>13 was an event in your life.</p> <p>14 <b>A</b> Yes.</p> <p>15 <b>Q</b> The last paragraph, or there's two extra, it states –</p> <p>16 go ahead and read paragraph 9 and 10. They are pretty</p> <p>17 short.</p> <p>18 <b>A</b> Nine says it is further agreed that this agreement shall</p> <p>19 not be construed or considered an agreement between the</p> <p>20 parties to obtain a divorce from one another but that</p> <p>21 this same is to be considered strictly as an agreement</p> <p>22 settling rights respecting property division of each of</p> <p>23 the parties hereto, and that each person was urged to</p> <p>24 attain legal advice and attorney and that the same is</p> <p>25 free and voluntary acts of each of the parties hereto.</p>	<p style="text-align: right;">Page 70</p> <p>1 <b>Q</b> Did anybody at any point in time encourage you to get an</p> <p>2 attorney?</p> <p>3 <b>A</b> No, not that I recall.</p> <p>4 <b>Q</b> I think you testified that you believed the Bogues who</p> <p>5 were kind of friends with you and were doing this to</p> <p>6 protect what you believe your property in Colorado also</p> <p>7 were working on your behest?</p> <p>8 <b>A</b> Yeah. I guess I looked at it we fit in this gray area</p> <p>9 and they were there to help me as well.</p> <p>10 <b>Q</b> And if Eric Bogue would have told you, you know,</p> <p>11 Stephanie, you need to have – if you are not</p> <p>12 comfortable with this, you need to have an attorney look</p> <p>13 at this, what would you have done?</p> <p>14 <b>A</b> I don't know because we didn't have an option. We had</p> <p>15 to do this that night. I don't know. I don't know what</p> <p>16 I would have done.</p> <p>17 <b>Q</b> And then the last paragraph, 10, go ahead and read that.</p> <p>18 <b>A</b> The parties have entered into this agreement freely and</p> <p>19 after adequate opportunity for independent counsel and</p> <p>20 acknowledge that the provisions are fair. Neither party</p> <p>21 relies upon any representations or statements of the</p> <p>22 other as to any matters material to this agreement.</p> <p>23 <b>Q</b> Okay. So if you read this, and it tells you you are not</p> <p>24 relying on anybody telling you anything, but that's, in</p> <p>25 fact, what you were doing, wasn't it?</p>
<p style="text-align: right;">Page 71</p> <p>1 <b>A</b> Yes, it is.</p> <p>2 <b>Q</b> And it talks about having the opportunity -- adequate</p> <p>3 opportunity for independent counsel. Do you see that?</p> <p>4 <b>A</b> Yes.</p> <p>5 <b>Q</b> And do you believe in the time frame when you received</p> <p>6 this document for the first time on the evening or late</p> <p>7 afternoon, early evening of October 10th until the time</p> <p>8 you were driving from Colorado to Faith to get married,</p> <p>9 that you had adequate opportunity to have independent</p> <p>10 counsel review this?</p> <p>11 <b>A</b> No. I got it – even if I opened it immediately, it was</p> <p>12 20 minutes before close of business.</p> <p>13 <b>Q</b> And the reason you didn't press the issue was your time</p> <p>14 constraints and your trust in Butch and the Bogues?</p> <p>15 <b>A</b> Correct.</p> <p>16 <b>Q</b> Do you recall -- I think you said it was really quick –</p> <p>17 how long you were in with Eric to sign this?</p> <p>18 <b>A</b> What I remember would be just a handful of minutes. I</p> <p>19 can't even think that it was even five minutes.</p> <p>20 <b>Q</b> Okay. So after you signed it, what happens next?</p> <p>21 <b>A</b> Came out into the main part of their office.</p> <p>22 <b>Q</b> When you say their, you mean –</p> <p>23 <b>A</b> The Bogues, yes. I know for sure the pastor was there</p> <p>24 at that point. And – or, at least there shortly after</p> <p>25 and really we just went right into kind of a modified</p>	<p style="text-align: right;">Page 72</p> <p>1 ceremony and got married and Eric and Cheryl served as</p> <p>2 our witnesses.</p> <p>3 <b>Q</b> And who presided over it?</p> <p>4 <b>A</b> Harold Delbridge.</p> <p>5 <b>Q</b> And if you look at Exhibit 3?</p> <p>6 <b>MR. COLLINS:</b> Your Honor, I would offer Exhibit 3 which</p> <p>7 is the marriage certificate of Martin Webb and Stephanie</p> <p>8 Eagleburger.</p> <p>9 <b>MR. NIES:</b> No objection.</p> <p>10 <b>MR. RUMPCA:</b> No objection.</p> <p>11 <b>MS. COOK:</b> No objection.</p> <p>12 <b>MR. MORRIS:</b> No objection.</p> <p>13 <b>MR. CHICOINE:</b> No objection.</p> <p>14 <b>THE COURT:</b> 3 is received.</p> <p>15 <b>Q (BY MR. NIES, continuing)</b> Can you tell me what this is?</p> <p>16 <b>A</b> Mine and Butch's marriage certificate.</p> <p>17 <b>Q</b> What's the date?</p> <p>18 <b>A</b> October 11, 2013.</p> <p>19 <b>Q</b> And you were – this took place where?</p> <p>20 <b>A</b> In Faith.</p> <p>21 <b>Q</b> Okay. And it notes that: Faith, Meade County, South</p> <p>22 Dakota?</p> <p>23 <b>A</b> Yes.</p> <p>24 <b>Q</b> And the witnesses on that are who?</p> <p>25 <b>A</b> It is their signatures. But it is Cheryl Bogue and Eric</p>

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- 1 Bogue.
- 2 Q So the attorneys who drafted the prenuptial agreement
- 3 and who you met with just prior, Eric Bogue, to sign it,
- 4 witnessed your wedding?
- 5 A Correct.
- 6 Q It took place in their office?
- 7 A Yes.
- 8 Q Immediately following, fairly shortly after the signing?
- 9 A Yes, within minutes.
- 10 Q What did you guys do after that?
- 11 A I remember we took a handful of pictures in the office
- 12 with the Bogues and the pastor, and then we went to
- 13 dinner in Faith with Eric and Cheryl. I don't think
- 14 Harold was able to join us for that. I think he had to
- 15 get home. There was — I don't remember what it was
- 16 called, a small restaurant in Faith and we went there
- 17 for dinner.
- 18 Q During the ceremony or after you had signed it, there's
- 19 going to be questions, I'm assuming, about and use the
- 20 word coercion which is language that is used in some of
- 21 the cases. You know, it doesn't sound like you felt
- 22 coerced, someone is making, holding you there saying you
- 23 have to do this?
- 24 A Nobody is holding a gun to my head kind of situation.
- 25 But there was also the — there is no other time; you

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- 1 A I don't remember our travel at that point, but he went
- 2 immediately back up and I don't think he came back until
- 3 the night before we were leaving for the wedding.
- 4 Q Where did you fly out for the wedding?
- 5 A Denver.
- 6 Q Who went to the wedding?
- 7 A My parents, my sister, two of my best friends, and then
- 8 Dee and her family, and Deb and his family, and Eric and
- 9 Cheryl.
- 10 Q So the Bogues went to the wedding with you?
- 11 A Yes.
- 12 Q Did you help coordinate their travel plans?
- 13 A I did, yes.
- 14 Q So they were aware of the time restriction that you were
- 15 heading to Italy for a wedding on November 12th,
- 16 correct?
- 17 A Oh, yes.
- 18 Q I'm sorry to jump around. When you met with Eric Bogue
- 19 in his office to initial and sign the prenup, would that
- 20 have been the first time that you recall that you would
- 21 have spoken to Eric or had any discussions with Eric
- 22 about the prenup?
- 23 A About the prenup, yes. I don't remember conversations
- 24 before.
- 25 Q So 2013 around this time, there's going to be discussion

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- 1 have to do this. It was just what we were doing. It
- 2 had to fit in where it did and so that's just what we
- 3 did.
- 4 Q Okay. And you relied upon Butch and the Bogues?
- 5 A Hundred percent.
- 6 Q And you believe, based on this language you saw in the
- 7 prenup about that you were going to do wills, that you
- 8 guys would take care of what would happen to property
- 9 and things upon death in those wills?
- 10 A Correct.
- 11 Q Eventually there was a will signed by Butch in 2015,
- 12 correct?
- 13 A Correct.
- 14 Q And do you recall what you got in that will. I'm not
- 15 going to put it in — there is a dispute as to whether
- 16 or not it is the appropriate will.
- 17 Do you remember what you got in that will?
- 18 A Do you want me to say as of remembering right now or
- 19 what I knew then?
- 20 Q What did you know — let's step back. I'm almost done.
- 21 We will go back and I will finish the story and then we
- 22 will ask that question.
- 23 So did you return to Colorado after the marriage?
- 24 A Yes.
- 25 Q Did Butch stay and deal with the Atlas issues?

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- 1 about how sophisticated your business is and things of
- 2 that nature. But — question is going to be asked.
- 3 In 2013, was your business a lot different than it
- 4 is today?
- 5 A Oh, very.
- 6 Q And it has grown since and been more successful than
- 7 where it was 2013?
- 8 A Yes.
- 9 Q In part because of Butch's guidance and help?
- 10 A Yeah, actually, he had a kind of a significant role in
- 11 being more successful.
- 12 Q Did you and Butch, back in 2013, if you recall, have
- 13 discussions about what would happen upon death?
- 14 A At that point, no.
- 15 Q When would that have first occurred?
- 16 A I don't remember when it would have first occurred. He
- 17 would make generalized statements about wills and
- 18 needing to do one or needing to update one.
- 19 Unfortunately, he is a little bit of a procrastinator
- 20 with some of that stuff, but I would say more specific
- 21 details didn't come until really probably the last
- 22 couple of years.
- 23 Q Okay. When was your daughter born?
- 24 A 2014, November.
- 25 Q And then there was an incident in 2015, I think, where

<p style="text-align: right;">Page 77</p> <p>1 Butch was hurt; is that correct?</p> <p>2 A Yes, that's correct.</p> <p>3 Q And did that prompt him to do anything about his will?</p> <p>4 A Yeah, finally make one.</p> <p>5 Q So you were aware he made a will in 2015?</p> <p>6 A Yes.</p> <p>7 Q Did you have any part in the making of the will?</p> <p>8 A Making of it, no.</p> <p>9 Q Did you have discussions with him prior to that?</p> <p>10 A No.</p> <p>11 Q Did he give you any indication of what you may receive</p> <p>12 in the will?</p> <p>13 A None.</p> <p>14 Q At any point did he tell you what you would be receiving</p> <p>15 in the will?</p> <p>16 A No.</p> <p>17 Q When is the first time you learned what was in the 2015</p> <p>18 will?</p> <p>19 A Not until after he passed away.</p> <p>20 Q What did you learn in the 2015 will that you got from</p> <p>21 that will?</p> <p>22 A The -- just like the property in Colorado, what was in</p> <p>23 it.</p> <p>24 Q Like the furniture?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 78</p> <p>1 Q Anything else?</p> <p>2 A No.</p> <p>3 Q Were you surprised that's all you got in the will?</p> <p>4 A Yes.</p> <p>5 Q You didn't expect he was going to leave you the ranch,</p> <p>6 did you?</p> <p>7 A No.</p> <p>8 Q And he had -- in operating the ranch, who kind of was,</p> <p>9 in the later years, working with Butch?</p> <p>10 A Brian Webb and Kailee Webb.</p> <p>11 Q And who is Brian Webb?</p> <p>12 A A cousin and you can kind of say like his ranch manager,</p> <p>13 if you wanted to give him a title.</p> <p>14 Q And Kailee is his daughter?</p> <p>15 A Correct.</p> <p>16 Q And you mentioned when you went to Italy for the wedding</p> <p>17 that Dee Haugen and her family came; is that correct?</p> <p>18 A Yes.</p> <p>19 Q And Deb came?</p> <p>20 A Yes, and his family.</p> <p>21 Q At that time did you feel like you had an okay</p> <p>22 relationship with Dee Haugen?</p> <p>23 A I think you can say okay. I would say very strained.</p> <p>24 Q Was your impression was that she wasn't happy that you</p> <p>25 were marrying Butch?</p>
<p style="text-align: right;">Page 79</p> <p>1 A I think that's a fair statement.</p> <p>2 Q And has the relationship improved at all since 2013?</p> <p>3 A Improved?</p> <p>4 Q Yes.</p> <p>5 A No.</p> <p>6 Q Did that impact, from your observation, Dee's</p> <p>7 relationship with Butch?</p> <p>8 A Yeah. Unfortunately, I think it did.</p> <p>9 Q In what ways?</p> <p>10 A I think he was frustrated and hurt with her opinions</p> <p>11 and, I guess, her lack of willingness to give me and</p> <p>12 give us a chance.</p> <p>13 Q Did he -- had he, prior to that, in your understanding,</p> <p>14 relied upon her for help with the ranch or discuss</p> <p>15 business with her?</p> <p>16 A Prior to that I think she was a lot more involved.</p> <p>17 Q And once you got married, you saw that a lot less?</p> <p>18 A Yeah. They talked a lot less frequently. He got a lot</p> <p>19 more frustrated in conversations. I think he just kind</p> <p>20 of withdrew a little bit more, could kind of hold a</p> <p>21 grudge a little bit.</p> <p>22 Q And Kailee was coming of age where she was actively</p> <p>23 involved in helping run the ranch?</p> <p>24 A Yes.</p> <p>25 Q So did it appear to you that he relied on her for those</p>	<p style="text-align: right;">Page 80</p> <p>1 type of things?</p> <p>2 A A lot more and more, yes.</p> <p>3 Q And would discuss business decisions and things of that</p> <p>4 with her more?</p> <p>5 A Yeah. She kind of took on the role of multiple people</p> <p>6 that used to be in those roles, she kind of assumed</p> <p>7 herself.</p> <p>8 Q You understand that the prenuptial agreement is removed</p> <p>9 and you take under elected share, that doesn't mean you</p> <p>10 get the ranch or any -- you get a percentage of the</p> <p>11 estate; correct?</p> <p>12 A Yes, that's my understanding.</p> <p>13 Q And so -- and in your opinion, would that also</p> <p>14 benefit -- or assist you in helping take care of your</p> <p>15 kids?</p> <p>16 A Yes.</p> <p>17 MR. COLLINS: That's all I have. Thank you.</p> <p>18 THE COURT: Thank you. Mr. Nies, I will come to you</p> <p>19 next.</p> <p>20 MR. NIES: Thank you, Your Honor.</p> <p>21 CROSS-EXAMINATION</p> <p>22 BY MR. NIES:</p> <p>23 Q I have asked you questions before. I represent Dee</p> <p>24 Haugen. Can I call you Stephanie?</p> <p>25 A Yes.</p>

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- 1 Q Jeff covered a lot of the questions I was going to ask.  
 2 I will try to go through these in the same order he did.  
 3 I want to talk a little bit about your education. You  
 4 testified you went to Colorado State, got a bachelor's  
 5 degree. Correct?  
 6 A Correct.  
 7 Q Do you know what Butch's education was?  
 8 A Bachelor's, I believe.  
 9 Q Do you know where he went for his college degree?  
 10 A Where he graduated from? University of Wyoming.  
 11 Q So you and Butch had the same level of education,  
 12 correct?  
 13 A Degrees, yes.  
 14 Q So when you were gifted interest in Vista -- I know that  
 15 is not what it was called at the time, but when you were  
 16 gifted interest in it, 45%, do you have any estimate of  
 17 what the business was worth at that time?  
 18 A No.  
 19 Q It was valuable, I presume?  
 20 A You are talking Vista Equine entity?  
 21 Q Whatever you were gifted by the previous owner.  
 22 A In 2011, I guess that's a hard question to answer. I  
 23 would say Royal Vista Equine had a value to it. But I  
 24 guess any new start-up is probably not valuable. So I  
 25 guess I don't know how to answer your question.

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- 1 Q You were asked about the contract. You said it is a  
 2 form contract; is that correct?  
 3 A For Vista's contracts?  
 4 Q Yes.  
 5 A Yes. It is a form, fill in the blank.  
 6 Q You testified a lawyer drafted those for you?  
 7 A Correct.  
 8 Q What was your understanding of what would happen if  
 9 somebody didn't follow that contract?  
 10 A Can you rephrase that?  
 11 Q If you signed a contract with a client and they didn't  
 12 do what they were supposed to do under the contract,  
 13 what was the consequence?  
 14 A I don't know that that totally applies to our contracts.  
 15 So I guess I don't know how to answer your question.  
 16 Q Do your contracts have provisions for you getting paid?  
 17 A Yes.  
 18 Q So what if somebody doesn't pay you?  
 19 A I don't remember the exact clauses in there, but I know  
 20 it talks about, like, the interest rates that they would  
 21 get charged. I don't remember what it says, if it has  
 22 to go to collections or something like that.  
 23 Q But you understand that these are binding contracts  
 24 between you and your client, correct?  
 25 A To some degree, yes.

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- 1 Q We can move on. You mentioned that they gifted it to  
 2 you because they wanted the business to continue; is  
 3 that correct?  
 4 A Correct.  
 5 Q Why did they give it to you as opposed to somebody else?  
 6 A It wasn't just me. Their focus was for it to be a team  
 7 that was carrying it forward. They saw that the team  
 8 that was in place that had been running it was doing a  
 9 good job.  
 10 Q So it is fair to say you were good at what you were  
 11 doing, correct?  
 12 A My portion, yes.  
 13 Q And just so I'm clear here, so you had, for all intents  
 14 and purposes, run the front of the house since 2006,  
 15 correct?  
 16 A I believe that would be correct.  
 17 Q Okay. And when we hit 2013, you had owned it for about  
 18 two years, correct?  
 19 A Correct.  
 20 Q Do you remember roughly what the gross revenue was in  
 21 2013?  
 22 A In '13, I do not remember.  
 23 Q You testified that in '21 it was 2.5 million. Would it  
 24 have been significantly less than that?  
 25 A It would have, yes.

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- 1 Q And you understand that if there is a breach of the  
 2 contract, there's consequences, correct?  
 3 A To some degree, yes.  
 4 Q I believe you testified, and I want to make sure I am  
 5 clear, how many employees did Vista have in 2013?  
 6 A I think we were probably in that dozen range. I don't  
 7 remember -- sorry -- exactly the numbers.  
 8 Q Does that include yourself?  
 9 A Yes.  
 10 Q So you already testified that you had already been  
 11 divorced once when you met Butch -- or, when you started  
 12 dating Butch.  
 13 MR. NIES: What number is the divorce decree? I don't  
 14 have the numbers in front of me.  
 15 MS. COOK: Exhibit number?  
 16 MS. COOK: 5.  
 17 MR. NIES: Your Honor, I would ask to admit Exhibit 5.  
 18 THE COURT: Any objection, Mr. Rumpca?  
 19 MR. RUMPCA: No objection.  
 20 MS. COOK: No objection.  
 21 MR. MORRIS: No objection.  
 22 MR. CHICOINE: No objection.  
 23 MR. COLLINS: I may have objection to relevance of the  
 24 question.  
 25 THE COURT: I will receive it. Go ahead.



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1  
2 **Q (BY MR. COLLINS, continuing)** I'm not going to go through  
3 this in detail, Stephanie, but when you divorced  
4 Mr. Keplinger, am I correct that there was property,  
5 there were vehicles or a vehicle, and your interest in  
6 Vista for all assets during the marriage, correct?  
7 **A** That's what I remember.  
8 **Q** And as part of the divorce, the parties had to decide  
9 who was going to get those assets; correct?  
10 **A** Correct.  
11 **Q** And it looks like the two of you stipulated to that?  
12 **A** No.  
13 **Q** The two of you agreed who would get which assets?  
14 **A** Yes.  
15 **Q** So you understood that marriages involve property  
16 rights; correct?  
17 **A** I suppose they can.  
18 **Q** And if a marriage breaks up for any reason, those  
19 property rights need to be determined, correct?  
20 **A** Yes.  
21 **Q** Let's move to — so you met Butch, you testified, in  
22 about 2007, correct?  
23 **A** I believe so, yes.  
24 **Q** What was your understanding of his wealth level?  
25 **A** In 2007?

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1 west place. We have a place referred to as the north  
2 place, the Corson County property. Did you go up there,  
3 too?  
4 **A** I don't remember the first time I went up there. I  
5 think I had seen it before us getting married but I  
6 don't remember.  
7 **Q** If you hadn't seen it, did you know it existed?  
8 **A** I honestly don't know.  
9 **Q** While you were there, did you see his cattle?  
10 **A** Yes.  
11 **Q** Did he drive you out into the pasture to see them or  
12 were they all gathered at the place?  
13 **A** I think we drove around a little bit. We went riding  
14 one time. I think that would be about it.  
15 **Q** Did he ever take you to his building in Eagle Butte?  
16 **A** The building in Eagle Butte, no, not that I remember.  
17 **Q** Were you aware of it?  
18 **A** That one I don't remember because I kind of jumbled some  
19 of those buildings around or his office locations  
20 around.  
21 **Q** Okay. There's been — strike that.  
22 So let's talk about the wedding planning. You have  
23 testified that you wanted it to be a destination wedding  
24 and you hired a wedding — or a planner to help you with  
25 it. Who did the actual planning for that destination

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1 **Q** Yes.  
2 **A** Zero.  
3 **Q** You didn't have any understanding?  
4 **A** No.  
5 **Q** What is the average wealth level of a Vista client?  
6 **A** I couldn't even presume a guess.  
7 **Q** So it is — are they generally wealthy?  
8 **A** No. I don't think that's a fair assumption.  
9 **Q** You have testified that you started dating him in early  
10 2013. And from now on just like Mr. Collins said, it is  
11 all in 2013. So we don't need to — and you've  
12 testified that you were up in South Dakota between four  
13 and six times.  
14 **A** I believe.  
15 **Q** When you were in South Dakota, where did you go while  
16 you were here?  
17 **A** Where did we visit? Where did we stay?  
18 **Q** Where did you stay?  
19 **A** Usually the west place house.  
20 **Q** Did you see the east place?  
21 **A** What are you terming the east place?  
22 **Q** Whatever is not the west place.  
23 **A** So I would refer to that as the homeplace. Yes. I had  
24 seen it.  
25 **Q** So my recollection is we have the homeplace; we have the

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1 wedding?  
2 **A** The travel agent's name?  
3 **Q** No, no. Was it you or Butch who coordinated with that  
4 travel agent?  
5 **A** I probably coordinated with the travel agent more.  
6 **Q** So it is fair to say you were involved in planning the  
7 wedding, correct?  
8 **A** To a degree. But, I guess, keep in mind that it was not  
9 typical wedding planning. This was pretty much kind of  
10 handed to us a little bit being, one, distant and, two,  
11 not speaking Italian. A lot of this was kind of  
12 pre-arranged for us.  
13 **Q** Understood. But you were part of that process?  
14 **A** A little, yes.  
15 **Q** So my understanding is you had already scheduled the  
16 wedding in — the actual ceremony in Italy to occur in  
17 November of 2013, correct?  
18 **A** Can you ask that again? I'm sorry.  
19 **Q** Sure. You had — let me take a step back.  
20 When did you schedule the actual wedding date in  
21 Italy?  
22 **A** I don't remember.  
23 **Q** What was that date?  
24 **A** The Italy date was November 12th.  
25 **Q** Do you recall when you actually left?

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1 A I don't remember the date. It would have been a handful  
 2 of days before that. Maybe around the 8th or so. I  
 3 know we were there a few days before we got married.  
 4 Q So if we assume that you left for Italy on the 8th, and  
 5 I presume you scheduled that a few months before.  
 6 Obviously, it was scheduled by October.  
 7 A Correct.  
 8 Q In your testimony, you used words like the – I'm going  
 9 to call the Faith ceremony was improvised, a mock  
 10 ceremony; you didn't want it to feel like a wedding; you  
 11 just fit it in a window. Are all those fair?  
 12 A The Faith ceremony? You mean, physically in Faith,  
 13 not –  
 14 Q Sorry. Yeah, the October 12th ceremony.  
 15 A Can you ask your question again.  
 16 Q That ceremony, you have testified – words I've written  
 17 down – improvised, mock ceremony, you fit it in a  
 18 window. The impression I got from your testimony was it  
 19 just had to get done so you were legally married before  
 20 you left.  
 21 A Correct, correct.  
 22 Q One thing that you very often stated in your direct is  
 23 that you had to get married at that precise date. Did  
 24 you look into other dates?  
 25 A I didn't. I don't know if Butch did. But I didn't.

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1 into this gray area where we were friends and they were  
 2 willing to discuss these things with me and around me.  
 3 And then I also felt like merging into this joint entity  
 4 as then Butch and Stephanie as a married couple, that  
 5 then they do become my lawyers.  
 6 Q Had they – as of October 11th, had either Eric or  
 7 Cheryl given you legal advice?  
 8 A I don't recall.  
 9 Q I want to talk a little bit about that property in  
 10 Loveland. You have already testified that Butch bought  
 11 it and he put it in your name. Are you testifying that  
 12 there was no discussion when he put it in your name  
 13 about his other assets?  
 14 A No.  
 15 Q So –  
 16 A I guess, maybe, can you be more specific?  
 17 Q Well, what I'm trying to figure out, you took title to a  
 18 million dollar-plus piece of property in your own name  
 19 and I'm trying to figure out if there was any discussion  
 20 that went along with it. Such as, It is okay,  
 21 Stephanie. I have plenty of assets up in South Dakota.  
 22 That's why I'm going to put this in your name.  
 23 Were there any conversations like –  
 24 A Along those lines, no. Those discussions would have  
 25 been different.

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1 Q Because it's almost a month between October 11th and  
 2 November 8th. Why couldn't you have done a different  
 3 wedding date?  
 4 A Based on Butch's schedule.  
 5 Q Did you ask him?  
 6 A No, but he knew his schedule.  
 7 Q But you never said, hey, Butch, this is too quick. Can  
 8 we push it back a few weeks?  
 9 A No.  
 10 Q In your testimony, you use the word secret. I  
 11 understand the nuance of that. I want to make clear.  
 12 At the Faith ceremony on October 11th, was Stephanie,  
 13 Butch, Eric, Cheryl, and Pastor Delbridge, correct?  
 14 A Correct.  
 15 Q Nobody else there?  
 16 A Correct.  
 17 Q You didn't invite bridesmaids or anything like that?  
 18 A No.  
 19 Q Didn't have a wedding cake or anything like that?  
 20 A No.  
 21 Q Okay. You testified that you had met the Bogues before  
 22 the October 11th ceremony. They weren't your lawyers;  
 23 correct?  
 24 A I guess I didn't fully I understand their role. I knew  
 25 they were Butch's lawyers, and I think I kind of fit

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1 Q Okay. What – you say they would have been different.  
 2 Was there anything different, like you say? Was there  
 3 any discussion about – you knew of the payday loan  
 4 litigation, correct?  
 5 A Correct.  
 6 Q Was the conversation, Stephanie, I'm going to put this  
 7 property in your name to protect it from my creditors?  
 8 A Yes, it was much more along those lines.  
 9 Q Okay, okay. Now, I want to make sure we are clear here:  
 10 It was a gift to you; correct? There were no strings.  
 11 His name wasn't on it anywhere. It was strictly in your  
 12 name.  
 13 A Yes. It was strictly in my name.  
 14 Q Okay. Let's move to talk a little bit about the prenup.  
 15 You have already testified you don't remember when Butch  
 16 brought it up.  
 17 A That's correct.  
 18 Q Can you give me any idea? Are we talking a month, two  
 19 months before the October 11 ceremony? Any idea?  
 20 A If I had to guess, it would have been much shorter, week  
 21 or two type time frame.  
 22 Q So for the sake of discussion, let's say that it was a  
 23 week or two. Did you – once he brought that up, did  
 24 you call a lawyer?  
 25 A No. I didn't have a lawyer.



<p style="text-align: right;">Page 93</p> <p>1 Q Did Vista Equine have a lawyer?</p> <p>2 A We had a business lawyer, yes.</p> <p>3 Q Did you talk to that business lawyer?</p> <p>4 A No. I guess I would have assumed that was outside of</p> <p>5 what they did.</p> <p>6 Q But certainly you had a week to call a lawyer and say</p> <p>7 I'm going to have a prenup coming. Can you help explain</p> <p>8 it to me, correct?</p> <p>9 A There's presumably a week.</p> <p>10 Q Eric Bogue will testify that he talked to you prior to</p> <p>11 meeting you.</p> <p>12 MR. COLLINS: Objection, Your Honor. That's not the</p> <p>13 testimony.</p> <p>14 MR. NIES: That's in the depositions. I can read them</p> <p>15 into the record.</p> <p>16 MR. COLLINS: Your Honor, I will object because</p> <p>17 Mr. Bogue, on several occasions in his deposition, says</p> <p>18 he is not speaking out of any remembrance. It is all</p> <p>19 what his standard practice would be. He has no specific</p> <p>20 recollection of these events. Until he testifies, I</p> <p>21 would object.</p> <p>22 THE COURT: I will sustain the objection. If he</p> <p>23 testifies and you want to recall, you can.</p> <p>24 MR. NIES: Let's move on.</p> <p>25 Q (BY MR. NIES, continuing) I want to talk about the email</p>	<p style="text-align: right;">Page 94</p> <p>1 that has been introduced as Exhibit 1. During direct,</p> <p>2 you testified that when you needed to find a copy of the</p> <p>3 prenup, you searched and found that email, correct?</p> <p>4 A Yes, that's correct.</p> <p>5 Q When you searched, did you find any other email that was</p> <p>6 sent or received in October of 2013?</p> <p>7 A I don't remember if there is anything in that month.</p> <p>8 Q Well, I asked you in the discovery to produce every</p> <p>9 email that was sent or received in October 2013, and you</p> <p>10 didn't provide it, correct?</p> <p>11 A I don't recall what was provided but if there wasn't</p> <p>12 anything, then I didn't find anything.</p> <p>13 Q Don't you find it a little bit odd that this is the only</p> <p>14 email from that month that you kept?</p> <p>15 A I wouldn't say that I kept it. I would say that Yahoo</p> <p>16 saved it.</p> <p>17 Q Again, if Yahoo saved only one -- you sent other emails</p> <p>18 in October of 2013, correct?</p> <p>19 A I wouldn't remember but presumably.</p> <p>20 Q Did you have any other email accounts other than</p> <p>21 Stephanie_Eagleburger@yahoo.com?</p> <p>22 A For personal, no.</p> <p>23 Q So, again, I want to make sure: You are saying that you</p> <p>24 probably sent or received emails from this account in</p> <p>25 October of 2013?</p>
<p style="text-align: right;">Page 95</p> <p>1 A Probably.</p> <p>2 Q Why weren't those kept by Yahoo?</p> <p>3 A They very well could have been but they didn't contain</p> <p>4 any of these -- whatever search words that I used.</p> <p>5 Q You were asked to give every email from that time and</p> <p>6 you didn't provide anything else.</p> <p>7 A Then I might have misunderstood.</p> <p>8 Q Okay. When you -- and it has already been -- we have</p> <p>9 already gone through the email. When you received the</p> <p>10 email from Butch, do you remember how you actually</p> <p>11 looked at the prenup? Did you just open it up in a PDF</p> <p>12 or did you print it out?</p> <p>13 A Oh, I don't remember.</p> <p>14 Q But you did have the five pages?</p> <p>15 A I don't recall how many were attached.</p> <p>16 Q Do you recall three -- well, two and a third pages of</p> <p>17 content and then a signature page with exhibits?</p> <p>18 A I do not recall what was in it originally.</p> <p>19 Q At the very least, we know it had Exhibit A, correct,</p> <p>20 because it was your assets?</p> <p>21 A Can you point me where I'm supposed to be looking?</p> <p>22 Q Oh, sorry. Exhibit 2 page 4.</p> <p>23 A I would say presumably that was there because I needed</p> <p>24 to make corrections to it.</p> <p>25 Q Was that the only page?</p>	<p style="text-align: right;">Page 96</p> <p>1 A That I made corrections to?</p> <p>2 Q No. The only page that you reviewed?</p> <p>3 A I do not remember.</p> <p>4 Q Do you remember reviewing page 1 or page 2?</p> <p>5 A I don't recall it specifically.</p> <p>6 Q Now, you testified that you started reading it and you</p> <p>7 stopped because it was too complicated?</p> <p>8 A Yes. I did not understand it.</p> <p>9 Q The entire -- or, almost the entire document has already</p> <p>10 been read into the record, so I just want to look at</p> <p>11 some very specific things here. If you -- on page 1, if</p> <p>12 you look at, there's the first paragraph, this</p> <p>13 agreement, then a witnesseth, then two whereases. If you</p> <p>14 look at the second whereases --</p> <p>15 A Uh-huh.</p> <p>16 Q It says Butch and Stephanie consider it to their best</p> <p>17 interest to settle between themselves now and forever</p> <p>18 their respective rights. I will stop right there. What</p> <p>19 about that clause don't you understand?</p> <p>20 A I don't know what we are settling. I don't know what</p> <p>21 the interests are.</p> <p>22 Q It says now and forever, their respective rights and all</p> <p>23 other rights which may grow out of their marriage</p> <p>24 relationship. What don't you understand about that?</p> <p>25 A What are our rights?</p>

