

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

APPEAL NO. 30902

BRAD HILL
Plaintiff/Appellant

vs.

ELIZABETH HILL
Defendant/Appellee

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

HONORABLE JEFFREY CONNOLLY, CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

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Notice of Appeal was filed on November 13, 2024.

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BRAD HILL,

Plaintiff and Appellant,

vs.

NO. 30902

ELIZABETH HILL,

Defendant and Appellee.

APPELLANT’S BRIEF

PRELIMINARY STATEMENT

Throughout this Brief, Brad Hill, will be referred to as “Brad,” Elizabeth Hill will be referred to as “Elizabeth,” Benicia Hill will be referred to as “Benicia,” Cody Hill will be referred to as “Cody.” References to documents in the record herein will be designated as follows:

- Court Trial Transcript (October 7, 2024)CT
- Memorandum Opinion Findings of Fact, Conclusions of Law, Order,
Judgment, and DecreeOrder

JURISDICTIONAL STATEMENT

Brad appeals from the Order entered by the Honorable Jeffrey Connolly in the Seventh Judicial Circuit, on October 21, 2024. Notice of Appeal was timely filed on November 13, 2024. This Court has jurisdiction over this matter pursuant to SDCL § 15-26A-3.

STATEMENT OF LEGAL ISSUES

Whether the court erred in determining that a 1968 Harley Davidson motorcycle, Precious Moments figurines, and firearms registered to Leonard Powell were non-marital property.

Whether the court erred in admitting defense exhibit I over a hearsay objection.

Whether the court erred in determining a value for the firearms when no testimony or evidence was presented at trial to establish their value.

Whether the circuit court abused its discretion in dividing the parties' marital firearms and Thomas Kinkade paintings.

Whether the court erred in awarding Elizabeth seven-hundred-and-fifty dollars in monthly alimony based upon the current property division.

STATEMENT OF THE CASE

On November 26, 2023, Brad filed a Complaint for Divorce in Pennington County Circuit Court for a divorce from Elizabeth on the grounds of irreconcilable differences. He also requested the court equitably divide the parties' property and debt. Elizabeth was served on January 4, 2024, and filed a *pro se* Admission of Service and Answer on January 22, 2024. Elizabeth confirmed that the parties separated on October 17, 2023, and have property and debts to divide. She consented to the divorce.

After discovery occurred, there was a trial to the court held on October 7, 2024. Brad appeared with counsel and testified. He also had appraiser Shelly Carter testify remotely on his behalf. Elizabeth appeared *pro se* and testified. She also had three witnesses testify telephonically on her behalf: the parties' son Cody Hill, Brad's friend Paul White, and Brad's mother Benicia Hill. The court granted the parties' request for a divorce on the grounds of irreconcilable difference and divided their property and debts in a Memorandum Opinion

Findings of Fact, Conclusions of Law, Order, Judgement, and Decree dated October 21, 2023. Brad filed a timely notice of appeal on November 13, 2024, disputing the division of the property and debts.

STATEMENT OF FACTS

The parties were married on April 30, 1992, in Kern County California. Brad graduated high school in 1989 and joined the United States Army. He served in the Army from 1989 to 1993, as a result of his military service Brad is an eighty percent disabled veteran and receives \$2,260 per month for disability compensation from the Veterans Administration (VA).

Brad worked as a corrections officer for the California Correctional Institution in Tehachapi, California for twenty years after he separated from the Army. Brad retired from the California Correctional Institute around 2013. As a result, he receives a pension from the California Public Employee's Retirement System (CalPERS) and has a 457-b retirement plan.

Elizabeth worked prior to the marriage as an animal control officer. She was the sole provider in the marriage for a six-month period during 1994 as Brad transitioned out of the Army. However, during the majority of the marriage Elizabeth did not work at all and was a homemaker and homeschooled the couple's children.

Around 2015 Elizabeth's father, Leonard Powell died. *CT* 132:6. According to Elizabeth her father left her a 1968 Harley Davidson motorcycle and some firearms. There was conflicting testimony about what happened to both the motorcycle and the firearms during the trial. Brad stated that the motorcycle was payment to both Brad and Elizabeth for trimming trees near an airfield at Mr. Powell's house. They both testified that at one point in time the motorcycle was registered in both of their names in California.

At some point during 2015 Brad was convicted of a felony, and as a result was not allowed to lawfully possess a firearm. As a result, the Kern County Sheriff's Department confiscated the firearms in the couple's home. There is again conflicting testimony about what happened to the firearms. Cody Hill, the parties' son, testified that he picked them up from the sheriff's office and that Brad then took them from him. Meanwhile, Benicia Hill, Brad's mother, testified that she retrieved the firearms from the sheriff's office.

Around 2019 the parties sold their marital home and placed all their possessions in a storage shed in Bakersfield California. They purchased a fifth wheel recreational vehicle (RV) and began living out of the RV full-time. The RV was registered in Pennington County South Dakota. They registered their other vehicles in South Dakota, both parties obtained South Dakota driver's licenses, and claimed Pennington County as their residents. At some point in time the fifth wheel RV burned, and they purchased a class A motorcoach with their insurance proceeds. They also financed a pickup truck and a motorcycle in 2021.

The couple separated in the fall of 2023.

STANDARD OF REVIEW

The applicable standard of review is different depending upon whether this Court is evaluating an issue of fact or of law. *Halbersma v. Halbersma*, 775 N.W.2d 210, 214 (SD 2009). A circuit court's findings of fact will not be set aside unless they are clearly erroneous. SDCL 15-6-52(a). *Id.* A circuit courts conclusions of law are reviewed under a de novo standard, giving no deference to the circuit court's conclusions of law. *Id.*

A circuit court's determination of whether property is marital or non-marital is under the abuse of discretion standard of review. *Field v. Field*, 949 N.W.2d 221, 224 (SD 2020). An abuse of discretion is "a fundamental error of judgement, a choice outside the range of permissible choices, a decision, which on full consideration, is arbitrary or unreasonable.

State v. Deleboy, 929 N.W.2d 103, 108-09 (SD 2019) (quoting *Thurman v. Can Mut. Ins. Soc'y*, 836 N.W.2d 611, 616 (SD 2013)). However, an error of law is never within the range of permissible choices and is therefore an abuse of discretion. *Lewis v. Sanford Med. Ctr.*, 840 N.W.2d 662, 668 (SD 2013).

The standard of review for a trial court's ruling on the admissibility of evidence is under an abuse of discretion standard. *State v. Williams*, 710 NW2d 427, 430 (SD 2006).

A circuit court's finding regarding valuation of property is under the clearly erroneous standard of review. *Giesen v. Giesen*, 911 N.W.2d 750, 757 (SD 2018).

The standard of review for a circuit court's property division is the abuse of discretion standard, which occurs when a court exercises its discretion ""to an end or purpose not justified by, and clearly against, reason and evidence."" *Kost v. Kost*, 515 NW2d 209, 212 (SD 1994).

The standard of review in awarding alimony is the abuse of discretion standard. *Kappenmann v. Kappenmann*, 479 N.W.2d 520, 523 (SD 1992).

ARGUMENT

The court made the following determinations when dividing the parties' property: (1) the parties were married for almost thirty years, (2) the value of their property was minimal and none of it income producing, (3) the parties are both fifty-three years old, (4) both parties are in poor physical and mental health, (5) neither party appears able to earn a living Brad is disabled and a felon and Elizabeth has never worked outside of the home, (6) they accumulated property through a marriage where Brad worked outside of the home and Elizabeth was a homemaker, she inherited some income from her father. *Order 5*. Brad does not dispute these findings but does dispute their application to various property as outlined

below. He additionally disputes the allocation of some property as non-marital as outlined below, as well as the admission of defense exhibit I.

1. The circuit court erred in determining that the 1968 Harley Davidson motorcycle was not marital property because it was acquired in both Brad's and Elizabeth's name and Brad's contributions to the maintenance of the motorcycle were more than de minimis.

The circuit court ruled that the 1968 Harley Davidson motorcycle should be excluded from the marital estate because it was inherited. *Order* 11. The court went on to state that even if it were marital property, it was equitable for Elizabeth to receive it. *Id.* The court acknowledged that the motorcycle was registered in both Brad and Elizabeth's name. *Id.* The court accepted a \$25,000 valuation by Ms. Carter. *Id.*

Brad believes that the 1968 Harley Davidson motorcycle should be considered marital property and that it is equitable for the value of the motorcycle to be split between the parties equitably. South Dakota is an "all property state" in that "all property of either or both divorcing parties is subject to equitable division by the court, regardless of title or origin. *Endres v. Endres*, 532 N.W.2d 65, 68 (SD 1995) (*quoting Radigan v. Radigan*, 465 N.W.2d 483, 486 (SD 1991)).

The factors the circuit court is supposed to consider when determining whether to include inherited property in the marital estate are: (1) the duration of the marriage, (2) the value of the property owned by the parties, (3) the ages of the parties, (4) the health of the parties, (5) the competency of the parties to earn a living, (6) the contribution of each party to the accumulation of the property, and (7) the income producing capacity of the parties' assets. *Halbersma v. Halbersma*, 775 N.W.2d 210, 215 (SD 2009). These factors overlap with the factors the circuit court used to consider equitably dividing the couple's property in

general listed at the beginning of this section. Brad stipulates that the circuit court's findings above are equally applicable in determining if the 1968 Harley Davidson motorcycle should be included in the marital property.

Inherited property is not ipso facto excluded from consideration in the overall division of the property." *Novak v. Novak*, 713 N.W.2d 551, 553 (SD 2006). The circuit court may also consider evidence including the origin and treatment of inherited property and the direct or indirect contributions of each party to the accumulation and maintenance of the property in determining whether the inherited property should be included in the marital estate. *Terca v. Terca*, N.W.2d 319, 326 (SD 2008). There is contradicting testimony on how the motorcycle was received. Brad testified that he received the 1968 Harley Davidson motorcycle as reimbursement for topping a eucalyptus tree orchard near Elizabeth's father's home so that a nearby airplane runway could be used. *CT* 74:9-12. Meanwhile, Elizabeth testified that the 1968 Harley Davidson motorcycle was inherited by her when her father died. Elizabeth admitted a court order releasing the motorcycle from her father's estate to both her and Brad. *CT* 96:20-24. She testified that the only reason it was listed this way is because they were married. *CT* 96:20-24.

Both parties testified that the motorcycle was registered in both of their names after it was received from Elizabeth's father. Brad also testified that the motorcycle was registered in the state of California in his name. *CT* 75:2-3. Defense exhibit E was a California registration that listed both Brad and Elizabeth as the owners of the motorcycle. Elizabeth again reiterated that the motorcycle was registered to both her and Brad. *CT* 164:17-20.

"Only in the case where one spouse has made no or de minimis contributions to the acquisition or maintenance of an item of property and has no need for support, should a court set it aside as 'non-marital' property." *Billion v. Billion*, 553 NW2d 226, 232 (SD 1996).

Brad testified that the motorcycle was not running when he received it but that he worked on and got it running. *CT* 75:5-6. Elizabeth did not dispute this assertion in either her cross-examination of Brad or her own direct testimony.

While there is a disagreement relating to the origin of the motorcycle's acquisition, it is clear from the testimony of Elizabeth that the motorcycle was in Brad's name from the moment it came into her possession, and she admitted evidence that it was registered in both of their names. Brad also testified that he took the motorcycle from a state of non-operation and was able to repair it to a state where it could once again be ridden, this act in and of itself demonstrates that Brad's contributions to the maintenance of the motorcycle are more than de minimis. As a result, the motorcycle should be included in the marital assets and equitably divided between Brad and Elizabeth.

Brad requests that this Court hold that the circuit court abused its discretion by making an error of law in determining that the motorcycle was not marital property and instruct the circuit court to determine the motorcycle marital property and equitably divide it between Brad and Elizabeth.

2. The circuit court erred in determining that the Precious Moments

figurines were non-marital property because a number of them were acquired during the marriage and Brad's contributions to the maintenance of the figurines were more than de minimis.

The circuit court ruled that 300 Precious Moments figurines were non-marital. *Order* 10. The court accepted a \$30,000 valuation from Ms. Carter for the Precious Moments figurines. *Id.* The court appears to have ruled that these items were inherited from Elizabeth's grandmother. The Court also stated that even if the Precious Moments figurines were marital property, it was equitable for Elizabeth to receive them. *Id.*

As stated in section one, South Dakota is an "all property state" in that "all property of either or both divorcing parties is subject to equitable division by the court, regardless of title or origin. *Endres v. Endres*, 532 N.W.2d 65, 68 (SD 1995) (*quoting Radigan v. Radigan*, 465 N.W.2d 483, 486 (SD 1991)). Brad again stipulates that the circuit court's findings regarding the factors the circuit court used to consider equitably dividing the couple's property in general listed at the beginning of this section are equally applicable in determining if the Precious Moments figurines should be included in the marital property.

Inherited property is not ipso facto excluded from consideration in the overall division of the property." *Novak v. Novak*, 713 N.W.2d 551, 553 (SD 2006). The circuit court may also consider evidence including the origin and treatment of inherited property and the direct or indirect contributions of each party to the accumulation and maintenance of the property in determining whether the inherited property should be included in the marital estate. *Terca v. Terca*, N.W.2d 319, 326 (SD 2008). Brad testified that Elizabeth accumulated some of the Precious Moments figurines during the marriage *CT* 77:17-18. Elizabeth testified that her grandmother began collecting the Precious Moments figurines in 1978. *CT* 166:11-19. Elizabeth further testified that Brad added pieces to the collection throughout the marriage. *CT* 166:12-13. Benicia did not know how many of the Precious Moments figurines were purchased during Brad and Elizabeth's marriage. *CT* 185:5-7. She did not deny that any of the Precious Moments figurines were purchased during the marriage, which shows that she also knew that some of them were purchased during the marriage. Cody gave conflicting testimony regarding how many Precious Moments figurines were acquired during the parties' marriage, ranging from "he didn't know" to a "very big majority of them" could have been given to Elizabeth from her grandmother. *CT* 197:9-15. The fact that some of the Precious

Moments figurines were purchased during the marriage is uncontested based on the testimony of these four witnesses.

"Only in the case where one spouse has made no or de minimis contributions to the acquisition or maintenance of an item of property and has no need for support, should a court set it aside as 'non-marital' property." *Billion v. Billion*, 553 NW2d 226, 232 (SD 1996). Cody testified that the Precious Moments figurines were always on display on a shelf or in a case during his childhood. *CT* 197:22-24. Brad's contributions in acquiring and maintaining the Precious Moments figurines is more than de minimis because of the number of figurines purchased during the marriage and the maintenance in prominently displaying them in the couple's home during the marriage. As a result, the Precious Moments figurines should be included in the marital assets and equitably divided between Brad and Elizabeth.

Brad requests that this Court hold that the circuit court abused its discretion by making an error of law in determining that the Precious Moments figurines were not marital property and instruct the circuit court to determine the figurines are marital property and equitably divide them between Brad and Elizabeth.

