

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA
APPEAL # 31012

THOMAS WADE CLAYTON,
Defendant and Appellant,
vs.
ANNA MARIE CLAYTON,
Plaintiff and Appellee.

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

THE HONORABLE RACHEL R. RASMUSSEN
CIRCUIT COURT JUDGE

APPELLANT'S AMENDED BRIEF

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JURISDICTIONAL STATEMENT

Jurisdiction is appropriate because the actions related to this case arise in Lincoln County, Second Judicial Circuit, South Dakota. Appellant Thomas W. Clayton was a resident of Lincoln County at the time the divorce action commenced. Appellee, Anna M. Cameron, f/k/a Anna M. Clayton, was and is a resident of Minnehaha, County, South Dakota.

IDENTIFICATION OF PARTIES AND RECORD

Throughout this brief, Appellant is referred to as "Mr. Clayton," "Tom," "Appellant," or "Defendant." Appellee is referred to as "Appellant," "Plaintiff," or "Anna."

The Trial Transcript is referred to as "TR1 __" for the first day of

trial, "TR2 __" for the second day, etc. The Pretrial Motion to Distribute Funds is referred to as The Pretrial Motion for Restraining Order is referred to as "TRO.Mot." Declarations are referred to as "TRO.Mot.Decl." Reference to the TRO Hearing Transcript is TRO.Hrg. __.

The Motion to Reopen Record is referred to as "Mot.Reopen." Pretrial Orders are referred to by the date of their filing, i.e., "10/12/2022 ORDER."

Exhibits are referred to as Exh. __. Defendant Expert's Exhibits are referred to as Expert.Exh. __. The Court's Division of Property Exhibit is Ct.Exh. __.

Findings of Fact are referred to as "FF#__." Conclusions of Law are referred to as "CL#__."

STATEMENT OF THE ISSUES

ISSUE NO. 1

Did the Trial Court Abuse Its Discretion and Clearly Err when It Ruled Tom Violated the Pretrial Temporary Restraining Order by Purchasing a Condominium and Donating to the U.S.D. School of Law with Stipulated Nonmarital Funds?

Trial Court ruled Appellant violated the Pretrial Restraining Order.

Apposite Authorities:

1. S.D.C.L. § 25-2-7

2. S.D.C.L. § 25-4-33.1(1)
3. Halbersma v. Halbersma, 2009 S.D. 98, 775 N.W.2d 210
4. Cook v. Cook, 2022 S.D. 74, 983 N.W.2d 180

ISSUE No. 2

Did the Trial Court Abuse Its Discretion, Clearly Err, and Err as a Matter of Law When It Found Tom Violated the June 10, 2022 Stipulation, then Unilaterally Reduced Tom's Nonmarital Home Sale Proceeds from \$432,624 to \$89,364.

Trial Court ruled Appellant violated the parties' June 10, 2022 Stipulation and reduced the agreed amount of Appellant's nonmarital home sale proceeds from \$432,624 to \$89,364

Apposite Authorities:

1. Divich v. Divich, 2002 S.D. 24, ¶10, 640 N.W.2d 758
2. Lamore Restaurant Group, LLC v. Akers, 2008 S.D. 32, ¶30, 748 N.W.2d 756
3. Endres v. Endres, 532 N.W.2d 65, 72 (S.D. 1995)
4. Sprang v. Altman, 2009 S.D. 49, ¶9, 768 N.W.2d 507

ISSUE NO. 3

Did the Trial Court Abuse Its Discretion by Denying Appellant's Motion to Reopen the Record to Help Resolve any Ambiguities in the Stipulation.

Trial Court denied Appellant's Motion to Reopen Record.

Apposite Authorities:

1. Endres v. Endres, 532 N.W.2d 65, 72 (S.D. 1995)

ISSUE NO. 4

Did the Trial Court Abuse Its Discretion, and Make Clear Errors and Errors as a Matter of Law, Resulting in an Inequitable Division of Property?

Trial Court ruled that almost all of Appellant's property was marital and awarded Appellee more than half.

Apposite Authorities:

1. 26 U.S.C. §§ 1(h)(1)(D), 1411(a)(1), (b)
2. Endres v. Endres, 532 N.W.2d 65, 67 (S.D. 1995)
3. Weber v. Weber, 2023 S.D. 64, 999 N.W.2d 230
4. Liebel v. Liebel, 2024 S.D. 34

ISSUE No. 5

Did the Trial Court Commit Clear Error and Abuse Its Discretion When It Found Appellee Was in Need of Support?

Trial Court Found that Appellee was entitled to support.

Apposite Authorities:

1. Weber v. Weber, 2023 S.D. 64, 999 N.W.2d 230
2. Billion v. Billion, 1996 S.D. 101, 553 NW.2d 226

ISSUE No. 6

Did the Trial Court Abuse Its Discretion by Awarding
Appellee \$15,000.00 in Attorney Fees?

Trial Court ruled Appellee was entitled to attorney fees and awarded \$15,000.00.

Apposite Authorities:

1. S.D.C.L. § 53-3-5
2. Schutterle v. Schutterle, 260 N.W.2d 341 (S.D. 1977)

REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests 20 minutes for oral argument.

STATEMENT OF THE CASE

On Oct. 15, 2021, Plaintiff filed her Complaint for Divorce. SR 1. On Oct. 25, 2021, Defendant submitted his Admission of Service and Answer. SR 8. On Dec. 8, 2021, the Hon. John R. Pekas recused himself and the Hon. Rachel R. Rasmussen was appointed to preside. SR 32.

Tom entered into a contract to sell his home and Anna filed a motion to restrict distribution of the proceeds. SR 174. On June 10, 2022, the parties signed a Stipulation, agreeing Tom would receive \$432,624 of the home's premarital value with the balance held in attorney-client trust, and her motion was not pursued. SR 352.

On August 17, 2022, Anna filed a motion for violation of the temporary restraining order, claiming Tom sold ethanol investments and purchased I-Bonds, and purchased a condominium and donated to the U.S.D. School of Law Foundation, without her consent. Tom resisted the motion, stating the parties agreed to keep their assets separate, the ethanol investments were nonmarital, and he used Stipulated nonmarital proceeds for the condominium and donation. SR 219.

Tom filed a motion to compel production of documents related to Anna's claims of fault and support. SR. 292. Anna resisted until the hearing, when her attorney admitted Anna agreed to irreconcilable

differences and was not seeking alimony. SR 364, TRO.Hrg. 6. Tom's motion to compel was rendered moot.

A hearing on Anna's Motion for TRO violation went forward. Anna acknowledged the parties' June 10, 2022 Stipulation for the record. It stated:

6. The parties agree that Defendant owned the Elderberry Property at the time of marriage and a certain portion of the Elderberry Property constitutes non- marital and separate property of the Defendant.
7. The parties agree that Defendant is entitled to keep said Four Hundred [Thirty]-Two Thousand Six Hundred Twenty-Four dollars (\$432,624.00) from the house proceeds in his possession during the pendency of this divorce. The remaining balance of the proceeds shall be held in Defendant's attorney's trust account to be held in trust until an agreement is reached between the parties or by Order of the Court.

Hrg.Exh. C, §§6-7; SR 352.

The Court ruled that Tom violated the TRO by selling ethanol assets and purchasing I-Bonds.

The Court also accepted the parties' Stipulation and on-the-record agreement that Tom was entitled to \$432,624 of his home's premarital home sale proceeds, but ruled that Tom violated the TRO by purchasing a condominium and donating to the Law School with the same proceeds. TRO.Hrg. 24, 51. It did not enter findings of fact or conclusions of law, nor explain why the parties' Stipulation did not govern Tom's condominium

purchase and donation. SR 391. The 10/12/22 Order was never served on Tom, who learned of it nine days before trial.

A four-day trial was held, from September 3, 2024 through September 6, 2024. The Court entered Findings of Fact and Conclusions of Law on December 13, 2024. SR02 8. Tom filed his objections on January 6, 2025. SR02 37, 49. The court rejected Tom's objections on January 30, 2025. SR02 260.

Judgment and Decree of Divorce was entered on Jan. 31, 2025 and Notice of Entry was entered on Feb. 3, 2025. SR02 268. Tom filed his Notice of Appeal on Feb. 26, 2025. SR02 425.

STATEMENT OF THE FACTS

Tom is 70 years old; Anna is 65. TR1 39, TR2 184. The parties were married on June 6, 2008. TR2 198. They lived together for just over 12 ½ years, until early Spring 2021. TR3 153. Each has three children from previous marriages but none together. TR1 39.

From 1978-88, Tom owned his own seat and was a successful trader on the Chicago Board of Options Exchange (CBOE). TR2 190-92. In 1987, Tom married his first spouse; they were divorced in 2006. TR1 38. Almost all of Tom's assets were acquired during his first marriage. Exh. C.

In 1989, Tom purchased 317 acres of farmland near Sioux Falls with

his Profit-Share Pension Plan (PSP). TR2 197-98. From 1989-92, Tom attended the University of South Dakota School of Law. TR2 196. In 1992, Tom purchased a lot and built a house in Sioux Falls. TR2 201. Upon graduation, his family moved to Sioux Falls and Tom began his legal career. Id.

In the early 2000s, Tom purchased four ethanol investments: Lake Area Corn Processors (LACP), Otter Creek Ethanol, Sioux River Ethanol, and Verasun Energy. TR2 204-08. In the 2006 divorce, Tom was awarded his farm, the Sioux Falls home and all ethanol investments. Exh. C.

Tom met Anna in May, 2007, who was also divorced in 2006. Tom told Anna his first marriage had a prenuptial agreement, but still gave his first wife a significant sum. TR2 209-10. Anna, a successful stockbroker, replied, "I don't want your money." TR2 210. They agreed that Anna would pay her and her minor son's own expenses, and Tom paid the rest. TR1 64, TR3 150-51, Exh. E-1. Tom did not pursue a prenuptial agreement. Id.

Tom brought \$2.7 Million into the marriage. Exhs. A, A-1. In 2017-18, Tom inherited \$449,763 from his parents. TR3 213, Exh. C-1. During the marriage, Tom's nonmarital investments provided \$850,033 in

distributions and income. Exh. RRR.¹

Anna did not identify her premarital assets. Throughout the marriage, they kept their financial accounts separate and paid their own bills, and reimbursed each other for credit card use. TR1 64, 190-92; Exhs. TT, JJJ.

In August, 2009, Anna was let go by Merrill Lynch where she was a financial advisor. Anna located a regional broker-dealer to join. Anna and Tom recruited Anna's clients who moved with her to Merrill. TR3 176. They met with the new regional manager at Tom's law office where she approved the client transfers, which Tom faxed to the home office. TR3 176. Tom obtained his securities licenses and the parties created their own advisory company, "Clayton Investment Group, LLC." TR3 177-78.

The parties rented office space with two offices. Tom's law practice provided all the business equipment, secretary station, and conference room furniture. TR3 186, Joint Exhibit (zip drive) D (2009 Form 4562 Law Depreciation Schedule).

Tom's law income dropped significantly due to his work on his and Anna's financial advisory business. TR3 188. Anna's advisory income steadily grew, and by 2018 she was earning six figures. Exh. SS.

Tom paid the lion's share of rent and expenses. TR3 186-87; Exh. RR

¹ Row numbers were included for easier reference.

(\$137,000 v. \$54,000). Overall, Tom lost a small amount of income as a financial advisor. Exh. SS. Anna earned \$741,164 after expenses. Id.

Tom successfully represented Anna in three major legal events for no compensation: Her Merrill Lynch litigation, a 2013 personal injury,² and the advisory business sale. TR3 176-79, 188-90, 197-99.

From 2013-20, Tom improved his Elderberry home. TR3 148-50, Exh. E. He spent \$281,050 on home improvements, using nonmarital funds. Id. Anna contributed \$19,700. Exh. F.

Tom paid \$267,000 for all home and 1-acre maintenance costs, per the parties' agreement. Exhs. E-1, 14 at 3. Anna contributed \$25,500 for indoor cleaning. Exh. F-1.

Tom rented his farm since 1989, which took about 2 hours per month. TR4 53-54, Exh. P at 3. He:

1. Established a partnership with his PSP in 1990.
2. Interviewed and hired tenants every year, and decided whether to share crop or cash rent the land, and at what price.
3. Installed tile in 2004.
4. Put low-producing land in CRP in 2008, then renewed the contract in 2018.
5. Custom hired people to take care of his CRP contracts' requirements.

² Tom was compensated by subrogated insurers. Exh. VV.

6. Regularly walked the farm to see whether there were any encroachments or weed problems, observed how crops were progressing, and monitored erosion.
7. Paid property taxes annually with farm income.
8. Purchased umbrella liability insurance with farm income and annually renewed it.
9. Prepared farm tax returns and forms.
10. Dealt with a carbon pipeline outfit that wanted to lay pipe across his farm.
11. Installed waterways in 2020 and a minor amount of tile, and enrolled the waterway acreage in CRP.
12. Over the years changed farming practices from regular till to no till to minimum till, and rented the property using crop sharing, cash rent, and a blend of both.
13. Allowed his farm tenant to harvest grass hay off CRP ground when permitted due to drought.

Exh. III.

The farm was self-sustaining. Anna had no knowledge or experience with farming, and did not help to improve or maintain it. TR2 164, TR3 108, 111, 116, TR4 125-26.

Tom's farm appreciated greatly during the marriage – from \$639,457 in 2008 to \$2.7 Million by Tom's estimate. Expert Exh. A, support p. 114 (premarital value), Exh. O. Anna's appraisers valued it at \$3.5 Million.

Exh. 1.

In 2015, Tom found a duplex in a favorable location in Sioux Falls and convinced Anna to invest with him. TR3 200-01. They purchased it for \$110,000. Tom advanced \$42,594 to keep it solvent, and in 2021 they sold it for \$250,000. TR3 204, Exh. CC.

In 2017-18, Tom inherited \$450,000.00 from his parents. TR2 213, Exh. C-1. He gifted Anna \$50,000.00. Exh. BBB at 2. Tom began researching real estate in the Palm Springs, California area, which he knew well. TR3 155. He asked Anna if she wanted to invest. TR4 87, 167. Anna said yes. Id.

In March, 2019, Tom purchased plane tickets and he and Anna flew to Palm Springs. Exh. I-1. They put a bid on a condominium, which was accepted. TR4 22, 167. When they returned to Sioux Falls, Anna asked Tom what percent she would receive if she invested \$25,000.00. TR4 167-68. He did the math and told her around 7%. Id. Anna was visibly upset, TR4 87, 168.

Tom told Anna he could not give from his percent because it reduced his children's inheritance. TR4 168. Anna stated she understood but declined to invest. Id. Anna voluntarily signed all the title company documents removing herself as a purchaser. TR4 87; Exh. 7.

After Anna decided against investing, Tom followed the advice he

gave his wealthier clients who owned real estate in two states and created a revocable trust. TR4 180. It purchased the condominium for \$350,000 using his inheritance, proceeds from an ethanol investment sale, farm income, and his Profit Share Plan (PSP). TR3 157-58, 180; Exh. 7; Expert Exhs. A, C. After the closing Anna contributed \$7,650 of items to update the condo. Exh. J.

Throughout the marriage, Tom was very generous. He gifted Anna jewelry and IRA contributions, paid for medical expenses, paid for her autos' maintenance, made monthly payments for her Mercedes, and paid off its outstanding loan. Exh. BBB. Tom purchased tennis equipment and helped pay significant medical bills for Anna's son. Id. In all, Tom made \$140,000 in gifts to Anna and her son. Id. He paid \$112,000 for health insurance to cover the three of them, and paid their premiums after he went on Medicare until the parties separated. Exhs. AAA, BBB.

Anna's gifts to Tom were negligible, but in line with the parties' understanding that Anna did not seek Tom's wealth and was only responsible for her and her son's expenses. TR1 64, TR4, 164; Exh. JJJ.

In 2019, Anna told Tom she wanted to sell the advisory business. They had many conversations over who she should sell to. TR3 188. In 2020, she sold it to a local broker for \$310,000. TR1 50-51.

Tom assigned the office lease to the buyer and moved out in March, 2020, as the COVID-19 pandemic hit. Id. He previously wound down his law practice in preparation for retirement but continued to work from home. Id.

In early Spring, 2021, Tom moved to Palm Desert. In April, 2021, Anna informed Tom she and her son were moving out and did so on May 1, taking \$21,000 of furnishings purchased during the marriage and leaving Tom with an almost empty house. TR4 37, Exh. NNN. In October, 2021, Anna filed for divorce.

At the end of a 4-day trial, the Court found that almost everything Tom owned was marital property, totaling \$5.95 Million. Ct.Exh. A-1. It did not credit him for the premarital value of his assets. Id.

The Court awarded Anna \$2.9 Million, including \$1.75 Million of Tom's farm, half of the Palm Desert condo, and \$15,000 in attorney fees. FF#45-51, 76; Compare Exh. 14 with FF#98-99; Ct.Exh. A-1; CL#33; Judgment and Decree of Divorce.

STANDARD OF REVIEW

The Circuit Court's decision to classify property as marital or nonmarital is reviewed abuse of discretion. Field v. Field, 220 S.D. ¶15, 949 N.W.2d 221, 224. Abuse of discretion is "a fundamental error of judgment,

a choice outside the range of permissible choices, a decision, which on full consideration, is arbitrary and unreasonable.”” Id. (quotation omitted).

“South Dakota in general terms, [i]s an ‘all property state,’” meaning property of both parties is subject to equitable division. Id. ¶16. In making an equitable division, “‘the court shall have regard for equity and the circumstances of the parties.’” Id. (quoting S.D.C.L. § 25-4-44).

“Equitable” does not mean “equal.” Id.

“Gifted or inherited property is not automatically deemed separate and ‘ipso facto excluded from consideration in the overall division.’” Field, 220 S.D. ¶17, 949 N.W.2d at 224-25 (quotation omitted). Whether gifted or inherited property is separate or marital depends on evidence of “‘the origin and treatment of . . . [the] property and direct and indirect contributions of each party to the accumulation and maintenance of the property.’” Id. (quoting Halbersma, 2009 S.D. 98, ¶12, 775 N.W.2d at 215).

The Circuit Court must classify property as marital or nonmarital based on the seven factors stated in Cook v. Cook: (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.

Cook, 2022 S.D. 74, ¶28, 983 N.W.2d 180, 190. Property is set aside as nonmarital when a spouse “has made no or de minimis contributions to the acquisition or maintenance of an item of property and has no need for support.” Id. ¶18 (quotation omitted).

After application of the above standards and principles, the Supreme Court should hold that the Trial Court clearly erred, abused its discretion and erred as a matter of law and reverse its money judgment.

ARGUMENT

ISSUE NO. 1

The Trial Court Abused Its Discretion and Clearly Erred when It Ruled Tom Violated the Temporary Restraining Order by Purchasing a Condominium and Donating to the U.S.D. School of Law with Stipulated Nonmarital Funds.

On August 17, 2022, Anna moved for an Order stating Tom violated the pretrial Temporary Restraining Order (TRO) by (1) selling his Sioux River Ethanol and half of his LACP Ethanol investments in May, 2022, and purchasing \$20,000 in bonds with the proceeds; and (2) by using Stipulated nonmarital funds to purchase a condominium and donate \$50,000 to the U.S.D. Law School.

Tom’s supplemental discovery response disclosed the reduction in his LACP shares and sale of Sioux River (a/k/a/ Poet) ethanol. Exh. 75 at 3. Anna’s motion shocked Tom because it was contrary to their pre-marriage

understanding about their separate property.

The law regarding premarital assets is well-settled:

Other than the duty of support, a spouse does not have any vested rights in the property of his or her mate during the course of their marriage. See SDCL 25-2-24; SDCL 25-7-1. Thus, *spouses are entitled to maintain separate property and do with it as they see fit.*

Halbersma, 2009 S.D. 98, ¶8; 775 N.W.2d at 214-15 (emphasis added).

S.D.C.L. § 25-2-4 permits parties to maintain and transact their separate assets during marriage, and § 25-2-7 states:

Each spouse shall have and retain after marriage all the civil and property rights of a single person. Each may buy and sell, receive and convey, or dispose of . . . any real or personal property belonging to him or her or in which he or she may have an interest, without joining the name of the spouse except for the homestead.

S.D.C.L. § 25-2-7 (emphasis added).

Tom submitted a Brief, Declaration and exhibits. He cited the parties' practice of maintaining their separate property, and showing his ethanol investments were nonmarital property. TRO.Decl. ¶¶2, 10-32. He also traced his condominium purchase and Law School donation to the \$432,624 stipulated nonmarital home sale monies. Id. ¶¶9, 33-39; Exh. C (identical to Trial Exh. 14). He submitted Anna's supplemental interrogatory Answer, two weeks after executing the Stipulation, that she was only entitled to home sale proceeds following deduction the \$432,624 stipulated nonmarital amount. TRO.Decl. ¶9, Exh. D.

Anna did not present any evidence. Anna's attorney admitted at the hearing that the stipulated \$432,624 funds were nonmarital:

Funds, we agreed to a number [sic]. There's funds that *we agree that are nonmarital*, prior to the marriage. And also, the growth of the value of the home pursuant to South Dakota case law, which was agreed to be held in defendant's trust account – defendant's attorney's trust account. . . ."

TRO.Hrg. 8 (emphasis added). Tom's condominium purchase and donation, traced to his Stipulated nonmarital funds, should have also been nonmarital.

The Court acknowledged that the Stipulation decided the issue regarding the premarital value of Tom's home: "There's already been agreement regarding the home." Id. 51. However, it interrupted Tom and prevented him from proving his condominium and Law School donation came from the Stipulated funds. It stated, "a \$50,000 gift, I don't know where that came from," although Tom's submissions showed it came from stipulated nonmarital funds. Id. 23; TRO.Decl. ¶¶9, 33-39; Exhs. C, D.

Thus, the parties' Stipulation, Anna's attorney's admission, and Tom's proof that the condominium and donation came from Stipulated proceeds should have allowed the Court to rule that the condominium and donation were made with nonmarital funds. Anna's admission about the Stipulation could also be construed as consent under S.D.C.L. § 25-4-33.1(1).

Nonetheless, the Court ruled that Tom violated the TRO by selling his ethanol investments and purchasing bonds, and also by purchasing the condominium and donating to the Law School. Its vague Order contained no Findings.

Tom never transacted anything else following the TRO hearing. One time he requested to Anna and the Court that he be allowed to purchase an investment, which was denied. See Court Record, “Copy of Email(s)” (11/15/2022), APPX. JJ.

Two months after the Court’s ruling and two years before trial, the Supreme Court held that “SDCL 25-4-33.1 [TRO statute] restrains a party from dissipating *marital* assets.” Cook v. Cook, 2022 S.D. 74, ¶26; 983 N.W.2d 180, 190 (citation omitted) (emphasis in original). It was not meant to affect nonmarital assets, and appears to allows a party to use funds that both parties agree are nonmarital.

The Trial Court’s ruling regarding Tom’s condominium purchase and donation was clear error and an abuse of discretion.

ISSUE No. 2

The Trial Court Abused Its Discretion, Clearly Erred, and Erred as a Matter of Law When It Found Tom Violated the June 10, 2022 Stipulation, then Unilaterally Reduced Tom’s Nonmarital Home Sale Proceeds from \$432,624 to \$89,364.

At trial, Anna testified that \$432,624 of the Stipulation monies were

Tom's nonmarital property "to which he would have access." TR1 178; Exh. 14. She never testified he was prohibited from using the proceeds. She testified the remaining \$371,653 in attorney-client trust was, however, restricted from use until trial. Id.

Two months after the Stipulation was executed, Anna submitted a supplemental Interrogatory Answer confirming that she was only entitled to a portion of the \$371,653 held in trust, while \$432,624 was Tom's premarital proceeds. Exh. 89 (Pl.Supp.Irog.Ans. No. 31 (not 33) (Aug. 10, 2022). Anna confirmed her discovery Answer at trial. TR2 52-53.

At the TRO Motion Hearing, Anna's attorney admitted the Stipulation provided Tom with \$432,624 nonmarital home sale proceeds, which the Court acknowledged. It stated, "There's already been agreement and stipulation on the record regarding the home assets." TRO.Hrg. 51.

After Anna's testimony, and while Tom was testifying about purchasing his condominium with the Stipulated proceeds, the Court interrupted him:

THE COURT: Wait a second. We need to push pause a second. Hold on one moment. How do you want to address this, Ms. Rosenbaum? *Because I believe this testimony is in direct violation of a court order.* So, I wanted to at least push pause. *The sale proceeds from the Elderberry home were not to be spent.* They were to be kept in different accounts. . . . I believe the last two paragraphs of that [Stipulation] indicate where the proceeds can go, but they have to stay during the pendency of the divorce.

TR3 167. However, the TRO Order and hearing transcript stated *nothing* about requiring Tom to keep the \$432,624 in his personal account untouched, like the funds in attorney-client trust.

Tom continued to testify that the Stipulation's nonmarital set-aside allowed him to deposit the funds into his personal account and access them because they were not in dispute. TR3 169. Thus, the parties unambiguously agreed on the Stipulation's meaning. TR1 178 (Anna testimony). The Court interrupted again, stating its interpretation was correct and the parties were wrong. TR3 170.

Tom and Anna's testimony made sense: "Otherwise all the money would be put in one account and not be separated." TR3 169; TR3 171, TR1 178. Tom's condominium purchase and donation were traced directly to the Stipulation's nonmarital home sale proceeds. Exhs. L, HHH; Expert Exh. D, TR3 22-24. A party's use of "direct tracing" of property through "any number of transactions in order to reach the final proceeds or result" is permissible under South Dakota law. Charlson v. Charlson, 2017 S.D. 11, ¶, 892 N.W.2d 903, 905.

Despite the parties' identical testimony, and tracing, the Court *sua sponte* deconstructed the Stipulation in its post-trial Findings. It denied the Stipulation allowed Tom to put \$432,624 in his separate account to use in

any way. FF#88. It found the Stipulation required Tom to hold and treat his nonmarital proceeds identically to the \$371,653 balance in attorney-client trust, “until an agreement is reached between the parties or by Order of the Court,” even though there was no similar restriction on the \$432,624 amount. Id. See Exh. 14, §7 (same as Exh. E); TR1 178, TR3 167-72.

The Court found Tom violated the Stipulation by accessing and spending his nonmarital funds, and “[h]is actions dissipated marital property.” FF##88-91. It claimed, “it is unclear where the remaining \$163,624 is located,” even though the evidence showed the funds were in Tom’s bank account, and Anna never complained about the remaining proceeds. TR1 13, Exhs. L, HHH.

The Court even rejected the Stipulation’s *amount* of nonmarital home sale proceeds, even though it stated that the parties settled the issue at the TRO Hearing. TRO.Hrg. 51. Besides Anna’s attorney’s hearing admission, the Stipulation cited “\$432,624” no less than *three times*, along with a reliable basis: the Lincoln County Department of Equalization. Exh. 14 at 1, 2 §7. The Court also rejected the parties’ testimony.

In its deconstruction, the Court found that Stipulation §6, “a certain portion” of the proceeds constitutes “non-marital and separate property of the Defendant,” meant that the amount was undetermined. The Court

disregarded the very next section, however which unequivocally identified the “certain portion” was \$432,624, based on the 2008 Lincoln County Department of Equalization assessed value. Exh. 14, §7.

The Court remarkably stated, “Equity requires the Court to follow the parties’ Stipulation that recognizes some portion of the home is non-marital.” FF#97. Employing an extraordinary methodology, it stated, “Tom was in the Elderberry home himself for two of the past 18 years [2006-2024], from 2006-2008.” FF#98. However, Tom sold the home in 2022. Exh. 14. This error pales next to the Court’s exclusion of Tom’s 14-year ownership from when he built the home in 1992 until his divorce in 2006. TR2 201.

It then divided the \$804,277 net home sale proceeds by 18 years from 2006-2024 (including two premarital years plus two years after the home was sold), and concluded the home’s *premarital value* was \$9,364, or \$44,682 per year for the 2 years Tom was single between marriages. Id. Its methodology slashed Tom’s Stipulated nonmarital proceeds by \$343,260.

The Court justified its revision as follows:

“This is a reasonable amount based on the length of the marriage, *appreciation of the property during the marriage*, and the parties’ *joint contributions to the maintenance and success of the home*.”

FF#99 (emphasis added). In other words, the Court reduced Tom’s

stipulated \$432,624 premarital proceeds to \$89,364, to increase the amount “during the marriage,” which increased Anna’s share. Id.

Even though Tom proved the remaining \$371,653 held in trust consisted of (1) his improvements paid from nonmarital monies during the marriage, totaling \$281,050, (2) Anna’s separately paid improvements of \$19,700, and (3) appreciation of \$71,176, none of which Anna disputed, the Court ignored Tom’s evidence. Exh E at 11. It found the home’s \$802,277 net proceeds, minus the new \$89,364 nonmarital amount, or \$714,913, was all marital property. FF#100. It then awarded Anna half, or \$357,456. Ct.Exh. A-1, Line 51.

The Court’s \$40,666 “award” to Tom included \$26,469 of another client’s trust monies, even though Tom testified that the \$26,469 belonged to another client. TR4 55, TR1 178; Ct.Exh. A-1, Line 51.

While property divisions need not conform to a “rigid formula that must be followed . . . or require perfection that would approach mathematical certainty,” the Court’s *sua sponte* actions caused an inequitable result: It increased Anna’s marital share and reduced Tom’s. “An abuse of discretion occurs when discretion is exercised to an end or purpose not justified by, and clearly against, reason and evidence.” Goeden v. Goeden, 2024 SD 51 ¶32 (quoting Cook, 2022 S.D. 74, ¶19, 983 N.W.2d

180, 188).

The Court's methodology and rationale are jarring. It discarded a perfectly reasonable, objective, and *agreed upon* Department of Equalization valuation of \$432,624. TR3 52. Its substitute methodology excluded 14 years of Tom's premarital ownership (1992-2006), erroneously added 4 years to the length of the parties' occupancy, then for no perceivably legitimate analysis calculated \$44,682 per year for when Tom was single between marriages. FF#98. Its methodology and result have no conceivable validity.

It is doubtful the Court had the authority to unilaterally reduce the amount of Tom's nonmarital home sale proceeds. "Contractual stipulations in divorce proceedings are governed by the law of contracts[.]" Erickson v. Erickson, 2023 S.D. 70, ¶28 (citations omitted). To determine a proper interpretation, "the court *must* seek to ascertain and give effect to the intentions of the parties, and it is clear error and an abuse of discretion to refuse to do so." Divich v. Divich, 2002 S.D. 24, ¶10, 640 N.W.2d 758, 761 (emphasis in original).

Parole evidence is admissible and necessary "to *explain* the instrument." Lamore Restaurant Group, LLC v. Akers, 2008 S.D. 32, ¶30, 748 N.W.2d 756, 764 (emphasis in original). Here, the Court *rejected* the

parties' testimony, Anna's first attorney's pretrial hearing admission, and its own remarks at the same hearing.

Likewise, it failed to "give a reasonable and effective meaning to all [the Stipulation's] terms[.]": The Preamble and §§ 6 & 7, read together, clearly show the nonmarital amount was \$432,624. Charlson, 2017 S.D. 11 ¶, 892 N.W.2d at 911.

The Court's reliance on §8 to support its reduction was contrary to the parties' testimony and pretrial admissions. While §8 allowed a party to argue for a different amount in the event of newly discovered information, *neither party argued for or proposed a different amount.*

Further, the absence of a restriction on the nonmarital amount, and presence of a restriction on the attorney-client trust's \$371,653, is clear inference that the parties did not intend for Tom's nonmarital proceeds to be restricted.

ISSUE No. 3

The Trial Court Abused Its Discretion by Denying Appellant's Motion to Reopen the Record to Help Resolve any Ambiguities in the Stipulation.

Upon reading the Court's Findings, Tom moved to Reopen the Record. Motion to Reopen Record (1/18/25). He produced an email from Anna's attorney and her amended draft, which resulted in the final

Stipulation. Def.Resp.Aff., Motion to Reopen Record, ¶¶19-22, Exhs. D, E. Attorney's email states:

In order to try to reach a compromise *and allow Tom access to funds*, my client is only agreeable to *releasing* \$432,624.00 (assessed value in 2008). *Then the remaining funds can be held in escrow until an agreement is reached or Order of the Court.* She will not go above this amount at this time.

Alternatively, if Tom is not agreeable to this amount, then my client suggests *the entirety of the funds be held until an Agreement is reached or by Order of the Court.*

Exhs. D (email) (emphasis added), E (amended Stipulation). "Access" is defined as "freedom or ability to obtain or make use of something." Merriam-Webster Dictionary Online Dictionary (2025).

The parties signed Plaintiff's revised Stipulation, which comprises Trial Exhibit 14. Thus, Plaintiff herself proposed that \$432,624 be set aside as Tom's nonmarital home sale proceeds, to be "released" to him to "access" or use as he wished.

"The decision to reopen a case after the parties have rested is a matter within the sound discretion of the Trial Court." Endres v. Endres, 532 N.W.2d 65, 72 (S.D. 1995) (citation omitted). Its discretion "*is to be liberally exercised in behalf of allowing the whole case to be presented, for the best advancement of the ends of justice.*" Id. (citation omitted) (emphasis added).

The additional information clarified any ambiguity about whether Tom was required to hold his nonmarital home sale funds, untouched, or whether they were “released” to him, to “access” as he wished. Def.Resp.Aff., Motion to Reopen, Exh. D. It also directly contradicted the Court’s interpretation.

The Court denied the Motion to Reopen. Order Denying Motion to Reopen (1/30/25). The Court’s denial was clear error and an abuse of discretion.

Sua Sponte Reformation

Finally, the Court’s *unilateral* reformation of the parties’ Stipulation is likely unlawful. Contract reformation is a “remedy in equity by means of which a written instrument is made or construed to express or conform to the real intention of the parties, when some error or mistake has been committed.” Sprang v. Altman, 2009 S.D. 49, ¶9, 768 N.W.2d 507, 509 (citation omitted).

Although the Stipulation contained ambiguities, the parties’ parole testimony clarified their intent, as did their representations at the TRO Hearing. *Neither* party requested that the Stipulation be reformed. Yet the Court, without motion, reformed the parties’ Stipulation despite the parties’ very clear testimony and pretrial admissions, *acknowledged by the Court*,

that \$432,624 was the true value of Tom's nonmarital home sale proceeds. TRO.Hrg. 51.

The Court clearly erred, and abused its discretion, and error of law by assuming the power to unilaterally reform the Stipulation.

Law School Donation and Condominium Purchase

Tom's donation and condominium purchase were traced directly to his \$432,624 nonmarital funds. Expert Exh. D, TR3 23-24; Exh. L. The Court's unilateral Stipulation reduction, however, pulled them both into the marital estate. FF#139.

The Trial Court acknowledged that Tom used part of the \$432,624 to purchase the Chicago condominium and to make the law school donation. FF##135, 146. No other funds were used for these purposes. The Trial Court also found that "Anna has not been involved in the upkeep or maintenance of the [Chicago] condo." FF#137.

Nonetheless, after applying the reduced \$89,324 credit to the condominium, it awarded Anna half of the remaining \$129,636 condo value and half of the \$50,000 donation. FF#98-100, 142; Ct.Exh. A-1, Lines 6 & 48. Its actions and Findings constitute clear error, abuse of discretion, and error as a matter of law.

ISSUE NO. 4

The Trial Court Abused Its Discretion, and Made Clear Errors and Errors as a Matter of Law, Resulting in an Inequitable Division of Other Property.

1. Palm Desert Condominium

Like the Court's treatment of the Elderberry home, it rejected undisputed evidence, selected its own inputs, and supplied its own methodology to find Tom's \$550,000 Palm Desert condominium was 100% marital property and awarded Anna half. FF#105, 114-115.

Tom purchased the condominium for \$350,124.78. Exh. 7. Mr. Snyder, J.D., CPA, traced the monies Tom used for the purchase: (1) \$172,649.33 from his 2018 inheritance, (2) \$96,943.86 from his 2018 sale of Otter Creek Ethanol, (3) \$50,000 from his farm income, and (4) \$50,000 from his PSP. TR3 14-16, Expert Exh. B. None of Anna's funds were used and Anna never testified she contributed toward the purchase. TR3 16,

Finding #114, inexplicably stating "Tom believes he invested roughly \$47,000 in direct financial contributions," *is off by \$303,124.78*. Exh. 7.

Tom paid an additional \$25,922.71 in improvements. Exh. I. Even though Anna removed herself as purchaser, she contributed \$7,650.97 afterward to update the condo.³ Exh. J. Tom paid \$34,255.84 in

³ Cf. FF#104, falsely claiming Tom *alone* signed an escrow agreement

maintenance. Exh. I-1. Anna did not pay anything for maintenance. None of this was disputed.

Due to the Court's \$303,124.78 understatement of Tom's "direct financial equity contributions," Finding #115, stating Anna's \$7,600 contribution was "16% of the total costs and is therefore more than a *no or de minimus* contribution to the condo expenses," *is actually 2%* ($7650/(376,000 + 7650) = 2\%$).

The Court faulted Tom for using four accounts to purchase the Palm Desert property: "All accounts [Tom used] for the condo purchase were used for more than just the Palm Desert condo income and expense[]." FF#108. This finding is in direct conflict with the Supreme Court's approval of tracing funds to prove that assets are nonmarital. Charlson, supra.

Tom's inheritance and Otter Creek Ethanol proceeds were deposited into his separate checking account, which his expert traced directly to his Palm Desert purchase. Expert Exh. B, TR3 158-59. Tom's farm account contained funds *only* from farm partnership income. TR3 35-36.

The PSP only received monies from its annual 15% share of farm income. Exh. PPP. *None* came from "contributions" of income earned during marriage, which would conceivably render the farm account marital.

"which removed Anna's signature completely. . . ."

TR3 35-36 (Tom's expert testified none of monies going into PSP were deducted from employment income on the parties' tax returns, the hallmark of a true contribution), TR2 110 (Anna expert admitting none of monies going into PSP were deducted from income).

Finding #110, stating Tom did not "set up a separate account or business to keep the condo separate from the parties' other finances[]" is false. Tom opened his Revocable Trust checking account for the Palm Desert condominium on May 15, 2019, *one day after* setting up his Revocable Trust and a week prior to closing on the condo, for the *sole purpose* of accounting for the condominium's income and expenses. Expert Exh. B; Exh. I-1.

Finding #116, stating the parties "agreed" their contributions were equal, is nowhere in the trial transcript and clearly false. Tom's indirect contributions were always more than Anna's, due to his renting and improving the premises, hiring contractors and handymen and overseeing work, paying bills, preparing taxes, etc. TR4 89.

Anna made three trips to help get the condo up-to-date. TR3 103-04, 165-66. However, she never returned to the Condo after November, 2020, while Tom's indirect contributions continued up to and through the 2024 trial. Exh. I-1 (cost of Anna's last trip). No one would expect the parties'

indirect contributions to be equal.

Finding #117, stating “both parties contributed indirectly and directly to the upkeep and maintenance of this property” is false. Tom expended \$34,255 in direct maintenance. Exh. I-1. Anna did not expend *any* monies for maintenance.

In sum, Findings ##101-118 bore no resemblance to the testimony and exhibits, and included calculations based on wildly erroneous data. Yet, the Court found that the *full \$550,000 value* of the condominium was included in the marital estate. FF#119. Thus, Anna’s \$7,650 or 2% direct contribution generated a \$275,000 property division award, while the Court *reduced* Tom’s direct \$376,000 purchase and improvements. The Court’s finding is clear error and an abuse of discretion.

2. Fifth Avenue, LLC Duplex

The Court awarded Anna the full \$146,706 amount of the parties’ duplex proceeds without Findings. Ct.Exh. A-1 at 4. It did not even acknowledge that the parties purchased a duplex. FF#23 fn.2.

Tom contributed twice as much as Anna to purchase the duplex, and found the loan that returned their investments. TR3 201, Exh. CC at 1. He set up the LLC which required the parties to split the income and equity 50-50, and prepared all tax returns. TR3 202-03. Tom contributed the vast

amount of sweat equity. TR3 200-04. He advanced \$42,594 to keep the investment solvent. Exh. CC at 1-4. In 2016 he overpaid Anna for her \$581.93 contributions by \$1,408.07, which she never repaid. Id. at 2, 5. The Court failed to mention any of this, yet awarded Anna *the complete amount of the net proceeds*. Ct.Exh. A-1, Lines 54 (\$143,035), 66 (\$3,671); Exh. CC at 2, 4-5.

"It is well-settled law that it is the Trial Court's duty to make required findings of fact, and the failure to do so constitutes reversible error."
[citations omitted]. "We cannot meaningfully review the Trial Court decision without the Trial Court's reasons for ruling the way it did." Repp v. Van Someren, 2015 S.D. 53, ¶10 [citation omitted].

Twice the Court was made aware that it was required to make findings. See Defendant's Objections to the Court's Findings at 50; Defendant's Reply Brief for Motion to Reopen Record at 9 (1/12/25). The Trial Court refused.

The Court's award to Anna of the entire amount of Duplex proceeds is clear error and an abuse of discretion.

3. Intermingling

Findings ##35 and 37, stating Tom's premarital proceeds and inheritance are marital because they were "intermingled with other funds in

various accounts[]," FF#35, and "with other funds received or expenses paid, during the marriage," FF#37, fail to identify a single account of Anna's which Tom's premarital proceeds or inheritance were intermingled with.

Anna never testified that Tom's money assets intermingled. Anna's expert, Mr. Nelson, admitted that every time he testified about Tom's funds being "commingled," he referred to transfers *among Tom's own accounts*. TR2 122, 154; Exh. 66 at 6-8.

Mr. Snyder testified that none of Tom's monies, accounts or assets were ever commingled with Anna's. TR3 28-29.

Still, the Court found Tom's \$2.74 Million of premarital property and \$450,000 inheritance, were *all marital* simply because he moved funds within his *own* nonmarital accounts. Findings ##35 and 37 are clear error, an abuse of discretion, and error as a matter of law.

4. Farm Ground.

The Trial Court's findings that Anna contributed to Tom's farm "directly and indirectly," and awarded her 50% or \$1.75 Million tax-free, are devoid of credibility. FF##55, 74, 76.

Tom owned and rented out his farm ground long before knowing Anna. He performed every task, which took only 2 hours per month or 2 days per year, making his asset an almost purely passive investment. Exhs.

III, P at 3; TR2 197, TR3 122-38, TR4 20.

Anna had no farm experience or knowledge. TR2 169; TR3 138-39, 111, 115-16. Rose Pauley, Anna's cousin and childhood friend who farms over 3,500 acres near Milbank with her husband, testified Anna was not a "farm girl." TR2 164, 169. Since Anna was very young, she had no farm experience. TR2 164. Farm activities did not interest her. Id., TR4 111, TR4 126.

Anna testified that she was at the farm "over 20" times, but none involved farm maintenance. TR1 87-88. Her son testified they only went to the farm 16 times to light fireworks and walk the dog. TR2 177. Tom testified Anna visited the farm once to scatter his dog's ashes, and annually watched fireworks from the township road. TR3 138.

Tom understood crop share and cash rent leases and used them both. TR3 126, Exh. III. Since 2020, he uses a "floating agreement," a blend of crop yield, price risk and base cash rent. TR2 216-17; TR3 118.

Every year in January Tom met with his tenant to discuss rent. TR3 137. Beforehand, Tom researched what inputs cost, and what cash rent would bring. See, e.g., Exh. N at 5-6 (2023 Iowa State Extension Farm Cost Estimates and 2024 cash rent survey).

Finding #65, giving Anna credit for Tom's 2013 decision to switch

from crop share to cash rent, is false, but even if accepted is *de minimis*. Anna testified Tom was so “stressed” from crop share renting that she insisted on having an “intervention.” TR1 80-81. Anna testified she persuaded cousin Rose and her husband to drive to Sioux Falls *solely* to meet with Tom and convince him to switch from crop share to cash rent. TR1 80. She said she phoned them about Tom’s crop sharing and testified they were “shocked” and “astonished” to learn Tom still sharecropped. TR1 80.

Rose and her husband were Anna’s financial services clients. TR2 168. Rose testified that she, her husband, and Tom typically talked about “farm stuff” “before we started in on financial stuff.” TR2 164 (happened at 4-5 meetings).

They came to Sioux Falls in late 2012 to talk about purchasing insurance from Anna for estate succession purposes, which was the *only* reason they drove 4 hours round-trip. TR2 170. They ultimately bought the insurance. TR2 170, TR4 79-80.

Rose contradicted Anna’s testimony that she was “shocked” and “astonished” that Tom “still” cropshared. She testified, “I didn’t know anything about that crop share thing they [sic] were doing” before they arrived in Sioux Falls to discuss life insurance. TR2 169.

Tom recalled the meeting like Rose. They had their typical “break the ice” conversation about “farm stuff” before the actual meeting started. They discussed the 2012 drought, farm tiling, and the differences between sharecropping versus cash rent. TR2 166-67, TR4 80. Rose testified, “we talked about the cash rent because we made a comment that we would love to come down there and cash rent that [Tom’s farm] from them.” TR2 169.

Rose could not recall what Anna talked about before the meeting: “I would [not] know specifically . . .” TR2 167. Then the actual meeting began, which was a “serious discussion about estate planning” involving life insurance. TR4 79-80.

Thus, Rose and her husband’s reason for talking about cash rent had *nothing* to do with Tom’s so-called time-consuming and stressful share cropping. Rose did not confirm Anna’s fantastical testimony that (1) she and her husband were “shocked” and “astonished” that Tom sharecropped, and (2) contradicted Anna’s testimony that she and her husband drove 4 hours round-trip solely to convince Tom to switch from crop share to cash rent. TR2 167, TR4 80.

After her cousin testified, Anna was given the opportunity to correct her testimony about the true purpose of the meeting. TR3 42. She denied it had any other purpose but her “intervention.” Id.

Likewise, Anna claimed she discussed farm prices with the renter when he came to the office. TR1 84. The renter, who farmed the land for the past 9 years, testified he never had conversations with Anna about farm matters and she never participated in his and Tom's farm decisions. TR3 110, 116.

Tom testified that Anna never suggested, then or at any time, that he change from sharecropping to cash rent "to free up some of [his] time." TR4 80. Further, switching to cash rent is not a miraculous panacea. TR2 165-66. It required research and did not eliminate any of the other rental activities. Exh. III, TR3 108, 111, 115-16. The so-called time-saving, if it even existed, was minuscule to nonexistent considering that doing everything to manage the farm *took less than 2 hours per month*. Exh. P at 3.

Thus, Finding #63, stating Anna performed "maintenance and decisions," reducing Tom's "stress" and allowing him to "work less," including her so-called "intervention," was refuted by every witness, even her own.

To justify its Finding that Tom "worked less" after the faux intervention meeting, the Court used Tom's reported Social Security income. FF#67 ("based on Tom's earned social security income over the past decade"). Anna herself never made such a claim. Even accepting Anna's

claim that she saved Tom a minor amount of time when *renting - not farming* - bare farm ground, it is incredulous to believe that it is more than a *de minimus* contribution.

Finding #64, stating "The Group's [Clayton Investment Group's] office equipment and space were occasionally used for tasks related to the operation or lease of the farm[]," is remarkable. Anna never testified Tom used "the Group's" office space and equipment; she testified he used "*the* office and equipment." TR1 81. The Court added "The Group." FF#64.

Rather than Tom using "the Group's" office space and equipment, "the Group" used *Tom's* equipment and furnishings and Tom used his own office. TR1 81. Tom's law practice provided the advisory business with *all* of its equipment: phones, computers, fax machine, router, printer/copier, shredder, secretary station, conference table and chairs, etc. Joint Exhibit D (2009 Schedule C, Law Income, Form 4562 Depreciation Schedule), APPX. Q.

Second, Tom and "the Group" jointly rented and paid for office space and *separate offices*. Exh. RR. From 2010-12, they paid the same for rent and utilities. Id. From 2012 until 2020, when the business was sold, Tom paid significantly more for rent and shared expenses. Exh. RR at 4 (\$53,000 more).

The Court omitted all this evidence, and altered Anna's testimony to infer that Tom used "the Group's" office and equipment, when he actually used his own. See TR1 81. It is clear error, and an abuse of discretion, for the Court to alter Anna's testimony to depict Tom as reliant on Anna for performing his farm paperwork, when he used his own equipment and office space.

Like the Court's reliance on Tom's "social security income" when finding Tom "worked less" by switching to cash rent, the Court's reliance on Anna having a "fulltime job," and thus paying an indeterminate amount of the parties' maintenance expenses so Tom could keep his farm income "somewhat separate," FF#62, is entirely false.

Anna's financial expert did not testify that Anna earned more income than Tom. TR2 92-93. In fact, Tom's nonmarital investment income and distributions were *greater* than Anna's Social Security Income. Compare Exh. RRR (Tom's assets provided \$850,033, including farm income) with Exh. SS (Anna earned \$741,164).

While married, Anna only contributed \$19,700 toward Tom's home improvements and paid \$25,500 for housecleaning. Exhs. F, F-1. Tom's farm income (which the Court correctly identified as his) was over \$505,000. Exh. MMM, RRR; FF#62. Anna's minor contributions had no

effect on what Tom did with his farm income.

The Court found that by virtue of filing joint tax returns, Anna was entitled to an equity interest in Tom's farm and every other asset that provided taxable income.⁴ FF#73. This is erroneous in practice and theory.

