IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

APPEAL NO. 30966

JACQUELINE MARGARET TRUMBLE v. ERIC TRUMBLE

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE JOHN R. PEKAS
Circuit Court Judge

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Dakota Supreme Court Opinions

South Dakota Statutes

Other State Court Opinions

United States Supreme Court Opinions

Other Federal Court Opinions

PRELIMINARY STATEMENT

Appellant Jacqueline Margaret Trumble will be referred to as "Jacqueline". Appellee Eric Trumble will be referred to as "Eric". Any joint reference to Jacqueline and Eric will be as "the Parties". The real property located at E. Thurlow Island Lot 3, Plan VIP57456, District Lot 255, Coast Range 1 Land District PID: 018-452-957 will be referred to as "the Canadian Property". Reference to the settled record will be by the designation "R." followed by the page number(s). Reference to the December 2, 2024, motions hearing transcript will be by the designation "HT." followed by the page/line number(s). Reference to Appendix materials will be by the designation "APP." followed by the page number(s).

JURISDICTIONAL STATEMENT

Jacqueline appeals the Circuit Court's December 23, 2024, "Amended Order on Defendant's Motion and Affidavit for Order to Show Cause and Motion for Relief from Order on the Ground of Fraud." APP. 11-13. Notice of entry was served on December 26, 2024. R. 131-35. Per SDCL § 15-26A-3, it is a final order subject to appeal. Jacqueline timely filed and served her Notice of Appeal on January 13, 2025. SDCL § 15-26A-6; R. 137.

REQUEST FOR ORAL ARGUMENT

Jacqueline respectfully requests the privilege of appearing before this Court for Oral Argument.

STATEMENT OF LEGAL ISSUES

I. **Did the Circuit Court Err in Finding that Jacqueline Committed Sufficient Fraud to Entitle Eric to Rule 60(b) Relief?**

Yes. Relief under SDCL 15–6–60(b) is granted only upon a showing of exceptional circumstances. Property settlement agreements in divorce cases are arms-length transactions where the divorcing parties are each expected to perform "due diligence to ascertain the specific nature and value of various marital assets." Eric, by choosing to forego his right to compel Jacqueline's discovery responses, voluntarily agreed to also forego his right to discover that information. The Circuit Court erred in finding that Eric was entitled to Rule 60(b) relief due to his later belief that he made a bad bargain.

- *Hiller v. Hiller*, 2015 S.D. 58, 866 N.W.2d 536
- *Wegner v. Wegner*, 391 N.W.2d 690, 695 (S.D. 1986)
- *Jeffries v. Jeffries*, 434 N.W.2d 585 (S.D. 1989)

II. **Did the Circuit Court Err in Treating Property Casualty Insurance Proceeds as if they were Separate from the Marital Property They were Intended to Replace?**

Yes. Property casualty insurance proceeds exist solely to repair or replace marital property that has been damaged by a covered peril under an applicable insurance policy. They derive value only insofar as the underlying property has value. It was error for the Circuit Court to not make a factual inquiry into how the

insurance funds would be used in this case and compounded that error by, effectively, taking property away from Jacqueline that she and Eric agreed she should receive in the divorce.

- *Rolater v. Rolater*, 198 S.W. 391 (Tex. Civ. App. 1917)
- *O-So Detroit, Inc. v. Home Ins. Co.*, 973 F.2d 498 (6th Cir. 1992)

INTRODUCTION

Eric knew there were issues with Jacqueline's discovery production related to a fire loss to one of the Parties' marital assets, the Canadian Property. He even filed a motion to compel to get that information. He, however, freely and voluntarily chose to not pursue that discovery and, instead, decided to settle the divorce. Both Parties reached a meeting of the minds regarding what they were willing to give up and what they wanted to retain.

Months later, after both Parties learned more about how much insurance money Jacqueline would receive, Eric decided to try and undo what he decided was a "bad bargain" and seek Rule 60(b) relief. The Circuit Court, relying on the argument of counsel rather than a complete factual record, summarily granted Eric sweeping Rule 60(b) relief that was legally and factually erroneous.

This Court should decide that, in South Dakota, property casualty insurance proceeds are not separate from the marital property that they insure. Rather, such funds exist solely to repair or replace marital property that has been damaged by a covered peril under the insurance policy. As such, they should not be given independent value or evaluated independently. The Circuit Court erred by seeming to equate the same. Reversal is necessary to correct this error.

STATEMENT OF THE CASE

Jacqueline initiated divorce proceedings against Eric via a Summons and Verified Complaint, both of which were filed on May 31, 2023. R. 2-7. Eric filed his answer and counterclaim on August 9, 2023. R. 10-13. The Parties filed a joint Stipulation and Agreement on March 25, 2024. APP. 1-10. The Circuit Court entered a Judgment and Decree of Divorce on March 25, 2024. R. 26-27.

On October 14, 2024, Eric filed a "Motion and Affidavit for Order to Show Cause and Motion for Relief from Order on the Ground of Fraud Pursuant to SDCL 15-6-60(b)". R. 40-44. The Circuit Court heard argument on that motion on December 2, 2024. HT 1. The Circuit Court signed an Amended Order granting Eric's motion for 60(b) relief on December 23, 2024. APP. 11-13. Notice of entry was filed on December 26, 2024. R. 131-35. Jacqueline filed her notice of appeal on January 13, 2025. R. 137.

STATEMENT OF THE FACTS

When Jacqueline initiated divorce proceedings against Eric, they were not living together. R. 4, 12. Jacqueline lived in Canada in the Canadian Property, and Eric lived in Sioux Falls, South Dakota. R. 4. Jacqueline and Eric kept almost all of their personal possessions in the respective homes where they resided. APP. 3-4.

Shortly after Jacqueline filed for divorce, there was a fire at the Canadian Property. APP. 14. *See also* HT at 3:13-16. The Canadian Property is located on an island in a remote area of Canada. HT at 11:1-3. The Parties built the structures located at the Canadian Property using cash. *Id.*

Jacqueline personally maintained replacement cost insurance over the Canadian Property. APP. 14. During the divorce, Eric moved to get those insurance proceeds held in trust by his attorneys. R. 19-21. He also moved to compel responses to discovery requests related to that insurance. R. 22-23.

Those motions were never heard by the Circuit Court. Instead, the Parties entered into a stipulation dividing their assets. APP. 1-10. The Canadian Property was awarded to Jacqueline and the property located in Sioux Falls was awarded to Eric. APP. 2-3. The stipulation contemplated the insurance proceeds attached to the Canadian Property:

> The structures on the Canadian Property have burdened [sic] down, and the Wife carried insurance on the Canadian Property. The Parties agree that Wife shall be entitled to the exclusive ownership, title, use, and occupancy of the Canadian Property, and Wife *shall retain the insurance proceeds related to the claim due to the fire that occurred at the Canadian Property.*

APP. 3 (emphasis added).

STANDARD OF REVIEW

Typically, the standard of review for an order granting Rule 60(b) relief is abuse of discretion. *Corcoran v. McCarthy*, 2010 S.D. 7, ¶ 13, 778 N.W.2d

141, 146 (citations omitted). "[A] mistake of law constitutes an abuse of discretion." *Id.*

When, however, a circuit court addresses a Rule 60(b) without taking testimony or evidence, this Court performs a *de novo* review. *Rabo Agrifinance, Inc. v. Rock Creek Farms*, 2013 S.D. 64, ¶ 12, 836 N.W.2d 631, 636 (citing *Rindal v. Sohler*, 2003 S.D. 24, ¶ 6, 658 N.W.2d 769, 771). As the Circuit Court observed, it granted Eric's motion based on argument rather than the consideration of evidence and testimony:

> The Rule 60(b) motion was made by argument to the court without the taking of testimony. There was no testimony so the Court does not require Findings of Fact or Conclusions of Law. Moreover, they are not required on a motion. Specifically,". . . Findings of fact and conclusions of law are unnecessary on decisions of motions under § 15-6-12 or 15-6-56 or any other motion except as provided in § 15-6-41(b)." SDCL 15-6-52(a). The Court is not requiring them in this proceeding.

R. 107. This Court should perform *de novo* review of the Circuit Court's order.

ARGUMENT

"A divorce decree which divides or allots property or provides for payment of a gross sum in lieu thereof is a final and conclusive adjudication and cannot be subsequently modified." *Anderson v. Somers*, 455 N.W.2d 219, 221 (S.D. 1990) (citations omitted). "The only exception to this rule of finality is the presence of fraud or any other reason that would allow relief from a judgment." *Id.* (citations omitted).

"SDCL 15–6–60(b) authorizes relief from judgment based on mistake, inadvertence, excusable neglect, surprise and fraud, and is applicable to awards of support and property settlements incorporated in divorce decrees." *Id.* (citations omitted). "'Relief under SDCL 15–6–60(b) is granted only upon a showing of exceptional circumstances.'" *Hiller v. Hiller*, 2015 S.D. 58, ¶ 21, 866 N.W.2d 536, 543 (quoting *Pesicka v. Pesicka*, 2000 S.D. 137, ¶ 17, 618 N.W.2d 725, 728) (other citations omitted). Such wariness is justified "to preserve the delicate balance between the sanctity of final judgments and the incessant command of a court's conscience that justice be done in light of all the facts." *Corcoran*, 2010 S.D. 7, ¶ 14, 778 N.W.2d at 147. In particular, a party is not "entitled to vacate a property distribution which [is] based on a settlement agreement freely entered without coercion or fraud." *Wegner v. Wegner*, 391 N.W.2d 690, 695 (S.D. 1986).

I. The Circuit Court Erred in Finding that there was Sufficient Fraud to Entitle Eric to Rule 60(b) Relief

Neither Eric nor the Circuit Court identified the specific subsection of Rule 60(b) which entitled Eric to relief from the divorce decree. Eric's sole argument was that he was defrauded because Jacqueline failed to fully disclose the extent of insurance coverage she had for the Canadian Properties. Eric never argued that, aside from the purported fraud, there was any "other reason justifying relief from the operation of the judgment." SDCL § 15-6-60(b)(6).

As such, Eric's request for relief should be limited to SDCL § 15-6-60(b)(3). *Hiller*, 2015 S.D. 58, ¶ 23, 866 N.W.2d at 544.

A. A Property Settlement Agreement is an Arms-Length Contract

"When the parties to a marriage are negotiating a property settlement, recognizing that their interests are adverse to one another and that they are dealing at arms length, neither spouse owes to the other the duty of disclosure which he or she would normally owe if their relationship remained, in fact, a confidential one." *Jeffries v. Jeffries*, 434 N.W.2d 585, 588 (S.D. 1989). If the parties to a divorce are living separately while the settlement agreement is being negotiated, there is "no unique confidential relationship" between them and each party is "equally responsible for ascertaining the nature and value of the couple's marital assets." *Id.*

B. Rule 60(b) Relief is Unavailable When a Party, Like Eric, Fails to Perform Adequate Due Diligence

It is axiomatic that parties to a contract "must exercise due diligence in investigating contingencies placed in the contract." *Milligan v. Waldo*, 2001 S.D. 2, ¶ 12, 620 N.W.2d 377, 380 (citing *Moller v. Moller*, 356 N.W.2d 909, 911-12 (S.D. 1984)). That rule also applies to property settlement agreements in divorces. *Jeffries*, 434 N.W.2d at 588. Divorcing parties that fail to exercise "due diligence to ascertain the specific nature and value of various marital assets" prior to executing a property settlement agreement cannot claim that they lacked adequate information. *Jeffries*, 434 N.W.2d at 588. That is because

"'free deliberate choices are not subject to relief under Rule 60(b).'" *Id.* (quoting *Ackermann v. United States*, 340 U.S. 193, 71 S.Ct. 209, 95 L.Ed. 207 (1950)).

Here, there should be no question that Eric failed to exercise "due diligence to ascertain the specific nature and value of various marital assets." *Jeffries*, 434 N.W.2d at 588. He knew that there was a pending insurance claim related to the Canadian Property. He had received some information related to that insurance, but – and more importantly – he also knew that there was more due diligence to perform related to that insurance claim.

We know that Eric believed there was more information to gather due to his filings. He made two motions relevant to this discussion: a motion to compel and a motion to place the insurance proceeds in trust for the pendency of the divorce. R. 14-21.

In the motion to compel, Eric noted that, although he had received a copy of an insurance policy for the Canadian Property, he had not received any other responses to his discovery requests, including specific requests related to insurance for the Canadian Property. R. 15, 25. His counsel had been trying to communicate with Jacqueline's then-counsel, who had not been responding for some time. As a result, Eric asked the Circuit Court to intervene and compel Jacqueline and her then-counsel to respond to Eric's discovery requests.