3. Firearms

The circuit court estimates that the parties owned thirty-eight firearms and ruled that twelve were non-marital property because Elizabeth inherited them from her father. *Order* 8. The court ruled that twenty-six firearms were considered marital property. *Id.* The court *su sponte* assigned a value of five hundred dollars to each firearm making the non-marital firearms worth six thousand dollars and the marital firearms worth thirteen thousand dollars. There was conflicting testimony about where the firearms are located, but the court ordered Brad to return them within sixty days. *Id.*

- a. The circuit court erred in admitting exhibit I (a Bakersfield police report) because it was hearsay within hearsay, Elizabeth did not offer sufficient testimony for it to be offered under the business record exception, and even if she had her statements within it were inadmissible hearsay without an exception.**

Although "admission of evidence in violation of a rule of evidence is an error of law that constitutes an abuse of discretion," *Dubray v. SD Dep't of Soc. Servs.*, 690 N.W.2d 657, 661 (SD 2004), admitting evidence on an incorrect ground will be affirmed if the evidence was admissible on a different ground. See *Robeson v. State*, 403 A2d 1221, 1223 (MD Ct. of Appeals 1979) ("[W]here the record in a case adequately demonstrates that the decision of the trial court [admitting evidence] was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties, an appellate court will affirm. In other words, a trial court's decision may be correct although for a different reason than relied on by that court."). A police report may be admitted if the declarant officer's statement meets the business record exception and the declarant witness's statement qualifies as a non-hearsay admission. *Johnson v. O'Farrell*, 787 N.W.2d 307, 313 (SD 2010). "Prior to use of the business records exception, a proper foundation must be made through the 'testimony of the custodian or other qualified witness.'" *Dubray v. SD Dep't of Soc. Servs.*, 690 NW2d 657, 662 (SD 2004). Hearsay in a business record is not admissible under the business record exception but it is admissible if it falls under any other hearsay objection. *US v. Smith*, 521 F.2d 957, 964 (DC Ct. of Appeals 1975).

The only evidence Elizabeth submitted regarding the firearms quantity and description was exhibit I. Trial counsel objected to defense exhibit I as inadmissible hearsay and possibly hearsay within hearsay. Exhibit I was a Bakersfield police report listing firearms

that Elizabeth alleged were stolen out of the couple's storage shed. *CT* 144:23-25. The circuit court stated that it would take the objection under advisement, note the objection, and inform the parties of his ruling. *CT* 145:7-9. The court then admitted exhibit I stating that it contained the police department writing down what Elizabeth told them and acknowledging that, at least theoretically, she should testify to all the things she told the Bakersfield police. *CT* 146:2-8. A police record can be admitted under the business record exception, if the custodian of the record or a proper witness to lay the business record foundation. Elizabeth did not have anyone from the Bakersfield Police Department testify to lay the proper foundation for the business records exception. Her statements and the list of firearms would not have been admissible even if she had laid the proper foundation because her statements to the police officer who wrote the report were hearsay that did not fall under any exception to hearsay. As a result, Exhibit I was improperly admitted because it was hearsay within hearsay and there was no applicable hearsay exception that would allow either level of hearsay to be admitted.

Brad asks that this Court order that defense exhibit I was improperly admitted and direct the circuit court to amend its ruling on the list of firearms by limiting it only to firearms that Elizabeth specifically testified about during the trial.

b. The circuit court erred in determining a value for the firearms because there was no testimony or evidence presented at trial to establish their value.

"Where the parties come into the trial court without even a stipulation as to the values, then they had better be prepared to produce hard evidence as to those values other than their own personal opinions." *Hanks v. Hanks*, 296 N.W.2d 523, 526 (SD 1980). The parties must produce evidence as to the value of property in a proceeding to divide marital property. *Kost v. Kost*, 515 NW2d 209, 212 (SD 1994). The circuit court must do more than

surmise the property is worth something and then distribute the property. *Farlee v. Farlee*, 812 N.W.2d 501, 503-04 (SD 2012). A circuit court is not required to accept either party's proposed valuation of an asset. *Johnson v. Johnson*, 734 N.W.2d 801, 811 (SD 2007). Nor is the circuit court required to accept an expert witness's opinion regarding valuation. *Larson v. Larson*, 733 N.W.2d 272, 277 (SD 2007). The circuit court's valuation much fall "within a reasonable range of figures based on the evidence presented at trial." *Hill v. Hill*, 763 N.W.2d 818, 823 (SD 2009) (quoting *Johnson v. Johnson*, 734 N.W.2d 801, 811 (SD 2007)).

The parties did not come to court with a stipulation as to the value of the firearms. Elizabeth did not provide any evidence at all as to the value of the firearms. *Order 7*. The only evidence Elizabeth submitted regarding the firearms quantity and description was exhibit I.

Brad's witness, Ms. Carder, was not able to provide a valuation for the firearms because they were not in the storage shed for her to view. *CT 111:15-17*. It is also reasonable to assume that she had never seen the list of firearms contained in defendant's exhibit I because trial counsel indicated he had not received the list prior to trial. *CT 147:14*. The circuit court stated that it was assigning a "conservative estimate of [five hundred dollars] per firearm." The court provides no additional rationale for why this is a conservative estimate or how it came to this number. There was no range of figures presented during the trial for the court to use in coming to this estimation. The court must do more than surmise the firearms are worth something and then distribute them, however there is no guidance on what to do when neither party submits any evidence on the value of property.

As a result, Brad requests that this Court rule that exhibit I is inadmissible, the circuit court's valuation of the firearms be rejected, and that the firearms be completely removed

from the couple's property as there is no evidence relevant to the quantity, description, or value of the firearms.

In the event the Court does not order the firearms completely removed from the parties' property settlement, Brad objects to the determination that the firearms registered to Leonard Powell are not marital and the distribution of those and the marital firearms as outlined in sections three c and d below.

c. The circuit court erred in determining that the firearms registered to Leonard Powell were not marital property because Brad's contributions to their maintenance was more than de minimis.

As stated in sections one and two, South Dakota is an "all property state" in that "all property of either or both divorcing parties is subject to equitable division by the court, regardless of title or origin. *Endres v. Endres*, 532 N.W.2d 65, 68 (SD 1995) (*quoting Radigan v. Radigan*, 465 N.W.2d 483, 486 (SD 1991)). Brad again stipulates that the circuit court's findings regarding the factors the circuit court used to consider equitably dividing the couple's property in general listed at the beginning of this section are equally applicable in determining if the firearms registered to Leonard Powell should be included in the marital property.

Inherited property is not ipso facto excluded from consideration in the overall division of the property." *Novak v. Novak*, 713 N.W.2d 551, 553 (SD 2006). The circuit court may also consider evidence including the origin and treatment of inherited property and the direct or indirect contributions of each party to the accumulation and maintenance of the property in determining whether the inherited property should be included in the marital estate. *Terca v. Terca*, N.W.2d 319, 326 (SD 2008). "Only in the case where one spouse has made no or de minimus contributions to the acquisition or maintenance of an item of

property and has no need for support, should a court set it aside as 'non-marital' property." *Billion v. Billion*, 553 NW2d 226, 232 (SD 1996).

Elizabeth testified that the night before her brother moved into her father's house Brad and their children went to her father's house and took the firearms out of the house and put them in Brad's gun safes. *CT* 132:22-25. There is no testimony regarding the status of these firearms from this point up to the conflicting testimony regarding where all of the firearms went after they were confiscated by the Kern County Sheriff's Office. Brad testified that he began competitive shooting in high school and that this pursuit continued through his time as a corrections officer. *CT* 76:20-23. Brad's competitive shooting prowess was so prodigious that he even shot for the US Police and Fire Olympics. *CT* 76:1-3. Some of the personal property awarded to Brad from the couple's storage shed were his reloading equipment and spotting scopes. *Order* 12. Brad would use the reloading equipment to load his own bullets by placing the powder and projectile in a jacket and pressing them to make his own bullets. The record is devoid of any mention of Elizabeth's knowledge of or skill with firearms. It is very likely based upon this disparity in firearms acumen that Brad was the one that cared for and cleaned the firearms registered to Leonard Powell. Brad's care for the firearms was more than de minimis because he picked the firearms up from Mr. Powell's house, he stored them in his gun safes, and he likely maintained the firearms. As a result, the firearms registered to Leonard Powell should be included in the marital assets and equitably divided between Brad and Elizabeth.

Brad requests that this court hold that the circuit court abused its discretion by making an error of law in determining that the firearms registered to Leonard Powell were not marital property and instruct the circuit court to determine the firearms are marital property and equitably divide them between Brad and Elizabeth.

- d. The circuit court erred in dividing the firearms because Brad did not receive any monetary credit for the fact that Elizabeth was granted all of the firearms.**

A circuit court's division of property is not bound by a mathematical formula. *Johnson v. Johnson*, 734 NW2d 801, 812 (SD 2007). The inquiry is whether "'a judicial mind, in view of the law and the circumstances of the particular case, could reasonably have reached such a conclusion.'" *DeVries v. DeVries*, 519 NW2d 73, 75 (SD 1994). The law requires an equitable, not necessarily equal, division of assets. *Halbersma v. Halbersma*, 738 NW2d 544, 551 (SD 2007).

Brad testified that he has not possessed a firearm after his felony conviction, nor did he take any firearms from the marital estate. *CT* 44:6-14. Ms. Carder testified that based on her knowledge firearms are not allowed to be stored in a California storage shed. *CT* 111:12-14. She further testified that she did not find any firearms in the storage shed. *CT* 111:15-17.

The combined testimony of Elizabeth, Benicia, and Cody is completely contradictory. The only thing they appear to agree on is their assertion that at some point prior to the couple placing their property in a storage shed Brad unlawfully took the firearms from someone. Elizabeth testifies that Cody took possession of the firearms from the sheriff's office in March of 2015. *CT* 132:6 & 135:15-17. Cody testifies that he took possession of the firearms from the sheriff's office in June or July of 2018. Elizabeth then testified that around March of 2017 Brad's mother Benicia picked up the firearms from the sheriff's office. *CT* 138:6-9.

Benicia could not have ever possessed the firearms if using the date Elizabeth stated that Cody took possession of the firearms, March 2015, because they would have been in Cody's possession. Cody could not have picked up the firearms from the sheriff's

department if using the date that Cody said he took possession of the firearms, June or July of 2018, because they would have been in Benicia's possession since March of 2017. Cody was adamant that he did not pick up the firearms from his grandmother Benicia. *CT* 194:21.

Cody testified that his father Brad coerced Cody into letting him take the firearms from him. *CT* 191:23-25. However, as late as October 2018 Cody was arrested with a firearm registered to Brad in his possession. *CT* 193:23-25, 194:1-6. This would not be possible if Brad had actually taken all the firearms from Cody. Benicia's story is even more improbable. She testified that Brad was loading the firearms into his truck at the sheriff's office while she was signing the paperwork to pick them up. *CT* 182:23-25. The likelihood of law enforcement officers allowing a prohibited person to load firearms into his own or anyone else's car in their presence is very unlikely, especially when the person loading the firearms is the one they were confiscated from. Benicia then testified that she did not report this incident until five or six years later. *CT* 183:8-10.

Brad is asking the Court to rule that the circuit court's finding that he is in possession of the firearms and needs to return the firearms within sixty days is an abuse of discretion not justified by, and clearly against, reason and the evidence. He further asks that the Court remand this matter back to the circuit court for a proper valuation on all the firearms, that the firearms registered to Leonard Powell be reclassified as marital property, and that the value of the firearms be equitably divided between himself and Elizabeth. Brad specifically asks that he be given monetary credit for the equitable division of the firearms as he cannot legally possess them.

4. The circuit court erred in dividing the Thomas Kinkade paintings because the quantity of paintings was incorrect and the paintings were not equitably divided.

A circuit court's division of property is not bound by a mathematical formula. *Johnson v. Johnson*, 734 NW2d 801, 812 (SD 2007). The inquiry is whether "'a judicial mind, in view of the law and the circumstances of the particular case, could reasonably have reached such a conclusion.'" *DeVries v. DeVries*, 519 NW2d 73, 75 (SD 1994). The law requires an equitable, not necessarily equal, division of assets. *Halbersma v. Halbersma*, 738 NW2d 544, 551 (SD 2007).

Brad testified that the couple owned thirteen or fourteen Thomas Kinkade paintings, ten from the Disney collection and three or four from the cottage scene paintings. *CT* 79:6-10. Brad testified that all the paintings were placed in the storage facility. *CT* 80:3-4. However, when Ms. Carder conducted the property appraisal there were only two Thomas Kinkade paintings in the storage shed. *CT* 80:9-10.

Brad testified that he was able to track the location of the couple's pickup truck through an app that connected the truck to his mobile phone. *CT* 81:7-10. He was able to see that Elizabeth made several trips to the storage shed after she left him in Arizona in October of 2023. *CT* 81:15-17. Ms. Carder testified that in the storage shed in back middle against the wall there was one area that appeared to have been cleaned out and swept and was different than the rest of the storage shed. *CT* 109:12-15.

There was conflicting testimony about how many Thomas Kinkade paintings the couple possessed. Elizabeth testified that the couple owned a total of six Thomas Kinkade paintings. *CT* 162:1. The circuit court ruled that Elizabeth claimed there was only two but conceded that there may be four more. *Order* 11. The paintings were valued at ten thousand

dollars apiece. *Id.* The court ordered that Brad could have the two in the storage shed and Elizabeth can have the four that are unaccounted for. *Id.* Brad received twenty thousand dollars' worth of Thomas Kinkade paintings while Elizabeth received a minimum of forty thousand dollars' worth of Thomas Kinkade paintings, and potentially up to eighty thousand dollars' worth of paintings.

Brad is asking the Court to rule that the circuit court's finding that there were only six Thomas Kinkade paintings is an abuse of discretion not justified by, and clearly against, reason and the evidence. He further asks that the Court remand this matter back to the circuit court for equitable distribution and specifically asks that he be given an eighty-thousand-dollar monetary credit for the missing paintings.

5. The circuit court erred in awarding Elizabeth seven-hundred-and-fifty dollars in monthly alimony because the property division was not equitable and favored her.

Elizabeth was awarded seven-hundred and fifty dollars a month in permanent alimony. *Order 13.*

The trial court must consider the following factors when setting an alimony award: (1) the length of the marriage; (2) the parties' respective ages and health; (3) the earning capacity of each party; (4) their financial situations after the property division; (5) their station in life or social standing; and, (6) the relative fault in the termination of the marriage. *DeVries v. DeVries*, 519 N.W.2d 73, 77 (SD 1994). A trial court's findings on these factors must support its legal conclusions. *Kappenmann v. Kappenmann*, 479 N.W.2d 520, 523 (SD 1992). Brad does not take issue with the circuit court's finding as to factors one through three or five and six, however he does think that factor four is currently incorrectly applied and additionally if his arguments above are accepted would need to be reevaluated.

Elizabeth received every favorable ruling under the circuit court's current property division. The 1968 Harley Davidson and the Precious Moments figurines were excluded from the marital property and thus not subject to division. She is to receive all the firearms as a result of Brad's felony conviction, and he is not getting a financial benefit from her being granted possession of these items. She is receiving eighty thousand dollars' worth of Thomas Kinkade paintings and Brad is not getting a financial offset for this division.

Brad asks this Court to hold that the circuit court granting Elizabeth alimony is abuse of discretion because of the unequitable property division in its current order. Additionally, Brad hopes that the Court grants his above requests which will drastically alter the property division. Brad respectfully requests that alimony be reevaluated by the circuit court in this event in order to be fair to both parties.