The evidence showed Tom *always* paid the taxes he was responsible for, and Anna *always paid less* than she was responsible for due to Tom's tax payments, deductions and tax credits, except in 2020 when she finally paid her share. Exh. RRR, TR3 32 (expert testimony), 199-200, TR4 13.⁵ Filing joint tax returns actually meant Anna's tax burden was less, and clearly not a contribution to the farm.

The Court also ignored Mr. Snyder's testimony, that filing tax returns never involves assets themselves, but only income, deductions, and credits; therefore, filing joint returns cannot change a nonmarital asset into a marital asset. TR3 33.

Further, a survey of jurisdictions in the nation which considered the issue of whether filing a joint tax return gives one party an equity interest in

⁴ The Court used the same rationale for finding Tom's ethanol investments were marital. See FF##131, 13, *infra*.

⁵ Initially believing Anna paid more than Tom in 2019, Mr. Nelson admitted he did not factor Tom's deductions and tax credits that Anna benefitted from, which unraveled his opinion. TR2 123, 130-31.

the other's nonmarital property *uniformly rejected the Trial Court's position*. Estate of Hunt v. Hunt, 389 S.W.3d 755, 756, 763 (Tenn. Ct. App. 2012) ("[W]e hold that the filing of joint income tax returns does not create any property right in the jointly filing spouse as a matter of law."); In re Estate of Trecker, 62 Wis.2d 446, 215 N.W.2d 450 (215 N.W.2d 1974) ("The [federal law providing for the benefit of joint tax filing] . . . did not [] create any property rights in the jointly filing spouses. . . . the mere partaking in a federally created administrative taxation procedure, i.e., joint tax return – does not result in the creation of substantive property rights."); Holston v. Holston, 128 So.3d 726 (Ala. App. 2013) ("[T]he Court of Appeals of Tennessee recently surveyed the applicable law and determined that 'the filing of a joint tax return does not, *ipso facto*, result in transmutation of separate property into marital.'") (*quoting Estate of Hunt*, 389 S.W.3d at 762). Thus, Finding #73 is clear error, an abuse of discretion, and error as a matter of law.

Farm Appraisal

The Trial Court's attempt to give Anna equal credit for the farmland's six-fold increase in appreciation is greatly misplaced: "Tom and Anna each contributed directly and indirectly to the farmland over the

past 16 years, during which time the farmland increased in value by almost six times.” FF##55-56, 74. Anna’s appraisers, who valued the land at \$3.5 Million, *did not rely on any of Anna’s alleged contributions* in determining the farm’s value. Exh. 1.

Anna and the Court want it both ways. The Court approved the \$3.5 Million farm valuation and awarded Anna half, yet the appraisal did not find Anna contributed to its value or appreciation. Further, of the appraisers’ “five factors,” Tom was entirely responsible for three and Anna was responsible for none.

First, its location close to Sioux Falls, in the city’s southern growth corridor, and on a hard road leading to Interstate 29, were all Tom’s criteria for buying it. TR2 197. Second, the farm’s average soil types existed when Tom bought the land. TR1 135. Third, the appraisers stated macroeconomic trends in agriculture and proximity to Sioux Falls *entirely caused the land’s appreciation*, which are relevant only because Tom bought and owns the farm where it lies. TR1 134, 136, TR4 76-77.

While Tom likely spent some farm income on marital things, farm income is not what is in dispute. Only the parties’ contributions to the *accumulation or appreciation of the property* is relevant. Conti v. Conti, 2021 SD 62, ¶30. The Trial Court never made this critical distinction.

Contrary to Finding #74, stating Anna contributed “directly and indirectly” to the farm’s appreciation “over the past 16 years”, the parties separated after 12 years, Tom owned it for 35 years, *Anna made no direct contributions*, and her indirect contributions were refuted by every other witness; and which, even if taken at face value, are *de minimus*. FF##74, 76, TR2 169 (cousin Rose testimony), TR3 108,110-11, 115-16 (farm tenant testimony), TR3 122-38, TR4 18, 20 (Tom testimony). And, there was never any evidence that the land was needed for Anna’s support. Thus, the Trial Court erred by finding that Tom’s farmland was 100% a marital asset subject to equal division. Cook, 2022 SD 74, ¶29.

In sum, Findings ##63-65, 67, 72-74, are all without credible support. Anna’s award of \$1.75 Million, or half of the farm’s \$3.5 Million value, FF#76, is clear error and an abuse of discretion.

Premarital Value of Farm

The Court abused its discretion and made clear error by not deducting the farm’s \$639,457 premarital value from its Finding, even though it used this amount when determining the farm’s value increased 6 times, to \$3.5 Million. Expert Exh. A-5, support pg. 114 (premarital value).

Tax Consequences

If the Court's property division stands, the farm will not remain an income-producing property, FF#75, but will have to be sold to pay for the Court's \$2.47 Million "equalization." Even Anna testified if she received a "significant property cash settlement [sic]," Tom "would have to liquefy [sic] assets or transfer assets." TR1 223.

While tax consequences are generally not considered when valuing an asset, "tax is ultimately an inevitable component of every single thing that happens, and so completely ignoring tax considerations can lead us down a very unequitable conclusion." TR3 24 (Mr. Snyder testimony). The Trial Court acknowledged its duty to take potential tax liabilities into consideration but did not do so, even though it was aware that Tom would have to sell assets to satisfy its all-cash judgment to Anna. TR4 178; Ct.Exh. A-1; Judgment for Divorce.

If Tom liquidated every asset but the farm to raise \$2.47 Million, he would be left with nothing but bare farmland, nowhere to live, and would fall \$287,000 short of the equalization. Ct.Exh. A-1. Selling the farm is the only feasible option.

Selling it for \$3.5 Million, even if possible, will cause a tax liability of *\$1.25 Million*, including \$809,000 federal and \$442,000 California state

income taxes. 26 U.S.C. §§ 1(h)(1)(D), 1411(a)(1), (b), Cal. Rev. Tax Code §§ 17041, 17043 (2024), TR4 97 (Tom is Cal. resident).

Mr. Snyder ran a tax liability analysis if the farm sold for Tom's 2.7 Million valuation. TR3 19-20; Expert Exh. E. Tom would pay \$542,855 in Federal Income Taxes - and \$242,000 in California taxes which he did not consider - for a combined liability of \$785,000. While the tax liability is less, Tom would still owe Anna \$762,000, requiring liquidation of additional appreciated or retirement assets and more tax liabilities.

Under these circumstances, it is clear error and an abuse of discretion to not consider Tom's need to sell the farm and the direct tax consequences. S.D.C.L. § 25-4-44 ("In making such division of the property the court shall have regard for equity and the circumstances of the parties.").

The result is truly inequitable. Failure to consider tax consequences in this case for awarding Anna half of Tom's highly appreciated property tax-free is clear error and an abuse of discretion.

5. Ethanol Assets.

It is clearly erroneous and an abuse of discretion for the Court to award Anna half of Tom's \$261,833 ethanol assets. FF#130; Ct.Exh. A-1 at 2. The Finding includes \$161,833 ethanol sale proceeds prior to trial, which the Court ruled violated the TRO but Tom fully accounted for them prior to

trial and at trial.

Tom brought every ethanol asset into the marriage. FF#120; TR2 204; Exh. C. They were the purest of passive investments and were never commingled. TR4 39-42. Anna admitted, and the Court found, that Anna had nothing to do with the accumulation or appreciation of Tom's ethanol investments. FF#123.

Findings ##131 & 133, stating the nonmarital assets generated income that was reported on the parties' joint tax returns, has no significance. Tom always paid his own taxes, and from 2008-19 paid Anna's taxes or provided deductions and credits that decreased hers. Exh. RRR. Thus, Anna always paid less for every year but 2020, when she finally paid her own. Id.

Further, the mere fact of filing joint tax returns, and the theoretical possibility that Anna *might* have had to pay Tom's tax liabilities (but never did), has been debunked by every jurisdiction appellant could find that considered the issue. See No. 4, Farm.

I-Bonds

Tom purchased \$20,000 U.S. Treasury I-Bonds with proceeds from his LACP Ethanol sale. FF#127; Exh. JJ (tracing I-Bond purchases to ethanol sale proceeds). The Court listed the I-Bonds as marital property. Ct.Exh. A-1 at 2, Line 37. Since Tom's ethanol assets should be nonmarital,

his I-Bond purchases with ethanol sale proceeds should also be nonmarital. Exh. JJ.

6. Tom's Prior Support Obligations.

Finding #8, crediting Anna for paying an unsubstantiated amount of Tom's 2006 divorce obligations, is false.

The Court supported its Finding, like others, by focusing solely on Tom's Social Security earnings and excluding every other source of Tom's ability to pay. FF#8 fn.1 (Tom's reported Soc. Sec. income is \$11,991).

The Court ignored undisputed evidence that during the marriage Tom had *\$2.7 Million* of nonmarital cash, securities, investment income and distributions, income from asset sales, and inheritance - *almost five times* the amount needed to pay his divorce obligations. He:

- (1) entered the marriage with \$642,313 in cash and securities. Expert Exhs. A, A-1.
- (2) received \$850,033 in distributions and income from his farm and nonmarital investments. Exh. RRR, Lines 16, 18-20, 79-83, 140-43, 202-07, 265-69, 321-25, 381-85, 448-52, 514-21, 588-90, 647-49, 707-12, 779.
- (3) sold \$200,000 of gold coins, which he bought in 1986. Exh. A, A detail pgs. 125-26.
- (4) inherited \$449,763. TR3 213, Exh. C-1.
- (5) sold his Otter Creek ethanol investment for \$96,943. Exh. B., Line 4.
- (6) Received stipulated premarital home sale proceeds of \$432,624. Exh.

14.

Tom's expert, Mr. Snyder, testified Tom's assets were more than sufficient to pay for everything. Expert Exh. A at 4. By citing Tom's Social Security income alone to justify its Finding, the Court clearly erred and abused its discretion.

7. 2003 Mercedes.

The Mercedes Finding illuminates the Court's process. Both parties testified and the Court found that Tom was gifted a 2003 Mercedes. FF#144. Before trial, after Anna's attorney admitted the car was Tom's gift, and the Court redirected the "gift" aspect to mean nonmarital. TR1 13. See TR1 186 (Anna testimony), TR2 56, TR4 31; Exh. UU.

The Court, however, found that the car was marital property because Tom did not prove he precluded Anna from using it, even though her use would cause depreciation, not appreciation, and would actually be a gift of use. FF#144. It is clear error and an abuse of discretion for the Court to require even more evidence than the parties' clear testimony and a pretrial admission that the vehicle was nonmarital.

8. Retirement Accounts.

The Court included the full value of the parties' retirement accounts in the marital estate. Ct.Exh. A-1 at 2, Lines 37, 39-40; 3, Lines 57-58. It did

not deduct for premarital values. FF#147.

Tom had three retirement accounts before marriage. Mr. Snyder valued them before marriage as follows:

SEP IRA: worth 318,831 (Expert Exh. A-2).

Roth IRA: worth \$12,552 (Expert Exh. A-3).

Profit Share Plan (PSP): worth \$263,082 (Expert Exhs. A, Lines 4-5, A-4 – A-5).

They total \$594,465. Tom's PSP originated in 1986 when he was a trader at the Chicago Board of Options. Exh. 66, PL7474.

At trial, Tom's retirement accounts were valued at \$855,007.

Jt.Prop.Spr. at 3, Lines 38, 40-41. Subtracting premarital values, Tom's retirement accounts appreciated by \$260,542.

Anna's combined premarital retirement accounts totaled \$57,634. At trial, they totaled \$311,268. Ct.Exh. A-1 at 3, Lines 57-58. They appreciated by \$253,634.

The parties' appreciations were almost equal, but Tom's premarital accounts were worth \$536,831 more than Anna's.

Without findings, the Court included the parties' premarital retirement account values in the marital estate. Without premarital deductions, the Court awarded Anna \$271,869 of Tom's retirement accounts' value.

The Court's failure to give the parties credit for their premarital retirement account values is clear error and an abuse of discretion.

9. Conclusion of Law #20.

The Court's Conclusion of Law #20, that Tom's premarital asset list is a substitute for a prenuptial agreement, is erroneous. Tom relied on Anna's premarital declaration as a successful financial advisor that she "did not want his money," along with their agreement that Anna would pay for her and her son's expenses while Tom paid for everything else.

Anna's declaration to not seek Tom's assets, and premarriage understanding on expenses, take this case out of the prenuptial substitute analysis in Liebel v. Liebel, 2024 S.D. 34, 9 N.W.3d 505. Tom detrimentally relied on Anna's promise, which was clearly foreseeable to Anna. Tom's reliance was justifiable. Anna reneged when she moved that Tom violated the pretrial TRO. Jed Spectrum Inc. v. Stoakes, 2025 S.D. 31, ¶47; Zwart v. Penning, 2018 S.D. 40, ¶_, 912 N.W.2d 833 (S.D. 2018).

Based on Anna's promises and the parties' agreement on expenses, and Tom's detrimental reliance, it is clear error and an abuse of discretion to conclude Tom used his premarital asset list as a premarital agreement substitute.

10. Similar Caselaw.

A survey of precedents shows the Court clearly erred, abused its discretion, and erred as a matter of law when it classified \$5.95 Million of Tom's nonmarital assets as marital and awarded Anna more than half. Following is an analysis of the relevant caselaw employing the seven factors for property division. Cook, 2022 S.D. 74, ¶29, 983 N.W.2d at 190.

In Endres v. Endres, the parties were married for 32 years, started with few assets, and had two children. Endres, 532 N.W.2d 65, 67 (S.D. 1995). Robert worked full-time. Id. Joan worked full-time for 13 years, then part-time after their children were born, primarily as a homemaker. Id. She also worked for the parties' businesses for no salary. Id. At the time of divorce, they owned property in excess of \$5.3 Million. Id.

The Endres Court affirmed a 50/50 division of the marital estate on the grounds that "both parties contributed equally to the accumulation of the marital estate." Id. at 71.

Here, the parties' circumstances are diametrically opposite, but the Court awarded Anna even more assets than in Endres. Tom entered the marriage with premarital assets of \$2.73 Million. The parties were together about 12½ years, had no children together, and Anna is a college graduate who worked full-time as a financial advisor.

Anna made no sacrifices during the marriage like Mrs. Endres. She amassed \$1.04 Million and kept it all to spend as she wished. Compared to Endres, the Trial Court's 50/50 division of assets is a clear abuse of discretion.

In Smetana v. Smetana, the parties were married twenty-five years. Smetana, 2007 S.D. 5, ¶6, 726 N.W.2d 887, 891 (challenged on prenuptial agreement grounds following enactment of UPAA). Robert owned farm land in North Dakota which he rented out 9 years before marriage. He purchased land in South Dakota before and during the marriage, which he and Joyce worked. Id. ¶¶3-4, 726 N.W.2d at 889. Joyce disked, combined, and did bookkeeping. Id. ¶2, 726 N.W.2d at 889. Joyce also worked outside the home and did the gardening, cleaning, cooking and laundry. Id.

The Court included most of the South Dakota land the parties worked on together in the marital estate. Id. ¶¶3-4, 726 N.W.2d at 889-90. However, Robert's farmland in North Dakota, which he rented out nine years before and during the marriage, was ruled nonmarital. Id. ¶3, 726 N.W.2d at 890.

Here, Tom owned and rented his farm nineteen years before the parties married. Like Smetana, Tom's farm should have been considered 100% nonmarital. Yet, the Court awarded Anna half and gave Tom no

credit for its premarital value.

In Weber v. Weber, the parties were married only four years and were 57 and 55 years old. Weber, 2023 S.D. 64, ¶¶1, 12, 999 N.W.2d 230, 232-33. Neither were working but both were in good health. Id. Donita inherited two quarters of land from her father, put them in her own name, and kept them separate for the duration of the marriage. Id. ¶7, 999 N.W.2d at 233.

She owned additional farm ground and added Ivan to the titles, and both parties worked the land before selling it. Id. ¶1, 999 N.W.2d at 232. Donna incurred \$200,00 capital gains tax liability upon sale of the jointly titled land. Id. ¶8; 999 N.W.2d at 233-34.

The Circuit Court found that Donita's inherited land, which she kept separate, was nonmarital property. Id. ¶13, 999 N.W.2d at 234. It found that the farm ground both parties worked and which Donita jointly deeded to Ivan was marital property, but awarded Donita the great majority of it. Id. ¶13, 999 N.W.2d at 234. It found Ivan's contributions were minimal, and market appreciation was the most significant factor in the farms' increased value. Id. ¶19, 999 N.W.2d at 235.

The Supreme Court upheld the Circuit Court. It held that Donita was entitled to a "significantly greater share" because she acquired most of the

marital property, and Ivan's contributions were overstated and relatively minor. Id. ¶¶19-20, 999 N.W.2d at 235.

Following Weber, the Circuit Court should have found Tom's farm was nonmarital property. Anna did not participate in acquiring it, market appreciation was the only reason its value increased, and Anna's testimony about her involvement was refuted by every witness, and even if accepted is the epitome of an overstated and *de minimis* contribution. Yet the Court awarded her half, or \$1.75 Million, while Tom will pay a \$1.25 Million tax bill for having to sell it.

In Liebel v. Liebel, the Supreme Court considered S.D.C.L. §§ 25-2-4 and 25-2-7. Liebel, 2024 S.D. 34, ¶¶31-32. It stated, "These statutes provide that a marriage generally does not create a property interest in separately owned property. This is true even in the absence of a premarital agreement." Id. ¶32.

The Liebel Court held that even though the parties considered their home to be a marital asset and held it in joint title, Gary was entitled to 75% of its value due the parties being married *only twelve years*, he was ten years older and almost retired, the home was not an income producing asset, and "[Gary] has made far greater contributions to the property than did [Julie]," including purchasing the lot, making all mortgage payments, and paying off

the mortgage with premarital funds. Id. ¶¶40-43. The Court found that Julie kept a separate bank account for her wages, paid a few utility bills, and made indirect contributions to the home by gardening. Id. ¶¶43.

Like Liebel, the parties' marriage lasted about 12 ½ years before separation. Tom is five years older and retired; Anna is still working. Tom bought the lot and built the home 16 years before marriage, and directly contributed \$714,000 from nonmarital funds. Exhs. 14 (\$432,624 Stipulated premarital value), E (\$281,050 improvements from nonmarital funds). Anna contributed \$19,700. Exh. F.

Like Mrs. Liebel, Anna kept her bank account separate, which only she controlled. She paid \$25,500 for housecleaning, shared indirect grocery shopping and laundry duties with Tom and planted a small amount of flowers annually, while Tom paid all upkeep and maintenance expenses totaling \$267,000 from nonmarital funds, and performed or paid for all tasks necessary to maintain the 1-acre lot. Exhs. 14, E-1, F-1. Yet, Anna was awarded almost \$357,000, or 44%, of the home's \$804,277 sale proceeds. Compared Liebel, the Court's award to Anna is clear error and an abuse of discretion.

In sum, when viewing the evidence through caselaw involving similar facts, the Court clearly erred, abused its discretion, and erred as a matter of

law by awarding Anna more than half of Tom's assets.

ISSUE No. 5

The Trial Court Clearly Erred and Abused Its Discretion When It Found Appellee Was in Need of Support.

The Court's finding that Anna is entitled to support is clear error and an abuse of discretion.

Anna's first attorney admitted at the pretrial Motions Hearing: "I have no issue telling the Court that we're not pursuing any other grounds [for divorce] besides irreconcilable differences. . . . And secondarily, we've also stated in the discovery, we're not pursuing alimony . . ." TRO.Hrg. 4, 6.

On the first day of trial, Anna's attorney confirmed there was no need to address fault. TR1 34-25. At trial, Anna testified the only ground for divorce was irreconcilable differences. TR1 37. Then, she began to testify about her need for support. TR1 223-24. Tom's counsel objected to relevance on the grounds that Plaintiff waived her right to alimony. Id. 224. The Court overruled but gave a standing objection. Id.

In Weber v. Weber, Ivan asserted a claim for support in his pleadings. Weber, 2023 S.D. 64, ¶16, 999 N.W.2d 230, 236. Before trial, "Ivan's attorney affirmatively relinquished any issue except the division of property by stating, 'the parties are agreeing to irreconcilable differences for the

grounds of divorce, so then I believe the only issue here is going to be property division.” Id. Like Weber, Anna agreed to irreconcilable differences, waived her right to support, and the only issue was property division.

The Trial Court had no authority to consider Anna’s need for support because she waived it, yet found Anna was entitled to support. It only considered Anna’s \$19.00/hr. entry-level wages from her new medical technician career. FF##25-26.

Anna voluntarily left the investment business in 2021. As an investment advisor, her income steadily increased every year and exceeded six figures. Exh. SS. In 2020, Anna sold the advisory business for \$310,000 and continues to receive the proceeds monthly. Exh. 56. The Court did not consider these monthly payments.

Switching careers and downsizing her lifestyle after the parties separated were Anna’s personal choices. Tom should not be required to support Anna’s previous spending habits, which were paid from her own monies by agreement, when she voluntarily decided to enter a different profession with significantly less income.

Further, the Trial Court was required to consider the value of Anna’s nonmarital assets when determining her need for support. Billion v. Billion,

1996 S.D. 101, ¶37, 553 NW.2d 226. The Court omitted consideration of *all* Anna's assets. FF##25-26 (considered income only).

Anna provided no exhibits supporting her monthly expenses, and admitted to including her adult son's extensive expenses, including college tuition. TR2 36-37. Anna's "trial by ambush," with no documentation to support any of her claimed expenses, should not have been allowed.

In sum, Anna waived her right to receive support at the Oct. 4, 2022 pretrial hearing, and before and during trial. Her trial testimony, unverified and unreliable, should not have been allowed. The Court's thin and incomplete basis for finding Anna needed support is clear error and an abuse of discretion.

ISSUE No. 6

The Trial Court Abused Its Discretion by Awarding Appellee \$15,000.00 in Attorney Fees.

Attorney fees are awarded under S.D.C.L. § 15-17-38 if appropriate and in the interests of justice. Green v. Green, 2019 S.D. 5, ¶13, 922 N.W.2d 283 at 288.

It was clear error, and an abuse of discretion, for the Court to award Anna \$15,000 in attorney fees, based on the jumbled state of documents Anna's first attorney provided her expert, and the Court's pre-trial ruling that Tom violated the TRO. FF##149-56, CL##29-33.

Mr. Nelson testified he never communicated with Tom. TR2 128. He received all his information, much of it incomplete and requiring repeated requests, from Anna's first attorney. TR2 89-90, 97, 113, 122, 128, 135, 155, 158. Tom had no say or control over the condition or completeness of the documents she provided Mr. Nelson.

Anna's Motion for Violation of the TRO, and trial testimony all proved, which the Court found, that she never contributed to Tom's ethanol investments or their appreciation and are truly nonmarital assets.

Tom's condominium purchase and Law School donation were from stipulated nonmarital funds. Anna's attorney admitted to the Stipulation's nonmarital status at the hearing, and the Court acknowledged it. TRO.Hrg. 8, 50-51; Exh. 14 (Stipulation). Anna's waiver of alimony at the hearing reduced the trial issue to the division of property and whether it was marital or nonmarital. Anna's attorney's admission that the Stipulation gave Tom \$432,624 nonmarital home sale proceeds took that amount off the table, and gave Tom permission to spend the proceeds on the condominium and donation. The Court's Order to the contrary was error.

After accepting the benefit of an agreement, a party "cannot avoid its obligation or effect by taking a position inconsistent therewith." Schutterle v. Schutterle, 260 N.W.2d 341, 350 (S.D. 1977) (quotation omitted). "South

Dakota Codified Law Sec. 53-3-5 ‘denies the right to assume inconsistent positions and is based on the principle of election and ratification . . .’” Id.

The divorce

Stipulation is a contract and within the caveat of Schutterle, Erickson, *supra*.

After admitting that Tom’s \$432,624 was nonmarital, and knowing Tom bought the condominium and donated with it, Anna’s attorney submitted an Order to the Court stating Tom violated the TRO by purchasing the condo and donating to the Law School. The Court signed Anna’s Order. Anna took an inconsistent position with the Stipulation and her attorney’s admission, to Tom’s detriment.

The Court also ignored the resources it took Tom to compel Anna to produce discovery documents related to her “extreme mental cruelty” and support claims, which she resisted all the way up to the hearing then dropped. TRO.Hrg. 6, 29. Further, Anna’s claim at trial that all Tom’s property was marital caused significant Court errors.

The Court’s findings regarding the extensive financial discovery and complex analyses apply equally or more to Tom than Anna. Anna served Tom with over 100 Interrogatories and 80 Production of Documents Requests, which required him to supplement 16 times, totaling over 17,000

pages. APPX. QQ. Tom's civil procedure duty to provide Anna with answers and documents she requested cannot be grounds for awarding attorney fees.

The Court's attorney fee award was clear error and an abuse of discretion.

CONCLUSION

Appellant prays that the Supreme Court reverses the Trial Court and Holds as follows:

1. The Trial Court's Finding that Anna is entitled to support is reversed, based on Anna's waiver and/or lack of sufficient facts to support its Finding.
2. Tom's farm is a nonmarital asset.
3. Tom's ethanol investments are nonmarital assets.
4. Tom's I-Bonds, purchased from nonmarital ethanol sale proceeds, are nonmarital assets.
5. Tom's Palm Desert Condominium is a nonmarital asset, with Appellant entitled to \$10,932 for the value of her contributions plus percentage of appreciation.
6. The Trial Court's Finding that the nonmarital value of Tom's home sale proceeds of \$89,364 is reversed, and the parties' stipulated value of \$432,624 is reinstated.
7. Of the \$371,653 home sale proceeds in trust, Tom is entitled to \$350,064 and Appellee \$21,589 based on their contributions and share of appreciation.

8. Tom's Chicago Condominium was purchased, and Law School donation was made, from nonmarital assets.
9. Tom's 2003 Mercedes is nonmarital property.
10. The Trial Court's award of \$146,705.40 to Appellee for the parties' rental duplex proceeds is reversed, and Appellee shall receive \$51,351.67 for her share of profit and Appellant shall receive \$95,353.73 for his share of profit and reimbursement of advances.
11. Awards Anna \$509,000.00 in equalization.
12. The Court's Oct. 12, 2022 Order that Appellant violated the Temporary Restraining Order is reversed.
13. The parties are given credit for the premarital value of their retirement assets.
14. Should Appellant have to sell an appreciated asset as the result of an award to Anna, the costs to sell the asset(s), including taxes, shall be shared equally by the parties.
15. The award of attorney fees to Appellee is reversed.

Dated this 25th day of September, 2025.

/s/William Clayton

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CERTIFICATE OF COMPLIANCE

Pursuant to S.D.C.L. § 15-26A-66 and the Court's Order granting enlargement of words, the undersigned states that this Appellate Brief is 60 pages in length typed in Times New Roman Proportional Typeface, 14 Point Font, and includes 12,490 words and 63,943 characters (no spaces) in the body of the brief.

Dated this 25th day of September, 2025.

/s/William Clayton

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of September, 2025, he served a true and correct copy of the following documents:

1. Amended Brief and Certificate of Service Upon:

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/s/William Clayton

APPENDIX

APPENDIX

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This action has been presented to this Court, the Honorable Rachel Rasmussen presiding, Circuit Court Judge. The Court filed and served its Findings of Fact, Conclusions of Law, and Order After Trial on December 13, 2024.

Both parties were provided an opportunity to propose additional Findings of Fact or Conclusions of Law or submit any Objections to the same on or before January 6, 2025.

Plaintiff filed Proposed Corrections to Findings of Fact, Conclusions of Law, and Order on January 6, 2025, to address what Plaintiff believed were typographical or mathematical errors on the attached property division spreadsheet, but Plaintiff did not otherwise object to the Court's findings, conclusions or order.

Defendant filed Responses and Objections to the Court's Findings of Fact and Conclusions of Law and Order after Trial on January 6, 2025. Defendant also filed a Motion to Reopen Record and Request for Hearing, with a supporting Affidavit of Elizabeth Rosenbaum on January 6, 2025.

The Court has considered the following submissions prior to entering this Judgment and Decree of Divorce: Plaintiff's Proposed Corrections to Findings of Fact, Conclusions of Law

and Order filed January 6, 2025; Defendant's Responses and Objections to the Court's Findings of Fact, Conclusions of Law, and Order, Motion to Reopen Record and Request for Hearing, Affidavit of Elizabeth Rosenbaum filed on January 6, 2025; Defendant's Second Affidavit of Elizabeth Rosenbaum filed on January 8, 2025; Plaintiff's Response to Defendant's Motion to Reopen Record and Request for Hearing and Objections to the Court's Findings of Fact, Conclusions of Law, and Order after Trial and Affidavit of Michele Munson filed on January 10, 2025; Defendant's Affidavit in Response to Plaintiff's Opposition to Defendant's Motion to Reopen Record filed on January 13, 2025; and Defendant's Supplemental Affidavit in Response to Plaintiff's Opposition to Defendant's Motion to Reopen Record filed on January 17, 2025.

The Court grants and denies these objections, additions, corrections, and motions as set forth herein and as separately set forth in the Court's Order Denying Defendant's Motion to Reopen and Request for Hearing filed on January 30, 2025.

A Judgment and Decree should now be entered incorporating the Findings of Fact, Conclusions of Law, and Order After Trial, which are incorporated herein by reference.

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED:

1. Plaintiff Anna Clayton (Anna) and Defendant Thomas Clayton (Tom) are hereby granted a Judgment and Decree of Divorce on the grounds of irreconcilable differences under SDCL § 25-4-2(7) and are hereby restored to the status and rights of single persons.
2. Tom is awarded all right, title and interest in the real property consisting of 317 acres of agricultural property in Perry Township, Lincoln County, South Dakota.
3. Tom is awarded all right, title and interest in the real property consisting of a condominium located at 271 Calle Del Verano; Palm Desert, California, 92260, including any personal property contents.
4. Tom is awarded all right, title and interest in the real property consisting of a condominium located at 1455 N. Sandburg Terrace; Chicago, Illinois, including any personal property contents.

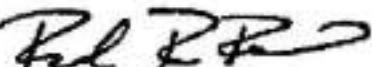
5. Tom is awarded all right, title and interest in the investment interest in the Kingsport Village Limited Partnership.
6. Tom is awarded all right, title and interest in the North Dakota mineral interest.
7. Tom is awarded all right, title and interest in the 2017 Jeep Cherokee.
8. Tom is awarded all right, title and interest in the 2003 Mercedes E500.
9. Anna is awarded all right, title and interest in the 2019 Subaru Ascent.
10. Tom is awarded all right, title and interest in the 2014 Honda Motorcycle CTX and Big Tex Trailer.
11. Tom is awarded all right, title and interest in any and all coins he currently has in his possession as part of his coin collection or otherwise.
12. Tom is awarded all right, title and interest in any artwork he currently has in his possession.
13. Anna is awarded all right, title and interest in any artwork she currently has in her possession.
14. Tom is awarded all right, title and interest in any personal property he currently has in his possession.
15. Anna is awarded all right, title and interest in any personal property she currently has in her possession.
16. Tom is awarded all right, title and interest in any jewelry he currently has in his possession.
17. Anna is awarded all right, title and interest in any jewelry she currently has in her possession.
18. Tom is awarded all right, title and interest in any firearms he currently has in his possession.
19. Anna is awarded all right, title and interest in any firearms she currently has in her possession.
20. Tom is awarded all right, title and interest in any remaining shares owned in Lake Area Corn Processors or proceeds from previous sales of those shares.
21. Tom is awarded all right, title and interest in any remaining shares owned in Poet or proceeds from previous sales of those shares.

22. Tom is awarded all right, title and interest in any US Treasury Direct I-bonds currently held in his name.
23. Tom is awarded all right, title and interest in the InterActive Brokers, LLC Roth IRA account held in his name alone, account ending 7324.
24. Tom is awarded all right, title and interest in the TD Ameritrade account held in his name alone, account ending 1901.
25. Tom is awarded all right, title and interest in SEP IRA account held with LPL in his name alone, account ending 8778.
26. Tom is awarded all right, title and interest in the Charles Schwab profit sharing pension plan held in his name alone, account ending 1978.
27. Tom is awarded all right, title and interest in the First Premier Bank checking account in his name alone, account ending 3140.
28. Tom is awarded all right, title and interest in the First Bank & Trust checking accounts ending 0222, 0249, 9153, and 0230.
29. Tom is awarded all right, title and interest in the LEVO savings account in his name alone, account ending 4383.
30. Tom is awarded all right, title and interest in the First Bank & Trust account for his attorney trust account, account ending 0214, and held in the name of South Dakota Bar Foundation; Thomas W Clayton Attorney at Law Trust Account, except that Tom must pay Anna \$357,456 from this account for Anna's share of the proceeds from the sale of the home located at 5012 S. Elderberry Circle; Sioux Falls, South Dakota. Tom is to make this payment to Anna on or before April 13, 2025. Tom is entitled to the remaining funds in the First Bank & Trust account ending 0214 after this transfer is made.
31. Anna is awarded all right, title and interest in the funds held with the Woods, Fuller, Shultz & Smith, PC Trust account. These funds represent sale proceeds of the 5th Ave, LLC property formerly located at 1909 and 1911 South 5th Ave.; Sioux Falls, South Dakota, for which findings and conclusions of law related to classification of this property and these funds as marital property were separately addressed through the Court's February 3, 2022 Order filed on February 4, 2022, which is further incorporated herein by reference.
32. Anna is awarded all right, title, and interest in the LPL Roth IRA account held in her name alone, account ending 7030.

33. Anna is awarded all right, title, and interest in the LPL Rollover IRA account held in her name alone, account ending 3555.
34. Anna is awarded all right, title, and interest in the LPL Individual Cash account (Allianz Annuity) held in her name alone, account ending 7761 and any further remaining balance from her personal injury award.
35. Anna is awarded all right, title, and interest in the LPL Individual Cash account held in her name alone, account ending 9393.
36. Anna is awarded all right, title, and interest in the First Premier Bank checking account held in her name alone, account ending 8841.
37. Anna is awarded all right, title, and interest in the Frontier Bank checking account held in her name alone, account ending 3859.
38. Anna is awarded all right, title, and interest in the Frontier Bank Health Savings Account (HSA) held in her name alone, account ending 3078.
39. Anna is awarded all right, title, and interest in the Fifth Avenue checking account balance held jointly with Anna and Tom, account ending 0265. Tom must remove his name from the joint account or the parties close the joint account and the remaining funds be transferred to Anna individually.
40. Anna is awarded all right, title and interest in any life insurance policies for which she is the owner, and she may decide whether to maintain the policies after the divorce and, if she maintains the policies, she may name the beneficiary of her choosing.
41. Anna is awarded all right, title and interest in the 529 accounts for her children or grandchildren, Carter, Blake and Beckham, which accounts are held through LPL and either American Funds or Franklin Templeton.
42. Tom is awarded all right, title and interest in the 529 accounts for his children or grandchildren.
43. Anna is awarded all right, title and interest in the remaining sale proceeds from Clayton Investment Group, LLC, and is awarded all right, title and interest in any proceeds from the sale of LLC's furniture to Frick.
44. Anna is awarded all right, title an interest in the Frontier Bank Safe Deposit Box held in her name and any contents held there.
45. Tom is solely responsible for paying any remaining debt owed for his credit card with Capital One Venture Visita ending 5914.

46. Tom is solely responsible for paying any remaining loan balance owed for his Jeep Cherokee through LEVO, loan ending 4383.
47. Anna is solely responsible for paying any remaining loan balance owed for her 2019 Subaru through Chase.
48. Anna is solely responsible for paying any remaining debt owed for her credit card with Chase ending 7092.
49. Anna is solely responsible for paying any remaining debt owed for her credit card with American Express ending 63006.
50. Anna is solely responsible for paying any remaining debt owed for her credit card with Citi Costco ending 1124.
51. Tom is solely responsible for paying any attorney fees or costs he incurred or still owes for this divorce action.
52. Anna is solely responsible for paying any attorney fees or costs she incurred or still owes for this divorce action, except that Tom is ordered to pay \$15,000 of Anna's attorney fees and costs. Tom is required to make this payment to Woods, Fuller, Shultz & Smith, PC on or before April 13, 2025.
53. Tom is ordered to pay Anna, as a property cash equalizing payment, a total sum of \$2,468,708.00. Tom is required to make this payment to Anna on or before April 13, 2025. This amount is calculated after granting the corrections presented by Anna on January 6, 2025 and granting the objection by Tom regarding the 2017 Jeep Cherokee being awarded to him. This is also reflected in Exhibit A1 attached to this Judgment and Decree of Divorce.
54. Neither Tom nor Anna is awarded spousal support.
55. Plaintiff is reinstated to the name of Anna Cameron.
56. The Court further corrects its Finding of Fact 85, which should refer to \$20,000 instead of \$20,00.
57. The Court otherwise rejects Plaintiff's and Defendant's objections and additional proposed findings of fact and conclusions of law.

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Honorable Rachel Rasmussen
Circuit Court Judge

	A DESCRIPTION	B NOTES	C Court's Value and Division	D
			Anna	Tom
3	REAL ESTATE			
4	Agricultural property (317 acres in Perry Township, Lincoln County, SD)			3,500,000
5	Condominium located at 1453 N. Sandburg Terrace, Chicago, IL.	\$119,000 - \$89,364 premarital funds used for purchase		129,636
6	Kingsport Village Limited Partnership (investment in apartment building on west side of Sioux Falls through Dunham Properties)		0	0
7	Proceeds from sale of 5012 S. Elderberry Circle, SD, SD (marital)	\$714,913 marital	(see Line 51)	357,457
8	Premarital Proceeds from 5012 Elderberry	\$89,364 premarital		
9	North Dakota mineral interest (Tom)	Agreed		X
10	VEHICLES			
11	2017 Jeep Cherokee (Tom drives)	Agreed		14,412
12	2003 Mercedes E300 (Tom) Gift			4,572
13	2019 Subaru Ascent (Anna drives)	Agreed	21,022	
14	2014 Honda motorcycle CTX and Big Tex Trailer	Agreed		2,800
15				
16				
17	PERSONAL PROPERTY			
18	Coin Collection - purchased during marriage	Agreed		X
19	Coin Collection - inherited	Agreed		X
20	Coin Collection - purchased from Ted Tufty	Agreed		2,190
21	American Eagle Gold Coin	Agreed		X
22	Mi Young Lee artwork - large stretched canvas			500

EXHIBIT

A1

	A	B	C	D
	DESCRIPTION	NOTES	Court's Value and Division	
			Anna	Tom
23	Mt Young small artwork - 24x30 in		500	
24	Marital Property aquired during marriage sold by Anna/HT (brown sofa, large area rug, small items)	Agreed	249	
25	Marital Property aquired during marriage sold by Tom/HT (grey sofa, king bed, king mattress, desk, black leather chair, leather sofa, JD rider, edger, ladder, blower, gas trimmer, ramps, ext ladder, 3 bar stools, small items)	Agreed		2,661
26	Pearl Necklace	Agreed	X	
27	Engagement Ring	Agreed	X	
28	Jewelry purchase Faini 11-3-21	Agreed		4,569
29	Lux and Bond Green jewelry 12-13-21	Agreed		1,271
30	Cyn Jewelry Vineyard	Agreed		287
31	Cyn Jewelry Vineyard	Agreed		131
32	Firearms in each party's possession	Agreed	X	X
33	Marital Property Kept by Anna		X	X
34	INVESTMENTS & RETIREMENT			
35	20,000 shares in Lake Area Corn Processor - sold	Reduced by \$20K spent on I-Bonds from Line 37		51,393
36	Sale proceeds from 72,327 shares in Post - sold 5/18/22 (Tom)			90,440
37	US Treasury Direct I-bonds purchased by Tom on 5-13-22 for \$20,000			20,000
38	InterActive Brokers LLC (IBKR) Roth IRA 7324 (Tom)			348,445
39	TD Ameritrade Account 1901 (Tom)			0
40	SEP IRA at LPL 8778 (Tom)			128,294
41	Charles Schwab profit sharing pension plan 1978)			386,268
42	20,000 shares in Lake Area Corn Processor - still exist			100,000

	A DESCRIPTION	B NOTES	C Court's Value and Division	D
			Anna	Tom
2	CHECKING AND SAVINGS			
43	ACCOUNTS IN TOM'S NAME			
44	First Premier Bank 3140 (Tom personal checking)	Agreed		1,556
45	First Bank & Trust 0222 (Farm Checking) (Tom)			50,262
46	First Bank & Trust 0249 (Tom Checking)	Agreed		3,988
47	First Bank & Trust 9153 (TWC Revocable Trust) (Tom)			110,832
48	\$50,000 check Tom issued from acct. 9153 to the University of South Dakota Foundation on 6-29-22	Amount not covered by premarital in Line 9		50,000
49	First Bank & Trust 0230 (Clayton Law Firm Checking) (Tom)	Agreed		3,103
50	LEVO Savings 4383 (Tom)	Agreed		673
51	Clayton Law Firm Trust Account	Anna home proceeds from Line 8	357,456	40,666
52				
53	ATTORNEY TRUST ACCOUNT			
54	WFSS Trust Account – includes proceeds from sale of 5th Ave. LLC property formerly located at 1909 and 1911 South 5th Ave.; SF, SD (duplex sold during the pendency of the divorce)		143,035	
55				
56	CHECKING AND SAVINGS			
57	ACCOUNTS IN ANNA'S NAME			
58	LPL Roth IRA 7030 (Anna)		275,981	
59	LPL Rollover IRA 3555 (Anna)		35,287	
60	LPL Individual Cash Acct. 7761 (Anna) (Allianz Annuity)	Agreed	X	X
61	LPL Individual Cash Acct. 9393 (Anna)	Agreed	33,726	
62	First Premier Bank Checking 8841 (Anna)	Agreed	1,588	
63	Frontier Bank Checking 3859 (Anna)	Agreed	871	
64	Frontier Bank HSA 3078 (Anna)	Agreed	12,467	
	Balance of PI Award (Anna)		X	X

1	2	3	4	5	
				6	7
65	66	67	68	69	70
JOINTLY HELD ACCOUNTS					
Fifth Avenue Checking Account Balance - (Anna and Tom) 0265	Agreed			3,671	
69	70	71	72	73	74
LIFE INSURANCE					
Anna is the owner and beneficiary of three policies for which her son Carter is the insured for one and her son Michael is the insured for the other two	Agreed			X	X
75	76	77	78	79	80
EDUCATIONAL (529) ACCOUNTS (Anna established for her son and grandsons)					
529 Account Cameron 3124 (Carter) (LPL held at American Funds)	Agreed			X	X
529 Account Cameron 3046 (Blake) (LPL held at Franklin Templeton)	Agreed			X	X
529 Account Cameron 7298 (Beckham) (LPL held at Franklin Templeton)	Agreed			X	X
79	80	81	82	83	84
BUSINESS INTERESTS					
Clayton Investment Group, LLC sale proceeds (contract value based upon amortization schedule and what remains due from sale)	Agreed			124,200	
Frick Purchase of Furniture				600	
82	83	84	85	86	87
OTHER					
Frontier Bank Safe Deposit Box (Anna)	Agreed			X	X
TOTAL ASSETS				1,010,653	5,948,406
DEBTS					

	A	B	C	D
	DESCRIPTION	NOTES	Court's Value and Division	
			Anna	Tom
87	Capital One Venture Visa credit card 5914 (Tom)			-4,734
88	Tom - LEVO Loan 4383 - Jeep Cherokee			0
89	Anna - Chase Loan - 2019 Subaru		-1,723	
90	Anna - Chase Credit Card ending in 7092		-2,168	
91	Anna - American Express Credit card ending 63006		-370	
92	Anna - Citi Costco Credit Card ending in 1124		-137	
93	Anna - Chuck Nelson invoice for expert witness report (will be more after testimony)		X	X
94	Anna - Duncae Law Firm attorney fees owed	Award of Attorney Fees/Costs		
95	Anna - Woods Fuller attorney fees owed		X	X
96	Tom - Attorney Fees		X	X
97	Tom Expert Fees		X	X
98	TOTAL DEBTS		-4,398	-4,734
99				
100				
101	GRAND TOTALS		1,806,255	5,943,672
102				
103	CASH NEEDED TO EQUALIZE		2,468,708	2,468,708
104				
105	NET AWARDS		2,474,963	2,474,964
106				
107				
108				
109				

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF LINCOLN)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

ANNA M. CLAYTON, Plaintiff,
vs.
THOMAS W. CLAYTON, Defendant.

41DIV21-190

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER AFTER TRIAL

A trial in this case was heard on September 3-6, 2024, in the Lincoln County Courthouse in Canton, South Dakota. Plaintiff was personally present and represented by Michele A. Munson. Defendant was personally present and represented by Elizabeth A. Rosenbaum. The Court heard witness testimony and received and reviewed numerous separate and joint exhibits. Based upon the whole of the record, the Court hereby makes the following Findings of Fact and Conclusions of Law as to the issues of divorce, property classification, and property division.

FINDINGS OF FACT

1. Plaintiff Anna Clayton ("Plaintiff" or "Anna") and Defendant Thomas Clayton ("Defendant" or "Tom") were married on June 6, 2008, in Minnehaha County, South Dakota.
2. The parties separated in May of 2021, and Plaintiff filed this action for divorce on October 15, 2021. The Defendant signed the Admission of Service on October 21, 2021.
3. At the time of the trial the Plaintiff was 64 years old, and the Defendant was 69 years old.
4. The parties did not enter into a premarital agreement or contract. Both parties testified that the Defendant had a premarital agreement for his first marriage, and he believed "they didn't work." The Defendant believes Plaintiff promised she would not take his money.

FILED
DEC 13 2024

Lincoln County, S.D.
Clerk Circuit Court

5. The parties lived together as a married couple at 5012 South Elderberry Circle in Sioux Falls, Lincoln County (hereinafter "Elderberry home") throughout their marriage.
6. The parties do not have any minor children together. However, both parties had children from prior marriages that they raised together during the marriage, and they treated all children as part of their blended family.
7. The Plaintiff did not receive the amount of child support she was supposed to receive during the marriage.
8. The Parties used approximately \$534,000 of income during the marriage to satisfy the Defendant's child support and alimony obligations following his 2006 divorce.
9. The parties shared or divided the duties necessary to maintain a household such as cooking, grocery shopping, and landscaping.
10. The Plaintiff contributed more than a de minimus amount to household maintenance.
11. The parties are educated and accomplished professionals who each brought their own assets and talents into the marriage.
12. The Plaintiff worked as an independent financial advisor prior to and during the marriage. She put in long hours and was financially successful, often being the primary income producer of the household.¹
13. The Plaintiff contributed more than a de minimus amount to the couples' financial success.
14. The Defendant was a successful stock trader prior to the marriage, and he worked as an attorney and financial advisor during the marriage. He did not believe his law practice made much money, but he was satisfied with his practice.
15. The Plaintiff has not calculated what she believes to be the value of her premarital estate.

¹ For example, Plaintiff's net social security earning from 2016-2021 was \$461,421, and Defendant's was \$11,991.

16. The Defendant calculated his net premarital estate from his prior earnings, inheritance received roughly halfway into the marriage, and assets he kept in his possession after his 2006 divorce.
17. In 2009, one year into the marriage, the parties jointly created Clayton Investment Group, LLC (the "Group"). The parties both had signature authority over the LLC's account.
18. The Group rented office space for both Plaintiff's financial advising Defendant's law practice from 2009 to 2020. The Group shared office space, utilities, staff, and equipment, and they often referred clients to each other.
19. All of Plaintiff's income between 2009-2020 went into the Group.
20. Both parties brought direct and indirect value to the Group, and both benefitted financially from the structure of the Group.
21. The Plaintiff sold her book of business in 2020 and stayed on an additional year to help the new owner during a transition period. She receives monthly buyout payments through 2026.
22. The parties' income allowed them to enjoy a middle to higher standard of living during the marriage.
23. The parties received income during the marriage from their respective careers, farm rental income, and investment income from properties² and stocks.
24. The parties reported income from all sources on joint tax returns throughout the marriage, and both parties paid toward the tax liabilities owed.
25. The Plaintiff currently works full time as a certified medical assistant ("CMA") and makes \$19 an hour. She finds her work fulfilling and wants to work another three to four years.

² For example, the parties created 5th Ave, LLC, to acquire and sell investment properties during the marriage.

26. Plaintiff's current CMA employment income, by itself, is not enough to cover her monthly expenses in the future.
27. The Defendant has gone into retirement and does not plan to work in the future. His current source of income includes rents and investments and social security income.
28. The parties' respective financial experts are credible.
29. The Plaintiff's expert is Charles Nelson, a CPA with 41 years of experience in the tax and financial world. The Defendant's expert is Michael Snyder, a CPA with 15 years of experience.
30. The financial experts did not conduct the same type of financial analysis.
31. Mr. Nelson reviewed and made findings based on the parties' financial transactions during the marriage. Mr. Nelson's report was based on a review of the discovery documents and not on any interviews.³
32. Mr. Nelson did not calculate the value of assets that either party brought into the marriage.
33. Mr. Snyder valued the Defendant's net premarital estate to trace those amounts and inheritance amounts throughout the marriage. Mr. Snyder's report was based on a review of discovery, and based on financial summaries and estimations provided by, and interviews with, the Defendant.
34. Mr. Snyder valued The Defendant's net premarital estate at \$2,171,936, plus \$430,136 in inheritance from his parents, for a total of \$2,602,072.
35. The \$430,139 in inheritance funds appear to come from inheritance received during the marriage. These funds were intermingled with other funds in various accounts over the years.

³ Mr. Nelson testified that his review of financial and tax documents was more complicated by the way the Defendant forwarded the information.