<p style="text-align: right;">Page 97</p> <p>1 Q Well, it is all rights.</p> <p>2 A I'm sorry. I guess I don't understand what that means.</p> <p>3 Q I'm trying to understand what is not clear there. It</p> <p>4 says all rights. Any right that is out there is</p> <p>5 governed, correct?</p> <p>6 A I don't understand what your rights are pertaining to a</p> <p>7 marriage.</p> <p>8 Q We will get to that. Now I want you to go to page 2,</p> <p>9 paragraph 8. Both Butch and Stephanie do hereby forever</p> <p>10 waive, release and quitclaim to the other all of the</p> <p>11 property rights and claims which he or she now has or</p> <p>12 may hereinafter has as husband, wife, widower, widow.</p> <p>13 What don't you understand about that?</p> <p>14 A Pretty much all of it. I get lost in the excessive</p> <p>15 words and filler. I don't follow these.</p> <p>16 Q Explain it. Both Butch and Stephanie do hereby forever</p> <p>17 waive. What about that clause don't you understand?</p> <p>18 A I guess forever giving something up?</p> <p>19 Q So I'm asking what about – what of those words or</p> <p>20 clauses doesn't make sense to you?</p> <p>21 A I suppose if you start to break down individual words, I</p> <p>22 could give you a better definition. I get very mixed up</p> <p>23 and confused when you string this whole thing together.</p> <p>24 This probably first eight, ten lines looks like it is</p> <p>25 one single sentence. I do not know how to interpret</p>	<p style="text-align: right;">Page 98</p> <p>1 that.</p> <p>2 Q How about the existence of the word widow and widower?</p> <p>3 A What's your question?</p> <p>4 Q What do widow and widower mean?</p> <p>5 A The other party has passed away.</p> <p>6 Q And you have already testified about the inclusion of</p> <p>7 the wills. How about the sentence above that. It talks</p> <p>8 about heirs, executors, administrators. Do you know</p> <p>9 what the word heir means?</p> <p>10 A I have a better understanding of it now.</p> <p>11 Q Fair enough. At the time were you aware that heir had</p> <p>12 something to do with death?</p> <p>13 A I would suppose.</p> <p>14 Q So you testified that Butch told you it was just</p> <p>15 divorce. How, in reading paragraph 8, can you think it</p> <p>16 is just divorce if it has words that talk about death?</p> <p>17 A Because I sat here and read this entire thing to you and</p> <p>18 I don't understand any of it.</p> <p>19 Q I know that's what you are testifying. I want you to</p> <p>20 explain why. It has the word widow and widower, heirs.</p> <p>21 How is that – how is death not involved?</p> <p>22 A I don't know.</p> <p>23 Q When you – you already testified that you went through</p> <p>24 and you corrected your – the incorrections – sadly,</p> <p>25 badly phrased.</p>
<p style="text-align: right;">Page 99</p> <p>1 You went through and corrected the mistakes in</p> <p>2 Exhibit A, correct?</p> <p>3 A Is that my assets?</p> <p>4 Q Yes, that is your assets.</p> <p>5 A Yes, I made some corrections.</p> <p>6 Q When do you recall first seeing Exhibit B?</p> <p>7 A I don't recall the first time I saw it. I don't</p> <p>8 remember if it was attached in this original email or if</p> <p>9 they were still figuring those numbers and if the first</p> <p>10 time I saw it was the evening we got married. I don't</p> <p>11 remember.</p> <p>12 Q But you saw it before you signed it because it's been</p> <p>13 initialed?</p> <p>14 A I saw it at least when I initialed it, yes.</p> <p>15 Q In your petition, you have said that Exhibit B is an</p> <p>16 insufficient disclosure of Butch's assets. Could you</p> <p>17 please explain to me what about Exhibit B is incorrect?</p> <p>18 A I think that's the problem. I couldn't tell you what is</p> <p>19 correct or incorrect. There is nowhere for me to</p> <p>20 justify any one of these numbers. I don't even know how</p> <p>21 he justified these numbers in this kind of time frame.</p> <p>22 I don't know of things that were outstanding. I don't</p> <p>23 know if this is even a complete list of entities. I</p> <p>24 don't – I think there's gobs of things that are</p> <p>25 potentially missing.</p>	<p style="text-align: right;">Page 100</p> <p>1 Q You say potentially. What is wrong with this one? We</p> <p>2 have been in this case for two years. What about this</p> <p>3 is wrong?</p> <p>4 A The financial companies, I have no idea. Under the</p> <p>5 ranch, I don't know where that number would have come</p> <p>6 from. I don't think that's necessarily a representation</p> <p>7 of real estate or cattle or equipment. There's no</p> <p>8 references to liabilities on here. I don't know where</p> <p>9 these numbers came from. I don't even know if he knows</p> <p>10 exactly where they came from.</p> <p>11 Q That's your opinion, correct? You can't bring me any</p> <p>12 facts that these numbers are wrong?</p> <p>13 A No. But nobody brought me any facts that they are</p> <p>14 correct, either.</p> <p>15 Q The asterisks, value amount reflects 2012 net income</p> <p>16 after taxes. That tells you where the value is. It</p> <p>17 tells you that they are valuing these things based on</p> <p>18 cash flow, correct?</p> <p>19 A I don't know.</p> <p>20 Q That's what it says. Net income.</p> <p>21 A Okay.</p> <p>22 Q As of 2013, all net income values for one through nine</p> <p>23 will be dramatically impacted by numerous lawsuits filed</p> <p>24 by various entities by several states and private</p> <p>25 parties. So you are being told right there, this is the</p>

<p style="text-align: right;">Page 101</p> <p>1 value as it was done but it is subject to change;</p> <p>2 correct?</p> <p>3 A I understand it could be subject to change.</p> <p>4 Q You see under 10 it has little pound sign, value for</p> <p>5 Martin A. Webb, enrolled member of the Cheyenne Sioux</p> <p>6 Tribe, include income derived from real property</p> <p>7 currently held in trust. That tells you quite a bit,</p> <p>8 doesn't it?</p> <p>9 Again, I don't know what — if the burden of proof</p> <p>10 is on you to prove what is wrong with this, what's wrong</p> <p>11 with this?</p> <p>12 A I think there's potentially a lot of things wrong with</p> <p>13 it. When there's no supporting documents provided, I</p> <p>14 don't know. And, like you said, we have been in this</p> <p>15 for a long time. Just No. 10, alone, I don't think is a</p> <p>16 ballpark figure. But I think when things aren't broken</p> <p>17 down to where you can know where the numbers are coming</p> <p>18 from, I don't think there's any way to know.</p> <p>19 Q So let's assume, for the sake of discussion, that the</p> <p>20 numbers are low. According to this, his assets were</p> <p>21 well over \$20 million; correct? Just add those values</p> <p>22 together.</p> <p>23 A I don't know what it totals to.</p> <p>24 Q 9 plus 7 plus 4 is 21. So there's \$21 million. How</p> <p>25 does this not give you an adequate understanding that</p>	<p style="text-align: right;">Page 102</p> <p>1 this was a very wealthy man?</p> <p>2 A There's no reference of potential debts on here. I</p> <p>3 think everybody assumes that I think he was just dollars</p> <p>4 and nobody talks about loans or debt or problems that</p> <p>5 could be out there. Just because he had real estate</p> <p>6 doesn't mean he owned it outright. Just because he had</p> <p>7 cattle, didn't mean he didn't have an operating loan. I</p> <p>8 don't know the full extent of what's there.</p> <p>9 Q So, again, are you testifying that this does not give</p> <p>10 you a reasonable approximation of his assets?</p> <p>11 A I don't think so.</p> <p>12 Q Okay. When you showed up in Faith in the dark on</p> <p>13 October 11, what was your expectation of what was going</p> <p>14 to happen?</p> <p>15 A That we would sign the prenup document and we would get</p> <p>16 married.</p> <p>17 Q Had you discussed what the actual ceremony was going to</p> <p>18 be?</p> <p>19 A It would be very simple. We didn't want the traditional</p> <p>20 vows. We didn't even do the kiss-the-bride-type</p> <p>21 situation. It was just very modified.</p> <p>22 Q Okay. I want to go back to the prenup. Sorry. I'm</p> <p>23 doing these out of order.</p> <p>24 A That's okay.</p> <p>25 Q If you go back to Exhibit A, your assets, other than the</p>
<p style="text-align: right;">Page 103</p> <p>1 Loveland property, No. 1, we all know about that. 2, 3,</p> <p>2 and 4, did Butch give any of those to you?</p> <p>3 A I think he helped me figure them out, yes.</p> <p>4 Q But the actual underlying asset, he didn't give it to</p> <p>5 you; correct? You earned those yourself?</p> <p>6 A Vista Equine and Vista Equine Colorado — I'm sorry,</p> <p>7 Visa Land &amp; Cattle, those were mine through the other</p> <p>8 businesses. Saw Ranch, I don't know how to answer that.</p> <p>9 I don't remember exactly what was held in that at the</p> <p>10 time. I think just some horses maybe, or maybe a horse,</p> <p>11 and those would have been purchased by him.</p> <p>12 Q As of the time you signed this, could you provide for</p> <p>13 yourself?</p> <p>14 A Yes.</p> <p>15 Q Could you support yourself?</p> <p>16 A Yes.</p> <p>17 Q Did you depend on Butch for your livelihood?</p> <p>18 A No.</p> <p>19 Q Whenever you finally saw Exhibit 2, the prenup —</p> <p>20 A Okay.</p> <p>21 Q — and you already testified that you believe there's</p> <p>22 issues with Exhibit B, and we have already read through</p> <p>23 it and saw that it has the words widow and so on, did</p> <p>24 you ever ask Butch why the discrepancy?</p> <p>25 A Discrepancy with what?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q You have testified he told you very clearly that it was</p> <p>2 just to deal with divorce. There's words like widow and</p> <p>3 widower and death in here that obviously aren't dealing</p> <p>4 with divorce. Did you ask him why there was a</p> <p>5 difference?</p> <p>6 A No. I didn't understand that there could even be a</p> <p>7 difference, I guess. To me the prenup was strictly on</p> <p>8 an instance of divorce, and I just took it at face value</p> <p>9 with what I was being told. I just trusted that</p> <p>10 information.</p> <p>11 Q The actual contractual part of the prenup is two pages</p> <p>12 and a paragraph and a half. Little over two pages long.</p> <p>13 You read the whole thing into the record very quickly.</p> <p>14 You read the whole thing; correct?</p> <p>15 A Parts of it.</p> <p>16 Q Are you testifying that you didn't even read the</p> <p>17 document?</p> <p>18 A I don't remember if I read the whole thing.</p> <p>19 MR. COLLINS: Are you talking about reading it into the</p> <p>20 record?</p> <p>21 MR. NIES: Sorry, good point.</p> <p>22 Q (BY MR. NIES, continuing) On October 11, 2023, did you</p> <p>23 read the whole document?</p> <p>24 A I don't recall.</p> <p>25 Q Sorry, 2013?</p>

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- 1 A I don't recall.
- 2 Q You have testified that you relied on Butch; that you
- 3 relied on the Bogues. But you are also a business
- 4 owner. Would you have signed a contract without reading
- 5 it for your business?
- 6 A I don't believe so.
- 7 Q Then why did you sign this?
- 8 A I think I understood well enough or I thought I
- 9 understood well enough from Butch what it was talking
- 10 about. I know – I don't remember if I read it in
- 11 entirety that night. Presumably, I did. I think I
- 12 understood pieces of it. I get lost in the roundabout
- 13 statements. So I think I relied more on what he told me
- 14 it was for and trusting that and trusting that the
- 15 Bogues were putting something together fairly.
- 16 Q The execution – I want to make sure I'm clear. Is it
- 17 your testimony –
- 18 (Microphone interference. Discussion held
- 19 off the record.)
- 20 Q Is it your testimony that Butch signed alone with Eric
- 21 and then you signed alone with Eric?
- 22 A Yes.
- 23 Q So Butch wasn't there when you signed?
- 24 A No.
- 25 Q Do you claim that Butch deceived you?

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- 1 October 11th, the wedding wouldn't happen?
- 2 A I guess I just knew that it wouldn't be able to.
- 3 Q Even though you had a month between October 11th and
- 4 when you flew out?
- 5 A Just because there was those days doesn't mean there was
- 6 those days with us together or the ability for us to be
- 7 together. I mean, this was – we didn't even have a
- 8 typical wedding night or do anything fun because he went
- 9 right back.
- 10 Q You already testified you were able to pick up the
- 11 marriage license without planning for it, correct?
- 12 A Say that again. I'm sorry.
- 13 Q You testified that you hadn't planned to get the
- 14 marriage license and you stopped by Sturgis to pick it
- 15 up the same day you got married; correct?
- 16 A Yes.
- 17 Q You could have done that literally any day, correct?
- 18 A No. I live in Colorado.
- 19 Q But you could have driven up. It is only five hours.
- 20 A Well, I guess I wouldn't have done that and we did –
- 21 I'm pretty sure you have to do that together anyways.
- 22 Q My point is I understand what you are saying. I
- 23 understand your argument. But it wasn't the only day
- 24 you could have done this.
- 25 A To me it was the only day this could be done.

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- 1 A I don't think he deceived me, no.
- 2 Q Do you claim that Butch tricked you?
- 3 A Tricked, no.
- 4 Q Do you claim that Butch knew that this prenup waived
- 5 your elective share right and didn't tell you that?
- 6 A Can you say that again?
- 7 Q Do you claim that Butch knew that the prenuptial
- 8 agreement actually waived rights after death and didn't
- 9 tell you that?
- 10 A I guess I don't know – I don't want to assume that he
- 11 knew it was in there, too. I don't know if he knew it
- 12 was in there.
- 13 Q You have already testified you weren't coerced or
- 14 forced, but I believe you said there was – you did feel
- 15 there was a date that had to get set, correct?
- 16 A I feel there was a bit of pressure, yes.
- 17 Q Was that pressure from Butch or yourself?
- 18 A I guess both. I mean, I would have to say Butch because
- 19 his schedule was the hardest to work around. He was the
- 20 one facing the most hardships and had the most things
- 21 going on at that time. So it very much was around him.
- 22 Q Did you – did he ever tell you we have to sign on
- 23 October 11th?
- 24 A In that way, I don't recall.
- 25 Q Did he ever indicate that if you didn't sign on

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- 1 Q Okay. What precisely did Butch tell you about what the
- 2 prenup said? Do you remember any of the exact words
- 3 that he used?
- 4 A I just remember the generalization that it was to
- 5 protect my assets, protect what was in Colorado.
- 6 Q Did he ever tell you that it didn't include after-death
- 7 provisions?
- 8 A He didn't use those words. And I wouldn't have known to
- 9 ask.
- 10 Q You have testified that Butch helped you provide the
- 11 numbers that you have on your Exhibit A of the prenup.
- 12 When did that happen? Did that happen on the night of
- 13 October 10th?
- 14 A I don't remember specifically.
- 15 Q Could it have been happened earlier?
- 16 A I don't remember.
- 17 MR. NIES: Give me one second to look through my notes
- 18 to make sure I don't have anything else. I am obviously
- 19 almost done here.
- 20 No further questions.
- 21 THE COURT: Thank you. Mr. Rumpca.
- 22 MR. RUMPCA: Thank you, Judge.
- 23 CROSS-EXAMINATION
- 24 BY MR. RUMPCA:
- 25 Q Stephanie, I'm going to jump around a fair amount since

<p style="text-align: right;">Page 109</p> <p>1 you have answered most of the questions already. I need</p> <p>2 to get some clarification on a couple and just so we can</p> <p>3 kind of make a clear record.</p> <p>4 You had indicated that you had a business lawyer in</p> <p>5 Colorado. Who was that?</p> <p>6 A Dana Cohen.</p> <p>7 Q Dana was the one who would assist with the contracts in</p> <p>8 your business; is that right?</p> <p>9 A Yes.</p> <p>10 Q And I believe your testimony was the input that you</p> <p>11 provided was essentially prices or things that needed</p> <p>12 to — you needed to protect yourselves from; is that</p> <p>13 correct?</p> <p>14 A Yes.</p> <p>15 Q So what sort of things would you want written into a</p> <p>16 contract to protect yourself from in your business?</p> <p>17 A So it would have been more like specifics on how we</p> <p>18 schedule things or the rights that the veterinarian has</p> <p>19 to treat instead of maybe a hospital situation where a</p> <p>20 veterinarian would get, like, a pre-authorization to do</p> <p>21 so many treatments. We more view it as they are left to</p> <p>22 get dropped off to be bred and the veterinarian has</p> <p>23 control of what is going to be done from there. So</p> <p>24 probably more specifics like that. Specifics on</p> <p>25 ordering semen. Just kind of like how our protocol</p>	<p style="text-align: right;">Page 110</p> <p>1 works.</p> <p>2 Q So you understood the importance, at least, of including</p> <p>3 the things like that in the contracts that you prepared</p> <p>4 for your business; correct?</p> <p>5 A Those details, yes.</p> <p>6 Q I want clarification on a couple dates. You were</p> <p>7 engaged in May of 2013. Do you remember the day? The</p> <p>8 date?</p> <p>9 A I want to say the 16th, but it is kind of skipping me at</p> <p>10 the moment.</p> <p>11 Q I think that's consistent with what you testified to</p> <p>12 previously. And then the Colorado property purchase,</p> <p>13 that came within days of that — after that, correct?</p> <p>14 Do you know what date?</p> <p>15 A No. May or June, I believe.</p> <p>16 Q If I say May 20th, any reason to disagree with that?</p> <p>17 A No.</p> <p>18 Q Did you make any contributions toward the purchase</p> <p>19 price?</p> <p>20 A No, I don't believe so.</p> <p>21 Q You described it, I believe, in your testimony on direct</p> <p>22 as it was titled in your name but it was not a gift. It</p> <p>23 was for both of you. Is that an accurate —</p> <p>24 A It was our house. Is that what you mean?</p> <p>25 Q I'm just asking: You say it was not a gift but it was</p>
<p style="text-align: right;">Page 111</p> <p>1 for both of you. Is that what you mean? It was both of</p> <p>2 your house that you could live in?</p> <p>3 A Yes.</p> <p>4 Q But obviously it was titled in just your name?</p> <p>5 A That's correct.</p> <p>6 Q And then ultimately later, it was identified in the</p> <p>7 prenuptial agreement on the assets on your exhibit list</p> <p>8 in that agreement, correct?</p> <p>9 A Yes.</p> <p>10 Q And so you were going to be able to keep that in what</p> <p>11 you are testifying, it was your understanding, in the</p> <p>12 event of divorce; correct?</p> <p>13 A Yes.</p> <p>14 Q And then ultimately later we asked about the language in</p> <p>15 the premarital agreement about doing wills and in the</p> <p>16 2015 will, Butch, you were provided — what was in the</p> <p>17 2015 for you?</p> <p>18 A The house furnishings, I think, was basically it.</p> <p>19 Q The house and furnishings?</p> <p>20 A Yes.</p> <p>21 Q So that was ultimately consistent with what your —</p> <p>22 A The will might not specifically say house since that was</p> <p>23 in my name. I'm a little foggy on that part. But I</p> <p>24 know there was furnishings.</p> <p>25 Q I'm just trying to clarify the testimony. I think you</p>	<p style="text-align: right;">Page 112</p> <p>1 are correct. The will didn't provide specifically for</p> <p>2 the house because that was already in your name; is that</p> <p>3 correct?</p> <p>4 A I think that's how that would work out, yes.</p> <p>5 Q Do you have the Exhibit 2 up there?</p> <p>6 A I have something that says 2.</p> <p>7 Q Yeah, prenuptial property distribution agreement.</p> <p>8 A Yes.</p> <p>9 Q Your testimony was not clear to me whether you recall</p> <p>10 seeing Exhibit A and Exhibit B, whether those were</p> <p>11 attached documents to the prenuptial agreement when you</p> <p>12 received that by email on October 10?</p> <p>13 A Yeah, I don't recall on that evening.</p> <p>14 Q But you understood — at least in your responsive email,</p> <p>15 you reference the 45% or the percentages that were</p> <p>16 initially in here. You reference those, correct?</p> <p>17 A Correct.</p> <p>18 Q So would it be safe to assume you had read the prenup</p> <p>19 with the attachments, exhibits, and that's where you</p> <p>20 came up with the numbers that you were trying to</p> <p>21 correct; is that right?</p> <p>22 A I would have to assume at least A was there. But I</p> <p>23 don't recall on B, and this was 11 years ago. I'm</p> <p>24 sorry. I don't specifically remember what I maybe did</p> <p>25 or didn't read.</p>



<p style="text-align: right;">Page 113</p> <p>1 Q And B was Butch's assets, right?</p> <p>2 A Correct.</p> <p>3 Q So, and if you look at the exhibit, it looks like it was</p> <p>4 probably prepared in a Word document. Whether it was</p> <p>5 sent in Word or PDF, I'm not sure, but it has page</p> <p>6 numbers on the bottom. Do you see that?</p> <p>7 A Yes.</p> <p>8 Q First page, page 1 of 5. And next page 2 of 5; page 3</p> <p>9 of 5; and the exhibits, Exhibit A, your property, that's</p> <p>10 page 4 of 5; and you see Exhibit B, page 5 of 5. You</p> <p>11 understand how Microsoft Word documents work?</p> <p>12 A More or less, yes.</p> <p>13 Q And how you can put page numbers at the bottom?</p> <p>14 A Yes.</p> <p>15 Q Have you looked at the page numbers at the bottom of</p> <p>16 that document, would your understanding be that, in all</p> <p>17 likelihood, yes, both of these exhibits were included in</p> <p>18 the document that you received?</p> <p>19 A I don't know if I can say that those page numbers were</p> <p>20 there then and the last page was included. I don't want</p> <p>21 to say I read it if it wasn't there. I don't remember.</p> <p>22 Q Well, if the last page wouldn't have been included,</p> <p>23 wouldn't the other page numbers say page 1 of 4 or page</p> <p>24 2 of 4?</p> <p>25 MR. COLLINS: I'm going to object, Your Honor. You</p>	<p style="text-align: right;">Page 114</p> <p>1 don't know what was sent to her. It could be partial.</p> <p>2 She doesn't recall. I mean, move on.</p> <p>3 THE COURT: Overruled. She can answer.</p> <p>4 A I could assume that there was possibly a page missing</p> <p>5 from a scan. I don't know what was included.</p> <p>6 Q Okay. You testified that you – you can correct me if</p> <p>7 I'm wrong; I'm just trying to take notes – that you had</p> <p>8 a brief conversation prior to the wedding about the</p> <p>9 prenup with Butch. Then I think on Eric's cross you</p> <p>10 said maybe a week or two in advance you had conversation</p> <p>11 with Butch about the prenup; is that right?</p> <p>12 A That's maybe vaguely when that could have come up. I</p> <p>13 really don't remember.</p> <p>14 Q Do you recall having testified at your deposition under</p> <p>15 oath on February 10th of 2023. Do you recall having</p> <p>16 your deposition taken at that time?</p> <p>17 A Yes.</p> <p>18 Q And do you recall giving your statement at that time</p> <p>19 that you believe the discussion perhaps occurred late</p> <p>20 summer potentially?</p> <p>21 A I guess I don't recall but if that's what it says.</p> <p>22 Q Would that certainly be a possibility that the</p> <p>23 discussion was late summer with Butch about the prenup?</p> <p>24 A Possibly. But to me that's September and we are talking</p> <p>25 about the same time frame.</p>
<p style="text-align: right;">Page 115</p> <p>1 Q Well, I mean, trying to figure out this time frame, yes.</p> <p>2 October 10th was the date of the email.</p> <p>3 A Right. You go back a couple weeks would be the end of</p> <p>4 September. To me, that's the same generalized time</p> <p>5 frame.</p> <p>6 Q So your testimony is you think it was at some point in</p> <p>7 September, correct?</p> <p>8 A Could have been.</p> <p>9 Q It wasn't as early to the prenup or as soon to the</p> <p>10 execution as October, though; correct?</p> <p>11 A I think you are wanting me to give a specific date, and</p> <p>12 I do not remember to give you a specific date.</p> <p>13 Q It wasn't sprung upon you, though.</p> <p>14 A In a way it was.</p> <p>15 Q If it was in advance by a couple weeks of ultimately</p> <p>16 executing it, how do you consider that being sprung</p> <p>17 upon?</p> <p>18 A I guess it depends on exactly what you mean by that. To</p> <p>19 me, it wasn't like we were having these long extended</p> <p>20 conversations about a prenup. It was a very generalized</p> <p>21 off-handed comment of, I think we need to do this. To</p> <p>22 me, that's springing it on me.</p> <p>23 Q You weren't surprised, were you, when you received the</p> <p>24 email on October 10th?</p> <p>25 A From that email, no.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q You expected that to be coming?</p> <p>2 A I expected the email. I didn't expect the comment.</p> <p>3 Q The comment?</p> <p>4 A Of him commenting about needing to do a prenup. That</p> <p>5 was what was sprung on me.</p> <p>6 MR. RUMPCA: I apologize, I just want to make sure I'm</p> <p>7 covering the correct stuff here.</p> <p>8 (Attorney reviewing notes.)</p> <p>9 Q I want to ask you about your efforts to locate that</p> <p>10 email, which is an exhibit – I think it is Exhibit 1</p> <p>11 here – and that's the email on October 10, that email</p> <p>12 string. You searched your email; is that correct?</p> <p>13 A Yes.</p> <p>14 Q And you had a separate email account from what Butch</p> <p>15 had?</p> <p>16 A Yes.</p> <p>17 Q And we see both of those email accounts, the addresses I</p> <p>18 should say, in that email string; is that right?</p> <p>19 A Yes.</p> <p>20 Q So Butch's was webbranch75@yahoo.com?</p> <p>21 A Yes.</p> <p>22 Q And you have already testified about your search of your</p> <p>23 emails. You didn't actually just go back to those</p> <p>24 dates. You did a search term and what populated is what</p> <p>25 you produced; is that correct?</p>

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- 1 A That's what I remember.
- 2 Q Do you have any idea about how many emails you get every
- 3 month?
- 4 A No idea.
- 5 Q Hundreds?
- 6 A I couldn't even guess.
- 7 Q It is not thousands, is it?
- 8 A I wouldn't assume so but I can tell you 99% of it is
- 9 spam. So I don't know.
- 10 Q So if you were to look for emails from Butch – I guess,
- 11 how did you do this search of your own email?
- 12 A I don't remember specifically but I think I used
- 13 keywords like prenup or Bogue, just try to be as broad
- 14 as possible and catch anything that would have had them
- 15 in it.
- 16 Q You didn't think to search by Butch's email address?
- 17 A There would have been a lot more things to try and go
- 18 through. So the Bagues would have been a better way to
- 19 try and narrow it down or the word prenup.
- 20 Q You said there would have been a lot more things to go
- 21 through if you would have searched Butch's email
- 22 address; correct?
- 23 A But things that were not relevant.
- 24 Q But you would have been able, then, to go through – it
- 25 would have populated all of the emails between you and

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- 1 Butch, right?
- 2 A Yes.
- 3 Q You could have searched those by date, gone through
- 4 those. Do you have any idea how long that might take
- 5 you?
- 6 A Honestly, I very well could have because I was trying to
- 7 be very thorough in what was sent over to you guys. I
- 8 just remember more search words.
- 9 Q I'm sorry. I thought it was the process you used,
- 10 utilizing search terms. Not an actual combing through
- 11 of your emails.
- 12 A I know I used search terms. I could have done the other
- 13 as well. I just don't recall.
- 14 Q That was then the only email that you located?
- 15 A Yes.
- 16 Q Or produced.
- 17 I know from prior, not testimony today, but you
- 18 have – you did, after Butch passed, you did look for
- 19 other wills and such within his email; is that correct?
- 20 A In his email?
- 21 Q Yes.
- 22 A Yes.
- 23 Q And did you also look through his email for emails
- 24 relevant to the prenuptial agreement?
- 25 A Not that I recall.

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- 1 Q You confined that to looking, after he passed away, to
- 2 emails regarding a will?
- 3 A I think it was will or whatever my counsel might have
- 4 been needing a document for, I would try and find. I
- 5 don't recall anything for this.
- 6 Q Have you been – I guess, did you ever access Butch's
- 7 email while you were located in South Dakota?
- 8 A Not that I recall.
- 9 Q Did you do, like, the search from your place in
- 10 Colorado?
- 11 A I would assume so, but I don't – I don't even remember
- 12 the exact instance so I'm not positive.
- 13 Q Did you ever change the password to Butch's email?
- 14 A I don't remember but it might have needed me to or if I
- 15 didn't remember an old format, reset a new one. My
- 16 stuff was always his backup and he never remembered his
- 17 own passwords anyways. We were constantly resetting it.
- 18 Q Did you reset it two days before your deposition?
- 19 A I don't recall.
- 20 Q Would there have been anybody else who would have reset
- 21 it two days in advance of your deposition?
- 22 A I'm not sure.
- 23 Q Did anybody else, to your knowledge, have access to
- 24 Butch's email?
- 25 A I think several people potentially did.

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- 1 Q Who?
- 2 A Myself. I know Kailee helped him with it a lot. Some
- 3 previous accountants and office people set them up and
- 4 maintained them for him. He was very poor with
- 5 passwords and not the best with technology. So really a
- 6 lot of us had access to a lot of his things.
- 7 Q Did you have to assist in providing Colleen Zea with an
- 8 authentication code or anything like that?
- 9 A Yes.
- 10 Q Did you delete Butch's emails from his Yahoo account
- 11 before you did that?
- 12 A No.
- 13 Q Do you have any knowledge as to whether anybody else
- 14 deleted Butch's emails before giving it over to Colleen?
- 15 A No, none.
- 16 Q Question on the – with regard to the 2015 will, in
- 17 part, but more so directed at the paragraph 8 of the
- 18 prenuptial agreement, the bottom sentence in that
- 19 referenced wills, and I wanted to clarify your testimony
- 20 because that's the paragraph that included widow,
- 21 widower, heirs. Do you recall testifying about that?
- 22 A Yes.
- 23 Q The final sentence there, in addition both parties agree
- 24 to complete wills, living wills and durable powers of
- 25 attorney within six months of the date of this

<p style="text-align: right;">Page 121</p> <p>1 agreement. Was it your testimony or did I recall it</p> <p>2 incorrectly that – is it your testimony that that was</p> <p>3 provided so that you could be provided for in the wills?</p> <p>4 That he could give and provide for you in a subsequent</p> <p>5 will?</p> <p>6 <b>A</b> To me, that's what a will is, yes.</p> <p>7 <b>Q</b> But that would be inconsistent with the remainder of the</p> <p>8 paragraph, would it not?</p> <p>9 <b>A</b> I don't understand your question.</p> <p>10 <b>Q</b> So if the paragraph is about giving up, forever waiving,</p> <p>11 releasing, quitclaim all of your property rights and</p> <p>12 claims, then it goes into the language regarding the</p> <p>13 widow and widower, heirs. So the paragraph – tell me</p> <p>14 if your interpretation is different. The paragraph</p> <p>15 above that last sentence talks about giving up your</p> <p>16 rights in a scenario of death, does it not?</p> <p>17 <b>A</b> I honestly don't know.</p> <p>18 <b>Q</b> Okay. But certainly not giving you rights in that</p> <p>19 scenario, is it?</p> <p>20 <b>A</b> Potentially to me, a will is potentially giving</p> <p>21 somebody – you would include things to potentially give</p> <p>22 somebody in a will. So if you start talking about that,</p> <p>23 that's what that means to me.</p> <p>24 <b>Q</b> Couldn't you exclude somebody in a will?</p> <p>25 <b>A</b> I suppose you could.</p>	<p style="text-align: right;">Page 122</p> <p>1 <b>Q</b> And isn't that ultimately what happened with Butch and</p> <p>2 as pertained to your interest in his will?</p> <p>3 <b>A</b> At that time, I had no idea what was in there.</p> <p>4 <b>MR. RUMPCA:</b> Your Honor, I have no further questions.</p> <p>5 <b>THE COURT:</b> Thank you. Ms. Cook.</p> <p>6 <b>MS. COOK:</b> Thank you, Your Honor.</p> <p>7 <b>CROSS-EXAMINATION</b></p> <p>8 <b>BY MS. COOK:</b></p> <p>9 <b>Q</b> Stephanie, I won't beat you over the head with any of</p> <p>10 this but I do just have some of my own follow-up</p> <p>11 questions.</p> <p>12 If you could turn to Exhibit No. 1, back to the</p> <p>13 email that we have spent a significant amount of time</p> <p>14 talking about.</p> <p>15 <b>A</b> Yes.</p> <p>16 <b>Q</b> Do me favor, if you would, would you turn to the second</p> <p>17 page of that.</p> <p>18 <b>A</b> Okay.</p> <p>19 <b>Q</b> And I'm going to ask you: Do you see where it says IRS</p> <p>20 Circular?</p> <p>21 <b>A</b> Yes.</p> <p>22 <b>Q</b> You see the bold and underlined. Can you read me that</p> <p>23 bold and underlined section, just the first four words.</p> <p>24 <b>A</b> IRS Circular 230 Disclosure.</p> <p>25 <b>Q</b> So you are capable of reading that, is that fair?</p>
<p style="text-align: right;">Page 123</p> <p>1 <b>A</b> Yes.</p> <p>2 <b>Q</b> But is it fair to say that you can read it because you</p> <p>3 are literate but you have no idea what an IRS Circular</p> <p>4 230 Disclosure actually means or the legal import of the</p> <p>5 same?</p> <p>6 <b>A</b> Very accurate.</p> <p>7 <b>Q</b> So I want to turn or have you turn to the front page of</p> <p>8 that email, and I think the testimony is clear on this</p> <p>9 front, but you state, will you resend in English, lawyer</p> <p>10 jargon is the quickest way for me to feel completely</p> <p>11 inept. I really don't understand most of these points.</p> <p>12 And I believe your testimony is you don't recall</p> <p>13 what you would have reviewed that would have spurred</p> <p>14 this email necessarily. I think you have testified that</p> <p>15 obviously you would have seen at least Exhibit A because</p> <p>16 you were making corrections to Exhibit A unprompted. Is</p> <p>17 that fair?</p> <p>18 <b>A</b> That's fair.</p> <p>19 <b>Q</b> Based upon the fact that you referenced you really don't</p> <p>20 understand most of these points, and recognizing that</p> <p>21 you don't have an independent recollection, would it be</p> <p>22 fair to say that at least you reviewed some portion of</p> <p>23 the legal aspect of this document?</p> <p>24 <b>A</b> Yes. I think I tried to make a fair effort. I just</p> <p>25 don't understand it.</p>	<p style="text-align: right;">Page 124</p> <p>1 <b>Q</b> And there's testimony you have a Bachelor of Science,</p> <p>2 right?</p> <p>3 <b>A</b> That's correct.</p> <p>4 <b>Q</b> And Butch had a Bachelor of Science, right?</p> <p>5 <b>A</b> Yes.</p> <p>6 <b>Q</b> And that, I guess, technically you had the same level of</p> <p>7 education; is that correct?</p> <p>8 <b>A</b> Yes.</p> <p>9 <b>Q</b> What about the same level of business experience at the</p> <p>10 time that this prenuptial agreement was signed?</p> <p>11 <b>A</b> Not even in the same ballpark.</p> <p>12 <b>Q</b> And I think it is clear but you don't have a background</p> <p>13 in law?</p> <p>14 <b>A</b> No, none.</p> <p>15 <b>Q</b> Don't have a legal degree?</p> <p>16 <b>A</b> No.</p> <p>17 <b>Q</b> You are not an accountant?</p> <p>18 <b>A</b> No.</p> <p>19 <b>Q</b> And you – for your business back in the time frame that</p> <p>20 we are talking about, you testified that you rely on</p> <p>21 professionals to assist with accounting and legal work?</p> <p>22 <b>A</b> Yes.</p> <p>23 <b>Q</b> You relied on Butch's business savvy and his probably 30</p> <p>24 plus years of business experience that he had on you.</p> <p>25 Is that fair?</p>



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- 1 A Yes, very.
- 2 Q Regardless of the timing, we can go back and forth
- 3 about, you know, if you talked about this with Butch a
- 4 week before; if you talked with Butch the night before.
- 5 Irrespective of that and regardless of the timing, did
- 6 you ever understand that you had a right to or that you
- 7 needed to have more time to have someone look at this
- 8 prenup for you?
- 9 A No.
- 10 Q And assuming even if it was the week before, there is a
- 11 question about whether you had utilized your business
- 12 attorneys in Colorado to potentially look at this, and I
- 13 think you said you don't recall.
- 14 A I don't recall exactly.
- 15 Q How many lawyers do you know that are licensed in South
- 16 Dakota?
- 17 A Everybody in this room and Eric and Cheryl.
- 18 Q At this point in time, it would have been the Bogues.
- 19 Is that fair?
- 20 A Yes. At that time, yes.
- 21 MS. COOK: Stephanie, I think that's all I have for you.
- 22 THE COURT: Mr. Morris?
- 23 MR. MORRIS: I have nothing further.
- 24 THE COURT: Thank you. Mr. Chicoine?
- 25 MR. CHICOINE: I do have a few questions, Your Honor. I

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- 1 A I believe in South Dakota or on his way to Colorado.
- 2 Q And you drove back to South Dakota with Butch on the
- 3 11th?
- 4 A Yes.
- 5 Q You asked -- you told Butch, I really don't understand
- 6 most of these points, right?
- 7 A In the email, yes.
- 8 Q Did Butch make an effort to explain any of those points
- 9 that you did not understand?
- 10 A The only explanations I ever got was that this was to
- 11 protect me and assets -- the Colorado property against
- 12 those lawsuits. That's how it was explained to me.
- 13 Q Did you ask for any further explanation?
- 14 A I don't believe so.
- 15 Q You understood that your email on October 10th at
- 16 8:20 p.m., did you understand that Butch would send that
- 17 on to Eric Bogue?
- 18 A I guess I made that assumption.
- 19 Q You stated in here that you wanted to correct a few
- 20 things including your percentage interests in Vista
- 21 Equine Colorado, LLC, and Visa Land & Cattle, LLC.
- 22 A Yes.
- 23 Q Looking at the prenuptial agreement Exhibit A, do you
- 24 have that page?
- 25 A Exhibit A?