At the same time, Eric asked the Circuit Court to freeze the insurance proceeds from the fire at the Canadian Property. R. 19-21. Eric observed that the property was "valued at roughly $2 million." R. 19. Eric "believed that [Jacqueline] has received the insurance proceeds from the property," but, Eric did not know anything more because Jacqueline had "refused to respond to [Eric's] discovery." R. 20.

Both of those motions were noticed for hearing on March 25, 2024. R. 22-25. That hearing, however, never occurred, and Eric declined to pursue his right to collect all the information related to the Canadian Property and its pending insurance claim. Instead, Eric and Jacqueline entered into the Stipulation and Agreement that Eric now says was the product of fraud. APP. 1-10.

Like any arms-length transaction, parties to a divorce property settlement agreement can choose to exercise their right to due diligence, or they can waive that right. Eric knew that there was more information related to the insurance claim out there. He even moved to compel its disclosure. He, however, decided to waive his right to pursue that information and, instead, enter into a property settlement agreement to resolve the divorce. There are any number of reasons why he chose that path, but fraud was not one of them.

This Court has held that such decisions do not warrant relief under Rule 60(b). In *Jeffries v. Jeffries*, 434 N.W.2d 585 (1989), Carolee Jeffries, like Eric here, sought Rule 60(b) relief due to the claim that her spouse "induced her into signing the property settlement agreement 'by making representations which were fraudulent or misrepresentations by his misconduct.'" *Id.* at 586-87. Like Eric, Carolee Jeffries complained that her spouse "concealed or fraudulently failed to disclose the nature and value of the assets of the parties when they were negotiating their property settlement agreement." *Id.* at 588.

This Court affirmed the underlying decision, finding that Carolee Jeffries' failure to exercise her due diligence rights prior to entering into the property settlement agreement barred her from Rule 60(b) relief:

> We note, however, that Carolee, a school teacher with a college education, entered into the agreement voluntarily, freely and intelligently. The evidence also indicates that Carolee received from the marital estate those possessions which she wanted, as well as receiving alimony. Carolee did not operate under a mistake of fact; rather, she entered into the agreement without exercising due diligence to ascertain the specific nature and value of various marital assets. This does not constitute grounds for relief from the property settlement agreement. In the absence of fraud, free deliberate choices are not subject to relief under Rule 60(b).

Id.

The factual scenario in *Jeffries* was even more favorable to Rule 60(b) relief than the scenario here. Unlike Carolee Jeffries, Eric was represented by competent counsel. Unlike Carolee Jeffries, Eric originally moved to compel

disclosure of the documents and information that formed the basis for his 60(b) motion but later decided to not pursue that motion. This case is not one of those "exceptional circumstances" warranting reopening of the divorce. *Hiller*, 2015 S.D. 58, ¶ 21, 866 N.W.2d at 543 (citations omitted).

C. Eric's Regret Over What He Now Considers a "Bad Bargain" is not a Valid Basis to Reverse the Original Divorce Decree

Divorcing parties are not entitled to modify a freely entered into property settlement agreement because they now dislike the bargain they negotiated. Property settlement agreements, by their nature, require each party to give something up in order to get something else they want. Both Eric and Jacqueline gave up rights and property to stop the divorce process. The Circuit Court legally erred by allowing Eric to get more than he bargained for.

This Court has repeatedly held that a circuit court's role "is not to relieve a party of his or her bad bargain." *Olson v. Olson*, 1996 S.D. 90, ¶ 11, 552 N.W.2d 396, 399–400 (citing *Whalen v. Whalen*, 490 N.W.2d 276 (S.D. 1992); *Pengra v. Pengra*, 429 N.W.2d 754 (S.D. 1988); *Jameson v. Jameson*, 239 N.W.2d 5 (S.D. 1976)). *See also Moller*, 356 N.W.2d at 911-12 (same); *Lodde v. Lodde*, 420 N.W.2d 20, 22 (S.D. 1988) ("[C]ourts are not required to relieve parties from such bad bargains.") (citations omitted); *Vandyke v. Choi*, 2016 S.D. 91, ¶ 10, 888 N.W.2d 557, 563 ("Whether or not the original decree was equitable, the role of the court … is not to relieve a party of his or her bad bargain.") (citations omitted). As such, subsequent proceedings "'cannot be

used to review the equities of the original [divorce] decree.'" *Olson*, 1996 S.D. 90, ¶ 11, 552 N.W.2d at 399-400 (quoting *Dougherty v. Dougherty*, 77 N.W.2d 845, 848–49 (S.D. 1956)).

Eric and Jacqueline acknowledged that they "freely and voluntarily" entered into the property settlement agreement. APP. 6. There was also mutual consideration backing the agreement. In other words, both Eric and Jacqueline gave up some things in order to get something else they wanted. For example, Jacqueline, from the beginning of the divorce, sought alimony from Eric. R. 5, 15. Eric, however, did not want to pay Jacqueline alimony, even though he was a prominent doctor and Jacueline was a nurse.[1] R. 5, 11. Jacqueline agreed to waive alimony to get the divorce finalized. APP. 6.

Eric and Jacqueline each received a house in the property settlement agreement also. Eric received a house located in Sioux Falls, South Dakota, and Jacqueline received the Canadian Property. APP. 2-3. Unlike the Canadian Property, however, the Sioux Falls house was intact and did not require Eric to replace all of his personal possessions. Jacqueline, on the other hand, was dependent on the pending insurance claim to get anything of value out of the Canadian Property.

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[1] Eric also made significantly more money than Jacqueline, which would have formed a valid basis for alimony had this case gone to trial. *See* HT at 12:13-16 ("Included in resolving the issues was a release of my client's claim to alimony. This is a 28 year marriage and [Eric] earns over $1,000,000 a year with [Jacqueline] earning $100,000 a year.").

Both Jacqueline and Eric agreed to valuations for all of that property. They also agreed that the insurance claim was subsumed under the valuation of the Canadian Property, since it was a replacement cost policy. APP. 3. At the time, neither Jacqueline nor Eric knew if the insurance proceeds would be enough to replace everything at the Canadian Property that was damaged or lost. APP. 14-15. Jacqueline was still gathering estimates to see how much those replacements would cost. *Id.* Fraud cannot be inferred on future conditions, like those. *See cf. Sperry Corp. v. Schaeffer*, 394 N.W.2d 727, 730 (S.D. 1986) (citing *Reitz v. Ampro Royalty Trust*, 61 N.W.2d 201 (S.D. 1953)) ("actionable misrepresentation must relate to a past or existing fact and not a future event").

Eric freely and voluntarily chose to not pursue his motion to compel, even though he knew it would reveal additional information about the insurance policies and claims. He also chose to enter into the March of 2024 Stipulation and Agreement before either party knew how much it would cost to repair or replace the Canadian Property and its contents. The Parties, despite these ambiguities and their right to clarify those ambiguities, made the free and deliberate choice to enter into a mutual bargain. Such decisions are not subject to relief under Rule 60(b). *Jeffries*, 434 N.W.2d at 588. (citations omitted).

The Parties each have their respective regrets over their decision to settle the divorce. Eric, apparently, now wishes he was awarded a house that he cannot legally own. Jacqueline, likewise, now wishes that she had not agreed to waive alimony. Just because they have regrets and may consider the March of 2024 Stipulation and Agreement a "bad bargain", they are not entitled to undo that agreement. Such agreements are binding, and the Court erred by giving Eric more than what he wanted in March of 2024.

II. The Circuit Court Legally Erred in its Treatment of the Insurance Proceeds

The Circuit Court, despite request from Jacqueline's counsel,[2] declined to make findings of fact. Nonetheless, the Circuit Court's Order granting Eric's motion for Rule 60(b) relief treated any insurance proceeds in excess of the $2 million in coverage that was informally disclosed by Jacqueline as newly discovered property. As such, the Circuit Court erroneously treated the insurance proceeds as separate from the Canadian Property. The Circuit Court compounded this error by failing to make the proper factual inquiry to determine whether the insurance proceeds would exceed the replacement cost of the damaged property.

This Court has not yet determined if property casualty insurance proceeds apply to damaged marital property or are considered as separate

[2] R. 107-08.

marital property. This Court should adopt the rule relied on by other courts that property casualty insurance proceeds to replace damaged marital property as indivisible from the property, itself. And, in the context of damaged marital property, the insurance proceeds should be exclusively applied to repair or replace the loss.

When a "house upon the land is destroyed by fire and there exists thereon a policy of insurance the money arising therefrom stands in the place and stead of such home." *Rolater v. Rolater*, 198 S.W. 391, 393 (Tex. Civ. App. 1917) (citing *Chase v. Swayne*, 88 Tex. 218, 30 S. W. 1049, 53 Am. St. Rep. 742). Such "insurance policies are not considered strictly personal contracts, separate from the realty, but should be regarded as contracts, which pass with the land to whomsoever the title passes, and that a destruction of the property by fire is an involuntary conversion of the house into money, which represents to the owner of the land the house lost." *Id.* Likewise, "a court may not waive the requirement of actual replacement unless the insured is unable to replace the damaged property due to bad faith actions by the insurance company." *O-So Detroit, Inc. v. Home Ins. Co.*, 973 F.2d 498, 503 (6th Cir. 1992).

These rules make sense. Property casualty insurance proceeds are not cash windfalls. They are intended to repair or replace real or personal property that was damaged by a covered peril. In other words, an insurance

claim – and any resulting payments – are a placeholder for the underlying insured property until such time that the property is restored to its pre-damage condition. Property casualty insurance payments should not be considered separate marital property. They should be subject to division only insofar as the marital property, itself, is divided.

The value of such insurance payments, likewise, should be tied to the value of the underlying marital property. There are frequently differences between the market value of marital property and its replacement cost. Courts regularly contemplate that the cost to replace damaged or lost property can be higher than its market value. *See, People v. Harris*, 2021 IL App (1st) 182595-U, ¶ 22 (citing *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 130314, ¶ 32) ("Replacement cost is normally much higher than the fair cash market value."). *See also Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 438 (Fla. 2013) ("replacement cost policies provide greater coverage than actual cash value policies because depreciation is not excluded from replacement cost coverage, whereas it generally is excluded from actual cash value"); *Mayer v. McNair Transp. Inc.*, 384 So. 2d 525, 526 (La. Ct. App. 1980) (citing jury instructions comparing different methods of evaluating a loss); *State v. Jackson*, 303 P.3d 727 (Kan. Ct. App. 2013) (noting that fair market value subject to restitution was approximately one half of its replacement cost).

Even if the Circuit Court were correct that Eric should have been allowed to seek some relief under Rule 60(b), it failed to conduct the proper inquiry into what kind of relief Eric should have received. As a preliminary matter, the Circuit Court neglected to evaluate how much it would actually cost to replace the property damaged by the fire.

Eric does not dispute that Jacqueline was entitled to receive the Canadian Property in the divorce. The Parties agreed to its value based on its pre-damage condition. If Jacqueline is not permitted to use the insurance proceeds to restore the Canadian Property to its pre-loss state, she will not receive the marital property that was the product of the Parties' mutual bargain. By failing to even conduct that factual inquiry, the Circuit Court should be reversed.

Additionally, Eric never argued – and the Circuit Court never found – that the actual marital property was misvalued. The Parties agreed that the Canadian Property was properly valued at $2 million. *See, e.g.*, R. 24 ("The property is valued at roughly $2 million."); HT at 12:6-8 ("the parties negotiated back and forth and ultimately they arrived at $2,000,000 U.S. dollars, which again is $2.8 million dollars Canadian."). The question should not have been what the value of the property casualty insurance policies was. The question should have been whether there were misrepresentations or frauds related to the value of the Canadian Property, itself. That argument

was never raised, and the Circuit Court abused its discretion by evaluating the wrong issue.

CONCLUSION

Eric freely and voluntarily decided not to conduct due diligence into the value of the Parties' assets. Under this Court's precedence, he cannot seek Rule 60(b) relief based on the idea that he did not have adequate or accurate information or documents. The Circuit Court erred in finding that he could.

The Circuit Court compounded this error by treating the insurance proceeds that formed the basis for Eric's Rule 60(b) motion as if they were separate marital assets from the Canadian Property, which Jacqueline received out of the Parties' mutually bargained for stipulation. The Circuit Court failed to evaluate whether these funds were necessary to repair or replace the damaged marital property and failed to consider that these funds were necessary to restore the marital property that Jacqueline received.

This Court should decide that, in South Dakota, property casualty insurance proceeds are not separate from the marital property that they insure. Rather, such funds exist solely to repair or replace marital property that has been damaged by a covered peril under the insurance policy. As such, they should not be given independent value or evaluated independently. The Circuit Court erred by seeming to equate the same. Reversal is necessary to correct this error.