36. Mr. Snyder concluded that the amount of the Defendant's net premarital estate and inheritance funds were sufficient to cover all assets (including recent purchases) the Defendant claims are non-marital assets.
37. The premarital and inheritance monies were deposited into accounts and/or transferred into accounts that were intermingled with other funds received, or expenses paid, during the marriage.
38. Mr. Snyder could not do a dollar-to-dollar tracing of the Defendant's claimed premarital funds throughout the marriage.
39. Several of the assets being claimed as premarital by the Defendant no longer exist.
40. Mr. Snyder recognized an amount of incorrect reporting and discrepancies when reviewing joint tax returns (and amendments) the Defendant prepared and filed, noting that the Defendant should have utilized the services of a CPA.
41. Tom and Anna's assets grew and changed over the past 16 years of their marriage.
42. The Plaintiff believes the value of the marital estate at the time of the trial is \$7,088,854.
43. The Defendant believes the value of the marital estate at the time of the trial is \$1,470,706.
44. The parties each testified, called witnesses, and submitted a plethora of financial exhibits for a determination of what assets should be included in the marital estate, their respective value, and an equitable division those assets.

Temporary Restraining Order

45. Some items on the parties' joint property spreadsheet have changed in form and/or overlap in value based on the Defendant's actions while this case has been pending.
46. The Defendant made a request to distribute proceeds from a property held by 5th Street, LLC, on November 22, 2021. The motion was denied by the Court in an order signed and

filed on February 3, 2022, which stated that “[t]he Court has the authority to determine what is and is not marital property....”

47. The Defendant made the following transfers after his admission of service of the temporary restraining order and after the February 3, 2022 hearing and this Court’s order: (1) sale of 20,000 shares of Lake Area Corn Processors (“LACP”) for \$71,393 (02/28/22); (2) purchase of U.S. Treasury I-bond for \$20,000 (05/13/22); (3) sale of 20,000 Poet shares for \$90,440 (05/18/22); (4) gift to University of South Dakota (“USD”) Law School for \$50,000 (06/29/22); and (5) purchase of Chicago condominium for \$219,000 (07/29/22).
48. On October 4, 2022, the Defendant was found in violation of the Court’s directives and “specifically prohibited from any further violations....” The October 4, 2022 hearing Order included a similar directive prohibiting such behavior.
49. Tom’s position at hearings, in his filings, and at trial is that he could deplete or change the nature of these assets because he was using “non-marital funds.”
50. Tom dissipated the marital estate by moving and changing marital funds after he had been served with the TRO and admonished by the Court.
51. Tom violated the TRO and Court directives. His dissipation of marital assets is greater than the amount of non-marital assets he is awarded in this equitable division of property.

317 Acres of Perry Township Farmland

52. Tom purchased 317 acres of farmland in Perry Township (“the farmland”) in 1989 for \$216,000. He retained ownership of it following his 2006 divorce and brought that asset into his marriage with Anna in 2008.
53. The 2008 tax assessed value of the farmland was \$589,331.

54. The property was improved during the marriage with the addition of tile and waterways. The main reason for the farmland's appreciation in value is the widespread increase in farmland value over the past couple decades.

55. Tom estimates the farmland current value at \$2,701,457; Anna's real estate expert values the farmland at \$3,500,000 based on a comparative market analysis.

56. Anna's real estate expert is credible, and her opinion is a reasonable value based on expertise and experience. The current value of the farmland is \$3,500,000.

57. The farmland appreciated in value by \$2,910,669 during the marriage.

58. The farm ownership structure changed throughout the course of the marriage.

59. Prior to 2017, Tom held title to the farmland in a partnership with himself and his profit-sharing plan ("PSP").

60. Tom transferred the PSP's property interest to himself individually in 2017. The deed was prepared by "Thomas W. Clayton, Esq." and states that the PSP transferred its interest to Tom individually and "as a married man."

61. Tom created the TWC Revocable Trust in 2019.

62. In 2021, Tom transferred the farmland by a deed prepared by "Thomas W. Clayton, Esq." that again states that he personally and "as a married man" transferred his interest into the TWC Trust.

63. Tom spent more time than Anna on the maintenance and decisions of the farm. Tom was the point of contact for renters, and he personally visited the farmland on a more regular basis than Anna. Neither party physically worked the farm ground.

64. The Group's office equipment and space were occasionally used for tasks related to the operation or lease of the farm.

65. Anna encouraged Tom to talk with her family about changing from a crop share agreement to a straight cash rent on the farmland. Tom agreed, and about a decade ago they had a conference with Anna's family and did switch to a straight cash rent structure.

66. There has been a renter each year on the property. No signed cash rent agreement was entered into evidence.

67. Cash rent provided the couple with a predictable income and reduced Tom's stress related to harvest yields. This structure was an income guarantee and allowed Tom to work less, which is reflected in Tom's amount of earned social security income over the past decade.

68. The change in rental agreement did not change the overall financial accounting, and most of the farmland income and expense is reflected in the farm accounts.

69. A separate farm account was kept for farm income and expenses. The farm account was occasionally used to pay personal expenses such as Christmas gifts, make donations, HOA dues, and alimony.

70. Tom testified that money was occasionally transferred from the farm account "when necessary" to pay personal expenses, which coincides with the amount of funds transferred out of the farm checking account into Tom's personal checking account.

71. Tom's non-farm income was relatively small, and likely not enough for the payment of all family expenses and maintenance of the household without Anna's income.

72. Anna maintained a fulltime job during the marriage. Anna's income for the household allowed Tom to keep the farmland income somewhat separate.

73. The farm income and expenses were included in the parties' joint tax returns throughout the marriage, and both parties have been financially responsible for any payments due relative to the property.

74. Tom and Anna each contributed directly and indirectly to the farmland over the past 16 years, during which time the farmland increased in value by almost six times.
75. The farmland will continue to be an income-producing property and source of revenue.
76. The farmland is a marital asset and included in the marital estate.

Elderberry Home

77. Tom owned the home at 5012 Elderberry since 1992, and he retained sole ownership of it following his 2006 divorce.
78. Anna and her son moved into the Elderberry home in 2008, and the parties lived there together until Anna and her son moved out in May 2021.
79. The tax-assessed value of the home in 2008 was \$432,624. The home sold for \$872,500 on June 16, 2022.
80. There were two mortgages on the home over the course of the marriage, and both Tom and Anna's names were on the notes, mortgages, and satisfactions of mortgage.
81. The Elderberry home was used as collateral for the parties' joint company, 5th Ave, LLC. The collateral debt on the home was paid off during the marriage.
82. Major and minor improvements were made to the home during the marriage. Improvements were paid for by both parties from income they each received during the marriage.
83. The Defendant's detailed lists of home maintenance show that he and Anna each contributed financially to the home through renovations, furniture purchases, and general home utility and maintenance expenses.
84. Tom's spreadsheets show that Anna did not directly contribute as much or more to the home financially than he did.

85. Accepting Tom's spreadsheets as true, Anna directly contributed over \$20,000 to the home.
86. The parties entered into a Stipulation and Agreement for the sale of the Elderberry home. They agreed that the Defendant owned the property at the time of their marriage and a "certain portion of the Elderberry Property constitutes non-marital and separate property of the Defendant."
87. The net home proceeds are \$804,277, which is \$371,653 more than the 2008 tax assessed value. The parties agreed that the Defendant would be able to keep the 2008 tax assessed value, \$432,624, "from the house proceeds in his possession during the pendency of this divorce" and "[t]he remaining balance of the proceeds shall be held in Defendant's attorney's trust account... ."
88. The agreement did not designate the \$432,624 as the Defendant's non-marital property that Tom could transfer or use as he wished. The parties specifically agreed that nothing in the Stipulation set aside any amount of home proceeds as non-marital, and nothing in the stipulation "constituted a final property settlement as to any property."
89. The Defendant did not keep \$432,624 in his possession during the pendency of the divorce. Instead, he used those funds to purchase other assets and make gifts.
90. Tom's failure to keep the \$432,624 in his possession unnecessarily complicates the property division determination because the funds are not easily located in any one account or asset.
91. At a minimum, Tom dissipated \$432,624 by using it to purchase a condominium in Chicago for \$219,000 and donating \$50,000 to USD Law School. It is unclear where the remaining \$163,624 is located.
92. Tom was to put the remaining \$371,653 net proceeds into his attorney's trust account. Instead, Tom put the \$371,653 into his own attorney-client trust account.

93. According to a 2022 tax return document, the home collected \$8,613 in rent prior to the June 2022 sale. This money was accepted by Tom but is not included in the joint property spreadsheet or in any identifiable location.

94. Tom and Anna each contributed to the upkeep and running of the household. They each did home chores such as yard projects, getting groceries, laundry, and cooking.

95. Tom and Anna both cared for the children in the home, transported them to school and activities, and participated in their day to day lives.

96. Both parties contributed indirectly to the home, and neither contributed more than the other.

97. The Elderberry home is a martial asset and will be included in the marital estate. Equity requires the Court to follow the parties' Stipulation that recognizes some portion of the Elderberry home is non-marital.

98. Tom was in the Elderberry home himself for 2 of the past 18 years, from 2006-2008. The sale proceeds of \$804,277, divided by 18 years, is \$44,682 per year. That amount, times the two years Tom was in the home prior to the marriage, is \$89,364.

99. The \$89,364 of net home proceeds will be Tom's premarital portion and not included in the marital estate. This is a reasonable amount based upon the length of marriage, appreciation of the property during the marriage, and the parties' joint contributions to the maintenance and success of the home.

100. The remaining \$714,913 of home proceeds will be included in the marital estate.

Palm Desert

101. The Palm Desert home is a property the parties looked at together for a retirement home. They decided to purchase it before retirement and use it as a rental property with the goal to live there upon retirement.
102. Tom and Anna interviewed condo property managers together in the Spring of 2019.
103. The parties signed an escrow agreement to buy the condo as husband and wife on May 10, 2019.
104. Tom created the TWC Revocable Trust on May 14, 2019. He signed an amended escrow agreement on May 15, 2019, which removed Anna's signature completely and labeled Tom's signature line as "Trustee" of the TWC Trust.
105. Tom completed the TWC Trust's purchase of the condo on May 23, 2019 for approximately \$350,000. The current value of the condo is approximately \$550,000, so the property appreciation over the past five years is roughly \$200,000.
106. Tom believes the condo is not marital because it is in his Trust's name and because the funds used to purchase the condo were all premarital and inherited funds.
107. Anna believes the condo is a marital asset because they shopped for it together, she thought they were buying it together, and they have both invested in it over the marriage.
108. Funds used to purchase the condo came from at least 4 different accounts: farm, TWC Revocable Trust, Tom's attorney-client trust account, and SEP distributions.
109. Mr. Snyder traced Tom's claimed premarital or inherited funds into various accounts, either by one step or multiple. He then concluded there were enough premarital or inherited funds in each of the accounts to cover the total purchase price of the condo.

129. Both parties agree the value of the remaining 20,000 LACP shares is \$100,000, which is equal to what Tom's estimate of all ethanol investments were prior to his marriage to Anna in 2008.

130. The ethanol shares were profitable and increased in value throughout the marriage.

131. All taxes paid on passive ethanol income received during the marriage was on a K-1 and included on a Schedule E on Tom and Anna's joint tax returns.

132. The ethanol investments will continue to be source of income.

133. The ethanol investments were in Tom's name, but the income and tax liabilities from the investment were treated as joint throughout the marriage.

134. The ethanol investments and the income derived therefrom are marital and included in the marital estate.

Chicago Condominium

135. Tom purchased the Chicago condominium on July 29, 2022, for \$219,000. He purchased it with the Elderberry home proceeds that he was supposed to keep in his possession during the pendency of the divorce.

136. The condo purchase was made after the divorce was filed and Tom had been served with the TRO and admonished by the Court not to dissipate any assets.

137. Anna did not know about and was not involved in the condo purchase. Anna has not been involved in the upkeep or maintenance of the condo.

138. The parties agree the value of the condominium is \$219,000. The parties disagree whether the condo is a marital asset.

139. At least some marital funds were used to pay for the condo, because Tom's non-marital Elderberry home proceeds are insufficient to cover the purchase price.

140. Based on a review of the tax records, it does not appear that the condo has generated income. It is unclear what additional financial funds Tom has spent on the condo, and what accounts have been used for the same.

141. The Defendant wants to keep possession of the condo and the Plaintiff does not want possession of it.

142. It is equitable to give Tom credit for using \$89,364 in pre-marital funds toward the purchase of the condo, thereby reducing the marital value of the condo to \$129,636.

Miscellaneous Items

143. Home Furnishings. Based on the testimony and evidence, both parties brought home furnishings and personal items into the marriage. Unless already agreed to by the parties, each party will retain possession of what he/she currently has without further compensation.

144. 2003 Mercedes. Both parties testified this was a gift to Tom in roughly 2018-19 from Tom's brother-in-law after Tom did some work for him. It was a gift during the marriage and will be included in the marital estate based on lack of evidence presented that it was kept separate or meant to only be for Tom's use and enjoyment.

145. Mi Young Lee Artwork. The artwork was received during the marriage, regardless if it was a gift of payment for income earned during the marriage, and therefore part of the marital estate. The type and value of the artwork is in dispute and will be divided equally.

146. \$50,000 check to USD Law. This gift was made out of the \$432,624 Elderberry home proceeds Tom was to keep in his possession until the resolution of the divorce. The non-marital portion of the home proceeds does not cover this amount and therefore it is included back into the marital estate.

147. Financial Accounts. Each party has made and contributed to retirement and financial accounts, and unless otherwise noted in these findings, it is equitable for each party to keep the financial accounts and debts currently in his/her name.

Grounds for Divorce

148. Plaintiff and Defendant agree that a divorce should be granted on the grounds of irreconcilable differences pursuant to SDCL § 25-4-2(7).

Attorney Fees and Costs

149. The parties are not in agreement on the payment of attorney's fees and costs. Each party is requesting that the other pay at least a portion of the other's fees and costs incurred during the litigation of this case.

150. Anna was represented by experienced counsel throughout this trial. She requests that Tom pay \$54,581.73 to the Duncan Law Firm for representation and costs incurred between December 22, 2020 and December 6, 2023; her financial expert's fees of \$18,225; \$26,269 to the Woods Fuller Law Firm for representation and costs incurred from December 7, 2023 to August 20, 2024; and the additional expenses and costs incurred for trial.

151. Anna believes Tom also complicated the nature of the divorce with his multiple filings and the manner in which he forwarded discovery to her attorney and expert witness.

152. Tom acted as his own counsel from the beginning of this action until January 16, 2023, when he retained experienced counsel. Tom has not submitted an itemized statement of expenses, but generally requests that his expert costs and his attorney fees and costs be litigated after the proceeding is over.

153. This case began in October of 2021 and concluded with a trial on the merits in September of 2024, almost three full years later.

154. This case involved extensive financial discovery and a complex analysis of business, tax, and financial records. The trial likewise involved extensive financial exhibits and testimony.

155. The number of pleadings, hearings, and the overall complexity of the litigation was exacerbated in part by the Defendant's violation of the TRO.

156. Anna's request for some amount of attorney's fees and costs associated with this litigation is reasonable based upon the circumstances of this case and actions of the Defendant, and the Defendant has the relative liquidity to pay for the same.

CONCLUSIONS OF LAW

1. Any Finding of Fact that is more appropriately a Conclusion of Law shall be deemed as such. Any Conclusion of Law that is more appropriately a Finding of Fact shall be deemed as such.
2. This matter is properly before the court in Lincoln County. The Court has jurisdiction over the parties to decide the issues of divorce and property division.
3. "Courts may make an equitable division of the property belonging to either or both, whether the title to such property is in the name of the husband or the wife. In making such division of the property, the court shall have regard for equity and the circumstances of the parties." SDCL § 25-4-44.

Temporary Restraining Order

4. "... [A] temporary restraining order shall be in effect against both parties until the final decree is entered, the complaint dismissed, or until further order of the court:
 - (1) Restraining both parties from transferring, encumbering, concealing, or in any way dissipating or disposing of any marital assets, without written consent of the other party or an order of the court, except as necessary in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures and to account for the court for all extraordinary expenditures made after the temporary restraining order is in effect; ..."
- SDCL § 25-4-33.1(1).
5. According to the South Dakota Supreme Court, "[t]o determine whether a spouse dissipated marital assets, we have identified that the circuit court should consider 'whether the transfers were improperly made to deplete the marital estate.'" *Cook v. Cook*, 2022 S.D. 74, ¶ 31, 983 N.W.2d 180, 191 (citing *Pennock v. Pennock*, 356 N.W.2d 913, 915 (S.D. 1984)).
6. Our law recognizes that "[s]pouses are certainly entitled to maintain separate property and do with it as they see fit." *Field v. Field*, 2020 S.D. 51, ¶ 17, 949 N.W.2d 221, 224-25 (citing *Halbersma v. Halbersma*, 2009 S.D. 98, ¶ 9, 775 N.W.2d 210, 215).
7. If transferred or dissipated property is property the court subsequently determines to be marital, then the court needs to further determine if such transfer or dissipation was improperly made to deplete the marital estate. See *Cook*, 2022 S.D. at ¶ 31, 191.
8. SDCL § 25-4-33.1(1), above, "does not require evidence of bad faith or a design to deplete the marital estate[.]" *Id.*, see also *Ahrendt v. Chamberlain*, 2018 S.D. 31, ¶ 17, 970 N.W.2d 913, 920.

9. The Defendant did not violate the temporary restraining order when he listed the Elderberry home for sale because no financial transactions occurred without the Plaintiff's agreement.
10. The Defendant did violate the temporary restraining order by dissipating marital home proceeds with the purchase of the Chicago condominium and gift to USD Law School.
11. The Defendant did violate the temporary restraining order by selling marital investments of ethanol shares and using the marital proceeds from the sales to purchasing new bond investments.

Marital Property Division

12. "[A]ll property of both of the divorcing parties [is] subject to equitable division by the [circuit] court, regardless of title or origin." *Field v. Field*, 2020 S.D. 51, ¶ 16, 949 N.W.2d 221, 224 (citing *Billion v. Billion*, 1996 S.D. 101, ¶ 61, 553 N.W.2d 226, 237).
13. Property that is premarital, gifted, or inherited property is not automatically excluded from the marital estate. See *Anderson v. Anderson*, 2015 S.D. 28, ¶ 7, 864 N.W.2d 10, 15.
14. Courts are guided by the following factors to classify property as marital or premarital:
 - (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.

Conti v. Conti, 2021 S.D. 62, ¶ 30, 967 N.W.2d 10, 18 (citing *Ahrendt*, 2018 S.D. at ¶ 10, 918).

15. "In evaluating the seven principal factors listed above, a circuit court may consider other evidence to determine whether inherited or gifted property should be excluded from the

marital estate, including the origin and treatment of inherited or gifted property and the direct or indirect contributions of each party to the accumulation and maintenance of the property." *Dunham v. Sabers*, 2022 S.D. 65, ¶ 46, 981 N.W.2d 620, 638 (citing *Halbersma*, 2009 S.D. at ¶ 12, 215).

16. "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." *Novak v. Novak*, 2006 S.D. 34, 713 N.W.2d 551, 555 (citing *Billion*, 1996 S.D. at ¶ 21, 232).
17. Similarly, property inherited by one of the spouses is properly excluded from the marital estate when the same two conditions are met. See *Terca v. Terca*, 2008 S.D. 99, ¶ 21, 757 N.W.2d 319, 325.
18. Tracing can also be utilized in an analysis of what constitutes marital property. "'Tracing' is an equitable principle which allows a party with the right to property to trace that property through any number of transactions in order to reach the final proceeds or result." *Ahrent*, 2018 S.D. at ¶ 21, 921 (citing *Charlson v. Charlson*, 2017 S.D. 11, ¶ 14, 892 N.W.2d 903, 906).
19. "Although tracing is allowed, [] it is not required as a matter of law." *Id.* A court is not required to do multiple steps of tracing just to keep assets as premarital or non-marital. See *id.*
20. This case is unlike some recent cases where property was divided in similar fashion that the Defendant is asking this court to do. Specifically, the Defendant asks the court to perform a tracing analysis and divide property in a manner consistent with a situation where a prenuptial agreement was in place. See, e.g., *Liebel v. Liebel*, 2024 S.D. 34, 9 N.W.3d 505; *Charlson v. Charlson*, 2017 S.D. 11, 892 N.W.2d 903.

21. This Court is guided by and tasked with making an equitable division of the marital estate.
22. Both parties made direct and indirect contributions to all marital property that was more than de minimus based on their respective financial contributions throughout the marriage, which allowed the marital estate to change and grow over the 16-year marriage.
23. Anna made more than de minimus indirect contributions to the retention and maintenance of all assets, regardless of title or origin, throughout the marriage. See, e.g., *Ahrendt* at ¶ 13, 919 (citing *Terca v. Terca*, 2008 S.D. 99, ¶ 25, 757 N.W.2d 319, 326 ("In addition, the Court has recognized that a spouse's indirect contributions to the improvement of an asset may also be considered in the division of assets.")).
24. Anna has shown a need for financial assistance in the future.
25. Both parties leave the marriage with some investments, but Tom will retain the majority of the marital income-producing property.

Grounds for Divorce

26. South Dakota codified law ("SDCL") § 25-4-2 lists seven grounds for granting a divorce. Subsection § 25-4-2(7) allows a divorce to be granted upon irreconcilable differences.
27. SDCL § 25-4-17.2 prohibits a court from granting a divorce based on irreconcilable differences unless both parties consent to the same.
28. Tom and Anna have consented to a divorce based on irreconcilable differences and may be granted a divorce under SDCL § 25-4-2(7).

Attorney Fees

29. Each party to an action typically bears the burden of their own attorneys' fees. The two exceptions are when the parties agree otherwise, or when attorney's fees are allowed under

the law. See *Toft v. Toft*, 2006 S.D. 91, ¶ 17, 723 N.W.2d 546, 551 (citing *Microsoft Antitrust Litigation*, 2005 S.D. 113, ¶ 29, 707 N.W.2d at 98 (internal citations omitted)).

30. In determining if attorney's fees will be awarded in divorce cases, the trial court must consider what constitutes a reasonable fee and then, what portion of those fees, if any, should be paid by the opposing side. See *Hybertson v. Hybertson*, 1998 SD 83, ¶ 24, 582 N.W.2d 402, 407.

31. "[T]he court, if appropriate, in the interests of justice, may award payment of attorneys' fees in all cases of divorce..." SDCL § 15-17-38.

32. The Plaintiff's request for attorney fees is reasonable and necessary considering the circumstances of this case. This case involved a marital estate over \$7 million dollars, multiple properties and investments, and a significant amount of discovery for the legal issues involved.

33. The Defendant further complicated the proceedings by dissipating marital assets.

Considering this in light of the parties' relative worth, income, and liquidity, the Defendant shall reimburse \$15,000 in attorney fees and costs to Plaintiff. The parties will each be responsible for their own attorneys' fees and expert witness costs beyond the award to the Plaintiff.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that the parties' assets are divided according to the attached Exhibit A. It is further,

ORDERED that the attorney fees award and equalization amount is not due until any necessary refinancing is completed or four (4) months from the date of this decision, whichever is earlier. It is further,

ORDERED that Plaintiff's counsel shall prepare a proposed Judgment and Decree of Divorce which shall incorporate by reference the findings and conclusions in this written decision.
It is further,

ORDERED that both parties shall have until December 23, 2024, to prepare any objections to this decision or submit additional proposed findings of fact or conclusions of law to the Court.

It is further,

ORDERED that if the parties do not submit any additional findings or conclusions by 5:00 p.m. on December 23, 2024, the Court's decision will become final, and a Judgment and Decree of Divorce will be entered.

Dated this 13 day of December, 2024.




Rachel R. Rasmussen, Circuit Court Judge

Attest: Brittan Anderson, Clerk

By: JM Baker Deputy

A

2/13/24 RLR

	A	B	C	D
1				
2				
3				
4	Agricultural property (317 acres in Perry Township, Lincoln County, SD)			
5	271 Calle Del Verano; Palm Desert, CA 92260 (condominium and personal property)			
6	Condominium located at 1455 N. Sandburg Terrace, Chicago, IL	\$219,000 - \$89,364 premarital funds used for purchase		
7	Kingsport Village Limited Partnership (investment in apartment building on west side of Sioux Falls through Denium Properties)			
8	Proceeds from sale of 5012 S. Elderberry Circle, SF, SD (marital)	\$714,913 marital		
9	Premarital Proceeds from 5012 Elderberry	\$89,364 premarital		
10	North Dakota mineral interest (Tom)	Agreed		X
11	2017 Jeep Cherokee (Tom drives)	Agreed	14,412	X
12	2003 Mercedes E300 (Tom) Gift			5,572
13	2019 Subaru Ascent (Anna drives)	Agreed	\$13,923	

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Lincoln County, S.D.
Clerk Circuit Court

	A	B	C	D
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15	2014 Honda motorcycle CTX and Big Tex Trailer	Agreed		
16				
17				
18	Coin Collection - purchased during marriage	Agreed		
19	Coin Collection - inherited	Agreed		
20	Coin Collection - purchased from Ted Tufly	Agreed		
21	American Eagle Gold Coin	Agreed		
22	Mi Young Lee artwork - large stretched canvas			
23	Mi Young small artwork - 24x30 in			
24	Marital Property acquired during marriage sold by Anna/HT (brown sofa, large area rug, small items)	Agreed		
25	Marital Property acquired during marriage sold by Tom/HT (grey sofa, king bed, king mattress, desk, black leather chair, leather sofa, JD rider, edger, ladder, blower, gas trimmer, ramps, ext ladder, 3 bar stools, small items)	Agreed		
26	Pearl Necklace	Agreed		
27	Engagement Ring	Agreed		
28	Jewelry purchase Faini 11-3-21	Agreed		
29	Lux and Bond Green jewelry 12-13-21	Agreed		
30	Cyn Jewelry Vineyard	Agreed		
31	Cyn Jewelry Vineyard	Agreed		
32	Firearms in each party's possession	Agreed		
33	Marital Property Kept by Anna			
34	20,000 shares in Lake Area Com Processor sold	Reduced by \$20K spent on I-Bonds from Line 37		
35				

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	A	B	C	D
1	1. <u>WFSS Trust Account</u>	NOTES		
2	WFSS Trust Account -- includes proceeds from sale of 5th Ave. LLC property formerly located at 1909 and 1911 South 5th Ave.; SF, SD (duplex sold during the pendency of the divorce)			
3				
4				
5				
6				
7	56 LPL Roth IRA 7030 (Anna)			
8	57 LPL Rollover IRA 3555 (Anna)			
9	58 LPL Individual Cash Acct. 7761 (Anna) (Allianz Annuity)	Agreed		
10	59 LPL Individual Cash Acct. 9393 (Anna)	Agreed		
11	60 First Premier Bank Checking 8841 (Anna)	Agreed		
12	61 Frontier Bank Checking 3839 (Anna)	Agreed		
13	62 Frontier Bank HSA 3078 (Anna)	Agreed		
14	63 Balance of PPI Award (Anna)			
15	64 LPL Individual Cash Acct. 7761 (Anna) (Allianz Annuity)			
16	65 Fifth Avenue Checking Account Balance - (Anna and Tom) 0265	Agreed		
17				
18	66 LPL Individual Cash Acct. 9393 (Anna) (Allianz Annuity)			
19	67 Anna is the owner and beneficiary of three policies for which her son Carter is the insured for one and her son Michael is the insured for the other two	Agreed		
20				
21				
22	68 LPL Individual Cash Acct. 7761 (Anna) (Allianz Annuity)			
23	69 S29 Account Cameron 3124 (Carter) (LPL held at American Funds)	Agreed		
24	70 S29 Account Cameron 3046 (Blake) (LPL held at Franklin Templeton)	Agreed		
25	71 S29 Account Cameron 7298 (Beckham) (LPL held at Franklin Templeton)	Agreed		
26	72 S29 Account Clayton (Ryan Clayton)	Agreed		
27	73 S29 Account Clayton (Ryan Clayton)	Agreed		

A	B	C	D
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Clayton Investment Group, LLC sale proceeds (contract value based upon amortization schedule and what remains due from sale)	Agreed		
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Capital One Venture Visa credit card 5914 (Tom)			
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IN THE SUPREME COURT OF
THE STATE OF SOUTH DAKOTA

APPEAL 31012

THOMAS WADE CLAYTON,

Defendant and Appellant,

vs.

ANNA MARIE CLAYTON,

Plaintiff and Appellee.

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

THE HONORABLE RACHEL R. RASMUSSEN CIRCUIT COURT JUDGE

APPELLEE'S BRIEF

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Notice of Appeal Filed Feb. 26, 2025

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Preliminary Statement

In this brief, Plaintiff and Appellee, Anna Marie Cameron, formerly Anna Marie Clayton, is referred to as "Appellee" or "Anna." Defendant and Appellant, Thomas Wade Clayton, is referred to as "Appellant" or "Tom." All other individuals are referred to by name. References to documents are designated as follows:

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Jurisdictional Statement

Appellant appeals from the Judgment and Decree of Divorce entered on January 31, 2025, in the Second Judicial Circuit, Lincoln County, South Dakota, in the matter of Thomas Clayton v. Anna Clayton, Case No. DIV 21-190. Notice of Appeal was timely filed on February 26, 2025, pursuant to SDCL 15-26A-3(1), which grants the South Dakota Supreme Court jurisdiction over final judgments entered by the circuit courts.

Statement of Legal Issues and Authorities

I. The circuit court did not abuse its discretion when it found that Tom violated the Temporary Restraining Order (TRO).

The circuit court found that Tom violated the TRO and dissipated the marital estate by unilaterally—without Anna's written consent or a court order—selling \$163,000 worth of ethanol shares, purchasing \$20,000 in I-bonds, buying a condo for

\$219,000, and making a \$50,000 donation to the USD Law School, all during the pendency of the divorce proceedings.

- *Roseth v. Roseth*, 2013 S.D. 27, 829 N.W.2d 136.
- *Coffey v. Coffey*, 2016 S.D. 96, 888 N.W.2d 805.
- *Black Hills Excavating Servs., Inc. v. Retail Const. Servs., Inc.*, 2016 S.D. 23, 877 N.W.2d 318.
- SDCL 25-4-33.1(1).

2. The circuit court did not abuse its discretion when it classified \$89,364 as Tom's nonmarital share of the Elderberry Home sale proceeds.

The circuit court properly considered Tom's request to set aside proceeds from the sale of the marital home by classifying \$89,364 of the marital home proceeds as Tom's nonmarital property.

- *Osdoba v. Kelley-Osdoba*, 2018 S.D. 43, 913 N.W.2d 496.
- *Radigan v. Radigan*, 465 N.W.2d 483, 484 (S.D. 1991).
- *Ahrendt v. Chamberlain*, 2018 S.D. 31, 910 N.W.2d 913.

3. The circuit court did not abuse its discretion by denying Tom's motion to reopen the record.

The circuit court appropriately denied Tom's motion to reopen the record after a four-day trial, because the alleged newly discovered evidence Tom hoped to present was unnecessary, the Court made a credibility determination that Tom knew about the Court's prior order despite what additional evidence Tom had hoped to present, and Tom otherwise had ample opportunity to present evidence during the four-day trial.

- *State v. Milk*, 2000 SD 28, ¶ 11, 607 N.W.2d 14, 18.
- *Black Hills Excavating*, 2016 S.D. 23, ¶ 10, 877 N.W.2d at 322.
- *Carr v. Benike, Inc.*, 365 N.W.2d 4, 6 (S.D. 1985).

4. The circuit court did not abuse its discretion when fairly and equitably classifying and dividing the parties' assets and debts.

The circuit court's classification and division of the marital estate fairly and equitably resulted in Anna retaining \$1,006,255 in assets and Tom \$5,943,672, with Tom ordered to pay Anna an equalization payment of \$2,468,708.50, so they each received an equal portion (\$3,474,963.50) of the marital estate, and Tom received an additional \$89,364 in nonmarital property.

- *Liebel v. Liebel*, 2024 S.D. 34, 9 N.W.3d 505.
- *Muenster v. Muenster*, 2009 S.D. 23, 764 N.W.2d 712.
- *Dunham v. Sabers*, 2022 S.D. 65, 981 N.W.2d 620.
- *Kelley v. Kirk*, 391 N.W.2d 652, 657 (S.D. 1986).

5. The circuit court did not abuse its discretion by considering, and did not clearly error when finding, that Anna had a need of support.

When considering Tom's claim for separate property, the court properly considered whether Anna had a need for support, and the evidence supports the court's finding that Anna had a need for support and made more than a de minimis contribution to the acquisition or maintenance of the property that weighed in favor of classifying the property as marital.

- *Weber v. Weber*, 2023 S.D. 64, 999 N.W.2d 230.
- *Field v. Field*, 2020 S.D. 51, 949 N.W.2d 221.

6. The circuit court did not abuse its discretion in awarding Anna \$15,000.00 in attorney fees.

The circuit court found that Anna's attorney fees were reasonable and necessary and that Tom's actions unreasonably increased her attorney fees, justifying Tom paying \$15,000.00 of her attorney fees.

- *Goff v. Goff*, 2024 S.D. 60, ¶ 26, 12 N.W.3d 139, 149-50
- SDCL 15-17-38

Statement of the Case

Anna and Tom were married in 2008 and separated in May 2021, when Anna moved out of the marital home at 5012 S. Elderberry Circle ("Elderberry Home"). Anna filed for divorce on October 15, 2021. SR-I at 1-6. Anna served Tom with her Summons, including a Temporary Restraining Order pursuant to SDCL § 25-4-33.1, on October 25, 2021. SR-I at 7.

On November 22, 2021, Tom moved to distribute proceeds from the sale of their jointly owned duplex (the "Duplex"), which the parties acquired during the marriage. SR-I at 26. After a February 3, 2022, hearing, the court entered an order (the "February 3 Order") finding that the Duplex was marital property and the proceeds should "be divided at the end of a divorce [through an] . . . equitable division . . . by the court at that point in time." App. 1-2.

On February 24, 2022, after learning Tom had listed the Elderberry Home for sale without her knowledge or consent, Anna moved to prohibit distribution of the proceeds. SR-I at 174. The parties executed an Interim Stipulation and Agreement ("Interim Stipulation") regarding the Elderberry Home sale on June 10, 2022. The Interim Stipulation allowed Tom to keep some of the proceeds from the sale in his possession while the divorce was pending, but the parties expressly agreed that "nothing in this Interim Stipulation . . . establishes certain property and/or dollar amounts as marital . . . or nonmarital property[.]" App. 4.

On August 17, 2022, Anna moved under SDCL 25-4-33.1 to prevent Tom from further dissipating marital assets. She alleged Tom violated the automatic Temporary

Restraining Order (“TRO”) by (1) buying \$20,000 in U.S. Treasury Direct I-Bonds, (2) selling \$90,408.75 in ethanol investments, and (3) donating \$50,000 to the University of South Dakota (“USD”), all without Anna’s knowledge or consent. SR-I at 186-87. At an October 4, 2022, hearing, the court reprimanded Tom for violating the TRO and reminded him repeatedly that he could not unilaterally declare assets nonmarital. App. 28.

Following the October 4 hearing, the court entered an order on October 12, 2022, finding Tom had violated the TRO (“October 12 Order”). Notably, Tom represented himself at the hearing and thereafter. Tom had knowledge of and access to the Odyssey file and serve system and used the system nine days before and eight days after the Order was filed for his own pleadings. SR-II at 144. An attorney who is included on the Odyssey file and serve system receives an e-mail notification when a document, like the October 12, 2022 Order has been filed by the clerk. *Id.* SDCL 15-6-5(b) states that “[u]nless otherwise ordered by the court or provided by rule, whenever this chapter requires or permits service to be made upon a party represented by an attorney, the service shall be made upon the attorney,” and “[u]nless otherwise ordered by the court, all documents filed with the court electronically through the Odyssey® system or served electronically through the Odyssey® system are presumed served upon all attorneys of record at the time of submission.” In addition, the signed October 12 Order was provided to Tom on August 26, 2024, with Anna’s proposed witness and exhibit list. SR-II at 281.

A four-day trial was held from September 3 to September 6, 2024. The principal issue was the classification and division of property. Both parties presented multiple

witnesses and exhibits regarding contributions, asset characterization, and valuation. The court entered findings of fact and conclusions of law ("Findings and Conclusions") on December 13, 2024. App. 2.

Tom moved to reopen the record on January 6, 2025. SR-II at 57. The court denied that motion on January 30, 2025. SR-II at 280. On January 31, 2025, the court entered the Judgment and Decree of Divorce ("Divorce Decree") and notice of entry was filed on February 3, 2025. App. 91. Tom filed his notice of appeal on February 26, 2025. SR-II at 445.

Statement of Facts

Anna and Tom were married on June 6, 2008, when Anna was 47 and Tom was 53. App. 62. It was a second marriage for both. Each had three children from prior relationships, and they had no children together. App. 63.

At the time of marriage, Tom was a self-employed attorney; Anna was an established financial advisor, having worked for Edward Jones for eight years before joining Merrill Lynch in 2007. TR-1 at 41, 47-48. Both entered the marriage with their own children, assets, and financial obligations. App. 63; TR-1 at 43. Although Tom had a prenuptial agreement in his first marriage, neither party sought or obtained a prenuptial agreement to exclude premarital or inherited property as separate property in the event of a later divorce. App. 62-63; TR-1 at 41.

Tom built the Elderberry Home in 1992 and retained sole ownership of it in his 2006 divorce. App. 70. In January 2008, Anna and her four-year-old son moved into the Elderberry Home after she sold the home she owned in Brandon, South Dakota. TR-1 at

42-43. The parties lived in the Elderberry Home throughout the marriage until May 2021. TR-1 at 74; App. 70. During the marriage, they twice mortgaged the Elderberry Home; both were listed on the notes, mortgages, and satisfactions. SR-I at 131, 156; TR-4 at 112.

In 2009, Tom and Anna formed Clayton Investment Group, LLC, ("Group"). App. 64. Anna continued her financial advisory practice through the Group while Tom continued his law practice and also became licensed as a financial advisor. *Id.* Together, they rented shared office space to conduct their work. TR-1 at 70; TR-2 at 38-39.

Tom's law practice remained active throughout the marriage, though it was not his primary source of income. App. 63; TR-2 at 90. Before the marriage, Tom had purchased 317 acres of farmland in Perry Township ("Farmland") in 1989 for \$216,000 and had accumulated various ethanol investments from Lake Area Corn Processors, Otter Creek Ethanol, Sioux River Ethanol, and Verasun Energy (the "ethanol investments"). SR-I at 2878; App. 75. Tom retained sole ownership of these assets after his first divorce. App. 75. During this marriage, Tom's primary income streams were rental payments from the Farmland and returns from the ethanol investments. TR-2 at 90.

Anna worked full-time throughout the marriage, contributing and earning more than Tom in some years. App. 63. She contributed financially and non-financially to the marriage, supporting the family's middle-to-upper-class lifestyle through her earnings, homemaking, and business management. SR-II at 29; TR-2 at 174. Anna and Tom commingled all aspects of their financial and non-financial lives by blending their families and professional practices, as well as their assets and earnings.

In 2019, the parties began looking for retirement property in California. TR-1 at 97. They agreed to buy a condo in Palm Desert ("Palm Desert Condo"), rent it short-term, and eventually retire there together. TR-1 at 98-99. Anna and Tom initially signed an escrow agreement to buy the condo as husband and wife. TR-1 at 99. Shortly afterward, Tom unilaterally restructured the purchase by substituting himself as trustee of the TWC Revocable Trust ("TWC Trust") as the purchaser and removing Anna. TR-1 at 99-100. The TWC Trust closed on the Palm Desert Condo on May 23, 2019, for approximately \$347,000. SR-1 at 2921. The Palm Desert Condo represented the parties' "retirement dream," and Tom's unilateral actions left Anna feeling her input "did not matter." TR-1 at 100.

In December 2020, as she prepared to slow down for retirement, Anna sold her book of business to Jon Frick for \$310,000. TR-1 at 50. The sale included a \$10,000 down payment and a \$24,000 consulting agreement, under which Anna would stay on for one year to help transition clients. TR-1 at 50. The remaining \$276,000 would be paid in monthly installments of \$4,600 plus interest. TR-1 at 214. Anna was also required to execute a non-compete agreement, and those monthly payments allowed Anna to continue meeting her monthly expenses post-separation. *Id.*

The parties separated in May 2021, and Anna moved out of the Elderberry Home. While separated, they agreed to sell the Duplex, which they had purchased together in 2015 as a rental property. SR-1 at 109-110. Anna and Tom created the Fifth Avenue, LLC, to operate and manage the property, as equal partners and owners. SR-1 at 111. The rental income from the Duplex was comingled in their personal accounts and used for

shared expenses, including the Elderberry Home mortgage. SR-I at 117. They sold the Duplex in late October 2021 for \$250,000. SR-I at 112.

Anna filed for divorce on October 15, 2021, requesting an equitable division of property, spousal support, attorney fees, and a divorce on grounds of irreconcilable differences or extreme cruelty. SR-I at 3-4. Tom, appearing pro se, answered that most assets were his premarital or separate property, asked that each retain “premarital property,” opposed spousal support, and requested a divorce on the grounds of irreconcilable differences. SR-I at 8-10.

On November 22, 2021, Tom moved to distribute the \$250,000 from the sale of the Duplex, arguing that Fifth Avenue, LLC, owed him for alleged advances and that the Duplex proceeds were nonmarital. SR-I at 21-22; SR-II at 1451-52. Anna opposed the motion, arguing that the proceeds were marital and should be held pending an equitable division by the court. SR-I at 109. The court denied Tom’s motion and entered findings at that time to support the initial conclusion in the February 3 Order that the proceeds were marital and would be divided equitably as part of the final property division. App. 1-2. Both during the hearing on the motion and in the February 3 Order denying the motion, the court emphasized that, regardless of title or origin, the court—not Tom—had “the discretion to determine what is and is not marital or non-marital property.” App. 2; SR-II at 1453.

Shortly thereafter, Anna was forced to file a motion to prohibit the distribution of proceeds from the sale of the Elderberry Home (“Elderberry Proceeds”). SR-I at 174. Tom had listed the home for sale without Anna’s knowledge in violation of the TRO and

was then withholding information about the sale. SR-I at 174-76. Tom insisted the home was solely his to sell. SR-I at 182.

On June 10, 2022, days before closing, the parties executed the Interim Stipulation. App. 3. They agreed to sell the Elderberry Home for \$872,500. *Id.* The Interim Stipulation stated that Tom "owned the Elderberry Home at the time of marriage and a certain portion of the Elderberry Home constitutes non-marital and separate property of [Tom]," and that the 2008 tax assessed value was \$432,624. App. 4. It then stated Tom was "entitled to keep said [\$432,624] . . . in his *possession* during the pendency of this divorce[.]" with the balance of net proceeds to be held in trust. *Id.* (emphasis added).

Critically, the Interim Stipulation also included an express reservation clause, which Tom fails to acknowledge in his brief to this Court, which clearly stated:

Both parties acknowledge and agree that nothing in this Interim Stipulation and Agreement on the Sale of the Elderberry Property establishes certain property and/or dollar amounts as marital that may be divided or nonmarital property that will remain separate property and no agreement herein constitutes an admission regarding the same and/or constitutes a final property settlement as to any property.

App. 4.

On August 17, 2022, Anna was forced to file a motion to again enforce the TRO and prevent Tom from further dissipating the marital estate. SR-I at 186. She had learned through discovery or otherwise that Tom had dissipated marital funds by: (1) purchasing \$20,000 in U.S. Treasury Direct I-Bonds ("I-Bonds"); (2) selling \$90,408.75 in ethanol shares; (3) donating \$50,000 to USD; and purchasing a condominium in Chicago, Illinois ("Chicago Condo"), where he and his girlfriend resided. SR-I at 187-188.

Tom argued again that his unilateral transactions were allowed because he dissipated what he considered his separate, nonmarital funds. SR-I at 225. He argued that he could trace the purchase money to the \$432,624 in his possession from the Elderberry Proceeds and funds from other accounts that he alleged were his nonmarital property. SR-I at 220-24.

At the October 4, 2022, hearing, Anna had to ask the court to enforce the TRO and prevent Tom from selling or spending marital assets without her knowledge or consent. App. 12-13. Tom, appearing pro se, argued that because he had "traced" the funds to his premarital sources, the TRO did not apply. App. 21.

The court firmly rejected Tom's position. It told Tom in plain terms that he could not simply declare assets to be his separate property and then spend them before the court classified them at a later trial. App. 26. The court repeatedly emphasized that only the court—not Tom—had the authority to determine whether an asset was marital or separate, and it could not make that determination "if it's already sold and gone[.]" App. 25. As the court put it: "That's not your decision to make, Mr. Clayton. That is the Court's determination to make[.]" App. 28.

Following the hearing, the court entered the October 12 Order stating that Tom had "sold and made purchases that are in violation of the [TRO]" and that he was "specifically prohibited from any further violations of the [TRO]." App. 59-60. The court further emphasized that it had the "authority to determine whether the LLC proceeds, marital home proceeds, I-Bonds, [ethanol investments], USD donation," and the Chicago Condo were "separate or marital property" at a later trial. App. 60. Essentially, the court

held that a party cannot avoid the TRO by claiming the money he or she spends is his or her nonmarital property.

During the four-day trial in September 2024, the primary issue was the classification and equitable division of the significant assets accumulated or appreciated during the 16-year marriage. The court heard testimony from both Anna and Tom, family members, and financial experts.

Anna testified that, before their marriage, she and Tom agreed that she would continue working and pay for her son's expenses, her car, and personal items such as clothes and shoes. TR-1 at 65. Otherwise, their money was used jointly to cover their living expenses. TR-1 at 64. Anna further described how, in her view, marriage was a partnership where living expenses and finances were combined without keeping score. TR-1 at 63-64.

When Anna moved into the Elderberry Home with her son in 2008, it became her "mission" to build a blended family and "make the house a home," so Tom's children would feel comfortable spending time with their father. TR-1 at 65-66. She described doing most of the household labor—cooking, cleaning, laundry, and everyday upkeep—throughout the marriage. TR-1 at 65. Carter, Anna's son, and Ryan, Tom's son, confirmed that Anna routinely prepared meals, did dishes and laundry, and handled gardening. TR-2 at 174; TR-4 at 124, 127.

The Palm Desert Condo was the parties' mutual "retirement dream," that they chose together after looking at several properties in California, and they planned to rent it until retirement and then live there together. TR-1 at 97-99. The parties agree that Anna

was primarily responsible for the household labor with the Palm Desert Condo, including that she primarily selected, furnished, and prepared the property for rental. TR-1 at 98, 111.

But Tom later removed Anna from the purchase agreement and placed the Palm Desert Condo in the TWC Trust without consulting her, which made her feel that her input did not matter. TR-1 at 100. Anna was upset with Tom's unilateral actions, because the Palm Desert Condo "was her retirement" and "where [she] dreamed that [they] would spend time together[.]" TR-1 at 100.

Anna trained to become a Certified Medical Assistant (CMA) after separating from Tom and realizing that she needed a new retirement plan. TR-1 at 51. As a CMA, Anna earns \$19 per hour, or roughly \$3,000 per month. TR-1 at 224-225. Her monthly expenses were about \$7,000, which she could currently meet only because she received \$4,600 per month from the sale of her financial advisory book of business. TR-1 at 225; SR-1 at 621. However, those payments would soon expire, and she would then require additional financial support, especially once she retires. TR-1 at 55; TR-1 at 225. At the time of trial, Anna was 64 and looking to retire in two to four years. TR-1 at 55.

Anna supported Tom's Farmland operations over the years, encouraged him to switch from crop share to cash rent to create stable income and reduce his workload and stress, relayed messages from tenants, and urged him to formalize lease terms. TR-1 at 49-50, 80-84. Anna's cousin, Rose Pauley, confirmed Anna participated in discussions about the Farmland, particularly regarding the move from sharecropping to cash rent. TR-2 at 165-67. Anna reached out to Rose and her husband Bob for advice, as they were

successful South Dakota farmers. *Id.* Tom changed the Farmland's ownership structure during the marriage, including conveying interests to himself, "a married man," then later to the TWC Trust in August 2021, during separation. SR-I at 2916, 2919; TR-1 at 89.

Anna hired Charles Nelson, owner of Nelson & Nelson, CPAs LLP, to conduct a forensic accounting of the parties' finances to identify any comingling, focusing on the Palm Desert Condo, the rental income from the Farmland, Tom's inheritance, and the flow of funds during the marriage. TR-2 at 84. Nelson testified to extensive commingling across Tom's various accounts and difficulty tracing claimed "premarital" dollars because income and expenses moved freely among personal, farm, and trust accounts. TR-2 at 89, 121-22.

Mr. Nelson's report was also admitted into evidence. SR-I at 3377. Regarding the Palm Desert Condo, Nelson explained that although the property was titled in the name of the TWC Trust, the funds used for its purchase were drawn from multiple sources, including a personal account, the farm account, a client trust account, and the trust itself. SR-I at 3378. Nelson further noted that rental payments for the Palm Desert Condo, which should have been deposited into the TWC Trust account, were instead placed in the farm account. SR-I at 3378-79. Additionally, the farm account was used to pay for personal and marital expenses, such as Christmas gifts, Elderberry Home real estate taxes, Tom's pre-marital alimony, Elderberry Home HOA dues, and church pledges. SR-I at 3380; TR-2 at 97-98.