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- 1 will use the podium since it is set up.
- 2 CROSS-EXAMINATION
- 3 BY MR. CHICOINE:
- 4 Q My notes indicate that you testified in May of 2013,
- 5 after your engagement, you purchased -- you and Butch
- 6 purchased the Colorado property?
- 7 A Correct.
- 8 Q And that was for purposes of -- to start a family or for
- 9 your family. What was your testimony in that regard?
- 10 A That it would be like the family house. It would have
- 11 been for us.
- 12 Q After -- when you were engaged, had you and Butch talked
- 13 about having children?
- 14 A After, yes.
- 15 Q At the time you purchased the home in Colorado, had you
- 16 talked about having children?
- 17 A We talked about having children on our very first date.
- 18 Q Did you understand that the home in Colorado was
- 19 intended for use by children that you may have?
- 20 A Yes.
- 21 Q I want to talk Exhibit 1 a little bit, the email. You
- 22 weren't with Butch at the time you were exchanging
- 23 emails on October 10th, 2013, were you?
- 24 A No.
- 25 Q Butch was in South Dakota?

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- 1 Q Yes.
- 2 A Yes.
- 3 Q So Exhibit A here provides that -- this is the initial
- 4 copy of initial, provides for 45% interest in Vista
- 5 Equine Colorado, LLC, and a 45% interest in Visa Land &
- 6 Cattle, LLC; is that right?
- 7 A That's correct.
- 8 Q Do you know if those numbers were changed after your
- 9 email the evening of October 10th?
- 10 A I would presume they had to be.
- 11 Q Do you know what they said before -- or when you first
- 12 looked at that exhibit?
- 13 A I believe 50%, but I'm not positive.
- 14 Q You also asked about checking, savings, and 401(k) in
- 15 that Exhibit 1 email; is that right?
- 16 A Yes.
- 17 Q Is that in relation to your checking, savings and
- 18 401(k)?
- 19 A Yes.
- 20 Q And your checking, savings, and 401(k) are not reflected
- 21 in the signed prenuptial agreement; is that right?
- 22 A That's correct.
- 23 Q You also asked about your horses not being -- that they
- 24 are in your personal name and those also were not
- 25 included in the signed prenuptial agreement?

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- 1 A Correct.
- 2 Q Did you have any understanding of Butch's checking,  
3 savings or 401(k)?
- 4 A No.
- 5 Q Do you know whether Butch had a retirement account?
- 6 A Yes, he did.
- 7 Q Do you know that he had a retirement account in October  
8 of 2013?
- 9 A Then, no.
- 10 Q When did you ask Butch about his retirement account?
- 11 A I don't think I ever asked him about it.
- 12 Q How did you find out about Butch's retirement account?
- 13 A He cashed it out at one point.
- 14 Q When?
- 15 A I do not recall. After we got married but I do not  
16 recall.
- 17 Q Did you know whether Butch had any life insurance  
18 policies in October of 2013?
- 19 A I didn't know -- at that point, I did not know.
- 20 Q Did you later come to find whether Butch had life  
21 insurance policies?
- 22 A I became aware of it in 2015.
- 23 Q I want to take a look at, again, back to Exhibit 2, the  
24 prenuptial agreement and particularly Exhibit B, Butch's  
25 schedule. Are you with me?

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- 1 Q On October 11, 2013, did you have understanding of the  
2 fair market value of Butch's companies and ventures  
3 listed as 1 through 10?
- 4 A No.
- 5 Q We have been through Exhibit 2 at length. Do you  
6 know -- is there anything in that document that you  
7 believe indicates that you don't need to know anything  
8 further than what's disclosed in the exhibits?
- 9 A Can you ask that again.
- 10 Q Yeah. Is there anything in the prenuptial agreement,  
11 after having looked it over and testified to it into the  
12 record, is there anything in that agreement that leads  
13 you to understand that you were waiving further  
14 disclosure of assets?
- 15 A I don't think so.
- 16 Q You know now, and you asked questions in October of 2013  
17 about cash and checking, savings, and livestock, but  
18 those are not listed in Exhibit 2. Did you feel like  
19 you didn't need to know those assets to sign the  
20 agreement?
- 21 A That I didn't need to know livestock of his? Is that  
22 what you are asking? That I didn't need to know his  
23 number of livestock?
- 24 Q Correct. The values of livestock and checking and  
25 savings and 401(k), did you feel like you needed to know

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- 1 A Yes.
- 2 Q You were asked about the values of items 1 through 10 on  
3 Exhibit B. Did you understand those to reflect the net  
4 income of those entities or ventures?
- 5 A I didn't really understand what those numbers  
6 represented or how they were -- how they came about.
- 7 Q Mr. Nies asked you about the asterisks that refers to  
8 the net income after taxes, and I guess -- did you see  
9 that? Did you read that before you signed?
- 10 A I don't -- I guess I don't remember that specifically.  
11 I see that it says it. But I guess without anything  
12 else to go over, I don't know if it is accurate.
- 13 Q Did you have any knowledge of the equity that Butch may  
14 have had in those companies or ventures?
- 15 A When you say that, do you mean then taking out the debts  
16 against them?
- 17 Q I guess I'm asking your understanding. Did you have an  
18 understanding of the value of those assets after taking  
19 out the debts?
- 20 A No.
- 21 Q Do you know what I mean when I ask about equity?
- 22 A I have my understanding.
- 23 Q What's your understanding of equity?
- 24 A Your income less the expenses against it. Your  
25 ownership stake in it after what was taken out.

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- 1 those?
- 2 A I guess I didn't know what I needed to know.
- 3 Q Okay. Exhibit 2, paragraph 4 contains a discussion  
4 about Butch paying you in the event of divorce or  
5 separation; is that right?
- 6 A Yes.
- 7 Q Did you and Butch discuss how much he would have to pay  
8 you in the event of divorce or separation?
- 9 A No.
- 10 Q Do you know where these numbers came from?
- 11 A No.
- 12 Q Did you know the extent of cash that Butch had at the  
13 time of your marriage on October 11, 2013?
- 14 A No.
- 15 MR. CHICOINE: Nothing further, Your Honor. Thank you.
- 16 THE COURT: Thank you. Mr. Collins.
- 17 MR. COLLINS: I have two questions.
- 18 THE COURT: Perfect, let's do it.
- 19 REDIRECT EXAMINATION
- 20 BY MR. COLLINS:
- 21 Q Stephanie, as to the 401K, it wasn't clear in your  
22 answer. Did Butch have a 401(k) in 2013 at the time you  
23 got married?
- 24 A I believe he did.
- 25 Q I don't think we told the Court, prior to him building

<p style="text-align: right;">Page 133</p> <p>1 these businesses and being a rancher, what was his</p> <p>2 occupation?</p> <p>3 <b>A</b> He was in banking.</p> <p>4 <b>Q</b> He was president of a bank?</p> <p>5 <b>A</b> Yes.</p> <p>6 <b>Q</b> And probably accumulated 401(k) in that?</p> <p>7 <b>A</b> Yes.</p> <p>8 <b>Q</b> So that 401(k) is not listed on that sheet?</p> <p>9 <b>A</b> Correct.</p> <p>10 <b>Q</b> The only last question is this: I tried to set off</p> <p>11 today and explain we are trying to envision everybody 11</p> <p>12 years older. How old are you today?</p> <p>13 <b>A</b> 40.</p> <p>14 <b>Q</b> And so it is important for us to remember at the time</p> <p>15 that this took place in 2013, you were 29, correct?</p> <p>16 <b>A</b> Correct.</p> <p>17 <b>MR. COLLINS:</b> That's all I have. Thank you. Mr. Nies?</p> <p>18 <b>MR. NIES:</b> No questions, Your Honor.</p> <p>19 <b>THE COURT:</b> Mr. Rumpca?</p> <p>20 <b>MR. RUMPCA:</b> No questions, Your Honor.</p> <p>21 <b>THE COURT:</b> And I think Ms. Cook –</p> <p>22 <b>MS. COOK:</b> No questions, Your Honor.</p> <p>23 <b>THE COURT:</b> Mr. Morris?</p> <p>24 <b>MR. MORRIS:</b> No, Your Honor.</p> <p>25 <b>THE COURT:</b> Mr. Chicoine?</p>	<p style="text-align: right;">Page 134</p> <p>1 <b>MR. CHICOINE:</b> Nothing further.</p> <p>2 <b>THE COURT:</b> We will take an hour for lunch. Come back</p> <p>3 at 1:30.</p> <p>4 (Lunch recess taken at 12:25 p.m. and Court</p> <p>5 resumed at 1:34 p.m.)</p> <p>6 <b>THE COURT:</b> We are back on the record and we just</p> <p>7 finished with Stephanie Webb, our first witness. And</p> <p>8 Mr. Collins, do you have other witnesses you are going</p> <p>9 to call?</p> <p>10 <b>MR. COLLINS:</b> I do not, Your Honor.</p> <p>11 <b>THE COURT:</b> Mr. Nies.</p> <p>12 <b>MR. NIES:</b> Okay, thank you, Your Honor. I have four</p> <p>13 witnesses, two of which will be very quick. I will</p> <p>14 start with Pastor Delbridge so we can get him home.</p> <p>15 <b>THE COURT:</b> Okay.</p> <p>16 <b>THE COURT:</b> Hi, Pastor. If you could come up here, I</p> <p>17 will swear you in and you can have a seat.</p> <p>18 <b>THE WITNESS:</b> Okay, I have to walk through this.</p> <p>19 <b>THE COURT:</b> Good luck with that. Thank you.</p> <p>20 <b>HAROLD DELBRIDGE,</b></p> <p>21 called as a witness, being first duly sworn, testified as</p> <p>22 follow:</p> <p>23 <b>DIRECT EXAMINATION</b></p> <p>24 <b>BY MR. NIES:</b></p> <p>25 <b>Q</b> Okay, Pastor, thank you for coming today. I have got a</p>
<p style="text-align: right;">Page 135</p> <p>1 couple questions quick for you. I'm Eric Nies</p> <p>2 representing Dee Haugen. So just quick, could you just</p> <p>3 introduce yourself to the Court.</p> <p>4 <b>A</b> I'm sorry. You have to speak up.</p> <p>5 <b>Q</b> Sorry. Could you please introduce yourself to the</p> <p>6 Court?</p> <p>7 <b>A</b> Oh, okay. I'm Pastor Harold Delbridge. I live at 19904</p> <p>8 Four Corners Road, Philip, South Dakota.</p> <p>9 <b>Q</b> Thank you. You married Butch and Stephanie Webb back in</p> <p>10 2013, correct?</p> <p>11 <b>A</b> I did.</p> <p>12 <b>Q</b> How well do you remember the day of the wedding?</p> <p>13 <b>A</b> Pretty well. I had been through some experiences that</p> <p>14 year. My wife died in June. Then we dealt with Atlas</p> <p>15 in October and cleared up and everything was good. I</p> <p>16 remember it pretty good.</p> <p>17 <b>Q</b> Do you remember when you arrived at the Bogues' office</p> <p>18 in Faith that day?</p> <p>19 <b>A</b> Yeah.</p> <p>20 <b>Q</b> Who was present when you got there?</p> <p>21 <b>A</b> Eric and Cheryl and Butch and Stephanie.</p> <p>22 <b>Q</b> As I'm sure you know, this trial today involves the</p> <p>23 signing of a prenuptial agreement. Did you see that</p> <p>24 agreement being signed?</p> <p>25 <b>A</b> I did not. That was all done when I came in. Butch</p>	<p style="text-align: right;">Page 136</p> <p>1 introduced me to Stephanie, and we just visited with her</p> <p>2 for a little while. And then when we got ready to do</p> <p>3 the wedding part, why that's what we did.</p> <p>4 <b>Q</b> Sure.</p> <p>5 <b>Q</b> Did you – when you were there, how was the feeling of</p> <p>6 the room? Was it happy? Was it sad?</p> <p>7 <b>A</b> Happy. Stephanie said to me, she said, Butch is going</p> <p>8 to teach me to ride. We talked about horses. Of</p> <p>9 course, I was big into the horse deal at that time.</p> <p>10 Yeah, we had a good visit about she wanted to have a</p> <p>11 horse. She wanted to learn to ride. Like most young</p> <p>12 girls are on their wedding day.</p> <p>13 <b>Q</b> Okay. If either Butch or Stephanie would have asked you</p> <p>14 to postpone the ceremony, would that have been a</p> <p>15 problem?</p> <p>16 <b>A</b> For me?</p> <p>17 <b>Q</b> Yeah.</p> <p>18 <b>A</b> I had to take my calendar out of my pocket and look and</p> <p>19 see what day you are going to ask me to come back.</p> <p>20 <b>Q</b> So it would have just been a question of scheduling?</p> <p>21 <b>A</b> Yes, if I had something scheduled.</p> <p>22 <b>Q</b> Okay, okay.</p> <p>23 <b>MR. NIES:</b> No further questions, Your Honor.</p> <p>24 <b>THE COURT:</b> Mr. Rumpca.</p> <p>25 <b>CROSS-EXAMINATION</b></p>

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- 1 Q Were you aware if Butch had a 401(k) that might have  
2 some value at that time?  
3 A No.  
4 Q Did anybody ask, to your recollection, what do you have  
5 in the bank; what's your cash position?  
6 A I believe that information – well, I don't know. I  
7 wasn't involved with that.  
8 Q Do you believe this is pretty accurate as to what was  
9 going on at that time or would you be relying on what  
10 Butch provided you that day or at that time?  
11 A I'm sorry. Can you restate that.  
12 Q Sure. Poorly worded question. I will re-ask.  
13 Did you try to self-verify any of these items to  
14 make sure anything was included to get full disclosure  
15 or did you just rely on what Butch told you?  
16 A No. I would rely on what Butch told me. He was very  
17 honest.  
18 Q Do you know if he owned any horses at that time?  
19 A I believe he did.  
20 Q Do you see any listing for livestock or valuations of  
21 that?  
22 A My memory is Webb Ranch held the ranch assets. So I  
23 believe that's, to my memory, that would have been the  
24 cattle, machinery, things like that, feed stock. My  
25 memory is that the horses for the most part were held in

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- 1 A That's correct.  
2 Q What was the nature of your practice?  
3 A Largely transactional until the last ten years and then  
4 it was combination of transactional and criminal.  
5 Q As of 2013, what would it have been?  
6 A I think that overlaps the time I was serving as Corson  
7 County State's Attorney or beginning of that time. It  
8 would have included the criminal aspect as well as  
9 transactional.  
10 Q But you were still doing contracts, stuff like that?  
11 A Absolutely.  
12 Q When did you first meet Butch Webb?  
13 A I don't know that I could answer that question. Long  
14 time ago.  
15 Q So 20, 30 years ago, long time type of thing?  
16 A 20-plus. I didn't know him as long as Cheryl did.  
17 Q Cheryl's testified that she represented Butch in a lot  
18 of different positions. Did you – would you – did you  
19 do a lot of work for Butch, legal-wise?  
20 A I did some.  
21 Q What type of work would you have done for him?  
22 A Primarily corporate formation work.  
23 Q Looks like he had a lot of LLCs. Would you have helped  
24 him create those?  
25 A Yes.

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- 1 DeKaKe Ranch, LLC.  
2 MR. COLLINS: I think that's all I have. Thank you.  
3 MS. COOK: I have nothing, Your Honor.  
4 MR. MORRIS: Nothing, Your Honor.  
5 MR. CHICOINE: No questions.  
6 THE COURT: Mr. Nies.  
7 MR. NIES: Nothing, Your Honor.  
8 THE COURT: Thank you, Ms. Bogue.  
9 MR. NIES: Next I will call Eric Bogue.  
10 THE WITNESS: Am I released?  
11 THE COURT: Yes, you are.  
12 THE WITNESS: Thank you.  
13 ERIC BOGUE,  
14 called as a witness, being first duly sworn, testified as  
15 follow:  
16 DIRECT EXAMINATION  
17 BY MR. NIES:  
18 Q Thank you, Eric. I'm Eric, too, and I will be starting  
19 with the questioning. Could you just quickly introduce  
20 yourself to the Court.  
21 A My name is Eric Bogue. I currently live outside Canton,  
22 work in Sioux Falls.  
23 Q Cheryl just testified that you – you were in Dupree,  
24 Faith, that area from the early '90s to just a couple  
25 years ago; is that correct?

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- 1 Q Would it be fair to say that you were also Butch's  
2 friend?  
3 A Yes.  
4 Q Were you good friends? Acquaintances? How would you –  
5 where would you put that on the line of friendship?  
6 A I don't know how to answer that.  
7 Q Sorry. That was a tough question and it really wasn't  
8 very well-worded.  
9 Would you call yourself a good friend?  
10 A I think so.  
11 Q As you know, the reason we are here is to discuss the  
12 prenuptial property distribution agreement that you  
13 drafted. How many – in your career, how many prenups  
14 do you think that you drafted?  
15 A Approximately ten.  
16 Q Did you have kind of a set form that you'd work off of?  
17 If somebody asked you to draft one, how would you do it?  
18 A Like a lot of documents that I drafted, there was a  
19 starting format, sure, but each one was unique. So they  
20 would have been amended or changed depending on the  
21 circumstances of that particular case.  
22 Q Sure. How many of those prenups that you just said,  
23 roughly ten, have you done after you did Butch's?  
24 A I think the one I did for Butch and Stephanie would have  
25 been either one of the last or the last one that I had

<p style="text-align: right;">Page 153</p> <p>1 done.</p> <p>2 Q Do you remember when you were first asked to draft</p> <p>3 Butch's prenup?</p> <p>4 A I don't recall. It has been 11 years ago.</p> <p>5 Q Understood. Cheryl testified that she kind of handed</p> <p>6 over to you because you were -- you had more experience</p> <p>7 with that. Is that a fair characterization?</p> <p>8 A I think so.</p> <p>9 Q Do you remember how you went about drafting this one for</p> <p>10 Butch? Did you start by talking to him and then draft</p> <p>11 one or did you put a draft together and use it as a</p> <p>12 discussion piece?</p> <p>13 A I think each one of the prenups that I would have</p> <p>14 drafted during my practice would have started with</p> <p>15 conversations with the client. It would have started</p> <p>16 there.</p> <p>17 Q Do you remember in the process, did you ever talk to</p> <p>18 Stephanie?</p> <p>19 A My recollection is that we did have some conversations.</p> <p>20 I can't recall the number or context of those</p> <p>21 conversations at this point.</p> <p>22 Q But is it fair to say that you talked with Stephanie</p> <p>23 about the prenup before the day that she signed it?</p> <p>24 A That's my recollection, again, 11 years ago.</p> <p>25 Q Understood. Do you recall when you met Stephanie Webb?</p>	<p style="text-align: right;">Page 154</p> <p>1 A Exactly, no.</p> <p>2 Q Just general when -- let me ask it. Do you recall how</p> <p>3 long before they got married did you meet her?</p> <p>4 A Again precisely, no. I'm sorry.</p> <p>5 Q Had you met her before the date of the wedding?</p> <p>6 A Absolutely.</p> <p>7 Q Was the meetings -- were those meetings with her social?</p> <p>8 Go out for dinner, that type of thing?</p> <p>9 A For the most part, yes.</p> <p>10 Q Did you ever represent her?</p> <p>11 A No.</p> <p>12 Q Did you ever give her legal advice?</p> <p>13 A No.</p> <p>14 Q If you could take a look at Exhibit 1 in the book in</p> <p>15 front of you, this is an email string that's already</p> <p>16 been admitted. Starting from the bottom moving to the</p> <p>17 top, we have an email from you to Butch and Cheryl dated</p> <p>18 October 10th, 2013. The subject line is revised second</p> <p>19 draft of prenup. I presume from that subject line that</p> <p>20 this prenup had gone through several drafts to get to</p> <p>21 this point?</p> <p>22 A I believe that's correct.</p> <p>23 Q This email was sent on October 10th, the day before the</p> <p>24 final one was signed. Do you recall ever sending a</p> <p>25 draft directly to Stephanie?</p>
<p style="text-align: right;">Page 155</p> <p>1 A No.</p> <p>2 Q Would you have sent a draft directly to her?</p> <p>3 A Unlikely. Butch would have been the client. I would</p> <p>4 have sent it to him.</p> <p>5 Q It appears from this email, if you go over onto page 2.</p> <p>6 Again, please let me know when it is ready to be sent to</p> <p>7 Stephanie or let me know if you are going to send it to</p> <p>8 her. On October 10th, did Butch ever get back to you</p> <p>9 and say, I'll send it to Stephanie?</p> <p>10 A I don't recall that, no.</p> <p>11 Q Well, it looks like, according to this email string, he</p> <p>12 did, in fact, send it to Stephanie. And then she had</p> <p>13 some corrections, primarily on what she owned of Vista</p> <p>14 Equine. Do you remember on that night did Butch call or</p> <p>15 email you back and say there's some corrections that</p> <p>16 need to be made?</p> <p>17 A I don't remember that conversation. I'm sorry.</p> <p>18 Q No, that's okay. They were apparently made because they</p> <p>19 are correct in the prenup. I presume you don't recall</p> <p>20 when you made those corrections.</p> <p>21 A Exactly, no. Presumably sometime after the first email</p> <p>22 was sent and before it was signed.</p> <p>23 Q Understood, understood.</p> <p>24 I would like to walk through the actual draft</p> <p>25 that's Exhibit 2. There's been some testimony from</p>	<p style="text-align: right;">Page 156</p> <p>1 Stephanie that she understood that this was just</p> <p>2 supposed to address divorce and nothing else. Was that</p> <p>3 your intent when you drafted it?</p> <p>4 A No.</p> <p>5 Q What was your intent when you drafted it?</p> <p>6 A It would have been broader than that, and I think that's</p> <p>7 reflected in the language.</p> <p>8 Q If I was to ask you to point out to me where in here it</p> <p>9 is intended to address elective share or postdeath,</p> <p>10 where would you point to me?</p> <p>11 A That's paragraph 8.</p> <p>12 Q When you drafted this paragraph 8, was it your intent to</p> <p>13 have a complete waiver of the elective share?</p> <p>14 A To be more comprehensive of that to deal with all</p> <p>15 postdeath and all claims regardless of when they came</p> <p>16 up.</p> <p>17 Q If you could go to the pages 4 and 5 of that document,</p> <p>18 we have Exhibit A and Exhibit B which are property</p> <p>19 lists. Do you recall putting these lists together?</p> <p>20 A I do, typing them up, yes.</p> <p>21 Q Do you recall who gave you the information to put on</p> <p>22 these lists?</p> <p>23 A I'm sure that came from Butch. It would have been</p> <p>24 standard how these were put together.</p> <p>25 Q You just mentioned the standard part. Was your practice</p>



<p style="text-align: right;">Page 157</p> <p>1 to collect the information directly from your client</p> <p>2 then?</p> <p>3 <b>A</b> Yes.</p> <p>4 <b>Q</b> You stated that you spoke with Stephanie before. Did</p> <p>5 she ever provide you any information on what her assets</p> <p>6 were?</p> <p>7 <b>A</b> My recollection is, again, we did conversations</p> <p>8 preceding the signing of this. Certainly at the time it</p> <p>9 was signed. As the document evolved, I believe</p> <p>10 information came from both parties.</p> <p>11 <b>Q</b> I note paragraph 10 on page 3 states the parties have</p> <p>12 entered into this agreement freely and after adequate</p> <p>13 opportunity for independent counsel and acknowledge that</p> <p>14 the provisions are fair. Are you aware? Did Stephanie</p> <p>15 ever hire a lawyer to look at this?</p> <p>16 <b>A</b> I'm not aware of whether she did or didn't.</p> <p>17 <b>Q</b> Did you tell her that she needed to hire a lawyer?</p> <p>18 <b>A</b> Needed to?</p> <p>19 <b>Q</b> Yeah.</p> <p>20 <b>A</b> I don't know that I phrased it that way. I would have</p> <p>21 said, if she had any questions, she was certainly</p> <p>22 encouraged to have her own counsel. If either of them</p> <p>23 had any reluctance at the time I explained it to them</p> <p>24 before it was signed -- we went through every</p> <p>25 paragraph -- I would have stressed that make sure you</p>	<p style="text-align: right;">Page 158</p> <p>1 are comfortable before you sign because there are</p> <p>2 important legal consequences.</p> <p>3 <b>Q</b> Let's talk about that. On October 11, they got to your</p> <p>4 office. Do you recall them arriving on that day?</p> <p>5 <b>A</b> Generally, yes.</p> <p>6 <b>Q</b> What -- as far as you recall, what was the process in</p> <p>7 reviewing and executing the prenup?</p> <p>8 <b>A</b> Again, 11 years ago, my recollection is that we sat down</p> <p>9 together, the three of us in the office. I remember</p> <p>10 Cheryl coming in and out of the office but I don't</p> <p>11 recall exactly whether it was in or out of that</p> <p>12 particular meeting. But the three of us went through</p> <p>13 each paragraph together. I believe there was a period</p> <p>14 of time when Stephanie did get up to change but I think</p> <p>15 that was after it was signed but I don't remember that</p> <p>16 with any certainty.</p> <p>17 <b>Q</b> So you have testified you go through paragraph by</p> <p>18 paragraph. Do you remember? Did Stephanie or Butch ask</p> <p>19 any questions?</p> <p>20 <b>A</b> I think they both did. My recollection is they both</p> <p>21 did.</p> <p>22 <b>Q</b> Do you remember what the questions were?</p> <p>23 <b>A</b> I do not.</p> <p>24 <b>Q</b> In going through paragraph by paragraph, I presume you</p> <p>25 pointed out that paragraph 8 was intended for</p>
<p style="text-align: right;">Page 159</p> <p>1 after-death situations?</p> <p>2 <b>A</b> Yes. We went through the paragraph. Each of the</p> <p>3 paragraphs, but certainly would have explained that has</p> <p>4 the broader impact as to pre-death, post-death issues.</p> <p>5 <b>Q</b> Stephanie's testified that she didn't understand the</p> <p>6 prenup. Did she communicate that to you?</p> <p>7 <b>A</b> I don't recall exactly the nature of the conversation</p> <p>8 precisely. But the -- based, again, on how I handled my</p> <p>9 practice, if she had indicated that kind of uncertainty</p> <p>10 or lack of understanding, we would have either spent</p> <p>11 more time to go through it to explain it to a point</p> <p>12 where the clients both -- my client and she understood</p> <p>13 it, or at some point that I would have recommended that</p> <p>14 they not sign it at that point until they were</p> <p>15 comfortable.</p> <p>16 <b>Q</b> If you would have recommended that they didn't sign it,</p> <p>17 would that have been acceptable to Cheryl and yourself?</p> <p>18 <b>A</b> Absolutely. I have clients, other clients throughout</p> <p>19 the course of my practice where they came in to sign</p> <p>20 documents and were not comfortable or didn't understand</p> <p>21 and I strongly recommended they give themselves some</p> <p>22 time before they signed it or that they obtain their own</p> <p>23 counsel separate from the conversation.</p> <p>24 <b>Q</b> Stephanie has testified that she was never advised that</p> <p>25 she may need to have her own lawyer. Is it correct that</p>	<p style="text-align: right;">Page 160</p> <p>1 that was a standard procedure for you?</p> <p>2 <b>A</b> Sorry. I'm not -- can you rephrase the question.</p> <p>3 <b>Q</b> That was a bad question.</p> <p>4 Was it standard procedure for you to always make it</p> <p>5 clear who was the client and who wasn't?</p> <p>6 <b>A</b> Yes. I believe during the deposition the same kind of</p> <p>7 question came up. I would just say that in a small</p> <p>8 practice, it wasn't uncommon for parties to come in</p> <p>9 together, and it would be important to designate which</p> <p>10 was the client, often the one that set the appointment</p> <p>11 up that was the client. Make sure that all the parties</p> <p>12 understood that I could only legally represent one of</p> <p>13 the parties in the room to that mutual contract. And</p> <p>14 then encourage the non-client, if they felt</p> <p>15 uncomfortable at all, to hire their own counsel.</p> <p>16 However, again, given nature of the small town practice,</p> <p>17 very common that we make clear, that we are always very</p> <p>18 candid and truthful with all the parties in our office.</p> <p>19 No quicker way to lose the ability to practice law in a</p> <p>20 small town if you get a reputation for lying to people.</p> <p>21 <b>Q</b> Do you remember how long it was between when you sat</p> <p>22 down and started talking about it and when it was</p> <p>23 signed?</p> <p>24 <b>A</b> I don't.</p> <p>25 <b>Q</b> Was it a long time? Short time? Do you have any feel</p>

<p style="text-align: right;">Page 161</p> <p>1 for what it would have been.</p> <p>2 <b>A</b> No. My general recollection is it was not a long time</p> <p>3 but it was not an extraordinarily brief period of time.</p> <p>4 I would say approximately half hour.</p> <p>5 <b>Q</b> Do you recall any reluctance on the behalf of Stephanie</p> <p>6 to sign?</p> <p>7 <b>A</b> No.</p> <p>8 <b>Q</b> Do you recall her expressing that she felt coerced?</p> <p>9 <b>A</b> Absolutely not.</p> <p>10 <b>Q</b> Do you recall Stephanie expressing that she felt that</p> <p>11 she hadn't had sufficient time to review it?</p> <p>12 <b>A</b> No.</p> <p>13 <b>Q</b> Do you recall the general feel of the room? Was it</p> <p>14 happy? Sad? Stressed?</p> <p>15 <b>A</b> Generally happy. I was told prior to that, but not long</p> <p>16 before that, that the time was that they actually would</p> <p>17 do the ceremony in our office. I was not aware at the</p> <p>18 time I had sent the draft out that we would actually be</p> <p>19 doing the ceremony in our office.</p> <p>20 <b>Q</b> Let's talk a little bit about that. So at the time you</p> <p>21 sent the draft out on October 10th, was it your</p> <p>22 understanding that it was going to be signed the next</p> <p>23 day?</p> <p>24 <b>A</b> That, I believe, I was aware they were coming to the</p> <p>25 office to sign the prenup.</p>	<p style="text-align: right;">Page 162</p> <p>1 <b>Q</b> But it sounds like you weren't aware that the wedding</p> <p>2 was going to occur there as well?</p> <p>3 <b>A</b> My recollection is, no, I was not aware of that point.</p> <p>4 <b>Q</b> It has been alleged that the fact that you and Cheryl</p> <p>5 acted as witnesses for that wedding ceremony somehow</p> <p>6 bears upon the legitimacy of the prenup. Do you believe</p> <p>7 it does?</p> <p>8 <b>A</b> I don't see the connection between the two.</p> <p>9 <b>Q</b> Having drafted this agreement, do you believe that it is</p> <p>10 clear as to what is being waived by both parties?</p> <p>11 <b>A</b> I believe so.</p> <p>12 <b>Q</b> Do you believe that the agreement fulfills what Butch's</p> <p>13 intent was in asking you to draft it?</p> <p>14 <b>A</b> Yes.</p> <p>15 <b>Q</b> In your conversations with Butch, did he indicate what</p> <p>16 his estate plan was going to be?</p> <p>17 <b>A</b> No.</p> <p>18 <b>Q</b> On paragraph 4 of the document, it has some divorce</p> <p>19 language and essentially gives Stephanie an extra 2%</p> <p>20 every year that they have been married up to 20%. Do</p> <p>21 you remember, is this -- was this standard language in</p> <p>22 your documents or did Butch ask you to put this in?</p> <p>23 <b>A</b> My recollection is Butch asked for that.</p> <p>24 <b>Q</b> Did Butch explicitly ask for there to be any other</p> <p>25 provisions in here? Do you recall?</p>
<p style="text-align: right;">Page 163</p> <p>1 <b>A</b> I can't with specificity say that other than to say that</p> <p>2 the document was ultimately drafted per his request and</p> <p>3 to his approval. Otherwise we wouldn't have signed it.</p> <p>4 <b>Q</b> Sure. And just so I'm clear, you don't recall any --</p> <p>5 either Butch or Stephanie voicing any disapproval?</p> <p>6 <b>A</b> That's correct.</p> <p>7 <b>Q</b> And again, I understand it was 11 years ago. Do you</p> <p>8 recall Stephanie expressing any -- do you recall</p> <p>9 Stephanie expressing that she had any problems</p> <p>10 understanding the terms?</p> <p>11 <b>A</b> I don't recall there being any -- I have indicated both</p> <p>12 parties had questions. We went through the document.</p> <p>13 But other than that, no. They didn't have any -- either</p> <p>14 party did not indicate a problem in understanding the</p> <p>15 document.</p> <p>16 <b>Q</b> Is it fair to say that you were comfortable that any</p> <p>17 questions that had been asked had been answered?</p> <p>18 <b>A</b> Yes.</p> <p>19 <b>Q</b> Do you recall what happened after the ceremony?</p> <p>20 <b>A</b> I believe we went to dinner.</p> <p>21 <b>Q</b> Do you recall any further conversations at dinner about</p> <p>22 the contents of the document?</p> <p>23 <b>A</b> No. It would have been generally inappropriate to do</p> <p>24 that in Faith, to have that kind of conversation. News</p> <p>25 like that would spread very fast.</p>	<p style="text-align: right;">Page 164</p> <p>1 <b>Q</b> Makes sense.</p> <p>2 <b>A</b> In a small town.</p> <p>3 <b>Q</b> When you -- sorry. Strike that.</p> <p>4 It appears from the copy that I have in front of me</p> <p>5 that Butch and Stephanie either signed or initialed each</p> <p>6 page. Was that your standard practice?</p> <p>7 <b>A</b> Yes.</p> <p>8 <b>Q</b> It appears you were the notary. Is that your signature</p> <p>9 on page 3?</p> <p>10 <b>A</b> Yes.</p> <p>11 <b>Q</b> Just so we have it on the record, so Butch and Stephanie</p> <p>12 both signed this document in front of you, correct?</p> <p>13 <b>A</b> That's correct.</p> <p>14 <b>Q</b> Do you remember when Pastor Delbridge arrived?</p> <p>15 <b>A</b> Generally, yes.</p> <p>16 <b>Q</b> Was it after the prenup was signed?</p> <p>17 <b>A</b> Yes.</p> <p>18 <b>Q</b> So is it fair to say that at first it was just you and</p> <p>19 Cheryl, then Butch and Stephanie showed up. They signed</p> <p>20 the prenup, and then Pastor Delbridge showed up?</p> <p>21 <b>A</b> Yes. When we finished, we walked out. I mentioned that</p> <p>22 I believe Stephanie went in to change her clothes prior</p> <p>23 to the ceremony. Harold arrived, and we had some</p> <p>24 general conversation before the ceremony began.</p> <p>25 <b>MR. NIES:</b> No further questions at this time, Your</p>

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1 Honor.

2 **THE COURT:** Thank you. Mr. Rumpca?

3 **CROSS-EXAMINATION**

4 **BY MR. RUMPCA:**

5 **Q** Eric, were you in the same -- were Butch and Stephanie  
6 in the same room when you described the contents of the  
7 document or did you do that twice? Did you go over it  
8 separately, I guess, with Butch and then separately with  
9 Stephanie.

10 **A** My recollection is we did it together, the three of us.