CONCLUSION

The circuit court erred in determining the 1968 Harley Davidson, the Precious Moments figurines, and the firearms registered to Leonard Powell were non-marital property as outlined above. Additionally, the circuit court erred in dividing the marital firearms and the Thomas Kinkade paintings as outlined above. Additionally, Brad believes that the circuit court erred in granting alimony to Elizabeth given the fact that the property distribution favored her.

For these reasons, Brad asks the Court to make rulings consistent with his arguments above and then remand this case to the circuit court so that a new property distribution can be made among the two parties, and the circuit court can reevaluate the alimony award in accordance with the new property distribution.

REQUEST FOR ORAL ARGUMENT

Plaintiff/Appellant Hill respectfully requests that he be allowed to present oral argument on this issue.

SIGNED AND DATED this 24th day of April 2025.

Respectfully submitted,
THE LAW OFFICE OF L. ADAM
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By: /s/ L. Adam Bryson
L. Adam Bryson
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

I certify that Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Garamond typeface in 12-point type. Appellant's Brief contains approximately 6,879 words and 27 pages. I certify that the word processing software used to prepare this brief is Microsoft Word (Version 16.90.2).

By: /s/ L. Adam Bryson
L. Adam Bryson
Attorney for Appellant

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 24, 2025, a true and correct copy of Appellant's Brief in the matter of Hill v. Hill, was served via regular US mail and electronic mail upon the individuals listed below:

ELIZABETH HILL
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SIGNED AND DATED this 24th day of April 2025.

Respectfully submitted,
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(605) 593-8972 (telephone)

By: /s/ L. Adam Bryson
L. Adam Bryson
Attorney for Appellant

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

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

51DIV23-000423

BRAD HILL,)
)
Plaintiff,)
)
vs.)
)
ELIZABETH HILL,)
)
Defendant.)

**MEMORANDUM OPINION FINDINGS
OF FACT, CONCLUSIONS OF LAW,
ORDER, JUDGMENT, AND DECREE**

Husband, Brad, filed a complaint for divorce, through counsel, on November 26, 2023. Brad sought a divorce on the grounds of irreconcilable differences. He also asked the Court to equitable divide the parties' property and debt. And he asked the Court to award him his attorneys fees.

Wife, Elizabeth, was served on January 4, 2024. She filed an answer, pro se, on January 22, 2024. Initially, Elizabeth objected to the divorce. She suggested that their marital difficulties may have stemmed from Brad's post-traumatic stress disorder (P.T.S.D.) diagnosis and her hearing issues. Although Elizabeth did not ask for a divorce, she alleged that Brad committed adultery, emotional abuse, and had been convicted of a felony. Elizabeth confirmed the parties separated on October 17, 2023, and had property and debts to divide. Elizabeth also asked for spousal support, including interim support for September and October 2024. She consents to divorce.

Some discovery occurred. There was a trial on October 7, 2024. Brad appeared with counsel and testified. An appraiser, Shelly Carter, testified remotely on Brad's behalf. Elizabeth appeared pro se and testified. Three witnesses testified telephonically on behalf of Elizabeth: the parties' son Cody Hill, Brad's friend Paul White, and Brad's mother Benicia Hill. The Court received several exhibits.

FACTUAL BACKGROUND

The parties were married on April 30, 1992, in Kern County California. They are both almost 54 years old. They have two adult children.

Brad graduated high school in 1989 and served in the United States Army from 1989 to 1993. Brad was deployed during the Gulf War and suffers from Gulf War Syndrome. He has an 80% disability rating and receives a \$2,260 monthly disability payment from the Veterans Administration ("V.A.") for P.T.S.D., memory loss, and fibromyalgia. He previously took several medications but does not currently.

After his separation from the military, Brad worked as a correctional officer at the California Correctional Institution in Tehachapi, California for about twenty years. Brad has had four shoulder surgeries. Brad retired around 2013 and receives a pension through the California Public Employees' Retirement System ("CalPERS").

Elizabeth worked as an animal control officer prior to the marriage. For six months in 1994, she was the sole provider for the family, until Brad obtained his job as a correctional officer. She has no retirement account or pension. Elizabeth and her witnesses testified though that Brad did not want Elizabeth to work during the marriage and that he wanted her to homeschool their children and be a homemaker. Brad testified that he encouraged Elizabeth to return to work as an animal control officer, but she refused. Brad testified that Elizabeth was "832 certified," which appears to a reference to the training requirements to be a peace officer in California. Brad claims he paid for this certification, Elizabeth claims her parents paid for it. It appears that Elizabeth has had very limited employment in 2023 and 2024. Elizabeth's health is poor. She has hearing issues and uses hearing aids. She also suffers from some form of anxiety and takes Wellbutrin.

Around 2012 to 2015 the parties experienced some turmoil. Elizabeth's father Leonard Powell died. Elizabeth testified she inherited a motorcycle and firearms from her father. The parties also testified that they sought protection orders against each other. And there may have been violations of protection orders. The testimony also reveals Brad had at least one significant interaction with law enforcement.

The witnesses were relatively vague about Brad's legal issues, but it appears that he cannot possess firearms and may have had firearms taken by law enforcement because of a domestic violence protection order and/or a felony conviction. The Court understands that law enforcement may have removed firearms based on one of the protection orders and fears that Brad could harm himself and others. It also appears that sometime around 2015, Brad was convicted of a felony after a thirteen-hour armed standoff with California law enforcement. A S.W.A.T. team was involved. Brad referenced a "no contest plea" but other witnesses referenced a "trial." The Court suspects that firearms could have been seized because of that criminal investigation, in addition to being removed earlier as result of a protection order. Both Cody and Benincia testified that they had taken custody of firearms at different times. It appears that both the parties' firearms and Elizabeth's father's firearms were seized. Again, the testimony is unclear, but Elizabeth testified that at least 25 of Brad's firearms and 12 of her father's firearms were seized in 2015. Another 33 were apparently seized in March of 2017 after what appears to be either a second arrest or a conviction.

The marriage apparently weathered Brad's legal issues. It appears that they sold their home in California around 2019. They placed several possessions in a storage unit in Bakersfield California and began living in a fifth wheel full-time. They apparently registered this fifth wheel trailer in Pennington County South Dakota. Their

other vehicles are also registered here, they have South Dakota driver's licenses show a Pennington address, and claim Pennington County as their "residence." At some point, their fifth wheel burned, and they purchased a class A motorcoach with the insurance proceeds. They financed a large pickup and a motorcycle in 2021. Their desire to be "residents" of South Dakota has also apparently caused them to lose their taxpayer-funded health insurance from the state of California.

They separated in the Fall of 2023. Apparently, they were camping in Quartzsite, AZ. Brad wished to travel to Oklahoma to attend his niece's wedding. He claims Elizabeth refused his request to drive the parties' pick-up and instead had to ride his motorcycle, which was very difficult considering his numerous shoulder surgeries. He was unable to endure the ride back and instead was driven back to Arizona by his brother. The parties' testimony is contradictory as to whether Elizabeth left upon Brad's return or if he asked her to leave. It appears though, that Elizabeth took the pickup, a dog (which parties claim is their service animal), and her immediate personal possessions and returned to California. She apparently is homeless and stays in the pickup in and around Bakersfield, California. Brad apparently kept the motorcycle and the motorhome. It is unclear where he stays. Both parties still claim South Dakota residency and attended trial.

DISCUSSION

1. Grounds for Divorce

The parties do not contest the divorce. They don't dispute the Court's jurisdiction. Each is granted a divorce on the grounds of irreconcilable differences.

2. Property and Debt

In making an equitable division of the marital estate, the law does not require perfection that would approach mathematical certainty. Therefore, there is no rigid formula that must be followed, nor any fixed percentage to which either party is entitled. However, the circuit court should consider the following factors:

- (1) the duration of the marriage;
- (2) the value of the property owned by the parties;
- (3) the ages of the parties;
- (4) the health of the parties;
- (5) the competency of the parties to earn a living;
- (6) the contribution of each party to the accumulation of the property; and
- (7) the income-producing capacity of the parties' assets.

The trial court must make the division of property on the basis of these principal factors while having due regard for equity and the circumstances of the parties.¹

The parties were married for almost thirty years. They are both 53 years and in poor physical and mental health. Neither appears able to earn a living. Brad is disabled and a felon. Elizabeth has essentially never worked outside of the home. The value of their property, while difficult to establish on this record, is minimal and none of it is income-producing. They accumulated their property through a marriage in which Brad worked outside the home and Elizabeth was a homemaker. Some property was inherited from Elizabeth's father.

a. Firearms

The parties own dozens, if not more, firearms. Many were Elizabeth's fathers. Many were Brad's. It is unclear where they are, and thusly it is impossible to value

¹ *Goeden v. Goeden*, 2024 S.D. 51, ¶ 43 (cleaned up).

them. Benicia testified that she took custody of some or all of the firearms after Brad's "trial." She apparently received these firearms directly from law enforcement. She testified though, that immediately after she took custody of the firearms, Brad "loaded them into his truck." She testified that she reported Brad to the F.B.I. five or six years later after school shootings caused her to be concerned that she could be held accountable for Brad's potential gun crimes. Likewise, Cody testified that he took custody of some or all the firearms at some point, likely from the Kern County Sheriff's Department in 2018.²

Elizabeth testified that the firearms were placed in the parties' Bakersfield storage unit. She claims that at some point, likely after separation, Brad removed the firearms from the storage unit. Exhibit I is a police report Elizabeth filed with the Kern County Sheriff claiming that the firearm's were stolen from the storage unit. That report identifies the 38 following registered firearms:

Registered to Elizabeth

- EMF Early Modern.8888 revolver SAA Serial# SA 144367
- SR Sturm Ruger .41 revolver Serial # 4668000
- SR Sturm Ruger .22 revolver Serial # 26433523

Registered to Benicia (serial numbers redacted)

- TAS Taurus Forjas .454 revolver
- Marlin .22 semiautomatic rifle
- Carcano .65 semiautomatic rifle
- Smith & Wesson .38 revolver
- Winchester .410 shotgun
- Savage Arms .17 rifle
- Chinese .762 rifle

² Its impossible for the Court to know exactly what happened based on the limited testimony at trial. But it's likely that some firearms were seized and given to Cody and others were seized and given to Benicia. But regardless, the evidence suggest that Brad took possession of those firearms back at some point. It's possible that Cody and Benicia each had temporary possession of different firearms, or that they may have had possession of some of the same firearms at different times.

- Anschutz and Savage .22 rifle
- Sturm and Ruger .41 revolver
- Sturm and Ruger .22 rifle
- Mauser .792 rifle
- International armament .30 semiautomatic rifle

Registered to Leonard Powell

- Harrington and Rich .3006 rifle Serial # 5646929
- Bond Arms .45 pistol Serial # C00455
- Sauer & Sons .9 P938 Serial #52B054261
- Sauer & Sons .380 pistol Serial # 27A220300
- Para Ordnance .9mm pistol Serial # P234430
- Colt .45 pistol Serial # DR37387
- Springfield .45 pistol Serial #US581672
- Springfield .9mm pistol Serial #US887127
- Sauer & Sons .9mm pistol Serial #M453447
- Kimber .45 pistol Serial #KU83462
- Para Ordnance .45 pistol Serial #P181579
- Gabindo .380 pistol Serial #A06745

Registered to Brad (serial numbers redacted)

- Anderson semiautomatic rifle
- FI Industries 12 gauge shotgun
- Savage Arms .17 rifle
- Savage Arms .17 rifle
- FI Industries .9mm pistol
- Para Ordnance .45 pistol
- Para Ordnance .45 pistol
- Sturm & Ruger .22 pistol
- Springfield .454 semiautomatic rifle
- Taurus Forjas .454 pistol
- Carl Walther .380 pistol

Exhibit I suggests that Brad has been, or might be, charged with illegally possessing these firearms. Again, it's unclear where these firearms are or what they are worth. But a conservative estimate of \$500 per firearm reveals an estimate of at least \$19,000.

i. Leonard Powell's Firearms

The firearms listed above, which are registered to Elizabeth's late father, Powell are not martial. The court estimates their value to be about \$6,000. These firearms should be returned to Elizabeth within sixty days. The preferred method would be for them to be surrendered to law enforcement.

ii. Marital Firearms

The other firearms are marital. These include the firearms registered to Brad and to Elizabeth. It also includes the firearms registered to Benicia as those appear to be registered to her when she took custody of them several years ago. The court estimates their value to be about \$13,000. These firearms should be returned to Elizabeth within sixty days. The preferred method would be for them to be surrendered to law enforcement.

b. Retirement Accounts

Brad has two retirement accounts from his time a California employee, a CalPERS vested pension, which appears to be a 401(a) defined benefit plan and a 457(b) defined contribution plan with a balance of \$80,130. Both plans were funded entirely during the marriage. Brad argues, without authority, that Elizabeth is not entitled to any portion of the 457(b) plan. As to the 401(a), Brad proposes that his current gross monthly pension benefit of \$3,742 be divided in half, multiple by 12 (for the months in a year) and then multiplied by 20 (the years the parties were married) and then that number be assigned to each party in a property division. And that he pays that amount to Elizabeth each month. That's not how retirement benefits are divided.

In South Dakota a retirement plan has been recognized as a divisible marital asset since it represents consideration in lieu of a higher present salary. Contributions made to the pension plan would have been available to the family as disposable income during the marriage.³

Accordingly, Elizabeth is awarded half of Brad's monthly CalPERS retirement benefit—whatever the benefit is or becomes in the future. And she should receive it directly from CalPERS as a nonmember by way of a Qualified Domestic Relations Order ("QDRO"). As the member, Brad should prepare the QDRO and submit it to the Court by November 30, 2024. Until the CalPERS begins paying monthly benefits directly to Elizabeth, Brad should pay \$1,872 directly to Elizabeth beginning November 1, 2024.

Elizabeth is also entitled to half of the value of the 457(b) account on the date of divorce. She is also entitled to a QDRO allowing to rollover 50% of the balance (approximately \$40,065) to an approved retirement account. She should provide Brad's counsel with her retirement account information, and he should prepare and provide the court a QDRO within 30 days transferring 50% of the plan balance as of the date of the divorce to Elizabeth.

c. Bank Accounts

The bank accounts should be divided equally. Elizabeth may retain the \$2,640 in the Chase Premier checking account.⁴ Brad may retain the \$299 in the Safe 1 credit union account. Brad should transfer \$55,728.50 to Elizabeth to balance out her interest in the Chase Savings account within by October 31, 2024.

³ *Grode v. Grode*, 1996 S.D. 15, ¶ 24.