Tom hired Michael Snyder to reconstruct his premarital estate, trace various transactions from the premarital estate, and evaluate whether Tom's tax-related decisions

during the marriage were proper. TR-3 at 4-8. Snyder valued Tom's premarital estate at \$2,171,936 and his inheritance at \$430,136, totaling \$2,602,072. TR-3 at 14-16. He attempted to trace the funds used to purchase the Palm Desert condo and concluded all sources were either premarital, income from the Farmland, or Tom's inheritance. TR-3 at 14-16. However, Snyder's valuations were based solely on Tom's disclosures and estimates, rather than current values or actual statements. TR-3 at 49-51. Further, he did not verify whether the assets he traced still existed at the time of trial. TR-3 at 49-51.

In its post-trial Findings and Conclusions, the court found both parties to be educated, accomplished professionals who brought assets and earning capacity into the marriage. App. 63. The court specifically found that Anna made significant financial and nonfinancial contributions to the parties' lifestyle. *Id.* The court concluded that "[b]oth parties made direct and indirect contributions to all marital property that was more than *de minimis*" and that their efforts allowed the marital estate "to change and grow over the 16-year marriage." App. 83.

The court valued the Farmland at \$3,500,000 and found it to be marital property, based on Anna's direct and indirect contributions. App. 68-69. Tom did not present any competing valuation evidence. For the Elderberry Home, which sold for \$872,500, the court determined \$714,913 of the net proceeds were marital and \$89,364 were Tom's separate share. App. 72. The court found Tom violated the TRO by purchasing the Chicago Condo for \$219,000 and donating \$50,000 to USD without Anna's written consent or a court order. App. 67-68. Those assets were also classified as marital. The

court credited Tom \$89,364 of separate funds toward the Chicago Condo, reducing its marital value to \$129,636. App. 77.

The court found Tom's ethanol investments were marital property because they generated substantial marital income and tax obligations during the marriage, and because that income was treated jointly and reported on their joint marital tax return. App. 75-76. The court concluded Tom also violated the TRO by selling ethanol investments and using the proceeds to buy the I-Bonds, again without Anna's consent or a court order. App. 81.

The court found both experts "credible," but noted that Snyder could not trace Tom's alleged premarital funds "dollar-for-dollar," and that Tom's premarital and inherited funds were repeatedly comingled and placed into accounts that were used to pay marital expenses. App. 65-66. The court also observed that some assets Tom labeled "premarital" no longer existed. App. 66. As to the Palm Desert Condo, the court found it marital because it was bought with blended sources, maintained as part of the parties' joint retirement plan, and both parties contributed to its upkeep. App. 73.

The court included other assets—home furnishings, the 2003 Mercedes, and artwork—in the marital estate. App. 77. The court also awarded Anna \$15,000 in attorney fees, finding the request reasonable given the size and complexity of the marital estate, but also necessary because Tom's actions increased the amount of time spent on the case and his relative liquidity. App. 84

Tom later moved to reopen the record, claiming newly discovered evidence, SR-II at 57-58, 174. He claimed he did not learn about the October 12 Order until it was

submitted as an exhibit at the pretrial conference, and therefore, he was unaware that the court had found he had violated the TRO until that time. SR-II at 57-58. Anna responded that Tom was present at the October 2022 hearing, was included in the emails presenting the proposed order to the court, and, in any event, had a copy of the October 12 Order two weeks before trial. SR-II at 142-45. The court denied Tom's motion, finding his claimed lack of knowledge "without merit." SR-II at 280-81.

The court made numerous credibility determinations that factored into the fair and equitable property division, based on its ability to view four days of witness testimony and courtroom behaviors.

The court entered its Divorce Decree on January 31, 2025, granting the divorce on the grounds of irreconcilable differences. App. 91. Although Anna received some income-producing assets, the court expressly found Tom retained "the majority of the marital income-producing property." App. 83. The court's final division resulted in Anna retaining \$1,006,255 in assets and Tom \$5,943,672. App. 101. Tom was ordered to pay Anna an equalization payment of \$2,468,708.50. App. 96. Contrary to Tom's assertion in his brief to this Court, Anna did not receive more assets than Tom.

Standard of Review

A circuit court's division of marital property, including its classification of property as marital or nonmarital, is reviewed for abuse of discretion. *Cook v. Cook*, 2022 S.D. 74, ¶ 19, 983 N.W.2d 180, 187. "An abuse of discretion occurs when discretion is

exercised to an end or purpose not justified by, and clearly against, reason and evidence.”

Id.

Findings of fact are reviewed for clear error. *Conti v. Conti*, 2021 S.D. 62, ¶ 24, 967 N.W.2d 10, 16. Whether a spouse made more than a de minimis contribution to the accumulation or maintenance of property is also reviewed for clear error. *Ahrendt v. Chamberlain*, 2018 S.D. 31, ¶ 13, 910 N.W.2d 913, 919. Under the clearly erroneous standard, “[t]he question is not whether this Court would have made the same findings that the trial court did, but whether on the entire evidence [this Court is] left with a definite and firm conviction that a mistake has been committed.” *Matter of Est. of Simon*, 2024 S.D. 47, ¶ 20, 11 N.W.3d 36, 41. “All conflicts in evidence must be resolved in favor of the trial court’s findings.” *Larson v. Larson*, 2007 S.D. 47, ¶ 9, 733 N.W.2d 272, 275.

Contractual stipulations in divorce proceedings are governed by the law of contracts.” *Roseth v. Roseth*, 2013 S.D. 27, ¶ 13, 829 N.W.2d 136, 142. “Contract interpretation is a question of law reviewable de novo.” *Id.*

Argument

1. The circuit court did not abuse its discretion when it found that Tom violated the Temporary Restraining Order (TRO).

Tom contends the court abused its discretion in finding he violated the TRO when he purchased the Chicago Condo for \$219,000 and donated \$50,000 to USD. AB 12. He also asserts the court erred in finding he violated the Interim Stipulation. AB 24-25. Because the court found he violated the TRO—not the Interim Stipulation—and because Tom’s arguments on these issues overlap, they will be addressed together.

Tom's theory is that the Interim Stipulation essentially gave him the \$432,624 as his separate property. AB 14. He claims the court misinterpreted the Interim Stipulation and disregarded the parties' alleged understanding that the \$432,624 represented his separate premarital property, which he was free to use as he wished. AB 18.

Thus, this is ultimately an issue of contract interpretation. "[I]n determining the proper interpretation of a contract the court must seek to ascertain and give effect to the intention of the parties." *Coffey v. Coffey*, 2016 S.D. 96, ¶ 8, 888 N.W.2d 805, 808 (alteration in original) (citation omitted). In general, parol evidence is only admissible to explain a written contract after the court finds that the writing is ambiguous. *Roseth*, 2013 S.D. 27, ¶ 15, 829 N.W.2d 136, 142. Thus, "[w]hen contract language is unambiguous, extrinsic evidence is not considered because the intent of the parties can be derived from within the four corners of the contract." *Black Hills Excavating Servs., Inc. v. Retail Const. Servs., Inc.*, 2016 S.D. 23, ¶ 10, 877 N.W.2d 318, 322.

A contract is not ambiguous just because the parties later disagree "on its proper construction or their intent upon executing the contract." *Id.* "Rather, a contract is ambiguous only when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement." *Vander Heide v. Boke Ranch, Inc.*, 2007 S.D. 69, ¶ 37, 736 N.W.2d 824, 836.

The plain language of the Interim Stipulation is unambiguous. The parties agreed that a certain portion of the Elderberry Home was Tom's separate property, that the Elderberry Home was valued at \$432,624 in 2008, and that Tom was entitled to keep this

amount from the Elderberry Proceeds "in his possession" while the divorce was pending. However, it also expressly stated that "nothing in this Interim Stipulation . . . establishes certain property and/or dollar amounts as marital . . . or nonmarital property . . . and no agreement herein constitutes an admission regarding the same and/or constitutes a final property settlement." App. 4. In other words, Tom could temporarily hold the \$432,624, but the Stipulation did not decide its ultimate classification.

Tom's arguments about the need for extrinsic evidence to understand the parties' intent are without merit and seek to render the reservation clause meaningless, contrary to the well-established rules of contract interpretation. *Coffey*, 2016 S.D. 96, ¶ 8, 888 N.W.2d at 809 (explaining that courts do not interpret contractual language in a manner that renders a portion of the contract meaningless). Giving a "reasonable and effective meaning to all of" the terms, the Interim Stipulation allowed Tom to hold the \$432,624 in his possession pending final division; however, the funds were not definitely his separate property to spend freely. *Id.*

Regardless, the TRO applies to all assets. Under SDCL 25-4-33.1:

Upon the filing of a summons and complaint for divorce . . . by the plaintiff, and upon personal service of the summons and complaint on the defendant a [TRO] shall be in effect against both parties until the final decree is entered . . . or until further order of the court:

(1)Restraining both parties from transferring, encumbering, concealing, or in any way dissipating or disposing of any marital assets, without the written consent of the other party or an order of the court, except as may be necessary in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the temporary restraining order is in effect[.]"

Although the statute refers to “marital assets,” this term must be understood in the context of South Dakota’s approach to property division during divorce. The distinction between “marital” and “non-marital” property is a classification made by the court at the end of the divorce process for purposes of equitable division, not a preexisting legal status. *See Field v. Field*, 2020 S.D. 51, ¶ 25, 949 N.W.2d 221, 227. Because the court must later classify each asset as marital or non-marital, a party cannot avoid the TRO by claiming the money spent was his or her separate property. Rather, the TRO necessarily applies to all assets owned by either party while a divorce is pending.

Thus, even though Tom was allowed to have possession of the funds, he was prohibited from “dissipating or disposing of” the funds without Anna’s written consent or a court order, except as was “necessary in the usual course of business or for the necessities of life[.]” SDCL 25-4-33.1(1). Moreover, he was specifically required to notify Anna “of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures[.]” *Id.*

After his admission of service of the TRO, Tom did not notify Anna or obtain a court order before buying the Chicago Condo or donating \$50,000 to USD. Purchasing a second condo in another state and making a large charitable donation plainly do not qualify as expenditures “necessary in the usual course of business” or as “necessities of life.” SDCL 25-4-33.1(1). They are extraordinary expenditures.

Therefore, the court’s conclusion that Tom violated the TRO by his unilateral purchase of the Chicago condo and donation to USD, was not an abuse of discretion. Likewise, the circuit court did not abuse its discretion in concluding that Tom further

violated the TRO by selling off \$161,753 worth of ethanol investments and using \$20,000 from those proceeds to purchase the I-Bonds.

As explained below, the court also did not abuse its discretion by including the ethanol investments in the marital estate. The parties intertwined their finances during the marriage, jointly benefited from the investment income, and shared the tax consequences. By selling \$161,753 worth of ethanol investments without Anna's consent or a court order, Tom violated the TRO by disposing of marital property. Additionally, by reinvesting \$20,000 of the proceeds in I-Bonds, Tom made an extraordinary expenditure without notifying Anna or properly accounting to the court. These actions directly contravened the TRO's restraints intended to preserve assets pending classification and division. Thus, the court acted within its discretion in finding Tom violated the TRO.

2. The circuit court did not abuse its discretion when it classified \$89,364 as Tom's nonmarital share of the Elderberry Home sale proceeds.

The circuit court has broad discretion to classify property as marital or nonmarital. *Nickles v. Nickles*, 2015 S.D. 40, ¶ 32, 865 N.W.2d 142, 153. However, "property should only be excluded as non-marital when '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[.]'" *Dunham v. Sabers*, 2022 S.D. 65, ¶ 46, 981 N.W.2d 620, 639.

The record supports the court's finding that Anna made more than a de minimis contribution to the Elderberry Home. She lived there with her son from 2008 until May 2021, when the parties separated. She provided homemaking labor for more than a decade. Carter and Ryan corroborated that Anna cooked, cleaned, did laundry, and performed upkeep. TR-2 at 174; TR-4 at 124, 127. The court found that, considering both

parties' direct and indirect efforts, "neither [party] contributed more than the other" to the Elderberry Home during the marriage. App. 72. That finding is not clearly erroneous. Accordingly, the court did not abuse its discretion in classifying the Elderberry Home as a marital asset.

Tom argues that the parties "stipulated" that \$432,624 of the Elderberry proceeds was his separate, nonmarital property. But as explained above, the Interim Stipulation expressly reserved classification and stated that nothing in it "constitutes a final property settlement." App. 4. *See also Radigan v. Radigan*, 465 N.W.2d 483, 484 (S.D. 1991) ("An agreement between the parties [as to property division] is one relevant factor for the court's consideration, but such an agreement does not control the court's exercise of its discretion in light of all relevant factors."). Moreover, the court found Tom dissipated the \$432,624 in violation of the TRO and therefore could include those funds in the marital estate. *See Ahrendt*, 2018 S.D. 31, ¶ 17, 910 N.W.2d at 920 (upholding inclusion in the marital estate of funds transferred in violation of a TRO).

The court then exercised its discretion to determine Tom's nonmarital portion of the Elderberry Proceeds by dividing the total sale proceeds (\$804,277) by eighteen years—from when he retained sole ownership following his 2006 divorce until the 2024 trial. App. 72. Multiplying the resulting annual value of \$44,682 by the two years Tom lived in the home before marrying Anna, the court allocated \$89,364 to Tom as his nonmarital share. *Id.*

Tom argues the court improperly used an 18-year span because the home was sold in 2022. However, "there is no rigid formula that must be followed, nor any fixed

percentage to which either party is entitled.” *Osdoba v. Kelley-Osdoba*, 2018 S.D. 43, ¶ 19, 913 N.W.2d 496, 502 (citation omitted). The court found that \$89,364 was “a reasonable amount based upon the length of the marriage, appreciation of the property during the marriage, and the parties’ joint contributions to the maintenance and success of the home.” App. 72.

Although the home was sold in 2022, the proceeds remained subject to the court’s equitable division until a final determination was made in 2024. Thus, treating the \$804,277 in Elderberry Proceeds as a continuation of the Elderberry Home for classification purposes was within the court’s discretion. And the court’s findings refers to the “amount” being equitable, so the methodology the circuit court used to arrive at that amount need not follow a rigid formula, so long as the final amount was deemed fair and equitable, and that amount is not an abuse of discretion.

Finally, the circuit court did not abuse its discretion in awarding Anna \$357,456.00 from the Elderberry Proceeds. The record shows that Anna lived in and contributed to the home for over a decade, supported the household financially, and shared responsibility for maintaining and improving the property. The award reflects the court’s reasoned effort to equitably divide the marital estate, taking into account the parties’ long-term financial partnership and their respective contributions, and the extreme commingling of any pre-marital or inherited assets with marital property.

3. The circuit court did not abuse its discretion by denying Tom’s motion to reopen the record.

Following a four-day trial and multiple pre-trial hearings, Tom requested to reopen the record so that he could produce evidence he did not receive notice of the

Court's October 12 Order. But the evidence Tom wished to supplement was immaterial to the court's decision, incredible to the court regardless due to Tom being at the hearing and involved in e-mails regarding the order following the hearing, and, ultimately, had Tom exercised reasonable diligence, he could have presented his evidence during the four-day trial.

A trial court's ruling on a motion to reopen a civil case to permit additional evidence is reviewed under the abuse of discretion standard. *State v. Milk*, 2000 SD 28, ¶ 11, 607 N.W.2d 14, 18; *Sabhari v. Sapari*, 1998 SD 35, ¶ 27, 576 N.W.2d 886, 895; *Endres v. Endres*, 532 N.W.2d 65, 72 (S.D.1995). A trial court is given wide latitude in determining whether to reopen a case. *See Milk*, 2000 SD 28, ¶ 11, 607 N.W.2d at 18. "While the particular criteria that guides a trial court's decision to reopen are necessarily flexible and case-specific, it is generally understood that a trial court abuses its discretion if its refusal to reopen works an 'injustice' in the particular circumstances." *Id.* (citation omitted).

Again, the circuit court found Tom's claim that he did not know about the October 12 Order "without merit," noting he was present at the October 2022 hearing, was copied on communications about the order, and had the order at least two weeks before trial—yet did not raise the issue then. SR-II at 280-81. Moreover, the court granted Tom multiple concessions during the trial, allowing him to present evidence out of turn and in other ways. On this record, denying the motion to reopen the record after a four-day trial was plainly within the court's discretion and certainly did not result in any

injustice to Tom considering how the evidence he wanted to present had little to no bearing on the outcome.

Additionally, Tom's argument with respect to this issue that the circuit court sua sponte reformed the interim stipulation is entirely without merit. As explained above, the plain language of the Interim Stipulation is unambiguous. "When contract language is unambiguous, extrinsic evidence is not considered because the intent of the parties can be derived from within the four corners of the contract." *Black Hills Excavating*, 2016 S.D. 23, ¶ 10, 877 N.W.2d at 322. The court did not reform the Interim Stipulation; it simply enforced its terms as they were written. Admitting parol evidence to contradict those terms would itself risk reversible error. *See Carr v. Benike, Inc.*, 365 N.W.2d 4, 6 (S.D. 1985) (reversing where trial court admitted "contemporaneous understanding" when the written agreement was "patently clear").

4. The circuit court did not abuse its discretion when fairly and equitably classifying and dividing the parties' assets and debts.

Tom advances numerous arguments regarding the circuit court's classification and division of the existing assets and debts. He argues the court erred by classifying as marital: (1) the Palm Desert Condo, (2) the Farmland, (3) the ethanol investments and I-Bonds, (4) the 2003 Mercedes, (5) the retirement accounts, and (6) Fifth Avenue Duplex proceeds. *See e.g.*, AB 26, 31, 39, 43, 46-47. He also claims the court should have excluded the premarital value from each asset.

Tom's arguments ignore the distinction in how property is viewed during a marriage and during a divorce under South Dakota law. "[O]utside the context of *divorce* . . . marriage does not vest in one spouse an interest in the other's separate property."

Scherer v. Scherer, 2015 S.D. 32, ¶ 6, 864 N.W.2d 490, 493 (alteration in original) (citation omitted). Thus, while married, spouses are generally “entitled to maintain separate property and do with it as they see fit.” *Field*, 2020 S.D. 51, ¶ 17, 949 N.W.2d at 224. *See also* SDCL 25-2-4. However, in the context of divorce, “South Dakota is an all property state, meaning *all property* of the divorcing parties is subject to equitable division by the circuit court, *regardless of title or origin*.” *Liebel v. Liebel*, 2024 S.D. 34, ¶ 18, 9 N.W.3d 505, 511 (emphasis added). *See also* SDCL 25-4-44.

While all property owned by divorcing parties is subject to equitable division, the circuit court must first classify each asset as either marital or non-marital. *See Liebel*, 2024 S.D. 34, ¶ 18, 9 N.W.3d at 511. The circuit court has broad discretion in its classification, but “property should only be excluded as non-marital when ‘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.]’” *Dunham*, 2022 S.D. 65, ¶ 46, 981 N.W.2d at 639 (citation omitted). This is a narrow exception. As a result, premarital assets, inheritances, and gifts are “not automatically deemed separate and ‘*ipso facto* excluded from consideration in the overall division of property.’” *Field*, 2020 S.D. 51, ¶ 17, 949 N.W.2d at 224-25 (citation omitted).

After classifying property, the court equitably divides it. There is “no rigid formula” and “no fixed percentage” guaranteed to either spouse. *Osdoba*, 2018 S.D. 43, ¶ 19, 913 N.W.2d at 502 (citation omitted). The court considers:

- (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.

Dunham, 2022 S.D. 65, ¶ 40, 981 N.W.2d at 637. "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." *Goeden v. Goeden*, 2024 S.D. 51, ¶ 43, 11 N.W.3d 768, 782.

The Palm Desert Condo

Tom argues the Palm Desert Condo, which was clearly purchased by the parties during the marriage, should have been deemed his separate property because he allegedly traced the purchase money to his premarital estate and inheritance.

Whether an asset originates from an inheritance or the premarital estate is not the test for determining separate property under South Dakota law. "Although tracing is allowed ... it is not required as a matter of law." *Ahrendt*, 2018 S.D. 31, ¶ 21, 910 N.W.2d at 921. To exclude property as nonmarital, the court must find both that the non-owning spouse made only a de minimis contribution and that there is no need for support. *Dunham*, 2022 S.D. 65, ¶ 46, 981 N.W.2d at 639.

Here, buying the condo was a joint retirement plan, which Anna and Tom chose, furnished, and prepared together to use as a rental before retiring there. TR-1 at 97-99, 111. Anna was involved in the acquisition, purpose, and maintenance of the condo in a meaningful way. *Id.*

Even crediting Tom's tracing, his own numbers show the condo was purchased with a mix of approximately \$172,649 in inheritance and \$196,943 in marital earnings. TR-3 at 14-16. Moreover, the accounts used to purchase the condo were also used

throughout the marriage to pay marital expenses, undermining Tom's argument that the funds remained segregated. SR-I at 3378-80.

On this record, the court did not clearly err in finding Anna's contribution more than de minimis and did not abuse its discretion in classifying the Palm Desert Condo as marital.

The Farmland

Tom argues the circuit court clearly erred in finding that Anna contributed to the Farmland and abused its discretion by classifying the entire Farmland as marital without excluding any premarital value. AB 31. He further claims the court should have considered potential tax consequences if he must sell the Farmland to satisfy the equalization payment. AB 42.

The record supports the court's findings. The court recognized that Tom spent more time managing the Farmland than Anna; however, Tom himself admits that his management required only a couple of hours each month. TR-4 at 53-54. Nonetheless, Anna contributed to this source of passive income by encouraging Tom to switch from a crop share to a cash rent structure, which reduced Tom's workload and stress. The evidence showed that Farmland rental income, along with returns from the ethanol investments, were Tom's primary income sources during the marriage and that those funds were used to pay personal and household expenses.

Mr. Nelson testified that personal expenses—including church donations, Elderberry HOA dues and real estate taxes, gifts, and even alimony—were paid from the Farmland account. TR-2 at 97-98. Given the evidence presented of Anna's full-time

employment throughout the marriage, the court found that "Anna's income for the household allowed Tom to keep the farmland income somewhat separate." App. 69.

Without Anna's contributions, Tom would not have enjoyed the same degree of flexibility in managing and retaining Farmland income. South Dakota law requires courts to consider indirect contributions where one spouse's efforts allow the other to preserve or grow property with funds "that otherwise would be required for the support and maintenance of the family." *Muenster v. Muenster*, 2009 S.D. 23, ¶ 17, 764 N.W.2d 712, 717 (citation omitted). The court's finding that Anna made more than a de minimis contribution to the Farmland was therefore not clearly erroneous.

The court also acted within its discretion in classifying the entire value of the Farmland as marital. The court considered the origin, appreciation, contributions of both parties, and the Farmland's income-producing capacity in light of how that income was used throughout the marriage. Relying on Anna's expert testimony, the court found that the Farmland increased in value from \$589,331 in 2008 to \$3,500,000—a gain of approximately \$2.91 million during the marriage. App. 68.

Tom did not present any competing valuation evidence. Although market forces were the primary driver of appreciation, it was within the court's discretion to consider the role of marital partnership and indirect support in maintaining and leveraging that investment.

Tom next claims the property division is inequitable because he may have to sell the Farmland to fund the \$2.47 million equalization payment and that such a sale would create adverse tax consequences. However, he cites no authority supporting his argument

that the circuit court should have considered the tax consequences of selling the Farmland in dividing the marital estate. The failure to cite supporting authority waives the argument. *Langdeau v. Langdeau*, 2008 S.D. 44, ¶ 35, 751 N.W.2d 722, 733. Moreover, he presents estimates of potential tax liability that were never presented to the court to consider at trial. See *Halbersma v. Halbersma*, 2009 S.D. 98, ¶ 21, 775 N.W.2d 210, 218 (“The failure to present an issue to the circuit court constitutes a bar to review on appeal.”).

In any event, South Dakota follows the “well-settled rule that theoretical tax consequences on transactions which are not necessary or probable but merely conjectural need not be considered.” *Wallahan v. Wallahan*, 284 N.W.2d 21, 25 (S.D. 1979). Thus, the Court has held that it is reversible error to consider the after-tax value of an asset for equitable division unless there is evidence that liquidating the asset is actually necessary to provide the funds required for the property distribution. *Kelley v. Kirk*, 391 N.W.2d 652, 657 (S.D. 1986).

After payment of the \$2,468,708.50 equalization amount, both parties will retain approximately \$3,474,963.50 each. App. 101. Tom is not compelled to liquidate all of his assets or even all of the Farmland; he can choose which assets to sell and do so in a tax-efficient manner. A property division is not inequitable simply because the spouse who must make the equalization payment ends up with fewer assets than before. See *Lien v. Lien*, 278 N.W.2d 436, 442 (S.D. 1979).

Accordingly, the court did not abuse its discretion in classifying the Farmland as a marital asset.

Ethanol Investments and I-Bonds

Tom argues his ethanol investments should have been excluded because he acquired them before this marriage and kept them separate.

The court acknowledged Anna “was not involved in the acquisition or maintenance of the ethanol shares.” App. 75. However, the court was not required to exclude those investments from the marital estate on that basis. “Contribution of the parties to the acquisition of marital assets is a factor to be considered in dividing property, but it is not dispositive.” *Scherer*, 2015 S.D. 32, ¶ 14, 864 N.W.2d at 495.

Although Anna did not contribute directly to the ethanol investments, the court found that Anna had demonstrated a need for future financial assistance. Evidence was presented demonstrating that the parties intertwined their financial lives, careers, and retirement plans during their marriage. The record shows that the ethanol investments generated substantial income during the marriage, which the parties used to support their lifestyle, and that they bore the tax consequences together. App. 76. Given these circumstances, including the ethanol investments in the marital estate was well within the court’s discretion.

Moreover, Tom misinterprets the circuit court’s findings about the parties’ joint tax returns. The court did not conclude that filing joint returns created a shared property interest in the ethanol investments or the Farmland. Rather, it found that filing jointly showed the parties reported income from these assets together, were both liable for the related taxes, and used that income to pay their joint expenses.

For similar reasons, the court properly included the I-Bonds. Tom purchased the I-Bonds using proceeds from selling ethanol investments while the TRO was in effect. App. 67. Because those transactions violated the TRO, the court did not abuse its discretion in treating the I-Bonds as marital. *See Ahrendt*, 2018 S.D. 31, ¶ 17, 910 N.W.2d at 920 (upholding inclusion in the marital estate of funds transferred in violation of a TRO).

2003 Mercedes

Tom also challenges the inclusion of a 2003 Mercedes in the marital estate. He claims it was a personal gift from his brother-in-law. AB 46.

Whether a gift is marital depends on the donor's intent at the time of the transfer. *Field*, 2020 S.D. 51, ¶ 24, 949 N.W.2d at 226. The evidence presented regarding the 2003 Mercedes was minimal. Tom testified that while helping prepare his sister and brother-in-law's South Dakota home for sale, he asked his brother-in-law about what he wanted to do with the 2003 Mercedes. TR-4 at 31. His brother-in-law was unsure, so Tom said, "Well, I'll take it, and [his brother-in-law] said, Okay, you can have it." TR-4 at 31.

Anna similarly testified that Tom's "sister and brother-in-law had decided to sell their home in Sioux Falls, and [the Mercedes] was stored there, and they needed to dispose of it." TR-1 at 185. She further explained that it was not just Tom who helped his sister and brother-in-law get the house ready for sale. TR-2 at 57. Anna and other family members also assisted in preparing the house, not just Tom, and multiple items were exchanged and commingled during this process. TR-2 at 57.

On this record, the court reasonably found insufficient evidence that the Mercedes was intended as an exclusively personal gift to Tom alone. That finding was not clearly

erroneous, and including the Mercedes in the marital estate was within the court's discretion.

Retirement Accounts

Tom argues the circuit court failed to deduct the premarital value of his retirement accounts from the marital estate. AB 47. He cites no authority to argue that the court was required to make such a deduction. The failure to cite supporting authority waives the claim. *Langdeau*, 2008 S.D. 44, ¶ 35, 751 N.W.2d at 733. He likewise offered no authority—in his objections to the Findings and Conclusions—requiring exclusion of premarital retirement balances. SR-II at 112.

In any event, the record reflects that the court considered the length of this 16-year marriage, the parties' contributions, and their future financial needs. App. 81-83. The law is clear that a circuit court is not required to "give both divorcing parties credit for all their premarital assets in order to make an equitable division of property." *Muenster*, 2009 S.D. 23, ¶ 16, 764 N.W.2d at 717. Tom's bare assertion that the court "failed to deduct" his premarital balances does not establish an abuse of discretion.

Fifth Avenue Duplex Proceeds

Tom also challenges the award to Anna of the \$143,035 from the sale of the Fifth Avenue Duplex. The circuit court incorporated its February 3 Order into the final Divorce Decree. In that order, the court found that the Duplex "was purchased with personal funds and then refinanced with personal funds" and that the proceeds "must be deposited and go through a personal account." App. 2. After considering the relevant factors, the court

held that the Duplex proceeds were marital property to be divided as part of the overall equitable distribution. *Id.*

Although the court did not repeat detailed findings on those proceeds in the Divorce Decree, in its Findings and Conclusions, the court incorporated its prior findings by reference, which specifically noted that "the parties created Fifth Ave, LLC, to acquire and sell investment properties during the marriage" and found that during the marriage, they received "investment income from properties[.]" App. 65. These findings are not clearly erroneous, and including the Fifth Avenue Duplex Proceeds in the marital estate was within the court's discretion.

5. The circuit court did not abuse its discretion when it considered, and did not clearly error when it found, that Anna had a need of support.

Relying on *Weber v. Weber*, 2023 S.D. 64, ¶16, 999 N.W.2d 230, 236, Tom argues that the circuit court had no authority to consider Anna's need for support because Anna waived any claim for alimony.

Tom's reliance on *Weber* is misplaced. In *Weber*, the Supreme Court held that a husband waived the right to argue for *spousal support* on appeal because he "did not request spousal support or present any specific testimony relating to this issue" to the circuit court. *Weber*, 2023 S.D. 64, ¶ 25, 999 N.W.2d at 236. In other words, *Weber* did not hold that a party's overall financial need becomes irrelevant to equitable division if alimony is waived.

South Dakota's existing decisional law demonstrates that, for purposes of equitable division in divorce proceedings, a court is required to consider a spouse's need for support before classifying an asset as marital or non-marital. *See Cook*, 2022 S.D. 74,

¶30, 983 N.W.2d at 191 (remanding for reclassification of retirement income when the circuit court failed to address whether wife needed the retirement income to pay for support); and *Field*, 2020 S.D. 51, ¶ 29, 949 N.W.2d 221, 227 (by failing to consider the wife's contributions and her need for support, the court's exclusion of the entire value of the family farm from the marital estate was "in irreconcilable tension" with established law).

Here, like the husband in *Weber*, Anna waived alimony. However, by arguing that nearly every asset was non-marital, Tom made Anna's need for support an issue the court had to address. Thus, the court properly considered Anna's need for support when classifying the property.

At trial, Anna—then 64 and planning to retire within a few years—had monthly expenses of about \$7,000, her CMA wages were about \$3,000 per month, and she was only able to cover the gap because she was receiving \$4,600 per month from the sale of her book of business. TR-1 at 224-225. But those payments will stop in two years. TR-1 at 55, 225.

Nonetheless, Tom argues Anna's budget should not have been credited because it included expenses for her adult son. But Anna's son was four years old when she and Tom married and was raised in their household. The court had discretion to treat any transitional support Anna continued to provide him as consistent with her demonstrated need, especially in light of her approaching retirement, declining earning capacity, and the fact that Tom retained most of the income-producing property. App. 83.

Both parties are now at or near retirement age and will largely depend on accumulated marital assets to support themselves. The court's consideration of Anna's future financial need was both proper and necessary to classify and equitably divide the property. Therefore, the court did not abuse its discretion when considering and did not clearly error when finding that Anna had a need for support.

6. The circuit court did not abuse its discretion in awarding Anna \$15,000.00 in attorney's fees.

Tom argues that the circuit court abused its discretion in requiring him to pay \$15,000.00 of Anna's attorney fees. An award of attorney fees in divorce action is permitted by statute. SDCL 15-17-38 permits a court, "if appropriate, in the interests of justice," to award attorney fees in a divorce. Whether an award of attorney fees is warranted is left to the sound discretion of the court. *Jameson v. Jameson*, 1999 S.D. 129, ¶ 30, 600 N.W.2d 577, 583.

The analysis requires two steps. First, the court must determine the reasonableness of the fee by considering:

(1) the amount and value of the property involved, (2) the intricacy and importance of the litigation, (3) the labor and time involved, (4) the skill required to draw the pleadings and try the case, (5) the discovery utilized, (6) whether there were complicated legal problems, (7) the time required for the trial, and (8) whether briefs were required.

Goff v. Goff, 2024 S.D. 60, ¶ 26, 12 N.W.3d 139, 149-50 (citation omitted). Second, the court must determine the necessity for such a fee by considering "the parties' relative worth, income, liquidity, and whether either party unreasonably increased the time spent on the case." *Id.*

The circuit court did not abuse its discretion in awarding Anna \$15,000.00 in attorney's fees because it properly applied the required two-prong analysis of reasonableness and necessity. In considering the reasonableness of the fee, the court found that the case involved a marital estate exceeding \$7 million, with multiple properties, investments, and substantial financial documentation that required review over nearly three years of litigation. App. 78-79. The case required extensive discovery, multiple hearings, a four-day trial, and significant briefing. Based on those factors, the court found Anna's fees reasonable.

Under the second prong of the analysis, the court found that Tom had the liquidity to contribute to Anna's fees. App. 79. It also found that Tom's violation of the TRO and dissipation of marital assets increased the complexity and duration of the case. *Id.* Although Anna incurred almost \$100,000 in fees, the court ordered Tom to contribute only \$15,000. App. 84. That limited award confirms the court weighed reasonableness and necessity and exercised its discretion conservatively.

Conclusion

The circuit court carefully exercised its discretion in classifying and dividing the marital estate. Its findings are supported by the record, and its rulings are consistent with South Dakota law on classification, dissipation, and equitable division. The Court should summarily affirm the Judgment and Decree of Divorce, including the property division, equalization payment, TRO findings, attorney-fee award, and denial of Tom's post-trial motion.

Dated this 10th day of November 2025.

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Certificate of Compliance

The undersigned hereby certifies that the foregoing brief complies with the type volume limitation set by SDCL 15-26A-66(b)(2). This brief was prepared and printed in a proportionally spaced typeface using Microsoft Word in Century Schoolbook, size 12. This brief contains 9,814 words, including headings, footnotes, and quotations, but excluding the table of contents, table of cases, jurisdictional statement, statement of legal issues, and certificates of counsel.

Dated this 10th day of November 2025.

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Certificate of Service

The undersigned hereby certifies that on November 10, 2025, the foregoing brief was filed electronically with the South Dakota Supreme Court and that the original of the same was filed by mailing the same to:

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Appendix

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STATE OF SOUTH DAKOTA)
: ss
COUNTY OF LINCOLN)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

ANNA M. CLAYTON,
Plaintiff,
vs.
THOMAS W. CLAYTON,
Defendant.

41DIV21-190

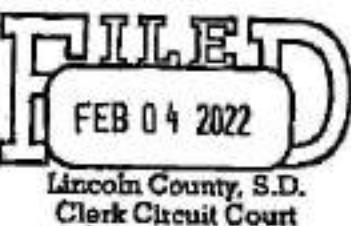
**ORDER DENYING DEFENDANT'S
MOTION TO DISTRIBUTE
PROCEEDS OF DUPLEX SALE**

This matter having come before the Court in the Courtroom of the Lincoln County Courthouse, Canton, South Dakota, on the 3rd day of February, 2022, with the Honorable Rachel Rasmussen, Judge of the Court presiding, and the Plaintiff appearing in person and with counsel, Amanda W. Engel of the Duncan Law Firm, Sioux Falls, South Dakota, and the Defendant appearing via Zoom in person and on behalf of himself, and the Court, after reviewing the file herein and the arguments of counsel having been heard, hereby enters the following Order,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Distribute Proceeds of Duplex Sale is DENIED.

IT IS FURTHER ORDERED and determined that:

1. The parties purchased the Duplex with personal funds while married.
2. The Fifth Avenue, LLC ("LLC") was created, and the Duplex was then transferred via a Quit Claim Deed.
3. The LLC managed the Duplex and its business.
4. In 2020, the parties refinanced the original loan from 2015 obtained by the parties.



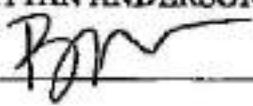
5. The loan was refinanced but no registering of the executed Quit Claim Deed occurred.
6. The Court has the authority to determine what is and is not marital property by considering such factors as earning capacity, duration of the marriage, and value of property, as well as other factors.
7. The Duplex was purchased with personal funds and then refinanced with personal or marital funds. When considering the factors used to determine marital and nonmarital property, as well as *Field v. Field*, 949 N.W.2d 221, 2020 S.D. 51, the Court has the authority to determine what property is subject to an equitable division regardless of how the property is held.
8. A key factor in the Court's holding is that the LLC does not have the ability to distribute the funds. The funds must be deposited and go through a personal account.
9. The proceeds from the Duplex sale are considered marital property.

IT IS FURTHER ORDERED the proceeds from the Duplex sale are considered marital property, pursuant to SDCL 25-4-44, and shall be divided in accordance with a full property settlement and other marital and nonmarital property division by settlement between the parties or Order of the Court.

Dated this 3rd day of February, 2022.


Honorable Rachel Rasmussen
Circuit Court Judge

ATTEST:
BRITTAN ANDERSON, Clerk

By: 
Deputy



STATE OF SOUTH DAKOTA)
:ss
COUNTY OF LINCOLN)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

ANNA M. CLAYTON,

Plaintiff,

vs.

THOMAS W. CLAYTON,

Defendant.

41DIV#21-190

**INTERIM STIPULATION AND
AGREEMENT ON SALE OF THE 5012
ELDERBERRY CIRCLE HOUSE**

This Interim Stipulation and Agreement on the Sale of the 5012 Elderberry Circle House is made and entered by and between Plaintiff, Anna M. Clayton ("Plaintiff"), residing in Sioux Falls, South Dakota, and Defendant, Thomas W. Clayton ("Defendant"), residing in Sioux Falls, South Dakota.

WHEREAS, it is the parties' intention to stipulate to matters related to and concerning the sale of the house located at 5012 S. Elderberry Circle, Sioux Falls, SD 57108 (hereinafter the "Elderberry Property"), during the pendency of this divorce; and

WHEREAS, the 2008 tax assessed value of the Elderberry Property was Four Hundred Thirty-Two Thousand Six Hundred Twenty-Four dollars (\$432,624.00); and

NOW, THEREFORE, in consideration of the promises herein contained, and mutual benefits to be derived therefrom, it is stipulated and agreed by and between the parties hereto, subject to the approval of this Court, as follows:

1. The Elderberry Property is located at 5012 S. Elderberry Circle, Sioux Falls, SD 57108.
2. The parties mutually agree to selling the Elderberry Property during the pendency of the divorce in accordance with the terms contained herein.
3. The Elderberry Property is currently under contract with a signed residential purchase contract for a sale price of Eight Hundred Seventy-Two Thousand Five Hundred dollars (\$872,500.00).
4. Closing for the sale of the Elderberry Property is set for June 16, 2022 at First Dakota Title.

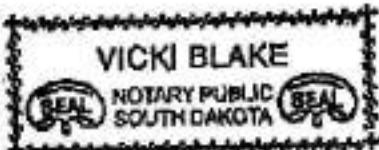
5. Neither party has a right to withhold any information from the other party concerning the sale of the Elderberry Property.
6. The parties agree that Defendant owned the Elderberry Property at the time of marriage and a certain portion of the Elderberry Property constitutes non-marital and separate property of the Defendant.
7. The 2008 tax assessed value of the Elderberry Property was Four Hundred Thirty-Two Thousand Six Hundred Twenty-Four dollars (\$432,624.00). The parties agree that Defendant is entitled to keep said Four Hundred Thirty-Two Thousand Six Hundred Twenty-Four dollars (\$432,624.00) from the house proceeds in his possession during the pendency of this divorce. The remaining balance of the proceeds shall be held in Defendant's attorney's trust account to be held in trust until an agreement is reached between the parties or by Order of the Court.
8. Both parties acknowledge and agree that nothing in this Interim Stipulation and Agreement on the Sale of the Elderberry Property establishes certain property and/or dollar amounts as marital that may be divided or nonmarital property that will remain separate property and no agreement herein constitutes an admission regarding the same and/or constitutes a final property settlement as to any property.

Dated this 10th day of June, 2022.

Anna Clayton
Anna Clayton, Plaintiff

Subscribed and sworn to before me
this 10th day of June, 2022.

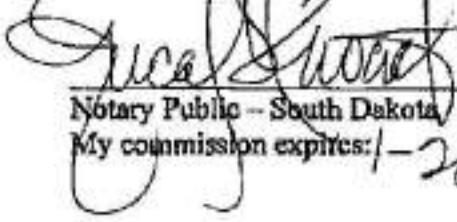
Vicki Blake
Notary Public – South Dakota
My commission expires: 2/16/24



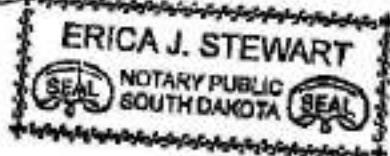
Dated this 14 day of June, 2022.

Thomas Clayton, Plaintiff

Subscribed and sworn to before me
this 14 day of June, 2022.


Erica J. Stewart
Notary Public - South Dakota

My commission expires: 1-28-2028



1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
2 COUNTY OF LINCOLN) SECOND JUDICIAL CIRCUIT
3
4 _____)
5 ANNA CLAYTON,)
6 Plaintiff,) Motion Hearing
7 vs.) DIV 21-190
8 THOMAS CLAYTON,)
9 Defendant.)

11 BEFORE: THE HONORABLE RACHEL R. RASMUSSEN
12 Circuit Court Judge
Canton, South Dakota
October 4, 2022.

14 APPEARANCES.

15 For the Plaintiff: Amanda Engel
16 Attorney at Law
17 515 W. Landscape Place Suite 101
Sioux Falls, South Dakota 57108

18 For the Defendant: Defendant appeared pro se.

20

21

22

23

24

1 (WHEREUPON, the following proceedings were duly
2 had:)

3 THE COURT: We're on the record in DIV 21-190, Clayton
4 versus Clayton.

5 This is a divorce matter that's been pending for some
6 time -- approximately a year now -- and comes before the
7 Court. We previously had a hearing, I believe it was back
8 in February, so we haven't been together in a while.

9 Since that period of time, there were not many filings.
10 And then beginning in August, and throughout, and up until
11 yesterday, there were additional filings made, a number of
12 them.

13 There was a motion for an order to compel plaintiff to
14 answer interrogatories, respond to that. And then I believe
15 the plaintiff is requesting mediation and for the defendant
16 to compel -- to compel defendant to comply with discovery,
17 as well. So it appears outstanding discovery issues
18 possibly, as well as the issue of scheduling mediation.

19 Any other issues that we're addressing here today from
20 either counsel's perspective?

21 MS. ENGEL: Just the, um, enforcement of the temporary
22 restraining order, as well, which was part of the
23 plaintiff's initial motion.

24 THE COURT: All right.

25 THE DEFENDANT: I guess, Your Honor, currently the parties

1 have a stipulation they want to enter on the record, as
2 well, as far as both parties agreeing and consenting that
3 the divorce matter be determined and be judged to be
4 irreconcilable differences.

5 THE COURT: It would be premature for me to make that
6 determination. If you would like to submit that in your
7 final stipulation and agreement, that is fine. But I'm not
8 going to enter an order for grounds for divorce before I
9 enter an order for divorce.

10 So if that's the agreement between the parties, that's
11 noted for the record, but I can't find irreconcilable
12 differences for purposes of a divorce decree when I'm not
13 entering a divorce decree.

14 THE DEFENDANT: Can we enter the, you know, the stipulation
15 on the record now, though, and then just proceed with the
16 order?

17 THE COURT: I think we've already -- proceed with the order?

18 THE DEFENDANT: Proceed with the order, you know, at the end
19 of the procedure?

20 THE COURT: No. No, we cannot. That's not appropriate
21 because it's grounds for which the divorce is granted on and
22 I'm not granting a divorce at this point in time.

23 So it's noted on the record, obviously, by you, Mr.
24 Clayton. But entering the grounds for divorce prior to
25 entering the divorce decree is not appropriate procedurally.

1 THE DEFENDANT: Okay. Could I have the other side speak
2 also that they're in agreement that the divorce be...

3 THE COURT: Ms. Engel?

4 MS. ENGEL: Sure, Your Honor. This is a nonissue. The
5 complaint both parties gave was irreconcilable differences,
6 so I don't see why it even needs to be stipulated on the
7 record; however, if defendant is insistent upon it, I have
8 no issue telling the Court that we're not pursuing any other
9 grounds besides irreconcilable differences.

10 THE COURT: All right. That's fine. I'll leave it to the
11 parties from there on.

12 Any other issues that I didn't or Ms. Engel didn't
13 already mention, Mr. Clayton, that you feel we need to
14 address today?

15 THE DEFENDANT: Yes, Your Honor. Latest -- one of the
16 latest filings, plaintiff stated that she's no longer
17 requesting alimony, and I would like to make some kind of a
18 record or hope there's a record that that is something that
19 will continue in full force through the -- throughout the
20 divorce proceedings, so...

21 THE COURT: I think that's already in one of the filings, so
22 I don't think we need to add that to the record when it's
23 already filed and on the record. Does that make sense?

24 THE DEFENDANT: Well, the answer could always be changed, is
25 my --

1 THE COURT: Up to and until I enter a decree of divorce,
2 yes, but any other legal negotiations, Mr. Clayton, are
3 between you and the plaintiff. I'm not getting involved in
4 negotiations on certain decisions, such as alimony, that may
5 be premature depending on how you guys decide something else
6 or how I rule on whether something is marital property or
7 not. So I'm just going to leave that for negotiations with
8 the parties. I did note that it was in one of the filings,
9 so I think there's already record of that.

10 THE DEFENDANT: I'd just like to ask that, you know, the
11 plaintiff -- to make that record also.

12 THE COURT: I'm not going to require that at this point in
13 time. There's already been a record. There's been an
14 answer. And I don't know that it's appropriate for the
15 Court to get involved in that negotiation process or make a
16 determination prior to entering a decree of divorce.

17 Any other issues you'd like the Court to decide today,
18 sir?

19 THE DEFENDANT: Well, based on what you've stated, Your
20 Honor, you know, I have moved for the, you know, production
21 of documents related to the issue of fault in the divorce
22 and also related to the issue of fault in alimony, as well.
23 And I understand that those issues are still up in the air,
24 not fully decided. The parties have got their, you know,
25 record amongst themselves.

1 What I would propose to do as far as my motion --
2 regarding my motion to compel, the records pertaining to the
3 issue of fault, extreme -- extreme mental cruelty, and also
4 alimony as far as fault be held in abeyance, in the event
5 that the issue arises. Then the motion can go forward
6 again.

7 THE COURT: Ms. Engel?

8 MS. ENGEL: Your Honor, I don't think that it needs to be
9 held in abeyance. We have our filings. The complaint,
10 again, both shows the parties agree to irreconcilable
11 differences. Mr. Clayton didn't even file alternative
12 grounds anyway, so that isn't relevant anymore.

13 And, secondarily, we've also stated in the discovery,
14 we're not pursuing alimony. So those -- the fault-based
15 things you'd otherwise need under the defendant's motion to
16 compel aren't relevant anymore.

17 THE COURT: I guess, when I look at the motion to compel, if
18 the issue of extreme cruelty or the issue of fault is taken
19 out of that, what still needs to be decided on your motion,
20 Mr. Clayton?

21 THE DEFENDANT: There's production of document requests,
22 Your Honor.

23 THE COURT: That would be one of the discovery issues.

24 THE DEFENDANT: Correct.

25 THE COURT: Any other of those three major issues:

1 Temporary restraining order, mediation, or discovery that
2 you can see that we need to address?

3 THE DEFENDANT: Those would be it, Your Honor.

4 THE COURT: Okay.

5 Helps to make sure we're on the same page as to what
6 we're doing before we jump into specific arguments, I guess.

7 If the, again, issue for the motion for the order to
8 compel is regarding fault, I believe that's moot at this
9 point, and I don't need to make a decision on that issue.

10 Regarding production of documents, I think there are
11 arguments both ways from each side, so I'd probably hear
12 from both parties on that.

13 And then we can move into the mediation and temporary
14 restraining order, but I'm guessing the discovery issue may
15 be the bigger issue.

16 Since you've filed the original motion, Mr. Clayton,
17 I'll go ahead and hear from you first.

18 THE DEFENDANT: We -- I will say that the plaintiff filed
19 the original motions, Your Honor, as far as the temporary
20 restraining order and motion to compel mediation.

21 THE COURT: All right. I'll hear from the plaintiff first.

22 MS. ENGEL: Thank you, Your Honor.

23 Your Honor, today, we're here on a two-part motion. A
24 motion regarding violation of the temporary restraining
25 order that is filed with the summons. It was when the

1 divorce was initially started.

2 There has been a repeated pattern of defendant selling
3 assets and/or expending marital funds that are restricted
4 under the temporary restraining order. The first example
5 that we had was back at a hearing in February, the LLC
6 funds. Defendant's position was that they're his funds and
7 they're not marital property. The Court ruled they're
8 marital property.

9 The second example is in relation to the marital home.
10 Defendant unilaterally listed the marital home for sale. My
11 client found out because she saw a "for sale" sign -- her
12 neighbor saw a "for sale" sign in the yard. We then talked
13 to the defendant and asked him about it, asked to agree to
14 hold the funds. He refused, saying it was, again, his sole
15 property and he can do what he wants with it.