11 **Q** And when you prepared the document, which is marked as  
12 Exhibit 2, there's page numbers on the bottom and there  
13 was a document electronically sent to Butch, Butch's  
14 email, that was ultimately shared with Stephanie as you  
15 saw in the forwarded email. Do you know? Did you  
16 separate -- were the exhibits that are A and B, page 4  
17 and 5 of what is Exhibit 2, do you know if those  
18 exhibits were separate or if those would have been what  
19 you included within the Word document that you had  
20 forwarded to Butch?

21 **A** I believe they would have been included and I believe  
22 that's what generated -- appears to have generated the  
23 comment back in the email as to the change to those  
24 exhibits.

25 **Q** Any reason to believe you would have separately sent

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1 Exhibit A, which is Stephanie's assets, and then later  
2 attached Exhibit B which was just Butch's assets?

3 **A** I don't recall sending it in that manner, no.

4 **Q** And then the change that you would have made in response  
5 to, I guess, you ultimately incorporated the changes  
6 that were suggested with regard to the Vista Equine 45%  
7 ownership, correct?

8 **A** It appears that was incorporated, yes.

9 **Q** Do you know how it was communicated to you, how you  
10 received that information that these need to be changed?

11 **A** I don't. I can't, at this point, 11 years later tell  
12 you whether it was before the parties arrived or while  
13 we were sitting there going through the document  
14 together.

15 **Q** Okay.

16 **MR. RUMPCA:** Eric, I don't have any further questions.

17 **THE COURT:** Thank you. Mr. Collins.

18 **MR. COLLINS:** Thank you.

19 **CROSS-EXAMINATION**

20 **BY MR. COLLINS:**

21 **Q** Eric, do you remember having your deposition taken in  
22 December of 2022?

23 **A** I do.

24 **Q** You have indicated a number of times, this is 11 years  
25 ago, have a general recollection, things of that nature.

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1 Do you remember on several occasions in that deposition  
2 when being pressed, do you have specific recollections  
3 or are you defaulting to a general practice. Do you  
4 remember that question being asked?

5 **A** I do.

6 **Q** And your response was, I'm defaulting to a general  
7 practice. I don't really have any recollection of what  
8 actually occurred. Do you remember that?

9 **A** I do remember that, yes.

10 **Q** So today has that changed or is it still your testimony  
11 that you are kind of defaulting to what a general  
12 practice would have been, that you don't have a specific  
13 recollection of what occurred that day?

14 **A** I think both answers are true. There are parts that I  
15 do remember. There are parts that I do not remember. I  
16 think I have indicated that.

17 **Q** Okay. So let's talk about that. You had indicated that  
18 you believe you may have spoken to Stephanie prior to  
19 the signing of the document on the phone. Is that  
20 accurate?

21 **A** To my recollection, yes.

22 **Q** You also just testified that you were dealing with Butch  
23 because he was the client; correct?

24 **A** That's correct.

25 **Q** So what were you talking to Stephanie about before the

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1 signing of the document?

2 **A** I think those were conversations with Butch and  
3 Stephanie.

4 **Q** So you believe that Butch and Stephanie were talking to  
5 you about the prenup together?

6 **A** Again, my recollection, yes.

7 **Q** On the phone?

8 **A** They were not there, so they would have had to have been  
9 on the phone.

10 **Q** Conference call?

11 **A** Whatever label you want to put on it. They were both  
12 available on the line.

13 **Q** Butch was in Colorado -- or Butch was in South Dakota.  
14 Stephanie was in Colorado.

15 **A** I don't know that.

16 **Q** What were you talking about?

17 **A** I don't recall.

18 **Q** But you are sure you had this conversation?

19 **A** My recollection is I talked with Stephanie before the  
20 meeting with her and Butch on the 11th, yes.

21 **Q** You say talking about the prenuptial. What were you  
22 talking about?

23 **A** Again, I don't recall. I'm sorry.

24 **Q** And do you have an actual specific recollection, when  
25 they were there on the 11th, of sitting in your office



<p style="text-align: right;">Page 169</p> <p>1 with both of them and going through this and answering</p> <p>2 questions? Is that your testimony or is that what your</p> <p>3 practice would have been?</p> <p>4 <b>A</b> Both.</p> <p>5 <b>Q</b> Do you have any recollection of any question that may</p> <p>6 have been asked that day to you?</p> <p>7 <b>A</b> I do not.</p> <p>8 <b>Q</b> Who were you representing that day?</p> <p>9 <b>A</b> Butch.</p> <p>10 <b>Q</b> But you were answering questions from Stephanie?</p> <p>11 <b>A</b> Yes.</p> <p>12 <b>Q</b> So you were giving legal advice to Stephanie?</p> <p>13 <b>A</b> No.</p> <p>14 <b>Q</b> What's the difference between answering a question about</p> <p>15 a legal document and giving legal advice? You were</p> <p>16 interpreting the document for her, weren't you?</p> <p>17 <b>A</b> I was answering a question. I was explaining the</p> <p>18 document to both parties. We went through each</p> <p>19 paragraph, as I said both during my deposition and I</p> <p>20 have answered today.</p> <p>21 <b>Q</b> If Stephanie disputes that, has a specific recollection</p> <p>22 of that day, that's not what happened, you would</p> <p>23 disagree with that?</p> <p>24 <b>A</b> I would.</p> <p>25 <b>Q</b> Even though you don't have a specific recollection.</p>	<p style="text-align: right;">Page 170</p> <p>1 <b>A</b> Of the exact questions?</p> <p>2 <b>Q</b> Right.</p> <p>3 <b>A</b> Correct.</p> <p>4 <b>Q</b> Did you ever -- when you do this in Faith, small towns</p> <p>5 where you meet with both clients that are signing a</p> <p>6 document, even though you only represent one of them,</p> <p>7 and answer questions about it, do you ever have them</p> <p>8 sign a disclaimer saying, Hey, I represent this one. I</p> <p>9 don't represent you. You should go get legal counsel?</p> <p>10 <b>A</b> I'm sure that may have happened during the course of my</p> <p>11 practice but I don't know that that would have been</p> <p>12 routine.</p> <p>13 <b>Q</b> So to protect yourself, you wouldn't normally have</p> <p>14 someone sign a document indicating, I understand you are</p> <p>15 not representing me today?</p> <p>16 <b>A</b> Routinely, no.</p> <p>17 <b>Q</b> Again, in your mind, what's the difference between</p> <p>18 answering a question about a legal document and its</p> <p>19 impact on somebody and giving legal advice? Can you</p> <p>20 tell me what the difference is?</p> <p>21 <b>A</b> When I'm representing a client, it is significantly</p> <p>22 different than when I'm just answering questions. As I</p> <p>23 have already indicated, I don't mislead people because</p> <p>24 it is an inappropriate to do that in a small practice.</p> <p>25 I don't know what it is like in Rapid, what it is like</p>
<p style="text-align: right;">Page 171</p> <p>1 in Spearfish or in Pierre, but generally we try to</p> <p>2 maintain a truthfulness with all parties in our office</p> <p>3 and make sure that we answer the questions.</p> <p>4 <b>Q</b> Sure. I am not accusing you of misleading anybody. My</p> <p>5 question more goes to the part that is, what if someone</p> <p>6 relies -- you are giving them an answer that they are</p> <p>7 going to rely on but you don't represent them and their</p> <p>8 interests. Is that fair?</p> <p>9 <b>A</b> I think what is also fair, I made it very clear if they</p> <p>10 were at all uncomfortable, either of those parties, they</p> <p>11 should not sign the document until they were</p> <p>12 comfortable.</p> <p>13 <b>Q</b> Do you have a specific recollection of that</p> <p>14 conversation?</p> <p>15 <b>A</b> Yes.</p> <p>16 <b>Q</b> And that's despite your previous testimony that --</p> <p>17 basically, your whole testimony was that this is my</p> <p>18 general practice. I don't have a recollection. Today</p> <p>19 you have more recollection than two years ago?</p> <p>20 <b>MR. NIES:</b> Your Honor, I object to that. I have got the</p> <p>21 deposition right here. Yeah, there was some times in</p> <p>22 which Mr. Bogue defaulted back to practice, but there</p> <p>23 were times he was very clear that he had that specific</p> <p>24 recollection.</p> <p>25 <b>THE COURT:</b> Well, I think he has testified that both</p>	<p style="text-align: right;">Page 172</p> <p>1 have occurred and so I think he has answered the</p> <p>2 question.</p> <p>3 <b>Q (BY MR. COLLINS, continuing)</b> Have you ever litigated a</p> <p>4 prenuptial agreement?</p> <p>5 <b>A</b> I have not.</p> <p>6 <b>Q</b> Do you kind of know what is important when you do these</p> <p>7 to make sure that they aren't invalidated?</p> <p>8 <b>A</b> Generally, I believe so, yes.</p> <p>9 <b>Q</b> Opportunity to seek independent counsel, timing between</p> <p>10 getting the draft and getting married, things of that</p> <p>11 nature?</p> <p>12 <b>A</b> Yes.</p> <p>13 <b>Q</b> In this case it appears the first time Stephanie got the</p> <p>14 document was the evening before she came to your office</p> <p>15 and got married, correct?</p> <p>16 <b>A</b> I can't answer the first time that she saw it. They did</p> <p>17 sign it the same day that they got married.</p> <p>18 <b>Q</b> Is it -- if Stephanie testified that the first time she</p> <p>19 saw it was the night Butch sent it to her, then that</p> <p>20 would be the day before she signed it and got married?</p> <p>21 <b>A</b> If you are saying that's what her testimony is.</p> <p>22 <b>Q</b> Do you have anything to dispute that?</p> <p>23 <b>A</b> I do not.</p> <p>24 <b>Q</b> So there wasn't an opportunity -- if that's the</p> <p>25 timeline, there wouldn't have been an opportunity to get</p>

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1 independent counsel, was there?  
 2 **A** There certainly was still opportunity to get independent  
 3 counsel. I stressed that the day that it was signed.  
 4 **Q** Okay. And I'm not going to go back and forth about what  
 5 you specifically recall and now are saying happened  
 6 versus what you have said earlier, but that conversation  
 7 may or may not have occurred. Okay.  
 8 But she did sign it the next day in your office?  
 9 **A** I'm sorry, the next --  
 10 **Q** She did sign the prenup the day after she received the  
 11 email from Butch in your office, correct?  
 12 **A** Again, I have already testified: I don't know when she  
 13 received the document first. But she signed it on the  
 14 11th in my office.  
 15 **Q** This wasn't a normal execution of a prenup agreement,  
 16 was it?  
 17 **A** I think the same question was asked in the deposition,  
 18 so to the extent that a marriage happened in our office,  
 19 I think that's the first time that this happened. So to  
 20 that extent, it is unusual.  
 21 **Q** Not only that a marriage happened but, in this case,  
 22 Butch was a longtime family friend of Cheryl; correct?  
 23 **A** That's correct.  
 24 **Q** Long-time friend of yours; correct?  
 25 **A** Correct.

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1 document that potentially could be construed to affect  
 2 property holdings upon death is paragraph 8?  
 3 **MR. RUMPCA:** Is the question asking him to review the  
 4 entire --  
 5 **MR. COLLINS:** Yes.  
 6 **THE COURT:** Maybe we should take a break so he can  
 7 review it. Let's take a ten-minute recess, just a brief  
 8 recess so you can read it.  
 9 **THE WITNESS:** Thank you.  
 10 (A brief recess was taken. The hearing  
 11 resumed at 2:45 p.m.)  
 12 **THE COURT:** Mr. Collins.  
 13 **Q (BY MR. COLLINS, continuing)** Is there any other place in  
 14 the document that you would point to that would indicate  
 15 that someone has given up their right of intestate share  
 16 of what happens upon death?  
 17 **A** Yes.  
 18 **Q** What section is that?  
 19 **Q** That's the second whereas.  
 20 **Q** So you believe the second whereas would be language that  
 21 a layperson would read and understand that they are  
 22 giving up their rights upon someone's death?  
 23 **A** That's not what your first question was.  
 24 **Q** Sure. Would a layperson be able to read that and  
 25 understand that, do you believe?

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1 **Q** And not only did the wedding happen immediately after  
 2 signing the prenup in your office, but you and Cheryl  
 3 were witnesses to that, correct?  
 4 **A** To which part?  
 5 **Q** To the wedding.  
 6 **A** Yes.  
 7 **Q** And you notarized the prenup, correct?  
 8 **A** I did.  
 9 **Q** And then you and Cheryl attended the wedding in Italy,  
 10 correct?  
 11 **A** We did.  
 12 **Q** Did Butch pay for you guys to travel to the wedding?  
 13 **A** He did.  
 14 **Q** So you guys were close family friends of Butch?  
 15 **A** I think I have testified, yes, I believe that we were.  
 16 **Q** Do you know where you would have got the language for  
 17 paragraph 8 in your prenuptial agreement regarding what  
 18 occurs upon death? Did you come up with the language or  
 19 did you get it from somewhere? Where is the language  
 20 that's in paragraph 8 of the prenuptial agreement  
 21 regarding what happens upon death? Where did that come  
 22 from?  
 23 **A** At this point, I don't recall.  
 24 **Q** If you want to look at it, Exhibit 2, page 2, would you  
 25 agree with me in general that the only paragraph in this

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1 **A** I don't know what a layperson would understand. I'm  
 2 sorry.  
 3 **Q** Okay. Would you agree that the paragraph 8, which  
 4 explicitly looks to be designated as the paragraph to  
 5 talk about potential death and what happens, the first  
 6 sentence of that paragraph is eight sentences long.  
 7 **A** I'm sorry. Could you repeat the question.  
 8 **Q** I'm sorry. Or eight lines long. The first sentence is  
 9 eight lines long?  
 10 **A** I haven't counted them. My English teacher may roll  
 11 over in her grave if she realized I had a long run-on  
 12 sentence but if that's the case, then, yes.  
 13 **Q** What about a -- I suppose your answer may be the same,  
 14 but what about a layperson trying to read that sentence  
 15 and understand what it means. Would that make it more  
 16 difficult in your opinion that it is eight lines long?  
 17 **A** Again, I can't answer what a layperson would or wouldn't  
 18 understand.  
 19 **Q** Okay. Was part of this drafting -- was it your  
 20 understanding that there was property that Butch had  
 21 purchased and put in Stephanie's name in Colorado that  
 22 they wanted that protected?  
 23 **A** I understood there was property in Colorado. We had  
 24 actually been to that house.  
 25 **Q** And did you understand that -- was there ever any

<p style="text-align: right;">Page 177</p> <p>1 conversation with Butch or with Cheryl that there was</p> <p>2 some concern that property may get caught up with</p> <p>3 Butch's litigation so that's why he put it in</p> <p>4 Stephanie's name?</p> <p>5 <b>A</b> Precisely that way, I don't recall.</p> <p>6 <b>Q</b> Did you ever have any conversations that part of the</p> <p>7 reason for the prenup, anyway, was to protect that</p> <p>8 property so that it didn't get caught up in the prenup</p> <p>9 for Stephanie and Butch?</p> <p>10 <b>A</b> To the extent –</p> <p>11 <b>Q</b> Or caught up in the litigation? Sorry.</p> <p>12 <b>A</b> Sorry. To the extent that all property was at risk,</p> <p>13 yes.</p> <p>14 <b>Q</b> What involvement did you have in gathering the</p> <p>15 information for the exhibits to the prenuptial agreement</p> <p>16 regarding the financial disclosure?</p> <p>17 <b>A</b> I received that from my client, Butch, and from</p> <p>18 Stephanie.</p> <p>19 <b>Q</b> So Stephanie sent you her information and her numbers</p> <p>20 separately and directly or did you receive it through</p> <p>21 Butch?</p> <p>22 <b>A</b> I don't recall whether it came through Butch or at the</p> <p>23 time of our meeting.</p> <p>24 <b>Q</b> Okay. Well, it wouldn't be at the time of the meeting</p> <p>25 because you already had it. It had been sent out the</p>	<p style="text-align: right;">Page 178</p> <p>1 night before, correct?</p> <p>2 <b>A</b> Some of it, yes.</p> <p>3 <b>Q</b> Because she was commenting on the exhibit with – her</p> <p>4 financial disclosure in her email the night before,</p> <p>5 correct?</p> <p>6 <b>A</b> According to Exhibit 1, yes.</p> <p>7 <b>Q</b> So previously you testified that you were communicating</p> <p>8 through Butch because he was your client. But you may</p> <p>9 have gotten information regarding disclosure from</p> <p>10 Stephanie?</p> <p>11 <b>A</b> Again, my previous answer to an earlier question was I</p> <p>12 believe my recollection is I had conversations with both</p> <p>13 prior to the drafting or completion of this draft but</p> <p>14 certainly that was an evolving process and included the</p> <p>15 time that we met in the office before it was signed.</p> <p>16 <b>Q</b> You would have had apparently multiple conversations</p> <p>17 with at least Butch, since he was your client, correct?</p> <p>18 <b>A</b> Yes, again, per Exhibit 1, I indicated second draft.</p> <p>19 <b>Q</b> So he must have commented and made changes to the</p> <p>20 original draft. Is that a fair assumption?</p> <p>21 <b>A</b> I don't recall but I assume as much.</p> <p>22 <b>Q</b> With Stephanie, would it have been your standard process</p> <p>23 to go through it with Butch before you sent it out?</p> <p>24 <b>A</b> Yes.</p> <p>25 <b>Q</b> So when you met with him in your office, what questions</p>
<p style="text-align: right;">Page 179</p> <p>1 would you have answered with Butch? When you met in</p> <p>2 your office the day it was signed what would you be</p> <p>3 answering for Butch if you'd already went through it and</p> <p>4 he approved it?</p> <p>5 <b>A</b> I'm sorry.</p> <p>6 <b>Q</b> If you had done multiple drafts and had conversations</p> <p>7 with Butch regarding what's in the prenup and he signs</p> <p>8 off and says it's good to go, what additional questions</p> <p>9 or need would you have to talk to Butch about what's in</p> <p>10 it on the day it was signed? He had already approved</p> <p>11 it.</p> <p>12 <b>A</b> Again, my recollection and standard practice would have</p> <p>13 been we would have gone through the entire document</p> <p>14 anyway paragraph by paragraph, including Exhibits A and</p> <p>15 B.</p> <p>16 <b>Q</b> So is this practice you have, is this specific to</p> <p>17 prenuptial agreement or is this all documents you draft?</p> <p>18 <b>A</b> All documents.</p> <p>19 <b>Q</b> All documents you draft for a client, you go through</p> <p>20 paragraph by paragraph with the client before they sign</p> <p>21 it?</p> <p>22 <b>A</b> Yes.</p> <p>23 <b>Q</b> With regards to the financial disclosures, did you</p> <p>24 provide – did you do anything to verify the numbers or</p> <p>25 information given to you?</p>	<p style="text-align: right;">Page 180</p> <p>1 <b>A</b> No.</p> <p>2 <b>Q</b> Did you ask additional questions as to things that may</p> <p>3 be missing such as bank accounts, 401(k) plans, things</p> <p>4 of that nature?</p> <p>5 <b>A</b> I asked a generalized question, is this a complete list.</p> <p>6 But I don't recall asking specifically as to the items</p> <p>7 you've mentioned.</p> <p>8 <b>Q</b> Okay. Would it be a surprise if neither party gave you</p> <p>9 a bank account number. Would that typically be</p> <p>10 included?</p> <p>11 <b>A</b> If it had been provided and they wanted it included,</p> <p>12 certainly it would have been included.</p> <p>13 <b>Q</b> Isn't the purpose of the financial disclosure to give a</p> <p>14 full and accurate, the best they can, representation of</p> <p>15 their assets?</p> <p>16 <b>A</b> Yes. But that may or may not include an account number.</p> <p>17 <b>Q</b> What about a 401(k)?</p> <p>18 <b>A</b> Again, I don't recall that being a specific part of this</p> <p>19 conversation.</p> <p>20 <b>Q</b> Who stood up as Butch's best man at their wedding in</p> <p>21 Italy?</p> <p>22 <b>A</b> I did.</p> <p>23 <b>Q</b> If you look at paragraph 4 of the prenuptial agreement,</p> <p>24 I think it was asked, this appears to be monies that</p> <p>25 Stephanie received in the event of divorce. Is that</p>

<p style="text-align: right;">Page 181</p> <p>1 correct?</p> <p>2 A I'm sorry. Could you repeat the question.</p> <p>3 Q Sure. This paragraph seems to outline monies that</p> <p>4 Stephanie would receive from Butch in the event of</p> <p>5 divorce under this prenuptial agreement. Is that fair?</p> <p>6 A You said page 4?</p> <p>7 Q No, paragraph 4. Sorry. Page 2. I apologize.</p> <p>8 A I believe that's what paragraph 4 deals with, yes.</p> <p>9 Q Did you have conversations and believe it was Butch's</p> <p>10 intent to have Stephanie receive more money if they got</p> <p>11 divorced than she would get if he passed away?</p> <p>12 A I believe the document was drafted as it was requested.</p> <p>13 Q So did you have conversations -- do you recall</p> <p>14 conversations saying you are going to give Stephanie</p> <p>15 money upon divorce but if you pass away, she gets</p> <p>16 nothing, other than what's in her disclosures?</p> <p>17 A Specifically on that level, no, I don't recall that</p> <p>18 conversation.</p> <p>19 Q Would that be an odd result, do you believe, that</p> <p>20 someone would want to give their ex-spouse money more</p> <p>21 than if they were still married and they passed away?</p> <p>22 A No, it would not necessarily be an odd result.</p> <p>23 MR. COLLINS: Thank you. That's all I have.</p> <p>24 THE COURT: Ms. Cook.</p> <p>25 MS. COOK: Thank you, Your Honor.</p>	<p style="text-align: right;">Page 182</p> <p style="text-align: center;"><b>CROSS-EXAMINATION</b></p> <p>1</p> <p>2 BY MS. COOK:</p> <p>3 Q Good afternoon, Mr. Bogue. I'm name is Katie Cook. I</p> <p>4 represent Kailee and Kenna Webb. I just have some</p> <p>5 questions because I want to make sure that I understand</p> <p>6 timeline and your testimony today.</p> <p>7 Eric, would you agree with me that it is possible</p> <p>8 that Stephanie could have believed that you were acting</p> <p>9 on both her and Butch's -- acting with both her and</p> <p>10 Butch's best interests in mind?</p> <p>11 A In their best interests? It is possible.</p> <p>12 Q And I think you testified earlier that you didn't have a</p> <p>13 disclaimer or an engagement letter or anything that you</p> <p>14 would have given to Stephanie to indicate to her</p> <p>15 specifically that Butch was your only client. Is that</p> <p>16 fair?</p> <p>17 A Yes.</p> <p>18 Q And Mr. Bogue, did you ever have conversations with</p> <p>19 Stephanie about what her goals were with regard to the</p> <p>20 prenu? </p> <p>21 A No.</p> <p>22 Q And Mr. Bogue, I can bring you a copy of your deposition</p> <p>23 testimony, but this is where I'm starting to get gray on</p> <p>24 what you recall versus -- so during your deposition,</p> <p>25 there was a question along the lines of whether you had</p>
<p style="text-align: right;">Page 183</p> <p>1 conversations with Stephanie prior to the time that the</p> <p>2 prenuptial agreement was executed. The question was,</p> <p>3 tell me -- I will give you a little bit more context.</p> <p>4 So the question was, Do you have a recollection of your</p> <p>5 conversations with Butch about the prenuptial agreement?</p> <p>6 Your answer was, Vaguely or generally?</p> <p>7 Question, Tell me what you generally recall was his</p> <p>8 intent.</p> <p>9 Answer, Generally to maintain protection of those</p> <p>10 assets that he had going into the marriage similar to</p> <p>11 what Stephanie expressed to me as well that she wanted</p> <p>12 to maintain those assets of hers.</p> <p>13 Can you explain to me, if that conversation did, in</p> <p>14 fact, occur, how you attempting to draft the prenuptial</p> <p>15 agreement to also meet Stephanie's goals does not</p> <p>16 constitute some form of legal advice to Stephanie?</p> <p>17 A I'm sorry could you repeat the question part of that.</p> <p>18 You don't have to go through all the way back to the</p> <p>19 transcript.</p> <p>20 Q My question is if you are meeting with Stephanie to</p> <p>21 discuss the goals of this prenuptial agreement, my</p> <p>22 question is how is that not you providing legal advice</p> <p>23 if you are having those discussions and attempting to</p> <p>24 work them into this draft?</p> <p>25 A I believe that the goal as expressed by my client,</p>	<p style="text-align: right;">Page 184</p> <p>1 Mr. Webb, was protect assets. At the time, again, my</p> <p>2 recollection is Stephanie echoed that sentiment rather</p> <p>3 than my providing legal advice to Stephanie.</p> <p>4 Q And I think you testified today that you never met with</p> <p>5 Stephanie in person but that it was just via joint calls</p> <p>6 between Butch and Stephanie. Is that a fair rendition</p> <p>7 of your testimony?</p> <p>8 A I believe so, yes.</p> <p>9 Q And during your deposition, you had testified when asked</p> <p>10 about your meetings or conversations with Stephanie.</p> <p>11 Question was, Okay, so you talked about Stephanie.</p> <p>12 And this is immediately what we just walked through</p> <p>13 in the transcript.</p> <p>14 Tell me about what conversations did you have with</p> <p>15 Stephanie about this prenuptial agreement?</p> <p>16 Answer, There were a few conversations leading up</p> <p>17 to that. Some on the phone and some in person.</p> <p>18 Question, Okay. So your testimony is that</p> <p>19 Stephanie met with you and discussed the prenuptial</p> <p>20 agreement at your office?</p> <p>21 Answer, yes.</p> <p>22 Question, do you have any records that would</p> <p>23 reflect when that was?</p> <p>24 Answer, It would have been contemporaneous with the</p> <p>25 execution, not necessarily exactly the same, but it</p>

<p style="text-align: right;">Page 185</p> <p>1 would have been temporally the same.</p> <p>2 Having the benefit of your deposition testimony, is</p> <p>3 it possible, based on your prior testimony, that you</p> <p>4 did, in fact, meet with Stephanie and separately from</p> <p>5 Butch on the day of the prenuptial agreement being</p> <p>6 executed?</p> <p>7 <b>A</b> No.</p> <p>8 <b>Q</b> So your testimony previously was inaccurate as to your</p> <p>9 meeting with her?</p> <p>10 <b>A</b> I don't think the word separately was in that answer to</p> <p>11 the question.</p> <p>12 <b>Q</b> And I think that you also had testified you don't know</p> <p>13 when Stephanie would have first seen the prenuptial</p> <p>14 agreement. Is that fair?</p> <p>15 <b>A</b> That's fair.</p> <p>16 <b>Q</b> You have no way – I think you already said this. You</p> <p>17 have no way to contradict Stephanie's testimony that the</p> <p>18 first time she would have seen the prenap would have</p> <p>19 been via the email the night before executing it. Is</p> <p>20 that fair?</p> <p>21 <b>A</b> That's also fair.</p> <p>22 <b>Q</b> If this is the first time that Stephanie would have seen</p> <p>23 the prenuptial agreement, you would agree with me this</p> <p>24 is roughly or less than 24 hours prior to her executing</p> <p>25 it. Is that fair?</p>	<p style="text-align: right;">Page 186</p> <p>1 <b>A</b> Again, I don't know when she first saw it. So –</p> <p>2 <b>Q</b> But presuming her testimony is correct and recognizing</p> <p>3 you have no way to contradict her testimony or the email</p> <p>4 that is introduced in this case as Exhibit 1, you would</p> <p>5 agree that, assuming that all of that is correct, that</p> <p>6 would have been within or less than 24 hours from the</p> <p>7 time that she received it to the time that it was</p> <p>8 executed. Is that fair?</p> <p>9 <b>A</b> Assuming all of that is the first time she saw it,</p> <p>10 correct, then, yes, apparently that's 24 hours.</p> <p>11 <b>Q</b> Okay. And did you have an understanding as to the</p> <p>12 circumstances necessitating the legal marriage ceremony</p> <p>13 at your office in South Dakota?</p> <p>14 <b>A</b> Generally, yes.</p> <p>15 <b>Q</b> What was your understanding of the reason that they were</p> <p>16 doing that?</p> <p>17 <b>A</b> Generally was my understanding that there was some</p> <p>18 aspect of Italian law that would not have allowed the</p> <p>19 ceremony to take place there as an original and it would</p> <p>20 have been waited or delayed. So in order to effectuate</p> <p>21 that, they did a ceremony in South Dakota first.</p> <p>22 <b>Q</b> And I think you testified previously that Butch paid for</p> <p>23 you and Cheryl, Mrs. Bogue, to attend that ceremony in</p> <p>24 Italy. Is that fair?</p> <p>25 <b>A</b> Yes.</p>
<p style="text-align: right;">Page 187</p> <p>1 <b>Q</b> So your understanding was that the legal, I guess,</p> <p>2 marriage at your office was necessitated by timing</p> <p>3 constraints as compared to the previously planned</p> <p>4 ceremony in Italy. Is that fair?</p> <p>5 <b>A</b> No. Not timing constraints. It was change in aspect of</p> <p>6 Italian law. That's how I understood it at the time.</p> <p>7 <b>Q</b> What change in Italian law did you understand it to be?</p> <p>8 <b>A</b> Just that they couldn't do that ceremony in Italy.</p> <p>9 <b>Q</b> And when would you and Butch have discussed that change</p> <p>10 in scheduling then?</p> <p>11 <b>A</b> I did not discuss that with Butch.</p> <p>12 <b>Q</b> How did that become known to you?</p> <p>13 <b>A</b> Cheryl told me.</p> <p>14 <b>MS. COOK:</b> Your Honor, I have got no further questions.</p> <p>15 Thank you, Mr. Bogue.</p> <p>16 <b>THE COURT:</b> Thank you. Mr. Morris.</p> <p>17 <b>MR. MORRIS:</b> He is under oath. I'm tempted, but I will</p> <p>18 pass.</p> <p>19 <b>THE COURT:</b> Mr. Chicoine.</p> <p>20 <b>MR. CHICOINE:</b> Yes, I do have some questions.</p> <p>21 <b>CROSS-EXAMINATION</b></p> <p>22 <b>BY MR. CHICOINE:</b></p> <p>23 <b>Q</b> Good afternoon, Eric. I will have you look at Exhibit 1</p> <p>24 in that binder if you would, please. That's an email</p> <p>25 exchange which starts what would be on the bottom of</p>	<p style="text-align: right;">Page 188</p> <p>1 page 1 and on to page 2 of Exhibit 1 with email</p> <p>2 October 10 at 3:34 p.m. Are you with me?</p> <p>3 <b>A</b> Yes.</p> <p>4 <b>Q</b> This is a message that you sent to Butch and to Cheryl</p> <p>5 regarding revised second draft of prenap. Is that fair?</p> <p>6 <b>A</b> Again, according to the exhibit, yes.</p> <p>7 <b>Q</b> Your email message states that you have further revised</p> <p>8 the previous draft and the subject line refers to a</p> <p>9 revised second draft. It is fair to say that this –</p> <p>10 the attachment to that email was not the first</p> <p>11 prenuptial agreement you had prepared for Butch?</p> <p>12 <b>A</b> It appears not; that's correct.</p> <p>13 <b>Q</b> I want to ask you about the bottom of page 2, very last</p> <p>14 line there has some brackets or – well, brackets that</p> <p>15 appear to reference an attachment. Do you see that very</p> <p>16 last line?</p> <p>17 <b>A</b> Yes.</p> <p>18 <b>Q</b> Webb-prenup-003a.pdf?</p> <p>19 <b>A</b> Yes.</p> <p>20 <b>Q</b> Do you know whether you sent this revised second draft</p> <p>21 to Butch in PDF form?</p> <p>22 <b>A</b> That's what the email would indicate that I sent it in</p> <p>23 that format. That would be fairly common.</p> <p>24 <b>Q</b> The title of this document – is it your practice to</p> <p>25 title documents you prepare for clients in such a manner</p>



<p style="text-align: right;">Page 189</p> <p>1 who indicate the client name, nature of the document in</p> <p>2 the actual file name?</p> <p>3 <b>A</b> Yes.</p> <p>4 <b>Q</b> Can you tell me what 003a might refer to?</p> <p>5 <b>A</b> Internal version number.</p> <p>6 <b>Q</b> Are you indicating that this is the third version of a</p> <p>7 prenup?</p> <p>8 <b>A</b> Internally, yes.</p> <p>9 <b>Q</b> Just to be clear, do you recall receiving the message</p> <p>10 from Stephanie in any form that is the first email in</p> <p>11 Exhibit 1? Do you recall receiving that at any time</p> <p>12 before the marriage ceremony?</p> <p>13 <b>A</b> I don't recall at this time, no.</p> <p>14 <b>Q</b> You did make changes to Exhibit A of Exhibit 2, that</p> <p>15 would be Stephanie's schedule, to reflect the</p> <p>16 percentages of those LLC interests?</p> <p>17 <b>A</b> Yes.</p> <p>18 <b>Q</b> Do you recall if you were told that Stephanie had asked</p> <p>19 about checking, savings, 401(k)?</p> <p>20 <b>A</b> I don't recall that, no.</p> <p>21 <b>Q</b> Do you recall a conversation with either Butch or</p> <p>22 Stephanie about including checking, savings, or 401(k)</p> <p>23 for either of them?</p> <p>24 <b>A</b> At this time, I do not. I'm sorry.</p> <p>25 <b>Q</b> Do you recall a conversation with either Stephanie or</p>	<p style="text-align: right;">Page 190</p> <p>1 Butch about including horses or livestock interest for</p> <p>2 either of them?</p> <p>3 <b>A</b> Also, I don't recall that at this time either.</p> <p>4 <b>Q</b> Exhibit 2, the prenuptial agreement, I understand you</p> <p>5 testified that paragraph 8 was intended to be more</p> <p>6 comprehensive than a waiver of the elective share. Is</p> <p>7 that right?</p> <p>8 <b>A</b> Yes.</p> <p>9 <b>Q</b> In your review of the -- of Exhibit 2, the prenuptial</p> <p>10 property distribution agreement -- does that in any</p> <p>11 way reference elective share?</p> <p>12 <b>A</b> I'm sorry. Could you restate the question.</p> <p>13 <b>Q</b> Does the agreement in any way reference an elective</p> <p>14 share?</p> <p>15 <b>A</b> Using those words, no.</p> <p>16 <b>Q</b> Do you recall any sort of an explanation -- did you give</p> <p>17 an explanation to Butch or Stephanie about what an</p> <p>18 elective share is?</p> <p>19 <b>A</b> At this time, no.</p> <p>20 <b>MR. CHICOINE:</b> Nothing further. Thank you.</p> <p>21 <b>THE COURT:</b> Thank you. Mr. Nies.</p> <p>22 <b>MR. NIES:</b> I have no redirect, Your Honor.</p> <p>23 <b>THE COURT:</b> Thank you, Mr. Bogue. You may step down.</p> <p>24 <b>MR. NIES:</b> Is he released as well?</p> <p>25 <b>THE COURT:</b> Yes. Mr. Bogue, you may be released.</p>
<p style="text-align: right;">Page 191</p> <p>1 <b>MR. NIES:</b> I just have a few questions for my client Dee</p> <p>2 Haugen, and then I will be done.</p> <p>3 <b>THE COURT:</b> Okay. Ms. Haugen, if you would come</p> <p>4 forward, I will swear you in.</p> <p>5 <b>DEE HAUGEN,</b></p> <p>6 called as a witness, being first duly sworn, testified as</p> <p>7 follow:</p> <p>8 <b>DIRECT EXAMINATION</b></p> <p>9 <b>BY MR. NIES:</b></p> <p>10 <b>Q</b> Thank you, Dee. I will keep this brief. How close were</p> <p>11 you to your father?</p> <p>12 <b>A</b> I was very close.</p> <p>13 <b>Q</b> In 2013, how often did you talk with him?</p> <p>14 <b>A</b> Oh, probably multiple times a day.</p> <p>15 <b>Q</b> Were these conversations by phone, Zoom? How did you</p> <p>16 talk with him?</p> <p>17 <b>A</b> Cell phone.</p> <p>18 <b>Q</b> Do you remember him telling you that he had gotten</p> <p>19 engaged?</p> <p>20 <b>A</b> I do.</p> <p>21 <b>Q</b> Around that time, did you have any conversations with</p> <p>22 him about prenup?</p> <p>23 <b>A</b> I did.</p> <p>24 <b>Q</b> When was this?</p> <p>25 <b>A</b> The end of May.</p>	<p style="text-align: right;">Page 192</p> <p>1 <b>Q</b> And of 2013?</p> <p>2 <b>A</b> Yes.</p> <p>3 <b>Q</b> What did you tell him about a prenup?</p> <p>4 <b>A</b> I begged him to get a prenup, to make sure and sign one.</p> <p>5 <b>Q</b> And what did he tell you?</p> <p>6 <b>A</b> He said that he would.</p> <p>7 <b>Q</b> Did he indicate if he had already had a discussion with</p> <p>8 Stephanie on that?</p> <p>9 <b>A</b> Yes. He told me that he promised me that he would sign</p> <p>10 a prenup and get her to sign a prenup and that he had</p> <p>11 already discussed it with her.</p> <p>12 <b>Q</b> I want to make this clear. End of May 2013, Butch told</p> <p>13 you he had already discussed a prenup?</p> <p>14 <b>A</b> Yes.</p> <p>15 <b>Q</b> There's been lots of talk about Butch's 401(k) here. Do</p> <p>16 you have any knowledge about that 401(k)?</p> <p>17 <b>A</b> I knew that he had one when he worked for the bank. He</p> <p>18 was president of Western Dakota Bank since '89 maybe.</p> <p>19 So he had one, uh-huh.</p> <p>20 <b>Q</b> What happened to it?</p> <p>21 <b>A</b> He cashed it out when he started putting money together</p> <p>22 for the payday lending.</p> <p>23 <b>Q</b> When would that have been?</p> <p>24 <b>A</b> To my recollection, it would have been 15 or 16 years</p> <p>25 ago.</p>

Sara Gentry

---

**From:** Barbara Vargo  
**Sent:** Monday, May 30, 2022 11:28 AM  
**Cc:** Barbara Vargo  
**Subject:** Revised 2nd draft of Pre-nup

**From:** Stephanie <[Stephanie\\_eagleberger@yahoo.com](mailto:Stephanie_eagleberger@yahoo.com)>  
**Date:** October 10, 2013 at 8:20:51 PM MDT  
**To:** Butch Webb <[webbranch75@yahoo.com](mailto:webbranch75@yahoo.com)>  
**Subject:** Re: Revised 2nd draft of Pre-nup

Will you resend in English?? Lawyer jargon is the quickest way for me to feel completely inept. I really don't understand most of these points.