⁴ This money does not need to be divided because apparently the only money in this account came from Brad's monthly interim support transfers.

d. Vehicles

Elizabeth should receive the 2021 Ford F250, worth approximately \$46,000. Brad should receive the 2021 Harley Davidson, worth approximately \$14,000, and the 2003 Monaco Windsor Coach, worth approximately \$39,000. Brad should receive the 2022 Look Trailer and the Unut trailer, each worth approximately \$5,000. Exhibit 17 also identifies a “Harley Davidson Special Construction.” Its unclear what this is. The Court awards it to Elziabeth. The parties should exchange title to these vehicles within Sixty days.

e. Storage Unit

The parties have control over a storage unit in Bakersfield California. Elizabeth is responsible for the lease on the storage unit, subject to Brad’s right to retrieve certain items within sixty days. Because of the history of protection orders in this matter, Brad should arrange for a third-party to retrieve his property from the storage unit. Alternatively, Brad may retrieve his property personally if California law enforcement is available to oversee the removal of the property consistent wit this order. Elizabeth may not unreasonably withhold access to the storage unit for Brad to retrieve his property. Failure to retrieve his property within sixty days will result in Brad’s property reverting to Elizabeth without equalization.

i. Precious Moments Figurines

There are 300 Precious Moments figurines in the storage unit. Carter valued them at \$30,000 even though she only opened one box in fear that the 140-degree heat in the unit had or would damage them. Accordingly, this valuation is highly speculative. Moreover, Cody, Elzabeth, and Benicia testified that Elizabeth had inherited the from her grandmother. The Court finds that they are non-marital should be awarded to

Elizabeth. Even if these figurines are marital property, it is equitable for Elizabeth to receive them.

ii. Thomas Kinkade Paintings

There 2 Thomas Kinkade Disney Painting in the storage unit. Carter valued them at \$10,000 each even though she did not look at them. Brad claims-without evidence that there are six more paintings he also claims are worth \$10,000. Elizabeth concedes there may have been four more. Brad should receive the two in the storage unit. Elizabeth may retain the other four paintings.

iii. 1968 Harley Davidson Motorcycle

There is 1968 Harley Davidson motorcycle in the storage unit. It belonged to Powell, Elizabeth's father. It apparently is registered to both Brad and Elizabeth. Brad claims that Powell gifted it to the parties because Brad cleared trees for Powell. Elizabeth claims she inherited it from her father. Carter valued the motorcycle at \$25,000.

The motorcycle should be excluded from marital estate because it was inherited. Brad's testimony regarding the clearing of trees is not compelling. Even if this motorcycle is marital property, it is equitable for Elizabeth to receive it.

Other Items in Storage Unit

Brad should receive these items from the storage unit:⁵

- Military History Items
- Desert Storm Paperwork
- Vietnam Collectibles
- Branding Irons
- Half of the Family Photos
- Family Papers

⁵ The Court does not conclude that all items on Exhibit 17 are in the storage unit. Specifically, Benicia testified that a box of family items was in her possession.

- Reloading Equipment⁶
- Spotting Scopes⁷
- Starlink
- Numerous Tool Chests and Tools
- Chemical Sprayer
- Smoker
- Air Compressor
- Vacuum Cleaner
- Oxygen Canister

Elizabeth should receive these items⁸ from the storage unit:⁹

- Half of the Family Photos
- Mohogany Bed Frame
- Headboard
- Chest with Clothes
- Dining Table
- Ammunition
- Clipper Dive Canoe.

f. Debts

Elizabeth should be responsible for the \$42,000 Ford F250 loan, the \$7,000 American Express balance, the \$1,200 Barclays balance, and the \$7,000 USAA balance. Brad should be responsible for the time share debt.

The Court notes that neither the property nor debt division is *equal*. The Court, having considered the entire record finds it to be *equitable*.

3. Alimony

Elizabeth requests permanent alimony.

The factors to be considered in awarding alimony are: 1) The length of the marriage; 2) the respective earning capacity of the parties; 3) their respective financial condition after the property division; 4) their

⁶ The court assumes but does not hold that it is legal for Brad to possess reloading equipment.

⁷ The court assumes but does not hold that it is legal for Brad to possess spotting scopes.

⁸ The Court accepts the values on Exhibit 17.

⁹ The Court does not conclude that all items on Exhibit 17 are in the storage unit. Specifically, Benicia testified that a box of family items was in her possession.

respective age, health, and physical condition; 5) their station in life or social standing; and 6) the relative fault in the termination of the marriage.¹⁰

The parties were married for almost thirty years. They are both 53 years and in poor physical and mental health. Neither appears able to earn a living. Brad is disabled and a felon. Elizabeth has essentially never worked outside of the home. The Court has divided the property equitably, but notes that Brad's financial condition is likely better than Elizabeth's after the property division. He is awarded the parties only residence, a motorhome. He also is responsible for less debt and has a non-marital source of income, his VA disability. Finally, a portion of Elizabeth's property division is comprised of firearms and paintings, the location of which are unknown. The parties' station in life and social standing is relatively equal, but Brad is, on one hand—a veteran, and on the other—a felon. While the parties are awarded a divorce based on irreconcilable differences, the court concludes, that Brad is more at fault for the termination of the marriage. Elizabeth's story regarding separation is more believable, Brad is the plaintiff, Elizabeth initially resisted divorce, and Brad is a felon.

Plainly, Elizabeth *needs* spousal support. She is homeless. On the other hand, Brad has a limited ability to pay alimony. After considering the factors set forth above. The court concludes Elizabeth is entitled to \$750 a month in permanent alimony. This obligation will continue until modified by the Court, Elizabeth's remarriage, or death of one of the parties.

4. Attorney's Fees

Brad is not entitled to his attorney's fees.

¹⁰ *Ryken v. Ryken*, 440 N.W.2d 300, 303 (S.D. 1989).

5. Interim Support

Brad had been transferring \$2,000 from savings to the joint checking each month. He did not in September or October. At trial, he was ordered to do so. If he has not, he should immediately transfer an additional \$4,000 to Elizabeth. This is in addition to her \$55,728.50 share of the balance of that account and in addition to his November alimony obligation and his retirement payment obligation.

ORDER, JUDGMENT, AND DECREE

Based on the foregoing it is,

ORDERED, ADJUDGED, AND DECREED that each party is granted a Judgment and Decree of Divorce on the grounds of irreconcilable differences and the parties are restored to the status of single persons. It is further

ORDERED, ADJUDGED, AND DECREED that the parties' property and debt should be divided consistent with this memorandum order. It is further

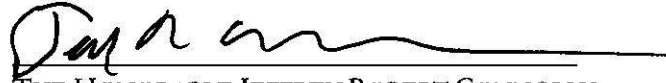
ORDERED, ADJUDGED, AND DECREED that all other debts shall be paid by the party incurring such debt. It is further

ORDERED, ADJUDGED, AND DECREED that Elizabeth be awarded permanent alimony in the amount of \$750 a month beginning November 1, 2024. It is further

ORDERED, ADJUDGED, AND DECREED that each party shall, at the request of the other, execute and deliver any such instruments as may be required in order to carry out the intentions and provisions of this Judgment and Decree of Divorce. In the event either party shall fail to execute deeds, titles, or other documents of transfer as required by this Judgment and Decree of Divorce, this Judgment and Decree shall operate as an effective transfer of that party's interest in said property as set forth herein.

Dated October 21, 2024.

BY THE COURT:



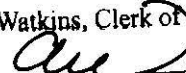
THE HONORABLE JEFFREY ROBERT CONNOLLY
CIRCUIT COURT JUDGE

ATTEST: 
AMBER WATKINS, CLERK OF COURTS



FILED
Pennington County, SD
IN CIRCUIT COURT

OCT 21 2024

Amber Watkins, Clerk of Courts
By  Clerk

3:22 PM

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Shirley A. Johnson-Leged
Clerk

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

APPEAL NO. 30902

BRAD HILL
Plaintiff/Appellant

vs.

ELIZABETH HILL
Defendant/Appellee

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH
DAKOTA

HONORABLE JEFFREY CONNOLLY, CIRCUIT COURT JUDGE

APPELLEE'S BRIEF

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30902

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

BRAD HILL,

Plaintiff and Appellant,

vs.

NO. 30902

ELIZABETH HILL,

Defendant and Appellee.

APPELLEE'S BRIEF

PRELIMINARY STATEMENT

Throughout this Brief, Elizabeth Hill will be referred to as "Elizabeth," Brad Hill, will be referred to as "Brad," Benicia Hill will be referred to as "Benicia," Cody Hill will be referred to as "Cody." References for documents in the record herein will be designated as follows:

- Court Trial Transcript (October 7, 2024) - CT
- Memorandum Opinion Findings of Fact, Conclusions of Law, Order, Judgment, and Decree-Order

JURISDICTIONAL STATEMENT

Brad appeals from the Order entered by the Honorable Jeffrey Connolly in the Seventh Judicial Circuit, on October 21, 2024. Notice of Appeal was timely filed on November 13, 2024. This Court has jurisdiction over this matter pursuant to SDCL § 15- 26A-3.

STATEMENT OF LEGAL ISSUES

1. Did the circuit court err in determining that the 1968 Harley Davidson motorcycle was non-marital property?

The trial court found the motorcycle was inherited by Elizabeth from her father, making it non-marital property. Alternatively, it ruled that even if marital, awarding it to Elizabeth was equitable.

- *Novotny v. Novotny*, 2006 SD 64, 719 N.W.2d 512
- *Schwieger v. Schwieger*, 2008 SD 115, ¶ 24, 758 N.W.2d 772
- *Kraut v. Kraut*, 1995 SD 122

2. Did the circuit court err in classifying the Precious Moments figurines as non-marital property?

The trial court determined the figurines were inherited by Elizabeth from her grandmother and thus non-marital. It further held that awarding them to Elizabeth was equitable even if marital.

- *Johnson v. Johnson*, 739 N.W.2d 6 (S.D. 2007)

3. Firearms

The circuit court's findings and rulings regarding the firearms were both reasonable and supported by the evidence.

- *Field v. Field*, 949 N.W.2d 221, 224 (S.D. 2020)
- *Giesen v. Giesen*, 911 N.W.2d 750, 757 (S.D. 2018)

A. Did the circuit court err in admitting Exhibit I (police report) regarding firearms?

The trial court admitted Exhibit I, concluding it qualified as a business record and that Elizabeth's statements within it were admissible.

- *Robeson v. State*, 403 A.2d 1221, 1223 (Md. Ct. App. 1979)

- *Johnson v. O'Farrell*, 787 N.W.2d 307, 313 (S.D. 2010)
- *State v. Williams*, 710 N.W.2d 427, 430 (S.D. 2006)

B. Did the circuit court err in valuing and distributing the marital firearms?

The trial court assigned a conservative value of \$500 per firearm despite no direct testimony, finding the estimate reasonable given the lack of evidence. It ordered Brad to return any firearms in his possession.

- *Johnson v. Johnson*, 734 N.W.2d 801, 811 (S.D. 2007)
- *Hanks v. Hanks*, 296 N.W.2d 523, 526 (S.D. 1980)
- *Kost v. Kost*, 515 N.W.2d 209, 212 (S.D. 1994)
- *Hill v. Hill*, 763 N.W.2d 818, 823 (S.D. 2009)

C. Did the circuit court err in determining that firearms registered to Leonard Powell were non-marital property?

The trial court classified these firearms as non-marital, ruling they were inherited by Elizabeth and Brad's contributions to their maintenance were de minimis.

- *Billion v. Billion*, 553 N.W.2d 226, 232 (S.D. 1996)
- *Terca v. Terca*, 923 N.W.2d 319, 326 (S.D. 2008)
- *Novak v. Novak*, 713 N.W.2d 551, 553 (S.D. 2006)

D. Did the circuit court err in declining to award Brad a monetary credit for firearms he cannot possess?

The trial court determined that awarding Elizabeth the firearms without a monetary credit to Brad was equitable given Brad's felony conviction, which legally barred him from possessing firearms.

- *Halbersma v. Halbersma*, 738 N.W.2d 544, 551 (S.D. 2007)
- *DeVries v. DeVries*, 519 N.W.2d 73, 75 (S.D. 1994)

- *Johnson v. Johnson*, 734 N.W.2d 801, 812 (S.D. 2007)
- *State v. Dillon*, 2001 S.D. 97, ¶10, 632 N.W.2d 37, 42

4. Did the circuit court err in its division of the Thomas Kinkade paintings?

The trial court resolved conflicting testimony by awarding Brad two verified paintings and Elizabeth four unaccounted-for paintings, finding the division equitable.

- *Halbersma v. Halbersma*, 738 N.W.2d 544, 551 (S.D. 2007)
- *DeVries v. DeVries*, 519 N.W.2d 73, 75 (S.D. 1994)
- *Johnson v. Johnson*, 734 N.W.2d 801, 812 (S.D. 2007)

5. Did the circuit court err in awarding Elizabeth Hill \$750 per month in alimony?

The trial court awarded permanent alimony based on Elizabeth's limited earning capacity, Brad's disability income, and the need to address post-division financial disparity.

- *DeVries v. DeVries*, 519 N.W.2d 73, 77 (S.D. 1994)
- *Johnson v. Johnson*, 471 N.W.2d 156, 163 (S.D. 1991)

STATEMENT OF THE CASE

Appellee Elizabeth Hill respectfully submits this response to the appeal filed by Brad Hill challenging the trial court's judgment regarding property classification, evidentiary rulings, valuation, distribution of marital assets, and alimony. The circuit court's findings were supported by the evidence, were not an abuse of discretion, and should be affirmed.

This appeal arises from the trial court's judgment in the dissolution of the marriage between Elizabeth Hill (Appellee) and Bradley Hill (Appellant). The trial court carefully considered the evidence presented and rendered rulings supported by the record and applicable law. Appellant challenges the court's findings on five grounds, none of which warrant reversal.

STATEMENT OF FACTS

The parties were married on April 30, 1992, in Kern County California. Brad graduated high school in 1989 and joined the United States Army. He served in the Army from 1989 to 1993, as a result of his military service Brad is an eighty percent disabled veteran and receives \$2,260 per month for disability compensation from the Veterans Administration (VA).

Brad worked as a corrections officer for the California Correctional Institution in Tehachapi, California for twenty years after he separated from the Army. Brad retired from the California Correctional Institute around 2013. As a result, he receives a pension from the California Public Employee's Retirement System (CalPERS) and has a 457-b retirement plan.

Elizabeth worked prior to the marriage as an animal control officer. She was the sole provider in the marriage for a six-month period during 1994 as Brad transitioned out of the Army. Elizabeth was a full – time homemaker and homeschooled the couple's children.

Around 2015 Elizabeth's father, Leonard Powell died. *CT 132:6*. According to Elizabeth her father left her a 1968 Harley Davidson motorcycle and some firearms. They both testified that at one point in time the motorcycle was registered in both of their names in California. However, this was done for Insurance purposes only.

At some point during 2015 Brad was convicted of a felony, and as a result was not allowed to lawfully possess a firearm. Arrest dates of October 2015 and December 2015. As a result, the Kern County Sheriff's Department confiscated the firearms in the couple's home. Cody Hill, the parties' son, testified that "At least 30" firearms were released to him by the Kern County Sheriff's Department. "June or July 2018". Cody also testified that in total, "between pistols, rifles, probably close to 100 to 120." Meanwhile, Benicia Hill, Brad's mother, testified that she retrieved the firearms from the sheriff's office.