16 We ultimately reached -- after defendant retained
17 counsel, we reached a stipulation and agreement on it and
18 it's been filed with the Court.

19 Funds, we agreed to a number. There's funds that we
20 agree that are nonmarital, prior to the marriage. And also,
21 the growth of the value of the home pursuant to South Dakota
22 case law, which was agreed to be held in defendant's trust
23 account -- defendant's attorney's trust account, but
24 actually defendant's trust account right now, as he no
25 longer has an attorney.

1 THE COURT: Okay. I was going to just interject. I never
2 saw an attorney on here, so there's not counsel? I just
3 want to make sure that we have all parties that we need to
4 have.

5 MS. ENGEL: Melissa Nicholson Breit represented him for a
6 period of three months. Her and I -- there's -- I don't
7 believe she ever did a notice of appearance, but she was
8 corresponding on his behalf, so...

9 THE COURT: If you have anyone do that, please have them
10 file a notice of appearance.

11 THE DEFENDANT: I will, Your Honor.

12 THE COURT: Thank you. I recognize it's a little bit
13 different situation when you're an attorney yourself, but go
14 ahead.

15 MS. ENGEL: Thank you, Your Honor.

16 So, again, we agreed to hold those funds.

17 The next example of the defendant violating the
18 temporary restraining order is when he bought I bonds for
19 \$20,000. This was -- defendant had argued that this was
20 bought with money that is nonmarital property; however, this
21 was prior to receiving any funds from that June 2022 sale of
22 the marital home. These funds were purchased on -- excuse
23 me -- these bonds were purchased on May 13th of 2022, again,
24 during the pendency of the divorce.

25 The next example is when defendant sold his shares for

1 POET around May 16th or 18th, according to his discovery.
2 This was totally without plaintiff's consent. They were --
3 they had them during the marriage. There's a factual
4 dispute of whether or not they are marital property. And,
5 again, the same rationale that applied to the marital home,
6 that any growth in these shares would be considered marital
7 property, but they've been sold.

8 The next example is the selling of 20,000 units of his
9 Lake Area Corn processing shares. In his discovery, he
10 stated that they were sold earlier this year. I don't know
11 the exact date. The same rationale applies to these shares
12 as it does the POET shares.

13 The next example, the sixth example, is him making a
14 \$50,000 donation to USD. That was on June 29th of 2022.

15 Seventh example is defendant buying a condo in Chicago
16 for upwards of \$200,000 on July 28th or 29th, again, without
17 the consent of plaintiff.

18 The eighth example is him purchasing jewelry around a
19 value of \$5,000 on November 3rd of 2021. Again, it would
20 have been prior to receiving any of those marital funds --
21 or excuse me -- the funds from the sale of the marital home.

22 Every single one of these was done during the course of
23 the marriage, and we only learned about these after we
24 pressed the issue and after defendant filed his discovery.
25 This wasn't a discussion back and forth to make sure we get

1 the best price or anything like that. It was just done
2 because plaintiff -- or excuse me -- defendant continually
3 asserts that it's his sole property and we have nothing to
4 do with it. It's not marital and the Court has no
5 discretion over it.

6 Our concern with these repeated violations of the
7 temporary restraining order is that they're large purchases.
8 They're not minimal basic necessities, everyday average
9 business. And if they were, they should be something that
10 should be discussed with plaintiff, just like we tried to
11 have a discussion on the marital home. We don't want these
12 things to be valueless, but they can't be unilaterally sold
13 in violation of the temporary restraining order.

14 We're also concerned about defendant's liquidity.
15 Right now, if he has funds, there's the probability of a
16 lump sum payment from defendant to plaintiff. The more he
17 sells, the more he disposes of, the more he purchases, the
18 less assets there are to allocate in the divorce.

19 There's also been a constant commingling of funds. It
20 isn't clear that these funds are only marital or only
21 nonmarital. It's very commingled, just like we saw with the
22 LLC.

23 Plaintiff's concern is that defendant is not going to
24 stop these purchases until the Court tells him to stop. We
25 have -- I've tried to have discussions with defendant on

1 this and it's gone nowhere. He says it's his property and
2 he can do what he wants with it. It's this Court's job to
3 say what's marital and what's nonmarital.

4 In addition, defendant's admitted to -- admissions by
5 defendant are judicial admissions. They're in his
6 interrogatory answers. There's no disputing that these
7 happened. Given the repeated patterns of his disregard of
8 the temporary restraining order, we're requesting that the
9 Court enforce the restraining order, restrict any further
10 selling or disposing of any other assets or funds outside of
11 your basic, normal, everyday usual business.

12 We also ask that the jewelry purchase be considered an
13 asset in the division -- property division for the
14 defendant. We're also asking that the funds from the sale
15 of POET and the Lake Area Corn Processors be held in my
16 firm's trust account until there is a court order of the
17 Court and agreement between the parties.

18 In regards to mediation, do you want me to address that
19 now?

20 THE COURT: Sure, go ahead.

21 MS. ENGEL: This matter has been pending since October of
22 '21. This pretrial order mandates mediation. While there
23 are outstanding discovery issues, they are very minimal.
24 And it's not uncommon to schedule mediation for a time
25 period a few months out. And that's what I asked defendant

1 to do in accordance with the pretrial order.

2 Defendant blatantly refused to schedule mediation even
3 though there were options provided to him to schedule
4 mediation further out. We need this matter to move along.
5 We're getting stalled out. Defendant didn't even conduct
6 any discovery until May of 2022. There's just -- it's been
7 moving too slow. And setting a mediation date will require
8 the parties to move this along. We also have to do it
9 before we even have a trial in this matter anyway.

10 I talked to Mr. Travis' office. He has no issues
11 scheduling mediation out. He agrees it's common. Also,
12 that -- if for some reason we need to cancel or reschedule,
13 he's fine with that too. We simply want to get a mediation
14 date set on the calendar to get this moving forward.

15 We do have an outstanding discovery request from
16 plaintiff that we're waiting on. It's two questions, to be
17 clear, Your Honor. It is not 30-plus interrogatories. It's
18 two interrogatories in which I asked the defendant to simply
19 provide me with an answer via email about some Venmo
20 payments. He did not.

21 Again, two questions. But since that's been pending,
22 he's managed to file five different things with the Court,
23 but not answer the two discovery questions. It's clearly a
24 delaying tactic to wait for 30 days to push this out further
25 and to use it as a motive for delaying mediation.

1 Mr. Clayton also alleges that there's deficiencies in
2 the request for admissions. I filed just the request for
3 admissions draft in seven business days in order to make
4 sure that this is not being delayed further. We were served
5 and this was flipped around in seven business days. He
6 alleges there's deficiencies. I reached out asking what
7 those deficiencies are so we can keep this moving. I
8 haven't heard back. I also asked defendant if he can
9 confirm or get it on the calendar in case we need it. No
10 response.

11 I do think that defendant's using this as a delaying
12 and prolonging tactic. Mr. Clayton doesn't have to pay for
13 attorney's fees. My client does. And when you have to pay
14 for attorney's fees, it adds up quickly when you have to do
15 repeated requests or you can do an unlimited number of
16 filings. This has been happening for nearly a year and it
17 needs to move along.

18 Also, defendant asserts that there needs to be experts
19 and witnesses disclosed. Well, in accordance with the
20 Court's pretrial order, that's a week before mediation,
21 which we can comply with.

22 Also, it's not a trial by ambush. It's very clear from
23 our discovery who we are relying on for anything related to
24 property, which is the only issue that seems to be pending.

25 Setting dates will require us to move on. I did reach

1 out to Mr. Travis' office this morning. He's already
2 booking into December and January. Like, there's no -- he's
3 very busy, so he does book a couple months out.

4 There are several dates available if the Court wants to
5 hear them?

6 THE COURT: I don't think I need to.

7 MS. ENGEL: Okay. And we're also requesting that, again,
8 send mediation dates or, alternatively, amend a pretrial
9 order to set a date in which discovery has to be completed
10 by and a date in which mediation has to be completed by so
11 there's a firm deadline so this case will move forward.

12 And we're also asking for our attorney's fees for
13 having to have -- bring the motion for the violation of the
14 restraining order when it's clear that the defendant
15 shouldn't have taken these actions as it has been pending
16 during the divorce, as well as having to file a motion to
17 simply comply with the Court's pretrial order.

18 THE COURT: Thank you, Ms. Engel.

19 Mr. Clayton, response?

20 THE DEFENDANT: Thank you, Your Honor.

21 I wonder if this is the motion for temporary
22 restraining order you've been looking for, such as I cleaned
23 out a joint bank account or I actually had everything in a
24 joint brokerage account somehow sold and then a check
25 written to me, as opposed to anything that Ms. Clayton may

1 have any interest in. That's not what we're here about.

2 Ever since this divorce proceeding started, all I've
3 heard is this constant drumbeat of material property,
4 material property, material property. You know, at each
5 turn, I painstakingly and meticulously explained with
6 documentation that the property that the plaintiff claims is
7 marital property is separate property. At each turn, my
8 explanations have been met with deaf ears, so here we are.

9 I want to point the Judge's attention to, you know,
10 SDCL 25-4-7 which talks about, you know, separate property.
11 It clearly states that "Each spouse shall have retained
12 after marriage all the similar property rights as a single
13 person. Each may buy, sell, receive, and convey or dispose
14 of by will or otherwise dispose of any real or personal
15 property belonging to him or her in which he or she may have
16 an interest without joining the name of the spouse." It
17 goes on to say, "Except for the homestead."

18 Now, every piece of property that the plaintiff is
19 talking about is separate property.

20 THE COURT: What did you just cite, again, Mr. Clayton?

21 THE DEFENDANT: SDCL 25-4-7.

22 THE COURT: That was repealed. I'm almost positive that was
23 repealed.

24 MS. ENGEL: It states that on the website for the South
25 Dakota statutes, repealed.

1 THE COURT: Yeah. That statute was repealed. Did you have
2 a different statute you meant to cite?

3 THE DEFENDANT: When was it repealed, Your Honor?

4 MS. ENGEL: This says, "Repealed by SL 1974, Chapter 173."

5 THE DEFENDANT: I find it still in my Dakota Disc.

6 THE COURT: There's no replacement either. It was just
7 completely repealed.

8 THE DEFENDANT: You know, let me make a note of that and see
9 if I can re-brief that because it still is in my Dakota Disc
10 list of statutes, and it doesn't list it has been repealed.
11 But let me just go on, even notwithstanding that issue, Your
12 Honor.

13 The temporary restraining order states that "The
14 parties are prohibited from transferring, encumbering,
15 concealing or in any way dissipating or disposing of any --
16 here's the important words -- "marital assets."

17 Okay. Now, the statute restricts itself to what are
18 marital assets. Now, once parties are married, it doesn't
19 automatically mean that --

20 THE COURT: Sorry. What statute are you referring to?

21 THE DEFENDANT: SDCL 25-4-33-1, which is the statute --

22 THE COURT: Do you mean 33.1?

23 THE DEFENDANT: Yes, .1.

24 THE COURT: Go ahead. I just wanted to make sure I'm
25 following you. Go ahead.

1 THE DEFENDANT: Now, that statute restricts itself to
2 marital assets. It doesn't say, well, I'll combine assets
3 whether marital or separate. It is -- and I believe it's
4 clear that only marital assets can dissipate marital assets
5 -- marital estate -- excuse me -- under the Legislature's
6 TRO statute. And I think the case law backs this up. And
7 I've cited *Arendt v Chamberlain*.

8 (At which time, the reporter asked for the defendant to
9 repeat the case.)

10 THE DEFENDANT: *Arendt v Chamberlain*.

11 THE COURT: And the cite?

12 THE DEFENDANT: It is -- let me pull up my main brief here.

13 THE COURT: If it's in your brief, I can find it.

14 THE DEFENDANT: It will be in my surrebuttal brief, Your
15 Honor.

16 MS. ENGEL: I have it, Your Honor, if you'd like. 2018 SD
17 31.

18 THE COURT: And I have that too. All right.

19 THE DEFENDANT: All right. So...

20 THE COURT: Thank you. Go ahead.

21 THE DEFENDANT: In that case, the Court was -- Supreme Court
22 was deciding whether the trial court was right and whether
23 this defendant's 401(k) was separate property or marital
24 property. The defendant said it was separate property
25 because it was a 401(k) and held in her name only. And the

1 Court basically said -- well, it didn't say -- it didn't
2 hold that while separate property is included as marital
3 property -- instead, it drilled down and said that the
4 source of those funds are from marital efforts by both
5 parties; and, therefore, it is marital property. And there
6 was a violation of the temporary restraining order because
7 it was marital property.

8 So what we have here is, again, the plaintiff is
9 arguing that this is a no-property state, and I don't
10 dispute that; however, there's nothing here that says
11 there's -- the Court can't consider both separate property
12 and marital property when determining its divorce.

13 THE COURT: Hold on a second, though. If I do that, Mr.
14 Clayton -- and that's for me to determine -- then how are
15 you determining it on your own if it is for the Court, as
16 you say, and as it says in the case you just cited, that it
17 is for the Court to make an equitable division of property
18 belonging to either or both -- whether the title of such
19 property is in the name of the husband or the wife, and,
20 again, before dividing the property, the Court must classify
21 it as marital or nonmarital. And that's in Paragraph 8 of
22 the case you just cited.

23 So if it's the Court's job to do that, please explain
24 to me why you feel that you are able to do that on your own.

25 THE DEFENDANT: I'm not going to say that, Your Honor. What

1 I am going to tell you is, we are not there. We are not at
2 the trial where you make those determinations. It's very
3 important because we are here at a pretrial hearing where
4 the other side is asking you to classify what I clearly laid
5 out are separate --

6 THE COURT: Right.

7 THE DEFENDANT: -- assets.

8 THE COURT: Mr. Clayton, I still determine if they're
9 separate or marital assets; correct?

10 THE DEFENDANT: You determine them.

11 THE COURT: Right. And I can't do that if you take that
12 decision away from me; right? If you determine something is
13 separate property all on your own, not only are you taking
14 the authority that is specifically granted to the courts to
15 determine out of my hands --

16 THE DEFENDANT: I'm not doing that, Your Honor.

17 THE COURT: How so? I want to try to understand where
18 you're coming from because it's lost right now.

19 THE DEFENDANT: That determination is made at the divorce
20 trial.

21 THE COURT: But I can't make that determination on this
22 property if it's already sold and gone, and shares are sold
23 and -- how do I make that determination on property if it's
24 gone?

25 THE DEFENDANT: Well, it's not gone, Your Honor. And I

1 painstakingly traced it for the plaintiff. It's not gone.
2 I mean, in my ordinary business, Your Honor, I buy and sell
3 investments.

4 THE COURT: That might be, Mr. Clayton, but the asset,
5 itself, has been converted. When you sell shares, it's
6 converted. When you buy a condo, that's using personal
7 funds whether or not those personal funds are a marital
8 asset or a separate asset. And I don't know because I
9 haven't made that determination. It's for me to decide upon
10 the judgment and decree of divorce, which I think we both
11 agree.

12 THE DEFENDANT: Right.

13 THE COURT: But I can't do that if you're deciding it
14 preemptively before I have that authority. That's the
15 Court's authority, Mr. Clayton, not your authority to do.

16 THE DEFENDANT: Your Honor, I'm bringing all those assets to
17 the Court.

18 THE COURT: No, you're not. I haven't seen any motion to
19 sell property or anything that allows the plaintiff to
20 respond.

21 THE DEFENDANT: You know, everything I've sold or bought has
22 been presented to the plaintiff.

23 THE COURT: Then has the plaintiff had an opportunity to
24 respond to those things?

25 THE DEFENDANT: I believe so.

1 THE COURT: Okay. Do you have discovery that you can,
2 please, show me that you presented these things prior to the
3 sales?

4 THE DEFENDANT: No, I cannot, Your Honor.

5 THE COURT: Please produce that for me by the end of the
6 week. Okay?

7 THE DEFENDANT: I probably can't, Your Honor.

8 THE COURT: Why not?

9 THE DEFENDANT: Well, because I have, you know, in my
10 ordinary course of business, bought and sold things. And I
11 will say that, you know, markets move fast and offers to buy
12 or sell things move fast.

13 THE COURT: You specifically just told the Court that you
14 presented those things to the plaintiff before you did it.

15 THE DEFENDANT: No. I presented those things to the
16 plaintiff after --

17 THE COURT: Okay.

18 THE DEFENDANT: -- in my discovery response. When they've
19 happened, they've been reported.

20 THE COURT: So before you converted large pieces of property
21 that may or may not have been marital assets, you did not
22 ask the plaintiff anything. Is that a correct statement?

23 THE DEFENDANT: Um, no, because there's not been a
24 determination that the property is marital assets.

25 THE COURT: And whose determination is that to make?

1 THE DEFENDANT: It's yours at the trial, Your Honor.
2 THE COURT: It is my determination. Until then, the
3 temporary restraining order is in effect, Mr. Clayton, and
4 you're playing very fast and very loose. The briefs that
5 you submitted basically just say I can because it's my
6 property. That's not your decision to make, Mr. Clayton.
7 That is the Court's determination to make, as you indicated,
8 after I hear both sides and everything else.

9 What if I determine that one of these assets was
10 marital property or the funds that you used to buy a condo
11 in Chicago is part personal property? How do we go about
12 things then? That doesn't allow the plaintiff or the Court,
13 quite frankly, a fair opportunity to make those
14 determinations.

15 THE DEFENDANT: Well, Your Honor, again, I put everything
16 before the Court in the brief showing that the property is
17 separate property.

18 THE COURT: But I don't make that determination until it's
19 called on for me to make it, and no one has filed a motion
20 with the Court to declare it separate property so that you
21 can sell it; is that correct?

22 THE DEFENDANT: Well, yes.

23 THE COURT: Okay.

24 THE DEFENDANT: But there's still no determination by the
25 Court that this property is marital property, which is what

1 the TRO addresses.

2 THE COURT: But I don't determine that until it's brought
3 before the Court, just like the LLC, Mr. Clayton. If you
4 want to do something with property, you need to bring it
5 before the Court so the Court can make that determination.

6 We learned that in February with the LLC; right?

7 THE DEFENDANT: I think we learned that the documentation
8 wasn't clear with the LLC. That is what we learned; and,
9 therefore, the money was regrettably put into there
10 classified as personal property.

11 THE COURT: Mr. Clayton, you need to comply with the
12 temporary restraining order. You do not get to determine
13 what's separate property and then try to explain it on the
14 back end.

15 If you want to sell property, you want to transfer
16 property, you want to buy property, you want to sell a
17 marital home, you have to include the plaintiff on it. And
18 if there's a disagreement, it has to come before the Court
19 to make the determination of whether it's marital or
20 nonmarital, otherwise, you are preempting the Court's
21 determination.

22 THE DEFENDANT: Again, as far as the home goes, I dispute
23 that it's a marital home.

24 THE COURT: You can dispute that all you want, and once it
25 comes before the Court for determination, then the Court

1 will decide if it's marital or nonmarital. And if it's
2 separate property, then just go ahead and sell it or do what
3 you want with it. If I decide it's marital, that's a
4 different course of action.

5 THE DEFENDANT: The parties already stipulated that on
6 the --

7 THE COURT: On the back end. That's what I'm saying, Mr.
8 Clayton. This does not happen on the back end. This
9 happens on the front end.

10 THE DEFENDANT: What happened with the plaintiff being fully
11 apprised of the negotiations, and agreeing to the
12 negotiations, and agreeing to the sale of the property? As
13 a matter of fact, I ended up selling it for more than what
14 the plaintiff ultimately said was acceptable for her.

15 THE COURT: Do you understand that any sale of stocks,
16 bonds, purchases, major expenditures like that, Mr.
17 Clayton -- a \$50,000 gift, I don't know where that \$50,000
18 came from. You maybe can explain it on the back end, but
19 unless and until those funds are determined your separate
20 property, you can't do that. That's a Court's
21 determination, not yours.

22 THE DEFENDANT: Well --

23 THE COURT: I don't know how to get that through because
24 that's in effect now. That's why we have the temporary
25 restraining order; right?

1 THE DEFENDANT: Well -- well -- the temporary restraining
2 order, as far as I understand it, applies to marital assets.

3 THE COURT: And who determines what's marital?

4 THE DEFENDANT: You know, I --

5 THE COURT: Who determines what's marital, Mr. Clayton?

6 THE DEFENDANT: Both parties determine, you know -- present
7 the evidence to the Court --

8 THE COURT: That's all I'm asking. That's all I'm asking.
9 I think that's all, probably, the plaintiff is asking, is
10 that you bring that to the Court. Because otherwise, you're
11 taking that determination away from the Court.

12 Regardless of what negotiations or talks you had
13 between each other, either you have an agreement to do
14 something with a large parcel of property, assets, sales,
15 something like that, or you can bring it to the Court. So
16 you need to follow that.

17 And if you want a determination if something is marital
18 to sell it -- whether bonds, stocks, things like that, bring
19 it to the Court. And then I'll do my job that statute and
20 case law directs me to do, and determine whether or not it
21 is, in fact, marital property, otherwise, you're taking that
22 discretion out of my hands and that's putting the cart
23 before the horse. I can't determine whether or not it's
24 marital property if it's no longer there.

25 THE DEFENDANT: And, you know, that's my belief. And my

1 argument is that this is the cart before the horse, asking
2 you to determine what's marital -- what's -- my property is
3 marital property before it's actually been proven separate
4 property or marital property.

5 THE COURT: I think we're all in agreement on that, Mr.
6 Clayton. I think what we need to do, then, going forward is
7 in order for me to determine that, go ahead and let me
8 determine that. Go ahead and bring it before the Court.

9 If it's something time sensitive, I can certainly make
10 time either early in the morning or over a lunch hour, later
11 in the day, anything like that, to accommodate the parties
12 if it is something that needs a fast turnaround as far as
13 timeframe and to make a decision.

14 But as far as what is and isn't marital, unless it
15 comes before the Court -- it's the Court's determination to
16 determine whether it's marital or not, not after the fact.

17 THE DEFENDANT: And all the property, you can determine at
18 the trial.

19 THE COURT: But I can't. I can't determine the property,
20 necessarily, because some of the property has already been
21 converted.

22 THE DEFENDANT: You know, the Supreme Court allows tracing,
23 Your Honor. I'll be glad -- that's what I did in my brief
24 was I traced all the proceeds.

25 THE COURT: And going forward, I'm going to ask you and

1 order that any other such purchases, sales, or anything of
2 the like be brought to the plaintiff in advance. And if
3 there's not an agreement, that it be brought to the Court
4 expeditiously, which you indicated is part of your business.
5 I certainly don't want to hold you up on business
6 investments or anything of the like. Is that fair? Does
7 that make sense?

8 THE DEFENDANT: I can live with that. I mean, I take it
9 back. I don't want to be so flippant. That's perfectly
10 acceptable, Your Honor. But what I'd like to, you know,
11 urge the Court is to not find that I've been in violation of
12 the temporary restraining order up to this date. I'll be
13 glad to comply with your order going forward.

14 THE COURT: And then regarding the mediation, can I hear
15 from you on that, Mr. Clayton?

16 THE DEFENDANT: Yes, Your Honor. Let's see. All right.
17 Yeah, we're not even away from the first year of the
18 commencement of the divorce. Now, the plaintiff submitted
19 three supplemental discovery responses, not voluntarily, but
20 because I had to inform her of deficiencies and request for
21 more responses -- more complete responses.

22 It took a lot of back and forth, which is part of the
23 record in my exhibits, before plaintiff supplemented her
24 responses. And still, four months since I first sent out
25 this first set of discoveries, there are still -- until this

1 open court agreement that the issue of fault is not going to
2 be part of the matter going forward -- that I'm still
3 waiting for answers and documents relating to the fault
4 aspect.

5 Now, I'm still asking for documents related to
6 property. I'll get to those in a second. And I want the
7 Court to know that I provided everything the plaintiff has
8 asked for, discovery and more, but there hasn't been equal
9 cooperation.

10 Now, plaintiff's motion to compel mediation has morphed
11 since it started. In my brief, it started, you know, as an
12 attempt to just close off the discovery for this duty to
13 respond to my discovery and fast-track this case with -- so
14 we didn't have to disclose experts before we entered into
15 the mediation so the reports could be disclosed and could be
16 -- and the reports could be disclosed and experts also
17 deposed.

18 And that's especially important because up to this
19 issue of fault, I had to decide whether I needed to obtain
20 an expert as far as fault goes. Now that that's been taken
21 off the table, it's a different subject. But before today,
22 that was still a viable subject before mediation could be
23 scheduled.

24 Now -- what we have now instead of a motion to order me
25 to mediate is -- this motion is more like, Your Honor,

1 please deviate from your pretrial order, okay, which is, you
2 know, finish -- let's finish the discovery. Then let's do
3 the mediation. And before the mediation, let's disclose the
4 experts and their reports before there's a mediation
5 deadline.

6 Now -- and that's true -- that's plaintiff's position,
7 even though she, herself, has not completed her discovery.
8 And I have not responded to her most recent discovery. When
9 she sent me the discovery request, Your Honor, I sent an
10 email and I asked, "Why don't you just withdraw this motion
11 to compel mediation? We're obviously not done with
12 discovery."

13 And what we have here is -- what I hear is, there's
14 some kind of a real -- of a pushback, like it's my fault
15 that she had to send me a discovery request.

16 Well, Your Honor, I've dealt with many, many attorneys
17 in my career and it's been a joy working with them. What I
18 can tell you, Your Honor, in this case, I want to be able to
19 rely on the formal discovery requests and their deadlines,
20 rather than engage in informal discovery. And I have every
21 right to do so.

22 And so, I guess, what I would like this Court to do --
23 well, first of all, the issue of Dick Travis as a mediator
24 just baffles me. I know Dick Travis. All right. But he's
25 not -- he's not the only mediator in the Second Circuit or

1 in the state that can be tapped to mediate cases.

2 THE COURT: Are you not agreeable to Mr. Travis doing
3 mediation?

4 THE DEFENDANT: I may be, but it depends on his schedule and
5 my schedule.

6 THE COURT: How about him as a person, are you --

7 THE DEFENDANT: I like Dick Travis.

8 THE COURT: I'm not asking your opinion of him as a person.
9 I'm just asking, would you have any issues or would you be
10 comfortable with Dick Travis doing the mediation?

11 THE DEFENDANT: I would have to ask him some more questions
12 first because it seems like the plaintiff's attorney is,
13 kind of, joined at the hip with him, and it's just like he's
14 the only mediator available. And I'd just like to find out
15 what's the relationship with Ms. Engel that makes her want
16 to reach out to you and you alone?

17 THE COURT: Ms. Engel, you want to speak to that?

18 MS. ENGEL: Yes, please. I'm not joined at the hip with Mr.
19 Travis. I'm sure the Court is well aware Mr. Travis is one
20 of the few mediators available. He's been doing it for a
21 very long time.

22 And I also checked with Mr. Travis to make sure he did
23 not feel uncomfortable handling the divorce case with Mr.
24 Clayton. I made sure of that because I know they probably
25 have practiced together or had at some point the same

1 circle, in terms of litigation.

2 That is just ridiculous to even say. And it's not
3 uncommon for one party to reach out to find a mediator.
4 And, quite frankly, there's never been an alternative
5 suggestion. I'm open to suggestions. I just want a
6 mediation scheduled.

7 THE COURT: I think that's the appropriate step. You know,
8 it depends on your -- I guess, your position and how you
9 practice, whether it's just a year that it's been pending or
10 already a year that it's been pending. And the divorce
11 pretrial order doesn't say discovery is complete and then
12 mediation. It just says prior to scheduling a pretrial
13 conference.

14 I would like to know that discovery is complete between
15 the parties and that there's been mediation. They're not
16 one before the other or mutually exclusive, anything like
17 that. So I think that's appropriate and it's something that
18 maybe a mediator can help you work through with some of
19 these other issues too.

20 THE DEFENDANT: Well, that's kind of the thing. I mean,
21 plaintiff talks about being able to work through these
22 discovery issues, but that hasn't been the case. I mean, I
23 provided everything they've asked me for, but here I am with
24 the motion to compel right now because matters can't be
25 worked through.

1 Your Honor, I just took them in the order they came.
2 So I just assumed one was, you know, one needed to be
3 completed before the second was completed. And especially
4 it goes with disclosure of experts, which obviously needs to
5 happen before a mediation can take place.

6 THE COURT: I don't think it has to happen before a
7 mediation. I think you must exchange preliminary -- it
8 says, "preliminary witnesses," so each side, kind of, knows
9 where the other is coming from. It's not an order that says
10 one week prior, you have to have all of your witnesses
11 notified and everything else.

12 It's kind of like on interrogatories when they say,
13 anyone who may know something about this incident, please
14 disclose them. But with preliminary witnesses, I don't know
15 that it is necessarily as much of an issue.

16 But I guess I'd like to hear your thoughts on that, Mr.
17 Clayton.

18 THE DEFENDANT: With preliminary witnesses, I agree.
19 Except, you know, experts are a separate category. And
20 again, you know, my understanding before the plaintiff today
21 agreed to, you know, do this -- consent to a --
22 irreconcilable differences, which I understand the Judge
23 isn't accepting now, but it may be we need to reach out to a
24 psychology expert, you know, once I got ahold of the
25 discovery documents I'm asking for.

1 Now, I see that's off the table, but before it wasn't.
2 That was something I had to come into court, you know,
3 prepared to argue for. I still need an economic expert. I
4 still haven't gotten all the discovery economically from the
5 plaintiff yet, as we stand here, because that's part of the
6 next part of my motion to compel discovery.

7 THE COURT: Which specific -- if you can just identify the
8 specific items. There are a couple that you've asked for
9 and the plaintiff has responded either there are no
10 documents available or see certain Bates stamps, and then
11 you respond and say you don't want to comb through
12 everything.

13 So which specific items? I want to try to pin that
14 down. So if I can at all help with that --

15 THE DEFENDANT: Sure.

16 THE COURT: -- between the parties.

17 THE DEFENDANT: I'm looking at the production of documents
18 Request Number 4.

19 THE COURT: Which date is that?

20 THE DEFENDANT: In my motion to compel documents, Exhibit 1.
21 It would be on page, um, I numbered them as pages of -- on
22 Page 33 -- Exhibit 1, Page 33, but that's as the
23 interrogatories -- Interrogatory Page 33. It's not actually
24 -- there's not actually 33 pages to this exhibit. But it's
25 on page 33 of the plaintiff's -- of my exhibit, which is 1,

1 2, 3, 4, 5 -- it would be on the sixth page.

2 THE COURT: Is that the 17-page document?

3 THE DEFENDANT: I don't believe so.

4 THE COURT: Which date was that one filed?

5 THE DEFENDANT: Um, this was filed under my motion to compel
6 or -- my motion to compel --

7 THE COURT: August 18th?

8 THE DEFENDANT: -- discovery. Um, let's see.

9 MS. ENGEL: I have a file stamped as 9-6, Exhibit 1.

10 THE COURT: The affidavit? Is that it, Mr. Clayton?

11 THE DEFENDANT: Yep. My motion -- this motion is -- these
12 documents were part of my September 6th pleading.

13 THE COURT: Okay. Let me make sure I'm on the same page
14 here, as well.

15 THE DEFENDANT: They relate to documents initially provided
16 -- or responses provided on June 14, 2022.

17 THE COURT: And how many pages is the document that you're
18 referencing?

19 THE DEFENDANT: Exhibit 1 is nine pages, Your Honor.

20 Let me correct myself. The production of documents
21 request and answers are on Page 7 of Exhibit 1.

22 THE COURT: I apologize. I have a system where all the
23 attachments -- or all the exhibits are entered, so I just
24 have a list of ten things. And that's why I asked how many
25 pages because it just says the number of pages, not the

1 actual page number.

2 The specific document that you're referencing, is that
3 three pages? Four pages?

4 THE DEFENDANT: It's -- what did I say? It's 11 pages.

5 THE COURT: And it's titled, again?

6 THE DEFENDANT: It would be Exhibit 1.

7 THE COURT: No. I mean, the caption of it.

8 THE DEFENDANT: "Plaintiff's Answers to Defendant's
9 Interrogatories and Request For Production of Documents to
10 Plaintiff's First Set."

11 THE COURT: Oh, okay. So I'm looking at the other --
12 plaintiff's supplemental -- third supplemental answers or
13 did you say fourth?

14 THE DEFENDANT: This would be, actually, the first.

15 THE COURT: Plaintiff's first supplemental answers.

16 THE DEFENDANT: Mn-hmm. Actually, there's a total of nine
17 pages to this exhibit, Your Honor. And their responses are
18 on Page 7 of that nine-page exhibit.

19 THE COURT: Is it okay if I just look at that one --

20 MS. ENGEL: Yeah.

21 THE COURT: To make sure that I'm on the same page.

22 Will you bring that up, Mr. Clayton?

23 MS. ENGEL: I'm assuming it's this; right?

24 THE DEFENDANT: Yeah.

25 THE COURT: Is it the supplemental -- I want to make sure

1 I'm reading the same thing. Will you flip one page, please.

2 THE DEFENDANT: That would not be my --

3 THE COURT: If you flip one page. That's the supplemental,
4 supplemental...

5 THE DEFENDANT: Mine would have Exhibit 1 in bold, I think,
6 in the bottom right-hand corner.

7 MS. ENGEL: Your Honor, I have a file-stamped copy if the
8 Court would like to --

9 THE COURT: What's the date and time?

10 MS. ENGEL: It's 9-6 at 10:08 a.m.

11 THE COURT: And it's part of the defendant's affidavit?

12 MS. ENGEL: Yes. I believe when I looked on Odyssey, it was
13 labeled as Exhibit 1.

14 THE COURT: Okay.

15 MS. ENGEL: I think the exhibits were filed as separate
16 individual filings.

17 THE COURT: They all were filed as separate filings. That's
18 why I'm having trouble.

19 MS. ENGEL: Yeah.

20 THE COURT: And it's on the request for production of
21 documents. Okay. I just looked to see what it was. I
22 didn't look or try to decipher any of your notes or
23 anything, Mr. Clayton.

24 THE DEFENDANT: Not much to decipher.

25 THE COURT: I'll have you continue. I'm sorry.

1 THE DEFENDANT: All right. So that, you know, production of
2 documents Number 4, you know, basically, talks about, you
3 know, a list of all marital assets. And I got a response,
4 well, look through our pages 1 through 2414. In other
5 words, find them yourself.

6 And, you know, since then, there's been other
7 supplement responses, basically a hodgepodge of things, but
8 they still haven't really -- you know, the plaintiff still
9 hasn't told me, okay, what is this list, and what are the
10 values of these marital assets that you claim?

11 And that's also the same -- well, pretty similar with
12 production of documents Number 5, which regards nonmarital
13 assets, which is, give me that same list of separate assets
14 together with your estimate of the value of those nonmarital
15 assets. And the same initial response was, you know, look
16 through documents 1 through 2414. And, basically, you know,
17 find them yourself.

18 And I believe I've looked through them, Your Honor, but
19 I believe the plaintiff is way better -- way better situated
20 to actually go through her own discovery documents and if
21 there's anything outside of them, go through those too and
22 identify what are these nonmarital assets you have. What
23 are the -- or what are these marital assets you have.

24 And on May 9th of 2022, plaintiff's attorney promised
25 my former attorney that, yeah, I'm able to identify all

1 those documents, whether marital or nonmarital.

2 And I still don't have anything. It's just -- just a
3 hodgepodge of information that, you know, requires basically
4 shifting the work that I believe plaintiff should be doing
5 in this matter of compiling her list of premarital and
6 marital assets, as opposed to me trying to, you know,
7 compile those lists myself.

8 So anyhow, then there was production of documents
9 Request Number 7. Well, you know, interestingly, plaintiff
10 actually answered that. There's nothing there regarding
11 whether there's any financial statements. Plaintiff, after,
12 you know, going through some kind of a half a page of
13 arguments basically, you know -- I don't even know if she
14 said it -- basically, you know, there are no financial
15 statements.

16 All right. Well, good. I can live with that. But
17 it's nice to know now instead of, you know, at the brink of
18 a hearing, finding out about those things.

19 So in sum, Your Honor, it's -- I believe the defendant
20 is entitled to have, you know, plaintiff put together these
21 lists of her marital and nonmarital assets. And it would
22 behoove her to do it because that would make the Court's job
23 easier to, you know, determine. As you sit and make your
24 equitable apportionment, what documents -- or what items
25 does the plaintiff claim are nonmarital or separate and what

1 does she claim are marital? And I believe it would make the
2 trial much easier. It would make my ability to determine
3 whether those -- that list is right or not much easier,
4 rather than just me being -- having to compile that list
5 myself. So that's all I have to say.

6 THE COURT: Thank you.

7 Ms. Engel, response to that, please.

8 MS. ENGEL: Thank you, Your Honor.

9 The action of defendant's motion to compel is to make
10 plaintiff provide documents that I think she has. We don't
11 have any more documents. We've answered the discovery.
12 Quite frankly, we've gone above and beyond supplementing
13 four times. I can't remember the last time I had a case
14 where another attorney did that.

15 It's not my job to go through the documents for
16 defendant. We have provided him with Bates-stamped
17 documents. In return, he's provided me with over 120 emails
18 -- separate emails with separate attachments, which I then
19 had to comb through. So talk about shifting the work. My
20 client has paid for me to go through those emails. So that
21 is an absolutely unfair statement to say. And, you know
22 what, I also didn't raise the issue to defendant saying,
23 hey, I need you to provide me some consolation of discovery,
24 because he, again, represents himself, regardless of the
25 fact that he's also an attorney.

1 Additionally, in your request for production Number 4
2 and 5 -- if defendant completely read the discovery, even
3 duplicative number of interrogatories Number 17 and 48,
4 they're the same questions. They ask for the same
5 information in which complete answers were also provided to
6 those.

7 And what defendant also failed to provide to the Court
8 is an Excel -- he does reference it as an exhibit with his
9 writings on it -- there's an Excel spreadsheet, Plaintiff's
10 Exhibits 18 and 19, which is filed on that 9-6 date. It's
11 an itemized spreadsheet made by my client with values and
12 personal property laid out in there.

13 Now, if defendant thinks it's insufficient, that is on
14 him. He's confusing his role with personal knowledge and
15 his role as an attorney. He's imputing what he thinks my
16 client should be answering or remembering or providing. If
17 there is a dispute, that is for trial or mediation or
18 negotiations.

19 My client provided the information she has. She
20 doesn't have anything else. She also sufficiently and
21 adequately answered the discovery. There's nothing else to
22 say. There's nothing else to provide. She provided her
23 list. We complied with the discovery and supplemented four
24 times in hopes of avoiding a motion to compel despite the
25 outrageous demands of defendant in terms of the things he

1 thinks she should have.

2 He has his own information. If you look through his
3 letters in which he talks about defendant -- or excuse me --
4 plaintiff needs to answer this, it's riddled with personal
5 facts and personal arguments. The line is being blurred
6 between the two. We provided the information. His personal
7 knowledge is irrelevant to what my client puts in her
8 answers.

9 In regards to production -- or excuse me -- request for
10 production Number 7, when we had our meet and confer, his
11 complaint was that we referenced a wide variety of
12 documents, not that we didn't answer yes or no.

13 Also, defendant has the knowledge of care, custody, and
14 control to know what's in the financial statements because
15 he filed the taxes on behalf of the parties, which
16 ultimately left him with the finances. He would have that
17 information. We finally said -- supplemented and just said,
18 no, please stop asking us about it. We don't have any more
19 documents.

20 And he also has talked about the number of documents
21 provided. Just to clarify, his attorney previously asked
22 for seven years' worth of records. That amounts to a lot of
23 documents, especially when my client did a good job of
24 keeping things.

25 THE COURT: Are those the seven years of records that are

1 Bates stamped?

2 MS. ENGEL: Yes. I believe we're up to 2,600, Your Honor.
3 And everything's been provided.

4 And in addition to that, we also sent him an email
5 trying to -- when he asked for us to supplement specific
6 things, we sent him separate -- an email laying out
7 everything as easily as we could. We've been nothing but
8 trying to help him with it and provide him with all the
9 information. There's simply just nothing left to provide
10 despite the fact that he believes there is. But his belief
11 is based on his own personal knowledge, not documents in my
12 client's possession.

13 I also believe -- we also believe this is, again, a
14 tactic to delay, continue, and drive up the cost of
15 litigation, especially when he sends 120 separate emails,
16 when he could provide them on a flash drive, put them on a
17 CD, provide them Bate stamped. Just because he's
18 unrepresented doesn't mean he doesn't have the knowledge,
19 the skills, and the wherewithal to provide adequate
20 discovery.

21 His motion is baseless, and, quite frankly, it's
22 wasting our time, the Court's time. And in addition, he
23 also simply didn't look at the answers to interrogatories
24 Number 58. It was in there. Then we had to spend time
25 answering it, even though he stated no. Just simply review

1 the supplemental discovery.

2 Plaintiff adequately and sufficiently answered her
3 discovery. There's nothing else to produce. She
4 established she correctly gave the information so there'd be
5 no trial by ambush. Because she's done this, pursuant to
6 15-6-37-A-C, we're asking for attorney's fees for having to
7 respond to this motion to compel.

8 THE COURT: Where -- at what point, Mr. Clayton, were you
9 getting responses that said Exhibits 1 through 2,400? I
10 just ask because the ones that I see for the answers gives
11 specific ranges, such as the 2480 through 2499, the 2415
12 through 2479.

13 THE DEFENDANT: I'm looking at the plaintiff's answers. I'm
14 looking at my Exhibit 1, Your Honor. And let me just
15 address a couple other things. I produced records going
16 back seven years myself, Your Honor. And I carefully
17 delineated and identified exactly what records I've
18 submitted to the other side so they can easily categorize
19 them.

20 This has not been a hardship on the defendant. I have
21 way more records to have to disclose, but I didn't -- I've
22 been happy to do it. As a matter of fact, a lot of time
23 early in this divorce was spent compiling all those records
24 and disposing them.

25 I just wonder why there's such a resistance for the

1 plaintiff to go through the documents she provided which
2 identify a whole bunch of different purchases, et cetera,
3 and property, and 2400 pages' worth, and write down, okay,
4 this is my marital property, this is my nonmarital property.
5 Just go and answer the questions that way. Here's the page
6 that it's on. I've done that myself, Your Honor, for the
7 plaintiff. So --

8 THE COURT: If I may, sir, what -- I see one response that
9 identifies a supplemental answer, as well, to vehicles. And
10 then otherwise, there is that spreadsheet that the plaintiff
11 produced. I think it's called Plaintiff's 18 and 19, if I
12 recall correctly, that goes through -- and then you had made
13 marks on it and I think filed it attached to this --

14 THE DEFENDANT: Right.

15 THE COURT: -- motion. Does that give you information on
16 what she is and is not claiming as far as property?

17 THE DEFENDANT: You know, it's so sketchy compared to all
18 the property that's out there.

19 THE COURT: So what is missing from there?

20 THE DEFENDANT: Well, I would say there's a lot that's
21 missing as far as exhibits. One, her Bates stamps 1 through
22 2414 which lists a whole bunch of purchases of things and
23 which should be categorized somewhere.

24 THE COURT: I understand that. In the, I understand,
25 basically, the production of documents, your argument is

1 it's fairly inconvenient and annoying to go through. Is
2 that a fair statement?

3 THE DEFENDANT: Well, it's very --

4 THE COURT: Voluminous?

5 THE DEFENDANT: -- unfair and overbearing, I think.

6 THE COURT: All right.

7 THE DEFENDANT: I can't read -- I can't get inside the
8 plaintiff's mind.

9 THE COURT: You can't, but it is your responsibility to go
10 through those documents --

11 THE DEFENDANT: And I have --

12 THE COURT: -- if you did have.

13 THE DEFENDANT: -- and I have.

14 THE COURT: Okay. So if you've gone through the documents,
15 then you can organize them as you want to. You can put your
16 own tabs, or whatever, on them as well, so you know where
17 they are and not every time you're looking through 2,400
18 pages of documents.

19 Beyond that, what I would like to do for purposes of
20 discovery -- to make this very clear -- if there are items
21 listed on that spreadsheet, and, obviously, spreadsheets
22 are, you know, what we all work towards in these cases -- on
23 Plaintiff's Exhibit 18 and 19 -- and you had made some notes
24 on that, Mr. Clayton?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Would you please specifically write which items
2 you believe need to be addressed that are not on there.

3 THE DEFENDANT: Okay.

4 THE COURT: Because I think if you can narrow it down to
5 specific items, that would be helpful. Because if plaintiff
6 does not have any further documentation to produce, then we
7 run into a little bit of a wall because we're asking for
8 things that we can't get, or vice versa.

9 And same with you, Ms. Engel. If there's anything on
10 that piece of paper that you don't believe Mr. Clayton has
11 identified as one piece of property or the other, I'm
12 ordering both sides to disclose those to the other party by
13 the end of the day on Friday. That's the scheduling order
14 of the Court.

15 Identify whatever property you don't know to the other
16 side, and if there's not any unidentified property, then
17 we're okay going forward. If there's unidentified property,
18 that has to be a specific item of unidentified property so
19 that each side can know whether they're claiming it as
20 personal property -- or I should say separate property -- or
21 marital property. And then we can get everything included.

22 MS. ENGEL: Also, Your Honor, just so you're aware, I do
23 have the property spreadsheet that we use for trial. I've
24 provided that to him in relation to settlement negotiations.
25 So we do have that started for the Court's convenience, as

1 well, which incorporates this information.

2 THE COURT: I don't think I need it at this point. I would
3 trust that you guys can identify, you know, if there are
4 other items.

5 Mr. Clayton, for example, that gives you an opportunity
6 to say what about this car? What about this account? But
7 then you can identify specific items, and then it would
8 help, I think, the plaintiff understand specifically what
9 you're asking for.

10 Likewise, if there's specific items that you don't see
11 or are wondering about, please identify those to Mr. Clayton
12 by Friday so that he has an opportunity to respond as to
13 whether he believes those are separate or marital property.

14 THE DEFENDANT: Your Honor, I have business to conduct here
15 in Sioux Falls tomorrow. And then I spend a day driving
16 back to Chicago. So Friday is going to be a little bit -- I
17 don't want anybody to think, oh, my goodness, here's Mr.
18 Clayton delaying things again. But I know I'm going to need
19 more time than just, you know, Thursday -- and then Thursday
20 -- and then providing the information on Friday.

21 THE COURT: Next Wednesday the 12th, by the end of the day.
22 If the parties can be very specific with each other as to
23 what item or property -- not a potential range of things,
24 but a specific item or property by Wednesday, October 12th,
25 I think that's sufficient.

1 In addition, I've heard from both parties regarding
2 mediation and I think it is appropriate to do a large part
3 of the discovery prior to mediation so you can identify some
4 of those potential witnesses that were mentioned.

5 What I do believe, however, is that the parties have
6 been going back and forth enough that I think there's enough
7 information that's been transferred. Also, there's already
8 been a spreadsheet done and specific issues identified by
9 the parties. I see no reason why this case couldn't be
10 scheduled for mediation. And it would be the Court's hope
11 that that mediation process would help tease out any
12 remaining issues that are there, may help resolve them, and
13 hopefully get everybody more on the same page in a less
14 conflicting way.

15 You don't always have to agree to everything, but,
16 obviously, um, if you know where each other is coming from,
17 I think that would help. That's why I put that deadline for
18 next Wednesday. And that's why I do believe it's
19 appropriate to order mediation in the case.

20 If something happens in mediation or something happens
21 after mediation, I do not want either counsel to think you
22 are stuck with the preliminary list of witnesses or anything
23 like that that you provide each other. That's certainly not
24 the intent of the Court that you're bound by anything that
25 you may provide, but it gives the other party reasonable

1 notice of where you're coming from. And I feel like,
2 through the filings, that I think each side has made fairly
3 clear where they're coming from in this case.

4 So what I'm going to do is order that the plaintiff's
5 motion to compel mediation be granted at this point. I do
6 believe it's in the interest of moving the case along, and
7 based on filings already, that there's been enough disclosed
8 to hopefully make it fruitful and that mediation be, at
9 least, scheduled if you can within the next couple of weeks.

10 So if we can have a date that works for the parties and
11 for either Mr. Travis or another mediator that the parties
12 may agree upon, have that scheduled in the next couple of
13 weeks, that would be great. If one of the parties would
14 just shoot me an email and let me know that it's been
15 scheduled, I'll make a note on my file so that I know.

16 And regarding the temporary restraining order, I think
17 my oral decision on that was pretty clear earlier. Any of
18 those other purchases that may seem to blatantly be separate
19 property from you, Mr. Clayton, still need to be at least
20 run by the plaintiff before things are sold, transferred,
21 bought, and the like, especially those personal assets of
22 cash on hand, stocks, things like that.

23 What I ask is that the parties keep the amounts in
24 abeyance because the Court still needs to make a
25 determination on whether those items that were listed by the

1 plaintiff are marital or nonmarital property. There's
2 already been agreement and stipulation on the record
3 regarding the home assets. I already determined the LLC
4 funds, regarding the I bonds, POET shares, Lake Area Corn
5 Processors units, \$50,000 donation, the finances used to buy
6 a condo in Chicago, and the jewelry. Those items will still
7 need to be determined by the Court, and the amounts tied to
8 those items will still need to be determined by the Court
9 whether they're separate or marital assets.