A few things to correct:

I own 45% of Vista Equine Colorado, LLC.

45% of Vista Land & Cattle, LLC. L&C has no business function but is the owner of the small farm property.

What about checking, savings, 401k?? Does that need to be included? My personal horses are in my personal name not a ranch name what about them?

I can't think of anything else right now.

I love you!!

Sent from my iPhone

On Oct 10, 2013, at 4:40 PM, Butch Webb <[webbranch75@yahoo.com](mailto:webbranch75@yahoo.com)> wrote:

I love you

Sent from my iPhone

Begin forwarded message:

**From:** "Eric Bogue" <[boguelaw@faithsd.com](mailto:boguelaw@faithsd.com)>  
**Date:** October 10, 2013, 3:34:25 PM MDT  
**To:** "Butch Webb" <[webbranch75@yahoo.com](mailto:webbranch75@yahoo.com)>, "Cheryl F Bogue" <[boguelaw@yahoo.com](mailto:boguelaw@yahoo.com)>  
**Subject:** Revised 2nd draft of Pre-nup

Butch and Cheryl:

Based on Cheryl's request to clarify the net income figures shown on Exhibit B and to add some reference to the trust property, I have further

**FILED**

OCT 16 2024

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

revised the previous draft. I have attached this latest version for your review. Again, please let me know when its ready to be sent Stephanie or let me know if you are going to send it to her.

Eric

**Eric H. Bogue**  
Bogue & Bogue, LLP  
Law Offices  
P.O. Box 250  
Faith, SD 57626-0250  
(605) 967-2529  
[boquelaw@faithsd.com](mailto:boquelaw@faithsd.com)

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<webb-prenup-003a.pdf>





STATE OF SOUTH DAKOTA     )  
  )ss.  
COUNTY OF ZIEBACH         )

### PRE-NUPTIAL PROPERTY DISTRIBUTION AGREEMENT

THIS AGREEMENT, by and between Martin A. Webb, age 56, hereinafter referred to as "Butch", a single person and resident of rural Ziebach County, South Dakota, and Stephanie A. Eagleberger, age 29, hereinafter referred to as "Stephanie", a single person and resident of rural Larimer County, Colorado, now do enter into and agree to this Pre-Nuptial Property Distribution Agreement as follows:

#### WITNESSETH:

WHEREAS, Butch and Stephanie have decided to be married to each other and share their common goals, dreams and property, and whereas Butch and Stephanie realize that each of them have their own separate property, assets and liabilities, and whereas both persons desire that in the event of divorce or separation that each person would receive in a property distribution or settlement only such property which is specifically stated within this Agreement and

WHEREAS, Butch and Stephanie consider it to their best interests to settle between themselves, now and forever, their respective rights and all other rights which may grow out of their marriage relationship between them in which either of them now has or may hereafter claim to have in any property of every kind, nature and description, real, personal or mixed, now owned or which hereafter may be acquired by either of them now therefore,

In consideration of the mutual promises and other good and valuable considerations herein expressed, the sufficiency of which consideration is hereby acknowledged, the parties hereto agrees as follows:

1. That in the event a Court, sees fit to award either party a divorce or separation from the other upon the evidence presented, it is the intent of the parties that this agreement shall be incorporated by reference in the final judgment or decree of divorce and shall thereafter be binding and conclusive on the parties hereto.
2. It is the intent of the parties that this agreement creates a contractual relationship and shall be enforceable without regard to any final judgment or decree of divorce, or subsequent modification of such judgment or decree.
3. That each of the parties shall at all times keep the other indemnified against all debts and liabilities which each may have contracted and from all actions, claims, demands, costs damages and expenses on account thereof.

**FILED**

OCT 16 2024

Page 1 of 5

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

By \_\_\_\_\_ Stephanie 0063

Filed: 9/18/2023 6:54 PM CST Dewey County, South Dakota 20PRO22-000001

4. That in the event of divorce or separation, Stephanie shall retain all the property listed on Exhibit A, attached hereto and incorporated herein by this reference, as her sole separate property, and Butch waives any right or claim to such property. In addition thereto, Stephanie shall be entitled to two percent (2%) of the value of Butch' property for each year of their marriage. However, the total such value shall not exceed twenty percent (20%) of Butch's property regardless of the length of their marriage. Butch will be entitled to make the payment of the total such value to Stephanie over a period not to exceed four (4) years. Such payments shall be made in equal annual installments together with interest at the Prime Rate as set by the Federal Reserve Bank and in effect on the date the Decree of Divorce is signed by the Court, with the first such installment due on the date the Notice of Entry of the Decree of Divorce is received by Butch and each successive annual installment due on the anniversary thereof until fully paid.
5. That in the event of divorce or separation, Butch shall retain all the property listed on Exhibit B, attached hereto and incorporated herein by this reference, as his sole separate property, and Stephanie waives any right or claim to such property.
6. Both parties agree to share as marital property and further agree that there is no property which will considered in the marital estate, in the event of divorce or separation.
7. Each of the parties undertakes and agrees to execute such assignments, deeds or other documents as are necessary to carry out the property division, and each party further agrees that should it become necessary in the future in order to effect the sale, transfer or mortgage of any property belonging to either of the parties, either will upon request of the other, promptly sign and deliver all papers necessary and requisite to show the release by such party of all interest in the property.
8. Except as herein provided, both Butch and Stephanie do hereby forever waive, release and quit claim to the other all of the property rights, and claims which he or she now has or may hereafter have as husband, wife, widower, widow, or otherwise by the marital relations which may exist in the future between the parties hereto by any present or future law in any state of the United States of America, or any other country, in and to, or against the property of the other party or his or her estate, whether now owned or hereafter acquired by such other party. Both Butch and Stephanie herein forever covenant and agree for himself and herself and their heirs, executors, administrators, and assigns for the purpose of enforcing any or either of the rights specified in an relinquished under this paragraph. In addition, both parties agree to complete Wills, Living Wills, and Durable Power of Attorney within in six (6) months of the date of this Agreement.
9. It is further agreed that this agreement shall not be construed or considered an agreement between the parties to obtain a divorce, one from the other, but that the same is to be considered strictly as an agreement settling rights respecting property division of each of

*BW*  
*SK*


10. The parties have entered into this agreement freely and after adequate opportunity for independent counsel and acknowledge that the provisions are fair. Neither party relies upon any representations or statements of the other as to any matters material to this agreement.

*Martin A. Webb*  
Martin A. Webb

Stephanie A. Eagleberger

On this the 11<sup>th</sup> day of October, 2013, before me, Eric H. Bogue, the undersigned officer, personally appeared Martin A. Webb and Stephanie A. Eagleberger, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

set my hand and official seal.

  
\_\_\_\_\_  
Notary Public

19

EXHIBIT "A"

	<u>Description</u>	<u>Value</u>
1.	<b>Primary residence</b> , located at: 3051 North County Rd Loveland, CO 80538  Includes residence, accompanying 70 acres, and all furniture, appliances, and other miscellaneous personal effects. However, specifically excludes any personal effects belonging to Martin A. Webb which may be present thereon from time to time.	\$ 1,300,000.00
2.	<b>Vista Equine Colorado, LLC</b> 45% A Colorado limited liability company	200,000.00
3.	<b>Saw Ranch, LLC</b> 100% A Colorado limited liability company	200,000.00
4.	<b>Visa Land &amp; Cattle, LLC</b> A Colorado limited liability company 45%	50,000.00

*BW*  
*HE*

# EXHIBIT "B"

	<u>Description</u>		<u>Value*</u>
1.	Financial Solutions, LLC	100%	\$ (1,733.00)
2.	Red Stone Financial, LLC	100%	700,641.00
3.	PayDay Financial, LLC	100%	3,135,381.00
4.	Management Systems, LLC	100%	4,322,684.00
5.	24-7 Cash Direct, LLC	100%	0.00
6.	Great Sky Financial, LLC	100%	0.00
7.	Western Sky Financial, LLC	100%	7,899,928.00
8.	High Country Financial, LLC	100%	0.00
9.	Red River Finance, LLC	100%	0.00
10.	Martin A. Webb*		9,821,825.00
	Includes 100% ownership of: Webb Ranch, LLC and DeKaKe Ranch, LLC		

\* Value amount reflects 2012 Net Income after taxes. No separate valuation has been made. As of 2013, all net income values for items 1-9 will be dramatically impacted by numerous lawsuits filed against these various entities by several states and private parties which has resulted in a near total cessation of business activity.

# Value for Martin A. Webb, an enrolled member of the Cheyenne River Sioux Tribe, include income derived from real property currently held in Trust for Martin A. Webb by the United States of America, Department of the Interior, Bureau of Indian Affairs. All such trust property cannot be transferred out of trust and/or to a non-Indian without the consent of the United States of America, Department of the Interior, Bureau of Indian Affairs.



STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF DEWEY )

IN CIRCUIT COURT  
FOURTH JUDICIAL CIRCUIT

20PRO22-001

THE ESTATE OF MARTIN WEBB,

DECISION ON SPOUSAL ELECTION

This Matter having come before the Court on Stephanie Webb's Verified Petition for Spousal Elective Share and Family Allowance. The Court held a trial on September 11, 2024. There was no objection to the Family Allowance and that is GRANTED.

Stephanie in petitioning the Court for an elective share pursuant to SDCL 29A-2-201 et.seq. had the burden of proof at trial to show that the premarital agreement was not enforceable. SDCL 29A-2-213; 25-2-21.

Stephanie Webb was the spouse of the decedent Butch Webb. Stephanie lives in Loveland Colorado. She graduated from high school in 2002. She obtained a BS in Equine Science in 2006 from Colorado State University. Butch had a bachelor's degree from the University of Wyoming. She was previously married in 2007 to Chris Kepplinger. They separated in 2011 and divorced in 2012.

In 2007 she was employed as the Office Manager for Royal Vista Equine a business which conducts high-end breeding of horses, i.e. assisted reproduction. There were 10-12 employees at that time. Stephanie oversaw client communications, billing clients, and paying bills. She would work with CPAs to do the year end taxes. She also entered into contracts with clients for services provided by business. In 2011, the owners of Royal Vista Equine wanted to retire. The owners gifted the business to her and her partner Jake Dahl. She testified that they did so because she was good at what she was doing. She continued to employ about a dozen employees. There was no purchase price. Stephanie testified that she changed the name of the business from Royal Vista Equine to Vista Equine LLC when she and Jake acquired it. Her interest was and still is 45% of this business.

At the time of being gifted the business in 2011 she kept the same role as Office Manager at a pay of \$45,000/year. There is no evidence of what Stephanie's current income is from the business, nor is it relevant.

Stephanie testified that she understood the importance of including details in contracts she enters for her business purposes. She has always been able to provide for and support herself. She did not depend on Butch for her livelihood. She has the same level of education as Butch and was a business owner.

Stephanie met Butch in 2007 when he became a client of Royal Vista Equine. She knew he was from South Dakota and bred horses. Stephanie knew, because Butch was a client of Royal Vista Equine, he had the means to afford high end breeding. In 2013, she began texting Butch looking for a brood mare. In January of 2013 they began the "courting process" by calling and texting a lot. In February of 2013 they went to a bull sale in Nebraska, and he asked her out for dinner. She testified that they had a lot of similarities and looked at things the same way. She testified they both had been married before and they knew what they wanted in a partner. She further testified that even though it seemed fast it just "flowed" for them. There was a 28-year age difference between Butch and Stephanie. Butch was 57 and Stephanie was 28. Stephanie testified that she was very hypersensitive about a gold-digger image, so she purposely did not ask about money. She was aware he had money.

In the spring of 2013 Stephanie travelled to South Dakota to see the ranch and meet Butch's children and other family. Butch, at the time, had four children two of which were minors. By May of 2013 they were engaged. Dee Haugen ( Butch's daughter) testified that in this time frame Butch told her he had talked to Stephanie about a prenuptial agreement. In early summer of 2013, Butch and Stephanie started talking about marriage. Stephanie testified that the prenuptial agreement was brought up in late summer of 2013.

Stephanie testified that she wanted a place to live in Colorado because she was not ready to move to South Dakota. Stephanie testified that Butch also wanted to have a place in Colorado to go to in case he lost everything in South Dakota as he had several payday loan companies caught up in litigation. On May 20, 2013, Butch purchased approximately 70 acres of real estate and a house in Colorado valued, at the time (2013), at 1.3 million dollars and titled it in Stephanie's name only. No strings attached. She contributed nothing to the purchase of this property. Butch did not live in Colorado. Stephanie testified that Butch was still in South Dakota and would come to Colorado 1 to 2 times per month. He would stay a day or two or sometimes a couple of weeks. Stephanie testified that he would have tied the trips to Colorado to his trips to Oklahoma for sales.

Stephanie had been to South Dakota 4 to 6 times prior to the marriage. He took her around and showed her his properties, cattle and horses during these visits. She did not spend time with his family during these trips.

She testified her dream place for a wedding was Italy. She testified that Butch told her that if that's your dream that's where we will go. In September of 2013 Stephanie planned the wedding with a travel agent. In planning she learned that she needed a certain document to be filed 6 months prior to the wedding in order to get married in Italy. The wedding in Italy was planned for November 12, 2013. She found it next to impossible to actually get married in another country. So, they decided to do a "mock" ( Stephanie's word) legal ceremony in South



Dakota before the ceremonial wedding in Italy. This was her decision. Stephanie didn't want this legal ceremony to feel like the wedding. It was a legal ceremony only. She just wanted it to be informal. Stephanie described how the ceremony would go. She wanted certain things like "no kiss the bride". Butch again brought up the prenuptial agreement a couple of weeks before the wedding.

In October of 2013, South Dakota suffered storm Atlas. Butch's ranch was significantly impacted by Atlas. He had cattle loss and building damage. Stephanie stayed in Colorado and Butch went back to South Dakota. He was desperate to get to South Dakota to take care of his property. They were trying although not required to get a legal ceremony done before they left for Italy. Butch was under pressure with the storm. They managed to arrange a date in Faith South Dakota for October 11, 2013. At no time did she ask the date to be moved even after receiving the prenuptial agreement on October 10.

Stephanie testified she thought the prenuptial agreement was a protection against Butch's payday loan lawsuits and in the event of divorce. At no time did Stephanie seek legal counsel regarding the effects of a prenuptial agreement. Significantly, Stephanie testified that she doesn't even recall if she read the agreement. Stephanie further testified that the prenuptial agreement was a "non-factor".

The evidence shows that on October 10, 2013, she received an email from Butch with the prenuptial agreement attached including both party's valuations of assets. Stephanie's property was valued at \$450,000. In addition to the \$450,000 she listed the real property, residence and all personal effects totaling \$1,300,000. In sum Stephanie's assets were valued at \$1,750,00.00. Butch's assets were listed and totaled approximately \$26,000,000.

Stephanie testified that she was confused as to the legal wording in the prenuptial agreement. However, she did not talk to a lawyer. She did not ask to move the ceremony back. She did not ask any questions. She testified that at the time of the agreement she may not have even read it.

On October 11, 2013, Butch drove to Colorado to pick up Stephanie and bring her to South Dakota for the ceremony. At no time did she ask about the prenuptial agreement on the ride to South Dakota despite knowing that they were going to sign it or ask for a lawyer to review the prenuptial agreement. She testified that she just trusted Butch and the Bogues.

She testified that when she went into Eric Bogues office, she did not have any questions of him regarding the prenuptial agreement. She does not recall if they went through paragraph by paragraph. She testified that Butch did not deceive or trick her. After signing the agreement, they went into the main part of the office and did the wedding ceremony. Eric and Cheryl Bogue were the witnesses. Stephanie testified that she knew the Bogue's were Butch's lawyers.

Pastor Delbridge testified that both Stephanie and Butch were happy. Cheryl Bogue testified that Stephanie appeared happy. She did not appear to be under stress or coercion.

Eric Bogue testified that he met Butch 20 years ago. They were also good friends. He drafted the prenuptial agreement at Butch's request. He had drafted approximately 10 prenuptial agreements in his practice. He recollected conversations with Stephanie about the prenuptial



agreement. He testified that he recalls sending Exhibit 1 as one document including both attachments exhibit A and B and that is what generated Stephanie's proposed changes to the document.

Bogue testified that he has never represented her or given her legal advice. Bogue testified that his intent when drafting the agreement was broader than divorce. It was for all post death claims regardless of when they came up. He remembers conversing with Stephanie before the day of signing but certainly spoke with her about the agreement on the date of signing. He testified that he would have recommended if she had any questions or hesitation to contact a lawyer as there were important legal consequences.

He testified that he remembers both Stephanie and Butch asked questions during the meeting and he testified he went through each paragraph with them. He testified that he certainly would have explained paragraph 8 which specified the post death disposition of property, claims, and rights. If Stephanie had expressed concerns, he testified he would have strongly recommended that she wait and obtain counsel. He further testified that he also would go over it some more if she had concerns. She did not. He further testified that he always makes it clear who he is representing despite not having a written disclosure. He testified that he did not provide legal advice to Stephanie he just confirmed her intention to keep the assets separate. He testified that he did not recall any reluctance by Stephanie. Bogue testified that she did not appear coerced. She seemed generally happy. Mr. Bogue's testimony was credible.

Stephanie then went back to Colorado and Butch came back to South Dakota until the November wedding in Italy.

In 2015 Butch made a will consistent with the provisions of the prenuptial agreement. Stephanie testified that she did not know about this will until his passing.

Pursuant to SDCL 29A-2-213 : "The right of election of a surviving spouse...may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse." In this case, Stephanie has asserted the waiver was not enforceable because it was not voluntary. SDCL 29A-2-213(b)(1) Or alternatively, that the waiver was unconscionable under the provisions set forth in SDCL 29A-2-213(b)(2)(i-iii).

In pertinent part the prenuptial property distribution agreement provides:

"Whereas Butch and Stephanie consider it to their best interest to settle between themselves now and forever their respective rights and all other rights which may grow out of their marriage relationship between them in which either of them now has or may hereafter claim to have in property of every kind, nature and description, real, personal or mixed, now owned or which hereafter may be acquired by either of them now therefore..."

8. "Except as herein provided, both Butch and Stephanie do hereby forever waive, release and quit claim to the other all of the property rights, and claims which he or she now has or may hereafter have as husband, wife, widower, widow, or otherwise by the marital relations which may exist in the future between the parties hereto by any present or future law in any state of the United States of America, or any other country, in and to, or against the property of the other

party or his or her estate, whether now or owned or hereafter acquired by such other party. Both Butch and Stephanie here in after forever covenant and agree for himself and herself and their heirs, executors, administrators, and assigns and for the purpose of enforcing any or either of the rights specified in and relinquished under this paragraph. In addition, both parties agree to complete wills, living wills, and durable power of attorney within six months of the date of this agreement.

9. It is further agreed that this agreement shall not be construed or considered an agreement between the parties to obtain a divorce, one from the other, but that the same is to be considered strictly as an agreement settling rights respecting property division of each of the parties hereto, and that each party was urged to obtain legal advice an attorney and that the same is a free and voluntary act of each of the parties hereto.

10. The parties have entered into this agreement freely and after adequate opportunity for independent counsel and acknowledge that the provisions are fair. Neither party relies upon any representations or statements of the other as to any matter's material to this agreement.

Our Supreme Court has recognized that "antenuptial agreements are favored in the law since they allow parties to protect the inheritance rights of their respective children by prior marriages and thus prevent subsequent strife over the disposition of their respective estates". *Schutterle v. Schutterle*, 260 NW 2d 341, 347 (SD 1977). Pursuant to SDCL 25-2-21(a) (1) and (2) a party to a premarital agreement may claim that it is unenforceable if either of two grounds are established: 1. The execution was not voluntary or 2. The agreement was unconscioable. Further, SDCL 29A-2-213(b)(1) and (2) provides that a waiver of the right to an elective share of the deceased spouse is not enforceable if the waiver was not executed voluntarily or because the waiver was unconscionable. *Matter of Estate of Eichstadt*, 983 NW2d 572 (SD2022).

The Supreme Court in the *Matter of Estate of Eichstadt*, 983 NW2d 572 (SD2022) found that voluntary is not defined by SDCL 25-2-21. Also voluntary is not defined in SDCL 29A-2-213. In *re Estate of Smid*, 756 NW2d 1, (SD2008). The Smid Court noted that general rules of contracts apply to identify a governing definition of voluntary. The Smid Court held "one who accepts a contract is conclusively presumed to know its contents and to assent to them in the absence of fraud, misrepresentation or other wrongful act by another contracting party." The Eichstadt Court found that voluntariness is not based solely on contract principles because the legislature enacted both SDCL 25-2-21 and SDCL 29A-2-213. Thus, premarital agreements are unique and require, in addition to contract principles an examination of the totality of circumstances surrounding the execution. *Matter of Estate of Eichstadt*, 983 NW2d 572 (SD2022)

In this case, Stephanie was a college educated young businesswoman who did not rely on Butch for her livelihood. She was previously married and divorced. She worked at the company 6 years before meeting Butch. She became the owner of this company two years prior to dating Butch. The business had an estimated value near \$500,000. She was paid an annual salary of \$45,000. She employed 12 people. She oversaw the accounts receivable and payable and client

communications. She was familiar with contractual obligations as she entered into contracts with clients for the services her company provided.

Stephanie testified that she did not believe that Butch deceived or tricked her into signing the prenuptial agreement. She testified she may not have even read the agreement. She testified that she did not remember asking one single question before signing the agreement. Significantly, she testified the agreement was a "nonfactor". She was determined to get married regardless of the agreement. The Court finds she was going to sign the agreement regardless of what it said or meant. She was not under duress. She was not fearful of how Butch would react if she asked questions or delayed or refused to sign. There was no evidence of Butch bullying her. In fact, it appeared as if he was doing everything to please her. He told her she should have her dream wedding in Italy. He purchased her a home and land. He always picked her up so she would not have to travel to South Dakota on her own.

The only stress she testified to was a self-imposed time limit to get the marriage done before she had her dream wedding in Italy. There was no evidence they couldn't do the legal ceremony after the Italy ceremony. Butch was not pressuring her to get married or sign the agreement.

The couple had discussed a premarital agreement at least by late summer of 2013. She testified that about two weeks prior to the wedding she knew the prenuptial agreement was going to be coming. The parties did not marry until October of 2013. She was by all accounts happy the day of the wedding as was Butch. Eric Bogue testified that he went over each paragraph with her. She had the opportunity to speak with counsel if she chose. She had access to lawyers and had worked with them through her business dealings. There was a disclosure of assets. She did not even live in the same state as Butch and had opportunity on her own without his pressure to seek out advice if she chose.

The Court finds Stephanie acted purposefully and intentionally to exercise her own free will. The Court cannot find wrongful conduct on the part of Butch. The Court finds that at the time she signed the agreement she truly did not care about the contents ( she may not have read it she said) and it was a "nonfactor". She just wanted to get married. This does not make the agreement involuntary.

Voluntary means that the act was taken intentionally and is a product of a person's free will. In re Estate of Smid, 756 N.W.2d 1,8 (SD 2008). She was not threatened or coerced. "In the context of plea agreements, a voluntary plea...is by definition not the result of threats, force or promises made apart from the plea agreement or any other form of coercion. State v. Nikolaev, 619 N.W.2d 244,247 (SD 2000). She may feel regret ten years later. Regret does not equal involuntary. Unfortunately, hindsight is 20/20. The Court finds the agreement was entered into voluntarily.

The Court also finds the agreement was not unconscionable. Stephanie had adequate knowledge of the nature and extent of Butch's property. The Court finds that the agreement disclosed (exhibit B to Exhibit1) the nature and extent of Butch's property prior to Stephanie signing the agreement. Stephanie had been to his properties 4 to 6 times over the course of 10 months and could observe for herself his land, buildings, and livestock. He was a client of her high-end

horse breeding services. She knew he had money and was sensitive about being labeled a gold-digger. The agreement did provide for her in the case of divorce.

The Supreme Court in Sanford explained "it is sufficient for a spouse to provide, within the best of his or her abilities, a list of assets and liabilities with approximate valuations. The listing must be sufficiently precise to give the other spouse a reasonable approximation of the magnitude of the other spouse's net worth." Sanford v. Sanford, 694 NW 2d at 295(SD 2005).

The Court finds listing the 9 separate payday loan LLC's he owned with each LLC's net value individually (see Exhibit B to the Prenuptial Property Distribution Agreement which was Exhibit 1 in this trial) totaling a little over \$16 million and then the specification of his two ranch LLC's :Webb Ranch LLC and DeKaKe Ranch LLC and real property totaling \$9.8 million for a total **NET WORTH (SPECIFIED IN EXHIBIT B)** of just under \$26 million was sufficiently precise to apprise Stephanie of the reasonable magnitude of Butch's net worth. The disclosure was fair and reasonable. At the time of signing the agreement, the undisputed evidence established that Stephanie was well aware Butch's financial worth far exceeded hers.

Stephanie submitted additional evidence by way of affidavit after the trial as allowed by the Court. Stephanie asserts that there was an additional \$1.8 million dollars in a commercial building, real property and retirement account that was not included in the disclosure. The Court finds this amount is nominal in the entire scheme and accounts for less than 8% of the entirety of the estate. The nature and extent of the property owned by Butch was disclosed to Stephanie prior to signing. The agreement was not unconscionable.

Based upon the totality of circumstances the Court finds Stephanie has not met her burden to prove that the agreement was not voluntary or unconscionable. The Petition for Spousal Election is DENIED.



BY THE COURT:

Michelle K. Comer

Circuit Court Judge

ATTEST:

Clerk

Deputy

**FILED**

DEC 30 2024

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

By \_\_\_\_\_

STATE OF SOUTH DAKOTA

COUNTY OF DEWEY

ESTATE OF **MARTIN ALLEN WEBB**,

Deceased.

SS.

IN CIRCUIT COURT

FOURTH JUDICIAL CIRCUIT

20PRO22-000001

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Court on Stephanie Webb's *Verified Petition For Spousal Elective Share and Family Allowance*, and the Court held a trial thereon on September 11, 2024.

Interested party Deb Allen Ducheneaux was represented by A. Jason Rumpca, Riter Rogers, LLP. Interested party Dee Haugen represented by Eric John Nies, Nies Karras & Skjoldal, P.C. Interested parties Kailee Taryn Webb and Kenna Webb were represented by Katelyn A. Cook, Gunderson, Palmer, Nelson & Ashmore. Interested party Lakin Webb was represented by Nathan Chicoine, DeMerrseman, Jensen, Tellinghuisen & Huffman, LLP. Interested party Wynston Webb was represented by Robert L. Morris, Morris Law Firm, Prof. LLC. Interested party Stephanie Webb was represented by Jeffery D. Collins, Lynn, Jackson, Schultz & Lebrun, P.C.

The Court having heard the evidence and the arguments of counsel, having considered all pleadings of record, and good cause appearing, hereby enters the following:

### FINDINGS OF FACT

1. No party to the Probate action objected to the request by Stephanie Webb ("Stephanie") for family allowance.
2. Decedent Martin Allen "Butch" Webb ("Butch") died in 2021.
3. Stephanie was the spouse of Butch Webb as of his date of death.
4. Stephanie lives in Loveland, Colorado.
5. Stephanie graduated from High School in 2002.
6. Stephanie obtained a Bachelor's Degree in Equine Science in 2006 from Colorado State University.
7. Butch obtained a Bachelors's Degree from the University of Wyoming.
8. Stephanie had the same level of education as Butch.
9. Stephanie was previously married to Chris Kepplinger.

10. Stephanie and Chris Kepplinger separated in 2011 and divorced in 2012.
11. In 2007, Stephanie was employed as the Office Manager for Royal Vista Equine.
12. Royal Vista Equine is in the business of high-end horse breeding (i.e., assisted reproduction).
13. In 2007, Royal Vista Equine had ten to twelve employees.
14. As Office Manager, Stephanie oversaw client communications, billing of clients, paying bills, and worked with Royal Vista Equine's CPA to do year-end taxes.
15. As Office Manager, Stephanie also entered into contracts with clients for services provided by Royal Vista Equine.
16. Stephanie testified she understood the importance of including details in the contracts she utilizes in her Vista Equine LLC business.
17. In 2011, the owners of Royal Vista Equine wanted to retire, and gifted the business to Stephanie and her partner, Jake Dahl.
18. Stephanie was gifted, and still owns, 45.0% of the business.
19. Stephanie testified that the owners of Royal Vista Equine decided to gift the business in part to her because she was so good at her job.
20. When they were gifted ownership, Stephanie and Jake Dahl changed the business name to Vista Equine LLC.
21. After taking ownership of Vista Equine LLC, Stephanie continued to employ about twelve employees.
22. Stephanie continued as Office Manager with a \$45,000.00 salary; there is no evidence of her current salary.
23. Stephanie has always been able to provide for and support herself, and did not depend on Butch for her livelihood.
24. Stephanie met Butch in 2007 when he became a client of Royal Vista Equine.
25. Stephanie knew Butch was from South Dakota and bred horses.
26. Stephanie knew Butch had the financial means to afford high end breeding because he was a client of Royal Vista Equine.
27. In 2013, Stephanie began to text Butch to look for a brood mare.
28. In January 2013, Stephanie and Butch began the "courting process" by calling and texting a lot.



**29.** In February 2013, Stephanie and Butch went to a bull sale in Nebraska, and he asked her out for dinner.

**30.** Stephanie testified she and Butch were similar and looked at things the same way.

**31.** Stephanie also testified she and Butch had both been married before and knew what they wanted in a partner.

**32.** Stephanie testified that, even though the courting process seemed fast, it just “flowed” for her and Butch.

**33.** Butch was twenty-eight (28) years older than Stephanie.

**34.** In 2013, Stephanie was 28 years old and Butch was 57 years old.

**35.** Stephanie testified she was aware Butch was wealthy but she did not ask about money because she was hypersensitive about being perceived as a “gold-digger”.

**36.** Stephanie was a college-educated young businesswoman who did not rely on Butch for her livelihood and was previously married and divorced.

**37.** Stephanie worked at Royal Vista Equine for six years before marrying Butch, and became the owner of the business two years prior to dating Butch.

**38.** When Stephanie and Butch began dating, Vista Equine LLC had an estimated value of near \$500,000, Stephanie was paid an annual salary of \$45,000, and she employed twelve people.

**39.** In the spring of 2013, Stephanie traveled to South Dakota to see Butch’s ranches and his other family members.

**40.** At the time, Butch had four children, two of whom were minors.

**41.** Butch and Stephanie were engaged by May 2013.

**42.** Butch’s daughter Dee Haugen testified that around May 2013 Butch informed her (Dee) that he had talked to Stephanie about a prenuptial agreement.

**43.** In early summer of 2013, Butch and Stephanie started talking about the marriage.

**44.** Stephanie testified that a prenuptial agreement was brought up in late summer 2013.

**45.** Stephanie testified that in 2013 she wanted to continue living in Colorado because she was not ready to move to South Dakota.

**46.** Stephanie testified Butch also wanted a place in Colorado to go to in case he lost everything in South Dakota because of his ongoing payday loan company litigation.



**47.** In May 2013, Butch purchased approximately seventy acres of real estate and a house in Colorado valued in 2013 at \$1,300,000.

**48.** Butch titled the real estate referenced in Finding **47.** only in Stephanie's name, with no strings attached or reserved rights.

**49.** Stephanie contributed nothing to the real estate referenced in Finding **47.**

**50.** In 2013, Butch did not live in Colorado.

**51.** Stephanie testified that in 2013 Butch still lived in South Dakota and traveled to Colorado once or twice a month to stay for periods lasting from a day or two to a few weeks.

**52.** Stephanie testified Butch would have tied his stays in Colorado with sales trips to Oklahoma.

**53.** Prior to her marriage to Butch, Stephanie had been to South Dakota on four to six occasions.

**54.** During the trips to South Dakota referenced in Finding **53.**, Butch took Stephanie around his Ranches to show her his land, cattle, and horses; Stephanie did not spend time with Butch's family during the trips.

**55.** Stephanie testified her dream wedding venue was Italy.

**56.** Stephanie testified Butch told her that if Italy was her dream, he was willing to have the wedding there.

**57.** In September 2013, Stephanie planned the wedding in Italy with a travel agent.

**58.** Stephanie eventually scheduled the wedding in Italy to occur on November 12, 2013.

**59.** As part of the planning process, Stephanie learned a certain document needed to be filed at least six months prior to the trip in order for the marriage to occur in Italy.