Around 2019 the parties sold their marital home and placed all their possessions in a

storage shed in Bakersfield California. They owned a fifth wheel RV and began living out of it full-time. The fifth wheel RV was registered in Pennington County South Dakota. They registered their other vehicles in South Dakota, both parties obtained South Dakota driver's licenses, and claimed Pennington County as their residents. At some point, the fifth wheel RV was destroyed by fire in October 2020. In December 2020, they purchased a class A motorcoach. In July 2021, Brad Hill traded in a brand new Indian Motorcycle and purchased a brand new Harley-Davidson at Black Hills Harley for \$23,000 in cash. They also financed an F-250 Ford truck in Nevada in May of 2023. The couple separated in October of 2023. In November 2023, following the initiation of divorce proceedings by Brad Hill, he utilized marital assets to acquire a second trailer for an unknown amount.

STANDARD OF REVIEW

This Court applies varying standards of review depending on the nature of the issue raised. In this case, Brad Hill challenges the circuit court's determinations concerning property classification, evidentiary rulings, property valuation and distribution, and the alimony award. Each is governed by well-established standards that favor affirmance absent a clear abuse of discretion or legal error.

A circuit court's findings of fact are reviewed under the clearly erroneous standard and will not be set aside unless, after reviewing all the evidence, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Halbersma v. Halbersma*, 775 N.W.2d 210, 214 (S.D. 2009); SDCL 15-6-52(a). The reviewing court gives due regard to the trial court's opportunity to assess the credibility of witnesses.

Questions of law are reviewed de novo, without deference to the circuit court's conclusions. *Halbersma*, 775 N.W.2d at 214.

A circuit court's classification of property as marital or non-marital is reviewed under the abuse of discretion standard. *Field v. Field*, 949 N.W.2d 221, 224 (S.D. 2020). An abuse of discretion occurs only when the trial court makes "a fundamental error of judgment, a choice outside the range of permissible choices, a decision which, on full consideration, is arbitrary or unreasonable." *State v. Delehoy*, 929 N.W.2d 103, 108–09 (S.D. 2019) (quoting *Thurman v. CUN Mut. Ins. Soc'y*, 836 N.W.2d 611, 616 (S.D. 2013)). An error of law, by contrast, is never within the range of permissible choices and thus constitutes an abuse of discretion. *Lewis v. Sanford Med. Ctr.*, 840 N.W.2d 662, 668 (S.D. 2013).

Rulings on the admissibility of evidence are also reviewed for abuse of discretion. *State v. Williams*, 710 N.W.2d 427, 430 (S.D. 2006). The circuit court is afforded wide latitude in evidentiary matters, particularly in bench trials.

A trial court's valuation of property is a factual finding reviewed under the clearly erroneous standard. *Giesen v. Giesen*, 911 N.W.2d 750, 757 (S.D. 2018). This Court must uphold such valuations if they are supported by evidence in the record and are not clearly mistaken.

The division of marital property is reviewed under the abuse of discretion standard. A circuit court abuses its discretion only when its decision is "clearly against reason and evidence." *Kost v. Kost*, 515 N.W.2d 209, 212 (S.D. 1994). The trial court has broad discretion to distribute marital property in a manner it deems equitable under the circumstances.

Finally, the award of alimony is also committed to the sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion. *Kappenmann v. Kappenmann*, 479 N.W.2d 520, 523 (S.D. 1992).

In all respects, the circuit court's decisions in this matter were reasonable, supported by the record, and well within the range of permissible judicial discretion.

ARGUMENT

Brad Hill's appeal fails because it does not challenge the circuit court's key factual findings, which are both comprehensive and supported by the record. The court properly considered the parties' long-term marriage, poor health, limited earning potential, and non-income-producing property in reaching its equitable distribution. Although Brad disputes the classification and allocation of certain assets, he provides no legal basis to overturn the court's discretionary determinations. Instead, he asks this Court to reweigh evidence already considered below. The court's decisions, including its evidentiary ruling on Exhibit I, its valuation of property, and its award of modest alimony were reasoned, supported by the evidence, and well within the bounds of judicial discretion.

1. The Circuit Court Properly Determined That the 1968 Harley Davidson Motorcycle Was Non-Marital Property

The motorcycle was inherited property and presumptively non-marital. South Dakota law provides that inherited property is generally considered non-marital unless there is clear evidence of intent to convert it to marital property. See *Novotny v. Novotny*, 2006 SD 64, 719 N.W.2d 512.

The motorcycle was inherited by Elizabeth from her late father during the marriage.

Inheritance is not automatically marital, and the burden is on the spouse claiming otherwise (here, Brad) to prove transmutation.

No intent to convert the motorcycle to marital property was demonstrated. Brad argues that registration in both names and maintenance contributions prove conversion. However, the evidence does not support an intent to transmute:

- The motorcycle was titled jointly for insurance purposes only.
- Joint titling for administrative convenience does not, by itself, show an intent to make separate property marital. See *Schwieger v. Schwieger*, 2008 SD 115, ¶ 24, 758 N.W.2d 772 “Joint titling alone is insufficient to convert separate property to marital property absent clear and convincing evidence of the parties’ intent to do so.”
- No written or verbal agreement indicated a change in ownership intent.
- Brad had his own newer motorcycle for daily use, showing he did not rely on or share ownership of the 1968 Harley.
- Labor was voluntary and without a written agreement.
- Occasional use by Brad does not establish joint ownership or intent to convert.
- Elizabeth retained full control of the motorcycle.
- Brad’s contributions were minimal and voluntary. Brad’s claim that he spent community funds or labor on maintenance does not change the character of the asset:
- Contributions were de minimis and for incidental maintenance.
- Use of marital funds for minor parts is insufficient to transmute inheritance. See *Kraut v. Kraut*, 1995 SD 122.

South Dakota courts have routinely held that minor improvements or maintenance, even using joint funds, do not alone convert inherited property to marital property unless clearly intended to do so.

2. The Circuit Court Did Not Err in Determining That the Precious Moments Figurines Were Non-Marital Property

The court correctly concluded that the majority of the figurines were gifts to Elizabeth either before the marriage or from third parties specifically to her. Even those acquired during the marriage were shown to have been collected by Elizabeth and maintained as part of a personal collection. Brad Hill failed to prove substantial contribution or joint intent to classify them as marital. The decision is consistent with the equitable principles under *Johnson v. Johnson*, 739 N.W.2d 6 (S.D. 2007).

3. Firearms

The circuit court's findings and rulings regarding the firearms were both reasonable and supported by the evidence and thus should be affirmed.

First, the court correctly classified twelve of the firearms as non-marital property based on uncontroverted testimony that they were inherited by Elizabeth Hill from her father, Leonard Powell. Under South Dakota law, property acquired by inheritance is generally considered non-marital unless there is evidence of intent to gift it to the marital estate. *Field v. Field*, 949 N.W.2d 221, 224 (S.D. 2020). Brad Hill offered no such evidence. The court's classification of those firearms as non-marital was therefore not an abuse of discretion.

Second, the court appropriately valued the remaining twenty-six firearms which it determined to be marital property at \$500 per firearm, for a total of \$13,000. Brad Hill failed to offer any credible valuation evidence or expert testimony to support an alternative value. In the absence of such evidence, the court's use of a conservative, uniform estimate was a reasonable exercise of its discretion. A trial court's valuation of property is a factual determination reviewed under the clearly erroneous standard. *Giesen v. Giesen*, 911 N.W.2d 750, 757 (S.D. 2018). The court's valuation, while general, was supported by the record and not clearly erroneous.

Finally, Brad's complaint regarding the return of the firearms ignores the fact that the court did not conclusively determine their physical location due to conflicting testimony. Rather than penalizing either party, the court ordered Brad to return any firearms in his possession within sixty days a fair and practical directive under the circumstances. The court's handling of this matter balanced the interests of both parties and did not constitute an abuse of discretion.

In short, the circuit court acted well within its authority in classifying, valuing, and distributing the firearms. Brad Hill's failure to provide contrary evidence or demonstrate legal error provides no basis for reversal.

a. The Circuit Court Properly Admitted Exhibit I (a Bakersfield Police Report)

The circuit court did not err in admitting Exhibit I, the Bakersfield Police Department report, and its ruling should be affirmed. While Brad Hill contends the exhibit constitutes inadmissible hearsay within hearsay, he fails to acknowledge both the proper legal standard and the broader context under which courts may affirm evidentiary rulings.

First, even if a trial court admits evidence under an incorrect theory, the decision must be affirmed if the evidence is otherwise admissible under any valid legal theory. See *Robeson v. State*, 403 A.2d 1221, 1223 (Md. Ct. App. 1979). Here, the report was offered to corroborate Elizabeth Hill's testimony about the quantity and type of firearms taken from a shared storage unit. Her statements to the police were not offered for the truth of the matter asserted but to demonstrate consistent reporting of the loss, a relevant, non-hearsay purpose. To the extent they were considered for their truth, her statements could be admitted under the hearsay exception for party admissions, as outlined in *Johnson v. O'Farrell*, 787 N.W.2d 307, 313 (S.D. 2010).

Second, the court has discretion in evidentiary rulings, and those rulings are reviewed under an abuse of discretion standard. *State v. Williams*, 710 N.W.2d 427, 430 (S.D. 2006). In this case, the circuit court clearly acknowledged the hearsay objection, took it under advisement, and admitted the exhibit with full awareness of its contents and limitations. This reflects careful judicial consideration, not an arbitrary or erroneous ruling.

Third, Brad Hill's argument that no foundational witness was presented from the police department to establish the business records exception misses the point. The court did not necessarily admit the report under the business records exception alone. Rather, the judge recognized it as a corroborative document detailing Elizabeth's report of a theft, a matter she also testified to directly. Elizabeth's testimony, even if somewhat limited, combined with the context of her reporting the stolen items, provided sufficient basis for the court to consider the report in weighing credibility and resolving conflicting accounts of the firearms' existence and ownership.

Finally, Brad Hill's position that the circuit court should have relied only on firearms Elizabeth personally identified at trial is overly restrictive and ignores the practical necessity of considering all relevant, probative evidence in equitable distribution proceedings. The court had discretion to determine the weight of Exhibit I, not merely its admissibility, and Brad's cross-examination opportunities allowed him to challenge any alleged deficiencies. Accordingly, the court's admission of Exhibit I, was not an abuse of discretion, and Brad Hill has failed to show that any error, if it occurred, was prejudicial.

b. The Court's Valuation of Firearms Was Not Clearly Erroneous

The circuit court did not err in valuing the firearms at \$500 each, and its determination should be affirmed. While it is true that courts require evidence to support valuations, it is equally true that

trial courts have broad discretion to assess and assign reasonable values based on the information available at trial. Contrary to Brad Hill's assertions, the circuit court's valuation was not speculative or arbitrary but instead reflected a reasonable estimate based on the available record and testimony, including the nature and number of firearms listed in Exhibit I and testimony by both parties regarding ownership and possession.

Brad correctly cites *Hill v. Hill*, 763 N.W.2d 818, 823 (S.D. 2009), for the proposition that a trial court's valuation must fall "within a reasonable range of figures based on the evidence presented." However, he fails to acknowledge that a trial court is not required to adopt either party's valuation (*Johnson v. Johnson*, 734 N.W.2d 801, 811 (S.D. 2007)), nor is it required to accept a specific expert appraisal or exact documentation (*Larson v. Larson*, 733 N.W.2d 272, 277 (S.D. 2007)). What is required is a good-faith effort by the court to determine value based on the full record before it, particularly where, as here, neither party provided concrete valuation evidence.

Indeed, Brad himself presented no credible valuation evidence at trial. His own witness, Ms. Carder, testified that she was unable to evaluate the firearms because she had never seen them. Likewise, Brad admitted he did not have the firearms in his possession or present at trial. Despite objecting to the use of Exhibit I (the Bakersfield Police Report), Brad failed to offer an alternative inventory or valuation for the firearms he disputes. His assertion that the court should exclude the firearms entirely from the marital estate is inconsistent with South Dakota law, which expects parties to present valuation evidence if they wish to contest value. *Hanks v. Hanks*, 296 N.W.2d 523, 526 (S.D. 1980).

Given the absence of specific valuations from either party and the detailed list of firearms in Exhibit I, the court acted within its discretion in assigning a conservative value of \$500 per firearm. The court explicitly labeled the figure conservative and equitable, an approach that falls well within the “reasonable range of figures” standard from *Hill and Kost v. Kost*, 515 N.W.2d 209, 212 (S.D. 1994). Importantly, Brad does not argue that the firearms were worth less than \$500 each, he merely argues there was no basis at all. But the basis lies in both parties’ acknowledgement of the firearms’ existence, their relative quality and description as listed in Exhibit I, and the court’s equitable responsibility to divide marital assets even when neither party provides precise valuations.

Finally, Brad’s proposed remedy, that the firearms be excluded from the marital estate altogether, would unjustly benefit him by removing property he previously had control over and that was clearly acquired during the marriage. The trial court correctly recognized that excluding this property from equitable division would distort the property settlement and unfairly prejudice Elizabeth.

For these reasons, the circuit court’s valuation of the firearms at \$500 each was reasonable, supported by the record, and well within the court’s discretion.

c. The Circuit Court Properly Determined That Firearms Registered to Leonard Powell Were Non-Marital Property

The circuit court correctly exercised its discretion in determining that the firearms registered to Leonard Powell were non-marital property, inherited by Elizabeth, and not subject to division. While South Dakota is an “all property” state, not all inherited property must be equitably divided where one spouse made no or only de minimis contributions to the acquisition

or maintenance of the asset. *Billion v. Billion*, 553 N.W.2d 226, 232 (S.D. 1996). The court appropriately applied this principle, finding that Brad Hill's connection to the inherited firearms was insufficient to transform them into marital property.

The record clearly reflects that these firearms originated from Elizabeth's inheritance from her father. The act of moving the firearms from her father's residence into Brad's gun safes does not equate to a substantive contribution to their maintenance or preservation. Brad's claim that he "likely maintained" the firearms is speculative and unsupported by testimony or documentation at trial. No evidence was introduced showing regular upkeep, enhancements, or other significant labor that would elevate his involvement beyond a minimal custodial role.

Brad's general knowledge of firearms and participation in competitive shooting, while perhaps relevant to other property in the marital estate, is not evidence that he made a meaningful, traceable contribution to these specific inherited firearms. The appellate courts have made clear that inherited property may be excluded from marital division where a spouse's contributions are insubstantial and there is no demonstrated need to include it in equitable distribution. *Terca v. Terca*, 923 N.W.2d 319, 326 (S.D. 2008); *Novak v. Novak*, 713 N.W.2d 551, 553 (S.D. 2006).

Moreover, the circuit court properly considered the totality of the equitable division, including the minimal income-producing value of the marital estate, the health and economic status of both parties, and the fact that Elizabeth has virtually no employment history or financial independence. Including her inherited firearms in the marital division, despite Brad's negligible involvement with them, would result in a disproportionate and inequitable award, contrary to *Endres v. Endres*, 532 N.W.2d 65 (S.D. 1995).

Brad's argument that simply storing or cleaning the firearms converts them into marital property would set an impractical and expansive precedent. Such a rule would allow any inherited asset to become marital by virtue of passive storage or casual use, contrary to the clearly established precedent that requires more than trivial involvement.

The circuit court did not abuse its discretion. It made a reasoned and fact-based determination that the firearms inherited from Elizabeth's father, registered to Leonard Powell, were non-marital property and thus properly excluded from the equitable division.

d. The Division of Firearms was Equitable and within the Court's Discretion.