10 I'm not going to order, Mr. Clayton, that you undo
11 anything that you've done, but know, too, that the POET
12 shares of \$90,000, however much you paid for the condo,
13 \$50,000 to USD, things like that, may be assets that you
14 need to account for in the division of property at the end
15 of the day.

16 THE DEFENDANT: I understand, Your Honor. And I will
17 account for those and everything else I have.

18 THE COURT: Sounds great. Then we're all on the same page.

19 And the -- there wasn't a value listed, so I ask you to
20 produce the amount that you paid for the condo in Chicago so
21 that value is there, as well.

22 THE DEFENDANT: I believe I provided a settlement statement
23 to the plaintiff.

24 THE COURT: Okay. That's great.

25 MS. ENGEL: I do not recall, but I'm happy to check.

1 THE COURT: Okay. Then if you don't have it, just email for
2 it and ask for it again, and we'll keep moving forward.

3 Ms. Engel, was there anything else?

4 I'm going to hold the determination of attorney's fees
5 in abeyance depending on what happens in the next few
6 months.

7 Anything else from your end, Ms. Engel?

8 MS. ENGEL: No, Your Honor.

9 THE COURT: All right.

10 Mr. Clayton, anything else from your end, sir?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: All right. Thank you, both, for coming in at
13 1:00 instead of 1:30 today. We did need the extra time, it
14 looks like, so I appreciate it.

15 Would you be willing to prepare a proposed order?

16 MS. ENGEL: I will, Your Honor.

17 THE COURT: Just go ahead and loop the other in it, and let
18 me know if there are objections before I sign and file
19 anything.

20 THE DEFENDANT: Okay.

21 THE COURT: All right. We're in recess.

22 (At which time, the proceeding concluded.)

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STATE OF SOUTH DAKOTA)

5

COUNTY OF LINCOLN)

:SS

CERTIFICATE

6

I, JENA SKORCZEWSKI, Court Reporter and Notary Public in the above-named County and State, do certify that I reported in stenotype the proceedings of the foregoing matter; that I thereafter transcribed said stenotype notes; that the foregoing pages 1-52 inclusive are a true, full and correct transcription of my stenotype notes.

13

14

IN TESTIMONY WHEREOF, I hereto set my hand and official seal this 20th day of January 2025.

15

16

/s/ Jena Skorczewski

17

JENA SKORCZEWSKI

18

Court Reporter

19

Commission Expires: 09-25-25

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STATE OF SOUTH DAKOTA)
: SS
COUNTY OF LINCOLN)

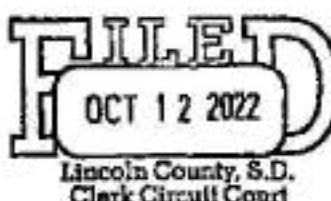
IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

ANNA M. CLAYTON, Plaintiff, vs. THOMAS W. CLAYTON, Defendant.	41DIV21-190 ORDER ON PLAINTIFF'S MOTION FOR VIOLATION OF TEMPORARY RESTRAINING ORDER AND MOTION TO COMPEL SCHEDULING OF MEDIATION AND DEFENDANT'S MOTION TO COMPEL
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This matter having come before the Court in the Courtroom of the Lincoln County Courthouse, Canton, South Dakota, on the 4th day of October, 2022, with the Honorable Rachel R. Rasmussen, Judge of the Court presiding, and the Plaintiff appearing in person and with counsel, Amanda W. Engel of the Duncan Law Firm, Sioux Falls, South Dakota, and the Defendant appearing in person and on behalf of himself, and the Court, after reviewing the file herein and the arguments of counsel having been heard, hereby enters the following Order,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Compel Mediation is GRANTED in order to keep this matter moving forward. Sufficient discovery has been conducted by and between the parties for mediation to occur. Mediation must be scheduled within the next two weeks. Parties must email the mediation date to the Court once scheduled.

IT IS FURTHER ORDERED that Defendant has sold and made purchases that are in violation of the Temporary Restraining Order.



IT IS FURTHER ORDERED that Defendant is specifically prohibited from any further violations of the Temporary Restraining Order.

IT IS FURTHER ORDERED that the Court determines what is marital property and such determination should not be made after the fact.

IT IS FURTHER ORDERED that it is within the Court's authority to determine whether the LLC proceeds, marital home proceeds, I-Bonds, Poet Shares, Lake Area Corn Processing Shares, USD Donation, purchase of the Chicago Condo, and the jewelry are separate or marital property. These items may be accounted for in the Court's property division and the funds therefrom shall held at abeyance by Defendant until a determination is made by the Court or the parties reach a mutual agreement.

IT IS FURTHER ORDERED that Defendant must obtain consent from Plaintiff before any assets, funds, or purchases, outside basic living necessities, are made by Defendant. If no agreement is reached between the parties, the matter shall be brought before and determined by the Court. The Court will hear such requests on an expedited basis to prevent any interference with or impact on the requested sale or purchase.

IT IS FURTHER ORDERED that Plaintiff's request for attorney fees is held in abeyance to see how this matter proceeds over the next few months.

IT IS FURTHER ORDERED that the parties are to provide to the other party an updated property list, pursuant to Defendant's Request for Productions Nos. 4 and 5, identifying specific items contained therein as marital property and/or as separate property which may not yet have been provided. Such information shall be provided to the other party by 5:00 p.m. on Wednesday, October 12, 2022.

Dated this 6th day of October, 2022.

R.R.R.
Honorable Rachel R. Rasmussen
Circuit Court Judge

ATTEST:
BRITTAN ANDERSON, Clerk

By: Jm Baker
Deputy



STATE OF SOUTH DAKOTA)
:SS
COUNTY OF LINCOLN)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

ANNA M. CLAYTON,
Plaintiff,
vs.
THOMAS W. CLAYTON,
Defendant.

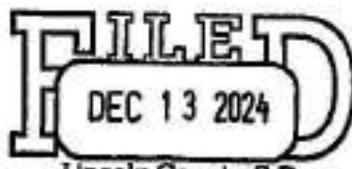
41DIV21-190

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER AFTER TRIAL

A trial in this case was heard on September 3-6, 2024, in the Lincoln County Courthouse in Canton, South Dakota. Plaintiff was personally present and represented by Michele A. Munson. Defendant was personally present and represented by Elizabeth A. Rosenbaum. The Court heard witness testimony and received and reviewed numerous separate and joint exhibits. Based upon the whole of the record, the Court hereby makes the following Findings of Fact and Conclusions of Law as to the issues of divorce, property classification, and property division.

FINDINGS OF FACT

1. Plaintiff Anna Clayton ("Plaintiff" or "Anna") and Defendant Thomas Clayton ("Defendant" or "Tom") were married on June 6, 2008, in Minnehaha County, South Dakota.
2. The parties separated in May of 2021, and Plaintiff filed this action for divorce on October 15, 2021. The Defendant signed the Admission of Service on October 21, 2021.
3. At the time of the trial the Plaintiff was 64 years old, and the Defendant was 69 years old.
4. The parties did not enter into a premarital agreement or contract. Both parties testified that the Defendant had a premarital agreement for his first marriage, and he believed "they didn't work." The Defendant believes Plaintiff promised she would not take his money.



5. The parties lived together as a married couple at 5012 South Elderberry Circle in Sioux Falls, Lincoln County (hereinafter "Elderberry home") throughout their marriage.
6. The parties do not have any minor children together. However, both parties had children from prior marriages that they raised together during the marriage, and they treated all children as part of their blended family.
7. The Plaintiff did not receive the amount of child support she was supposed to receive during the marriage.
8. The Parties used approximately \$534,000 of income during the marriage to satisfy the Defendant's child support and alimony obligations following his 2006 divorce.
9. The parties shared or divided the duties necessary to maintain a household such as cooking, grocery shopping, and landscaping.
10. The Plaintiff contributed more than a de minimus amount to household maintenance.
11. The parties are educated and accomplished professionals who each brought their own assets and talents into the marriage.
12. The Plaintiff worked as an independent financial advisor prior to and during the marriage. She put in long hours and was financially successful, often being the primary income producer of the household.¹
13. The Plaintiff contributed more than a de minimus amount to the couples' financial success.
14. The Defendant was a successful stock trader prior to the marriage, and he worked as an attorney and financial advisor during the marriage. He did not believe his law practice made much money, but he was satisfied with his practice.
15. The Plaintiff has not calculated what she believes to be the value of her premarital estate.

¹ For example, Plaintiff's net social security earning from 2016-2021 was \$461,421, and Defendant's was \$11,991.

16. The Defendant calculated his net premarital estate from his prior earnings, inheritance received roughly halfway into the marriage, and assets he kept in his possession after his 2006 divorce.
17. In 2009, one year into the marriage, the parties jointly created Clayton Investment Group, LLC (the "Group"). The parties both had signature authority over the LLC's account.
18. The Group rented office space for both Plaintiff's financial advising Defendant's law practice from 2009 to 2020. The Group shared office space, utilities, staff, and equipment, and they often referred clients to each other.
19. All of Plaintiff's income between 2009-2020 went into the Group.
20. Both parties brought direct and indirect value to the Group, and both benefitted financially from the structure of the Group.
21. The Plaintiff sold her book of business in 2020 and stayed on an additional year to help the new owner during a transition period. She receives monthly buyout payments through 2026.
22. The parties' income allowed them to enjoy a middle to higher standard of living during the marriage.
23. The parties received income during the marriage from their respective careers, farm rental income, and investment income from properties² and stocks.
24. The parties reported income from all sources on joint tax returns throughout the marriage, and both parties paid toward the tax liabilities owed.
25. The Plaintiff currently works full time as a certified medical assistant ("CMA") and makes \$19 an hour. She finds her work fulfilling and wants to work another three to four years.

² For example, the parties created 5th Ave, LLC, to acquire and sell investment properties during the marriage.

26. Plaintiff's current CMA employment income, by itself, is not enough to cover her monthly expenses in the future.
27. The Defendant has gone into retirement and does not plan to work in the future. His current source of income includes rents and investments and social security income.
28. The parties' respective financial experts are credible.
29. The Plaintiff's expert is Charles Nelson, a CPA with 41 years of experience in the tax and financial world. The Defendant's expert is Michael Snyder, a CPA with 15 years of experience.
30. The financial experts did not conduct the same type of financial analysis.
31. Mr. Nelson reviewed and made findings based on the parties' financial transactions during the marriage. Mr. Nelson's report was based on a review of the discovery documents and not on any interviews.³
32. Mr. Nelson did not calculate the value of assets that either party brought into the marriage.
33. Mr. Snyder valued the Defendant's net premarital estate to trace those amounts and inheritance amounts throughout the marriage. Mr. Snyder's report was based on a review of discovery, and based on financial summaries and estimations provided by, and interviews with, the Defendant.
34. Mr. Snyder valued The Defendant's net premarital estate at \$2,171,936, plus \$430,136 in inheritance from his parents, for a total of \$2,602,072.
35. The \$430,139 in inheritance funds appear to come from inheritance received during the marriage. These funds were intermingled with other funds in various accounts over the years.

³ Mr. Nelson testified that his review of financial and tax documents was more complicated by the way the Defendant forwarded the information.

36. Mr. Snyder concluded that the amount of the Defendant's net premarital estate and inheritance funds were sufficient to cover all assets (including recent purchases) the Defendant claims are non-marital assets.

37. The premarital and inheritance monies were deposited into accounts and/or transferred into accounts that were intermingled with other funds received, or expenses paid, during the marriage.

38. Mr. Snyder could not do a dollar-to-dollar tracing of the Defendant's claimed premarital funds throughout the marriage.

39. Several of the assets being claimed as premarital by the Defendant no longer exist.

40. Mr. Snyder recognized an amount of incorrect reporting and discrepancies when reviewing joint tax returns (and amendments) the Defendant prepared and filed, noting that the Defendant should have utilized the services of a CPA.

41. Tom and Anna's assets grew and changed over the past 16 years of their marriage.

42. The Plaintiff believes the value of the marital estate at the time of the trial is \$7,088,854.

43. The Defendant believes the value of the marital estate at the time of the trial is \$1,470,706.

44. The parties each testified, called witnesses, and submitted a plethora of financial exhibits for a determination of what assets should be included in the marital estate, their respective value, and an equitable division those assets.

Temporary Restraining Order

45. Some items on the parties' joint property spreadsheet have changed in form and/or overlap in value based on the Defendant's actions while this case has been pending.

46. The Defendant made a request to distribute proceeds from a property held by 5th Street, LLC, on November 22, 2021. The motion was denied by the Court in an order signed and

filed on February 3, 2022, which stated that “[t]he Court has the authority to determine what is and is not marital property....”

47. The Defendant made the following transfers after his admission of service of the temporary restraining order and after the February 3, 2022 hearing and this Court’s order: (1) sale of 20,000 shares of Lake Area Corn Processors (“LACP”) for \$71,393 (02/28/22); (2) purchase of U.S. Treasury I-bond for \$20,000 (05/13/22); (3) sale of 20,000 Poet shares for \$90,440 (05/18/22); (4) gift to University of South Dakota (“USD”) Law School for \$50,000 (06/29/22); and (5) purchase of Chicago condominium for \$219,000 (07/29/22).
48. On October 4, 2022, the Defendant was found in violation of the Court’s directives and “specifically prohibited from any further violations....” The October 4, 2022 hearing Order included a similar directive prohibiting such behavior.
49. Tom’s position at hearings, in his filings, and at trial is that he could deplete or change the nature of these assets because he was using “non-marital funds.”
50. Tom dissipated the marital estate by moving and changing marital funds after he had been served with the TRO and admonished by the Court.
51. Tom violated the TRO and Court directives. His dissipation of marital assets is greater than the amount of non-marital assets he is awarded in this equitable division of property.

317 Acres of Perry Township Farmland

52. Tom purchased 317 acres of farmland in Perry Township (“the farmland”) in 1989 for \$216,000. He retained ownership of it following his 2006 divorce and brought that asset into his marriage with Anna in 2008.
53. The 2008 tax assessed value of the farmland was \$589,331.

54. The property was improved during the marriage with the addition of tile and waterways. The main reason for the farmland's appreciation in value is the widespread increase in farmland value over the past couple decades.

55. Tom estimates the farmland current value at \$2,701,457; Anna's real estate expert values the farmland at \$3,500.000 based on a comparative market analysis.

56. Anna's real estate expert is credible, and her opinion is a reasonable value based on expertise and experience. The current value of the farmland is \$3,500,000.

57. The farmland appreciated in value by \$2,910,669 during the marriage.

58. The farm ownership structure changed throughout the course of the marriage.

59. Prior to 2017, Tom held title to the farmland in a partnership with himself and his profit-sharing plan ("PSP").

60. Tom transferred the PSP's property interest to himself individually in 2017. The deed was prepared by "Thomas W. Clayton, Esq." and states that the PSP transferred its interest to Tom individually and "as a married man."

61. Tom created the TWC Revocable Trust in 2019.

62. In 2021, Tom transferred the farmland by a deed prepared by "Thomas W. Clayton, Esq," that again states that he personally and "as a married man" transferred his interest into the TWC Trust.

63. Tom spent more time than Anna on the maintenance and decisions of the farm. Tom was the point of contact for renters, and he personally visited the farmland on a more regular basis than Anna. Neither party physically worked the farm ground.

64. The Group's office equipment and space were occasionally used for tasks related to the operation or lease of the farm.

65. Anna encouraged Tom to talk with her family about changing from a crop share agreement to a straight cash rent on the farmland. Tom agreed, and about a decade ago they had a conference with Anna's family and did switch to a straight cash rent structure.

66. There has been a renter each year on the property. No signed cash rent agreement was entered into evidence.

67. Cash rent provided the couple with a predictable income and reduced Tom's stress related to harvest yields. This structure was an income guarantee and allowed Tom to work less, which is reflected in Tom's amount of earned social security income over the past decade.

68. The change in rental agreement did not change the overall financial accounting, and most of the farmland income and expense is reflected in the farm accounts.

69. A separate farm account was kept for farm income and expenses. The farm account was occasionally used to pay personal expenses such as Christmas gifts, make donations, HOA dues, and alimony.

70. Tom testified that money was occasionally transferred from the farm account "when necessary" to pay personal expenses, which coincides with the amount of funds transferred out of the farm checking account into Tom's personal checking account.

71. Tom's non-farm income was relatively small, and likely not enough for the payment of all family expenses and maintenance of the household without Anna's income.

72. Anna maintained a fulltime job during the marriage. Anna's income for the household allowed Tom to keep the farmland income somewhat separate.

73. The farm income and expenses were included in the parties' joint tax returns throughout the marriage, and both parties have been financially responsible for any payments due relative to the property.

74. Tom and Anna each contributed directly and indirectly to the farmland over the past 16 years, during which time the farmland increased in value by almost six times.
75. The farmland will continue to be an income-producing property and source of revenue.
76. The farmland is a marital asset and included in the marital estate.

Elderberry Home

77. Tom owned the home at 5012 Elderberry since 1992, and he retained sole ownership of it following his 2006 divorce.
78. Anna and her son moved into the Elderberry home in 2008, and the parties lived there together until Anna and her son moved out in May 2021.
79. The tax-assessed value of the home in 2008 was \$432,624. The home sold for \$872,500 on June 16, 2022.
80. There were two mortgages on the home over the course of the marriage, and both Tom and Anna's names were on the notes, mortgages, and satisfactions of mortgage.
81. The Elderberry home was used as collateral for the parties' joint company, 5th Ave, LLC. The collateral debt on the home was paid off during the marriage.
82. Major and minor improvements were made to the home during the marriage. Improvements were paid for by both parties from income they each received during the marriage.
83. The Defendant's detailed lists of home maintenance show that he and Anna each contributed financially to the home through renovations, furniture purchases, and general home utility and maintenance expenses.
84. Tom's spreadsheets show that Anna did not directly contribute as much or more to the home financially than he did.

85. Accepting Tom's spreadsheets as true, Anna directly contributed over \$20,000 to the home.
86. The parties entered into a Stipulation and Agreement for the sale of the Elderberry home. They agreed that the Defendant owned the property at the time of their marriage and a "certain portion of the Elderberry Property constitutes non-marital and separate property of the Defendant."
87. The net home proceeds are \$804,277, which is \$371,653 more than the 2008 tax assessed value. The parties agreed that the Defendant would be able to keep the 2008 tax assessed value, \$432,624, "from the house proceeds in his possession during the pendency of this divorce" and "[t]he remaining balance of the proceeds shall be held in Defendant's attorney's' trust account.... ."
88. The agreement did not designate the \$432,624 as the Defendant's non-marital property that Tom could transfer or use as he wished. The parties specifically agreed that nothing in the Stipulation set aside any amount of home proceeds as non-marital, and nothing in the stipulation "constituted a final property settlement as to any property."
89. The Defendant did not keep \$432,624 in his possession during the pendency of the divorce. Instead, he used those funds to purchase other assets and make gifts.
90. Tom's failure to keep the \$432,624 in his possession unnecessarily complicates the property division determination because the funds are not easily located in any one account or asset.
91. At a minimum, Tom dissipated \$432,624 by using it to purchase a condominium in Chicago for \$219,000 and donating \$50,000 to USD Law School. It is unclear where the remaining \$163,624 is located.
92. Tom was to put the remaining \$371,653 net proceeds into his attorney's trust account. Instead, Tom put the \$371,653 into his own attorney-client trust account.

93. According to a 2022 tax return document, the home collected \$8,613 in rent prior to the June 2022 sale. This money was accepted by Tom but is not included in the joint property spreadsheet or in any identifiable location.

94. Tom and Anna each contributed to the upkeep and running of the household. They each did home chores such as yard projects, getting groceries, laundry, and cooking.

95. Tom and Anna both cared for the children in the home, transported them to school and activities, and participated in their day to day lives.

96. Both parties contributed indirectly to the home, and neither contributed more than the other.

97. The Elderberry home is a martial asset and will be included in the marital estate. Equity requires the Court to follow the parties' Stipulation that recognizes some portion of the Elderberry home is non-marital.

98. Tom was in the Elderberry home himself for 2 of the past 18 years, from 2006-2008. The sale proceeds of \$804,277, divided by 18 years, is \$44,682 per year. That amount, times the two years Tom was in the home prior to the marriage, is \$89,364.

99. The \$89,364 of net home proceeds will be Tom's premarital portion and not included in the marital estate. This is a reasonable amount based upon the length of marriage, appreciation of the property during the marriage, and the parties' joint contributions to the maintenance and success of the home.

100. The remaining \$714,913 of home proceeds will be included in the marital estate.

Palm Desert

101. The Palm Desert home is a property the parties looked at together for a retirement home. They decided to purchase it before retirement and use it as a rental property with the goal to live there upon retirement.
102. Tom and Anna interviewed condo property managers together in the Spring of 2019.
103. The parties signed an escrow agreement to buy the condo as husband and wife on May 10, 2019.
104. Tom created the TWC Revocable Trust on May 14, 2019. He signed an amended escrow agreement on May 15, 2019, which removed Anna's signature completely and labeled Tom's signature line as "Trustee" of the TWC Trust.
105. Tom completed the TWC Trust's purchase of the condo on May 23, 2019 for approximately \$350,000. The current value of the condo is approximately \$550,000, so the property appreciation over the past five years is roughly \$200,000.
106. Tom believes the condo is not marital because it is in his Trust's name and because the funds used to purchase the condo were all premarital and inherited funds.
107. Anna believes the condo is a marital asset because they shopped for it together, she thought they were buying it together, and they have both invested in it over the marriage.
108. Funds used to purchase the condo came from at least 4 different accounts: farm, TWC Revocable Trust, Tom's attorney-client trust account, and SEP distributions.
109. Mr. Snyder traced Tom's claimed premarital or inherited funds into various accounts, either by one step or multiple. He then concluded there were enough premarital or inherited funds in each of the accounts to cover the total purchase price of the condo.

110. All accounts used for the condo purchase were used for more than just the Palm Desert condo income and expense. No separate account or business was set up to keep the condo separate from the parties' other finances.

111. Property taxes on the condo were paid by funds made during the marriage.

112. Mr. Snyder believed flow of rental income was not clear, and Mr. Nelson believed the rental income and expenses were not accurately reported on the joint tax return.

113. The rental income and expenses for such things as property taxes occurred during the marriage and was accounted for (albeit incorrectly) on the parties' joint tax returns.⁴

114. Tom believes he invested roughly \$47,000 in direct financial equity contributions, and that Anna's total for the same was about \$7,600.

115. Taking Tom's spreadsheet as true, \$7,600 is roughly 16% of the total costs and is therefore more than no or a de minimus contribution to the condo expenses.

116. The parties agreed that they each contributed to the condo indirectly by cleaning, furnishing, decorating, and buying supplies.

117. Both parties contributed indirectly and directly to the upkeep and maintenance of this property.

118. Tom has retained possession of the property and considers it his primary residence.

119. The reasonable property value at the time of the divorce trial was \$550,000. This full amount is included in the marital estate.

⁴ Both experts agreed that the Palm Desert condo should not have been entered as a rental property on the joint tax return because the parties stayed there themselves for much more than 14 days in a year.

Ethanol Investments

120. Tom invested in ethanol in 1999, about halfway through his prior marriage that ended in 2006. Tom retained the ethanol shares following his first marriage and throughout his marriage to Anna.

121. Tom used ethanol income made both before and during his marriage to Anna to help pay the property settlement, alimony, and child support owed to his ex-wife.

122. Tom's estimate of Otter Creek Ethanol and Sioux River Ethanol before his marriage to Anna in 2008 is \$60,000 and \$40,000 respectively, for a total value of \$100,000.⁵

123. Anna was not involved in the acquisition or maintenance of the ethanol shares.

124. Tom made the ethanol share ownership and investment decisions throughout the marriage.

125. The ethanol investments resulted in a significant amount of income to parties during the marriage.

126. The form of the ethanol investments changed over the course of the marriage, and Anna was not made aware of these changes or ownership transfers.

127. Tom sold 20,000 LACP shares on February 28, 2022, for \$71,313. Tom used \$20,000 of the sale proceeds to purchase U.S. Treasury I-Bonds. It is unclear where the remaining sale proceeds are located.

128. Tom sold 20,000 Poet shares on May 18, 2022, for \$90,440. It is unclear where the sale proceeds are located.

⁵ The Otter Creek and Sioux River ethanol no longer exist. The ethanol interests in those companies are now in the LACP and Poet.

129. Both parties agree the value of the remaining 20,000 LACP shares is \$100,000, which is equal to what Tom's estimate of all ethanol investments were prior to his marriage to Anna in 2008.

130. The ethanol shares were profitable and increased in value throughout the marriage.

131. All taxes paid on passive ethanol income received during the marriage was on a K-1 and included on a Schedule E on Tom and Anna's joint tax returns.

132. The ethanol investments will continue to be source of income.

133. The ethanol investments were in Tom's name, but the income and tax liabilities from the investment were treated as joint throughout the marriage.

134. The ethanol investments and the income derived therefrom are marital and included in the marital estate.

Chicago Condominium

135. Tom purchased the Chicago condominium on July 29, 2022, for \$219,000. He purchased it with the Elderberry home proceeds that he was supposed to keep in his possession during the pendency of the divorce.

136. The condo purchase was made after the divorce was filed and Tom had been served with the TRO and admonished by the Court not to dissipate any assets.

137. Anna did not know about and was not involved in the condo purchase. Anna has not been involved in the upkeep or maintenance of the condo.

138. The parties agree the value of the condominium is \$219,000. The parties disagree whether the condo is a marital asset.

139. At least some marital funds were used to pay for the condo, because Tom's non-marital Elderberry home proceeds are insufficient to cover the purchase price.

140. Based on a review of the tax records, it does not appear that the condo has generated income. It is unclear what additional financial funds Tom has spent on the condo, and what accounts have been used for the same.

141. The Defendant wants to keep possession of the condo and the Plaintiff does not want possession of it.

142. It is equitable to give Tom credit for using \$89,364 in pre-marital funds toward the purchase of the condo, thereby reducing the marital value of the condo to \$129,636.

Miscellaneous Items

143. Home Furnishings. Based on the testimony and evidence, both parties brought home furnishings and personal items into the marriage. Unless already agreed to by the parties, each party will retain possession of what he/she currently has without further compensation.

144. 2003 Mercedes. Both parties testified this was a gift to Tom in roughly 2018-19 from Tom's brother-in-law after Tom did some work for him. It was a gift during the marriage and will be included in the marital estate based on lack of evidence presented that it was kept separate or meant to only be for Tom's use and enjoyment.

145. Mi Young Lee Artwork. The artwork was received during the marriage, regardless if it was a gift of payment for income earned during the marriage, and therefore part of the marital estate. The type and value of the artwork is in dispute and will be divided equally.

146. \$50,000 check to USD Law. This gift was made out of the \$432,624 Elderberry home proceeds Tom was to keep in his possession until the resolution of the divorce. The non-marital portion of the home proceeds does not cover this amount and therefore it is included back into the marital estate.

147. Financial Accounts. Each party has made and contributed to retirement and financial accounts, and unless otherwise noted in these findings, it is equitable for each party to keep the financial accounts and debts currently in his/her name.

Grounds for Divorce

148. Plaintiff and Defendant agree that a divorce should be granted on the grounds of irreconcilable differences pursuant to SDCL § 25-4-2(7).

Attorney Fees and Costs

149. The parties are not in agreement on the payment of attorney's fees and costs. Each party is requesting that the other pay at least a portion of the other's fees and costs incurred during the litigation of this case.

150. Anna was represented by experienced counsel throughout this trial. She requests that Tom pay \$54,581.73 to the Duncan Law Firm for representation and costs incurred between December 22, 2020 and December 6, 2023; her financial expert's fees of \$18,225; \$26,269 to the Woods Fuller Law Firm for representation and costs incurred from December 7, 2023 to August 20, 2024; and the additional expenses and costs incurred for trial.

151. Anna believes Tom also complicated the nature of the divorce with his multiple filings and the manner in which he forwarded discovery to her attorney and expert witness.

152. Tom acted as his own counsel from the beginning of this action until January 16, 2023, when he retained experienced counsel. Tom has not submitted an itemized statement of expenses, but generally requests that his expert costs and his attorney fees and costs be litigated after the proceeding is over.

153. This case began in October of 2021 and concluded with a trial on the merits in September of 2024, almost three full years later.

154. This case involved extensive financial discovery and a complex analysis of business, tax, and financial records. The trial likewise involved extensive financial exhibits and testimony.

155. The number of pleadings, hearings, and the overall complexity of the litigation was exacerbated in part by the Defendant's violation of the TRO.

156. Anna's request for some amount of attorney's fees and costs associated with this litigation is reasonable based upon the circumstances of this case and actions of the Defendant, and the Defendant has the relative liquidity to pay for the same.

CONCLUSIONS OF LAW

1. Any Finding of Fact that is more appropriately a Conclusion of Law shall be deemed as such. Any Conclusion of Law that is more appropriately a Finding of Fact shall be deemed as such.
2. This matter is properly before the court in Lincoln County. The Court has jurisdiction over the parties to decide the issues of divorce and property division.
3. "Courts may make an equitable division of the property belonging to either or both, whether the title to such property is in the name of the husband or the wife. In making such division of the property, the court shall have regard for equity and the circumstances of the parties." SDCL § 25-4-44.

Temporary Restraining Order

4. "... [A] temporary restraining order shall be in effect against both parties until the final decree is entered, the complaint dismissed, or until further order of the court:
 - (1) Restraining both parties from transferring, encumbering, concealing, or in any way dissipating or disposing of any marital assets, without written consent of the other party or an order of the court, except as necessary in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures and to account for the court for all extraordinary expenditures made after the temporary restraining order is in effect; ...".

SDCL § 25-4-33.1(1).

5. According to the South Dakota Supreme Court, "[t]o determine whether a spouse dissipated marital assets, we have identified that the circuit court should consider 'whether the transfers were improperly made to deplete the marital estate.'" *Cook v. Cook*, 2022 S.D. 74, ¶ 31, 983 N.W.2d 180, 191 (citing *Pennock v. Pennock*, 356 N.W.2d 913, 915 (S.D. 1984)).
6. Our law recognizes that "[s]pouses are certainly entitled to maintain separate property and do with it as they see fit." *Field v. Field*, 2020 S.D. 51, ¶ 17, 949 N.W.2d 221, 224-25 (citing *Halbersma v. Halbersma*, 2009 S.D. 98, ¶ 9, 775 N.W.2d 210, 215).
7. If transferred or dissipated property is property the court subsequently determines to be marital, then the court needs to further determine if such transfer or dissipation was improperly made to deplete the marital estate. See *Cook*, 2022 S.D. at ¶ 31, 191.
8. SDCL § 25-4-33.1(1), above, "does not require evidence of bad faith or a design to deplete the marital estate[.]" *Id.*, see also *Ahrendt v. Chamberlain*, 2018 S.D. 31, ¶ 17, 970 N.W.2d 913, 920.

9. The Defendant did not violate the temporary restraining order when he listed the Elderberry home for sale because no financial transactions occurred without the Plaintiff's agreement.
10. The Defendant did violate the temporary restraining order by dissipating marital home proceeds with the purchase of the Chicago condominium and gift to USD Law School.
11. The Defendant did violate the temporary restraining order by selling marital investments of ethanol shares and using the marital proceeds from the sales to purchasing new bond investments.

Marital Property Division

12. “[A]ll property of both of the divorcing parties [is] subject to equitable division by the [circuit] court, regardless of title or origin.” *Field v. Field*, 2020 S.D. 51, ¶ 16, 949 N.W.2d 221, 224 (citing *Billion v. Billion*, 1996 S.D. 101, ¶ 61, 553 N.W.2d 226, 237).
13. Property that is premarital, gifted, or inherited property is not automatically excluded from the marital estate. See *Anderson v. Anderson*, 2015 S.D. 28, ¶ 7, 864 N.W.2d 10, 15.
14. Courts are guided by the following factors to classify property as marital or premarital:
 - (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.

Conti v. Conti, 2021 S.D. 62, ¶ 30, 967 N.W.2d 10, 18 (citing *Ahrendt*, 2018 S.D. at ¶ 10, 918).

15. “In evaluating the seven principal factors listed above, a circuit court may consider other evidence to determine whether inherited or gifted property should be excluded from the

marital estate, including the origin and treatment of inherited or gifted property and the direct or indirect contributions of each party to the accumulation and maintenance of the property.” *Dunham v. Sabers*, 2022 S.D. 65, ¶ 46, 981 N.W.2d 620, 638 (citing *Halbersma*, 2009 S.D. at ¶ 12, 215).

16. “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.” *Novak v. Novak*, 2006 S.D. 34, 713 N.W.2d 551, 555 (citing *Billion*, 1996 S.D. at ¶ 21, 232).
17. Similarly, property inherited by one of the spouses is properly excluded from the marital estate when the same two conditions are met. See *Terca v. Terca*, 2008 S.D. 99, ¶ 21, 757 N.W.2d 319, 325.
18. Tracing can also be utilized in an analysis of what constitutes marital property. “‘Tracing’ is an equitable principle which allows a party with the right to property to trace that property through any number of transactions in order to reach the final proceeds or result.” *Ahrent*, 2018 S.D. at ¶ 21, 921 (citing *Charlson v. Charlson*, 2017 S.D. 11, ¶ 14, 892 N.W.2d 903, 906).
19. “Although tracing is allowed, [] it is not required as a matter of law.” *Id.* A court is not required to do multiple steps of tracing just to keep assets as premarital or non-marital. See *id.*
20. This case is unlike some recent cases where property was divided in similar fashion that the Defendant is asking this court to do. Specifically, the Defendant asks the court to perform a tracing analysis and divide property in a manner consistent with a situation where a prenuptial agreement was in place. See, e.g., *Liebel v. Liebel*, 2024 S.D. 34, 9 N.W.3d 505; *Charlson v. Charlson*, 2017 S.D. 11, 892 N.W.2d 903.

21. This Court is guided by and tasked with making an equitable division of the marital estate.
22. Both parties made direct and indirect contributions to all marital property that was more than de minimus based on their respective financial contributions throughout the marriage, which allowed the marital estate to change and grow over the 16-year marriage.
23. Anna made more than de minimus indirect contributions to the retention and maintenance of all assets, regardless of title or origin, throughout the marriage. See, e.g., *Ahrendt* at ¶ 13, 919 (citing *Terca v. Terca*, 2008 S.D. 99, ¶ 25, 757 N.W.2d 319, 326 (“In addition, the Court has recognized that a spouse’s indirect contributions to the improvement of an asset may also be considered in the division of assets.”)).
24. Anna has shown a need for financial assistance in the future.
25. Both parties leave the marriage with some investments, but Tom will retain the majority of the marital income-producing property.

Grounds for Divorce

26. South Dakota codified law (“SDCL”) § 25-4-2 lists seven grounds for granting a divorce. Subsection § 25-4-2(7) allows a divorce to be granted upon irreconcilable differences.
27. SDCL § 25-4-17.2 prohibits a court from granting a divorce based on irreconcilable differences unless both parties consent to the same.
28. Tom and Anna have consented to a divorce based on irreconcilable differences and may be granted a divorce under SDCL § 25-4-2(7).

Attorney Fees

29. Each party to an action typically bears the burden of their own attorneys’ fees. The two exceptions are when the parties agree otherwise, or when attorney’s fees are allowed under

the law. See *Toft v. Toft*, 2006 S.D. 91, ¶ 17, 723 N.W.2d 546, 551 (citing *Microsoft Antitrust Litigation*, 2005 S.D. 113, ¶ 29, 707 N.W.2d at 98 (internal citations omitted)).

30. In determining if attorney's fees will be awarded in divorce cases, the trial court must consider what constitutes a reasonable fee and then, what portion of those fees, if any, should be paid by the opposing side. See *Hybertson v. Hybertson*, 1998 SD 83, ¶ 24, 582 N.W.2d 402, 407.
31. “[T]he court, if appropriate, in the interests of justice, may award payment of attorneys' fees in all cases of divorce...” SDCL § 15-17-38.
32. The Plaintiff's request for attorney fees is reasonable and necessary considering the circumstances of this case. This case involved a marital estate over \$7 million dollars, multiple properties and investments, and a significant amount of discovery for the legal issues involved.
33. The Defendant further complicated the proceedings by dissipating marital assets.

Considering this in light of the parties' relative worth, income, and liquidity, the Defendant shall reimburse \$15,000 in attorney fees and costs to Plaintiff. The parties will each be responsible for their own attorneys' fees and expert witness costs beyond the award to the Plaintiff.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that the parties' assets are divided according to the attached Exhibit A. It is further,

ORDERED that the attorney fees award and equalization amount is not due until any necessary refinancing is completed or four (4) months from the date of this decision, whichever is earlier. It is further,

ORDERED that Plaintiff's counsel shall prepare a proposed Judgment and Decree of Divorce which shall incorporate by reference the findings and conclusions in this written decision. It is further,

ORDERED that both parties shall have until December 23, 2024, to prepare any objections to this decision or submit additional proposed findings of fact or conclusions of law to the Court.

It is further,

ORDERED that if the parties do not submit any additional findings or conclusions by 5:00 p.m. on December 23, 2024, the Court's decision will become final, and a Judgment and Decree of Divorce will be entered.

Dated this 13 day of December, 2024.




Rachel R. Rasmussen, Circuit Court Judge

Attest: Brittan Anderson, Clerk

By: JM Baker, Deputy

12/13/2024 10:46 AM

A
(2/13/24 RLR)

	A	B	C	D
1				
2				
3				
4	Agricultural property (317 acres in Perry Township, Lincoln County, SD)			
5	271 Calle Del Verano; Palm Desert, CA 92260 (condominium and personal property)			
6	Condominium located at 1455 N. Sandburg Terrace; Chicago, IL	\$219,000 - \$89,364 premarital funds used for purchase		
7	Kingsport Village Limited Partnership (investment in apartment building on west side of Sioux Falls through Dunham Properties)			
8	Proceeds from sale of 5012 S. Elderberry Circle, SF, SD (marital)	\$714,913 marital		
9	Premarital Proceeds from 5012 Elderberry	\$89,364 premarital		
10	North Dakota mineral interest (Tom)	Agreed		X
11	2017 Jeep Cherokee (Tom drives)	Agreed	14,412	X
12	2003 Mercedes E500 (Tom) Gift			
13	2019 Subaru Ascent (Anna drives)	Agreed		

FILED
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Lincoln County, S.D.
Clerk Circuit Court

	A	B	C	D
1				
2	2014 Honda motorcycle CTX and Big Tex Trailer	Agreed		
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17				
18	Coin Collection - purchased during marriage	Agreed		
19	Coin Collection - inherited	Agreed		
20	Coin Collection - purchased from Ted Tuffy	Agreed		
21	American Eagle Gold Coin	Agreed		
22	Mi Young Lee artwork - larged stretched canvas			
23	Mi Young small artwork - 24x30 in			
24	Marital Property squared during marriage sold by Anna/HT (brown sofa, large area rug, small items)	Agreed		
25	Marital Property aquired during marriage sold by Tom/HT (grey sofa, king bed, king mattress, desk, black leather chair, leather sofa, JD rider, edger, ladder, blower, gas trimmer, ramps, ext ladder, 3 bar stools, small items)	Agreed		
26	Pearl Necklace	Agreed		
27	Engagement Ring	Agreed		
28	Jewlery purchase Faini 11-3-21	Agreed		
29	Lux and Bond Green jewelery 12-13-21	Agreed		
30	Cyn Jewelry Vineyard	Agreed		
31	Cyn Jewelry Vineyard	Agreed		
32	Firearms in each party's possession	Agreed		
33	Marital Property Kept by Anna			
34				
35	20,000 shares in Lake Area Corn Processor - sold	Reduced by \$20K spent on I-Bonds from Line 37		

	A	B	C	D
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	Sale proceeds from 72,327 shares in Poet - sold 5/18/22 (Tom)			
36				
	US Treasury Direct I-bonds purchased by Tom on 5-13-22 for \$20,000			
37				
38	InterActive Brokers LLC (IBKR) Roth IRA 7324 (Tom)			
39	TD Ameritrade Account 1901 (Tom)			
40	SEP IRA at LPL 8778 (Tom)			
41	Charles Schwab profit sharing pension plan 1978)			
42	20,000 shares in Lake Area Corn Processor - still exist			
43				
44	First Premier Bank 3140 (Tom personal checking)	Agreed		
45	First Bank & Trust 0222 (Farm Checking) (Tom)			
46	First Bank & Trust 0249 (Tom Checking)	Agreed		
47	First Bank & Trust 9153 (TWC Revocable Trust) (Tom)			
48	\$50,000 check Tom issued from acct. 9153 to the University of South Dakota Foundation on 6-29-22	Amount not covered by premarital in Line 9		
49	First Bank & Trust 0230 (Clayton Law Firm Checking) (Tom)	Agreed		
50	LEVO Savings 4383 (Tom)	Agreed		
51	Clayton Law Firm Trust Account	Anna home proceeds from Line 8		
52				
53				

	A	B	C	D
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2	WFSS Trust Account -- includes proceeds from sale of 5th Ave. LLC property formerly located at 1909 and 1911 South 5th Ave.; SF, SD (duplex sold during the pendency of the divorce)			
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57	LPL Roth IRA 7030 (Anna)			
58	LPL Rollover IRA 3555 (Anna)			
59	LPL Individual Cash Acct. 7761 (Anna) (Allianz Annuity)	Agreed		
60	LPL Individual Cash Acct. 9393 (Anna)	Agreed		
61	First Premier Bank Checking 8841 (Anna)	Agreed		
62	Frontier Bank Checking 3859 (Anna)	Agreed		
63	Frontier Bank HSA 3078 (Anna)	Agreed		
64	Balance of PI Award (Anna)			
65				
66	Fifth Avenue Checking Account Balance - (Anna and Tom) 0265	Agreed		
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69	Anna is the owner and beneficiary of three policies for which her son Carter is the insured for one and her son Michael is the insured for the other two	Agreed		
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71				
72	529 Account Cameron 3124 (Carter) (LPL held at American Funds)	Agreed		
73	529 Account Cameron 3046 (Blake) (LPL held at Franklin Templeton)	Agreed		
74	529 Account Cameron 7298 (Beckham) (LPL held at Franklin Templeton)	Agreed		
75				
76				
77	529 Account Clayton (Ryan Clayton)	Agreed		

	A	B	C	D
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78				
80	Clayton Investment Group, LLC sale proceeds (contract value based upon amortization schedule and what remains due from sale)	Agreed		
81	Frick Purchase of Furniture			
82				
83	Frontier Bank Safe Deposit Box (Anna)	Agreed		
84				
85				
86				
87	Capital One Venture Visa credit card 5914 (Tom)			
88	Tom - LEVO Loan 4383 - Jeep Cherokee			
89	Anna - Chase Loan - 2019 Subaru			
90	Anna - Chase Credit Card ending in 7092			
91	Anna - American Express Credit card ending 63006			
92	Anna - Citi Costco Credit Card ending in 1124			
93	Anna - Chuck Nelson invoice for expert witness report (will be more after testimony)			
94	Anna - Duncan Law Firm attorney fees owed	Award of Attorney Fees/Costs		
95	Anna - Woods Fuller attorney fees owed			
96	Tom - Attorney Fees			
97	Tom Expert Fees			
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This action has been presented to this Court, the Honorable Rachel Rasmussen presiding, Circuit Court Judge. The Court filed and served its Findings of Fact, Conclusions of Law, and Order After Trial on December 13, 2024.

Both parties were provided an opportunity to propose additional Findings of Fact or Conclusions of Law or submit any Objections to the same on or before January 6, 2025.

Plaintiff filed Proposed Corrections to Findings of Fact, Conclusions of Law, and Order on January 6, 2025, to address what Plaintiff believed were typographical or mathematical errors on the attached property division spreadsheet, but Plaintiff did not otherwise object to the Court's findings, conclusions or order.

Defendant filed Responses and Objections to the Court's Findings of Fact and Conclusions of Law and Order after Trial on January 6, 2025. Defendant also filed a Motion to Reopen Record and Request for Hearing, with a supporting Affidavit of Elizabeth Rosenbaum on January 6, 2025.

The Court has considered the following submissions prior to entering this Judgment and Decree of Divorce: Plaintiff's Proposed Corrections to Findings of Fact, Conclusions of Law

and Order filed January 6, 2025; Defendant's Responses and Objections to the Court's Findings of Fact, Conclusions of Law, and Order, Motion to Reopen Record and Request for Hearing, Affidavit of Elizabeth Rosenbaum filed on January 6, 2025; Defendant's Second Affidavit of Elizabeth Rosenbaum filed on January 8, 2025; Plaintiff's Response to Defendant's Motion to Reopen Record and Request for Hearing and Objections to the Court's Findings of Fact, Conclusions of Law, and Order after Trial and Affidavit of Michele Munson filed on January 10, 2025; Defendant's Affidavit in Response to Plaintiff's Opposition to Defendant's Motion to Reopen Record filed on January 13, 2025; and Defendant's Supplemental Affidavit in Response to Plaintiff's Opposition to Defendant's Motion to Reopen Record filed on January 17, 2025.

The Court grants and denies these objections, additions, corrections, and motions as set forth herein and as separately set forth in the Court's Order Denying Defendant's Motion to Reopen and Request for Hearing filed on January 30, 2025.

A Judgment and Decree should now be entered incorporating the Findings of Fact, Conclusions of Law, and Order After Trial, which are incorporated herein by reference. Therefore, it is hereby ORDERED, ADJUDGED AND DECREED:

1. Plaintiff Anna Clayton (Anna) and Defendant Thomas Clayton (Tom) are hereby granted a Judgment and Decree of Divorce on the grounds of irreconcilable differences under SDCL § 25-4-2(7) and are hereby restored to the status and rights of single persons.
2. Tom is awarded all right, title and interest in the real property consisting of 317 acres of agricultural property in Perry Township, Lincoln County, South Dakota.
3. Tom is awarded all right, title and interest in the real property consisting of a condominium located at 271 Calle Del Verano; Palm Desert, California, 92260, including any personal property contents.
4. Tom is awarded all right, title and interest in the real property consisting of a condominium located at 1455 N. Sandburg Terrace; Chicago, Illinois, including any personal property contents.

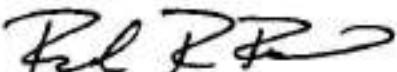
5. Tom is awarded all right, title and interest in the investment interest in the Kingsport Village Limited Partnership.
6. Tom is awarded all right, title and interest in the North Dakota mineral interest.
7. Tom is awarded all right, title and interest in the 2017 Jeep Cherokee.
8. Tom is awarded all right, title and interest in the 2003 Mercedes E500.
9. Anna is awarded all right, title and interest in the 2019 Subaru Ascent.
10. Tom is awarded all right, title and interest in the 2014 Honda Motorcycle CTX and Big Tex Trailer.
11. Tom is awarded all right, title and interest in any and all coins he currently has in his possession as part of his coin collection or otherwise.
12. Tom is awarded all right, title and interest in any artwork he currently has in his possession.
13. Anna is awarded all right, title and interest in any artwork she currently has in her possession.
14. Tom is awarded all right, title and interest in any personal property he currently has in his possession.
15. Anna is awarded all right, title and interest in any personal property she currently has in her possession.
16. Tom is awarded all right, title and interest in any jewelry he currently has in his possession.
17. Anna is awarded all right, title and interest in any jewelry she currently has in her possession.
18. Tom is awarded all right, title and interest in any firearms he currently has in his possession.
19. Anna is awarded all right, title and interest in any firearms she currently has in her possession.
20. Tom is awarded all right, title and interest in any remaining shares owned in Lake Area Corn Processors or proceeds from previous sales of those shares.
21. Tom is awarded all right, title and interest in any remaining shares owned in Poet or proceeds from previous sales of those shares.

22. Tom is awarded all right, title and interest in any US Treasury Direct I-bonds currently held in his name.
23. Tom is awarded all right, title and interest in the InterActive Brokers, LLC Roth IRA account held in his name alone, account ending 7324.
24. Tom is awarded all right, title and interest in the TD Ameritrade account held in his name alone, account ending 1901.
25. Tom is awarded all right, title and interest in SEP IRA account held with LPL in his name alone, account ending 8778.
26. Tom is awarded all right, title and interest in the Charles Schwab profit sharing pension plan held in his name alone, account ending 1978.
27. Tom is awarded all right, title and interest in the First Premier Bank checking account in his name alone, account ending 3140.
28. Tom is awarded all right, title and interest in the First Bank & Trust checking accounts ending 0222, 0249, 9153, and 0230.
29. Tom is awarded all right, title and interest in the LEVO savings account in his name alone, account ending 4383.
30. Tom is awarded all right, title and interest in the First Bank & Trust account for his attorney trust account, account ending 0214, and held in the name of South Dakota Bar Foundation; Thomas W Clayton Attorney at Law Trust Account, except that Tom must pay Anna \$357,456 from this account for Anna's share of the proceeds from the sale of the home located at 5012 S. Elderberry Circle; Sioux Falls, South Dakota. Tom is to make this payment to Anna on or before April 13, 2025. Tom is entitled to the remaining funds in the First Bank & Trust account ending 0214 after this transfer is made.
31. Anna is awarded all right, title and interest in the funds held with the Woods, Fuller, Shultz & Smith, PC Trust account. These funds represent sale proceeds of the 5th Ave. LLC property formerly located at 1909 and 1911 South 5th Ave.; Sioux Falls, South Dakota, for which findings and conclusions of law related to classification of this property and these funds as marital property were separately addressed through the Court's February 3, 2022 Order filed on February 4, 2022, which is further incorporated herein by reference.
32. Anna is awarded all right, title, and interest in the LPL Roth IRA account held in her name alone, account ending 7030.