Dated April 25, 2025.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Appellant's Brief does not exceed the word limit set forth in SDCL § 15-26A-66, said Brief containing 4,038 words, exclusive of the table of contents, table of cases, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel.

/s/ Robert D. Trzynka
One of the attorneys for Appellant

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the below documents were electronically filed with the Clerk of the Supreme Court via Odyssey:

- Appellant's Brief;
- Certificate of Compliance; and
- Certificate of Service

Notification of filing and service of such documents completed upon the following person, by placing the same in the service indicated, addressed as follows:

A. Russell Janklow	[ ]	Federal Express
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The undersigned further certifies that a copy of Appellant's Brief was mailed by First Class U.S. Mail, postage prepaid to:

Ms. Shirley A. Jameson-Fergel
Clerk of the Supreme Court
500 East Capitol Avenue
Pierre, SD 57501-5070

Dated April 25, 2025.

/s/ *Robert D. Trzynka*
One of the attorneys for Appellant

INDEX TO APPELLANT'S APPENDIX

STATE OF SOUTH DAKOTA	) :SS	IN CIRCUIT COURT
COUNTY OF MINNEHAHA	)	SECOND JUDICIAL CIRCUIT

JACQUELINE M. TRUMBLE, Plaintiff, v. ERIC TRUMBLE, Defendant.	49DIV23-294 **STIPULATION AND AGREEMENT**

THIS STIPULATION AND AGREEMENT made and entered into, by and between JACQUELINE M. TRUMBLE, hereinafter referred to as Wife, and ERIC TRUMBLE, hereinafter referred to as Husband, WITNESSETH:

WHEREAS, the Parties married each other on November 20, 1997, in British Virgin Islands, Tortola, BVI;

WHEREAS, the Parties agree that this case is properly venued in Sioux Falls, Minnehaha County, South Dakota, and this Court has jurisdiction of this matter;

WHEREAS, three children were born to this marriage and all three children are now of legal age, and Wife is not now pregnant;

WHEREAS, by reason of circumstances and conditions between the Parties, they are now separated and living apart, and the above-entitled action for dissolution of the marriage is now pending in Circuit Court, Second Judicial Circuit, County of Minnehaha; and

WHEREAS, Wife and Husband contend that it is the purpose of this *Stipulation and Agreement* to resolve the property settlement, alimony/separate maintenance, and other issues of the marriage; and

WHEREAS, both parties are represented by counsel in this matter. Wife is represented by Hope Okerlund Matchan of Hope Matchan Law, and Husband is represented by A. Russell Janklow of Johnson, Janklow & Abdallah, LLP;

WHEREAS, the Parties had the opportunity to review this Agreement with his or her counsel and have been fully advised of his or her rights;

NOW, THEREFORE, Wife and Husband, for and in consideration of mutual promises herein contained and the acts performed and to be performed as provided herein and both Parties, being healthy, able-bodied persons under no disability or duress, do knowingly and understandingly, freely and voluntarily, and each party respectfully mutually covenants and agrees, one with the other, and stipulates and agrees as follows:

1. **Incorporation.** The Parties agree that, upon execution of this Agreement by both of the Parties, the terms and conditions of this Agreement shall be incorporated into the final Judgment and Decree of Divorce entered in the above-entitled matter. All matters affecting the interpretation of the Agreement and the rights of the Parties in relation to this Agreement shall be governed by the laws of the State of South Dakota.

2. **Effective Date.** This Agreement shall become binding upon the Parties and their legal representatives, successors, and assigns, immediately upon the execution of this Agreement by the Parties.

3. **Attorneys' Fees and Costs.** The Parties agree to be responsible for his or her individual attorneys' fees that he or she has incurred in this matter as well as his or her individual costs and expenses incurred related to this litigation.

4. **Disclosure of Property.** The Parties agree that they have disclosed the existence of all property, in whatever form, owned by either or both of them, and that this Agreement is based upon a full knowledge of all property. Should an item of property be discovered in the future or should a party have failed to disclose the existence of an item of property, the Parties shall share equally in the value of that property, or the party who does not receive the undisclosed item shall receive an equivalent value in cash or other property.

5. **Real Property.** The Parties jointly own or have a legal interest in real property

located at E Thurlow Island Lot 3, Plan VIP57456, District Lot 255, Coast Range 1 Land District PID: 018-452-957 ("Canadian Property"). The structures on the Canadian Property have burdened down, and the Wife carried insurance on the Canadian Property. The Parties agree that Wife shall be entitled to the exclusive ownership, title, use, and occupancy of the Canadian Property, and Wife shall retain the insurance proceeds related to the claim due to the fire that occurred at the Canadian Property. The Parties also agree that Husband shall transfer and/or quit claim deed and interest or claim to Wife all rights, title and interest to the real property as described above within 30 days.

In addition, the Parties jointly own real property located at 3524 S. Spencer Blvd., Sioux Falls, SD 57103 ("Sioux Falls Property"). The Parties agree that Husband shall be entitled to the exclusive ownership, title, use, and occupancy of the Sioux Falls Property. The Parties agree that Wife shall quit claim to Husband all rights, title and interest to the Sioux Falls Property as described above within 30 days. Any indebtedness related to the Sioux Falls Property shall be the responsibility of Husband.

6. **Personal Property.** The Parties agree that each party shall retain all items that they had prior to the marriage and will be the sole owners of said property exclusive of the rights of the other party as well as the items specifically assigned to each party through this Agreement.

Husband shall retain as his sole and separate property all of his personal clothing and effects, jewelry and such other items of personal property that are currently in his possession or currently at the Sioux Falls Property, including his wedding ring, guns, and tools. Husband will be the sole owner of said property exclusive of the rights of the Wife.

Wife shall retain as her sole and separate property all of her personal clothing and effects and such other items of personal property that are currently in her possession or currently at the Sioux Falls Property, including her engagement and wedding rings, and other fine jewelry. Wife will be the sole owner of said property exclusive of the rights of the Husband.

With the exception of the above-listed items, the Parties agree that Husband shall be entitled to the exclusive ownership, title, and use of all household items currently located at the Sioux Falls Property.

7. **Vehicles.** The Parties agree that each party shall retain the following vehicles, free and clear of any claim by the other party.

Husband shall receive the 2009 Chevrolet Suburban and 2012 Volvo XC60.

Wife shall receive the 2020 Toyota Tundra and 2019 Silver Streak boat.

Within 30 days of the signing of this Stipulation, the Parties shall remove each other's names from the vehicles they are granted by either refinancing or selling the vehicle or doing a title name change.

8. **Retirement Benefits and Investment Accounts.** Except as specifically provided herein, Wife and Husband shall each retain his or her own retirement benefits and/or profit-sharing benefits and investment accounts as his or her own sole and separate property for his or her own exclusive use and benefit, including but not limited to each party's 401k.

With the exception that Husband shall transfer two-hundred and forty thousand dollars ($240,000) from his 401k to Wife's 401k.

The Parties further agree that execution of any and all documents pertinent and necessary to affect such exclusive retention shall be executed on or before the filing of the Judgment and Decree of Divorce, or upon request thereafter.

9. **Debts.** Upon entry of the divorce decree, each party agrees to assume and be responsible for all debts that they have individually incurred for which they are principally responsible, as well as all debt on those items currently in their possession or awarded to them in the division of property and shall save and hold harmless the other party therefrom, including necessary attorneys' fees and costs. Each party agrees not to contract any debts, charges or liabilities whatsoever for which the other, or his or her property or estate, shall be or may

become liable, and not to obtain credit in joint names or on the promise of joint repayment, except those obligations specifically excepted herein.

With the exception that Husband shall pay the balance of the debt Wife has incurred on her TD Bank credit card up to and not exceed twenty thousand dollars ($20,000).

Both Parties acknowledge and understand that this Agreement, and/or the final Judgment and Decree of Divorce, does not affect the rights of any creditor to seek judicial remedies against the other party in the event of a joint or statutory debt and further, that although the Parties have divided the indebtedness between them, the creditors do not have to abide by the Parties' division of the indebtedness.

10. Checking and Savings Account. Each party shall retain the funds in their individual checking and savings accounts and shall execute any paperwork necessary to remove the other party from any account in which his or her name appears. Specifically, Wife shall retain the funds in the TD Canada Trust Bank Checking Account, TD Canada Trust Savings Account, and TD Crossborder Account. Husband shall retain the funds in his TD US Bank Account and Premier Bank Account.

11. Taxes. The Parties agree that they will file their 2023 taxes jointly, and all future tax returns, starting in 2024, shall be filed separately and apart from each other. The Parties further acknowledge that their attorneys have not rendered tax advice on the consequences of this Agreement, and the Parties are encouraged to seek such advice as they deem necessary from a competent tax advisor.

12. Life Insurance. The Parties may each retain any life insurance policy or policies for which he or she is the insured with beneficiaries designated as they so choose.

13. Health Insurance. Each party shall obtain their own health insurance coverage and shall be solely responsible for the costs associated with such coverage.

14. **Undisclosed Debts.** In the event that there is a debt or obligation that has not been heretofore disclosed that obligation shall become the sole responsibility of the party that incurred it.

15. **Transfer of Property.** Each party releases, conveys, transfers, and assigns to the other party all of his or her rights, title and interest prospective in each item of property herein appointed, set aside, transferred, or restored and confirmed to the other party.

16. **Execution of Documents**. Each of the respective Parties agree to execute any necessary documents, deeds, assignments, or transfers of title necessary or required to carry out the terms and conditions of this Agreement. In the event the necessity of execution of any documents shall arise in the future, the respective party agrees to forthwith exercise the same upon written demand of the other party.

17. **Support, Maintenance or Alimony**. The Parties hereby waive any claim against one another for alimony, maintenance, or support and have been fully advised of such waiver.

18. **Understanding and Certification of Plaintiff and Defendant.** The Wife and Husband each acknowledge and certify that they are entering into this Agreement freely and voluntarily; that each is relying upon the financial information and data furnished by the other; that each has ascertained and weighed, to his or her satisfaction, all of the facts and circumstances likely to influence his or her judgment herein; and all the provisions herein as well as all questions pertinent hereto have been explained to them and are understood by them to their satisfaction; that they have given separate consideration to all the provisions hereof, including those for division of property and alimony; that they clearly understand and expressly agree to all the provisions of this Agreement.

19. **Binding.** This Agreement shall be binding upon and adhered to the benefit of the heirs, administrators, guardians, executors and assigns of each of the Parties.

20. **Estates.** Wife and Husband hereby mutually release and waive any and all rights, title, and interest accruing by operation of law or under any statute now or hereafter in force, or otherwise to participate in the separate estates and property of each other, whether such property be real or personal or wheresoever located, and whether acquired before or subsequent to their marriage, and whether acquired before or subsequent to the date hereof, including any right of election to take against any last will and testament of each other, and any right to the administration of the estate of each other, except only as provided by will or codicil executed after the date of this matter's Judgment.

21. **Waiver.** The Parties agree that the Court may, upon receipt of this executed *Stipulation and Agreement*, make and enter a final Judgment and Decree of Divorce herein without entry of Findings of Facts and Conclusions of Law, the Parties having expressly waived the same, and without further notice of the proceedings of trial in this matter, all of which are expressly waived.

22. **Non-Dischargeability.** The Parties specifically acknowledge herein that all debts and obligations assumed by them, and the property awarded to them hereunder, are in lieu of additional maintenance and support (although specifically not to be deemed alimony for purposes of federal tax return adjustments) and therefore, are non-dischargeable against them in accordance with 11 U.S.C. 523(5) of the present federal code and any amendments thereto.

23. **Conflict of Law.** This *Stipulation and Agreement* shall be construed in accordance with the substantive laws of the State of South Dakota.

24. **Grounds for Dissolution-Irreconcilable Differences.** The Parties hereto agree that the divorce may be entered upon the grounds of irreconcilable differences.

25. **Interference.** The Parties shall hereafter live separate and apart except as otherwise specified herein. Each party shall be free from interference, authority or control, direct or indirect, of the other party. Each party may, for his or her separate benefit, engage in any

employment, business, or profession he or she may select. The Parties shall not molest or interfere with each other in any aspect of their personal or professional lives.

26. Tax Consequences. The Parties acknowledge that there may be certain tax consequences pertaining to this Agreement, that their attorneys have not furnished tax advice with respect to this Agreement, that each party has been directed and advised to obtain independent tax advice from qualified tax accountants or tax counsel prior to signing this Agreement and that they have had the opportunity to do so.