**60.** Stephanie discovered that it would thus not be possible to be legally married in Italy on November 12, 2013.

**61.** Stephanie and Butch decided to do a "mock" (the word used by Stephanie under oath) legal ceremony in South Dakota before the ceremonial wedding in Italy.

**62.** It was Stephanie's decision to do the "mock" South Dakota ceremony.

**63.** Stephanie did not want the "mock" South Dakota ceremony to feel like the wedding and to only be the legal ceremony.

**64.** Stephanie wanted the “mock” South Dakota ceremony to be informal and directed exactly how it would go such as “no kiss the bride”.

**65.** A couple of weeks before the “mock” South Dakota ceremony, Butch again brought up the prenuptial agreement.

**66.** In early October 2013, South Dakota suffered Winter Storm Atlas, which significantly impacted Butch’s ranches.

**67.** Butch was in Colorado when Winter Storm Atlas hit, but traveled back to South Dakota while Stephanie stayed in Colorado.

**68.** Butch lost cattle and had buildings damaged by Winter Storm Atlas and was desperate to take care of his property.

**69.** Butch was under significant pressure due to the Winter Storm.

**70.** Even though it was not required that Butch and Stephanie have the “mock” South Dakota ceremony, they arranged it to occur in Faith, South Dakota, on October 11, 2013.

**71.** At no time did Stephanie ask the October 11, 2013, “mock” South Dakota ceremony be moved, even after receiving the Prenuptial Agreement on October 10, 2013.

**72.** On October 10, 2013, Stephanie received an email from Butch with the Prenuptial Agreement attached.

**73.** The October 10, 2013, Prenuptial Agreement included a listing of both parties’ valuations of assets.

**74.** The asset listing referenced in Finding **73.** valued Stephanie’s property and personal effects other than the real estate referenced in Finding **47.** at \$450,000 and valued the real estate referenced in Finding **47.** at \$1,300,000, for a total of \$1,750,000.

**75.** The asset listing referenced in Finding **73.**, valued Butch’s assets at approximately \$26,000,000.

**76.** Stephanie testified she thought the Prenuptial Agreement was a protection against Butch’s payday loan lawsuits and in the event of divorce.

**77.** At no time did Stephanie seek legal counsel regarding the effects of the prenuptial agreement.

**78.** Stephanie testified she does not even remember if she read the Prenuptial Agreement.

**79.** Stephanie also testified that the Prenuptial Agreement was a “non-factor”.

**80.** Stephanie testified she was confused as to the legal wording of the Prenuptial Agreement.

**81.** Despite the confusion referenced in Finding **80.**, Stephanie did not talk to a lawyer or ask to move the October 11, 2013, “mock” South Dakota ceremony back.

**82.** Despite the confusion referenced in Finding **80.**, Stephanie did not ask any questions about the Prenuptial Agreement and testified she may not have even read it.

**83.** On October 11, 2013, Butch drove to Colorado to pick up Stephanie and bring her to South Dakota for the “mock” ceremony.

**84.** Despite knowing that Butch and Stephanie intended to execute the Prenuptial Agreement prior to the “mock” ceremony, Stephanie did not ask about the Prenuptial Agreement on the drive from Colorado to Faith.

**85.** Despite knowing that Butch and Stephanie intended to execute the Prenuptial Agreement prior to the “mock” ceremony, Stephanie did not request that a lawyer review the Prenuptial Agreement.

**86.** Instead of requesting a lawyer review the Prenuptial Agreement prior to the “mock” ceremony, Stephanie testified she just trusted Butch, Eric Bogue, and Cheryl Bogue.

**87.** Stephanie testified that when she went into Eric Bogue’s law office in Faith, South Dakota, she did not have any questions for him regarding the prenuptial agreement.

**88.** Stephanie testified she knew Eric Bogue and Cheryl Bogue were Butch’s lawyers.

**89.** Stephanie testified she does not recall if the parties reviewed the Prenuptial Agreement paragraph by paragraph.

**90.** Stephanie testified Butch did not trick or deceive her regarding the Prenuptial Agreement.

**91.** After executing the Prenuptial Agreement, the parties went into the main part of the office and performed the wedding ceremony, of which Eric Bogue and Cheryl Bogue were witnesses.

**92.** Pastor Harold Delbridge testified both Stephanie and Butch were happy at the “mock” ceremony.

**93.** Cheryl Bogue testified Stephanie appeared happy at the “mock” ceremony.

**94.** Stephanie did not appear at the “mock” ceremony to be under stress or coercion.

**95.** Eric Bogue testified he met Butch twenty years ago and they were good friends.

**96.** Eric Bogue drafted the Prenuptial Agreement at Butch’s request.

**97.** Eric Bogue testified he drafted approximately ten prenuptial agreements, including the one for Butch.

**98.** Eric Bogue recollected conversations with Stephanie about the Prenuptial Agreement.

**99.** Eric Bogue testified he recalls sending the Prenuptial Agreement referenced in Finding **72.** as one document including both attachments (Exhibits A and B), and that is what generated Stephanie's proposed changes to the Prenuptial Agreement on October 10, 2013.

**100.** Eric Bogue testified he has never represented Stephanie or given her legal advice.

**101.** Eric Bogue testified he always makes it clear who he is representing despite not having a written disclosure.

**102.** Eric Bogue testified his intent in drafting the Prenuptial Agreement was broader than divorce.

**103.** Eric Bogue testified his intent in drafting the Prenuptial Agreement was to address all post-death claims regardless of when they came up.

**104.** Eric Bogue testified he remembers conversing with Stephanie about the Prenuptial Agreement before the day of signing, and that he certainly discussed the Prenuptial Agreement with Stephanie on the date of signing.

**105.** Eric Bogue testified he would have recommended that, if Stephanie had any questions or hesitation regarding the Prenuptial Agreement, Stephanie should contact an attorney because there were important legal consequences.

**106.** Eric Bogue testified he remembers that both Stephanie and Butch asked questions during the meeting and testified he went through each paragraph of the Prenuptial Agreement with them.

**107.** Eric Bogue testified he certainly would have explained paragraph 8 of the Prenuptial Agreement, which specified the post-death disposition of property, claims, and rights.

**108.** Eric Bogue testified that, if Stephanie had expressed concerns, he would have strongly recommended that she wait and obtain counsel.

**109.** Eric Bogue testified that if Stephanie had expressed concerns, he would have reviewed the Prenuptial Agreement more.

**110.** Eric Bogue testified that Stephanie did not express concerns about the Prenuptial Agreement.

**111.** Eric Bogue testified he did not provide legal advice to Stephanie, but just confirmed her intention to keep assets separate.

**112.** Eric Bogue testified he does not recall any reluctance on the part of Stephanie.

**113.** Eric Bogue testified Stephanie did not appear coerced and seemed generally happy.

**114.** Eric Bogue's testimony was credible.

**115.** The pertinent part of the Prenuptial Agreement provides as follows:

WHEREAS, Butch and Stephanie consider it to be in their best interests to settle between themselves, now and forever, their respective rights and all other rights which may grow out of their marriage relationship between them in which either of them now has or may hereafter claim to have in any property of every kind, nature and description, real, personal or mixed, now owned or which hereafter may be acquired by either of them now therefore, . . .

8. Except as herein provided, both Butch and Stephanie do hereby forever waive, release and quit claim to the other all of the property rights, and claims which he or she now has or may hereafter have as a husband, wife, widower, widow, or otherwise by the marital relations which may exist in the future between the parties hereto by any present or future law in any state of the United States of America, or any county, in and to, or against the property of the other party or his or her estate, whether now owned or hereinafter acquired by such other party. Both Butch and Stephanie herein forever covenant and agree for himself and herself and their heirs, executors, administrators, and assigns for the purpose of enforcing any or either of the rights specified in an [sic] relinquished under this paragraph. In addition both parties agree to complete Wills, Living Wills, and Durable Power of Attorney within in [sic] six (6) months of the date of this Agreement.

9. It is further agreed that this agreement shall not be construed or considered an agreement between the parties to obtain a divorce, one from the other, but that the same is to be considered strictly as an agreement settling rights respecting property division of each of the parties hereto, and that each party was urged to obtain legal advice an attorney and that the same is a free and voluntary act of each of the parties hereto.

10. The parties have entered into this agreement freely and after adequate opportunity for independent counsel and acknowledge that the provisions are fair. Neither party relies upon any representations or statements of the other as to any matter's material to this agreement.

**116.** The Prenuptial Agreement clearly purports to waive Butch's and Stephanie's elective share rights.

**117.** Stephanie went back to Colorado and Butch remained in South Dakota until the November wedding in Italy.

**118.** Stephanie testified she did not believe that Butch deceived or tricked her into signing the Prenuptial Agreement. She testified she may not have even read the Prenuptial Agreement. She testified the Prenuptial Agreement was a "nonfactor".

**119.** Stephanie's testimony that the Prenuptial Agreement was a "nonfactor" was significant.

**120.** Stephanie was determined to get married regardless of the Prenuptial Agreement.

**121.** Stephanie was going to sign the Prenuptial Agreement regardless of what it said or meant.

**122.** Stephanie was not under duress and was not fearful of how Butch would react if she asked questions or delayed or refused to sign.

**123.** There is no evidence Butch bullied Stephanie to execute the Prenuptial Agreement.

**124.** It appears from the evidence that Butch was doing everything to please Stephanie: Butch told Stephanie she should have her dream wedding in Italy, he purchased her a home and land, and he always picked her up so she would not have to travel to South Dakota on her own.

**125.** The only stress Stephanie testified to was a self-imposed time limit to get the marriage done before Stephanie's dream wedding in Italy.

**126.** There is no evidence Butch and Stephanie could not do the legal ceremony after the Italy ceremony.

**127.** Butch and Stephanie had discussed a prenuptial agreement at least by late summer 2013, and Stephanie testified that about two weeks prior to the wedding she knew the Prenuptial Agreement was going to be required.

**128.** Stephanie was by all accounts happy the day of the "mock" South Dakota ceremony, as was Butch.

**129.** Eric Bogue testified that he went over each paragraph with Stephanie, and she had the opportunity to speak with counsel if she chose.

**130.** Stephanie did not live in the same state as Butch and had the opportunity on her own without his pressure to seek out legal advice if she chose.

**131.** Stephanie acted purposefully and intentionally to exercise her own free will regarding the Prenuptial Agreement.

**132.** The Court cannot find wrongful conduct on the part of Butch regarding the Prenuptial Agreement.

**133.** At the time Stephanie executed the Prenuptial Agreement, she truly did not care about its contents, and testified it was a "nonfactor"; she just wanted to get married.

**134.** In 2015, Butch made a Will consistent with the provisions of the Prenuptial Agreement.

- 135.** Stephanie testified she was not aware of the 2015 Will until Butch's death.
- 136.** Stephanie entered into the Prenuptial Agreement voluntarily.
- 137.** Stephanie may regret executing the Prenuptial Agreement ten years later, but that does not make her execution of the Prenuptial Agreement involuntary.
- 138.** Stephanie had adequate knowledge of the nature and extent of Butch's property.
- 139.** The Prenuptial Agreement provided to Stephanie a reasonable approximation of Butch's net worth.
- 140.** The Prenuptial Agreement disclosed to Stephanie the nature and extent of Butch's property prior to Stephanie signing the Prenuptial Agreement.
- 141.** Prior to signing the Prenuptial Agreement, Stephanie had been to Butch's properties four to six times over the course of ten months and could observe for herself his land, buildings, and livestock.
- 142.** Butch was a client of Stephanie's high-end horse breeding services.
- 143.** Stephanie knew Butch had money and was sensitive about being labeled as a gold-digger.
- 144.** The Prenuptial Agreement provided for Stephanie in the case of divorce.
- 145.** The Prenuptial Agreement listed the nine separate payday loan LLCs Butch owned with each LLC's net value individually, totaling over \$16,000,000; the specifications of his two ranch LLCs and real property totaling \$9,800,000, for a total net worth of just under \$26,000,000.
- 146.** The Prenuptial Agreement listing was sufficiently precise to apprise Stephanie of the reasonable magnitude of Butch's net worth.
- 147.** The Prenuptial Agreement disclosure of Butch's assets was fair and reasonable.
- 148.** The undisputed evidence establishes that, at the time of signing the Prenuptial Agreement, Stephanie was well aware that Butch's financial worth far exceeded hers.
- 149.** Stephanie submitted additional evidence by way of affidavit that there was \$1,800,000 in additional assets owned by Butch which were not included in the Prenuptial Agreement disclosure.
- 150.** The \$1,800,000 was nominal in the entire scheme and accounts for less than 8% of the entirety of his Estate.
- 151.** The nature and extent of the property owned by Butch was disclosed to Stephanie in the Prenuptial Agreement prior to her execution of the Prenuptial Agreement.



**153.** Based on the totality of the circumstances, Stephanie voluntarily entered into the Prenuptial Agreement, and the Prenuptial Agreement was not unconscionable.

**154.** Any Finding of Fact deemed a Conclusion of Law or any Conclusion of Law deemed a Finding of Fact is incorporated therein respectively.

Upon the foregoing Findings of Fact, the Court enters the following:

### **CONCLUSIONS OF LAW**

- 1.** Stephanie's Petition for family allowance should be granted.
- 2.** In petitioning the Court for an elective share pursuant to SDCL § 29A-2-201, et. seq., Stephanie has the burden of proof at trial to show that the Prenuptial Agreement was not enforceable (SDCL § 29A-2-213; SDCL § 29A-2-21).
- 3.** Pursuant to SDCL 29A-2-213, "The right of election of a surviving spouse . . . may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse."
- 4.** The Prenuptial Agreement clearly purports to waive Butch's and Stephanie's elective share rights.
- 5.** Pursuant to SDCL § 25-2-21(a)(1) and (2), a party to a prenuptial agreement may claim that it is unenforceable if either of two grounds are established: the execution was not voluntary; or, the agreement was unconscionable.
- 6.** Pursuant to SDCL 29A-2-213(b)(1) and (2), provides that a waiver of the right to an elective share of the deceased spouse is not enforceable if the waiver was not executed voluntarily or because the waiver was unconscionable. *Matter of Estate of Eichstadt*, 983 NW2d 572 (SD 2022).
- 7.** Stephanie has asserted her waiver of her right of election was not enforceable because it was not voluntary per SDCL § 29A-2-213(b)(1); or alternatively, that the waiver was unconscionable under the provisions set forth in SDCL § 29A-2-213(b)(2)(i-iii).
- 8.** The South Dakota Supreme Court has recognized that "antenuptial agreements are favored in law since they allow parties to protect the inheritance rights of their respective children by prior marriages and thus prevent subsequent strife over the disposition of their respective estates." *Schutterle v. Schutterle*, 260 NW2d 341, 347 (SD 1977).
- 9.** In *Matter of Estate of Eichstadt*, 983 NW2d 572 (SD 2022), the South Dakota Supreme Court found that "voluntary" is not defined by SDCL § 25-2-1.
- 10.** In *In re Estate of Smid*, 756 NW 2d 1 (SD 2008), the South Dakota Supreme Court found that "voluntary" is not defined by SDCL § 29A-2-213.

11. In *Estate of Smid*, the South Dakota Supreme Court noted that general rules of contracts apply to identify a governing definition of voluntary.

12. The *Smid* Court held “one who accepts a contract is conclusively presumed to know its contents and to assent to them in the absence of fraud, misrepresentation or other wrongful action by another contracting party.”

13. The *Eichstadt* Court found that voluntariness is not based solely on contract principles because the legislature enacted both SDCL § 25-2-1 and SDCL § 29A-2-213.

14. Prenuptial agreements are unique and require, in addition to contract principles, an examination of the totality of circumstances surrounding the execution. *Matter of Estate of Eichstadt*, 983 NW2d 572 (SD 2022).

15. According to the South Dakota Supreme Court, “In the context of plea agreements, a voluntary plea . . . is by definition not the result of threats, force or promises made apart from the plea agreement or any other form of coercion.” *State v. Nikolaev*, 619 NW2d 244, 247 (SD 2000).

16. To be voluntary, an act is taken intentionally and is a product of a person’s free will. *In re Estate of Smid*, 756 NW 2d 1 (SD 2008).

17. In *Sanford v. Sanford*, 694 NW2d 283, 295 (SD 2005), the South Dakota Supreme Court explained that “it is sufficient for a spouse to provide, within the best of his or her abilities, a list of assets and liabilities with approximate valuations. The listing must be sufficiently precise to give the the other spouse a reasonable approximation or the magnitude of the other spouse’s net worth.”

18. Stephanie did not meet her the burden of proof to show that the Prenuptial Agreement was not enforceable.

19. Stephanie voluntarily executed of the Prenuptial Agreement.

20. The Prenuptial Agreement was not unconscionable.

21. Pursuant to SDCL 29A-2-213, Stephanie wholly waived her right to elective share.

22. Stephanie’s Petition for elective share should be denied.

23. Any Finding of Fact deemed a Conclusion of Law or any Conclusion of Law deemed a Finding of Fact is incorporated therein respectively.

2/3/2025 10:39:01 AM

Attest:  
Anderson, Judy  
Clerk/Deputy



BY THE COURT:

Michelle K. Comer  
Circuit Court Judge

STATE OF SOUTH DAKOTA

COUNTY OF DEWEY

ESTATE OF **MARTIN ALLEN WEBB**,

Deceased.

SS.

IN CIRCUIT COURT

FOURTH JUDICIAL CIRCUIT

20PRO22-000001

**ORDER DENYING STEPHANIE WEBB'S VERIFIED PETITION  
FOR SPOUSAL ELECTIVE SHARE AND APPROVING STEPHANIE  
WEBB'S VERIFIED PETITION FOR FAMILY ALLOWANCE**

This matter came before the Court on Stephanie Webb's *Verified Petition For Spousal Elective Share and Family Allowance*, and the Court held a trial thereon on September 11, 2024.

Interested party Deb Allen Ducheneaux was represented by A. Jason Rumpca, Riter Rogers, LLP. Interested party Dee Haugen was represented by Eric John Nies, Nies Karras & Skjoldal, P.C. Interested parties Kailee Taryn Webb and Kenna Webb were represented by Katelyn A. Cook, Gunderson, Palmer, Nelson & Ashmore. Interested party Lakin Webb was represented by Nathan Chicoine, DeMerrseman, Jensen, Tellinghuisen & Huffman, LLP. Interested party Wynston Webb was represented by Robert L. Morris, Morris Law Firm, Prof. LLC. Interested party Stephanie Webb was represented by Jeffery D. Collins, Lynn, Jackson, Schultz & Lebrun, P.C.

The Court having heard the evidence and the arguments of counsel, having considered all pleadings of record, and good cause appearing, and the Court having entered its Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** as follows:

1. Stephanie Webb's Petition for family allowance is granted.
2. Stephanie Webb's Petition for elective share is denied.

2/3/2025 10:38:35 AM

Attest:  
Anderson, Judy  
Clerk/Deputy



BY THE COURT:

Michelle K. Comer  
Circuit Court Judge

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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APPEAL NO. 31017

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In the Matter of the ESTATE  
OF MARTIN ALLEN WEBB,

Deceased.

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Appeal from the Circuit Court, Fourth Judicial Circuit  
Dewey County, South Dakota

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The Honorable Michelle K. Comer  
Circuit Court Judge

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BRIEF OF APPELLEE DEE C. HAUGEN

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NOTICE OF APPEAL FILED MARCH 5, 2025

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### **PRELIMINARY STATEMENT**

The Settled Record will be denoted by “SR” followed by the applicable citation to such Settled Record. The trial court’s Findings of Fact and Conclusions of Law will be denoted by “FF” or “CL”, as appropriate, followed by the appropriate paragraph number(s). The Findings of Fact and Conclusions of Law begin on page 1289 of the Settled Record. Refernxes to the Appendix are denoted as “Appendix” followed by the appropriate page number.

### **JURISDICTIONAL STATEMENT**

This matter is subject to this Court’s review under SDCL § 15-26A-3(1). Appellant appeals the *Order Denying Stephanie Webb’s Verified Petition for Spousal Elective Share and Approving Stephanie Webb’s Verified Petition for Family Allowance* entered by Judge Comer on February 3, 2025. (SR, 1301). On February 5, 2025, a *Notice of Entry* of such *Order* was served on all interested parties. (SR, 1302). Appellant Stephanie Webb (“Stephanie”) filed her *Notice of Appeal* on March 5, 2025. (SR 1304). Appellee Dee C. Haugen, a daughter of Martin Allen “Butch” Webb (“Butch”) and an interested party in the Estate of Martin Allen Webb, files this Appellee’s Brief.

## **STATEMENT OF THE LEGAL ISSUES**

**I. Whether the trial court erred in concluding that Stephanie voluntarily executed the prenuptial agreement waiving her spousal elective share.**

The trial court did not err in concluding that Stephanie voluntarily executed the prenuptial agreement.

Most Relevant Authorities:

SDCL § 29A-2-213;  
SDCL § 25-2-21;  
*In the Matter of the Estate of Eichstadt*, 2022 S.D. 78; and,  
*Walker v. Walker*, 2006 S.D. 68.

**II. Whether the trial court erred in concluding that the prenuptial agreement waiving Stephanie's spousal elective share was not unconscionable.**

The trial court did not err in concluding that the Prenuptial Agreement was not unconscionable.

Most Relevant Authorities:

SDCL § 29A-2-213;  
SDCL § 25-2-21;  
*In the Matter of the Estate of Eichstadt*, 2022 S.D. 78; and,  
*Sanford v. Sanford*, 2005 S.D. 34.

## **STATEMENT OF THE CASE**

This case involves a Prenuptial Agreement executed by Butch and Stephanie on October 11, 2013. Such Prenuptial Agreement provided for the mutual waiver of “all of the property rights, and claims which he or she now has or may hereafter have as a husband, wife, widower, widow, or otherwise by the marital relations” (SR, 1182). Upon Butch's death on December 9, 2021, his Estate was opened and a Special Administrator appointed (SR, 86). In such

Estate action, Stephanie petitioned for, inter alia, an Elective Share under SDCL Chapter 29A-2 (SR, 168). In her petition, Stephanie alleged the Prenuptial Agreement was unenforceable and she was thus entitled to the statutory Elective Share. Appellee Dee C. Haugen, among others, objected to the petition (SR, 233). A court trial was held on the petition before Hon. Michelle K. Comer on September 11, 2024 (SR, 978). Judge Comer issued a written *Decision on Spousal Election* on December 30, 2024 (SR, 1230). Judge Comer entered *Findings of Fact and Conclusions of Law* (SR, 1289) and an *Order Denying Stephanie Webb's Verified Petition for Spousal Elective Share and Approving Stephanie Webb's Verified Petition for Family Allowance* on February 3, 2025 (SR, 1301), and the *Notice of Entry* of the same was served on February 5, 2025 (SR, 1302).

### **STATEMENT OF THE FACTS**

Stephanie graduated from high school in 2002 and graduated from Colorado State University in 2006 with a Bachelor's Degree in Equine Science (FF 5 and 6). In 2007, Stephanie was employed as Office Manager of Royal Vista Equine, a horse breeding business (FF, 11 and 12). Stephanie's duties as Office Manager included overseeing client communications, billing of clients, paying bills, working with Royal Vista Equine's CPA to do year-end taxes, and entering into contracts for services to be provided to clients (FF, 14 and 15). Even though, as the Appellant's Brief insists, Stephanie testified that she relied on Royal Vista Equine's attorneys and "merely filled in details" (*Appellant's Brief*, p. 4), the Trial

court did not find that testimony credible and found she understood the importance of including details in the contracts (FF, 16).

Stephanie and her first husband, Chris Kepplinger, separated in 2011 and divorced in 2011 (FF, 9 and 10). Also in 2011, the owners of Royal Vista Equine wanted to retire and gifted the business to Stephanie and her partner; Stephanie received, and still owns, 45% of the business (FF, 17 and 18). Stephanie testified the original owners made the gift to her in part because she was so good at her job (FF, 19). Stephanie and her partner changed the name to Vista Equine LLC and continued to employ around twelve employees (FF, 20 and 21). After receiving the gifted interest, Stephanie continued to act as Office Manager (FF, 22).

Stephanie met Butch in 2007 when he became a Royal Vista Equine client (FF, 24). She knew he was from South Dakota and bred horses, and that he had the financial means to afford high end breeding services (FF, 24-26). Even though, as the Appellant's Brief insists, Stephanie testified it was not a fair assumption that Royal Vista Equine clients were wealthy (*Appellant's Brief*, p. 4), the Trial court did not find that testimony credible and found that Stephanie knew Butch was wealthy (FF, 35).

In 2013, Stephanie contacted Butch to look for a brood mare, which began the parties' "courting process" (FF, 27 and 28). At the time, Butch was twenty-eight years older than Stephanie (FF, 33). In 2013, Stephanie was a college-educated businesswoman who had been previously married and divorced and did not need to rely on Butch for her livelihood (FF, 23 and 36). She had worked for

Royal Vista Equine/Vista Equine for six years prior to 2013 and had become an owner of the business two years before 2013 (FF, 37). When Butch and Stephanie began dating, Vista Equine had an estimated value of \$500,000, Stephanie was paid \$45,000 per year, and she employed twelve people (FF, 38). Although Stephanie's Brief argues that the "evidence and testimony at trial does not support" the Trial court's conclusion that Stephanie was an experienced businesswoman, Stephanie does not explain her statement (*Appellant's Brief*, p. 8); the Trial court clearly found that Stephanie was a "college educated young businesswoman who did not rely on Butch for her livelihood" (FF, 36). As of 2013, Butch had four children, two of whom were minors (FF, 40). Butch and Stephanie had the same level of education (FF, 8).

Butch asked Stephanie out for dinner in February 2013 after a bull sale in Nebraska (FF, 29). Stephanie testified the parties were similar and looked at things the same way; they had both been married before and knew what they wanted in a partner (FF, 30 and 31). Even though, as Stephanie admitted, the "courting process" seemed fast, she testified it just "flowed" for them (FF, 32). Stephanie was aware Butch was wealthy but testified she did not ask about money because she did not want to be perceived as a gold-digger (FF, 25). Again, the Trial court was confident Stephanie was aware Butch was wealthy.

In the spring of 2013, Stephanie traveled to South Dakota to see Butch's ranches and his other family members (FF, 39). In total, Stephanie was in South Dakota from four to six times before she married Butch (FF, 53). During the trips,

Butch took Stephanie around his ranches and showed her his land, cattle, and horses (FF, 54).

Butch and Stephanie were engaged by May 2013 and began to discuss marriage in early summer 2013 (FF, 41 and 43). Appellee Dee C. Haugen, who is Butch's daughter, testified that in around May 2013 Butch informed Dee he had talked to Stephanie about a prenuptial agreement (FF, 42). Stephanie testified that a prenuptial agreement was brought up in late summer 2013 (FF, 44).

Stephanie wanted to continue living in Colorado and she testified Butch wanted a place in Colorado in case he lost his South Dakota assets as a result of his payday loan litigation (FF, 45 and 46). In May 2013, Butch purchased approximately seventy acres of real estate and house in Colorado (FF, 47). The 2013 value of such real estate was \$1,300,000 (FF, 47). Even though Stephanie did not contribute anything to the purchase, the real estate was titled only in Stephanie's name and Butch did not reserve any rights (FF, 48 and 49). Despite purchasing such valuable real estate, Butch did not live in Colorado in 2013 (FF, 50). Stephanie testified that in 2013 Butch lived in South Dakota and traveled to Colorado once or twice a month to stay for periods lasting from a day or two to a few weeks (FF, 51). Such short Colorado stays were tied to sales trips to Oklahoma (FF, 52).

Stephanie testified her dream wedding venue was Italy, and Butch was supportive and willing to have the wedding there (FF, 55 and 56). In September 2013, Stephanie planned the Italy wedding with a travel agent and Stephanie

scheduled the wedding to occur in Italy to occur on November 12, 2013 (FF, 57 and 58). Stephanie eventually learned that a certain document needed to be filed at least six months prior to the trip in order for Butch and Stephanie to get legally married in Italy; a legal marriage on November 12, 2013, was thus not possible (FF, 59 and 60). Butch and Stephanie decided to have performed a “mock” legal ceremony in South Dakota before the ceremonial wedding in Italy (FF, 61). The “mock” legal ceremony was Stephanie’s idea, but Butch went along with it (FF, 61 and 62). In her Brief, Stephanie attempts to concoct error in the Trial court’s Findings of Fact by claiming the Findings of Fact are inconsistent about who wanted the “mock” ceremony. *Appellant’s Brief*, p. 6. However, the Findings of Fact are clear that the “mock” ceremony was Stephanie’s decision, and that Butch complied with her desires. As Finding of Fact No. 56 notes, Butch was willing to go along with Stephanie’s ideas. Stephanie did not want the “mock” South Dakota ceremony to feel like the wedding (FF, 63). Rather, she wanted it to only feel like the ceremony and directed how it would go; for instance, there would be no “kiss the bride” (FF, 64).

A couple of weeks before the “mock” South Dakota ceremony, Butch again brought up the prenuptial agreement (FF, 65). In early October 2013, South Dakota suffered Winter Storm Atlas, which significantly impacted Butch’s ranches (FF, 66). Butch lost cattle, had buildings damaged by the Winter Storm, and was desperate to take care of his property (FF, 68). Butch was not in South Dakota when the Winter Storm hit but traveled back to South Dakota while



Stephanie stayed in Colorado (FF, 67). Butch was under significant pressure due to the Winter Storm (FF, 69).

Even though the “mock” South Dakota legal ceremony was not required, Butch and Stephanie arranged for it to occur in Faith, South Dakota, on October 11, 2013 (FF, 70). At no time did Stephanie ask that the “mock” South Dakota legal ceremony be rescheduled, even after receiving the draft Prenuptial Agreement on October 10, 2013 (FF, 71).

The Prenuptial Agreement at issue in this case was drafted by Attorney Eric Bogue at Butch’s request (FF, 96). Eric Bogue and his wife, Cheryl, were Butch’s attorneys (FF, 88). Eric Bogue testified he had known Butch for twenty years and that they were good friends (FF, 95). Eric Bogue testified he drafted approximately ten prenuptial agreements, including the Prenuptial Agreement for Butch (FF, 97). Eric Bogue’s intent in drafting the Prenuptial Agreement was broader than divorce, and he intended to address all post-death claims regardless of when they came up (FF, 102 and 103). Eric Bogue testified he had conversations with Stephanie about the Prenuptial Agreement both before October 11, 2013 (the day it was executed), and on October 11, 2013 (FF, 98 and 104). Eric Bogue testified that he had conversations with Stephanie about the Prenuptial Agreement, but that he has never represented Stephanie or given her legal advice; he always makes it clear who he is representing despite not having a written disclosure (FF, 98, 100, and 101).

On October 10, 2013, Stephanie received an email from Butch with the draft Prenuptial Agreement attached (FF, 72). Eric Bogue recalls sending such draft Prenuptial Agreement (FF, 99). The October 10, 2013, draft Prenuptial Agreement included a listing of both parties' valuation of assets (FF, 73). The valuation listed Stephanie's property and personal effects other than the Colorado real estate purchased by Butch at \$450,000 and the Colorado real estate at \$1,300,000 (FF, 74). The valuation listed Butch's assets at approximately \$26,000,000 (FF, 75). Stephanie testified that she thought the Prenuptial Agreement was protection against Butch's payday loan lawsuits or in the event of divorce and that she was confused as to the legal wording; however, at no time did Stephanie seek legal counsel regarding the effects of the Prenuptial Agreement, ask to delay the "mock" South Dakota legal ceremony, or ask questions about it (FF, 76, 77, 81, and 82). In reference to the draft Prenuptial Agreement, Stephanie testified she did not even remember if she read the draft and that it was a "non-factor" (FF, 78 and 79).

Butch drove to Colorado to pick up Stephanie and bring her to South Dakota for the October 11, 2013, "mock" South Dakota legal ceremony (FF, 83). Butch and Stephanie drove from Colorado to Faith, South Dakota, on October 11, 2013, and, despite knowing that the parties intended to execute the Prenuptial Agreement prior to the October 11, 2013, "mock" South Dakota legal ceremony, Stephanie did not ask about the Prenuptial Agreement on the drive from Colorado to South Dakota or request a lawyer review the Prenuptial Agreement (FF, 84 and

85). Stephanie testified that, instead of requesting a lawyer review the Prenuptial Agreement prior to the “mock” South Dakota legal ceremony, she just trusted Butch, Eric Bogue, and Cheryl Bogue (FF, 86).

Butch and Stephanie arrived at the Bogue law office in Faith on the evening of October 11, 2013; Stephanie knew both Eric Bogue and Cheryl Bogue were attorneys (FF, 88). Eric Bogue testified that he would have recommended that, if Stephanie had any questions or hesitation regarding the Prenuptial Agreement on October 11, 2013, she contact an attorney because there were important legal consequences (FF, 105). Stephanie had no questions for Eric Bogue that evening and testified she does not recall if the parties actually reviewed the Prenuptial Agreement (FF, 87 and 89). However, Eric Bogue testified that both Butch and Stephanie asked questions during the meeting and testified he went through each paragraph of the Prenuptial Agreement with them (FF, 106). Such review would have included an explanation of paragraph 8 of the Prenuptial Agreement, which specified the post-death disposition of property, claims, and rights (FF, 107). If Stephanie had expressed concerns, Eric Bogue would have strongly recommended that she wait and obtain counsel or review the Prenuptial Agreement more (FF, 108 and 109). However, he testified that she did not express any concerns (FF, 110). Eric Bogue testified that he never provided legal advice to Stephanie but confirmed her intention to keep assets separate (FF, 111). The Trial court specifically found Eric Bogue’s testimony to be credible (FF, 114). The Trial

court specifically believed Eric Bogue when he testified that she was told she had the opportunity to speak with counsel if she chose (FF, 129).

Eric Bogue does not recall reluctance on Stephanie's part, and she did not appear coerced; instead, she seemed generally happy (FF, 112 and 113).

Stephanie testified that Butch did not trick or deceive her regarding the Prenuptial Agreement (FF, 90). The parties executed the Prenuptial Agreement and then went into the main part of the law office and performed the "mock" South Dakota legal ceremony (FF, 91). Eric Bogue and Cheryl Bogue witnessed the ceremony (FF, 91). Pastor Harold Delbridge, who performed the ceremony, testified both Butch and Stephanie were happy at the ceremony (FF, 92). Pastor Delbridge also testified it would not have been a problem for him to postpone the ceremony if asked (SR, 969). Likewise, Cheryl Bogue testified Stephanie appeared happy (FF, 93). Stephanie did not appear at the ceremony to be under stress or coercion (FF, 94).

The Trial court found the following portions of the Prenuptial Agreement to be pertinent (FF, 115):

WHEREAS, Butch and Stephanie consider it to be in their best interests to settle between themselves, now and forever, their respective rights and all other rights which may grow out of their marriage relationship between them in which either of them now has or may hereafter claim to have in any property of every kind, nature and description, real, personal or mixed, now owned or which hereafter may be acquired by either of them now therefore, . . .

8. Except as herein provided, both Butch and Stephanie do hereby forever waive, release and quit claim to the other all of the property rights, and claims which he or she now has or may hereafter

have as a husband, wife, widower, widow, or otherwise by the marital relations which may exist in the future between the parties hereto by any present or future law in any state of the United States of America, or any county, in and to, or against the property of the other party or his or her estate, whether now owned or hereinafter acquired by such other party. Both Butch and Stephanie herein forever covenant and agree for himself and herself and their heirs, executors, administrators, and assigns for the purpose of enforcing any or either of the rights specified in an [sic] relinquished under this paragraph. In addition both parties agree to complete Wills, Living Wills, and Durable Power of Attorney within in [sic] six (6) months of the date of this Agreement.