33. Anna is awarded all right, title, and interest in the LPL Rollover IRA account held in her name alone, account ending 3555.
34. Anna is awarded all right, title, and interest in the LPL Individual Cash account (Allianz Annuity) held in her name alone, account ending 7761 and any further remaining balance from her personal injury award.
35. Anna is awarded all right, title, and interest in the LPL Individual Cash account held in her name alone, account ending 9393.
36. Anna is awarded all right, title, and interest in the First Premier Bank checking account held in her name alone, account ending 8841.
37. Anna is awarded all right, title, and interest in the Frontier Bank checking account held in her name alone, account ending 3859.
38. Anna is awarded all right, title, and interest in the Frontier Bank Health Savings Account (HSA) held in her name alone, account ending 3078.
39. Anna is awarded all right, title, and interest in the Fifth Avenue checking account balance held jointly with Anna and Tom, account ending 0265. Tom must remove his name from the joint account or the parties close the joint account and the remaining funds be transferred to Anna individually.
40. Anna is awarded all right, title and interest in any life insurance policies for which she is the owner, and she may decide whether to maintain the policies after the divorce and, if she maintains the policies, she may name the beneficiary of her choosing.
41. Anna is awarded all right, title and interest in the 529 accounts for her children or grandchildren, Carter, Blake and Beckham, which accounts are held through LPL and either American Funds or Franklin Templeton.
42. Tom is awarded all right, title and interest in the 529 accounts for his children or grandchildren.
43. Anna is awarded all right, title and interest in the remaining sale proceeds from Clayton Investment Group, LLC, and is awarded all right, title and interest in any proceeds from the sale of LLC's furniture to Frick.
44. Anna is awarded all right, title an interest in the Frontier Bank Safe Deposit Box held in her name and any contents held there.
45. Tom is solely responsible for paying any remaining debt owed for his credit card with Capital One Venture Visita ending 5914.

46. Tom is solely responsible for paying any remaining loan balance owed for his Jeep Cherokee through LEVO, loan ending 4383.
47. Anna is solely responsible for paying any remaining loan balance owed for her 2019 Subaru through Chase.
48. Anna is solely responsible for paying any remaining debt owed for her credit card with Chase ending 7092.
49. Anna is solely responsible for paying any remaining debt owed for her credit card with American Express ending 63006.
50. Anna is solely responsible for paying any remaining debt owed for her credit card with Citi Costco ending 1124.
51. Tom is solely responsible for paying any attorney fees or costs he incurred or still owes for this divorce action.
52. Anna is solely responsible for paying any attorney fees or costs she incurred or still owes for this divorce action, except that Tom is ordered to pay \$15,000 of Anna's attorney fees and costs. Tom is required to make this payment to Woods, Fuller, Shultz & Smith, PC on or before April 13, 2025.
53. Tom is ordered to pay Anna, as a property cash equalizing payment, a total sum of \$2,468,708.00. Tom is required to make this payment to Anna on or before April 13, 2025. This amount is calculated after granting the corrections presented by Anna on January 6, 2025 and granting the objection by Tom regarding the 2017 Jeep Cherokee being awarded to him. This is also reflected in **Exhibit A1** attached to this Judgment and Decree of Divorce.
54. Neither Tom nor Anna is awarded spousal support.
55. Plaintiff is reinstated to the name of Anna Cameron.
56. The Court further corrects its Finding of Fact 85, which should refer to \$20,000 instead of \$20,000.
57. The Court otherwise rejects Plaintiff's and Defendant's objections and additional proposed findings of fact and conclusions of law.

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Honorable Rachel Rasmussen
Circuit Court Judge

	A	B	C	D
1	DESCRIPTION	NOTES	Court's Value and Division	
2			Anna	Tom
3	REAL ESTATE			
4	Agricultural property (317 acres in Perry Township, Lincoln County, SD)			3,500,000
5				
6	Condominium located at 1455 N. Sandburg Terrace, Chicago, IL.	\$219,000 - \$89,364 premarital funds used for purchase		129,636
7	Kingsport Village Limited Partnership (investment in apartment building on west side of Sioux Falls through Dunham Properties)		0	0
8	Proceeds from sale of 5012 S. Elderberry Circle, SF, SD (marital)	\$714,913 marital	(see Line 51)	357,457
9	Premarital Proceeds from 5012 Elderberry	\$89,364 premarital		
10	North Dakota mineral interest (Tom)	Agreed		X
11	VEHICLES			
12	2017 Jeep Cherokee (Tom drives)	Agreed		14,412
13	2003 Mercedes E500 (Tom) Gift			4,572
14	2019 Subaru Ascent (Anna drives)	Agreed	21,022	
15	2014 Honda motorcycle CTX and Big Tex Trailer	Agreed		2,800
16				
17	PERSONAL PROPERTY			
18	Coin Collection - purchased during marriage	Agreed		X
19	Coin Collection - inherited	Agreed		X
20	Coin Collection - purchased from Ted Tuffy	Agreed		2,190
21	American Eagle Gold Coin	Agreed		X
22	Mi Young Lee artwork - large stretched canvas			500



	A	B	C	D
	DESCRIPTION	NOTES	Court's Value and Division	
			Anna	Tom
23	Mi Young small artwork - 24x30 in			500
24	Marital Property aquired during marriage sold by Anna/HT (brown sofa, large area rug, small items)	Agreed	249	
25	Marital Property aquired during marriage sold by Tom/HT (grey sofa, king bed, king mattress, desk, black leather chair, leather sofa, JD rider, edger, ladder, blower, gas trimmer, ramps, ext ladder, 3 bar stools, small items)	Agreed		2,661
26	Pearl Necklace	Agreed	X	
27	Engagement Ring	Agreed	X	
28	Jewelry purchase Faini 11-3-21	Agreed		4,569
29	Lux and Bond Green jewelery 12-13-21	Agreed		1,271
30	Cyn Jewelry Vineyard	Agreed		287
31	Cyn Jewelry Vineyard	Agreed		131
32	Firearms in each party's possession	Agreed	X	X
33	Marital Property Kept by Anna		X	X
34	INVESTMENTS & RETIREMENT			
35	20,000 shares in Lake Area Corn Processor - sold	Reduced by \$20K spent on I-Bonds from Line 37		51,393
36	Sale proceeds from 72,327 shares in Poet - sold 5/18/22 (Tom)			90,440
37	US Treasury Direct I-bonds purchased by Tom on 5-13-22 for \$20,000			20,000
38	InterActive Brokers LLC (IBKR) Roth IRA 7324 (Tom)			340,445
39	TD Ameritrade Account 1901 (Tom)			0
40	SEP IRA at LPL 8778 (Tom)			128,294
41	Charles Schwab profit sharing pension plan 1978)			386,268
42	20,000 shares in Lake Area Corn Processor - still exist			100,000

	A	B	C	D
	DESCRIPTION	NOTES	Court's Value and Division	
			Anna	Tom
1	CHECKING AND SAVINGS			
2	ACCOUNTS IN TOM'S NAME			
3	First Premier Bank 3140 (Tom personal checking)	Agreed		1,556
4	First Bank & Trust 0222 (Farm Checking) (Tom)			50,262
5	First Bank & Trust 0249 (Tom Checking)	Agreed		3,988
6	First Bank & Trust 9153 (TWC Revocable Trust) (Tom)			110,832
7	\$50,000 check Tom issued from acct. 9153 to the University of South Dakota Foundation on 6-29-22	Amount not covered by premarital in Line 9		50,000
8	First Bank & Trust 0230 (Clayton Law Firm Checking) (Tom)	Agreed		3,103
9	LEVO Savings 4383 (Tom)	Agreed		673
10	Clayton Law Firm Trust Account	Anna home proceeds from Line 8	357,456	40,666
11	ATTORNEY TRUST ACCOUNT			
12	WFSS Trust Account -- includes proceeds from sale of 5th Ave. LLC property formerly located at 1909 and 1911 South 5th Ave.; SF, SD (duplex sold during the pendency of the divorce)		143,035	
13	CHECKING AND SAVINGS			
14	ACCOUNTS IN ANNA'S NAME			
15	LPL Roth IRA 7030 (Anna)		275,981	
16	LPL Rollover IRA 3555 (Anna)		35,287	
17	LPL Individual Cash Acct. 7761 (Anna) (Allianz Annuity)	Agreed	X	X
18	LPL Individual Cash Acct. 9393 (Anna)	Agreed	33,726	
19	First Premier Bank Checking 8841 (Anna)	Agreed	1,588	
20	Frontier Bank Checking 3859 (Anna)	Agreed	871	
21	Frontier Bank HSA 3078 (Anna)	Agreed	12,467	
22	Balance of PI Award (Anna)		X	X

	A	B	C	D
	DESCRIPTION	NOTES	Court's Value and Division	
			Anna	Tom
65	JOINTLY HELD ACCOUNTS			
66	Fifth Avenue Checking Account Balance - (Anna and Tom) 0265	Agreed	3,671	
67				
68	LIFE INSURANCE			
69	Anna is the owner and beneficiary of three policies for which her son Carter is the insured for one and her son Michael is the insured for the other two	Agreed	X	X
70				
71	EDUCATIONAL (529) ACCOUNTS (Anna established for her son and grandsons)			
72	529 Account Cameron 3124 (Carter) (LPL held at American Funds)	Agreed	X	X
73	529 Account Cameron 3046 (Blake) (LPL held at Franklin Templeton)	Agreed	X	X
74	529 Account Cameron 7298 (Beckham) (LPL held at Franklin Templeton)	Agreed	X	X
75				
76	EDUCATIONAL (529) ACCOUNTS (Tom established and owns)			
77	529 Account Clayton (Ryan Clayton)	Agreed	X	X
78				
79	BUSINESS INTERESTS			
80	Clayton Investment Group, LLC sale proceeds (contract value based upon amortization schedule and what remains due from sale)	Agreed	124,200	
81	Frick Purchase of Furniture		600	
82	OTHER			
83	Frontier Bank Safe Deposit Box (Anna)	Agreed	X	X
84	TOTAL ASSETS		1,010,653	5,948,406
85				
86	DEBTS			

	A	B	C	D
	DESCRIPTION	NOTES	Court's Value and Division	
			Anna	Tom
87	Capital One Venture Visa credit card 5914 (Tom)			-4,734
88	Tom - LEVO Loan 4383 - Jeep Cherokee			0
89	Anna - Chase Loan - 2019 Subaru		-1,723	
90	Anna - Chase Credit Card ending in 7092		-2,168	
91	Anna - American Express Credit card ending 63006		-370	
92	Anna - Citi Costco Credit Card ending in 1124		-137	
93	Anna - Chuck Nelson invoice for expert witness report (will be more after testimony)		X	X
94	Anna - Duncan Law Firm attorney fees owed	Award of Attorney Fees/Costs		
95	Anna - Woods Fuller attorney fees owed		X	X
96	Tom - Attorney Fees		X	X
97	Tom Expert Fees		X	X
98	TOTAL DEBTS		-4,398	-4,734
99				
100				
101	GRAND TOTALS		1,006,255	5,943,672
102				
103	CASH NEEDED TO EQUALIZE		2,468,708	2,468,708
104				
105	NET AWARDS		2,474,963	2,474,964
106				
107				
108				
109				

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA
APPEAL # 31012

THOMAS WADE CLAYTON,
Defendant and Appellant,
vs.
ANNA MARIE CLAYTON,
Plaintiff and Appellee.

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

THE HONORABLE RACHEL R. RASMUSSEN
CIRCUIT COURT JUDGE

APPELLANT'S REPLY BRIEF

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Notice of Appeal Filed Feb. 26, 2025

REPLY BRIEF

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IDENTIFICATION OF PARTIES AND RECORD

Additional references are as follows:

Appellee's Brief is referred to as "Anna Br. ____."

Appellant's Brief is referred to as "Tom.Br. ____"

Appellee's Appendix is referred to as "Anna.Appx. at ____."

Appellant's Reply Brief Appendix is referred to as "Reply.Appx. at ____."

REPLY BRIEF

ISSUE No. 1: Temporary Restraining Order

Tom sold his ethanol assets before trial knowing Anna had no equity in them and believing her pre-marriage declaration that she did not want any of his assets. The Court's TRO Ruling merely pushed the issue of whether the ethanol assets were marital or not – to the trial. Anna.Appx. at 2. Since Tom traced and fully accounted for the ethanol asset proceeds, showing they were not dissipated. The harm was non-existent. Further discussion is found at Issue No. 5, Ethanol.

Dissipation of Assets

Anna's appellate claims, like the Court's findings, that Tom allegedly "dissipated" marital property, require proof that (1) his ethanol assets are truly marital property, (2) the Stipulation, the parties' testimony, Anna's attorney's admission at the TRO hearing and Court's acceptance on the record, and at trial, are without merit, and (3) Tom did not fully account for his ethanol assets and home sale proceeds. FF#50-51. Anna falls short on all three.

A full accounting of assets obviates a claim of dissipation. Roupe v. Roupe, 1996 S.D. 25, ¶10, 544 N.W.2d 540, 542. All assets were accounted for to Anna's satisfaction, per her testimony. The ethanol assets should never

have been classified as marital. TR1 193, 197 (Anna would not count ethanol sale proceeds as marital if Tom proved where the sale proceeds went); TR4 54, 130, Exhs. L, JJ, HHH (all proceeds from ethanol sales were deposited into Tom's bank account). Anna received all of Tom's monthly bank statements up to the date of trial. See, e.g., Exhs. 35-38, 40 ("most recent [monthly] statement and other relevant statements").

The Court incorrectly found that simply "moving and changing marital funds after he had been served with the TRO and admonished¹ by the Court," was sufficient to find dissipation. FF##50-51. This is clear error.

The same applies to Tom's use of Stipulated home sale proceeds. He showed where all the \$432,624 went: a \$219,000 Chicago condo, \$50,000 donation to the USD Law School, and the balance placed in his bank account and spent on ordinary expenses. Tom.Br. 18. Thus, the monies were not "dissipated," the "marital" estate was not depleted, and Anna never claimed it was. The Court's Findings of "dissipation" are clear error.

ISSUE No. 2: June 10, 2022 Stipulation

Besides Anna's first attorney's admissions, Anna's second attorney also admitted that the Court incorporated the parties' Stipulation "that Tom

¹ Findings ##50-51 are provably false. Tom did not transact any assets following the TRO hearing. Tom.Br. 15, Appx. JJ.

would take that \$432,624, and he could deposit in an account in his name but that \$371[,653] was to be deposited into the attorney trust account to be resolved by the court at a later time.” TR1 12-13.

Anna states, “a contract is not ambiguous just because the parties later disagree” on its intent. App.Br. 19. However, Anna and Tom’s testimonies were identical. TR1 178, TR3 169-71.

Distilled, §8 is a “condition precedent,” which gave both parties the opportunity to claim the Department of Equalization value was more or less than \$432,624. *Neither party availed itself of this opportunity.* The 2008 Equalization value held up. Anna’s new alignment with the Court’s Finding contradicts her own testimony and Supplemental Interrogatory Answer. Rarely does a party discredit her own testimony.

No Restriction on Spending Home Sale Proceeds

The parties’ trial testimony was unified: Tom was allowed to “access” or spend the funds. TR1 178, TR3 169-71. There was *no* testimony that Tom was required to hold his nonmarital proceeds, unspent. *Id.*, Appx. HH at 475. The Court and Anna’s new position, however, operate to put Tom’s amount in constructive trust, inaccessible and unspendable until trial like the \$371,653 proceeds.

Anna’s proffered TRO Order, which the Court signed, contains *no*

restrictions and in fact fails to even mention the Stipulation. Anna.Appx.

D.² The idea that Tom's nonmarital proceeds were supposed to be held frozen in Tom's private account came from the Court when it twice interrupted him and misquoted its own TRO Order. TR3-167, 170.

Anna cites Radigan v. Radigan, 465 N.W.2d 483, 485 (S.D. 1990) to support her argument that the Court had authority to cast the Stipulation aside. The Radigan opinion relied on McGee v. McGee, 415 N.W.2d 812, 813-14 (S.D. 1987). Both were fact-specific cases.

Here, the Court had no facts giving it authority to "reform" the Stipulation. Its stated purpose for altering its meaning was to increase Tom's home's marital value by reducing the agreed-upon premarital value, achieved through its ill-conceived methodology. FF#99.

It is impossible to render any "portion of the contract meaningless," when the parties' and attorneys' understanding of it is identical. App.Br. 20. Further, the statutory TRO does *not* "necessarily app[ly] to all assets owned by either party." App.Br. 21, 26-27. The Cook Court clarified the scope of the TRO in 2022, over 2 years before this trial: "SDCL 25-4-33.1 restrains a

² Tom presented his own Proposed Order, which included reference to the Stipulation. Reply.Appx. QQ. He never received notice that the Court had signed Anna's proposed Order because it was never uploaded into Odyssey and never directly served on him. Tom found out about it a mere nine (9) working days before trial.

party from dissipating *marital assets*. ‘Spouses are certainly “entitled to maintain separate property and do with it as they see fit.”’” Cook v. Cook, 2022 S.D. 74, ¶26, 983 N.W.2d 180, 190 (emphasis in original).

Thus, the Court clearly erred when it found (1) Tom’s use of the \$432,624 proceeds to purchase his Chicago condo and donate \$50,000 to the USD Law School violated the Stipulation, and (2) his \$432,624 negotiated amount was an empty promise, subject to the Court’s unilateral alteration.

ISSUE No. 3: Motion to Reopen Record

After receiving the Court’s findings, Tom provided it with additional irrefutable evidence: Anna’s own attorney proposed that \$432,624 should be Tom’s nonmarital proceeds, which were “released” to him to “access” if he signed her Stipulation. Motion to Reopen Exhs. D, E. He did.

Stipulation §8, so heavily relied on by the Court, existed before and with Anna’s attorney’s proffered Stipulation. It was not an amendment that obviated the first attorney’s email.

The proffered exhibits clearly undercut the Court’s finding that the Stipulation, providing Tom with \$432,624 nonmarital sale proceeds, was mere smoke, and Tom was not allowed to spend any of it anyway. Even Anna now believes like the Court, that the Stipulated amount is ambiguously unambiguous. App.Br. 25.

The Court's Order denying the Motion to Reopen only served to protect its erroneous findings. This is clear error, reversible and an abuse of discretion.

ISSUE No. 4: Inequitable Property Division: Elderberry Home

The Court's award of \$357,000 to Anna of Tom's home value, is clear error and an abuse of discretion because it is based in part on its reduction of his \$432,624 nonmarital proceeds to \$89,000. FF#87-100.

Anna's claim that "the Court found Tom dissipated the \$432,624 in violation of the TRO and therefore could include those funds in the marital estate" is false. App.Br. 29. The TRO Order does not even mention the Stipulation. As to the Court's implausible formula, Anna claims there is no need to question it because no rigid formula is required, and since the Court deemed the final amount "fair and equitable," it must be. App.Br. 30. This circular logic is absurd.

The Court dwelled on Anna's "indirect contributions" and never mentioned Tom's, which were far greater – he did 99.9% of the outside work and a good share of the inside renovations. It found Anna's direct contributions were \$20,000 but omitted Tom's \$281,000. The Court omitted undisputed evidence that Tom paid \$267,000 to maintain his home, while Anna voluntarily paid \$25,600 for cleaning. This is clear error.

Palm Desert Condominium.

Anna's claim that the condominium "was clearly purchased by the parties" is clearly false. App.Br. 28. Anna entered into the purchase agreement but backed out because she would not receive more equity than the fair amount her \$25,000 would purchase. TR4 87, 167-68. It is incredulous to believe that Anna had her heart set on this "joint retirement dream" or "plan" but would not invest a dime in it, although she claimed she was working full-time. App.Br. 12, 16, 28.³

Anna's claim that Tom purchased the condo with \$196,943 in "marital earnings," collapses on inspection. Transcript 3, pages 14-16, cited by Anna, says *nothing* about Tom using \$196,943 of marital earnings. It reveals Mr. Snyder's testimony that *all* monies Tom used to purchase the condo came from nonmarital sources. TR3 14-16.

Anna's claim that "the parties agree" that "Anna was primarily responsible for the household labor with the Palm Desert Condo," and she "primarily selected, furnished and prepared the property for rental" also vanishes upon inspection. App. BR at 12-13. Anna's own testimony belies her claims. See TR1 98, 111.

³ Anna does not cite any of her disproven testimony that falsely disparaged Tom, that Tom strongly denied, and was not included in the findings.

Anna's repeated claims that Tom "unilaterally restructured the purchase by substituting himself as trustee of the TWC Revocable Trust as the purchaser and removing Anna," etc., App.Br. 8, 13, are easily disproved by her own exhibit: Anna *voluntarily signed the Amended Escrow Agreement removing herself as purchaser.* Appx. W at 400 (Exh. 7 at 2).

Finally, Anna does not try to support the Court's unfollowable methodology for finding her \$7,600 contribution amounted to 14% of the Condo's equity when in reality it was 2%, because the Court excluded \$303,000 from Tom's purchase cost.

In sum, Anna's direct and indirect contributions to the Palm Desert Condominium edge on *de minimis*. And, Anna waived and did not prove her need for support. The Court's findings and award to Anna of half the condo's value are clear error and a gross abuse of discretion.

Fifth Avenue, LLC Duplex

Anna's reliance on the pretrial Motion to Distribute Order is misplaced. The Order held that the duplex proceeds would remain undistributed pre-trial, to be "divided in accordance with . . . other marital and nonmarital property division by . . . Order of the Court." Anna.Appx. A at 2. The Court's Judgment of Divorce, citing the pretrial Order as support for awarding the full \$146,705 to Anna, *never supported such an award.*

Appx. A (Judgment) at 4 (#31), 5 (#39). Tom had no ability to file objections, like he would if there had been findings, and the Supreme Court has nothing to review. Repp v. Van Someren, 2015 S.D. 53, ¶10. See S.D.C.L. §15-6-52(a). The failure to make findings is reversible error. Id.

The parties never “commingled” “rental income from the Duplex . . . in their personal accounts and used it for shared expenses, including the Elderberry Home mortgage.” App.Br. 8-9. It is remarkable how many untruths are packed into one statement. First, money is not “commingled” when it is placed in separate accounts.

Second, the parties never used “rental income in their personal accounts” to pay the mortgage, because it was paid by direct deduction from the Fifth Avenue, LLC bank account. See, e.g., Reply.Appx. RR (Motion to Distribute Exhs. 23, 26, 31, 37, 41).

Finally, the parties *never received* rental income. The 2019 and 2020 K-1s showed their only reportable incomes. Reply.Appx. SS (Jt. Exh. D, Exhs. WW, BBB. However, *the LLC never distributed income to the members.* Appx. T at 389-93 (Exh. CC, LLC Financial Detail).

In sum, Anna falls far short of supporting the Court’s actions. Its non-finding award to Anna of the full \$146,705 is clear error and abuse of discretion. Repp, supra.

“Intermingling”

Anna continually states that Tom’s “premarital and inherited funds were repeatedly commingled and placed into accounts that were used to pay marital expenses.” App.Br. 22. All the evidence, including Anna’s expert, showed Tom never commingled anything with her accounts and only transferred funds between his own when necessary.

Michael Snyder, J.D., CPA, testified that in his 15 years’ experience of working with clients who have as many business interests going on as Tom, he saw nothing out of the ordinary, and Tom’s movements of cash to where it was needed was not only common but highly advised. TR3 21-22.

Thus, the Court and Anna’s claims regarding “moving money from one account to another,” are smoke without fire. Tom had sound reasons for the transfers and none of them hid or devalued his assets.

Anna’s own expert testified that it was “challenging” to trace assets, because Anna’s first attorney failed and even refused to provide him with the necessary documents. TR2 122; Reply.Appx. TT at 15-22.

Using Nonmarital Monies to Pay Marital Expenses.

Like other repetitive arguments, Anna claims that because Tom used his nonmarital accounts to pay for marital expenses, *all* the monies in the accounts, and even nonmarital assets purchased using the same nonmarital

account funds, are transmuted into marital property. App.Br. 28-29.

Without support, this “legal alchemy” claim is baseless.

Tom’s payment of marital expenses from nonmarital sources was based on the parties’ pre-marriage agreement that he would do so. TR1 64. He also worked full-time for no compensation helping Anna’s clients grow their assets and boost her ‘book of clients’ value, and on her legal matters. It is hard to imagine punishing a spouse for these efforts by flipping his nonmarital assets to marital.

Inequitable Farm Division

Anna complained that Tom “changed the Farmland’s structure during the marriage,” App.Br. 14, which the Court made multiple findings about, as though it is significant by itself. FF##58-62. However, *every change in title was appropriate, no change altered Tom’s 100% ownership, and nothing about them depleted the farm’s value.* Exhs. 4-5, TR4 180.

Anna cites Finding #72, stating her full-time employment allowed Tom to keep his farm income “somewhat separate.” App.Br. 30. Anna and the trial court have it backwards.

Tom worked as hard or harder during the marriage. His full-time efforts on Anna’s behalf for no compensation were undisputed. He worked successfully and without compensation on the three most important legal

matters of her life which she entrusted to him (Merrill Lynch litigation, personal injury claim, advisory client buyout), and her children's criminal cases. TR2 181-82, TR3 195.

Anna's advisory also income increased in part because Tom paid the lion's share of office expenses, paid for health insurance, prepared all taxes, and ensured she received a fair business buyout. TR3 177-180, 188-190, 197-199; Exhs. 57, QQ, VV, WW.

It is clear error to find that Anna's income caused or allowed Tom to keep his farm income "somewhat separate" because his *Social Security Income* "for the past decade" was only \$25,579. FF#71, Reply.Appx. UU at 27. Anna did not even argue this at trial. This Court created finding highlights its advocacy for Anna.

Unpacking Finding #71, Tom's "nonfarm income" was \$850,033, including \$505,00 farm income - more than Anna's \$741,000 Social Security income and easily enough to pay for all the "family expenses and maintenance of the household without Anna's income." Tom.Br. 37, 45, Appx. AA at 417, Appx. CC at 426. In sum, the Court had no legitimate reason to exclude Tom's farm income *except to assist in proving its alleged misleading finding.*

Finding #67, stating Anna's so-called "intervention" reduced Tom's

stress and *workload* - even though *Tom's nonfarm income was "relatively small"* - cannot both be true. But instead of commending Tom's sacrifices and recognizing his indirect contributions, the Court punished him by erroneously focusing only on his lack of social security income.

No matter how much emphasis Anna places on her so-called "intervention," it only serves to highlight her credibility failure. Anna's entirely disputed efforts are far below the *de minimus* threshold.

Anna twice claims "Tom did not present any competing [farm] valuation evidence." App.Br. 15, 30. Tom testified and provided documentary evidence that his farm was worth \$2.7 Million, which was included in Finding #55. TR4 19-20, Reply.Appx. VV at 28 (Exh. O).⁴

Anna claims Tom did not preserve the tax consequences of her all-cash award for review. App.Br. 31. Mr. Snyder, however, testified about it and provided an exhibit for the tax consequences if Tom sold his farm for \$2.7 Million. Appx. J at 348. Tom's testimony and Objections to the Court's findings also preserved the issue. The Court even commented that it needed to take tax consequences into account, but precluded Mr. Snyder's testimony about the specific consequences and never did. TR3 25.

⁴ There was not enough space to critique Anna's Farm appraisal. This is true for many other Findings. See Appx. C at 38-89 (Defendant's Responses and Objections to the Court's FFs & CLs).

Anna states Tom provided no legal support for his evidence as to what the Court's Judgment will cost him in tax liabilities. App.Br. 30-41. Apparently S.D.C.L. §25-4-44, requiring the Court to "have regard for equity and the circumstances of the parties," doesn't count.

The tax consequences are not "theoretical." App.Br. at 31. Mr. Snyder and Tom applied the evidence, Findings and Judgment to existing tax statutes. Tom proved he could sell all his assets except the farm and still fall \$287,000 short of satisfying the Judgment. Tom.Br. 43-45. Kelly v. Kirk supports his argument that the Court committed reversible error by knowing it needed to consider, but refused to hear, the tax consequences of its property division that will require Tom to sell his farm. Kelly v. Kirk, 391 N.W.2d 652, 657 (S.D. 1986).

Ethanol Investments

Anna admits she did not contribute to Tom acquiring his ethanol investments and did not contribute to their appreciation. FF##120, 123. Instead, she claims that the evidence "demonstrated that the parties intertwined their financial lives, careers and retirement plans[,"] and "the ethanol investments generated substantial income during the marriage, which the parties used to support their lifestyle." App.Br. 32.

This was a second marriage of middle-aged professionals with

separate adult children, except for Anna's youngest. The parties always kept their financial accounts separate unless specifically agreed to, like the duplex and Palm Desert condo until Anna backed out. Even the parties' advisory business was never commingled: each party had their separate clients and expenses, and their broker-dealer paid them separately. TR4 153. When Tom transferred his clients to Anna, including himself, he paid Anna \$35,000 in quarterly advisory fees as her client although he managed his own investments. Exhs. O, NN; TR3 185-86.

Anna did what she wanted with her substantial earnings, enjoyed shopping and spending money on herself and her son, and also received child support and Minor's Social Security death benefits. Exhs. SS, JJJ (boutiques, salons, spas, tennis lessons), TR4 37 (was a "high-end shopper"). Tom had no say in how she spent her money and never questioned her. TR4 153. He paid all household expenses per agreement, TR1 64, Exh. E-1.

Anna's testimony that "marriage was a partnership where living expenses and finances were combined without keeping score" was not what the parties *did*, but was "wishful thinking on the stand." TR1 64.

Thus, Tom's ethanol distributions were not "used to support [the parties'] lifestyle." App.Br. 32. Anna used her own income to support her own lifestyle, while Tom used his ethanol distributions to improve his home

and pay household expenses, like the parties agreed, and for nonmarital expenses like support to his first spouse. He also showered gifts on Anna and her son. Exhs. AAA, BBB.

The Court's Finding that Tom's ethanol assets "were profitable and increased in value throughout the marriage" as grounds for awarding Anna half of their value, FF#130, is invalid: Anna was not involved in the acquisition or appreciation of the ethanol assets. FF#123, TR4 41.

Anna and the Court's contention, that filing joint tax returns caused Tom's ethanol assets to become marital property, was thoroughly discredited in Tom's Appellant's Brief. Tom.Br. 39-40. Tom did not "misinterpret" the Court's finding. App.Br. 32. Restatement did not change its meaning. Id.

In sum, Anna presents nothing to support the Court's conclusory and erroneous findings that Tom's ethanol assets should be marital property, entitling Anna to half.

2003 Mercedes

Anna remarkably argues against her attorney's pretrial stipulation that the 2003 Mercedes gift to Tom is nonmarital property. TR1 13. Anna veers from the findings by claiming, "Anna and other family members also assisted in preparing [Tom's sister and brother-in-law's] house, not just Tom, and multiple items were exchanged and commingled during this

process.” App.Br. 33. The Court did not cite this jaw-dropping claim to support its erroneous Finding #144.

None of the people Anna cited did anything to help prepare the house for sale or clean it. Reply.Appx. WW at 44-46 (Exh. UU at 21, 26, 28). Tom alone performed activities to help facilitate the sale. Id. at 42-45.

There was never an “exchange” of “other furniture” for artwork. TR2 57. This is astounding testimony. Rather than help, Anna hauled her personal property to Tom’s sister’s house for the hired stager to price and sell. TR2 57. Tom paid for the mover. Appx. WW at 38-39 (Check #1517 for \$100 to Parker Transfer). Anna kept the proceeds. Stuart and Ted gave Tom the Mi Young Lee artwork as a gift for his efforts. Id. at 33-35.

In sum, Anna’s admittedly “convoluted” testimony and her Appellee’s Brief are filled with easily disproven claims by an exhibit (UU) she never objected to and which refuted everything she testified to.

Retirement Accounts

Anna faults Tom for failing to identify a legal ground for why the Court abused its discretion by not deducting the premarital values of his and Anna’s retirement accounts. App.Br. 34. Tom objected to the Court’s lack of findings. Apparently, Tom was supposed to cite Repp, supra, again.

ISSUE No. 5: Invented Support Category.

Anna cites Cook, 2022 S.D. 74, ¶30, 983 N.W.2d at 191, stating, “a court is required to consider a spouse’s need for support *before* classifying an asset as marital or nonmarital.” App.Br. 35. This too is backwards. The Cook Court remanded the case to determine “the issue of alimony . . . *after* it reconsiders the property division.” Id. ¶38, 983 N.W.2d at 193 (emphasis added), Scherer v. Scherer, 2015 S.D. 32, ¶11, 864 N.W.2d 490, 495.

Anna blames Tom for “ma[king] Anna’s need for support an issue the court had to address,” notwithstanding her waiver, because Tom listed “nearly every asset [as] nonmarital.” App.Br. 36. “Blame Tom” is not a legal defense. Further, Anna claimed almost all of Tom’s assets were marital, and he had the burden of proving them nonmarital.

There is no category of support other than what the Legislature created. Every time the Supreme Court considered support with property division, it involved alimony testimony. Even in Scherer, alimony was contested, awarded, and ultimately reversed. Scherer, 2015 S.D. 32, ¶ 10-11, 864 N.W.2d at 494-95. Anna did not cite a single precedent to support her non-alimony claim the Trial Court created for her.

It was also clear error to accept Anna’s proof-free claim she needed \$7,000/month, including her son’s astounding expenses, because he was once 4 years old; and his “transitional support [sic] Anna continues to

provide him as [sic] consistent with *her* demonstrated need" is farcical.

App.Br. 36.

Anna has no health problems and voluntarily left the financial advisory business where she earned six figures, to enter the medical field at quite lower but rising wages and with health insurance. Compare Scherer, 2015 S.D. 32, ¶¶2, 9, 464 N.W.2d at 492, 495 (alimony was claimed and testified to; spouse was forced to go on disability, suffered a heart attack, and has severe osteoarthritis, scoliosis, and hyperthyroid problems).

Anna states, "the Court granted Tom multiple concessions during the trial, allowing him to present evidence out of turn and in other ways[.]" App.Br. at 25. The parties stipulated to take witnesses out of turn, and Anna did. Anna's "fair treatment" claim is belied by the many times cited in Tom's Appellant's Brief, this Reply Brief, and the following.

Finding #143, dealing with house furnishings, did not include \$21,700 of personal property Anna bought during the marriage, moved to her new apartment or sold without consulting Tom, and did not disclose on the joint property division spreadsheet. TR3 35-36, Exh. NNN. Tom uncovered Anna's omission. Exh. NNN.

Anna admitted she removed, sold and dissipated the property without informing Tom in violation of the TRO. TR4 183-85. Anna asked the Court

omit reference to the property she removed and converted. TR4 186. The Court did just that. FF#143. This is clear error.

The parties stipulated on the record that each would be awarded their respective main automobiles, which the Court accepted. TR13. The Joint Property Spreadsheet identified Tom's Jeep as going to him. Tom was asked on the last day of trial, "There's no dispute that you get your Jeep, correct?" TR4 31. Answer: "Yes." Id. The Court, however, awarded Tom's Jeep to Anna. Reply.Appx. XX at 48 (Ct.Exh. A). It only reversed itself when Anna stated it was error to do so. Appx. D at 90.

ISSUE No. 6: Attorney Fees

Anna's award of attorney fees, because Tom "dissipated marital assets," cites the finding itself to support the finding. Tom demonstrated that he never dissipated any assets and accounted for every dollar of his asset sales. All her other grounds were disproven in Tom's Appellant's Brief.

CONCLUSION

The Trial Court's conclusory findings, lack of findings and favoritism are so manifest that the Supreme Court should be firmly convinced that multiple errors have been made, requiring reversal.

If the Court's Findings and Judgment are upheld, Tom will have lost most of what he worked to build since 1978, 47 years, and well over half his

lifetime.

Appellant prays that the Supreme Court reverses the Trial Court and awards him and Appellee property as listed in his Appellant's Brief; and if that is not possible, grant a new trial with a new Circuit Court Judge.

Dated this 25th day of November, 2025.

/s/William Clayton

William R. Clayton, Esq.
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Clayton Trial Lawyers
400 E. Las Olas Blvd.,
Suite 1400
Fort Lauderdale, FL
33301
(954) 712-2300
Attorney for Defendant
Appellant Thomas W. Clayton

CERTIFICATE OF COMPLIANCE

Pursuant to S.D.C.L. § 15-26A-66, the undersigned states that this Reply Brief is 20 pages in length typed in Times New Roman Proportional Typeface, 14 Point Font, and includes 4,286 words and 22,172 characters (no spaces) in the body of the brief.

Dated this 25th day of November, 2025.

/s/William Clayton

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of November, 2025, he served a true and correct copy of the following documents:

1. Reply Brief, Reply Appendix and Certificate of Service

Upon:

MICHELLE A. MUNSON
Woods, Fuller,
Shultz & Smith, P.C.
300 S. Phillips Ave.,
Suite 300
Sioux Falls, SD 57104
(605) 336-3890
Attorneys for
Plaintiff/Appellee
Shelly.munson@woodsfuller.com

By Odyssey File and Serve to her last known email address.

/s/William Clayton

REPLY APPENDIX

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QQ

From: tclayton55@gmail.com
Subject: Clayton v. Clayton: ORDER FOLLOWING MOTIONS HEARING
Date: Oct 6, 2022 at 6:53:34 AM
To: rachel.rasmussen@ujs.state.sd.us
Cc: amanda@ddlawsd.com

Dear Judge Rasmussen,

Attached is the Defendant's proposed Order following the Oct 4, 2022 hearing. I also attach the Plaintiff's proposed Order.

Respectfully,

Thomas W. Clayton, Defendant

Thomas W. Clayton
Attorney at Law
Phone: 605-261-9529
1455 N. Sandburg Terrace
#502
Chicago, IL 60610



**ORDER FOLLOWING
MOTIONS HEARING.docx**
31 KB



**Plaintiff's Proposed Order
.docx**
18 KB

STATE OF SOUTH DAKOTA }
 :SS
COUNTY OF LINCOLN }
 SECOND JUDICIAL CIRCUIT

ANNA M. CLAYTON,

Plaintiff,

v.

THOMAS W. CLAYTON,

Defendant.

41DIV21-190

ORDER FOLLOWING MOTIONS
HEARING

WHEREAS, a hearing was held on the parties' motions on Tuesday, October 4, 2022, the Plaintiff, Anna M. Clayton, being personally present along with her attorney of record, Amanda Engel, of the Duncan Law Firm; and the Defendant, Thomas W. Clayton, being personally present and, as an attorney, representing himself; and

WHEREAS, the parties having filed their Briefs, Affidavits and Exhibits along with their motions, and the Court having previously read the parties' filings and heard their arguments; and being fully apprised of the premises, it is hereby

ORDERED that the Plaintiff's Motion for Violation of the Pre-Trial Protection Order is Denied; however, henceforth, the Defendant shall inform the Plaintiff beforehand of his intent to engage in further transactions involving property he may consider separate property, and further obtain prior approval of the Court before engaging in such transactions; and

The Plaintiff having answered in Interrogatory stating she does not seek alimony in this Case; and the parties representing to the Court at the hearing that they consent to a divorce on the grounds of Irreconcilable Differences; and therefore discovery on the issue of fault is no longer necessary and the parties seem to be fairly close in their disclosures regarding property, it is hereby

ORDERED that the Plaintiff's Motion to Compel Mediation is Granted, and the parties are ordered to inform the Court prior to Tuesday, October, 18, 2022 that a mediation is scheduled; and the parties are not barred from conducting additional discovery should the need arise prior to or after mediation; and it is further

ORDERED that, based on the parties' foregoing representations, the Defendant's Motion to Compel Discovery pertaining to Interrogatory Nos. 62 and 78 is Denied as moot; and it is further

ORDERED that regarding the Defendant's Motion to Compel Production of Documents No. 4 and 5, the parties shall update their respective list of marital property and separate property, identifying items which heretofore have not yet been disclosed, and provide their respective lists to the other not later than Wednesday, October 12, 2022 5:00 p.m.; and it is further

ORDERED that the parties' requests for attorney fees is hereby held in abeyance.

Dated this ____ day of _____, 2022.

BY THE COURT:

The Hon. Rachel R. Rasmussen
Judge of the Circuit Court

ATTEST:
BRITTAN ANDERSON
LINCOLN COUNTY CLERK OF COURT

By: _____
(Deputy)

000444

RR

FIFTH AVENUE LLC
 3130 W 57TH ST STE 102
 SIOUX FALLS SD 57108-3123

30
 1
 2

BUS LOW VOL-IMAGE ACCOUNT XXXXXX1720

		LAST STATEMENT	10/30/15	1,148.84
MINIMUM BALANCE	200.97	4 CREDITS		5,616.88
AVG AVAILABLE BALANCE	2,304.69	7 DEBITS		1,501.58
AVERAGE BALANCE	2,304.69	THIS STATEMENT	11/30/15	5,264.14

----- DEPOSITS -----
 REF #.....DATE.....AMOUNT REF #.....DATE.....AMOUNT REF #.....DATE.....AMOUNT
 11/13 600.00

----- OTHER CREDITS -----
 DESCRIPTION DATE AMOUNT
 XX7142 POS RETURN.... 11/06 22:24 11/06 MENARDS SIOUX FALL 11/09 16.88
 SIOUX FALLS SDUS MEN
 Transfer from Law Account 11/12 1,000.00
 Transfer from Law Account 11/20 4,000.00

----- CHECKS -----
 CHECK #..DATE.....AMOUNT CHECK #..DATE.....AMOUNT CHECK #..DATE.....AMOUNT
 1014 11/02 100.00 1015 11/10 265.00

----- OTHER DEBITS -----
 DESCRIPTION DATE AMOUNT
 XX7142 POS WITHDRAWAL. 10/31 03:58 10/31 THE HOME DEPOT 430 11/02 172.99
 SIOUX FALLS SDUS THE
8003447048 HERITAGE BANK NOTE 20155291 11/02 828.70
 NSF FEE CHARGE 11/12 32.00
 XCEL ENERGY-MN XCELENERGY 00108543196 11/23 52.05
 XX7142 POS WITHDRAWAL. 11/25 19:47 11/25 MENARDS SIOUX FALL 11/27 50.84
 SIOUX FALLS SDUS MEN

----- INTEREST -----
 AVERAGE LEDGER BALANCE: .00 INTEREST EARNED: .00
 INTEREST PAID THIS PERIOD: .00 DAYS IN PERIOD:
 ANNUAL PERCENTAGE YIELD EARNED: .00%

FIFTH AVENUE LLC
3130 W 57TH ST STE 102
SIOUX FALLS SD 57108-3123

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1
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BUS LOW VOL IMAGE ACCOUNT XXXXXX1720

		LAST STATEMENT 12/31/15	494.94
MINIMUM BALANCE	475.83	3 CREDITS	3,600.00
AVG AVAILABLE BALANCE	1,387.07	8 DEBITS	1,979.20
AVERAGE BALANCE	1,387.07	THIS STATEMENT 01/29/16	2,115.74

- - - - - DEPOSITS - - - - -

REF #	DATE	AMOUNT	REF #	DATE	AMOUNT	REF #	DATE	AMOUNT
	01/12	1,600.00						

- - - - - OTHER CREDITS - - - - -

DESCRIPTION	DATE	AMOUNT
Transfer from DBK	01/04	1,000.00
Transfer from DBK	01/22	1,000.00

- - - - - CHECKS - - - - -

CHECK #	DATE	AMOUNT	CHECK #	DATE	AMOUNT	CHECK #	DATE	AMOUNT
1020	01/14	415.21	1022	01/26	276.38			
1021	01/19	49.55	1023	01/19	180.20			

- - - - - OTHER DEBITS - - - - -

DESCRIPTION	DATE	AMOUNT
MIDAMERICAN ENERGY 4847051205W706	01/04	92.33 ✓
MIDAMERICAN ENERGY 4805051210W706	01/04	98.08 ✓
8003447048 HERITAGE BANK NOTE 20155291	01/04	828.70 ✓
CHECK # 1027 - XCEL ENERGY XCELENERGY 01027	01/26	38.75 ✓

- - - - - I N T E R E S T - - - - -

AVERAGE LEDGER BALANCE:	.00	INTEREST EARNED:	.00
INTEREST PAID THIS PERIOD:	.00	DAYS IN PERIOD:	
		ANNUAL PERCENTAGE YIELD EARNED:	.00%

26, 27

FIFTH AVENUE LLC
3130 W 57TH ST STE 102
SIOUX FALLS SD 57108-3123

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2
2

It's an exciting time in First PREMIER Bank's history because we're investing in technology like never before to serve you in greater ways in the future. As a result, we will be upgrading our systems beginning Friday, April 22, 2016 and be completed Monday, April 25, 2016 at 7:30am. Visit firstpremier.com/greater for more details on what changes are coming and the steps you need to take. Greater is coming!

BUS LOW VOL-IMAGE ACCOUNT XXXXXX1720

		LAST STATEMENT 02/29/16	2,439.47
MINIMUM BALANCE	1,442.50	2 CREDITS	1,600.00
AVG AVAILABLE BALANCE	2,119.35	9 DEBITS	1,351.97
AVERAGE BALANCE	2,119.35	THIS STATEMENT 03/31/16	2,687.50

----- DEPOSITS -----
REF #.....DATE.....AMOUNT REF #.....DATE.....AMOUNT REF #.....DATE.....AMOUNT
03/09 600.00 03/22 1,000.00

----- CHECKS -----
CHECK #..DATE.....AMOUNT CHECK #..DATE.....AMOUNT CHECK #..DATE.....AMOUNT
1028 03/08 116.60 1029 03/28 153.70

----- OTHER DEBITS -----
DESCRIPTION DATE AMOUNT
XCEL ENERGY-MN XCELENERGY 5100108543196 03/01 51.67
8003447048 HERITAGE BANK MILIE 20155291 03/01 828.70
MIDAMERICAN ENERGY 4847051205W754 03/10 35.09
MIDAMERICAN ENERGY 4805051210W754 03/10 74.06
XX7142 POS WITHDRAWAL 03/22 09:03 03/22 SIOUX FALLS UTILIT 03/23 21.99
SIOUX FALLS SDUS SIO
XCEL ENERGY-MN XCELENERGY 5100108543196 03/23 43.70
XX7142 POS WITHDRAWAL 03/29 20:54 03/29 MENARDS SIOUX FALL 03/31 26.46
SIOUX FALLS SDUS MEN

* * * C O N T I N U E D * * *

Date 5/31/16 Page 1
Primary Account Acct Ending 1720

51321

Fifth Avenue Llc
Thomas W Clayton
3130 W 57th St Ste 102
Sioux Falls SD 57108-3123

Business Low Volume	Number of Enclosures
Account Number	4
Acct Ending 1720	
Previous Balance	Statement Dates 5/02/16 thru 5/31/16
1,574.89	Days in this Statement Period 30
2 Deposits/Credits	Avg Ledger Balance 3,137.33
3,967.58	Avg Collected Balance 3,060.57
16 Checks/Debits	
4,795.68	
Service Charge .00	
Interest Paid .00	
Current Balance 746.79	

	Total For This Period	Total Year-to-Date
Overdraft item fees year to date	\$.00	\$.00
Return item fees year to date	\$.00	\$.00

Deposits and Credits

Date	Description	Amount
5/02	Phone/In-Person Transfer	3,000.00
5/13	Deposit	967.58

Checks and Withdrawals

Date	Description	Amount
5/02	8003447048 HERITAGE BANK FIFTH AVE LLC	828.70-
5/04	ENERGY MIDAMERICAN 4847051205A0503	20.03-

Date 3/31/17 Page 1
Primary Account Acct Ending 1720

419097

Fifth Avenue LLC
Thomas W Clayton
3130 W 57th St Ste 102
Sioux Falls SD 57108-3123

Business Low Volume	Acct Ending 1720	Number of Enclosures	4
Account Number		Statement Dates	3/01/17 thru 4/02/17
Previous Balance	2,615.92	Days in this Statement Period	33
2 Deposits/Credits	2,283.00	Avg Ledger Balance	1,925.54
7 Checks/Debits	3,218.12	Avg Collected Balance	1,884.63
Service Charge	.00		
Interest Paid	.00		
Current Balance	1,680.80		

	Total For This Period	Total Year-to-Date
Overdraft item fees year to date	\$.00	\$.00
Return item fees year to date	\$.00	\$.00

Deposits and Credits

Date	Description	Amount
3/03	Deposit	1,283.00
		1,283.00

Checks and withdrawals

Date	Description	Amount
3/01	ENERGY MIDAMERICAN 8724056031A0228 TOM W CLAYTON	165.93-
3/01	8003447048 HERITAGE BANK	828.70-

Schedule K-1
(Form 1065)

Department of the Treasury
Internal Revenue Service

2019

For calendar year 2019, or tax year

beginning / / 2019 ending / /

**Partner's Share of Income, Deductions,
Credits, etc.** ► See back of form and separate instructions.

651119
OMB No. 1545-0123

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items	
1 Ordinary business income (loss)	15 Credits
2 Net rental real estate income (loss)	1,203
3 Other net rental income (loss)	16 Foreign transactions
4a Guaranteed payments for services	55
4b Guaranteed payments for capital	
4c Total guaranteed payments	
5 Interest income	
6a Ordinary dividends	
6b Qualified dividends	
6c Dividend equivalents	17 Alternative minimum tax (AMT) items A -15
7 Royalties	
8 Net short-term capital gain (loss)	
8a Net long-term capital gain (loss)	18 Tax-exempt income and nondeductible expenses
8b Collectibles (28%) gain (loss)	
9c Unrecaptured section 1250 gain	
10 Net section 1231 gain (loss)	
11 Other income (loss)	19 Distributions
	20 Other information Z * STMT
12 Section 179 deduction	
13 Other deductions	
14 Self-employment earnings (loss)	
21 <input type="checkbox"/> More than one activity for at-risk purposes*	
22 <input type="checkbox"/> More than one activity for passive activity purposes*	
*See attached statement for additional information.	
For IRS Use Only	

Schedule K-1
(Form 1065)

Department of the Treasury
Internal Revenue Service

2019

For calendar year 2019, or tax year

beginning / / 2019 ending / /

**Partner's Share of Income, Deductions,
Credits, etc.** ▶ See back of form and separate instructions.

□ Final K-1 □ Amended K-1 OMB No. 1545-0123

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items	
1 Ordinary business income (loss)	15 Credits
2 (Net rental real estate income (loss))	1,203
3 Other net rental income (loss)	16 Foreign transactions
4a Guaranteed payments for services	
4b Guaranteed payments for capital	
4c Total guaranteed payments	
5 Interest income	
6a Ordinary dividends	
6b Qualified dividends	
6c Dividend equivalents	17 Alternative minimum tax (AMT) items
7 Royalties	A -16
8 Net short-term capital gain (loss)	
9a Net long-term capital gain (loss)	18 Tax-exempt income and nondeductible expenses
9b Collectibles (28%) gain (loss)	
9c Unrecaptured section 1250 gain	
10 Net section 1231 gain (loss)	
11 Other income (loss)	19 Distributions
12 Section 179 deduction	20 Other information
13 Other deductions	Z + STMT
14 Self-employment earnings (loss)	
21 <input type="checkbox"/> More than one activity for at-risk purposes*	
22 <input type="checkbox"/> More than one activity for passive activity purposes*	
*See attached statement for additional information.	
For IRS Use Only	

Schedule K-1
(Form 1065)

Department of the Treasury
Internal Revenue Service

2020

For calendar year 2020, or tax year

beginning / / 2020 ending / /

**Partner's Share of Income, Deductions,
Credits, etc.**

► See separate instructions.