27. Representations of the Parties. Both Parties are aware of their discovery rights and the foregoing terms of this Agreement are based upon the representations of the Parties to each other that they have made a thorough and complete disclosure of their assets, liabilities and overall financial position, and each acknowledges that this Agreement is being executed in reliance on the validity of said information.

28. Approval and Adoption. Both Parties have read the foregoing *Stipulation and Agreement* and have signed the same with full knowledge of its contents and each acknowledges receipt of a copy of said Agreement.

29. Fairness of the Agreement. This Agreement is deemed to be fair by both Parties and not the result of any fraud, duress, or undue influence exercised by either party upon the other or by any person or persons upon either.

30. Partial Invalidity. If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions of this Agreement shall nevertheless continue in full force and effect.

31. Modification and Waiver. A modification and waiver of any provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. The failure of either party to insist upon strict performance of any of the

provisions of this Agreement shall not be construed as waiver of any subsequent default of the same or similar nature.

32. Entire Agreement. Wife and Husband agree that this Agreement constitutes the entire Agreement of the Parties and is a full and complete property settlement between the Parties. No other further Agreement, oral or otherwise, constitutes part of the settlement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.
SIGNATURE PAGE TO FOLLOW.]

Dated this 7th day of March, 2024.

JACQUELINE M. TRUMBLE
("Plaintiff/Wife")

STATE/PROVINCE OF British Columbia)
:SS
COUNTY/DISTRICT OF _____)

Jacqueline M. Trumble, being first duly sworn on her oath, deposes and states that she is the Wife in the above-entitled action; that she has read the foregoing and knows the contents thereof, that the same is true of her own knowledge except as to those matters therein stated on information and belief, and as to those matters, she believes them to be true.

JACQUELINE M. TRUMBLE

On this 7th day of March, 2024, before me personally appeared Jacqueline M. Trumble, known to me to be the person who executed the foregoing *Stipulation and Agreement*, and acknowledged that she executed the same of her own free will, and deed.

WITNESSED AS TO EXECUTION ONLY
NO ADVICE SOUGHT OR GIVEN

(SEAL)

Notary Public – State/Province of British Columbia
My Commission Expires: N/A

Dated this 11 day of March, 2024.

Anastasia Ganton
Barrister & Solicitor
200 - 1260 Shoppers Row
Campbell River BC V9W 2C

ERIC TRUMBLE
("Defendant/Husband")

STATE OF Texas)
:SS
COUNTY OF Bell)

Eric Trumble, being first duly sworn on his oath, deposes and states that he is the Husband in the above-entitled action; that he has read the foregoing and knows the contents thereof, that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

ERIC TRUMBLE

On this 11 day of March, 2024, before me personally appeared Eric Trumble, known to me to be the person who executed the foregoing *Stipulation and Agreement*, and acknowledged that he executed the same of his own free will, and deed.

(SEAL)

Notary Public - State of Texas
My Commission Expires: 03-30-2027

A. SMITHEE
My Notary ID # 134280204
Expires March 30, 2027

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:ss	
COUNTY OF MINNEHAHA	)	SECOND JUDICIAL CIRCUIT

JACQUELINE M. TRUMBLE, Plaintiff, v. ERIC TRUMBLE, Defendant.	49DIV23-294 **AMENDED ORDER ON DEFENDANT'S MOTION AND AFFIDAVIT FOR ORDER TO SHOW CAUSE AND MOTION FOR RELIEF FROM ORDER ON THE GROUND OF FRAUD**

The above-entitled action having come on before the Court in Sioux Falls, Minnehaha County, South Dakota in the Second Judicial Circuit, on Monday, December 2, 2024. Plaintiff Jacqueline M. Trumble personally being present and represented by counsel, Alex Halbach of Halbach|Szwarc Law Firm, and Defendant Eric Trumble being represented by counsel, Erin Schoenbeck Byre and A. Russell Janklow of Johnson, Janklow & Abdallah Law Firm.

At the hearing, Defendant's counsel stipulated to dismiss the Motion and Affidavit for Order to Show Cause and the Parties' proceeded to argument on the Motion for Relief from Order on the Ground of Fraud Pursuant to SDCL 15-6-60(b).

After reviewing the pleadings and documents submitted by the Parties and upon hearing the arguments of counsel, the Court has found that Plaintiff committed fraud, failed to disclose or omitted assets, and/or intentionally concealed assets by producing information and representing to both Defendant and his counsel an incorrect insurance limit for the couple's property located at E. Thurlow Island Lot 3, Plan VIP57456, District Lot 255, Coast Range 1 Land District PID: 018-452-957 ("Canadian Property"), therefore,

IT IS ORDERED, ADJUDGED AND DECREED that the Court has jurisdiction over the Parties as this Motion was filed within two years after the date of discovery of the omission, and

the Court entered the Judgment and Decree of Divorce in this matter and, therefore, has continuing, exclusive jurisdiction pursuant to SDCL 25-4-79 and SDCL 25-4-82;

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff intentionally concealed or omitted assets pursuant to SDCL 25-4-77 and committed fraud pursuant to SDCL 15-6-60(b);

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff, Ms. Trumble, shall produce to Defendant, Mr. Trumble, every insurance policy in effect for the Canadian Property at the time of the fire and produce documentation setting forth all payments made by any insurance company pertaining to the Canadian Property, including but not limited to payments for the dwelling, personal property, debris removal and infrastructure rebuild;

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff, Ms. Trumble, shall produce this information within thirty (30) days of entry of this Order;

IT IS ORDERED, ADJUDGED AND DECREED that the proceeds from any and all insurance policies for the Canadian Property in excess of $2 million Canadian dollars, shall be equally divided between the Parties pursuant to SDCL 25-4-77 and the Parties' Stipulation and Agreement, which was integrated into the Judgment and Decree of Divorce and provides the following regarding undisclosed assets:

> **Disclosure of Property**. The Parties agree that they have disclosed the existence of all property, in whatever form, owned by either or both of them, and that this Agreement is based upon a full knowledge of all property. Should an item of property be discovered in the future or should a party have failed to disclose the existence of an item of property, the Parties shall share equally in the value of that property, or the party who does not receive the undisclosed item shall receive an equivalent value in cash or other property.

IT IS ORDERED, ADJUDGED AND DECREED that because the insurance proceeds are in Canadian dollars, the exchange rate to be used for the proceeds Plaintiff shall tender to Defendant

shall be based upon the exchange rate at the time the asset was concealed, on March 11 2024, which was 0.741;

IT IS ORDERED, ADJUDGED AND DECREED that upon entry of this Order, Plaintiff, Ms. Trumble, shall have ninety (90) days to produce the funds and shall place any insurance proceeds in excess of $2 million Canadian dollars in the trust account of the Halbach|Szware Law Firm to ensure the safekeeping of the asset;

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff, Ms. Trumble, shall pay the attorneys' fees and costs Defendant, Mr. Trumble, incurred in bringing this Motion pursuant to SDCL 25-4-78, totaling $3,169.01 according to the Affidavit submitted by Defendant's counsel.

BY THE COURT:

John R. Pekas
Circuit Court Judge

12/23/2024 8:21:17 AM

Attest:
Ludlow, Hannah
Clerk/Deputy

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:SS	
COUNTY OF MINNEHAHA	)	SECOND JUDICIAL CIRCUIT

JACQUELINE MARAGARET TRUMBLE, Plaintiff, v. ERIC TRUMBLE, Defendant.	49DIV23-000294 **AFFIDAVIT OF JACQUELINE MARGARET TRUMBLE IN OPPOSITION TO DEFENDANT'S MOTION AND AFFIDAVIT FOR ORDER TO SHOW CAUSE AND MOTION FOR RELIEF FROM ORDER ON THE GROUND OF FRAUD PURSUANT TO SDCL 15-6-60(b)**

Jacqueline Margaret Trumble, states and alleges as follows:

1. I am the Plaintiff in the above-captioned matter and I make this affidavit based on my personal knowledge.

2. Between the time I filed the Complaint in this matter and the time Defendant admitted service, our Canadian property ("Canadian Property") was lost to a fire.

3. I had insurance coverage on the Canadian Property and the insurance coverage included replacement cost coverage, which is based upon the costs necessary to rebuild the Canadian Property.

4. I had provided the Defendant with a copy of the insurance policy so he could understand our coverage as we discussed potential values for purposes of settling our divorce.

5. At the time Defendant and myself entered into the Stipulation and Agreement, the true value of the insurance claim was unknown because I didn't yet know the cost to rebuild. I repeatedly told Defendant that I couldn't ascertain the true value of the insurance policy and the claim because the process of obtaining estimates to rebuild was still ongoing. I

did provide him with a copy of the policy so he was aware of the policy and the coverages we had purchased.

6. Similarly, the final value of the insurance claim was not known at the time our divorce was finalized and he knew that the claim was still open and ongoing at the time.

Further your affiant sayeth naught.

Dated this November 25, 2024 in British Columbia, Canada.

I declare under penalty of perjury under the law of South Dakota that the foregoing is true and correct.

J Trumble

Jacqueline Margaret Trumble

CERTIFICATE OF SERVICE

I hereby certify that on this November 25, 2024, a true and correct copy of the foregoing was served upon the following persons via Odyssey File & Serve:

Russ Janklow
russ@janklowabdallah.com

Erin Schoenbeck Byre
erin@janklowabdallah.com

/s/ Alex Halbach
Alex Halbach

Title	Affidavit of Jacqueline in Opposition to Motion re Fraud -...
File name	Affidavit%20of%20...%20re%20Fraud.pdf
Document ID	8da07b604ad08ca6fa841e68a05d6f8a1dbec271
Audit trail date format	MM / DD / YYYY
Status	• Signed

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Document History

SENT	**11 / 26 / 2024** 00:44:18 UTC	Sent for signature to Jacqueline Maragaret Trumble (jmtrumble2@gmail.com) from alexh@halbachlawfirm.com IP: 98.161.134.224
VIEWED	**11 / 26 / 2024** 01:10:02 UTC	Viewed by Jacqueline Maragaret Trumble (jmtrumble2@gmail.com) IP: 170.203.201.147
SIGNED	**11 / 26 / 2024** 01:20:46 UTC	Signed by Jacqueline Maragaret Trumble (jmtrumble2@gmail.com) IP: 170.203.201.147
COMPLETED	**11 / 26 / 2024** 01:20:46 UTC	The document has been completed.

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

APPEAL NO. 30966

JACQUELINE M. TRUMBLE,

PLAINTIFF AND APPELLANT,

V.

ERIC TRUMBLE,

DEFENDANT AND APPELLEE.

APPEAL FROM THE SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE JOHN PEKAS
CIRCUIT COURT JUDGE

BRIEF OF APPELLEE ERIC TRUMBLE

ATTORNEYS FOR APPELLANT
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ATTORNEYS FOR APPELLEE
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Notice of Appeal Filed: March 8, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PRELIMINARY STATEMENT

Citations to the settled record in 49DIV23-000294 as reflected by the Clerk's Index are designated with "R." and the page number. Citations to the transcript from the December 2, 2024 hearing before the Circuit Court are designated as "HT" followed by the page number.

JURISDICTIONAL STATEMENT

This is an appeal arising from the Circuit Court's *Amended Order on Defendant's Motion and Affidavit for Order to Show Cause and Motion for Relief from Order on the Ground of Fraud*, entered on December 23, 2024. R. 128-30. A *Notice of Entry of Amended Order* was filed by Eric on December 26, 2024, and a *Notice of Appeal* was filed by Jacqueline on January 13, 2025. R. 131; 137. This Court has jurisdiction under SDCL 15-26A-3.

REQUEST FOR ORAL ARGUMENT

Appellee Eric Trumble respectfully requests the privilege of appearing for oral argument before this Honorable Court.

STATEMENT OF THE ISSUES

I. THE CIRCUIT COURT HAD SUFFICIENT GROUNDS TO FIND THAT JACQUELINE COMMITED FRAUD, FAILED TO DISCLOSE OR OMITTED ASSETS, AND/OR INTENTIONALLY CONCEALED ASSETS PURSUANT TO SDCL 25-4-77 AND SDCL 15-6-60(b).

The Circuit Court held a hearing on December 2, 2024, regarding whether Jacqueline committed fraud by concealing or omitting marital assets from Eric. After hearing the arguments of counsel and reviewing the evidence, the Circuit Court held that Jacqueline had committed fraud, failed to disclose or omitted assets—namely, the true value of the insurance policy on the Parties' property in Canada—and/or intentionally concealed assets pursuant to SDCL 25-4-77 and SDCL 15-6-60(b). The Circuit Court then ordered that the undisclosed/concealed marital assets were to be evenly divided between the Parties pursuant to the Parties' *Stipulation and Agreement*, which was integrated into the *Judgment and Decree of Divorce*, and SDCL 25-4-77.