9. It is further agreed that this agreement shall not be construed or considered an agreement between the parties to obtain a divorce, one from the other, but that the same is to be considered strictly as an agreement settling rights respecting property division of each of the parties hereto, and that each party was urged to obtain legal advice an attorney and that the same is a free and voluntary act of each of the parties hereto.

10. The parties have entered into this agreement freely and after adequate opportunity for independent counsel and acknowledge that the provisions are fair. Neither party relies upon any representations or statements of the other as to any matter's material to this agreement.

The trial court found that the Prenuptial Agreement clearly purports to waive Butch's and Stephanie's elective share rights (FF, 116). In 2015, Butch made a Will consistent with the provisions of the Prenuptial Agreement; Stephanie testified she was not aware of such 2015 Will until Butch's death (FF, 134 and 135).

Having considered the veracity of the testimony at trial, the trial court found Stephanie's testimony about the Prenuptial Agreement being a "non-factor" to her to be significant and concluded that Stephanie was determined to get

married regardless of the Prenuptial Agreement and was going to sign the Prenuptial Agreement no matter what it said (FF, 119, 120, and 121). Having considered the veracity of the testimony at trial, the trial court found Stephanie was not under duress and was not fearful of how Butch would react if Stephanie asked questions or delayed or refused to sign; rather, she was by all accounts happy on October 11, 2013 (FF, 122 and 128). Having considered the veracity of the testimony at trial, the trial court found no evidence that Butch bullied Stephanie to execute the Prenuptial Agreement; rather, the trial court found Butch was doing everything he could to please Stephanie (e.g., agreeing to the “dream wedding” in Italy, buying her the land in Colorado, and always picking her up from Colorado so she did not have to drive to South Dakota on her own) (FF, 123 and 124). Having considered the veracity of the testimony at trial, the trial court found no wrongful conduct on the part of Butch regarding the Prenuptial Agreement (FF, 132). The trial court found the only stress testified to by Stephanie was a self-imposed time limit to get the “mock” South Dakota legal ceremony done before the “dream wedding” in Italy – even though there was no evidence presented that the parties could not do the “mock” South Dakota legal ceremony after the wedding in Italy (FF, 125 and 126).

Having considered the veracity of the testimony at trial, the trial court found that Stephanie acted purposefully and intentionally to exercise her own free will regarding the Prenuptial Agreement (FF, 131). The trial court found that at the time Stephanie executed the Prenuptial Agreement, she truly did not care about

its contents and testified it was a “non-factor.” (FF, 133). Having considered the veracity of the testimony at trial, the trial court found that Butch and Stephanie had discussed the Prenuptial Agreement by at least late summer 2013, and Stephanie knew about two weeks before the “mock” South Dakota legal ceremony that the Prenuptial Agreement would be required (FF, 127). The trial court found that Stephanie did not live in the same state as Butch and had the opportunity to speak with her own counsel if she so chose (FF, 130). The trial court thus found that Stephanie entered into the Prenuptial Agreement voluntarily (FF, 136).

Having considered the veracity of the testimony at trial, the trial court found Stephanie had adequate knowledge of the nature and extent of Butch’s property (FF, 138). The trial court found the Prenuptial Agreement provided to Stephanie a reasonable approximation of Butch’s net worth and disclosed to Stephanie the nature and extent of Butch’s property prior to Stephanie signing the Prenuptial Agreement (FF, 139 and 140). The Prenuptial Agreement listed the nine separate payday loan LLCs which Butch owned with each LLC’s net value individually, totaling over \$16,000,000, and the specifications his two ranch LLCs and real property, totaling \$9,800,000, for a total net worth of just under \$26,000,000.00 (FF, 145). The trial court found such listing was sufficiently precise to apprise Stephanie of the reasonable magnitude of Butch’s net worth (FF, 146). The trial Court found that certain assets Stephanie alleged were owned by Butch but not disclosed were of a nominal amount in the entire scheme (FF 149



and 150). The trial court found the Prenuptial Agreement's disclosure of Butch's assets was fair and reasonable (FF, 147).

Further, having considered the veracity of the testimony at trial, the trial court noted Stephanie had been to Butch's properties four to six times over the course of ten months and could observe for herself his land, buildings, and livestock (FF, 141). The trial court also noted the fact that Butch was a client of Stephanie's high-end horse breeding service (FF, 142). The trial court noted that Stephanie knew Butch had money and was sensitive about being labeled a "gold-digger" (FF, 143). Having considered the veracity of the testimony at trial, the trial court found the undisputed evidence established that, at the time of the signing of the Prenuptial Agreement, Stephanie was well aware that Butch's financial worth far exceeded hers (FF, 148). The trial court found the nature and extent of Butch's property was thus disclosed to Stephanie in the Prenuptial Agreement prior to her execution of the Prenuptial Agreement (FF, 151).

The trial court found Stephanie voluntarily entered into the Prenuptial Agreement and it was not unconscionable (FF, 153; CL, 19 and 20). As such, the trial court concluded Stephanie did not meet her burden of proof to show that the Prenuptial Agreement was not enforceable (CL, 18).

### **STANDARD OF REVIEW**

As Stephanie notes in her Brief, the trial court's factual findings are reviewed under the clearly erroneous standard of review. *Matter of Estate of Eichstadt*, 2022 S.D. 78, ¶ 19, (citing *In re Estate of Smid*, 2008 S.D. 82, ¶¶ 11).

“A finding of fact is clearly erroneous if [this Court is] left with a definite and firm conviction that a mistake has been made.” *Id.* The trial court’s conclusions of law are reviewed under the de novo standard of review. *Torgerson v. Torgerson*, 2024 S.D. 50, ¶ 13. “Once the facts have been determined, however, the application of a legal standard to those facts is a question of law reviewed de novo.” *Id.*

### **ARGUMENT**

Stephanie properly cites SDCL § 29A-2-213(b) and SDCL § 25-2-21(a) as the statutes which govern the enforceability of the Prenuptial Agreement.

Stephanie also correctly notes that she bears the burden of proving that the Prenuptial Agreement – which she admits to signing – is not enforceable. As this Court explained in *Matter of Estate of Eichstadt*, pursuant to SDCL § 29A-2-213(b) and SDCL § 25-2-21(a), “a party to a Prenuptial agreement may claim it is unenforceable in either of two grounds are established: 1) a party did not execute the agreement voluntarily; or (2) the agreement was unconscionable.” 2022 SD 78, ¶ 20 (quotations omitted).

#### **I. The trial court did not err in concluding that Stephanie voluntarily executed the Prenuptial Agreement waiving her spousal elective share.**

In her Brief, Stephanie asked this Court to find that the trial court erred in concluding that Stephanie voluntarily executed to the Prenuptial Agreement. To do this, Stephanie provides this Court with a complex analysis of the issue of voluntariness using both South Dakota cases and out of state cases. A rebuttal of these arguments will be made later, but first it is important to note that Stephanie’s

arguments hinge entirely (and therefore fail entirely) on one factor: Stephanie is asking this Court to find Stephanie's version of events credible, even though the trial court did not. The trial court was presented, at times, with two very different versions of events as it pertains to the signing of the Prenuptial Agreement: the version according to Stephanie and the version according to Attorney Eric Bogue. As noted above, on several occasions, Stephanie includes footnotes and asides in her Brief which infer that the trial court somehow made a mistake simply because Stephanie disagreed with the trial court's conclusion. However, Stephanie cannot escape the fact that the trial court made a specific finding as to Attorney Eric Bogue's credibility (FF, 114), and thus did not find Stephanie's conflicting testimony credible.

This Court has long held that deference is given to the trial court as to the credibility of witnesses: "[w]e give the trial court's opportunity to judge the credibility of witnesses and to weigh their testimony due regard when reviewing the trial court's findings of fact." *Walker v. Walker*, 2006 S.D. 68, 70. Further, "[w]here there is conflicting evidence, we leave to the trial court the task of determining the credibility of the witnesses and the weight to give to their testimony." *Id* at 71. As Stephanie admits, there are points of "sharp disagreement" between Stephanie's version of events and that of Attorney Eric Bogue (See Appellant's Brief, p. 13). Having considered the veracity of the testimony at trial, the trial court believed Attorney Eric Bogue and determined that Stephanie voluntarily executed the Prenuptial Agreement. This Court should

resolve such disagreements in conflicting testimony in favor of the version accepted by the trial court.

Appellee thus submits Appellee need go no further to rebut Stephanie's arguments regarding voluntariness, but Appellee will now address the specific legal arguments raised by Stephanie.

The question is not whether Stephanie signed the Prenuptial Agreement, but whether her signature was "voluntary." She admits signing the Prenuptial Agreement. She admits having a chance to review it. She only disputes whether the signature was voluntary – even though she testified she was not pressured to sign, was not distressed when she signed, and signed of her own free will. Voluntariness is a question encumbered with facts unique to the individuals involved.

The Appellant's Brief states *Matter of Estate of Eichstadt*, 2022 SD 78, as one of the most relevant authorities and cites it several times. However, *Eichstadt* actually supports Appellee in this case. To review *Eichstadt* in more detail will demonstrate how the facts in *Eichstadt* are clearly distinguishable from this matter and how this Court's discussion of the law in *Eichstadt* sustains the trial court's decision.

In *Eichstadt*, the husband, Paul, literally tricked the wife, Kathryn, into meeting with his attorney to sign a prenuptial agreement. Paul asked Kathryn to go for a drive (a common source of enjoyment for the couple) and then, without warning, arrived at the Huron office of Carl Haberstick, Paul's attorney. *Matter of*

*Estate of Eichstadt*, 2022 SD 78, ¶ 4. Without Kathryn’s knowledge, Paul had asked Haberstick to prepare a prenuptial agreement. *Id.* Kathryn was presented with the complete agreement in Haberstick’s office, and testified she cried while Paul paced. *Id.* at ¶ 9. At the same meeting, Haberstick handed a letter to Kathryn which stated she had the right to her own counsel; she signed the letter. *Id.* at ¶ 5. Having “skimmed” through the prenuptial agreement, Kathryn executed the prenuptial agreement the same day. *Id.* at ¶ 11. The parties got married a week later. Kathryn testified she did not even know about the wedding until the day of the marriage. *Id.*

After Paul’s death, Kathryn claimed the prenuptial agreement was unenforceable. Paul’s Estate disputed her claim. At trial, Kathryn argued her execution of the prenuptial agreement was involuntary due to her “limited education, her unequal bargaining position” and the fact she was essentially ambushed by the prenuptial agreement at his attorney’s office. *Id.* at ¶ 15. Kathryn had an eighth-grade education and \$10,000 of assets in her own name *Id.* at ¶ 25. Additionally, she argued the prenuptial agreement was unconscionable due to insufficient asset disclosure. *Id.* at ¶ 15. The trial court found in favor of Kathryn. *Id.* at ¶ 17.

In considering the case on appeal, this Court commented that “a determination of voluntariness involves a more comprehensive examination of the circumstances surrounding the execution of the agreement.” *Id.* at ¶ 29. This Court noted as follows:

In particular, the [trial] court found that Kathryn was unaware that Paul had hired Haberstick to draft the Agreement. She was also unaware, when Paul asked her to go for a car ride on July 17, 2003, that he intended to take her to Haberstick's office to execute the Agreement. The court considered the fact that Kathryn, who had limited education, did not understand the legal terms of the Agreement and that the entire meeting at the attorney's office took only 15 minutes.

*Id.* at 32. The Supreme Court concluded the trial court's decision was not clearly erroneous, and thus affirmed the trial court's decision that the prenuptial agreement was void.

In *Eichstadt*, therefore, both the trial court and Supreme Court concentrated on the "ambush" of Kathryn by Paul and the relative educational position of the parties. In contrast, Stephanie had been aware Butch would require a Prenuptial Agreement for months (FF, 44), was aware the Prenuptial Agreement was being drafted (FF, 72), and Attorney Eric Bogue testified he had discussions about the Prenuptial Agreement prior to the day on which it was signed (FF, 98). The Prenuptial Agreement was not a surprise to Stephanie, and she knew she was driving from Colorado to Faith, South Dakota, to execute it (FF, 84). Stephanie specifically testified Butch did not deceive or trick her (FF, 118). The trial court found that Butch did not act wrongfully regarding the Prenuptial Agreement (FF, 132); instead, the trial court found that Stephanie acted purposefully and intentionally to exercise her own free will regarding the Prenuptial Agreement

(FF, 132). Unlike Kathryn, who cried, Stephanie was happy and was not under any duress when she executed the Prenuptial Agreement (FF, 122 and 126).

As previously noted, Stephanie and Attorney Eric Bogue disagree as to many particulars of the day on which the Prenuptial Agreement was signed, but the trial court found Eric Bogue's testimony to be credible (FF, 114). The trial court thus found that Eric Bogue discussed the Prenuptial Agreement with Stephanie during the drafting process (FF, 99); Eric Bogue described the Prenuptial Agreement paragraph by paragraph to both of them and encouraged questions (FF, 104, 105, 106, 107, 108, and 109); he stated neither party was obligated to sign that day (FF, 108). All these facts are clearly distinguishable from the *Eichstadt* fact pattern.

The *Eichstadt* Court also concentrated on Kathryn's limited education. In contrast, Stephanie was a university graduate with a bachelor's degree in equine science (FF, 6). Stephanie and Butch thus had the same level of education. (FF, 8). Stephanie managed a successful operation, of which she owned 45% (FF, 18). Although she was gifted such 45%, the gift was given in part because she was so good at her job (FF, 19). While Butch was without a doubt wealthier than Stephanie, Stephanie was a sophisticated businesswoman in her own right who had earned her management and ownership of a successful business. That is a far cry from *Eichstadt*, in which Kathryn had no education beyond the eighth grade and nominal assets.



It is important to note that when, in February 2022, Stephanie wanted to be named Personal Representative of Butch's Estate, she bragged about her education and sophistication.<sup>1</sup> She informed the trial court that she had a "bachelor's degree in equine science with an industry concentration and a minor in ag economics and racehorse economics" (Appendix, p. 4). She confidently stated she oversaw "all client communications" and had "overseen the books since I started working in the office in 2006. I do all the payroll, all the taxes, quarterly taxes. The only thing I really don't do are the annual reportings" (Appendix, p. 5). She noted the gross revenue of Vista Equine was a little under \$2.5 million in 2021 (Appendix, p. 5). Again, these are the words of a sophisticated professional, not someone like Kathryn without a high school education.

Further, unlike in *Eichstadt*, Stephanie was fully involved in the negotiations resulting in the Prenuptial Agreement. And unlike in *Eichstadt*, Stephanie was very active in the wedding planning; she testified it was her decision to be married in Italy (FF, 55). Although Stephanie only received the Prenuptial Agreement the night before executing it, it had been discussed prior to that date (FF, 44 and 127), and she had time to review it and even point out incorrect information (SR, 1180). The trial court found that Stephanie had sufficient notice to hire an attorney or to ask that the "mock" ceremony be

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<sup>1</sup> The Settled Record does not include the Transcript of Stephanie's Testimony from the February 18, 2022, Motions Hearing. Such Partial Transcript is included as the Appendix hereto.

postponed, but did neither (FF, 81, 85, and 86). Instead, according to Stephanie, the Prenuptial Agreement was a “nonfactor” (FF, 118).

It is also important to note that, while the *Eichstadt* Court cites in its discussion certain cases from other states in which the proximity of the execution of a Prenuptial agreement to the wedding is considered, the Eichstadt Court’s actual decision does not mention proximity as a reason for upholding the trial court decision *Matter of Estate of Eichstadt*, 2022 SD 78, ¶ 30. Instead, the *Eichstadt* Court concentrated on the issues discussed above.

Apparently unable to find any South Dakota precedent to back up her claims, Stephanie cites out of state authority to support her argument that she did not sign the Prenuptial Agreement voluntarily. In *In the Matter of the Estate of Lutz*, 563 N.W.2d 90, the Supreme Court of North Dakota considered the importance of obtaining separate counsel in analyzing the voluntariness of a prenuptial agreement. In *Lutz*, Lavilla Lutz, the surviving wife of the decedent, had signed a prenuptial agreement in which she waived any right to his estate. *Id.* at 92. Upon the decedent’s death, the Lavilla sought an elective share of his estate, arguing, in part, that the prenuptial agreement was signed involuntarily. *Id.* at 96. The trial court granted summary judgment against Lavilla, finding that there was no genuine issue of material fact as to her waiver of her elective share and the prenuptial agreement’s enforceability. *Id.* at 94.

In *Lutz*, the Supreme Court of North Dakota overturned the trial court's granting of summary judgment and remanded the case back to the trial court to determine whether the prenuptial agreement was executed voluntarily. *Id.* at 101. The *Lutz* case thus does not stand for the proposition that lack of separate legal counsel for each spouse automatically invalidates a prenuptial agreement, as Stephanie would have this Court believe. Instead, the Court in *Lutz* found that the trial court "failed to recognize the factual dispute about whether Lavilla was adequately advised to obtain independent counsel." *Id.* at 97.

While Stephanie argues that the Supreme Court of North Dakota's ruling in *Lutz* is helpful to her argument, in actuality it supports the trial court's ruling in the present case. In *Lutz*, the Court found that the trial court erred by failing to take evidence and consider whether the surviving wife was given an opportunity and advised to obtain independent counsel. In the present case, it is undeniable that the trial court did, in fact, take evidence as to Stephanie's right to obtain independent counsel and her opportunity to do so. The trial court heard testimony from both Stephanie and Attorney Eric Bogue as to Stephanie's right to have independent counsel and Attorney Eric Bogue informing her that he was not representing her (FF, 100, 105, and 108). Therefore, the trial court in *Lutz* was instructed, on remand, to do the very thing that the trial court in the present case did correctly the first time. A thorough analysis of *Lutz* is not helpful to Stephanie and should be read to uphold the trial court's ruling in the present case.

Next, Stephanie attempts to create error in the trial court's Findings of Fact by arguing that Attorney Eric Bogue's explanation of Prenuptial Agreement's provisions to Stephanie constituted giving Stephanie legal advice. (*Appellant's Brief*, p. 31). Essentially, Stephanie argues that a lawyer providing an explanation of a document's terms automatically constitutes legal advice and the creation of an attorney-client relationship. South Dakota's Rules of Professional Conduct disagree.

Rule 4.3 of South Dakota Rules of Professional Conduct outlines how an attorney should interact and communicate with an unrepresented party. In Comment 2 to Rule 4.3, it states that:

So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

SDCL Chapter 16-18 Appendix, Rule 4.3. As Stephanie notes, the trial court found that Attorney Bogue clearly informed Stephanie that he did not represent her, and that he only represented Butch Webb. Additionally, Stephanie notes that Attorney Eric Bogue stated that he provided Stephanie with an explanation of the Prenuptial Agreement's provisions when requested. Stephanie argues that these two things cannot coexist without this Court finding that the trial court erred. As shown in the above-cited Comment to Rule 4.3, Stephanie is incorrect in her understanding of how attorneys may interact with unrepresented parties. Attorney

Eric Bogue properly advised her that he represented Butch and she had the right to independent counsel, and then properly explained his own view of the meaning of the Prenuptial Agreement.

Therefore, the trial court correctly found Stephanie voluntarily executed the Prenuptial Agreement waiving her spousal elective share.

**II. The trial court did not err in concluding that the Prenuptial Agreement was not unconscionable.**

As noted above, the second ground on which party to a Prenuptial agreement may claim such agreement to be unenforceable is unconscionability.

The *Eichstadt* Court thus also considered whether the Prenuptial agreement in question was unconscionable under SDCL § 29A-2-213(b) due to insufficient disclosure on the part of Paul of his assets. The *Eichstadt* Court concluded there was sufficient disclosure and overturned the trial court's conclusion that the Prenuptial agreement was unconscionable *Id.* at ¶ 48. In doing so, the Eichstadt Court cited the decision in *Ryken v. Ryken*, which provided as follows:

[A]n antenuptial agreement will be held valid if the prospective spouse can be said to have had adequate knowledge of the nature and extent of the other party's property, either as a result of disclosure by the other party or through the independent knowledge, however acquired, of the prospective spouse, or if the prospective spouse has been adequately provided for by the agreement.

461 N.W.2d 122, 125 (S.D. 1990). The *Eichstadt* Court noted that Kathryn was aware at the time she signed the Prenuptial agreement “that Paul’s financial worth far exceeded hers” and there was no evidence that “she did not, or could not, have

obtained adequate knowledge of Paul’s property and financial obligations.”

*Matter of Estate of Eichstadt*, 2022 SD 78, ¶ 48.

In this case, there was a detailed list of Butch’s assets attached to the Prenuptial Agreement (FF, 73, 74, and 75). As the trial court found, the listing valued Butch’s assets at approximately \$26,000,000 (FF, 75). Such listing broke down nine separate limited liability companies and set forth the net value of each and also set forth the value of his ranch limited liability companies (FF, 145). Further, Stephanie was not only Butch’s girlfriend but involved in the horse business with him (FF, 24, 25, and 26). Given the nature of her business, she knew or should have known that only very wealthy individuals can participate in the horse business in the manner that Butch did (FF, 26). As noted above, the trial court did not believe Stephanie when she claimed it was not a fair assumption that Royal Vista Equine clients were wealthy. The trial court further noted that Stephanie had been to Butch’s South Dakota ranches on “four to six” occasions and had the opportunity to see for herself the size of Butch’s estate (FF, 141). Further, she knew he had the financial wherewithal to purchase his girlfriend a \$1,300,000 house (FF, 74).

Stephanie’s Brief complains she was unable to determine Butch’s “financial condition” because he did not include a separate listing of liabilities (*Appellant’s Brief*, p. 36). However, Stephanie knew very well that the nature of Butch’s payday lending business, and the fact he was engaged in lawsuits regarding the same, made it very difficult to determine exact liabilities at any

given time (SR, 1180). Stephanie testified one of the reasons Butch purchased the Colorado residence for her was in case he lost his South Dakota assets because of the lawsuits (FF, 45 and 46). As the trial court concluded, Butch's asset listing complied with the standard as set forth in *Sanford v. Sanford*, 2005 S.D. 34, ¶ 44, and repeated in *Matter of Estate of Eichstadt*, 2022 SD 78, ¶ 45: Stephanie was given a "reasonable approximation of the magnitude" of Butch's assets. She knew very well what she was giving up by executing the Prenuptial Agreement. As in *Eichstadt* she knew Butch's "financial worth far exceeded hers" and there is no evidence that she did not, or could not, have obtained adequate knowledge of Butch's property and financial obligations. In fact, as her testimony shows, Butch was more than willing to share information about his life and assets with her.

Further still, it is important to consider what Justice Kern stated in her dissent in *Eichstadt*:

Notably, although Kathryn did not understand the exact effect of the Agreement, she did understand that the purpose of the Agreement was for Paul to keep his property and for her to keep hers, and she knew Paul held assets far in excess of hers.

*Matter of Estate of Eichstadt*, 2022 SD 78, ¶ 58. Despite the fact of her college degree and sophisticated job, Stephanie attempts to cast herself as a simpleton who did not understand a contract which clearly stated that

Butch and Stephanie do hereby forever waive, release and quit claim to the other all of the property rights, and claims which he or she now has or may hereafter have as a husband, wife, widower, widow, or otherwise . . .



This conclusion is strengthened by the fact that Stephanie kept one and only one email string from 2013: the email in which she facetiously says she does not understand legalese while at the same time using sophisticated words like “inept” and “jargon” (SR, 1180). The fact she held for nearly a decade the single email which she claims showing her lack of knowledge in fact indicates she very well understood the importance of the Prenuptial Agreement and the fact she was waiving rights.

Therefore, the trial court correctly found the Prenuptial Agreement provided a “fair and reasonable” disclosure of Butch’s assets which was “sufficiently precise to apprise Stephanie of the reasonable magnitude of Butch’s net worth” (FF, 146 and 147).

### **CONCLUSION**

Appellee respectfully requests the Court uphold the trial court’s decision in this matter.

Dated this June 5, 2025.

NIES KARRAS & SKJOLDAL, P.C.

BY: /s/ Eric John Nies  
Eric John Nies  
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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Brief does not exceed the number of words permitted under SDCL § 15-26A-66(b)(2), said Brief contains 8,305 words and 42,594 characters without spaces. I have relied on the word and character count of the word-processing system used to draft this brief in preparing this certificate as permitted under SDCL § 15-26A-66(b)(4).

/s/ Eric John Nies  
Eric John Nies

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Brief of Appellee in the above-entitled action was duly served by serving a true copy thereof by Notice of Electronic Filing generated by the Odyssey File & Serve System, on June 5, 2025, to the following named persons at their last known post office addresses as follows:

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The undersigned further certifies that pursuant to SDCL 15-26A-79, the original of the Brief of Appellee in the above-entitled action was mailed to Ms. Shirley A. Jameson-Fergel, Clerk of the Supreme Court, State Capitol, 500 East Capitol, Pierre, SD 57501, by United States mail, first class postage thereon prepaid, on the date above written.

/s/ Eric John Nies  
\_\_\_\_\_  
Eric John Nies

## **APPENDIX**

1. Partial Transcript of Motions Hearing (Stephanie Webb's Testimony)

1 STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
 2 COUNTY OF DEWEY ) FOURTH JUDICIAL CIRCUIT  
 3  
 4 \_\_\_\_\_ )  
 5 )  
 6 **In the Matter of the Estate** ) Partial Transcript of  
 7 **of MARTIN ALLEN WEBB,** ) Motions Hearing  
 8 ) (Stephanie Webb's Testimony)  
 9 )  
 10 Deceased. ) 20PRO22-01  
 11 )  
 12 \_\_\_\_\_ )

13  
 14 BEFORE: **THE HONORABLE MICHELLE K. COMER**  
 15 Circuit Court Judge  
 16 Deadwood, South Dakota  
 17 February 18, 2022, at 2:00 p.m.

18 APPEARANCES:

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## I N D E X

WITNESSES:

PAGE

**STEPHANIE ALLYN WEBB:**

DIRECT EXAMINATION BY MR. COLLINS

3

CROSS-EXAMINATION BY MR. NIES

14

1 (WHEREUPON, the following constitutes a partial  
2 transcript of the proceedings had, Stephanie Allyn Webb's  
3 testimony, as ordered by Counsel:)

4 **STEPHANIE ALLYN WEBB,**

5 called as a witness, being first duly sworn, testified as  
6 follows:

7 **DIRECT EXAMINATION**

8 **BY MR. COLLINS:**

9 **Q** Could you state your full name for the record?

10 **A** Stephanie Allyn Webb.

11 **Q** And, Stephanie, I recognize in watching Kailee testify  
12 that, you know, we're here for certain purposes, but this  
13 is an emotional issue and you lost your husband. That's  
14 correct?

15 **A** Yes.

16 **Q** And so, you know, I'm -- if you need to take a break, let  
17 us know, but we will work through this; okay?

18 **A** Thank you.

19 **THE COURT:** There's also tissue there.

20 **THE WITNESS:** I've got some in my pocket. Thank you.

21 **THE COURT:** You're welcome.

22 **Q (BY MR. COLLINS, continuing)** And I think there's some up  
23 there.

24 **A** Thank you.

25 **Q** Okay. Tell the Court a little bit about yourself. Where



1 did you grow up and go to college? Things of that nature.

2 **A** I grew up in Colorado Springs and then attended Colorado  
3 State University. I have a bachelor's degree in equine  
4 science with an industry concentration and a minor in ag  
5 economics and racehorse economics.

6 **Q** Okay. And then following your completion of college in  
7 those areas, what business or what line of work did you go  
8 into?

9 **A** During college, I started as an intern -- an undergraduate  
10 intern, I'm sorry -- at Royal Vista Equine, which is an  
11 equine breeding facility in Fort Collins, Colorado. Upon  
12 that and completion of that internship, I was hired on to  
13 help sales prep racehorse yearlings that summer.

14 After that I was asked to stay on and help oversee  
15 their office. I did that for about a period of, say, six  
16 months and I was asked to be the office manager. So that  
17 puts us back to around 2005 and 2006. And so I was there  
18 with Royal Vista Equine since that time for the owners  
19 Vaughn and Jill Cook. And in 2011 they decided to retire  
20 and turned over the business to myself and my business  
21 partner, Jake Dahl, and we have been running it as Vista  
22 Equine Colorado since that time.

23 **Q** And what does that business specialize in?

24 **A** We are a commercial facility that specializes in assisted  
25 reproductive techniques in horses. So more specifically,

1 we stand stallions; we manage subfertile mares and  
2 stallions, horses -- mares to carry their own  
3 pregnancies -- but the vast majority of our business is  
4 doing embryo transfers.

5 We manage a large herd of recipient mares or  
6 surrogates, mares that will carry the pregnancies for  
7 donors that do not. And then more recently we have started  
8 doing oocyte aspirations. So taking the egg from the donor  
9 mare, having that injected with sperm cells in a lab, and  
10 then those embryos return to our facility for transfer.

11 Q And this isn't a small operation. What kind of -- give the  
12 Court an idea of what the size of your operation is like in  
13 gross revenue.

14 A Gross revenue for 2021 was a little under 2.5 million.

15 Q And your job responsibilities with that entail what?

16 A I'm the office manager there. I oversee all client  
17 communication and assisting the back half of our operation,  
18 coordinating contracts and things like that.

19 On a financial aspect, I have overseen the books since  
20 I started working in the office in 2006. I do all the  
21 payroll, all the taxes, quarterly taxes. The only thing I  
22 really don't do are the annual reportings. We do have a  
23 CPA for that. But as far as the semimonthly payroll,  
24 monthly taxes, quarterly taxes, some annual summary  
25 reports, I do all that. All of the accounts payable,

1 accounts receivable, I take care of all of that.

2 Q So tell me, when did you meet Butch Webb?

3 A Met him in 2007.

4 Q Okay. And you were married when?

5 A 2013.

6 Q Okay. And since that time, have you become familiar with  
7 Webb Ranch?

8 A Very.

9 Q Okay. And before we talk about the cattle side, let's talk  
10 about the horse side and what the relationship has been  
11 between Webb Ranch and your business in Colorado.

12 A Okay. He had been doing breeding with embryo transfers  
13 with what was then Royal Vista Equine -- and subsequently  
14 Vista Equine Colorado -- as long as I've known him. That  
15 is how we met is strictly through that breeding business.  
16 He's always done embryo transfers, some years more than  
17 others, but that's how I met him was through the breeding  
18 business.

19 Q So you've been familiar with the Webb Ranch's horse side of  
20 the business for a number of years --

21 A Yes.

22 Q -- is that fair?

23 A That's correct.

24 Q Okay. And tell us about your experience on the cattle  
25 side.

1   **A** On the cattle side, we would talk, you know, frequently. I  
2       know his plans on when he sells cattle, when he typically  
3       likes to work calves, things like that. I would attend  
4       bull sales with him as frequently as I could. I would  
5       attend sales of calves as frequently as I could. We would  
6       talk about things constantly. I tried to garner some of my  
7       knowledge from the horse side and apply it to the cattle  
8       side where I could.

9               He would frequently ask me questions; ask my opinion.  
10       We made decisions together all the time. If he had a sick  
11       calf, you know, well, this is what we do on foals, maybe  
12       that would work. He'd try it. He had a significant  
13       problem at the feedlot a couple years ago and I was able to  
14       help him get to the bottom of that.

15              You know, I like to research things and seek out  
16       issues, and so that's what I helped him do. So we were  
17       heavily involved together. Just because I wasn't there for  
18       the day-to-day on the cattle doesn't mean we didn't talk  
19       about it a lot.

20   **Q** Sure. But you would admit that the cattle portion of the  
21       operation is a weaker strength -- is not a strength of  
22       yours compared to your horse knowledge?

23   **A** It is not.

24   **Q** Okay. And so in that time when you were married to Butch  
25       and Butch was working on the ranch, did you see the

1 interaction or were you aware of the interaction between  
2 Butch and Brian and the operations?

3 **A** Yes, very.

4 **Q** And there's been testimony and you've been here about the  
5 plan going forward. And tell us about your plan to help or  
6 to continue these operations.

7 **A** I would continue things as Butch had laid out. My goal is  
8 that this operates no differently. Butch is an incredibly  
9 savvy businessman and I've learned a lot from him. He was  
10 an exceptional horseman and cattleman and I've learned a  
11 lot from him. I plan to have things go and -- I mean, my  
12 goal would be that nobody knows anything different.

13 He's established an incredible reputation in both  
14 industries and I want to see that continue and I want to  
15 see that grow. My goal is taking care of the younger kids.  
16 I don't need a stake in this. That's never been my  
17 intention. I just want the kids to be able to have the  
18 same opportunity that the older kids had, and I think  
19 that's what -- I'm sorry. I probably can't say that.

20 **Q** Well, tell me about the working relationship in just the  
21 short period of time, now that Butch is gone, that you've  
22 developed with Brian and Kailee.

23 **A** With Brian, you said, since he's been gone?

24 **Q** Yeah.

25 **A** We've spoke on the phone and texted numerous times. He's

1       helped include me in decisions he thinks need to be made  
2       selling steers, selling heifers. Do we buy hay or do we  
3       sell down some heifers. You know, kind of going over pros  
4       and cons. Vaccinating. I was there to help vaccinate  
5       heifers.

6             You know, I think any -- all aspects we've been  
7       discussing -- buying bulls, what the plan is with heifers,  
8       the replacement heifers going forward this year -- I think  
9       there's been many aspects that Brian and I have spoken  
10      about. He's being an excellent teacher and I appreciate  
11      that. I was able to gather a lot from Butch, but it is a  
12      lifelong -- it's a lifetime of experiences and I'm not --  
13      sorry.

14   **Q** Well, and so going forward, you intend to rely and talk  
15      with Brian?

16   **A** Yes, absolutely.

17   **Q** And you're not going to go out and just start making random  
18      decisions about selling things?

19   **A** No. No.

20   **Q** You understand you don't have the knowledge to do that;  
21      correct?

22   **A** Correct.

23   **Q** Okay. And the same side -- on the business side with  
24      Kailee, do you involve her in the conversations and  
25      discussions about what's in the best interest of the ranch?

1   **A** Absolutely, yeah. I think they're both a wealth of  
2       knowledge and I would be mistaken to not use them both as  
3       assets. I think that's just a smart business decision in  
4       any circumstance.

5   **Q** And that's what Butch did, isn't it?

6   **A** Yes.

7   **Q** And there was discussion that, you know, I think it  
8       probably wasn't fair of how much time Butch spent in  
9       Colorado. But how much time would Butch spend in Colorado  
10      on a monthly basis?

11   **A** I would say he was in Colorado half, if not sometimes more.  
12      50 percent of the time, if not more. It would definitely  
13      vary depending on time of year, you know, were they calving  
14      really heavy. Especially heifers. He would be at the  
15      ranch quite a bit more. He really needed to oversee that.  
16      If they were haying, it's long hours, things like that, so  
17      he would be there more.

18           But then these little kids were really important to  
19      him and he wanted to make sure he balanced that as much as  
20      he could, so he made an immense effort to go back and  
21      forth.

22   **Q** And he was able to, with Brian's help and Kailee's help, to  
23      continue the ranching operations from afar?

24   **A** Yeah, absolutely.

25   **Q** And there's been discussion and the Court's aware you have

1 two minor children with Mr. Webb; correct?

2 **A** Yes.

3 **Q** And you live in Colorado?

4 **A** Yes.