The circuit court did not abuse its discretion by awarding the firearms to Elizabeth without granting Brad a monetary credit. South Dakota law mandates an equitable, not necessarily equal, division of marital property. *Halbersma v. Halbersma*, 738 N.W.2d 544, 551 (S.D. 2007). The court's decision must be upheld if it is within the range of reasonableness. *DeVries v. DeVries*, 519 N.W.2d 73, 75 (S.D. 1994).

1. Brad Cannot Legally Possess Firearms, and the Court Acted Equitably in Awarding Them to Elizabeth

Brad testified that he is a prohibited person due to his felony conviction and cannot legally own or possess firearms. This legal disability makes it entirely reasonable for the circuit court to assign the marital firearms to Elizabeth. Dividing the firearms equally or awarding Brad a credit would effectively assign value for property he cannot lawfully use, sell, or possess which would be contrary to public policy and common sense.

The court was also within its discretion to find that Elizabeth should retain the firearms to ensure compliance with state and federal law and avoid further disputes over possession. Assigning them to the one spouse who can lawfully own them is not inequitable, it is practical and legally necessary.

2. The Trial Court Properly Exercised Its Discretion Given the Conflicting Testimony About Firearm Possession

The testimony regarding who possessed the firearms and when, was deeply conflicting. The court reasonably resolved this conflicting evidence by concluding that Brad retained possession or control of some or all of the firearms and ordered their return within sixty days. The circuit court is in the best position to evaluate credibility, and its resolution of these inconsistencies is entitled to deference on appeal. *Johnson v. Johnson*, 734 N.W.2d 801, 812 (S.D. 2007).

Brad asks the appellate court to resolve factual disputes in his favor, yet credibility determinations are the province of the trial court. *State v. Dillon*, 2001 S.D. 97, ¶10, 632 N.W.2d 37, 42. The circuit court's conclusion that Brad likely retained or had access to the firearms, despite his denial, is supported by the testimony of multiple witnesses and is not clearly erroneous.

3. Brad Is Not Entitled to a Monetary Offset for Property He Cannot Legally Receive

Brad's request for monetary compensation for firearms he cannot legally possess is without legal support. The court's task is to equitably divide property not guarantee theoretical compensation for assets that a party cannot lawfully own.

Even when one party receives a particular asset in the distribution, that does not automatically entitle the other to a matching monetary credit. The court may adjust its division based on factors such as earning potential, contributions to the marital estate, and the legal ability to retain or use the property. *Johnson v. Johnson*, 734 N.W.2d at 812.

To grant Brad a credit here would create an inequitable result: giving monetary value to assets he cannot lawfully possess, based on a speculative and contradictory record as to who retained them. The court's solution ordering the return of any firearms Brad did have and allocating the remaining firearms to Elizabeth was fair and legally sound under the circumstances.

The circuit court did not abuse its discretion by refusing to grant Brad monetary credit for the firearms. The division was reasonable given Brad's legal inability to possess them, the conflicting testimony about their whereabouts, and the court's equitable distribution of all other assets.

4. The Circuit Court's Division of the Thomas Kinkade Paintings Was Equitable and Based on Conflicting Testimony.

The circuit court did not abuse its discretion in dividing the Thomas Kinkade paintings. As both parties agree, South Dakota law does not require a mathematical formula when dividing marital property; it requires only an equitable division. *Halbersma v. Halbersma*, 738 N.W.2d 544, 551 (S.D. 2007). A division will be upheld so long as "a judicial mind, in view of the law and the circumstances of the particular case, could reasonably have reached such a conclusion." *DeVries v. DeVries*, 519 N.W.2d 73, 75 (S.D. 1994).

1. The Circuit Court's Finding of Six Paintings Is Supported by the Record

The trial court carefully evaluated the conflicting testimony regarding the number of Thomas Kinkade paintings. Brad claimed the couple owned thirteen or fourteen, while Elizabeth testified that the number was six. The court found that Elizabeth admitted to at least two, but conceded there may have been up to four more, for a total of six. This finding is well within the trial court's discretion, particularly given the contradictory nature of the testimony and absence of any documentation confirming Brad's higher count.

The circuit court, as the finder of fact, is in the best position to weigh credibility and resolve factual discrepancies. *Johnson v. Johnson*, 734 N.W.2d 801, 812 (S.D. 2007). Brad's assertion that the court erred by not accepting his count over Elizabeth's is nothing more than a request to reweigh evidence, something appellate courts do not do.

2. The Paintings Were Equitably, Not Necessarily Equally, Divided

Brad received two Thomas Kinkade paintings, the only two confirmed to exist in the storage unit at the time of appraisal. Elizabeth was assigned the remaining four unaccounted-for paintings based on the court's finding that she may have removed them from the storage unit. This distribution is equitable, not mathematically equal, and comports with South Dakota law.

Brad's argument for a \$80,000 monetary credit is speculative. There is no conclusive evidence in the record proving that:

- There were 14 paintings worth \$10,000 each,
- That Elizabeth removed any additional specific number of paintings,
- Or that she still has them in her possession.

The court reasonably based its division on what was verifiably present and made a fair inference regarding the possible missing paintings based on all the facts and credibility of the witnesses.

The law does not require the court to award speculative monetary credits for assets that are alleged but unproven.

3. Brad's Claim of a Cleaned Storage Area Is Not Proof of Misappropriation.

The suggestion that Elizabeth took additional paintings is based on Brad's speculation about his phone app and Ms. Carder's observation that an area in the storage unit appeared "cleaned out."

This is far from definitive proof that six or eight high-value paintings were removed, and by Elizabeth specifically. The area described as "cleaned out" is where all the gun cases containing firearms were located prior to their removal from storage by Brad Hill.

The court accounted for this uncertainty by acknowledging the possibility of up to four more paintings and dividing them accordingly. This reflects a reasonable compromise supported by the record and an attempt to equitably resolve a factual dispute with no clear resolution.

The circuit court's finding that there were six Thomas Kinkade paintings is supported by the record and lies well within its discretion. Its division of the paintings, two to Brad, four to Elizabeth, was equitable, considering the disputed evidence and the reality that Brad had possession of two while the others were potentially removed. The request for an \$80,000 credit is based on unproven claims and should be denied.

5. The Court Did Not Abuse Its Discretion in Awarding Elizabeth \$750 Per Month in Alimony.

The circuit court acted within its discretion in awarding Elizabeth \$750 per month in permanent alimony. South Dakota law is clear that alimony and property division are separate yet interrelated inquiries, and trial courts are afforded broad discretion in crafting a fair resolution based on the totality of the circumstances. *DeVries v. DeVries*, 519 N.W.2d 73, 77 (S.D. 1994). The award of alimony is not contingent on a mathematically equal property division, but rather on a holistic consideration of the *DeVries* factors.

Brad concedes that the circuit court correctly applied factors (1), (2), (3), (5), and (6). He challenges only factor (4), the financial situations of the parties after property division, arguing that Elizabeth's property award was overly favorable and should offset any need for alimony.

This argument mischaracterizes the trial court's reasoning. The record shows that Elizabeth:

- Has significantly lower earning potential than Brad,
- Will be solely responsible for her long-term financial support, and
- Continues to face economic disparity that cannot be corrected through property division alone.

Alimony in South Dakota is not a punitive measure; it is a tool to mitigate economic inequity created by the end of a long-term marriage. *Johnson v. Johnson*, 471 N.W.2d 156, 163 (S.D. 1991). The court recognized that despite the property division, Elizabeth would still be in a disadvantaged financial position, justifying a modest, permanent alimony award.

Brad's assertion that Elizabeth received "every favorable ruling" is overstated and unsupported. The court found that:

- The 1968 Harley Davidson and Precious Moments figurines were excluded from the marital estate based on evidence of donative intent or separate ownership,
- The firearms could not legally be awarded to Brad due to his felony conviction,
- The number and value of Thomas Kinkade paintings were disputed and resolved based on credibility and conflicting testimony, with Brad receiving two verified paintings worth \$20,000.

None of these rulings reflect an abuse of discretion or favoritism. The trial court's division reflects a fact-based, equitable approach rather than a mathematically precise balance sheet. And even if Brad disagrees with how the property was divided, a fair property division does not eliminate the need for alimony when there is ongoing income disparity.

Brad asks that alimony be reevaluated only if his challenges to the property division are upheld. However, unless and until any such reversal occurs (which the appellee contends is unwarranted), the alimony award stands as a reasonable, fact-supported determination of need and ability to pay.

The amount awarded, \$750 per month, is modest, especially in light of the length of the marriage and Elizabeth's financial needs. The trial court reasonably concluded that property alone was insufficient to sustain her financial stability over time.

The trial court did not abuse its discretion in awarding Elizabeth \$750 per month in alimony. The court thoroughly considered all relevant *DeVries* factors, and the award reflects a balanced approach to offset ongoing economic disparity that remains after the property division. Brad's challenge focuses on his disagreement with the outcome, not a showing of legal error.

CONCLUSION

The circuit court properly exercised its discretion in determining that the 1968 Harley Davidson motorcycle, the Precious Moments figurines, and the firearms registered to Leonard Powell were non-marital property, based on clear evidence regarding their origin, ownership, and treatment throughout the marriage. The court also acted within its discretion in dividing the Thomas Kinkade paintings and the remaining firearms, relying on testimony, credibility determinations, and the totality of the circumstances.

Additionally, the alimony award of \$750 per month is equitable and well-supported by the record, particularly in view of Elizabeth's limited earning capacity and ongoing financial needs. The court's findings on all relevant factors were reasonable and substantiated by substantial evidence.

Brad's disagreement with the court's factual findings and property distribution does not amount to legal error or an abuse of discretion. Accordingly, there is no basis for reversal or remand. The circuit court's judgment should be **affirmed in its entirety**.


REQUEST FOR ORAL ARGUMENT

Defendant/Appellee Elizabeth Hill respectfully requests that she be allowed to present oral argument on this issue.

SIGNED AND DATED this 16th day of June 2025.

Respectfully submitted,
ELIZABETH HILL
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By: Elizabeth Hill


Elizabeth Hill (June 16, 2025 12:24 PM)

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Defendant /Appellee

CERTIFICATE OF COMPLIANCE

I certify that Appellee's Brief is within the limitation provided for in SDCL rule 15-26A-66(b) using Times New Roman typeface in 12-point type. Appellee's Brief contains approximately 6742 words and 31 pages. I certify that the word processing software used to prepare this brief is Microsoft Word (Version 2504 Build 16.0.18730.)

By: 
Elizabeth Hill (Jun 16, 2025 12:06 PM PDT)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 16, 2025, a true and correct copy of Appellee's Brief in the matter of Hill v. Hill, was served via regular US mail and electronic mail upon the individuals listed below:

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

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

51DIV23-000423

BRAD HILL,)
)
Plaintiff,)
)
vs.)
)
ELIZABETH HILL,)
)
Defendant.)

**MEMORANDUM OPINION FINDINGS
OF FACT, CONCLUSIONS OF LAW,
ORDER, JUDGMENT, AND DECREE**

Husband, Brad, filed a complaint for divorce, through counsel, on November 26, 2023. Brad sought a divorce on the grounds of irreconcilable differences. He also asked the Court to equitable divide the parties' property and debt. And he asked the Court to award him his attorneys fees.

Wife, Elizabeth, was served on January 4, 2024. She filed an answer, pro se, on January 22, 2024. Initially, Elizabeth objected to the divorce. She suggested that their marital difficulties may have stemmed from Brad's post-traumatic stress disorder (P.T.S.D.) diagnosis and her hearing issues. Although Elizabeth did not ask for a divorce, she alleged that Brad committed adultery, emotional abuse, and had been convicted of a felony. Elizabeth confirmed the parties separated on October 17, 2023, and had property and debts to divide. Elizabeth also asked for spousal support, including interim support for September and October 2024. She consents to divorce.

Some discovery occurred. There was a trial on October 7, 2024. Brad appeared with counsel and testified. An appraiser, Shelly Carter, testified remotely on Brad's behalf. Elizabeth appeared pro se and testified. Three witnesses testified telephonically on behalf of Elizabeth: the parties' son Cody Hill, Brad's friend Paul White, and Brad's mother Benicia Hill. The Court received several exhibits.

FACTUAL BACKGROUND

The parties were married on April 30, 1992, in Kern County California. They are both almost 54 years old. They have two adult children.

Brad graduated high school in 1989 and served in the United States Army from 1989 to 1993. Brad was deployed during the Gulf War and suffers from Gulf War Syndrome. He has an 80% disability rating and receives a \$2,260 monthly disability payment from the Veterans Administration ("V.A.") for P.T.S.D., memory loss, and fibromyalgia. He previously took several medications but does not currently.

After his separation from the military, Brad worked as a correctional officer at the California Correctional Institution in Tehachapi, California for about twenty years. Brad has had four shoulder surgeries. Brad retired around 2013 and receives a pension through the California Public Employees' Retirement System ("CalPERS").

Elizabeth worked as an animal control officer prior to the marriage. For six months in 1994, she was the sole provider for the family, until Brad obtained his job as a correctional officer. She has no retirement account or pension. Elizabeth and her witnesses testified though that Brad did not want Elizabeth to work during the marriage and that he wanted her to homeschool their children and be a homemaker. Brad testified that he encouraged Elizabeth to return to work as an animal control officer, but she refused. Brad testified that Elizabeth was "832 certified," which appears to a reference to the training requirements to be a peace officer in California. Brad claims he paid for this certification, Elizabeth claims here parents paid for it. It appears that Elizabeth has had very limited employment in 2023 and 2024. Elizabeth's health is poor. She has hearing issues and uses hearing aids. She also suffers from some form of anxiety and takes Wellbutrin.

Around 2012 to 2015 the parties experienced some turmoil. Elizabeth's father Leonard Powell died. Elizabeth testified she inherited a motorcycle and firearms from her father. The parties also testified that they sought protection orders against each other. And there may have been violations of protection orders. The testimony also reveals Brad had at least one significant interaction with law enforcement.

The witnesses were relatively vague about Brad's legal issues, but it appears that he cannot possess firearms and may have had firearms taken by law enforcement because of a domestic violence protection order and/or a felony conviction. The Court understands that law enforcement may have removed firearms based on one of the protection orders and fears that Brad could harm himself and others. It also appears that sometime around 2015, Brad was convicted of a felony after a thirteen-hour armed standoff with California law enforcement. A S.W.A.T. team was involved. Brad referenced a "no contest plea" but other witnesses referenced a "trial." The Court suspects that firearms could have been seized because of that criminal investigation, in addition to being removed earlier as result of a protection order. Both Cody and Benincia testified that they had taken custody of firearms at different times. It appears that both the parties' firearms and Elizabeth's father's firearms were seized. Again, the testimony is unclear, but Elizabeth testified that at least 25 of Brad's firearms and 12 of her father's firearms were seized in 2015. Another 33 were apparently seized in March of 2017 after what appears to be either a second arrest or a conviction.

The marriage apparently weathered Brad's legal issues. It appears that they sold their home in California around 2019. They placed several possessions in a storage unit in Bakersfield California and began living in a fifth wheel full-time. They apparently registered this fifth wheel trailer in Pennington County South Dakota. Their

other vehicles are also registered here, they have South Dakota driver's licenses show a Pennington address, and claim Pennington County as their "residence." At some point, their fifth wheel burned, and they purchased a class A motorcoach with the insurance proceeds. They financed a large pickup and a motorcycle in 2021. Their desire to be "residents" of South Dakota has also apparently caused them to lose their taxpayer-funded health insurance from the state of California.