- SDCL 25-4-77
- SDCL 15-6-60(b)
- *Pekelder v. Pekelder*, 1999 S.D. 45, 591 N.W.2d 810

II. THE CIRCUIT COURT CORRECTLY TREATED THE INSURANCE POLICY AND ITS PROCEEDS AS AN UNDISCLOSED OR INTENTIONALLY CONCEALED MARITAL ASSET.

Appellant Jacqueline did not raise this issue to the Circuit Court before to or during the December 2, 2024 hearing. The Circuit Court thus did not rule on this matter, and it is not ripe for review. In any event, the Circuit Court correctly determined that the insurance policy in excess of $2 million Canadian was an undisclosed marital asset, and appropriately ruled that the proceeds in excess of $2 million Canadian should be equally divided between the Parties.

- SDCL 25-4-77
- *Halbersma v. Halbersma*, 2009 S.D. 98, 775 N.W.2d 210
- *Erickson v. Erickson*, 2023 S.D. 70, 1 N.W.3D 632

STATEMENT OF THE CASE

After Jacqueline Trumble ("Jacqueline") filed for divorce, Eric Trumble ("Eric") served his *Answer* and a set of discovery seeking information pertaining to the couple's marital assets. R. 10-12. Jacqueline refused to respond to Eric's discovery requests, so he filed a *Motion to Compel*. R. 14-18. Before the hearing, the Parties entered into a *Stipulation and Agreement* setting forth their agreement for the distribution of their marital assets and debts. R. 28-37. The Circuit Court then entered a *Judgment and Decree of Divorce*, which integrated the Parties' *Stipulation and Agreement*. R. 26-27.

Eric later discovered that Jacqueline and her counsel had disclosed to Eric and his counsel a fraudulent or incorrect insurance policy. The fraudulent policy stated that the insurance policy limits for their major asset, a house in Canada, were only $2 million Canadian, when the true insurance policy is believed to have policy limits of over $4 million Canadian.[1] R. 73-98. As a result, Eric filed a motion with the Circuit Court asking the Circuit Court to find that Jacqueline fraudulently concealed marital assets, failed to disclose marital assets, omitted marital assets, or intentionally concealed marital assets. R. 40-44.

A hearing was held on December 2, 2024. R. 128-130. After hearing

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1. To date, Jacqueline has not disclosed the insurance policy or policies that covered the Canadian Property at the time of the fire. Eric still does not know the true amount of proceeds Jacqueline has received in excess of the $2 million Canadian.

the arguments of counsel and reviewing the evidence submitted by the Parties through affidavits, the Circuit Court held that Jacqueline had committed fraud, failed to disclose or omitted marital assets and/or intentionally concealed marital assets pursuant to SDCL 25-4-77 and SDCL 15-6-60(b). *Id.* It then ordered that the undisclosed or concealed marital assets be evenly divided between the Parties pursuant to SDCL 25-4-77 and the Parties' *Stipulation and Agreement*. *Id.*

This appeal follows.

STATEMENT OF THE FACTS

This is not a situation where a party is seeking to unwind a bad bargain. Instead, this is a case in which one of the parties presented overtly false information to the other during their marital property settlement negotiations and now seeks to reap the rewards of her fraudulent activity. Condoning this behavior will disrupt the entire divorce settlement process by allowing a spouse to "get away with" presenting false information to his or her former spouse if they can convince their former spouse to sign the settlement agreement before it is discovered that marital assets were concealed or fraudulently disclosed.

A. Jacqueline improperly withheld relevant information and presented false information in the divorce proceeding.

Jacqueline filed for divorce on May 31, 2023 in Minnehaha County, South Dakota. R. 1-4. Eric then served his *Answer* and *Interrogatories and Requests for the Production of Documents* on August 9, 2023. R. 10-13.

Request for Production of Document Number 13 sought, "any and all insurance policies in your possession for the property owned by Defendant and you located on East Thurlow Island in Canada." The East Thurlow Island property located in Canada was the Parties' largest marital asset. R. 41. The property is a multi-acre waterfront property consisting of a house that was under construction ("Canadian Property") and various out-buildings. Following the commencement of the divorce, the house on the property, which was under construction, burned to the ground in a fire. *Id.* Accordingly, throughout the divorce proceeding, the Parties were discussing the value of the house based upon the insurance policy that covered it.

For the next six months, Jacqueline refused to respond to Eric's discovery. Eric and his counsel repeatedly reached out to Jacqueline and her counsel requesting that she produce the information. Counsel's communications included at least ten e-mails and numerous phone calls. R. 14-16 (*Motion to Compel Brief* setting forth the Parties' communications). Ultimately, Jacqueline refused to respond resulting in Eric filing a *Motion to Compel* on February 12, 2024—six months after the discovery had been served. R. 14-18.

During the divorce proceeding, Jacqueline first claimed that the Canadian Property was not covered by insurance. R. 41. Then, on October 15, 2023, she produced—what Eric now knows to be—a fraudulent or inaccurate insurance policy. R. 71-98. The policy produced was issued by

National Insurance Company and stated that its limits for the Canadian Property were $2 million Canadian.[2] R. 73-98. On January 3, 2024, Jacqueline's counsel[3] then sent Eric's counsel an e-mail confirming the value of the insurance policy. Jacqueline's counsel wrote, "The insurance company will rebuild the home at $2 million Canadian." R. 99. Eric and his counsel relied upon the representations made by Jacqueline and her counsel.

Prior to the Circuit Court hearing Eric's *Motion to Compel*, the Parties negotiated the division of their marital property based on the fraudulent insurance policy. The Parties entered into a *Stipulation and Agreement*, which provided:

> **4. Disclosure of Property**. The Parties agree that they have disclosed the existence of all property, in whatever form, owned by either or both of them, and that this Agreement is based upon a full knowledge of all property. Should an item of property be discovered in the future or should a party have failed to disclose the existence of an item of property, the parties shall share equally in the value of that property, or the party who does not receive the undisclosed item shall receive an equivalent value in cash or other property.

R. 29, HT 6:5-12. The Circuit Court entered a *Judgment and Decree of Divorce* on March 25, 2024, which integrated the Parties' *Stipulation and Agreement*. R. 26-27.

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2. The handwriting on the policy is Jacqueline's.
3. Jacqueline was represented by different counsel during the marital property negotiations. Appellant counsel filed their *Notice of Appearance* after Eric filed the Motion at issue in this appeal.

B. *Discovery of the false information and the Circuit Court's Order holding that Jacqueline concealed or omitted marital assets.*

In October of 2024, Eric discovered that Jacqueline had presented a false or inaccurate insurance policy during the Parties' negotiations. As a result, his counsel filed a motion requesting that the Circuit Court order Jacqueline to produce the true value of the Canadian Property's insurance policy limits and order Jacqueline to evenly divide the undisclosed insurance proceeds in excess of $2 million Canadian. R. 40-44. The Parties submitted affidavits presenting evidence for the Circuit Court's consideration. R. 49-50; R. 66-101.

At the December 2, 2024 hearing, the Parties submitted argument and the Circuit Court reviewed the documents submitted by the Parties. R. 272-291. After ruling from the bench, the Circuit Court filed its *Amended Order on Defendant's Motion and Affidavit to Show Cause and Motion for Relief from Order on the Ground of Fraud* on December 26, 2024. R. 128-130. The Circuit Court found that Jacqueline had committed fraud, failed to disclose or omitted assets, and/or intentionally concealed assets by producing information and representing to both Eric and his counsel an incorrect insurance limit for the Canadian Property. *Id.* The Circuit Court further found that Jacqueline intentionally concealed or omitted assets pursuant to SDCL 25-4-77 and committed fraud pursuant to SDCL 15-6-60(b). *Id.* It then ordered any proceeds in excess of $2 million Canadian to be evenly

divided between the Parties pursuant to SDCL 25-4-77 and the Parties' *Stipulation and Agreement*. *Id.* In an affidavit filed by Jacqueline on January 27, 2025, following the hearing, Jacqueline submitted communications from TD Insurance (not National Insurance Company), which confirmed that she had at least one insurance policy on the property with limits of $4 million Canadian—or $2 million Canadian *above* the previously disclosed policy. R. 253-54.

STANDARD OF REVIEW

For Issue I, the Circuit Court reached its decision based upon SDCL 25-4-77 and SDCL 15-6-60(b). This Court has never addressed the standard of review for SDCL 25-4-77 (Remedies for Intentional Concealment of Omitted Assets). However, the statute discusses the Circuit Court's "findings" and an "equitable division" of the omitted assets. *See* SDCL 25-4-77 (stating, "If the court *finds* the omitted assets were intentionally concealed by the nonmoving party or the nonmoving party's agent, the court may order an *equitable division* of the omitted assets' appreciated value . . ." (emphasis added)). As a result, a clearly erroneous or an abuse of discretion standard is appropriate for Issue I regarding the Circuit Court's determination on the fraudulently concealed or omitted assets. *See Hill v. Hill*, 2009 S.D. 18, ¶ 5, 763 N.W.2d 818, 822 (stating, "[w]e review findings of fact under the clearly erroneous standard"); *Jeffries v. Jeffries*, 434 N.W.2d 585, 588 (S.D. 1989) (stating, "we will not overturn the ruling of the circuit court on a property

division unless we find that the court abused its discretion"); *Alma Grp., L.L.C. v. Weiss*, 2000 S.D. 108, ¶ 13, 616 N.W.2d 96, 99 (holding that the "standard of review for equitable actions in South Dakota is abuse of discretion").

Regarding SDCL 15-6-60(b), this Court has explained that "[a] motion for relief based on SDCL 15–6–60(b) is addressed to the sound discretion of the trial court. Absent an abuse of that discretion, the order denying such a motion cannot be disturbed on appeal. The trial court's discretion should be exercised liberally in accord with legal and equitable principles so as to promote the ends of justice." *Rogers v. Rogers*, 351 N.W.2d 129, 131 (S.D. 1984) (citations omitted).[4]

Issue II appears to arise out of the Circuit Court's factual determination that the insurance policy and its proceeds were an undisclosed marital asset. Accordingly, this issue should be reviewed under the clearly

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4. Contrary to Jacqueline's contention, evidence was submitted to the Circuit Court supporting the Motion, including Eric certifying that the information in the Motion was accurate (R. 40-44); the Affidavit of Jacqueline Trumble (R. 49-51); and the Affidavit Eric Trumble with its supporting exhibits (R. 66-101). In addition, Jacqueline was present at the hearing and held the ability to testify, but she elected to forgo this opportunity. *See Rogers*, 351 N.W.2d at 131 (stating, "Inasmuch as the motion to vacate was submitted on the basis of affidavits, our review of the evidence 'is unhampered by the rule that a trial judge who has observed the demeanor of the witnesses is in a better position to intelligently weigh the evidence than the appellate court.'").

erroneous standard. *See Hill*, 2009 S.D. 18, ¶ 5, 763 N.W.2d at 822.

ARGUMENT

I. THE CIRCUIT COURT HAD SUFFICIENT GROUNDS TO FIND THAT JACQUELINE COMMITED FRAUD, FAILED TO DISCLOSE OR OMITTED ASSETS, AND/OR INTENTIONALLY CONCEALED ASSETS PURSUANT TO SDCL 25-4-77 AND SDCL 15-6-60(b).

In its *Amended Order*, filed on December 26, 2024, the Circuit Court relied on two statutes—SDCL 25-4-77 and SDCL 15-6-60(b)—in conjunction with the Parties' *Stipulation and Agreement*, to support its holding that Jacqueline committed fraud, failed to disclose or omitted assets and/or intentionally concealed assets. R. 128-130. Accordingly, if this Court determines that the Circuit Court erred by granting relief under one statute, the other statute provides alternative grounds to affirm the Circuit Court's ruling.

A. Eric and his counsel relied upon the representations made by Jacqueline and her counsel.

Notably absent from Jacqueline's brief is an argument that she presented a true and accurate insurance policy to Eric and his counsel during the marital property division negotiations. Instead, Jacqueline attempts to avoid the issue by claiming that Eric did not act with due diligence in order to uncover that Jacqueline had presented a false insurance policy. A clear difference exists between a party holding no duty to disclose his or her assets without being asked, and a party's duty and (general ethical obligation) to present truthful information about the value of his or her assets to the other

party when asked. *See Pekelder v. Pekelder*, 1999 S.D. 45, ¶ 12, 591 N.W.2d 810, 813 (holding that once a party undertakes "discovery procedures to ascertain the nature and value of the marital assets, [the opposing party] operate[s] under a continuing obligation to make a full disclosure of those assets"). Here, in response to Eric's request, Jacqueline presented a false insurance policy, and she is now trying to reap the benefits of her fraud.