5 **Q** And so what is kind of your plan for being able to handle  
6 operations on the ground if you're in Colorado? And as  
7 part of that, how many -- you know, your plans, if you need  
8 to come to South Dakota, how are you going to take care of  
9 that obligation?

10 **A** I mean, as far as the day to day goes, it's staying in  
11 close communication with Brian and Kailee. That's just  
12 absolutely a nonissue. You know, we -- it's been flawless,  
13 in my opinion, so far and I think it will continue to be  
14 that way. So staying in close contact with them is how  
15 things continue to work day to day.

16 If it's something that's out of my wheelhouse and,  
17 say, out of their wheelhouse, I have many people that I can  
18 reach out to that would be experts in various facets of  
19 this ranch. So I have absolutely zero problem -- and  
20 already have done so to this point -- reaching out, getting  
21 a second opinion, getting guidance. I think that's just a  
22 smart way to practice.

23 **Q** And since you've been special administrator, how many times  
24 have you come to South Dakota?

25 **A** Two or three. I'm sorry. I've lost track. I think two



1       since I became special administrator. I think two or three  
2       since that time.

3   **Q** Okay. And have you made arrangements -- or what are the  
4       arrangements that you've made with your minor children  
5       while you need to come to South Dakota that you can come  
6       here and fulfill your obligations?

7   **A** Yeah, I'm very thankful to have a very supportive family.  
8       I have my sister and her husband that live very close by,  
9       and that's where my kids are right now. And then both of  
10      my parents are retired and have a great deal of  
11      flexibility, so they've come up and stayed at my house to  
12      keep their routines normal. My daughter, Lakin, is in  
13      first grade, so she does have a school schedule to work  
14      around. At this time we don't have extracurriculars or  
15      things like that, but they are a huge help and more than  
16      willing to step into whatever roles they need to.

17             But I also want to get the kids up to South Dakota as  
18      much as possible. They both absolutely love the ranch.  
19      Lakin would make special dad/daughter trips up with him, so  
20      I want to keep things like that going. They need to know  
21      this just like their older siblings did.

22   **Q** And so do you have any concerns that you living in Colorado  
23       and having to travel back and forth to South Dakota is  
24       going to be any impediment to you managing and doing  
25       your -- fulfilling your duties as the special

1 administrator?

2 **A** I do not. I don't think it would be any different than  
3 it's operating as it was before.

4 **Q** And there was discussion about moving the horses down and  
5 that you've done something, you know, improper in that you  
6 took horses from South Dakota and took them to Colorado.

7 **A** Yeah.

8 **Q** You heard Kailee's testimony?

9 **A** I did.

10 **Q** Was that your recollection? That was discussed and a  
11 business decision?

12 **A** Yeah. And I even remember having this discussion with Dee  
13 in her vehicle, when she was taking me either to or from  
14 the airport, bringing this up before that, you know, we  
15 were talking about having horses foal out in Colorado.

16 **Q** Okay. And when you reviewed everything, there was a  
17 decision made with you and Kailee and Brian that that was  
18 the best business decision for the ranch?

19 **A** More so Kailee and I, but, yes.

20 **Q** Did Brian object and say no?

21 **A** No.

22 **Q** Okay. Did anybody say, no, don't do that?

23 **A** No, not that I'm aware of.

24 **Q** Okay. You understand, as a special administrator, that you  
25 would have a fiduciary duty to the estate; is that correct?

1    **A** Yes.

2    **Q** Okay. And you understand that you can't just do whatever  
3       you want?

4    **A** Absolutely.

5    **Q** Okay. And that you can't have -- deal in your own  
6       self-interest?

7    **A** Correct.

8    **Q** And is it your intent, then, to operate this in the best  
9       interest of the ranch going forward?

10   **A** Oh, a hundred percent, yeah.

11   **Q** Also, as part of our petition, you've indicated that you  
12       would be willing to waive the special administrator fee for  
13       the estate; is that correct?

14   **A** Absolutely.

15       **MR. COLLINS:** That's all I have, Your Honor.

16       **THE COURT:** Thank you, Mr. Collins.

17               Mr. Nies?

18       **MR. NIES:** Thank you, Your Honor.

19                               **CROSS-EXAMINATION**

20       **BY MR. NIES:**

21       **Q** You're learning on the job, aren't you?

22       **A** For which job? Could you explain?

23       **Q** To run a cattle ranch.

24       **A** In a grand sense, I guess you could say so, but I have a  
25       substantial agriculture background that I think helps lend

1 to this.

2 **Q** Sure. Is your job down with the equine center a full-time  
3 job?

4 **A** It is.

5 **Q** Okay. And you've got two young kids?

6 **A** I do.

7 **Q** Did you write the 2021 will for him to sign?

8 **A** I wrote portions of it for him.

9 **MR. NIES:** Okay. No further questions, Your Honor.

10 **THE COURT:** Anything further, Mr. Collins?

11 **MR. COLLINS:** Nothing, Your Honor.

12 **THE COURT:** Thank you. You may step down, Ms. Webb.

13 **THE WITNESS:** Thank you.

14 (WHEREUPON, the proceedings ordered transcribed  
15 duly ended.)

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1       STATE OF SOUTH DAKOTA       )  
2       COUNTY OF LAWRENCE       ) SS.       CERTIFICATE

3  
4           I, SANDRA C. SEMERAD, RMR, CRR, an Official Court  
5       Reporter and Notary Public in the State of South Dakota,  
6       Fourth Judicial Circuit, do hereby certify that I reported  
7       in machine shorthand the proceedings in the above-entitled  
8       matter and that Pages 1 through 15, inclusive, are a true  
9       and correct copy, to the best of my ability, of my  
10      stenotype notes of said proceedings had before the  
11      HONORABLE MICHELLE K. COMER, Circuit Court Judge.

12           Dated at Deadwood, South Dakota, this 6th day of July,  
13      2022.

14  
15  
16  
17  
18                               /s/ Sandra C. Semerad  
19                               SANDRA C. SEMERAD, RMR, CRR  
20                               Registered Merit Reporter  
21                               My Commission Expires: 3/7/24  
22  
23  
24  
25

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

---

APPEAL NO. 31017

---

In the Matter of the ESTATE  
OF MARTIN ALLEN WEBB,

Deceased.

---

Appeal from the Circuit Court, Fourth Judicial Circuit  
Dewey County, South Dakota

---

The Honorable Michelle K. Comer  
Circuit Court Judge

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**APPELLANT'S REPLY BRIEF**

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NOTICE OF APPEAL FILED MARCH 5, 2025

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## ARGUMENT

**I. The trial court erred in concluding that Stephanie voluntarily executed the Prenuptial Agreement waiving her spousal elective share.**

**A. Several of the trial court's key factual findings are not supported by the evidence and testimony at trial.**

Appellee Dee Haugen ("Appellee") argues as though this Court is bound by the trial court's factual findings. Appellee almost exclusively cites to the trial court's factual findings, rather than evidence and testimony presented at trial. While it is true that the trial court's factual findings are to be reviewed under the clearly erroneous standard of review, that does not mean this Court need not review them to ensure that a mistake has not been committed. *See Eagle Ridge Estates Homeowners Ass'n, Inc. v. Anderson*, 2013 S.D. 21, ¶ 12, 827 N.W.2d 859, 864 ("A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.").

Stephanie seeks a reversal because the trial court's findings of fact on several key issues are not supported by the evidence and testimony presented at trial. This Court has considered a variety of circumstances to determine whether a prenuptial agreement was executed voluntarily, including the timing of the disclosure of the draft of the prenuptial agreement and financial disclosures, the parties' knowledge and understanding of the terms of the prenuptial agreement, and the presence or absence of independent counsel, or an opportunity to consult

with independent counsel. *See In the Matter of the Estate of Eichstadt*, 2022 S.D. 78, ¶¶ 30-32, 983 N.W.2d 572, 584-85; *In the Matter of the Estate of Gab*, 364 N.W.2d 924, 926 (S.D. 1985); *Schutterle v. Schutterle*, 260 N.W.2d 341, 348 (S.D. 1977). Upon examination of the trial court’s findings of fact on these key factors, this Court should be left with a definite and firm conviction that a mistake has been committed. Because the trial court’s erroneous findings of fact touch upon many of these factors, they constitute reversible error, and for that reason, the trial court’s order should be reversed. *See Eagle Ridge Estates Homeowners Ass’n, Inc.*, 2013 S.D. 21, ¶ 12, 827 N.W.2d at 864.

**1. The trial court’s factual findings regarding Attorney Bogue’s role in the preparation and execution of the Prenuptial Agreement not supported by the evidence and testimony presented at trial.**

Appellee heavily relies upon the testimony of Eric Bogue (“Attorney Bogue”) regarding his interactions and discussions with Stephanie leading up to her execution of the Prenuptial Agreement. Appellee repeatedly makes the point that the trial court found Attorney Bogue’s testimony to be credible and found Stephanie’s testimony to not be credible. (Appellee’s Brief, pp. 6, 12, 19, 23). That is not accurate. The trial court made the explicit factual finding that it found Attorney Bogue’s testimony to be credible but made no factual finding regarding Stephanie’s credibility. (FF, 114).

It is important to parse Stephanie’s and Attorney Bogue’s testimony to be clear what they did and did not say on several key points. First, as to Stephanie’s

understanding of the Prenuptial Agreement's purpose and effect, Stephanie testified that it was not explained to her at any time, by either Attorney Bogue or Butch, that the Prenuptial Agreement would impact the disposition of Butch's assets upon his death. (TT, 38, 43-44, 58-59, 68, 108). She always understood the purposes of the Prenuptial Agreement were to protect the Colorado property and to control the disposition of their assets upon divorce. (TT, 38, 50-51, 53-54, 58, 67, 104-05, 108, 127). Attorney Bogue was only able to testify – eleven years after the fact – that he “*would have* explained the broader impact as to pre-death, post-death issues.” (FF, 104, 106-07, 129; TT, 157-59, 163, 165, 168-69). Consistent with Stephanie's testimony, however, Attorney Bogue testified that he did not provide Stephanie or Butch any explanation of the meaning of the term, “elective share.” (TT, 190).

It is important to recognize the limitations of Attorney Bogue's testimony. On the one hand, Stephanie clearly testified that she did not understand the Prenuptial Agreement's purpose and effect, and that it was not explained to her. (TT, 38, 43-44, 58-59, 68, 108). On the other hand, Attorney Bogue was only able to testify to what he *would have* done, rather than what he actually did. Attorney Bogue did testify, however, that he did not explain the meaning of the term, “elective share,” to Stephanie, which is a significant omission. (TT, 190). It would have been one thing for Stephanie to understand that the Prenuptial Agreement affected the disposition of Butch's assets upon his death, and quite another for her to understand that she otherwise had a statutory right to a portion

of his estate, even in the face of a contrary testamentary document. Thus, Attorney Bogue's testimony, even if found credible, is limited by its own terms and does not support the trial court's findings of fact and conclusions of law that the Prenuptial Agreement's terms were explained to Stephanie, that she knew and understood the Agreement's terms, and, ultimately, that she executed it voluntarily.

The same can be said of the trial court's findings of fact regarding Stephanie's understanding of Attorney Bogue's role in the preparation of the Prenuptial Agreement. Stephanie unequivocally testified that she thought Attorney Bogue was her attorney. (TT, 90, 91). She trusted Eric and Cheryl Bogue, thought they were there to help both Butch and her, and thought they had her best interests in mind and were also protecting her. (FF, 86; TT, 53-54, 58, 70, 74, 105). Attorney Bogue testified that, although he could not "recall exactly the nature of the conversation precisely," based on how he handled his practice, he "*would have* said" that if Stephanie had any questions, she was encouraged to have her own counsel, and that he *would have* stressed that she be comfortable before signing because the document has important legal consequences. (FF, 105, 108; TT, 157-59, 171, 173). Although Attorney Bogue insisted that he did not represent Stephanie and did not give her legal advice, he also testified that he answered her questions and *would have* explained the purpose and effect of the Prenuptial Agreement's provisions. (FF, 100, 106-07, 111; TT, 157-60, 163, 165, 168-70, 183-84). Even Attorney Bogue conceded that it was possible that

Stephanie understood that he was acting with both her and Butch's best interests in mind. (TT, 182).

The trial court nonetheless found otherwise. Despite Stephanie's testimony regarding her understanding of Attorney Bogue's role and his concession, the trial court nonetheless found that "Stephanie testified that she knew Eric Bogue and Cheryl Bogue were Butch's lawyers," (FF, 88), and the trial court accepted Attorney Bogue's testimony that he "has never represented Stephanie or given her legal advice." (FF, 100, 111). But, if the trial court also accepts Attorney Bogue's testimony that he "went through each paragraph of the Prenuptial Agreement with" Stephanie and Butch, and explained the purpose and effect of the Agreement's provisions, and answered Stephanie's questions, then that finding is untenable. (FF, 106-07; TT, 157-59, 163, 165, 168-69). *See, e.g., Pucket v. Hot Springs Sch. Dist. No. 23-2*, 239 F.R.D. 572, 580 (D. S.D. 2006) (recognizing that attorney provided legal advice by explaining effect of contractual release and indemnification provision).

Appellee, recognizing this incongruity, attempts to resolve this incongruity by referencing Rule 4.3 of the South Dakota of Professional Conduct:

*So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature, and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.*

(SDCL ch. 16-18, Appendix, Rule 4.3 (emphasis added)). Appellee then goes on to characterize the trial court's findings as stating that "Attorney Bogue *clearly* informed Stephanie that he did not represent her." (Appellee's Brief, p. 27). But that is precisely the problem. The trial court in fact made no such finding, and, even if it did, as demonstrated above, that finding would not at all be supported by the evidence and testimony represented trial. Ultimately, the trial court's findings of fact regarding Attorney Bogue's role in the preparation and execution of the Prenuptial Agreement are contrary to the evidence and testimony presented at trial and are therefore clearly erroneous.

**2. The trial court's factual findings that Stephanie had adequate opportunity to seek out legal advice is clearly erroneous.**

Appellee relies heavily on the trial court's factual findings to argue that Stephanie had ample opportunity to consult with counsel of her choosing. (Appellee's Brief, p. 16 (citing FF, 127)). Contrary to the evidence and testimony presented at trial and the trial court's factual findings, Appellee suggests that "Stephanie had been aware Butch would require a Prenuptial Agreement for months." (*Compare* Appellee's Brief, p. 22 to FF, 44; *see also* FF, 127). The trial court did conclude that Stephanie "had the opportunity to speak with counsel if she chose," and that she "had the opportunity on her own without [Butch's] pressure to seek out legal advice if she chose." (FF, 129-30).

Those factual findings, however, are inconsistent with Stephanie's uncontradicted trial testimony. In September 2013, Stephanie and Butch discussed

the need for a prenuptial agreement. (FF, 44; TT, 37, 41, 92, 114-15). Stephanie characterized the conversation as “very brief” with Butch “almost brush[ing] it off a little bit to not have it seem like it was a big deal.” (TT, 37, 115). Butch indicated that the Prenuptial Agreement was needed to protect Stephanie’s assets from any eventual judgment in the pending lawsuits. (Id., 37, 50-51, 53-54, 58, 67, 108, 127). Stephanie maintains that, before she saw the draft of the Prenuptial Agreement for the first time on October 10, 2013, she and Butch only had this one brief conversation about the Agreement. (TT, 37, 41). Thus, in the weeks leading up to their marriage, no draft of the Prenuptial Agreement had been shared with Stephanie, so, despite Appellee’s argument that Stephanie could have consulted with an attorney upon learning that Butch would require a prenuptial agreement in September 2013, it is entirely unclear what she and her attorney would have had to discuss.

It is uncontroverted that Stephanie received a draft of the Prenuptial Agreement for the first time the evening before the “mock” legal ceremony. Because Attorney Bogue viewed Butch, not Stephanie, as his client, he testified that he would not have sent a draft of the Prenuptial Agreement to her and would have sent it to Butch instead. (TT, 154-55). Consistent with that testimony, on October 10, 2013, at 3:34 p.m., Attorney Bogue sent a revised draft of the Prenuptial Agreement to Butch. (TT, 44-45, 154-55, Ex. 1; RA, 1180; Appx. Bkmk. 2). At 4:40 p.m. that same day, Butch forwarded the draft to Stephanie. (FF, 72; TT, 43, 46, 50, 126-27, Ex. 1; RA, 1180; Appx. Bkmk. 2). Nearly four



hours later, at 8:20 p.m., after attempting to read the draft of the Prenuptial Agreement,<sup>1</sup> Stephanie responded, expressing that she did not understand the Agreement. (FF, 80; TT, 46-47, 96, 105, 123, 127, Ex. 1; RA, 1180; Appx. Bkmk. 2). Stephanie went on to ask about and make corrections to her financial disclosures. (TT, 47-49, 123, 127-29, Ex. 1; RA, 1180; Appx. Bkmk. 2). Stephanie's email response is consistent with the testimony that she had no opportunity before October 10, 2013, to read or review the Prenuptial Agreement. (TT, Ex. 1; RA, 1180; Appx. Bkmk. 2).

Stephanie, despite the trial court's factual findings, did not have an opportunity to seek legal counsel regarding the Prenuptial Agreement before the "mock" legal ceremony. (*But see* FF, 77, 81, 85, 86, 127, 129, 130). Stephanie received the Agreement late in the day on October 10, 2013, and she and Butch embarked on the eight or nine-hour drive from Colorado to South Dakota early the next morning with a stop in Sturgis, South Dakota, to obtain a marriage license, arriving in Faith, South Dakota, for the execution of the Agreement and their "mock" legal ceremony in the late afternoon or early evening, and giving her no genuine opportunity to consult with her own attorney and have her own counsel

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1. Appellee argues that Stephanie did not "even remember if she read the Prenuptial Agreement." (Appellee's Brief, p. 11; FF, 78, 82, 118). But, as argued in Stephanie's initial brief, she did testify that she attempted to read the draft of the Agreement. (TT, 47, 96, 105, 123, 127-29). And, her October 10, 2013, email as well as her testimony (and the trial court's finding) that she was confused by the Agreement's language confirms that she did read it. (FF, 80; TT, 46-47, 96, 105, 123, 127-29, Ex. 1; RA, 1180; Appx. Bkmk. 2). Thus, any argument that she did not read the Agreement is not supported by the evidence and testimony presented at trial.

review the Agreement. (FF, 72; TT, 43, 46, 49-51, 54-56, 70-71, 126-27; Ex. 1; RA, 1180; Appx. Bkmk. 2; *see Lutgert v. Lutgert*, 338 So. 2d 1111 (Fla. Ct. App. 1976) (holding that prenuptial agreement was invalid when presented within twenty-four hours of wedding with passage booked on European cruise).

Appellee nonetheless argues that Stephanie could have pushed back or delayed the “mock” legal ceremony to gain that opportunity, but that argument is also inconsistent with the evidence and testimony presented at trial. When it became clear that it was not going to be possible for Stephanie and Butch to get legally married in Italy in November, they – not Stephanie<sup>2</sup> – decided to a legal “mock” ceremony in South Dakota followed by a ceremonial wedding in Italy. (FF, 61; TT, 36). But, in early October 2013, South Dakota was impacted by the Atlas Blizzard, and, although completing the legal marriage ceremony before they left for Italy in November was “going to be a tight time constraint anyways,” the Atlas Blizzard only made those limitations “a thousand times worse.” (FF, 66, 69; TT, 38-40, 54, 68-69, 89). It was not as if Stephanie and Butch could simply reschedule. (*Id.*). As Stephanie testified, Butch was one who was “going to tell you . . . what would happen,” and she understood that they would not get married if the Prenuptial Agreement were not signed on October 11, 2013. (TT, 69, 106-

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2. Appellee argues that “the ‘mock’ ceremony was Stephanie’s decision, and that Butch complied with her desires.” (Appellee’s Brief, p. 9; *see also* FF, 62). As indicated in Stephanie’s initial brief, not only are the trial court’s own findings of fact on this issue inconsistent (*see* FF, 61), but the uncontroverted evidence and testimony presented at trial indicated that the “mock” ceremony was a joint decision, and that Butch made the arrangements for that ceremony. (FF, 70; TT, 36, 41, 68, 102, 137).

07). Thus, the trial court's findings of fact that Stephanie had an adequate opportunity to review the Prenuptial Agreement and to seek out legal advice are clearly erroneous.

**3. The trial court's factual finding that the Prenuptial Agreement is a "non-factor" relies on testimony taken entirely out of context.**

Appellee, and the trial court, repeatedly rely upon Stephanie's purported testimony that the Prenuptial Agreement was a "non-factor" to conclude that she voluntarily executed the Agreement. (Appellee's Brief, pp. 11, 14, 16, 25; FF, 79, 118-121). It is important, however, to put that testimony in its proper context. As Stephanie made abundantly clear through her testimony, Butch told her that the Prenuptial Agreement was needed to protect her assets from an eventual judgment in his pending lawsuits; he did not tell her, and she did not understand, that it would preclude her from receiving anything from his estate if he were to pass away. (TT, 38, 41, 43-44, 50-51, 58-59, 67-68, 104-05, 108, 127). While she did appreciate that it would control the disposition of their assets in the event of a divorce, she also testified that "divorce wasn't in [their] future." (TT, 38, 58-59, 63-65, 67, 104). In other words, for Stephanie, the Prenuptial Agreement was a "non-factor" because it solely applied to situation in which she believed she would not find herself. Because the Prenuptial Agreement does not even contain the term "elective share," and the term was not explained to her, she cannot be faulted for that understanding. (FF, 115; TT, 43, 66, 190, Ex. 2; RA, 1182; Appx. Bkmk. 3). *See Eichstadt*, 2022 S.D. 78, ¶ 7, 983 N.W.2d at 578 (acknowledging attorney's

testimony that “the vast majority of individuals’ would not understand terms such as . . . elective share”). It was with this context that Stephanie commented that the Agreement was a “non-factor,” and Appellee’s argument and the trial court’s finding that the Agreement was a “non-factor” for Stephanie gives this statement a meaning that it does not bear.<sup>3</sup> Accordingly, this and the related factual findings are not supported by the evidence and testimony presented at trial and are therefore clearly erroneous.

**B. Appellee injects matters not included in the settled record.**

It is important to note one other issue in considering the facts that bear upon the voluntariness of the Premarital Agreement. Appellee injects matters that are not included in the settled record. Related to the parties’ relative education, business experience, and sophistication, Appellee argues that Stephanie “bragged” about her business acumen in testimony at a prior motions hearing before the trial court. (Appellee’s Brief, p. 24). Appellee recognizes, however, that this testimony comes from a February 18, 2022, motions hearing, the transcript of which was not included in the settled record. (Appellee’s Brief, p. 24, n. 1). Because this transcript was not included in the settled record, it cannot be considered for purposes of this appeal. *See Toben v. Jeske*, 2006 S.D. 57, ¶ 11,

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3. Based on this comment, the trial court made other factual findings that are not supported. (FF, 120 (“Stephanie was determined to get married regardless of the Prenuptial Agreement.”); FF, 121 (“Stephanie was going to sign the Prenuptial Agreement regardless of what it said or meant.”); FF, 133 (“At the time Stephanie executed the Prenuptial Agreement, she truly did not care about its contents, and testified it was a ‘non-factor’; she just wanted to get married.”).

718 N.W.2d 32, 35 (“Our review is restricted to facts contained within the settled record. . . . [A]ll parties are obligated to see that the settled record contains all matters necessary for the disposition of the issues raised on appeal, [and] the ultimate responsibility for presenting an adequate record on appeal falls upon [the parties].”). Even so, Stephanie’s testimony at the court trial stands in its own right, and her testimony at a prior motions hearing on an unrelated issue does not provide a foundation for the trial court’s findings of fact entered after trial.

**C. Viewed in light of this Court’s precedent, the totality of the circumstances reveal that Stephanie did not voluntarily sign the Premarital Agreement.**

Appellee predictably argues that the facts of this case are not analogous to the facts in *Eichstadt*. (Appellee’s Brief, pp. 20-25). In making that argument, Appellee concentrates on Paul Eichstadt’s deceit and “ambush” of Kathryn, his prospective wife, to distinguish this case. But, in making that and other similar arguments, Appellee fails to recognize or address the numerous ways in which this case is not only similar to *Eichstadt* but also the ways in which the facts of this case present an even more compelling picture of involuntariness.

As an initially matter, *Eichstadt* is similar to this case in several important ways. First, both Stephanie and Kathryn indicated that they did not understand the terms of the prenuptial agreement. (FF, 80; TT, 46-47, 60-66, 96-98, 104-05, 123, 127, 131, Ex. 1; RA, 1180; Appx. Bkmk. 2; *compare* 2022 S.D. 78, ¶¶ 32, 37, 983 N.W.2d at 585, 586-87). Second, like Paul, Butch directed his attorney to prepare the Prenuptial Agreement, and Butch scheduled the date of the legal marriage

ceremony when it was convenient for his schedule. (FF, 96; TT, 41, 55, 68, 106, 137, 153). And, finally, like Paul, Butch made the decisions in his and Stephanie's relationship. (TT, 68 (characterizing Butch as the "one that was going to tell you . . . what would happen"); *compare* 2022 S.D. 78, ¶¶ 4, 32, 983 N.W.2d at 577, 586-87 (noting that husband was the "controlling person in the relationship and made all the decisions, including when they would get married"))).

In some ways, the facts of this case are worse than those in *Eichstadt*. For example, unlike Stephanie and Butch, the *Eichstadt* couple had been in a relationship for decades and were similar in age. (FF, 28, 34; TT, 20, 22, 61; *compare* 2022 S.D. 78, ¶¶ 2-3, 25, 983 N.W.2d at 576-77, 582). In fact, in *Eichstadt*, Kathryn had been helping Paul with the farm operation for decades, and, as his bookkeeper, understood his farm operation and knew his financial condition. 2022 S.D. 78, ¶¶ 2-3, 48 n. 8, 983 N.W.2d at 576, 589 n. 8. Stephanie, by contrast, did not have a detailed understanding of Butch's property and business holdings. (FF, 35, 143; TT, 24-26, 59-60, 85-87, 99-102, 129-32). Additionally, the language of the *Eichstadt* prenuptial agreement included a disclaimer that clearly described its effect and the rights that were surrendered under it. 2022 S.D. 78, ¶ 6, 983 N.W.2d at 578. The Prenuptial Agreement in this case contained no such disclaimer or explanation and does not even contain the words, "elective share." (FF, 115; TT, 66, Ex. 2; RA, 1182; Appx. Bkmk. 3). Furthermore, the *Eichstadt* couple were married one week – rather than minutes –

after the execution of the prenuptial agreement. (FF, 91; TT, 71-73, 164, 174; *compare* 2022 S.D. 78, ¶ 11, 983 N.W.2d at 579.

In comparing this case to *Eichstadt*, the confusion regarding Attorney Bogue’s representation again surfaces. In *Eichstadt*, at the beginning of the meeting, Carl Haberstick, Paul’s attorney, made it abundantly clear – in writing – that he did not represent Kathryn, that Paul was his only client, that he could not give Kathryn any advice or “really answer any questions” about the prenuptial agreement, and that he recommended that she consult with her own attorney. 2022 S.D. 78, ¶ 5, 983 N.W.2d at 577. In fact, during the meeting, Paul offered to pay for a lawyer to look over the agreement for Kathryn, but she declined. *Id.* ¶ 10. In this case, Attorney Bogue did not offer any definitive testimony that he told Stephanie that he was not her lawyer, or that he specifically recalls recommending that Stephanie consult her own attorney. (TT, *supra*). The best he could do was to offer general testimony about what he “would have” done and to confirm that, unlike Haberstick, it was not his practice to have parties sign a document indicating that they understood his role. (FF, 101, 105, 108; TT, 157-59, 166, 170-71, 173, 182; *compare Eichstadt*, 2022 S.D. 78, ¶ 5, 983 N.W.2d at 577). In light of the confusion caused, particularly in light of Stephanie and Butch’s relationship with the Bogues, this factual difference between the facts of this case and those in *Eichstadt* is noteworthy.

Appellee seizes upon Stephanie’s citation to *In the Matter of the Estate of Lutz*, 1997 N.D. 82, 563 N.W.2d 90. As an initial matter, Stephanie cites *Lutz* not

because she was “unable to find any South Dakota precedent to back up her claims,” as Appellee posits, but because it is entirely consistent with and elucidates existing South Dakota precedent and because, like this case, it presents the rare factual scenario in which the wife believed that she was also represented by the husband’s attorney. (Appellee’s Brief, p. 25). Nor does Stephanie argue, based on *Lutz*, that the absence of independent legal counsel “automatically invalidates a prenuptial agreement,” as Appellee asserts. (*Id.*, p. 26). Rather, consistent with this Court’s analysis in *Eichstadt*, Stephanie asserts, and *Lutz* supports, that the presence or absence of legal counsel is a “significant factual factor” in analyzing the voluntariness of a prenuptial agreement. *See Eichstadt*, 2022 S.D. 78, ¶ 30, 983 N.W.2d at 584 (including “the presence or absence of independent counsel or . . . an opportunity to consult with independent counsel” in list of “multiple considerations that bear on the question whether a person voluntarily executed a premarital agreement”); *see also Lutz*, 1997 N.D. 82, ¶¶ 34-35, 563 N.W.2d at 98 (“[L]ack of adequate legal advice to a prospective spouse to obtain independent counsel is a significant factual factor in weighing the voluntariness of a premarital agreement. . . . Indeed, adequate legal representation will often be the best evidence that a spouse signed a premarital agreement knowledgeably and voluntarily.”).

Nor do the facts or *Lutz*’s procedural posture make that case any less persuasive. It is true, as Appellee asserts, that the North Dakota Supreme Court reversed the trial court due to its failure to take evidence and consider whether the



surviving wife was given an opportunity and advised to obtain independent counsel. *Lutz*, 1997 N.D. 82, ¶ 35, 563 N.W.2d 90, 99. And it is true that this case stands apart from *Lutz* in that the trial court did consider whether Stephanie had independent legal counsel present to advise and assist her. But in analyzing that issue, the trial court did not adequately take into consideration or even enter factual findings on the crucial point that Stephanie believed she was also represented by Attorney Bogue. Here, as in *Lutz*, the trial court did not properly analyze this issue and ultimately entered findings that were not supported by the evidence and testimony at trial. (FF, 86; TT, 53-54, 58, 70, 74, 90-91, 105, 182). Thus, ultimately, like the *Lutz* trial court, the trial court in this case also committed reversible error.

The errors in the trial court's findings of fact ultimately constitute reversible error. After all, the very factors on which Stephanie allege that the Court erred – namely, the timing of the disclosure of the draft of the prenuptial agreement and financial disclosures, the parties' knowledge and understanding of the terms of the prenuptial agreement, and the presence or absence of independent counsel, and an opportunity to consult with independent counsel – are all significant factors in weighing the voluntariness of a prenuptial agreement. *See Eichstadt*, 2022 S.D. 78, ¶¶ 30-32, 983 N.W.2d at 584-85; *Gab*, 364 N.W.2d at 926; *Schutterle*, 260 N.W.2d at 348. With the totality of the circumstances surrounding the execution of the Prenuptial Agreement properly analyzed, the Agreement cannot withstand this Court's close scrutiny, and the trial court's

conclusion that Stephanie voluntarily executed it should be reversed. *See Eichstadt*, 2022 S.D. 78, ¶¶ 31-32, 983 N.W.2d at 585; *Gab*, 364 N.W.2d at 926; *Schutterle*, 260 N.W.2d at 348.

**II. The trial court erred in concluding that the Prenuptial Agreement waiving Stephanie’s spousal elective share was not unconscionable.**

Stephanie also challenged the Prenuptial Agreement on the grounds that it is unconscionable. In responding to Stephanie’s arguments regarding the unconscionability of the Prenuptial Agreement, Appellee, in perhaps a tacit admission, focuses her argument on Stephanie’s very general knowledge about Butch’s financial condition. (Appellee’s Brief, pp. 28-31). While it is not necessary, under South Dakota law, “for a spouse to provide a detailed and exact valuation of his or her net worth in a prenuptial agreement,” “the listing must be sufficiently precise to give the other spouse a reasonable approximation of the other spouse’s net worth.” *Smetana v. Smetana*, 2007 S.D. 5, ¶ 12, 726 N.W.2d 887, 893 (quoting *Sanford v. Sanford*, 2005 S.D. 34, ¶ 42, 649 N.W.2d 283, 294); *see also In re Estate of Smid*, 2008 S.D. 82, ¶ 22, 756 N.W.2d at 8 (“[A] postnuptial agreement will be upheld if the extent and nature of the decedent’s property was revealed, and so long as the agreement was entered into freely and for good consideration.”). Indeed, while Stephanie relies upon *Smetana* to illustrate what is required, Appellee made no attempt to distinguish *Smetana* from the fact of his case. (Appellee’s Brief, pp. 28-31).

Stephanie had no such understanding. Stephanie described Butch as private about his money, keeping “[e]verybody [ ] on a need-to-know basis.” (TT, 25). During their eight-or nine-month courtship, Stephanie did visit South Dakota four to six times and saw some of his properties and his cattle. (FF, 28, 39, 53-54, 141; TT, 20, 22, 27, 33-34, 86-87). But Stephanie testified that she did not have a detailed understanding of Butch’s property and business holdings. (FF, 35, 143; TT, 24-25, 59-60, 85-87, 99-102, 129-132). Butch did not provide her an adequate financial disclosure to provide her that information. She was provided a draft of Butch’s financial disclosure for the first time the night before the Prenuptial Agreement was to be signed – and they were to be married. (FF, 72; TT, 46, 49-50, 126-127, Exs. 1, 2; RA, 1180, 1182; Appx. Bkmks. 2, 3). Even then, neither that draft nor the financial disclosure presented to her before execution clearly indicated Butch’s liabilities or net worth, making it difficult, if not impossible, for her to reasonably approximate his financial condition. (FF, 75; TT, 59-60, 99-102, 129-32, Exs. 1, 2; RA, 1180, 1182; Appx. Bkmks. 2, 3).

The Prenuptial Agreement is therefore unconscionable. Considering the circumstances surrounding the execution of the Agreement, the Agreement’s failure to expressly and clearly waive Stephanie’s spousal elective rights, and Butch’s failure to adequately disclose his financial condition, the Agreement is invalid for unconscionability. *See Eichstadt*, 2022 S.D. 78, ¶ 42, 983 N.W.2d at 588. Accordingly, the trial court erred in concluding that it was not unconscionable and should be reversed.

## **CONCLUSION**

Stephanie respectfully requests that this Court reverse the trial court's order and remand so that judgment may be entered accordingly.

Dated this 7<sup>th</sup> day of July, 2025.

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Brief does not exceed the number of words permitted under SDCL 15-26A-66(b)(2), said briefing containing 4,984 words and 25,740 characters, no spaces. I have relied on the word and character count of the word-processing system used to draft this brief in preparing this certificate as permitted under SDCL 15-26A-66(b)(4).

/s/ Meghann M. Joyce

Meghann M. Joyce

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Appellant's Reply Brief in the above-entitled action was duly served by serving a true copy thereof by Notice of Electronic Filing generated by the Odyssey File & Serve System, on the 7<sup>th</sup> day of July, 2025, to the following named persons at their last known post office addresses as follows:

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The undersigned further certifies that pursuant to SDCL 15-26A-79, the original of the Appellant's Reply Brief in the above-entitled action was mailed to Ms. Shirley A. Jameson-Fergel, Clerk of the Supreme Court, State Capitol, 500 East Capitol, Pierre, SD 57501, by United States mail, first class postage thereon prepaid, on the date above written.

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