They separated in the Fall of 2023. Apparently, they were camping in Quartzsite, AZ. Brad wished to travel to Oklahoma to attend his niece's wedding. He claims Elizabeth refused his request to drive the parties' pick-up and instead had to ride his motorcycle, which was very difficult considering his numerous shoulder surgeries. He was unable to endure the ride back and instead was driven back to Arizona by his brother. The parties' testimony is contradictory as to whether Elizabeth left upon Brad's return or if he asked her to leave. It appears though, that Elizabeth took the pickup, a dog (which parties claim is their service animal), and her immediate personal possessions and returned to California. She apparently is homeless and stays in the pickup in and around Bakersfield, California. Brad apparently kept the motorcycle and the motorhome. It is unclear where he stays. Both parties still claim South Dakota residency and attended trial.

DISCUSSION

1. Grounds for Divorce

The parties do not contest the divorce. They don't dispute the Court's jurisdiction. Each is granted a divorce on the grounds of irreconcilable differences.

2. Property and Debt

In making an equitable division of the marital estate, the law does not require perfection that would approach mathematical certainty. Therefore, there is no rigid formula that must be followed, nor any fixed percentage to which either party is entitled. However, the circuit court should consider the following factors:

- (1) the duration of the marriage;
- (2) the value of the property owned by the parties;
- (3) the ages of the parties;
- (4) the health of the parties;
- (5) the competency of the parties to earn a living;
- (6) the contribution of each party to the accumulation of the property; and
- (7) the income-producing capacity of the parties' assets.

The trial court must make the division of property on the basis of these principal factors while having due regard for equity and the circumstances of the parties.¹

The parties were married for almost thirty years. They are both 53 years and in poor physical and mental health. Neither appears able to earn a living. Brad is disabled and a felon. Elizabeth has essentially never worked outside of the home. The value of their property, while difficult to establish on this record, is minimal and none of it is income-producing. They accumulated their property through a marriage in which Brad worked outside the home and Elizabeth was a homemaker. Some property was inherited from Elizabeth's father.

a. Firearms

The parties own dozens, if not more, firearms. Many were Elizabeth's fathers. Many were Brad's. It is unclear where they are, and thusly it is impossible to value

¹ *Goeden v. Goeden*, 2024 S.D. 51, ¶ 43 (cleaned up).

them. Benicia testified that she took custody of some or all of the firearms after Brad's "trial." She apparently received these firearms directly from law enforcement. She testified though, that immediately after she took custody of the firearms, Brad "loaded them into his truck." She testified that she reported Brad to the F.B.I. five or six years later after school shootings caused her to be concerned that she could be held accountable for Brad's potential gun crimes. Likewise, Cody testified that he took custody of some or all the firearms at some point, likely from the Kern County Sheriff's Department in 2018.²

Elizabeth testified that the firearms were placed in the parties' Bakersfield storage unit. She claims that at some point, likely after separation, Brad removed the firearms from the storage unit. Exhibit I is a police report Elizabeth filed with the Kern County Sheriff claiming that the firearm's were stolen from the storage unit. That report identifies the 38 following registered firearms:

Registered to Elizabeth

- EMF Early Modern.8888 revolver SAA Serial# SA 144367
- SR Sturm Ruger .41 revolver Serial # 4668000
- SR Sturm Ruger .22 revolver Serial # 26433523

Registered to Benicia (serial numbers redacted)

- TAS Taurus Forjas .454 revolver
- Marlin .22 semiautomatic rifle
- Carcano .65 semiautomatic rifle
- Smith & Wesson .38 revolver
- Winchester .410 shotgun
- Savage Arms .17 rifle
- Chinese .762 rifle

² Its impossible for the Court to know exactly what happened based on the limited testimony at trial. But it's likely that some firearms were seized and given to Cody and others were seized and given to Benicia. But regardless, the evidence suggest that Brad took possession of those firearms back at some point. It's possible that Cody and Benicia each had temporary possession of different firearms, or that they may have had possession of some of the same firearms at different times.

- Anschutz and Savage .22 rifle
- Sturm and Ruger .41 revolver
- Sturm and Ruger .22 rifle
- Mauser .792 rifle
- International armament .30 semiautomatic rifle

Registered to Leonard Powell

- Harrington and Rich .3006 rifle Serial # 5646929
- Bond Arms .45 pistol Serial # C00455
- Sauer & Sons .9 P938 Serial #52B054261
- Sauer & Sons .380 pistol Serial # 27A220300
- Para Ordnance .9mm pistol Serial # P234430
- Colt .45 pistol Serial # DR37387
- Springfield .45 pistol Serial #US581672
- Springfield .9mm pistol Serial #US887127
- Sauer & Sons .9mm pistol Serial #M453447
- Kimber .45 pistol Serial #KU83462
- Para Ordnance .45 pistol Serial #P181579
- Gabindo .380 pistol Serial #A06745

Registered to Brad (serial numbers redacted)

- Anderson semiautomatic rifle
- FI Industries 12 gauge shotgun
- Savage Arms .17 rifle
- Savage Arms .17 rifle
- FI Industries .9mm pistol
- Para Ordnance .45 pistol
- Para Ordnance .45 pistol
- Sturm & Ruger .22 pistol
- Springfield .454 semiautomatic rifle
- Taurus Forjas .454 pistol
- Carl Walther .380 pistol

Exhibit I suggests that Brad has been, or might be, charged with illegally possessing these firearms. Again, it's unclear where these firearms are or what they are worth. But a conservative estimate of \$500 per firearm reveals an estimate of at least \$19,000.

i. Leonard Powell's Firearms

The firearms listed above, which are registered to Elizabeth's late father, Powell are not marital. The court estimates their value to be about \$6,000. These firearms should be returned to Elizabeth within sixty days. The preferred method would be for them to be surrendered to law enforcement.

ii. Marital Firearms

The other firearms are marital. These include the firearms registered to Brad and to Elizabeth. It also includes the firearms registered to Benicia as those appear to be registered to her when she took custody of them several years ago. The court estimates their value to be about \$13,000. These firearms should be returned to Elizabeth within sixty days. The preferred method would be for them to be surrendered to law enforcement.

b. Retirement Accounts

Brad has two retirement accounts from his time a California employee, a CalPERS vested pension, which appears to be a 401(a) defined benefit plan and a 457(b) defined contribution plan with a balance of \$80,130. Both plans were funded entirely during the marriage. Brad argues, without authority, that Elizabeth is not entitled to any portion of the 457(b) plan. As to the 401(a), Brad proposes that his current gross monthly pension benefit of \$3,742 be divided in half, multiple by 12 (for the months in a year) and then multiplied by 20 (the years the parties were married) and then that number be assigned to each party in a property division. And that he pays that amount to Elizabeth each month. That's not how retirement benefits are divided.

In South Dakota a retirement plan has been recognized as a divisible marital asset since it represents consideration in lieu of a higher present salary. Contributions made to the pension plan would have been available to the family as disposable income during the marriage.³

Accordingly, Elizabeth is awarded half of Brad's monthly CalPERS retirement benefit—whatever the benefit is or becomes in the future. And she should receive it directly from CalPERS as a nonmember by way of a Qualified Domestic Relations Order ("QDRO"). As the member, Brad should prepare the QDRO and submit it to the Court by November 30, 2024. Until the CalPERS begins paying monthly benefits directly to Elizabeth, Brad should pay \$1,872 directly to Elizabeth beginning November 1, 2024.

Elizabeth is also entitled to half of the value of the 457(b) account on the date of divorce. She is also entitled to a QDRO allowing to rollover 50% of the balance (approximately \$40,065) to an approved retirement account. She should provide Brad's counsel with her retirement account information, and he should prepare and provide the court a QDRO within 30 days transferring 50% of the plan balance as of the date of the divorce to Elizabeth.

c. Bank Accounts

The bank accounts should be divided equally. Elizabeth may retain the \$2,640 in the Chase Priemer checking account.⁴ Brad may retain the \$299 in the Safe 1 credit union account. Brad should transfer \$55,728.50 to Elizabeth to balance out her interest in the Chase Savings account within by October 31, 2024.

³ *Grode v. Grode*, 1996 S.D. 15, ¶ 24.

⁴ This money does not need to be divided because apparently the only money in this account came from Brad's monthly interim support transfers.

d. Vehicles

Elizabeth should receive the 2021 Ford F250, worth approximately \$46,000. Brad should receive the 2021 Harley Davidson, worth approximately \$14,000, and the 2003 Monaco Windsor Coach, worth approximately \$39,000. Brad should receive the 2022 Look Trailer and the Unut trailer, each worth approximately \$5,000. Exhibit 17 also identifies a "Harley Davidson Special Construction." Its unclear what this is. The Court awards it to Elziabeth. The parties should exchange title to these vehicles within Sixty days.

e. Storage Unit

The parties have control over a storage unit in Bakersfield California. Elizabeth is responsible for the lease on the storage unit, subject to Brad's right to retrieve certain items within sixty days. Because of the history of protection orders in this matter, Brad should arrange for a third-party to retrieve his property from the storage unit. Alternatively, Brad may retrieve his property personally if California law enforcement is available to oversee the removal of the property consistent wit this order. Elizabeth may not unreasonably withhold access to the storage unit for Brad to retrieve his property. Failure to retrieve his property within sixty days will result in Brad's property reverting to Elizabeth without equalization.

i. Precious Moments Figurines

There are 300 Precious Moments figurines in the storage unit. Carter valued them at \$30,000 even though she only opened one box in fear that the 140-degree heat in the unit had or would damage them. Accordingly, this valuation is highly speculative. Moreover, Cody, Elzabeth, and Benicia testified that Elizabeth had inherited the from her grandmother. The Court finds that they are non-marital should be awarded to

Elizabeth. Even if these figurines are marital property, it is equitable for Elizabeth to receive them.

ii. Thomas Kinkade Paintings

There 2 Thomas Kinkade Disney Painting in the storage unit. Carter valued them at \$10,000 each even though she did not look at them. Brad claims-without evidence that there are six more paintings he also claims are worth \$10,000. Elizabeth concedes there may have been four more. Brad should receive the two in the storage unit. Elizabeth may retain the other four paintings.

iii. 1968 Harley Davidson Motorcycle

There is 1968 Harley Davidson motorcycle in the storage unit. It belonged to Powell, Elizabeth's father. It apparently is registered to both Brad and Elizabeth. Brad claims that Powell gifted it to the parties because Brad cleared trees for Powell. Elizabeth claims she inherited it from her father. Carter valued the motorcycle at \$25,000.

The motorcycle should be excluded from marital estate because it was inherited. Brad's testimony regarding the clearing of trees is not compelling. Even if this motorcycle is marital property, it is equitable for Elizabeth to receive it.

Other Items in Storage Unit

Brad should receive these items from the storage unit:⁵

- Military History Items
- Desert Storm Paperwork
- Vietnam Collectibles
- Branding Irons
- Half of the Family Photos
- Family Papers

⁵ The Court does not conclude that all items on Exhibit 17 are in the storage unit. Specifically, Benicia testified that a box of family items was in her possession.

- Reloading Equipment⁶
- Spotting Scopes⁷
- Starlink
- Numerous Tool Chests and Tools
- Chemical Sprayer
- Smoker
- Air Compressor
- Vacuum Cleaner
- Oxygen Canister

Elizabeth should receive these items⁸ from the storage unit:⁹

- Half of the Family Photos
- Mohogany Bed Frame
- Headboard
- Chest with Clothes
- Dining Table
- Ammunition
- Clipper Dive Canoe.

f. Debts

Elizabeth should be responsible for the \$42,000 Ford F250 loan, the \$7,000 American Express balance, the \$1,200 Barclays balance, and the \$7,000 USAA balance.

Brad should be responsible for the time share debt.

The Court notes that neither the property nor debt division is *equal*. The Court, having considered the entire record finds it to be *equitable*.

3. Alimony

Elizabeth requests permanent alimony.

The factors to be considered in awarding alimony are: 1) The length of the marriage; 2) the respective earning capacity of the parties; 3) their respective financial condition after the property division; 4) their

⁶ The court assumes but does not hold that it is legal for Brad to possess reloading equipment.

⁷ The court assumes but does not hold that it is legal for Brad to possess spotting scopes.

⁸ The Court accepts the values on Exhibit 17.

⁹ The Court does not conclude that all items on Exhibit 17 are in the storage unit. Specifically, Benicia testified that a box of family items was in her possession.

respective age, health, and physical condition; 5) their station in life or social standing; and 6) the relative fault in the termination of the marriage.¹⁰

The parties were married for almost thirty years. They are both 53 years and in poor physical and mental health. Neither appears able to earn a living. Brad is disabled and a felon. Elizabeth has essentially never worked outside of the home. The Court has divided the property equitably, but notes that Brad's financial condition is likely better than Elizabeth's after the property division. He is awarded the parties only residence, a motorhome. He also is responsible for less debt and has a non-marital source of income, his VA disability. Finally, a portion of Elizabeth's property division is comprised of firearms and paintings, the location of which are unknown. The parties' station in life and social standing is relatively equal, but Brad is, on one hand—a veteran, and on the other—a felon. While the parties are awarded a divorce based on irreconcilable differences, the court concludes, that Brad is more at fault for the termination of the marriage. Elizabeth's story regarding separation is more believable, Brad is the plaintiff, Elizabeth initially resisted divorce, and Brad is a felon.

Plainly, Elizabeth *needs* spousal support. She is homeless. On the other hand, Brad has a limited ability to pay alimony. After considering the factors set forth above. The court concludes Elizabeth is entitled to \$750 a month in permanent alimony. This obligation will continue until modified by the Court, Elizabeth's remarriage, or death of one of the parties.

4. Attorney's Fees

Brad is not entitled to his attorney's fees.

¹⁰ *Ryken v. Ryken*, 440 N.W.2d 300, 303 (S.D. 1989).

5. Interim Support

Brad had been transferring \$2,000 from savings to the joint checking each month. He did not in September or October. At trial, he was ordered to do so. If he has not, he should immediately transfer an additional \$4,000 to Elizabeth. This is in addition to her \$55,728.50 share of the balance of that account and in addition to his November alimony obligation and his retirement payment obligation.

ORDER, JUDGMENT, AND DECREE

Based on the foregoing it is,

ORDERED, ADJUDGED, AND DECREED that each party is granted a Judgment and Decree of Divorce on the grounds of irreconcilable differences and the parties are restored to the status of single persons. It is further

ORDERED, ADJUDGED, AND DECREED that the parties' property and debt should be divided consistent with this memorandum order. It is further

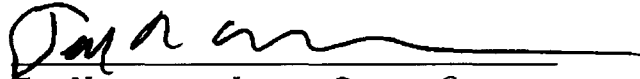
ORDERED, ADJUDGED, AND DECREED that all other debts shall be paid by the party incurring such debt. It is further

ORDERED, ADJUDGED, AND DECREED that Elizabeth be awarded permanent alimony in the amount of \$750 a month beginning November 1, 2024. It is further

ORDERED, ADJUDGED, AND DECREED that each party shall, at the request of the other, execute and deliver any such instruments as may be required in order to carry out the intentions and provisions of this Judgment and Decree of Divorce. In the event either party shall fail to execute deeds, titles, or other documents of transfer as required by this Judgment and Decree of Divorce, this Judgment and Decree shall operate as an effective transfer of that party's interest in said property as set forth herein.