Eric and his counsel acted with due diligence to obtain the policy of insurance for the Canadian Property. First, Eric served discovery on Jacqueline on August 9, 2023, which specifically requested the insurance policy. R. 14. For the next six months, Eric's counsel followed up with Jacqueline's counsel in an attempt to receive her financial information. R. 14-16. After Jacqueline refused to produce the information, Eric's counsel was forced to file a *Motion to Compel*. R. 14-18.

Jacqueline then presented a policy to Eric which stated that the insurance limits for the Canadian Property were $2 million Canadian. R. 73. At the time of receiving this information, Eric had no reason to dispute the validity of the policy. Further, he personally could not gain access to the policy because he was not listed on the policy, which he discovered after the house burned down. R. 67. Thus, Jacqueline was the only party in control of this information. Jacqueline's counsel then sent an e-mail to Eric's counsel confirming the value of the insurance policy, on January 3, 2024, by stating, "The insurance company will rebuild the home at *$2 million Canadian*." R.

99 (emphasis added). Jacqueline's counsel had a duty of candor to both the opposing party and the Court. *See* S.D. Rules of Professional Conduct Appendix Chapter 16-18 Rule 3.3 ("Candor Toward the Tribunal") and S.D. Rules of Professional Conduct Appendix Chapter 16-18 Rule 3.4 ("Fairness to Opposing Party and Counsel"). Eric's counsel thus had no reason to dispute the validity of the statement.

Based upon this fraudulent information, the Parties entered into a *Stipulation and Agreement*, which stated:

> 4. **Disclosure of Property**. The parties agree that they have disclosed the existence of all property, in whatever form, owned by either or both of them, and that this Agreement is based upon a full knowledge of all property. *Should an item of property be discovered in the future or should a party have failed to disclose the existence of an item of property, the Parties shall share equally in the value of that property, or the party who does not receive the undisclosed item shall receive an equivalent value in cash or other property.*

R. 29, HT 6:5-12 (emphasis added). Even more concerning, the *Stipulation and Agreement* explicitly provided:

> 27. **Representations of the Parties**. Both Parties are aware of their discovery rights and the foregoing terms of this Agreement are based upon the representations of the Parties to each other that they have made a thorough and complete disclosure of their assets, liabilities and overall financial position, and *each acknowledges that this agreement is being executed in reliance on the validity of said information.*

R. 35 (emphasis added); HT 6:18-7:1; *see also* R. 33; HT 6:12-16 ("each [party] is relying upon the financial information and data furnished by the other"). Jacqueline signed the *Stipulation and Agreement* attesting "that she has read

the foregoing and knows the contents thereof, that *the same is true of her own knowledge . . . .*" R. 37 (emphasis added). She then allowed the Circuit Court to enter the *Judgement and Decree of Divorce* without revealing to the Circuit Court or Eric that she had produced a fraudulent insurance policy during their negotiations, which severely undervalued the couple's largest asset.

Eric and his counsel, accordingly, performed due diligence to obtain the information. Throughout the negotiation process, Jacqueline repeatedly confirmed that the information she and her counsel provided was accurate. She then signed the *Stipulation and Agreement*—a binding contract between the Parties— under oath attesting that the information was true. *See Duran v. Duran*, 2003 S.D. 15, ¶ 7, 657 N.W.2d 692, 696 (stating, "stipulations in divorce proceedings are governed by law of contracts"). Due diligence during the marital property negotiation process does not require a party to fact check representations that the opposing party (and her counsel) *repeatedly testify to be true under oath*. Due diligence simply requires the party to request the information, and then permits the party to rely upon the assumption that the opposing party has not fabricated its responses.

Eric respectfully requests that this Court affirm the Circuit Court's Order as he and his counsel did their due diligence to request the information during the negotiation process.

B. The Circuit Court correctly ruled that Jacqueline intentionally concealed the true value of the insurance policy pursuant to SDCL 25-4-77.

SDCL 25-4-77 provides:

> If the court finds the omitted assets were intentionally concealed by the nonmoving party or the nonmoving party's agent, the court may order an equitable division of the omitted assets' appreciated value, a forfeiture of the omitted assets to the moving party, or any other appropriate distribution. In addition, the court may award either compensatory damages or punitive damages, or both, to the moving party.

The Circuit Court did not commit a clearly erroneous error or abuse its discretion by finding that Jacqueline "intentionally concealed" assets from Eric, and it did not error by ordering the equitable division of the omitted assets pursuant to SDCL 25-4-77. The Circuit Court's ruling was supported by the evidence that Eric and his counsel submitted prior to and during the hearing. *See Grode v. Grode*, 1996 S.D. 15, ¶ 5, 543 N.W.2d 795, 799 (stating, "All conflicts in the evidence must be resolved in favor of the trial court's findings.").

First, Eric filed a *Motion and Affidavit* which provided:

> Following the entry of the Court's Order, Defendant discovered that Plaintiff had lied about the value of the Canadian Property's insurance proceeds. Defendant discovered that the value of the Canadian Property's insurance proceeds was actually four million Canadian dollars ($4,000,000) opposed to the two million Canadian dollars ($2,000,000) that Plaintiff had represented to Defendant.

R. 42. Eric then filed an *affidavit* with the Circuit Court, which provided that "[o]n October 15, 2023, Jacqueline produced an insurance policy for the Canadian home. However, the insurance policy supplied by Jacqueline was not the active insurance policy for the property. The active and true insurance policy had limits well in excess those listed in the provided policy." R. 67.

Eric's affidavit goes on to note that "Jacqueline's attorney also represented to both my counsel and me that '[t]he insurance company will rebuild the home at $2 million Canadian.' This information was untrue." *Id.* The affidavit then attaches the fraudulent insurance policy produced by Jacqueline (R. 73-98) and the e-mail correspondence from Jacqueline's counsel (R. 99-101). The evidence clearly supports the Circuit Court's finding that Jacqueline concealed assets.

Further, Jacqueline was present at the hearing and elected not to testify to rebut this information. R. 49. Following the hearing, however, Jacqueline confirmed through an affidavit and emails with TD Insurance that one insurance policy on the Canadian Property has policy limits of at least $4,000,000 Canadian. R. 253.

The evidence clearly supports the Circuit Court's ruling that Jacqueline "intentionally concealed or omitted assets pursuant to SDCL 25-4-77" and its direction that the proceeds in excess of $2 million Canadian, shall be "equally divided between the Parties pursuant to SDCL 25-4-77 and the Parties'

Stipulation and Agreement[.]" R. 129. This ruling was neither clearly erroneous nor "not justified by, and clearly against, reason and evidence." *Goff v. Goff*, 2024 S.D. 60, ¶ 13, 12 N.W.3d 139, 146. Eric respectfully requests that the Court affirm on this issue.

C. The Circuit Court correctly granted relief under SDCL 15-6-60(b) as Jacqueline and her counsel committed fraud, misrepresented assets, and withheld assets.

SDCL 15-6-60(b) provides that "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for . . . (1) Mistake, inadvertence, surprise, or excusable neglect [or] . . . (3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party[.]"[5] The Circuit Court correctly ruled that Jacqueline committed fraud and misrepresented, concealed, or withheld marital assets during the Parties' negotiations.

This Court has repeatedly held that fraud or mistake are justifiable grounds to authorize relief from property settlements incorporated into divorce decrees. *See Rogers*, 351 N.W.2d at 131; *Holt v. Holt*, 84 S.D. 671, 674, 176 N.W.2d 51, 53 (1970); *Jeffries*, 434 N.W.2d at 588. Specifically, in *Anderson v. Somers*, the Court noted:

> A divorce decree which divides or allots property or provides for payment of a gross sum in lieu thereof is a

5. The *Judgment and Decree of Divorce* was filed on March 25, 2024. R. 27. Eric filed his motion on October 14, 2024. R. 43. The motion was filed within one year of the judgment pursuant to SDCL 15-6-60(b).

> final and conclusive adjudication and cannot be subsequently modified. *The only exception to this rule of finality is the presence of fraud or any other reason that would allow relief from a judgment.* Thus, "[i]n *Rogers v. Rogers*, 351 N.W.2d 129 (S.D.1984), we held that SDCL 15–6–60(b) authorizes relief from judgment based on mistake, inadvertence, excusable neglect, surprise and fraud, and is applicable to awards of support and property settlements incorporated in divorce decrees." Although fraud is explicitly made a reason for relieving a party from a judgment under Rule 60(b)(3), we have also considered fraud as a basis for granting relief from a divorce decree under Rule 60(b)(6).

455 N.W.2d 219, 221 (S.D. 1990) (citations omitted) (emphasis supplied). The Circuit Court, therefore, had authority to re-distribute the undisclosed assets based upon Jacqueline's mistake, inadvertence, excusable neglect, surprise or fraud.

Further, as is discussed above, Eric's counsel presented evidence showing that Jacqueline turned over a fraudulent insurance policy with limits of only $2 million Canadian, when the true policy had limits in excess of $4 million Canadian, and her counsel also inaccurately represented that the policy was worth $2 million Canadian. R. 73-101. As a result, Jacqueline is set to receive a windfall due to her fraud. R. 253. Sufficient evidence existed for the Circuit Court's determination that Jacqueline committed fraud pursuant to SDCL 15-6-60(b) and to order an equal division of the policy's proceeds in excess of $2 million Canadian.

In her brief, Jacqueline relies heavily on *Jeffries v. Jeffries*, 434 N.W.2d 585 (S.D. 1989) for her proposition that the Parties were not in a confidential

relationship, so she supposedly held no duty to disclose the true value of the insurance policy for the Canadian Property. Notably missing from Jacqueline's brief is the clear text from the *Jeffries*' opinion, which provides, "*we do not intend to grant to estranged spouses any license to hide or misrepresent the value of any marital assets, nor will any such practice be condoned.*" 434 N.W.2d at 588.[6] This is the key sentence from the opinion that applies to this situation. Eric is not claiming that the Parties were in a fiduciary relationship, where Jacqueline had an obligation to act in his best interest. Rather, Eric simply expected that Jacqueline would not commit fraud, tell lies, or conceal marital assets during the negotiation process. The *Jeffries* Court confirmed that this type of fraudulent behavior will not be condoned.

The case that better applies here is *Pekelder v. Pekelder*, 1999 S.D. 45, 591 N.W.2d 810. In *Pekelder*, the husband and wife entered into a stipulation and agreement, which was incorporated into their divorce decree. The Pekelders' stipulation had a similar provision to the Trumbles' *Stipulation and Agreement* Subsection 4 ("Disclosure of Property"), providing that any property that was withheld or undisclosed was to be equally divided

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6. The appellant in *Jeffries* also "failed to make efforts to ascertain any additional information during the negotiation process." 434 N.W.2d at 588. *Jeffries* is further distinguished from the present situation based upon the facts set forth in Subsection I(A) above. Eric and his counsel undertook extensive efforts to obtain information from Jacqueline and her counsel, but Jacqueline and her counsel repeatedly thwarted these efforts and presented false information.

between the parties. *Id.* ¶ 3, 591 N.W.2d at 812. After the circuit court entered the divorce decree, it came to light that the husband had withheld a retirement plan from the wife. *Id.* ¶ 4. The circuit court held that the husband had deliberately withheld information, and based upon the parties' stipulation, ordered the property to be divided equally between the parties. *Id.* ¶ 6. Similar to Jacqueline, the husband sought to rely on *Jeffries* to support his proposition that he held no duty to disclose the information. *Id.* ¶ 9. This Court looked unfavorably upon the husband's argument by reaffirming that "[husband] construes *Jeffries* too broadly. *It does not grant a license to hide or misrepresent the value of marital assets.*" *Id.* ¶ 10, 591 N.W.2d at 813 (emphasis added). This Court went on to note:

> [Wife] fulfilled her responsibility to ascertain the nature and value of the marital assets by retaining counsel and negotiating through him and by relying on his request for production of documents and his other arrangements for the exchange of information about assets and liabilities. In cases of this nature, courts recognize that *the rule of Jeffries and Collins does not mean that, 'a husband holding community property in his name need not make a full disclosure of the same with all relevant information known to him and unknown to his wife which might affect her judgment in the negotiations.*

Id. ¶ 11 (emphasis supplied). Similar to the wife in *Pekelder*, Eric sought information through the discovery process in order to learn the value of an asset that was held *solely in Jacqueline's name*. He then relied upon both her and her counsel's representations regarding the value of the asset. Like the circuit court in *Pekelder*, the Circuit Court in this matter correctly held

that Jacqueline deliberately withheld assets.

The Circuit Court did not abuse its discretion by holding that Jacqueline fraudulently concealed or omitted assets. *See Rogers*, 351 N.W.2d at 131. Eric respectfully requests that this Court affirm the Circuit Court's ruling based upon SDCL 25-4-77, SDCL 15-6-60(b), and the Parties' *Stipulation and Agreement*.

II. THE CIRCUIT COURT CORRECTLY TREATED THE INSURANCE POLICY AND ITS PROCEEDS AS AN UNDISCLOSED OR INTENTIONALLY CONCEALED MARITAL ASSET.

Jacqueline did not present this issue to the Circuit Court. Even so, the Circuit Court did not err in determining that the insurance policy and its proceeds were undisclosed or withheld marital assets.

A. Jacqueline failed to preserve the issue of whether the insurance policy and proceeds were a marital asset.

This issue was not addressed at the December 2, 2024 hearing nor in Jacqueline's brief submitted to the Circuit Court before the hearing. R. 54-64. The Circuit Court, therefore, did not address this issue, and Jacqueline failed to preserve the issue. *See Halbersma v. Halbersma*, 2009 S.D. 98, ¶ 21, 775 N.W.2d 210, 218 (holding, "The failure to present an issue to the circuit court constitutes a bar to review on appeal. A party must show the circuit court was given an opportunity to correct the grievance she now complains about on appeal."); *see also Hiller v. Hiller*, 2015 S.D. 58, ¶ 23, 866 N.W.2d 536, 544.

Even if the Court determines that Jacqueline has adequately preserved this issue, the Circuit Court correctly determined that the insurance policy and its proceeds were an undisclosed or intentionally concealed marital asset.

B. The Parties stipulated that the insurance policy and its proceeds were a marital asset.

It is undisputed that the Canadian Property burned down during the pendency of the divorce. As a result, during the Parties' negotiations, there was no physical structure to appraise, and the Parties' valuation discussions were focused on the insurance policy attached to the Canadian Property. The value of the policy and the proceeds that were to be received were of paramount concern during the negotiation process because it was the couple's *largest asset*. That is why, when drafting the *Stipulation and Agreement*, the Parties ensured that the agreement was clear that the insurance policy and proceeds were treated as a marital asset and divided accordingly. The *Stipulation and Agreement* provides:

> **5. <u>Real Property</u>**. The Parties jointly own or have a legal interest in real property located at E Thurlow Island Lot 3, Plan VIP57456, District Lol255, Coast Range I Land District PID: 018-452-957 ("Canadian Property"). The structures on the Canadian Property have burned down, and *the Wife carried insurance on the Canadian Property*. The Parties agree that Wife shall be entitled to the exclusive ownership, title, use, and occupancy of the Canadian Property, and *Wife shall retain the insurance proceeds related to the claim due to the fire that occurred at the Canadian Property*. . . .

R. 29 (emphasis supplied).

Through the *Stipulation and Agreement*, Jacqueline has already conceded that the insurance policy and its proceeds were a marital asset that the Parties valued and divided. *See Erickson v. Erickson*, 2023 S.D. 70, ¶ 28, 1 N.W.3D 632, 641 ("[c]ontractual stipulations in divorce proceedings are governed by the law of contracts"). Jacqueline presented false information regarding the value of this asset, and as a result, she was ordered to equally divide the undisclosed asset. Respectfully, this Court should affirm the Circuit Court's ruling.

C. Jacqueline disclosed false or misleading information regarding the valuation of the Canadian Property.

Even if the Court determines that the insurance policy and its proceeds are not a separate marital asset from the Canadian Property, it does not change the simple fact that Jacqueline presented false information or concealed information that was used to value the couple's largest asset—the Canadian Property.

During the Parties' negotiations, Jacqueline presented information that the most she would receive to re-build the Canadian Property was $2 million Canadian. R. 73. Based upon this fraudulent information, the Parties negotiated and reached their valuation for the Canadian Property. R. 67. Accordingly, it is irrelevant whether the Canadian Property and insurance proceeds are conceptually deemed to be the same asset or separate marital assets. Under either assumption, the same analysis applies because Jacqueline presented fraudulent information pertaining to the valuation of

the couple's largest asset, which affected the Parties' property division, and the undisclosed amounts must be equally divided.

For example, if the Court determines the insurance policy and the house in Canada are the same asset, then the fact remains that the couple used the fraudulent insurance policy *to value the house*. If the proceeds and property are separate assets, the fact remains that Jacqueline presented a false policy and lied about the *value of the policy*. Whether the assets are considered to be the same or different as a legal matter is irrelevant to the true inquiry. The relevant question is whether Jacqueline lied about the value of a marital asset during the negotiation process. The Circuit Court determined that she did.

No matter how the property and insurance proceeds are categorized, Eric is entitled to "share equally in the value of that property" or he is entitled to "an equivalent value in cash or other property." R. 29 (*Stipulation and Agreement*), HT 6:5-12. This Court should affirm the Circuit Court's ruling.

D. The Circuit Court properly ordered an equal division of the fraudulently disclosed or concealed asset.

Jacqueline also argues that the Circuit Court failed to perform a valuation of the Canadian Property prior to ordering that the undisclosed asset be equally divided between the parties.

Contrary to this contention, the Circuit Court did value the undisclosed asset. The Circuit Court determined that Jacqueline disclosed a

fraudulent insurance policy with limits of only $2 million Canadian, when the true policy limits were much higher. R. 129. Accordingly, the Circuit Court determined that the value of the undisclosed asset was the amounts in excess of the $2 million Canadian limits. The Circuit Court then properly ordered that any undisclosed proceeds in excess the $2 million Canadian (disclosed amount) were to be divided equally between the Parties pursuant to the Parties' *Stipulation and Agreement* and SDCL 25-4-77. *Id.*

Importantly, the statutes on which the Circuit Court based its ruling are equitable in nature. SDCL 25-4-77 permits a circuit court to order an "equitable division of the omitted assets' appreciated value, a forfeiture of the omitted assets to the moving party, or any other appropriate distribution[.]" The Circuit Court elected to equally divide the undisclosed asset, which was the relief requested by Eric. Notably, this was not the harshest punishment that the Circuit Court could have ordered. The Circuit Court could have ordered Jacqueline to tender to Eric the *entire amount of the proceeds in excess of $2 million*. *See* SDCL 25-4-77. However, Eric requested and the Circuit Court agreed that a fair resolution was for the undisclosed amounts in excess of $2 million Canadian to be equally divided between the Parties. This decision complies with the plain meaning of SDCL 25-4-77, which allows for an equitable division of the undisclosed asset.

Of note, Jacqueline's brief fails to mention that the Canadian Property is a multi-acre piece of water-front land with multiple out buildings.

Instead, it focuses extensively on her claim that she will not gain the benefit of the bargain if she does not receive all the insurance proceeds (that she fraudulently withheld). Regardless of the amount of proceeds she receives, the Parties do not dispute that she is still entitled to the entire parcel of land and the structures on the property. The property itself, and other structures on the property have substantial value, regardless of the insurance proceeds.[7]

If Jacqueline had presented a true and accurate insurance policy during the Parties' negotiations, she would not be subject to the trouble she has made for herself by committing this fraud. The Circuit Court did not err in finding that Jacqueline failed to disclose or fraudulently disclosed a marital asset. The Circuit Court also did not err by ordering the concealed asset to be equally divided between the Parties. Eric respectfully requests that this Court affirm the Circuit Court's Order.

CONCLUSION

The Circuit Court had sufficient grounds to find that Jacqueline committed fraud, failed to disclose or omitted assets, and/or intentionally concealed assets pursuant to the Parties' *Stipulation and Agreement*, SDCL

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7. Jacqueline claims that the Parties agreed that the Canadian Property was valued at $2 million and cites to R. 24 to support this proposition. Presuming the appropriate cite to the record is R. 19, the $2 million valuation discussed in Defendant's Motion to Place Insurance Proceeds in Trust Account, *was based upon the fraudulently disclosed insurance policy*, and it does not specify Canadian or American dollars. This point further confirms that the Parties' valuation for the Canadian Property was based upon the value of the fraudulent insurance policy.

25-4-77 and SDCL 15-6-60(b). Further, the Circuit Court correctly treated the insurance policy and its proceeds as a marital asset.

WHEREFORE, Appellee Eric Trumble respectfully requests that this Honorable Court affirm the Circuit Court's Order.

Respectfully submitted this 19th day of May, 2025.

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CERTIFICATE OF COMPLIANCE

In accordance with SDCL 15-26A-66(b)(4), I certify that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Microsoft Word, and contains 5,829 words, excluding the table of contents, table of cases, jurisdictional statement, and certificates of counsel. I have relied on the word and character count of the word-processing program to prepare this certificate.

Erin Schoenbeck Byre
Erin Schoenbeck Byre

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of the foregoing BRIEF OF APPELLEE were served via email upon the following:

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on this 19th day of May, 2025.

Erin Schoenbeck Byre
Erin Schoenbeck Byre

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

APPEAL NO. 30966

JACQUELINE MARGARET TRUMBLE V. ERIC TRUMBLE

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE JOHN R. PEKAS
Circuit Court Judge

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Dakota Supreme Court Opinions

South Dakota Statutes

Other State Court Opinions

United States Supreme Court Opinions

Other Federal Court Opinions

Secondary Sources

PRELIMINARY STATEMENT

Appellant Jacqueline Margaret Trumble will be referred to as "Jacqueline." Appellee Eric Trumble will be referred to as "Eric." Any joint reference to Jacqueline and Eric will be as "the Parties." The real property located at E. Thurlow Island Lot 3, Plan VIP57456, District Lot 255, Coast Range 1 Land District PID: 018-452-957 will be referred to as "the Canadian Property." Reference to the settled record will be by the designation "R." followed by the page number(s). The March 25, 2024 Stipulation and Agreement from the settled record, will be generally referred to as the "Settlement Agreement." Reference to the December 2, 2024 motions hearing transcript, will be by the designation "HT." followed by the page/line number(s). Reference to Appendix materials will be by the designation "APP." followed by the page number(s).

INTRODUCTION

Eric fails to meaningfully respond to the issues that are important to this appeal. First, Eric confuses the difference between parties that abandon their discovery rights to prematurely seek a settlement agreement. Because Eric had the opportunity to pursue – but chose to abandon – his discovery rights is fatal to his claim that he was defrauded in the discovery process. He was not, as a result, entitled to Rule 60(b) relief. The trial court erred in granting his motion.

Second, Eric continues to mistakenly treat the insurance proceeds from the fire claim for the Canadian Property as something with independent value. Such funds, however, do not have *separate* and *distinct* value. To the contrary, their sole purpose is to repair or replace the actual marital property that was damaged: the Canadian Property. Both Eric and the trial court misapprehended that distinction, which is reversible error. The trial court's grant of Rule 60(b) relief was incorrect and should be reversed.

STANDARD OF REVIEW

Eric suggests that this Court should ignore the typical standard of review for 60(b) motions and, instead, adopt a heightened standard due to Appellee's claim that the only applicable statute to this case is SDCL § 25-4-77. *See* Appellee's Brief, pp. 8-9. Eric acknowledges that the basis for his grounds for relief is SDCL § 15-6-60(b), but he fails to consider that one of the

grounds for 60(b) relief is fraud, including fraud that would be considered "misconduct of an adverse party." SDCL § 15-6-60(b)(3). Even if Eric's arguments regarding disclosure are correct – and they are not – there is no need for this Court to adopt a separate test under SDCL § 25-4-77 because the conduct contemplated by SDCL § 25-4-77 is the same as the conduct contemplated by Rule 60(b)(3). As a result, this Court should apply existing Rule 60(b) motions instead of creating a whole separate standard of review.

Appellee's decision to argue for a new standard of review is likely strategic. That is because when a circuit court addresses a Rule 60(b) motion without taking testimony or evidence, this Court performs a *de novo* review. *Rabo Agrifinance, Inc. v. Rock Creek Farms*, 2013 S.D. 64, ¶ 12, 836 N.W.2d 631, 636 (citing *Rindal v. Sohler*, 2003 S.D. 24, ¶ 6, 658 N.W.2d 769, 771). To Counter this issue, Eric suggests that the Circuit Court did take evidence via affidavits and *could have* taken testimony, which should warrant a heightened standard of review. Eric's claim is contradicted by the "'long-standing rule [that] when reviewing findings based on documentary evidence [this Court does] not apply the clearly erroneous'" standard but, instead, utilizes *de novo* review. *Matters v. Custer Cnty.*, 538 N.W.2d 533, 534 (S.D. 1995) (quoting *First Nat. Bank v. Bank of Lemmon*, 535 N.W.2d 866, 871 (S.D.1995)). *See also People In Int. of G.R.F.*, 1997 S.D. 112, ¶ 23, 569 N.W.2d 29, 34 (multiple citations omitted) ("Affidavit evidence is reviewed de novo."). Ultimately, because the

Circuit Court "made its decision based on … affidavits, with no live testimony," this Court should "review the case de novo unimpeded by any deference to the [Circuit Court's] findings." *Culhane v. Michels*, 2000 S.D. 101, ¶ 5, 615 N.W.2d 580, 583 (citing *Miller v. Weber*, 1996 SD 47, ¶ 7, 546 N.W.2d 865, 867; *Muhlenkort v. Union County Land Trust*, 530 N.W.2d 658, 660 (S.D.1995).