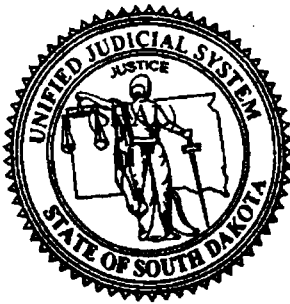
Dated October 21, 2024.

BY THE COURT:



THE HONORABLE JEFFREY ROBERT CONNOLLY
CIRCUIT COURT JUDGE

ATTEST: 
AMBER WATKINS, CLERK OF COURTS



FILED
Pennington County, SD
IN CIRCUIT COURT

OCT 21 2024

Amber Watkins, Clerk of Courts

By  Clerk
3:22 PM

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

APPEAL NO. 30902

BRAD HILL
Plaintiff/Appellant

vs.

ELIZABETH HILL
Defendant/Appellee

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

HONORABLE JEFFREY CONNOLLY, CIRCUIT COURT JUDGE

APPELLANT'S REPLY BRIEF

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Notice of Appeal was filed on November 13, 2024.

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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

BRAD HILL,

Plaintiff and Appellant,

vs.

NO. 30902

ELIZABETH HILL,

Defendant and Appellee.

APPELLANT'S REPLY BRIEF

ARGUMENT

The Appellant, Brad Hill, respectfully submits the following Reply Brief.

- 1. The circuit court erred in determining that the 1968 Harley Davidson motorcycle was not marital property because it was acquired in both Brad's and Elizabeth's name and Brad's contributions to the maintenance of the motorcycle were more than de minimis.**

The Appellee in her brief included a citation to *Novotny v. Novotny*, 2006 SD 64, 719 N.W.2d 512. Appellee has included this citation to provide support for the claim that in South Dakota "inherited property is generally considered non-marital unless there is clear and convincing evidence of intent to convert it to marital property." Appellant's counsel has attempted to research this case and not been able to find any case matching the citation provided. There are no results for the query "Novotny v. Novotny" A query for "2006 SD 64" returns a result for *Wisner v. Pavlin*, 2006 SD 64, which is a real property case regarding a partition sale of real property that is not related to a divorce. A query for "719 N.W.2d 512"

returns a Wisconsin guardianship case *In re Nicholas C.L.*, 719 N.W.2d 508 (WI 2006) which has nothing to do with property division in a divorce.

Appellee's assertion that "inherited property is generally considered non-marital unless there is clear and convincing evidence of intent to convert it to marital property" appears to be unsupported by legal citation. Additionally, it runs counter to the holding in *Endres v. Endres*'s that "all property of either or both divorcing parties is subject to equitable division by the court, regardless of title or origin. *Endres v. Endres*, 532 N.W.2d 65, 68 (SD 1995) (*quoting Radigan v. Radigan*, 465 N.W.2d 483, 486 (SD 1991)).

Appellee in her brief also included a citation to *Schwieger v. Schwieger*, 2008 SD 114, 24, 758 N.W.2d 772 that appears to be a ghost citation. A query for "Schwieger v. Schwieger" does not return any South Dakota cases. A query for "2008 SD 114" returns a criminal case *State v. Noteboom*, 2008 SD 114. A query for "758 N.W.2d 772" returns a Wisconsin employment case *Loth v. City of Milwaukee*, 758 N.W.2d 766 (WI 2008). Appellee included this citation to support the proposition that "joint titling for administrative convenience does not, by itself show an intent to make separate property marital" presumably to overcome the insinuation that the motorcycle was joint property because it was registered in both of their names according to her and in Brad's name according to him. This assertion appears to be unsupported by a legal citation.

Appellee also included a citation to *Kraut v. Kraut*, 1995 SD 112 that appears to be a ghost citation. A query for "Kraut v. Kraut" does not return any South Dakota Cases. A query for "1995 SD 112" provides no results. Appellee included this citation to support the assertion that "use of marital funds for minor parts is insufficient to transmute inheritance." This assertion appears to be unsupported by legal citation.

Brad is appealing the circuit court's holding that the motorcycle was inherited by Elizabeth. However, even if this Court were to hold that the motorcycle was inherited by Elizabeth Brad is appealing its classification as nonmarital property. Brad relies on the legal arguments in his original Appellant's Brief and does not believe that Appellee has submitted any legal arguments in her Appellee's Brief that he can respond to as all of her arguments appear to be unsupported by legal citation.

Brad disagrees that inherited property is presumptively nonmarital in South Dakota and has provided legal citations to the contrary in both his original brief and this reply brief. He disagrees with the notion that there must be intent to convert property from nonmarital to marital in South Dakota. Appellee has not provided any legal authority that supports this assertion.

Appellee states, without providing any citation to the record that the motorcycle was jointly titled for insurance purposes only. She also provides a ghost citation that states joint titling does not by itself show that property is marital. Appellee also stated via a ghost citation that clear and convincing evidence is required in order to convert nonmarital property to marital property.

Appellee also provided a number of factual arguments that were unsupported by citations to the record. She states that there is no written or verbal agreement to change ownership intent. There is no legal citation that such an agreement is required.

Appellee also states that Brad did not use the 1969 motorcycle for daily use because he had a newer motorcycle and that occasional use does not establish joint ownership. There is no legal authority supporting why these facts are relevant nor any citations to the record to support them. Brad also disagrees with Elizabeth's assertion that his contributions were minimal as outlined in his original brief.

Brad asks this Court to rule that the 1968 Harley Davidson in marital property that is subject to equitable division and that this Court order the circuit court to modify its property division order accordingly.

2. The circuit court erred in determining that the Precious Moments figurines were non-marital property because a number of them were acquired during the marriage and Brad's contributions to the maintenance of the figurines were more than de minimis.

Appellee included a citation to *Johnson v. Johnson*, 739 N.W.2d 6 (SD 2007) that also appears to be a ghost citation. A query for “739 N.W.2d 6 (SD 2007)” returns a South Dakota criminal case *State v. Johnson*, 739 N.W.2d 1 (2007). A query for “Johnson v. Johnson” returns twenty-three South Dakota cases. *Johnson v. Johnson*, 734 N.W.2d 801 (SD 2007) a divorce case about the equitable division of social security benefits. *Johnson v. Johnson*, 14 N.W.3d 316 (SD 2024) a contract dispute claim. *Johnson v. Johnson*, 471 N.W.2d 156 (SD 1991) a divorce case that references equitable division. *Johnson v. Johnson*, 291 N.W.2d 776 (SD 1980) an alimony case that contains no references to the words “equitable” or “equity.” *Johnson v. Johnson*, 451 N.W.2d 293 (SD 1990) a case regarding child support modification and contempt of court. *Johnson v. Johnson*, 300 N.W.2d 865 (SD 1980) a divorce case regarding how to divide the equity in a marital home between the parties. *Johnson v. Johnson*, 468 N.W.2d 648 (SD 1991) a case about modification of child support. *Johnson v. Johnson*, 477 N.W.2d 603 (SD 1991) a case about a jurisdictional dispute regarding child custody. *Johnson v. Johnson*, 529 N.W.2d 119 (SD 1995) a divorce case about the award of temporary rehabilitative alimony. *Johnson v. Johnson*, 23 N.W.2d 451 (SD 1946) a divorce case regarding the equitable division of property. *Johnson v. Johnson*, 210 N.W. 155 (SD 1926) a case regarding vacating a default judgement. The remainder of the cases are either

nonprecedential cases or cases where only one party is “Johnson.” Brad is unable to ascertain what “equitable principles” Appellee is referring to despite an exhaustive search due to the lack of detail in her brief and the ghost citation.

Brad relies on the arguments in his original brief and requests that this Court hold that the circuit court abused its discretion by making an error of law in determining that the Precious Moments figurines were not marital property and instruct the circuit court to determine the figurines are marital property and equitably divide them between Brad and Elizabeth.

3. Firearms

Appellee’s brief states that “property acquired by inheritance is generally considered nonmarital unless there is evidence of intent to gift it to the marital estate” with a citation to *Field v. Field*, 949 N.W.2d 221, 224 (SD 2020). This is not the holding of the *Field* case. In *Field* the circuit court excluded property as a gift to one of the divorce parties. This decision was reversed and remanded so that the full value of the property could be added to the marital property and then equitably divided. *Field v. Field*, 949 N.W.2d 221, 227-228 (SD 2020).

Additionally, the brief states that the valuation of the firearms are “supported by the record,” but fails to provide any citation to the record as to how the circuit court determined the value as Appellee provided no figures or estimates as to the value of the firearms. *Order* 7. Additionally, Brad’s witness, Ms. Carder, was not able to provide a valuation for the firearms because they were not in the storage shed for her to view. *CT* 111:15-17.

- a. The circuit court erred in admitting exhibit I (a Bakersfield police report) because it was hearsay within hearsay, Elizabeth did not offer sufficient testimony for it to be offered under the business record exception, and even**

if she had her statements within it were inadmissible hearsay without an exception.

Appellee provides a citation to a Mayland case that states that admission of evidence should be affirmed if the evidence is admissible under any valid legal theory. She then goes on to state that in her opinion the evidence was admitted for the purpose of corroborating her testimony, which is not a legal theory. Appellee's assertion that her statements to the police were not offered for the truth of the matter asserted is not accurate. Exhibit I was admitted to provide a list of firearms that Appellee claims that Brad stole from their storage shed.

Appellee's brief then goes on to state that exhibit I should be admitted under a hearsay exception for "party admissions." This is a misstatement of the rules of evidence. First the police report declarant is the police officer who wrote the report, not Elizabeth. Second, even if Elizabeth was the declarant she is not the opposing party, and her statements would not be admissible as non-hearsay by a party opponent.

Appellee's third and fourth points miss the mark. Appellant's argument is that inadmissible hearsay was admitted as exhibit I itself was hearsay and it contained hearsay within hearsay. The circuit court provided no explanation as to the grounds that Exhibit I was admitted. Appellant's trial counsel objected that the document was hearsay and likely hearsay within hearsay. Appellee, at the trial level, provided no arguments pertaining to hearsay exceptions or why exhibit I was not hearsay. The circuit court admitted exhibit I over Appellant's objection.

Appellant renews his request that this Court order that defense exhibit I was improperly admitted and direct the circuit court to amend its ruling on the list of firearms by limiting it only to firearms that Elizabeth specifically testified about during the trial.

b. The circuit court erred in determining a value for the firearms because there was no testimony or evidence presented at trial to establish their value.

Appellee's brief correctly points out that the only evidence submitted to the circuit court regarding the valuation of the firearms is exhibit I. Brad was unable to have the firearms valued by his witness because they were no longer in the storage shed when Ms. Carder came to evaluate the property.

Exhibit I contains a list of firearms that Elizabeth alleges were in the storage shed, it includes no information as to the value of the firearms. Neither party submitted estimates of the value of the firearms, as a result there is no dispute as to the value of firearms. The issue presented is what is the appropriate course of action for the circuit court in a situation like this were neither party has provided a value of property and both parties claim that the other is currently in possession of the property.

Brad renews his request that this Court rule that exhibit I is inadmissible, the circuit court's valuation of the firearms be rejected, and that the firearms be completely removed from the couple's property as there is no evidence relevant to the quantity, description, or value of the firearms.

In the event the Court does not order the firearms completely removed from the parties' property settlement, Brad objects to the determination that the firearms registered to Leonard Powell are not marital and the distribution of those and the marital firearms as argued in his original brief.

c. The circuit court erred in determining that the firearms registered to Leonard Powell were not marital property because Brad's contributions to their maintenance was more than de minimis.

Appellee's brief contains a citation to "*Terca v. Terca*, 923 N.W.2d 319, 326 (SD 2008)," this citation appears to be a typographical error and should read "*Terca v. Terca*, 757 N.W.2d 319, 326 (SD 2008)." Appellee includes the citation to *Terca* in order to support the position that "inherited property may be excluded from marital division where a spouse's contributions are insubstantial and there is no demonstrated need to include it in equitable distribution." Interestingly, one of the holdings in *Terca* is that the fact that property was inherited "nine years into a marriage weighs in favor of its inclusion in the marital estate." *Terca v. Terca*, 757 N.W.2d 319 (SD 2008). Applying this logic to the firearms at issue here, the firearms would have been inherited, at the earliest, in 2015 thirty-three years into their marriage. This factor likewise supports including the firearms in the marital property.

Brad renews his request that this court hold that the circuit court abused its discretion by making an error of law in determining that the firearms registered to Leonard Powell were not marital property and instruct the circuit court to determine the firearms are marital property and equitably divide them between Brad and Elizabeth.

d. The circuit court erred in dividing the firearms because Brad did not receive any monetary credit for the fact that Elizabeth was granted all of the firearms.

Appellee's brief states, "awarding Brad a credit would effectively assign value for property he cannot lawfully use, sell, or possess which would be contrary to public policy and common sense." Appellee provides no legal citation for her position. To be clear, Brad is not asking this Court to order the circuit court to provide him with firearms. Brad is

asking this Court to order the circuit court, in the event it does not order the firearms completely removed from the judgement to credit Brad with the value attributed to the firearms. The firearms do have a monetary value, many of them were originally Brad's prior to his felony conviction, and he is entitled to an equitable judgment for their monetary value. Brad renews his request in his original brief.

4. The circuit court erred in dividing the Thomas Kinkade paintings because the quantity of paintings was incorrect and the paintings were not equitably divided.

Brad renews his request for the Court to rule that the circuit court's finding that there were only six Thomas Kinkade paintings is an abuse of discretion not justified by, and clearly against, reason and the evidence. He further asks that the Court remand this matter back to the circuit court for equitable distribution and specifically asks that he be given an eighty-thousand-dollar monetary credit for the missing paintings.

5. The circuit court erred in awarding Elizabeth seven-hundred-and-fifty dollars in monthly alimony because the property division was not equitable and favored her.

Brad renews his request that this Court holds that the circuit court granting Elizabeth alimony is abuse of discretion because of the unequitable property division in its current order. Additionally, Brad hopes that the Court grants his above requests which will drastically alter the property division. Brad respectfully requests that alimony be reevaluated by the circuit court in this event in order to be fair to both parties.

CONCLUSION

Responding to appellees brief was very difficult in large part due to the ghost citations, incorrect citations, and citations that did not accurately represent the positions

presented in appellee's brief. Brad has attempted to respond to appellee's brief when necessary and renews his requests as outlined in his original brief.

SIGNED AND DATED this 31st day of July 2025.

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

I certify that Appellant's Reply Brief is within the limitation provided for in SDCL 15-26A- 66(b) using Garamond typeface in 12-point type. Appellant's Brief contains approximately 3,400 words and 15 pages. I certify that the word processing software used to prepare this brief is Microsoft Word (Version 16.90.2).

By: /s/ L. Adam Bryson
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 31, 2025, a true and correct copy of Appellant's Reply Brief in the matter of Hill v. Hill, was served via regular US mail and electronic mail upon the individuals listed below:

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SIGNED AND DATED this 31st day of July 2025.

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