Even if this Court were inclined to adopt an abuse of discretion standard, Appellee fails to dispute that errors of law constitute an abuse of discretion. *Corcoran v. McCarthy*, 2010 S.D. 7, ¶ 13, 778 N.W.2d 141, 146 (citations omitted).

ARGUMENT-IN-REPLY

I. Eric's Argument Ignores the Fact that he Knew Jacqueline's Disclosures were Incomplete at the Time he Signed the Settlement Agreement

As should be obvious from the significantly diverging case law cited by the Parties, this Court's precedence on Rule 60(b) relief for marital settlement agreements falls into two groups: (1) did the party seeking Rule 60(b) relief fail to exercise adequate due diligence prior to entering into the settlement agreement; or, (2) was the party seeking Rule 60(b) relief, despite exercising adequate due diligence, surprised by a willful nondisclosure of marital assets. As for the first group, parties to a marital settlement agreement have a duty to exercise due diligence because "their interests are adverse to one another and

that they are dealing at arms length...." *Jeffries v. Jeffries*, 434 N.W.2d 585, 588 (S.D. 1989). Parties that fail to exercise such due diligence are not entitled to Rule 60(b) relief. *Id.* On the other hand, where one party "fulfilled [his or] her responsibility to ascertain the nature and value of the marital assets" but the other party "misrepresent[ed] the value [or extent] of marital assets", the party surprised by the nondisclosure is entitled to Rule 60(b) relief. *Pekelder v. Pekelder*, 1999 S.D. 45, ¶¶ 10, 11, 591 N.W.2d 810, 813. The question here is whether Eric's decision to abandon discovery and enter into the Settlement Agreement puts him in the first or second group.

Eric incorrectly contends that he falls into the second group. There is no question that Eric could have – and at one point did – seek discovery into the insurance policy at issue in this appeal. R. 14-18. Eric even sought to compel disclosure of those documents when Jacqueline's counsel was unresponsive. R. 14-18. Eric set that motion for hearing, R. 22-23, but, rather than exercise his rights, Eric entered into the Settlement Agreement, instead.

That puts Eric in the first group. Eric failed to fulfill his duty "to ascertain the nature and value of the marital assets" because he abandoned his right to compel discovery "in the interest of obtaining a speedy divorce." *Id.* Eric's decision "terminate[d] the confidential fiduciary relationship between husband and wife" and, as a result, Rule 60(b) relief was and continues to be

unavailable to him. *Id.* (citing *Fairbairn v. Fairbairn*, 194 Cal.App.2d 501, 15 Cal.Rptr. 548, 551-52 (Cal.Ct.App.1961)).

Eric relies primarily on the *Pekelder* decision to justify the trial court's grant of Rule 60(b) relief. *Pekelder*, however, does not help Eric's position and, if anything, demonstrates why the trial court erred. The primary distinction between this case and *Pekelder* is that here, unlike *Pekelder*, Eric *forfeited* his right to full and complete discovery responses by not pursuing his motion to compel and entering into the Settlement Agreement when he was fully aware that more information regarding the insurance claim on the Canadian Property was available.

In other words, Eric took the "free deliberate choice[]" to not pursue discovery about the insurance policy or claim. *Jeffries*, 434 N.W.2d at 588. He could have done his due diligence, but, apparently, finalizing the divorce was more important than doing that due diligence. Divorcing parties make these kinds of decisions frequently. Affirming would only encourage parties to shortchange discovery and then seek to overturn what they later believe to be a "bad bargain" on the grounds that marital assets were not fully disclosed. This Court should follow its existing line of precedence and hold Eric to the decisions that he made.

The Settlement Agreement was not completely one-sided, either. Both Jacqueline and Eric gave up something of value, i.e., there was mutual

consideration, to enter into the Settlement Agreement. Eric declined to pursue discovery, and Jacqueline declined to pursue alimony, which would have been very valuable to Eric, given their significantly disparate earning capabilities.[1] Such a knowing and voluntary decision, coupled with mutual consideration, to abandon their respective rights cannot be ignored.

Ultimately, this case does not rise to kind of "exceptional circumstances" that this Court says are necessary to entitle a party to Rule 60(b) relief. *Hiller v. Hiller*, 2015 S.D. 58, ¶ 21, 866 N.W.2d 536, 543 (quoting *Pesicka v. Pesicka*, 2000 S.D. 137, ¶ 17, 618 N.W.2d 725, 728) (other citations omitted) ("'Relief under SDCL 15–6–60(b) is granted only upon a showing of exceptional circumstances.'"). Eric knew that he had the ability to get more information about the insurance claim on the Canadian Property. He abandoned that right by entering into the Settlement Agreement. He may now think that the Settlement Agreement was a "bad bargain", but that does not entitle him to undo the underlying judgment. *Olson v. Olson*, 1996 S.D. 90, ¶ 11, 552 N.W.2d 396, 399–400 (citations omitted). The trial court's grant of Rule 60(b) relief should be reversed and the original divorce decree should be reinstated.

[1] As noted at the December 2024 motions hearing, "[Eric] earns over $1,000,000 a year with [Jacqueline] earning $100,000 a year." HT at 12:15-16.

II. The Circuit Court Legally Erred in its Treatment of the Insurance Proceeds

1. Eric Misapprehends the Argument Regarding the Marital Status of the Insurance Proceeds

Eric, in his brief, misapprehends the difference between whether something is a marital asset or whether certain marital assets are indistinguishable from one another. Jacqueline agrees that the proceeds from the Canadian Property insurance claim are marital assets. That is not the question. The real question is whether those proceeds are *separate* and *distinct* from the Canadian Property, itself.

Eric mistakenly asserts that this argument is new. Yet, whether the proceeds are *separate* and *distinct* was something that was discussed by both parties at the hearing. *See, e.g.*, HT 13-15 (discussing the difference between the agreed-upon value of the home and the value of the insurance proceeds). That was also the result of the trial court's decision to not hold an evidentiary hearing and, instead, summarily grant Eric whatever relief he wanted.

Additionally, the Parties talked at the December 2024 hearing about why the value of the Canadian Property in the Settlement Agreement was higher than what they paid to build it shortly before the fire. There was no dispute that it originally cost "$1.6 million U.S. dollars to build" the Canadian Property. HT 11:4-6. Although Eric asserts that Jacqueline only disclosed $2 million Canadian dollars (appx. $1.4 million USD) in insurance coverage, HT

11:21-22, they negotiated a higher value for it in the Settlement Agreement: $2 million USD – or $2.8 million CSD. HT 11:23-12:21. The thrust of all discussions regarding both issues revolve around that disconnect. It is not a new argument.

2. Eric Fails to Dispute that Property/Casualty Insurance Proceeds Have no Intrinsic Value

Eric mostly focuses on the idea that the insurance proceeds from the Canadian Property claim are marital property. Jacqueline agrees that they are marital property. That is not the dispute, however. The dispute is whether the insurance proceeds have *separate* and *distinct* value from the Canadian Property, itself. Eric misapprehends that difference.

That decision is important. Other courts have agreed that property/casualty insurance proceeds do not have intrinsic value separate from the underlying marital asset. *See, e.g.*, *Rolater v. Rolater*, 198 S.W. 391, 393 (Tex. Civ. App. 1917) (citing *Chase v. Swayne*, 88 Tex. 218, 30 S. W. 1049, 53 Am. St. Rep. 742) (insurance proceeds "stand[] in the place and stead of" real property damaged by a property/casualty covered peril). That is because property/casualty insurance payments have no value *unless* they are used to repair/replace property that is covered by the policy *and* damaged by a covered peril. *Id.* More importantly, and Eric never disputes this issue, is the fact that replacement cost policies regularly tie insurance payments to a

promise to rebuild the damaged property. *O-So Detroit, Inc. v. Home Ins. Co.*, 973 F.2d 498, 503 (6th Cir. 1992) ("a court may not waive the requirement of actual replacement unless the insured is unable to replace the damaged property due to bad faith actions by the insurance company.").

Furthermore, the replacement cost of insured property may be more – *or less* – than its actual value. Eric never disputes that the replacement cost is frequently greater than the actual cash value of the covered property. *See, People v. Harris*, 2021 IL App (1st) 182595-U, ¶ 22 (citing *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 130314, ¶ 32) ("Replacement cost is normally much higher than the fair cash market value."). *See also Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 438 (Fla. 2013) ("replacement cost policies provide greater coverage than actual cash value policies because depreciation is not excluded from replacement cost coverage, whereas it generally is excluded from actual cash value"); *Mayer v. McNair Transp. Inc.*, 384 So. 2d 525, 526 (La. Ct. App. 1980) (citing jury instructions comparing different methods of evaluating a loss); *State v. Jackson*, 303 P.3d 727 (Kan. Ct. App. 2013) (noting that fair market value subject to restitution was approximately one half of its replacement cost).

South Dakota courts, however, do not use the replacement cost to value marital property. Instead, South Dakota courts rely on "fair market value" to calculate how marital property should be valued. *See In re Dissolution of*

Midnight Star Enters., L.P. ex rel. Midnight Star Enters., Ltd., 2006 S.D. 98, ¶ 19, 724 N.W.2d 334, 338 (quoting Oldfather, et. al, *Valuation and Distribution of Marital Property*, Vol. 2, Ch. 22.08[2][a] at 22–110 (1996)). *See also Hansen v. Hansen*, 2009 S.D. 91, ¶ 11, 774 N.W.2d 462, 464 (dispute over "the value of the life estate or how it would affect the home's *fair market value*" for the purposes of dividing the parties' marital property). That is an important distinction. Here, the insurance proceeds only exist to repair or replace the marital property that was damaged by the fire. While the dollar value may be more than the fair market value of that marital property, it does not change the "fair market value" of the actual property.

Eric's argument would double count the value of the Canadian Property. Neither Eric nor Jacqueline could receive *both* the pre-damage value of the Canadian Property *and* the insurance proceeds. The Canadian Property is not worth the fair market value negotiated in the Settlement Agreement absent the insurance funds being used to repair/replace it.

It bears repeating; property/casualty proceeds are not cash windfalls. They are not like life insurance. There is not a cash value that can be withdrawn at any time. Property/casualty payments are merely a placeholder for damaged marital property until such time that it can be restored to its pre-loss condition.

Additionally, Eric never disputes the other error with the trial court's logic. Neither Eric nor the trial court found that the $2 million USD/$2.8 million CSD value in the Settlement Agreement for the Canadian Property was incorrect. The Parties agreed, for the purposes of settling a disputed marital estate, that the Canadian Property had a fair market value of $2 million USD/$2.8 million CSD. The insurance proceeds only exist to *restore* the Canadian Property (and the personal property contained inside) to its pre-damage condition. Because Eric failed to provide *any* evidence that the Canadian Property's fair market value was anything other than what the Parties agreed to, the trial court's order was in error.

CONCLUSION

The trial court should not be afforded any deference because it failed to consider testimony or evidence at the hearing. As such, this Court is in the same position as the trial court.

The trial court made several legal errors that are also fatal to its decision to grant Eric's request for Rule 60(b) relief. Eric was not defrauded. He made a free and voluntary choice to forego discovery and, instead, pursue a Settlement Agreement. We will never know why he chose to make that decision, but it was his to make. He should be bound to it. He should not be entitled to undo the Settlement Agreement due to decisions that he made.

Additionally, Eric and the trial court misunderstood the role of replacement cost insurance proceeds. They are not a cash windfall. Their only value is in replacing damaged covered property, which is in this case the Canadian Property.

Eric should not have received Rule 60(b) relief, and the relief that the trial court granted went beyond what Eric was entitled to. These errors warrant reversal.

Dated June 17, 2025.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Appellant's Reply Brief does not exceed the word limit set forth in SDCL § 15-26A-66, said Brief containing 2,649 words, exclusive of the table of contents, table of cases, any addendum materials, and any certificates of counsel.

/s/ Robert D. Trzynka
One of the attorneys for Appellant

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the below documents were electronically filed with the Clerk of the Supreme Court via Odyssey:

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