Final K-1 Amended K-1

OMB No. 1545-0123

**Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items**

1 Ordinary business income (loss)	15 Credits
2 Net rental real estate income (loss)	640
3 Other net rental income (loss)	
4a Guaranteed payments for services	
4b Guaranteed payments for capital	
4c Total guaranteed payments	
5 Interest income	
6a Ordinary dividends	
6b Qualified dividends	
6c Dividend equivalents	17 Alternative minimum tax (AMT) items
7 Royalties	A -23
8 Net short-term capital gain (loss)	
9a Net long-term capital gain (loss)	18 Tax-exempt income and nondeductible expenses
9b Collectibles (28%) gain (loss)	
9c Unrecaptured section 1250 gain	
10 Net section 1231 gain (loss)	
11 Other income (loss)	19 Distributions
12 Section 179 deduction	
13 Other deductions	20 Other information
14 Self-employment earnings (loss)	Z *SMT
21 <input type="checkbox"/> More than one activity for at-risk purposes*	
22 <input type="checkbox"/> More than one activity for passive activity purposes*	

*See attached statement for additional information.

For IRS Use Only

Schedule K-1
(Form 1065)

2020

Department of the Treasury
Internal Revenue Service

For calendar year 2020, or tax year

beginning / / 2020 ending / /

Final K-1 Amended K-1

OMB No. 1545-0120

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1 Ordinary business income (loss)	15 Credits
2 Net rental real estate income (loss)	16 Foreign transactions
3 Other net rental income (loss)	
4a Guaranteed payments for services	
4b Guaranteed payments for capital	
4c Total guaranteed payments	
5 Interest income	
6a Ordinary dividends	
6b Qualified dividends	17 Alternative minimum tax (AMT) items
6c Dividend equivalents	A -24
7 Royalties	
8 Net short-term capital gain (loss)	
8a Net long-term capital gain (loss)	18 Tax-exempt income and nontaxable expenses
8b Collectibles (28%) gain (loss)	
9c Unrecaptured section 1250 gain	
10 Net section 1231 gain (loss)	
11 Other income (loss)	19 Distributions
12 Section 179 deduction	
13 Other deductions	20 Other information
14 Self-employment earnings (loss)	
21 <input type="checkbox"/> More than one activity for at-risk purposes*	
22 <input type="checkbox"/> More than one activity for passive activity purposes*	
*See attached statement for additional information.	
For IRS Use Only	

Partner's Share of Income, Deductions, Credits, etc.

► See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number
47-4194613

B Partnership's name, address, city, state, and ZIP code
Fifth Avenue LLC
5012 S. Elderberry Cir.
Sioux Falls, SD 57108

C IRS Center where partnership filed return ► Ogden, UT

D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's SSN or TIN (Do not use TIN of a disregarded entity. See instructions.)
503-90-6118

F Name, address, city, state, and ZIP code for partner entered in E. See instructions.
Anna M. Clayton
5012 S. Elderberry Circle
Sioux Falls SD 57108

G General partner or LLC member-manager Limited partner or other LLC member

H1 Domestic partner Foreign partner

H2 If the partner is a disregarded entity (DE), enter the partner's:

TIN _____ Name _____

H3 What type of entity is this partner? Individual

H4 If the partner is a retirement plan (IRA/SEP/KEOGH/etc.), check here

H5 Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	50.00000%	50.00000%
Loss	50.00000%	50.00000%
Capital	50.00000%	50.00000%

Check if decrease is due to sale or exchange of partnership interest

K Partner's share of liabilities:

	Beginning	Ending
Nonrecourse	\$	\$
Qualified nonrecourse financing	\$	\$
Recourse	\$	\$

Check this box if Item K includes liability amounts from lower tier partnerships.

L Partner's Capital Account Analysis

Beginning capital account	\$
Capital contributed during the year	\$
Current year net income (loss)	\$
Other increase (decrease) (attach explanation)	\$
Withdrawals & distributions	\$
Ending capital account	\$

M Did the partner contribute property with a built-in gain or loss?

Yes No If "Yes," attach statement. See instructions.

N Partner's Share of Net Unrecognized Section 704(c) Gain or (Loss)

Beginning	\$
Ending	\$

COPY

TT

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF LINCOLN)

IN CIRCUIT COURT

SECOND JUDICIAL CIRCUIT

ANNA MARIE CLAYTON,
Plaintiff,

COURT TRIAL

-VS-

THOMAS WADE CLAYTON,
Defendant.

41DIV.21-000190

BEFORE: The Honorable Rachel R. Rasmussen
Circuit Court Judge
Second Judicial Circuit
Canton, South Dakota,
on September 4, 2024

APPEARANCES: Ms. Michele Munson
Attorney at Law
300 South Phillips Avenue, Suite 300
Sioux Falls, South Dakota

For the Plaintiff;

Ms. Elizabeth Rosenbaum
Attorney at Law
P.O. Box 3086
Sioux City, Iowa

For the Defendant.

Roxane R. Osborn
605-782-3032
Sioux Falls, South Dakota

14

1 (Recess at 11:52 a.m.)

2 (Proceedings resumed at 1:20 p.m.)

3 THE COURT: Okay. So, we will officially go back on the
4 record in divorce file 21-190. The attorneys and their
5 respective clients are present. And Mr. Nelson was
6 previously sworn in under oath before our lunch break and you
7 will remain under oath for the remainder of your testimony,
8 and I will turn it back over to you, Ms. Munson. I believe
9 we left off just looking at Exhibit 66.

10 MS. MUNSON: Correct. Thank you, Judge.

11 THE COURT: Thank you.

12 DIRECT EXAMINATION cont'd

13 Q (BY MS. MUNSON) So, Chuck, is it okay if I refer to you
14 as Chuck?

15 A Yes, please do.

16 Q I know it's informal.

17 A Please do.

18 Q Um, could you please just summarize your Exhibit 66?
19 It's a lengthy document. If you could provide some type of
20 summary.

21 A Sure. Just briefly, um, there were a number of bank
22 accounts, and the, the big thing was the amount of money that
23 was transferred back and forth between many, many of those
24 accounts. Um, and then analyzing the tax returns. Um, and I
25 was only provided tax returns back to 2011, but most of

1 those, I won't say everyone, but most of those were amended
2 at some point to make corrections. Um, you know, amongst the
3 returns to make them more accurate with the IRS. Um, I think
4 that's the primary, primary thing is.

5 Q Um-hum.

6 A And then just I mentioned the documents before the, the
7 way they came to us was just a challenge to be able to put
8 things together.

9 Q Okay. And now as far as income is concerned, were you
10 able to determine that both Tom and Anna were earning income
11 throughout the marriage?

12 A Yes, they were. Those were reflected on their tax
13 returns. They filed married filing joint for most of the
14 years. The last couple of years they filed separately.

15 Q Okay. As far as Tom's income, where was Tom's income
16 being generated based on your review of the tax return?

17 A Most of his income came from farm rental income and then
18 ethanol investment income. Um, there was a minor amount came
19 from the law practice, but primarily the rental income from a
20 farm, the farm, and the ethanol investments.

21 Q Maybe you can answer for us, um, is the ethanol income
22 you earned from those shares, is that reported and included
23 in the farm partnership income or is it separate?

24 A Um, no. They filed a joint tax return, and the tax
25 return can have different schedules to it, and it all gets

1 it would be a separate tax return.

2 Q And did you learn that some of the tax reporting that
3 would be needed for that was not included?

4 A Um, I did not have the, the partnership returns I
5 reviewed, at least some of them did not have K-1s. Actually
6 on the front page of the partnership return, it will indicate
7 how many partners are included in that partnership, and that
8 front page didn't include a number, um, nor were there any K-
9 1s attached to those returns. So, that also made it
10 difficult trying to track how the income was flowing.

11 Q Now, did you also confirm through the tax returns that
12 not only was income tax on the income earned from the farm
13 being paid, but also real estate taxes for the property being
14 paid?

15 A So, the, yeah, the real estate, the real estate taxes
16 were primarily paid from -- there was a partnership farm
17 account, and the real estate taxes would have been paid from
18 that. Most of the time paid from that farm partnership.

19 Q Um-hum. Did you find that, in your review of the farm
20 partnership accounts that there were some payments being made
21 for personal expenses?

22 A Yes, there.

23 Q Was, and there's nothing illegal about that?

24 A There's nothing illegal about that.

25 Q But what does that involve then, though, when you're

1 numbers listed under number two, contributions made to the
2 PSP to then those specific numbers are detailed back in what
3 you just said, plaintiff's discovery 74 51 and the pages
4 thereafter?

5 THE WITNESS: The, the document of where I saw the
6 contributions made --

7 THE COURT: -- okay.

8 THE WITNESS: -- is, is that, yes.

9 THE COURT: Okay. Perfect.

10 THE WITNESS: I, I tried, I tried to provide a document
11 for each one of those contributions.

12 THE COURT: I have that. Thank you.

13 Q Okay. And, okay, were you also asked to evaluate how
14 did the profit sharing plan come to become a 15% owner of the
15 farm partnership?

16 A My documents didn't go back that far. The documents
17 provided to me didn't go back that far. It was just the
18 first thing I saw that that was how the farm partnership was
19 being identified.

20 Q Okay. And so now we are on part three, page three of
21 your report. Correct?

22 A Ah, um, oh, yes. Yes, yes. Item number three. Yes.
23 I'm, yep.

24 Q Okay. Yeah, so what you're saying is you weren't able
25 to find anything on the original, but then were you able to

1 physician's office, or -- and they will call the person. My
2 question to you is did you ever call Mr. Clayton about more
3 documents that you wanted or to explore things in more depth?

4 A Um, I --

5 MS. MUNSON: I'm going to object, just I'm going to
6 object as to the testimony that's been provided by counsel as
7 part of the question and --

8 THE COURT: -- I think the first sentence or two was
9 more of a statement than a question. So --

10 MS. ROSENBAUM: -- I'll rephrase.

11 THE COURT: Yeah, I'll just have you, I'll sustain, but
12 have you rephrase and ask again.

13 Q Did you ever call Mr. Clayton to get clarity on some of
14 your questions or to obtain more documents?

15 A I did not call Mr. Clayton.

16 Q Why not?

17 A Because I went to Amanda Engel, who hired me to request
18 the documents.

19 Q And so did you request more from her?

20 A Yes, I did. And I was sometimes I was provided,
21 sometimes I was not.

22 Q Ah, did you ask her if you could call Mr. Clayton?

23 A No, I did not.

24 Q Wouldn't that have helped your job?

25 A Um, there again, I was hired by Ms. Engel. I, I was,

1 Q Okay. So, there was nothing erroneous or incorrect done
2 that way?

3 A On the personal return, correct.

4 Q All right. Let's talk next about number two on page
5 three, contributions made to the profit sharing pension plan.

6 Um, are you aware that Tom sent in forms saying that these
7 monies were not contributions?

8 A No, I'm not aware of that.

9 Q All right. And if you had called Tom or been allowed to
10 call him, you might have known that, correct?

11 A You, okay. Um, can I ask, um, if they weren't, ah,
12 okay, correct. If, if Tom -- if I had had more information.

13 Q Okay.

14 A I, yes.

15 Q And did you see any 1099-Rs showing?

16 A No.

17 Q Okay. So, you didn't receive anything saying that there
18 --

19 A -- the --

20 Q -- contributions?

21 A No. 1099-R is coming, money coming out of the plant.

22 These are contributions going into the plan. A 1099, a 1099-
23 R is a distribution coming out of a retirement account.

24 Q Okay.

25 A These, these were contributions going into a retirement

STATE OF SOUTH DAKOTA) :SS
COUNTY OF MINNEHAHA)

CERTIFICATE

This is to certify that I, Roxane Osborn, Court Recorder and Notary Public, do hereby certify and affirm that I transcribed the proceedings of the foregoing case, and the foregoing pages 1 - 220, inclusive, are a true and correct transcription from CourtSmart.

Dated at Sioux Falls, South Dakota, this 23rd day of May, 2025.

/s/ 
Roxane R. Osborn
Court Recorder
Notary Public - South Dakota
My commission expires: May 9, 2030

Social Security Administration

Important Information

Date: November 22, 2023
BNC#: 23PP769B96954-A

THOMAS W CLAYTON
271 CALLE DEL VERANO
PALM DESERT CA 92260-2107

We review Social Security benefits each year to make sure they keep up with the cost of living. Your Social Security benefits will increase by 3.2% in 2024 because of a rise in the cost of living.

The law requires some people to pay higher premiums for their Medicare Part B (Medical Insurance) and Part D (Prescription Drug Plan) because of their income. These increases in the premiums are called the Income-Related Monthly Adjustment Amounts (IRMAA). Based on your income, you are required to pay IRMAA. We use information from the Internal Revenue Service (IRS) to decide if you will need to pay IRMAA. The information in this letter is for one year only.

How Much You Will Get

This letter explains your benefit amount, your Medicare premiums, your IRMAA, and what you can do if you disagree with our decision or your situation has changed. The information below shows your monthly benefit amount before and after deductions:

- Your new 2024 monthly benefit amount before deductions is: - \$2,270.00
- Your 2024 monthly deduction for the Medicare Part B premium is: - \$559.00
 - \$174.70 for the standard Medicare premium, plus
 - \$384.30 for the Medicare Part B IRMAA based on your 2021 income tax return
- Your 2024 deduction for the Medicare Part D plan is: - \$38.00
(We will notify you if the amount changes in 2024.)
- Your 2024 deduction for Medicare Part D IRMAA based on your 2021 income tax return is: - \$74.20
- Your benefit amount after deductions that will be deposited into your bank account or sent in your check on January 17, 2024 is: - \$1,598.80

EXHIBIT

FFF

C

See Next Page

0001546XPH437877-COMM15.615XP.R201117.0000000000.0000151.06362871.14299.92260210771

Review your earnings history below to ensure it is accurate because we base your future benefits on our record of your earnings. There's a limit to the amount of earnings you pay Social Security taxes on each year. Earnings above the limit do not appear on your earnings record. We have combined your earlier years of earnings below, but you can view your complete earnings record online with [Social Security](#). If you find an error, view your full earnings record online and call 1-800-772-1213.

Work Year	Earnings Taxed for Social Security	Earnings Taxed for Medicare (began 1966)
1966-1980	\$74,386	\$74,386
1981-1990	\$249,347	\$249,347
1991-2000	\$217,206	\$217,206
2001-2005	\$320,626	\$422,174
2006	\$33,598	\$33,598
2007	\$0	\$0
2008	\$5,587	\$5,587
2009	\$0	\$0
2010	\$15,120	\$15,120
2011	\$35,136	\$35,136
2012	\$18,941	\$18,941
2013	\$11,956	\$11,956
2014	\$0	\$0
2015	\$6,713	\$6,713
2016	\$11,991	\$11,991
2017	\$0	\$0
2018	\$0	\$0
2019	\$0	\$0
2020	\$0	\$0
2021	\$0	\$0
2022	\$6,875	\$6,875
2023	Not yet recorded	Not yet recorded

Total estimated Social Security and Medicare taxes paid over your working career based on your Earnings Record:

Social Security taxes
You paid: \$101,842
Employer(s): \$11,956

Medicare taxes
You paid: \$22,426
Employer(s): \$4,243

You may also have earnings from work not covered by Social Security, where you did not pay Social Security taxes. This work might have been for federal, state, or local government or in a foreign country. If you participate in a retirement plan or receive a pension based on work for which you did not pay Social Security tax, it could lower your benefits. Learn more at [ssa.gov/ssa-120](#).

- Social Security benefits are not intended to be your only source of retirement income. You may need other savings, investments, pensions, or retirement accounts to make sure you have enough money when you retire.
- You need 40 credits of work (at least 10 years) to qualify for retirement benefits. The amount of your benefit is based on your highest 35 years of earnings. If you have fewer than 35 years of earnings, years without work count as 0 and may reduce your benefit amount.
- To keep up with inflation, benefits are adjusted through "cost of living adjustments."
- If you get retirement or disability benefits, your spouse and children also may qualify for benefits.
- If you and your spouse both work, use the [Social Security Retirement Calculator](#) to estimate spousal benefits.
- If you are divorced and were married for 10 years, you may be able to claim benefits on your ex-spouse's record. If your ex-spouse receives benefits on your record, that does not affect your or your current spouse's benefit amounts.
- Learn more about benefits for you and your family at [ssa.gov/benefits-for-you-and-your-family-not-here](#).
- The Statement is updated annually. It is available online, or by mail upon request.

V V

STATE OF SOUTH DAKOTA

)

IN CIRCUIT COURT

COUNTY OF LINCOLN

:ss

SECOND JUDICIAL CIRCUIT

ANNA M. CLAYTON, : 41 DIV 21-000190

Plaintiff, : DEFENDANT'S 1st SUPPLEMENT TO
vs. : INTERROGATORY 2(d)

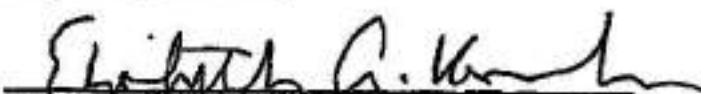
THOMAS W. CLAYTON, : .

Defendant : .

The Defendant states the following is his First Supplement to Interrogatory #2(d).

Dated this 1st day of September 2023.

Respectfully submitted,


Elizabeth A. Rosenbaum
600 4th Street #1006
Sioux City, IA 51101
Phone: (712) 233-3632
Fax: (712) 233-6101
Email: elizabeth@rosenbaumlawfirm.net
ATTORNEY FOR DEFENDANT

Copy via email to:
Amanda Engel, Attorney for Plaintiff

EXHIBIT

O

INTERROGATORY NO. 2: List all cash on hand, bank accounts, savings accounts, annuities, IRA retirement accounts of any kind, savings certificates, stocks, bonds and securities of any kind, including, but not limited to, 401(k) plans, 403(b) plans, annuities, pensions and any stock ownership plans, stock options, stock awards, cash, etc. as to which you are owner or part owner, or in which you claim any interest. Include all such property in which you claimed an interest during the past twelve months whether you presently have any interest or not. State:

(d) The present market value of said property and a statement of how you arrived at such value.

ANSWER:

2. Farm Ground (317) acres in Perry Township, Lincoln County, South Dakota, purchased in 1986:

Value: \$834,844. Lincoln County, SD Dept. of Equalization.

1st Supplement dated August 31, 2023:

Total Farm Acreage: 316.37 acres. See attached 2022 Real Estate Assessment Notice. Current property taxes are also attached. Additionally, a map of the property is included. (Bates-stamped DEF010866-DEF010870)

Farmable Acres: 178.9 acres; could be worth \$11,350/acre based on receiving \$45,602.00, or \$255/acre, from my renter for rent, subtracting \$28/acre for property taxes, then using a cap rate of .02. 178.9 acres x \$11,350/acre = \$2,030.515.00. See attached 2022 Form 1099 from OK Corrals, Inc. (\$45,602.00 for crop land and \$5,000.00 for hay land (see below) totals \$50,602.00).

Waterway Acres: 16.6 acres, which is in CRP. I receive \$300/acre for the waterway acres through 2019. This amount will decrease significantly when it is renewed. \$150/acre most likely in my opinion. This ground is worth \$135/acre after subtracting \$15/acre for property taxes. Using a .02 cap rate, the waterway ground is worth \$6,750/acre. 16.6 acres x \$6,750/acre = \$112,050.00.

South Quarter-Section CRP Ground: 60.1 acres. I receive \$113.11/acre average for three separate contracts. 2019 is the last year. Might only receive \$100/acre on re-signing.

This is very poor farm ground because it is low and wet and frequently flooded. Before putting it into CRP, 3 out of 4 or 4 out of 5 years, the crop failed or was so poor that crop insurance was applied for. It is not worth \$11,750/acre and is only worth the annual CRP payments of \$113.11/acre, less \$10.00/acre for property taxes and applying a .02 cap rate, I believe the 60.1 acres of CRP ground are worth \$5,155.50/acre. 60.1 acres x \$5,155.50/acre = \$309,846.00.

Hay Acres: 50 acres; my farmer believes this estimate is too high and a portion consists of unproductive acreage. I receive \$5,000.00 per year from my farmer, or \$100.00/acre.

Subtracting \$9.00/acre property taxes and applying a .02 cap rate, they hay acres are worth \$4,500/acre. 50 acres x \$4,500/acre = \$227,500.00.

Remaining 10.77 acres: This acreage consists of county and township road right-of-ways and Beaver Creek flow. This is unproductive acreage and may be worth \$2,000.00 per acre after subtracting \$40.00 (\$3.71/acre) property taxes. 10.77 acres x \$2,000.00/acre = \$21,540.00.

In sum, based on very recent rent history and a very low cap rate, the farm may be worth \$2,701,451.00. If it were sold, the realtor's commission would make it worth even less.

LINCOLN COUNTY
DIRECTOR OF EQUALIZATION
164 N MASH SUITE 210
CANTON, SD 57013-1708
PHONE: 605-764-2871

Website: www.lincolncountyad.org
Email: assessor@lincolncountyad.org

2022 REAL ESTATE ASSESSMENT NOTICE

Date: February 24, 2022

Director of Equalization: KARLA GOOSSEN, CAA

" THIS IS NOT A TAX BILL "

Report New or Removed Construction
Verify Owner Occupied Status If Changed
Residential and Commercial = Non-Owner Occupied

APPEALS

Local Board Deadline: March 17th

County Board Deadline: April 6th

To learn more about the appeal process
please go to appeals.lincolncountyad.org

00725-00-079-02720-00023 02/24/2022
CLAYTON, THOMAS W - TST
5012 S ELDERBERRY CR
SIOUX FALLS, SD 57108

Page 1 of 2

Parcel:	PERRY TOWNSHIP LENNOX IND DIST 41-4					
Legal Desc:	24 09 61 .831 NE1/4 "EX LOTH-1" 24-09-61					
Property	Acres	Land Value	Structures	Discretionary	Exemptions	Total Assessment
Ag Land	160.37	428,260				428,260
PARCEL ASSESSED VALUE	>>>>>>>>>>>>>>>>>>>>>>>>>>>>>					
Parcel Assessed Value						
Assessed value increased over last year's value of \$414,761 by 3.24%.						
The Director of Equalization will provide the property owner, upon request, sales of comparable property or other information supporting the increased assessment valuation. You have the right to appeal this valuation through the appeal process, which is explained at the end of this valuation notice.						
Parcel:	PERRY TOWNSHIP LENNOX IND DIST 41-4					
Legal Desc:	24 09 61 .831 SE1/4 - 24-09-61					
Property	Acres	Land Value	Structures	Discretionary	Exemptions	Total Assessment
Ag Land	160.00	433,863				433,863
PARCEL ASSESSED VALUE	>>>>>>>>>>>>>>>>>>>>>>>					
Parcel Assessed Value						
Assessed value increased over last year's value of \$420,063 by 3.24%.						
The Director of Equalization will provide the property owner, upon request, sales of comparable property or other information supporting the increased assessment valuation. You have the right to appeal this valuation through the appeal process, which is explained at the end of this valuation notice.						
Parcel:	CITY OF SIOUX FALLS SIOUX FALLS IND DIST 48-3					
Legal Desc:	29 B.F.-PRAIRIE TREE ADD LOT 9 - BLK 11					
Property	Acres	Land Value	Structures	Discretionary	Exemptions	Total Assessment
Owner Occupied	164.387	648,921				648,921
PARCEL ASSESSED VALUE	>>>>>>>>>>>>>>>>>>>>>>>					
*** CONTINUED ON NEXT PAGE ***						

Collector's Name: Parcel Number: District: Year: Type:
Lincoln County, SD 099.51.24.4010 14-62 2022 Real Estate

Last Updated 1/30/2023

GIS Information

Legal Description:

SE1/4 - 24-99-51

Assessed Value

433,653.00

Base Due 1,597.35 Due Date 04/30/2023

總計 1,597.35

卷之三

Second Installment
as Due 1,597.35 Due Date 10/31/2023

Net 1,597.35

卷之三

Totals

Base Due 3.194.70

Net 3,194.70

藏文古籍总目

Thomas Clayton 1,826.16 Paid on 10/24/2022

pd. # 1554 Form
1/30/23

DEF010687

32

Collection # 09951241010 District West Division

Lincoln County, SD 099.51.24.1010 14-62 2022 Real Estate

Last Updated 1/30/2023

Owner: CLAYTON, THOMAS W - TST 5042-8-ELBERBERRY-SIR
Client Address: Property Address

CLAYTON, THOMAS W - TST 5042-8-ELBERBERRY-SIR

SIOUX CITY, SD 59102 99, SD

[GIS Information](#)

Legal Description:

N81/4 *EX LOT H-1* 24-99-51



428,200.00

Co:

1

First Installment:

Base Due 1,577.26 Due Date 04/30/2023

Net 1,577.26



Second Installment:

Base Due 1,577.26 Due Date 10/31/2023

Net 1,577.26



Total Due 3,154.52

Base Due 3,154.52

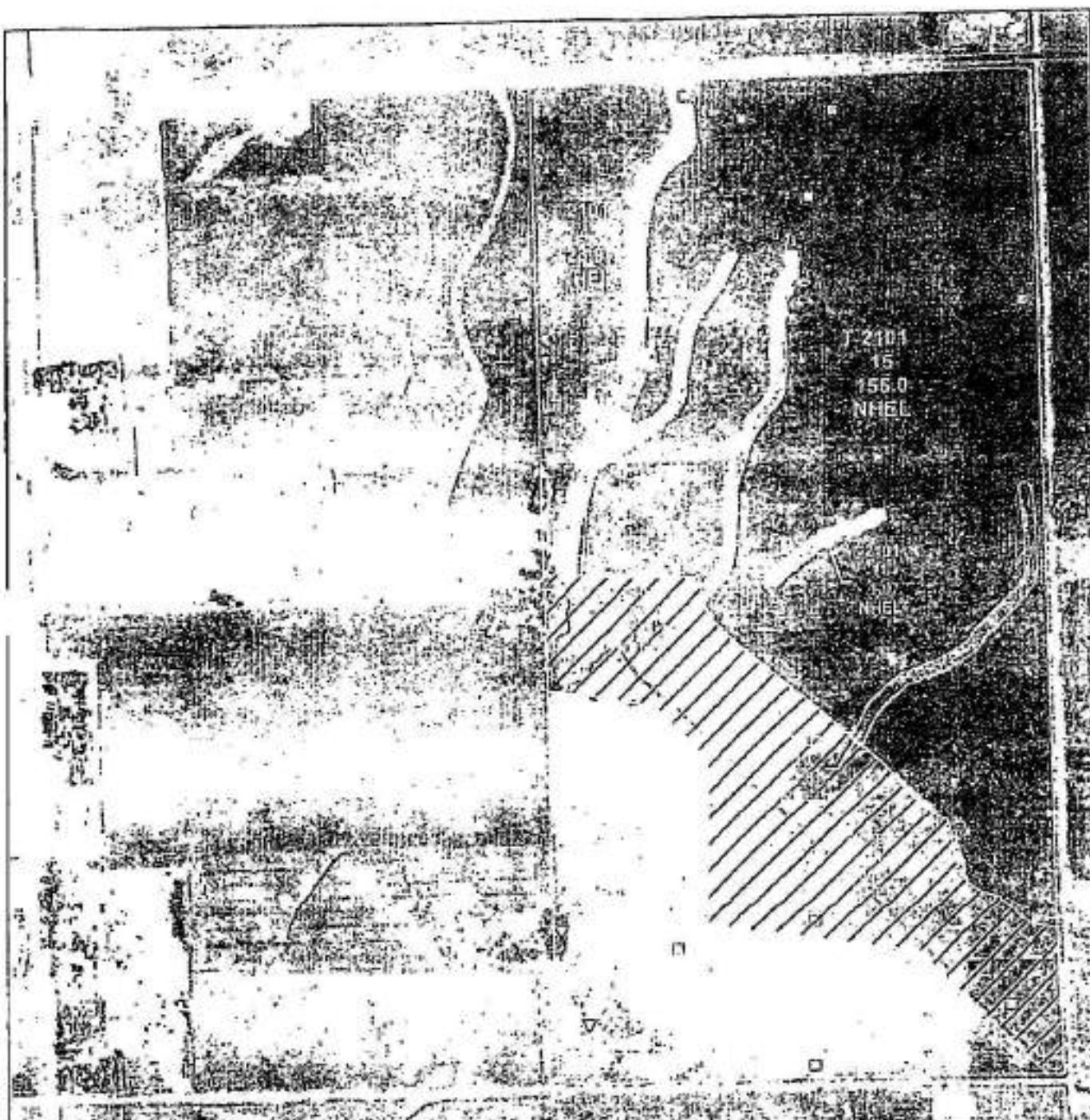
Net 3,154.52



Web Payments

Thomas Clayton 1,803.19 Paid on 10/24/2022

14,444
1/30/23
P.A.
Farm



Program
Year 2023



United States Department of Agriculture
Lincoln County, SD

PLSS: 24_99N_51W
Farm: 2539

1 inch equals 698 feet

Wetland Determination Identifiers

- Reserved Use
- Unreserved Use
- Exempt from Conservation Compliance Provision

Common Land Units

- Non Cropland

United States Department of Agriculture (USDA) Form: Service Agency (PLSS) maps are for FSA Programs information only. This map does not represent a legal survey or valid, actual ownership, mineral or water rights. This map is provided for the USDA's State, Regional, and County Conservation Programs (USCRP). The producer assumes the liability for all damages resulting from any errors or omissions in this map or from its use. USDA assumes no liability for any damages resulting from the use of this map for FSA Programs. Violations identified do not represent the size, shape or specific characteristics of the violations.

1099-MISC name, address, zip/postal code, county & phone no. OK CORRAL INC 48827 276TH STREET LEONNOX SD 57090 (605) 647-5288																													
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45-0393285	XXXX-XX-XXXX																												
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This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other处罚 may be imposed if Box 9 is filed late in time and the IRS determines that it has not been reported.

Instructions for Recipient

Recipient's taxpayer identification number (TIN). For your protection, this form may show only the last four digits of your social security number (SSN), individual taxpayer identification number (ITIN), or employer identification number (EIN). However, the payer has reported your complete TIN to the IRS.

Account number. May show as account or other unique number the payer assigned to distinguish your account. Amounts shown may be subject to self-employment (SE) tax. Individuals should use the instructions for Schedule SE (Form 1040), Corporations, partnerships, or partnerships must report the amounts on the appropriate line of their tax return.

Form 1099-MISC instructions: If the form is incorrect or has been issued in error, contact the payer. If you cannot get the form corrected, contact the preparer to your tax return and report your information correctly.

Box 1. Report rents from real estate on Schedule E (Form 1040). However, report rents on Schedule C (Form 1040) if you provide significant services to the tenant, sold real property on a business, or rented personal property as a business. See Pub. 527.

Box 2. Report royalties held, given, or received, excepted, copyrighted, and patented on Schedule E (Form 1040). However, report payments for a working interest or exception to the Schedule E (Form 1040) instructions. For royalties on timber, coal, and iron ore, see Pub. 544.

Box 3. Generally report the amount on the "Other Income" line of Schedule C (Form 1040) and classify the payment. The amount shown may be dependent upon the classification of a dependent employee, spouse, child, trustee, committee, basis, gaming profits, or other specific income. See Pub. 527, F 8 Income or business income, report the amount on Schedule C or F (Form 1040).

Box 4. Shows backup withholding or withholding on basis gaming profits. Generally, a payer must withhold if you do not furnish your TIN. See Form W-9 and Pub. 509 for more information. Report this amount on your tax return as tax withheld.

Box 5. Shows the amount paid to you on a fishing boat, crew member by the operator, who considers you to be

self-employed. Self-employed individuals must report this amount on Schedule C (Form 1040). See Pub. 527, Box 8. For individuals, report on Schedule C (Form 1040).

Box 7. If checked, consumer products totaling \$5,000 or more were sold to you for cash, on a buy-sell, or consignment, or other basis. Generally, report any income in your sale of these products on Schedule C (Form 1040).

Box 8. Shows substitute payment in lieu of dividends or tax-exempt interest received by your employer on behalf of a stock of shares of your corporation. Report on the "Other Income" line of Schedule C (Form 1040).

Box 9. Report this amount on Schedule C (Form 1040). Box 10. Shows gross products paid to an attorney in connection with legal services. Report only the taxable part of income on your return.

Box 11. Shows the amount of cash you received for the sale of fish if you are in the trade or business of catching fish.

Box 12. May show current year dividends as a nonemployee under a nonqualified deferred compensation (401(k)) plan that is subject to the requirements of section 409A, plus any earnings as accrued and after your deferrals.

Box 13. If the 401(k) plan requirement box is checked, the payer is reporting on this Form 1099 to satisfy its reporting requirement under chapter 3 of the Integrated Revenue Code. You may also have a filing requirement. See the instructions for Form 1040.

Box 14. Shows year-to-date compensation of stock, bonus, profit/loss payments subject to 6.25% excise tax. See the tax return instructions for where to report.

Box 15. Shows income as a nonemployee under an HSA plan that does not meet the requirements of section 409A. Any amount included in box 15 that is correctly taxable is also included in this box. Report this amount on income on your tax return. This income is also subject to a maximum deduction but is reported on Form 1040, 1040-SR, or 1040-NOL. See the instructions for your tax return.

Boxes 16-18. Show state or local income tax withheld from the payments.

Failure to report amounts. For the latest information about developments related to Form 1099-MISC and its instructions, such as legislation, regulations, or when they were published, go to www.irs.gov/uac/1099-misc.

Form File Frequency. Do not make a mistake in to see if you qualify for no-annual audit federal tax prepayment, filing, and direct deposit or payment option.

LINCOLN COUNTY
DIRECTOR OF EQUALIZATION
104 N MAIN SUITE 210
CANTON, SD 57013-1708
PHONE: 605-784-2571

Website: www.lincolncountysd.org
Email: assessor@lincolncountysd.org

2024 REAL ESTATE ASSESSMENT NOTICE
Date: FEBRUARY 26, 2024
Director of Equalization: KARLA GOOSSEN, CAA
** THIS IS NOT A TAX BILL **

Report New or Removed Construction
Verify Owner Occupied Status

APPEALS

Local Board Deadline: March 14th
County Board Deadline: April 2nd

To learn more about the appeal process
please go to appeals.lincolncountysd.org

CLAYTON, THOMAS W - TST
5012 S ELDERBERRY CIR
SIOUX FALLS, SD 57108

Page 1 of 2

Parcel:	098.51.24.1010	PERRY TOWNSHIP LENNOX IND DIST 41-4					
Legal Desc:	24 09 51 .838 NE1/4 "EX LOTH-1" 24-09-51	Acres	Land Value	Structures	Discretionary	Exemptions	Total Assessment
Property							451,768
Ag Land	158.37	451,768					0
Residential							0
Owner Occupied							0
Commercial							0
PARCEL ASSESSED VALUE							451,768
Parcel:	098.51.24.4010	PERRY TOWNSHIP LENNOX IND DIST 41-4					
Legal Desc:	24 09 51 .531 SE1/4 - 24-09-51	Acres	Land Value	Structures	Discretionary	Exemptions	Total Assessment
Property							457,522
Ag Land	160.00	457,522					0
Residential							0
Owner Occupied							0
Commercial							0
PARCEL ASSESSED VALUE							457,522

1st 1/2 pd. 2024
3/09/24
83248.28

RW. Jr.

LINCOLN COUNTY
DIRECTOR OF EQUALIZATION
104 N MAIN SUITE 210
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024010-001-002-025475-000000 8620AF08 PAM

CLAYTON, THOMAS W - TST
5012 S ELDERBERRY CIR
SIOUX FALLS, SD 57108

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Page 1 of 2

Parcel:	089.51.24.1010	PERRY TOWNSHIP LENNOX IND DIST 41-4					
Legal Desc:	24 99 51 .839 NE1/4 "EX LOT H-1" 24-99-51						
Property	Acres	Land Value	Structures	Discretionary	Exemptions	Total Assessment	
Ag Land	158.37	451,769				451,769	
Residential						0	
Owner Occupied						0	
Commercial						0	
PARCEL ASSESSED VALUE	>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>						451,769
Parcel:	089.51.24.4010	PERRY TOWNSHIP LENNOX IND DIST 41-4					
Legal Desc:	24 99 51 .831 SE1/4 - 24-99-51						
Property	Acres	Land Value	Structures	Discretionary	Exemptions	Total Assessment	
Ag Land	100.00	457,522				457,522	
Residential						0	
Owner Occupied						0	
Commercial						0	
PARCEL ASSESSED VALUE	>>>>>>>>>>>>>>>>>>>>>>>>>>>						457,522

18t 1/2 pd. epy 3/09/24
83248.28

RW. Jr.

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

Appeal No. 31012

ANNA MARIE CLAYTON,

Plaintiff and Appellee,

v.

THOMAS WADE CLAYTON,

Defendant and Appellant.

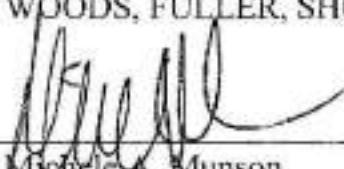
**APPELLEE'S MOTION FOR
ATTORNEY FEES
UNDER SDCL § 15-26A-87.3**

Appellee Anna Clayton respectfully moves the Court award her appellate attorney fees pursuant to SDCL § 15-26A-87.3. This motion is supported by a verified and itemized statement of legal services rendered pursuant to SDCL § 15-26A-87.3(l).

Dated this 10th day of November 2025.

WOODS, FULLER, SHULTZ & SMITH P.C.

By



Michele A. Munson

300 South Phillips Avenue, Suite 300

P.O. Box 5027

Sioux Falls, South Dakota 57117-5027

Attorneys for Plaintiff and Appellee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 10, 2025, the foregoing Appellee's Motion for Attorney Fees Under SDCL § 15-26A-87.3 was filed electronically with the South Dakota Supreme Court and that the original of the same was filed by mailing the same to:

Shirley Jameson-Fergel
Clerk, South Dakota Supreme Court
500 East Capitol
Pierre, SD 57501-5070
SCClerkBriefs@ujs.state.sd.us

and a true and correct copy of the foregoing motion was provided by electronic filing and U.S. Mail to:

William R. Clayton
Clayton Trial Lawyers
400 E. Las Olas Blvd., Suite 1400
Fort Lauderdale, FL 33301
Attorney for Defendant/Appellant

By /s/Michele A. Munson

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

Appeal No. 31012

ANNA MARIE CLAYTON,

Plaintiff and Appellee,

v.

**VERIFIED STATEMENT
OF LEGAL SERVICES RENDERED**

THOMAS WADE CLAYTON,

Defendant and Appellant.

Appellee Anna Clayton, by her counsel of record, respectfully submits the verified and itemized statement of legal services rendered in support of her motion for attorneys' fees pursuant to SDCL 15-26A-87.3.

I, Michele Munson, being first duly sworn on oath, depose and state as follows:

1. I am one of the attorneys representing the Plaintiff and Appellee in this Supreme Court appeal.
2. Attached hereto as **Exhibit A** is a true and correct copy of the detailed bill for the hours spent working on the Supreme Court appeal by Anna's counsel to date. I have gone through the statement to remove fees associated with enforcement of the decree or regarding the Defendant's failure to post bond. I circled and included in this request only the entries that were related to reviewing Appellant's brief and preparing our Appellee brief, even though I printed all entries since the notice of appeal was filed.

3. I enlisted the help of associate Emalee Larson-Sudenga in the preparation of Anna's response brief. The time she spent on the appeal is reflected under her initials, EVL. The time I spent on the appeal is reflected under my initials, MAM.

4. My hourly rate is \$350 based on my experience and for family law cases of this nature, which I have found to be fair and consistent with other attorneys with similar experience in this field of law.

5. Ms. Larson-Sudenga's hourly rate is \$225 based on her experience and expertise, which I also find fair and consistent with other attorneys with similar experience in this field of law.

6. Given the length of the Appellant's brief and number of issues raised, along with the extensive settled record and four-day trial transcript for this case, the amount of time spent on Anna's response brief was reasonable and necessary for the advancement of Anna's case before this Court.

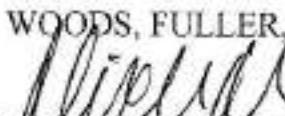
7. I declare under penalty of perjury under the law of South Dakota that the foregoing is true and correct and that I am signing this document in Sioux Falls, South Dakota.

WHEREFORE, Pursuant to SDCL 15-26A-87.3, Anna respectfully requests this Honorable Court award her **\$20,341.50** in appellate attorney fees for this Supreme Court appeal.

Dated this 10th day of November 2025.

WOODS, FULLER, SHULTZ & SMITH P.C.

By


Michele A. Munson

300 South Phillips Avenue, Suite 300
P.O. Box 5027
Sioux Falls, South Dakota 57117-5027
Attorneys for Plaintiff and Appellee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 10, 2025, the foregoing Verified Statement of Legal Services Rendered was filed electronically with the South Dakota Supreme Court and that the original of the same was filed by mailing the same to:

Shirley Jameson-Fergel
Clerk, South Dakota Supreme Court
500 East Capitol
Pierre, SD 57501-5070
SCClerkBriefs@ujs.state.sd.us

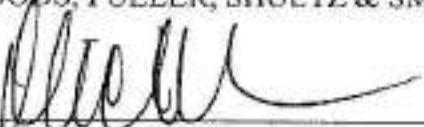
and a true and correct copy of the foregoing motion was provided by electronic filing and U.S.

Mail to:

William R. Clayton
Clayton Trial Lawyers
400 E. Las Olas Blvd., Suite 1400
Fort Lauderdale, FL 33301
Attorney for Defendant/Appellant

WOODS, FULLER, SHULTZ & SMITH P.C.

By



Michele A. Munson
300 South Phillips Avenue, Suite 300
P.O. Box 5027
Sioux Falls, South Dakota 57117-5027
Attorneys for Plaintiff and Appellee

WF
WOODS FULLER300 S. Phillips Ave | Suite 300 | Sioux Falls, South Dakota 57104
Ph: (605) 336-3890
<https://www.woodsfuller.com/>**INVOICE****Anna Cameron**
4904 S. Oxbow Ave., #313
Sioux Falls, SD 57106**RE : Anna Clayton v. Thomas Clayton (MAM)****Fees**

Date	Staff	Description	Billable Hours	Amount
3/3/2025	MAM	Review notice of appeal and discuss research needed on bond requirements.	0.10	\$35.00
3/10/2025	MAM	Listen to voicemail from Anna regarding appeal questions and review letter receipt from Supreme Court,	0.10	\$35.00
3/11/2025	SAL	Review Notice of Appeal, Docketing Statement, Order for Transcripts; research bond issue, attorneys' fees issue	1.00	\$285.00
3/11/2025	MAM	Discussion with associate regarding potential to file notice of review and request additional transcripts, as well as our filing deadline for a motion for attorney fees and whether a bond is required; review statutes addressing the same and consider my recommendation; draft e-mail to Anna explaining current issues we need to address and statutes and my advice regarding the same.	1.30	\$455.00
3/12/2025	MAM	Read and respond to e-mail from Anna confirming we will not file a notice of review or request additional transcripts and scheduling time to further discuss the bond question.	0.10	\$35.00

EXHIBIT**A**

3/13/2025	MAM	Prepare for and attend telephonic conference with Anna to discuss potential for notice of review, ordering additional transcripts, and demanding bond be posted or instead moving forward with enforcement following the automatic stay.	0.70	\$245.00
3/14/2025	MAM	Draft letter to opposing counsel regarding bond and cur enforcement of the judgment; e-mails regarding benefits of waiving or requiring bond.	0.50	\$175.00
3/14/2025	JJF	Analyze issues related to judgment lien and stay.	0.30	\$99.00
3/17/2025	MAM	Read and respond to e-mail from Anna regarding option to waive bond and enforce judgment or request bond.	0.10	\$35.00
3/18/2025	JJF	Work with Shelly Munson on stay and bond issues.	0.20	\$66.00
3/24/2025	MAM	Review and forward clerk's certificate and letter with alphabetical index and e-mail regarding bond letter.	0.20	\$70.00
3/25/2025	MAM	Review e-mail from Anna confirming receipt of Index and clerk's certificate and plan for addressing bond; finalize and send letter to opposing counsel regarding bond.	0.20	\$70.00
4/4/2025	MAM	Telephone conference with Anna and review her e-mail and direct check be issued from trust account since no bond has been filed and no response to our letter.	0.20	\$70.00
4/10/2025	SAL	Review Motion for Stay of Judgment and supporting affidavit	0.20	\$57.00
4/10/2025	MAM	Review and forward motion and affidavit regarding stay and bond.	0.20	\$70.00
4/11/2025	MAM	E-mail correspondence with Anna to provide her notice of the hearing date and time and correspondence regarding scheduling; telephone conference with Anna regarding the same; calendar our deadlines for the scheduled hearing.	0.40	\$140.00
4/16/2025	MAM	Review and forward settlement offer on bond issue to Anna and provide my initial thoughts.	0.10	\$35.00
4/18/2025	MAM	Review and consider e-mail from Anna regarding potential position on the bond issue and advantages and disadvantages of the same.	0.10	\$35.00

4/23/2025	MAM	Review and forward court reporter's endorsement to Anna and advise of estimated completion date.	0.10	\$35.00
4/25/2025	MAM	Correspondence with Anna regarding bond offer and transcript order.	0.30	\$105.00
5/6/2025	MAM	Read and respond to email from opposing counsel regarding bond issue response; review and forward notice of hearing.	0.10	\$35.00
5/19/2025	MAM	Review and forward notice and copy of transcript for first day of trial; review list of transcripts requested, along with Anna's e-mail about canceled hearings; review eCourts listing of hearings held and canceled and e-mail court reporter and opposing counsel to make sure all transcripts are included.	0.30	\$105.00
5/20/2025	MAM	Review e-mail confirmation from Anna regarding plan to request February 2022 transcript be included with other transcripts for record on appeal.	0.10	\$35.00
5/27/2025	MAM	Review and forward notice that court reporter completed another day of trial transcript.	0.10	\$35.00
6/3/2025	MAM	Review and forward the transcript from the third day of trial and the amended request for transcripts.	0.10	\$35.00
6/9/2025	MAM	Read and respond to e-mail from Anna asking if Tom paid the \$15,000 in attorney fees and whether that is stayed due to the request for a bond; review and forward final trial transcript and look at list to see what might remain for hearing transcripts.	0.20	\$70.00
6/10/2025	MAM	Review and forward additional transcript from pre-trial conference received today; review and compare original and amended order for transcripts and telephone conference with opposing counsel regarding February hearing still missing from both orders and update our list of remaining transcripts.	0.20	\$70.00
6/10/2025	SAL	Review Second Amended Order for Transcript	0.10	\$28.50
6/11/2025	MAM	E-mail correspondence with Anna to provide her the second amended order for transcripts that now includes the February 3, 2022 hearing.	0.10	\$35.00

6/12/2025	MAM	Review and forward additional hearing transcripts.	0.10	\$35.00
6/17/2025	MAM	Review and forward final hearing transcript received; begin work on our response to motion related to stay of judgment and bond.	0.20	\$70.00
6/18/2025	MAM	Prepare letter to Anna regarding deadline for Tom's appeal brief and continue work on response and opposition to Tom's motion for stay of judgment and supersedeas bond pending appeal; e-mail Anna regarding draft response to Tom's motion.	1.20	\$420.00
6/19/2025	MAM	Read and respond to e-mail from Anna regarding her review and approval of our response to Tom's motion regarding the bond.	0.10	\$35.00
6/20/2025	MAM	Read and respond to e-mail from Anna regarding her approval of response to motion to stay; review findings and conclusions to include references regarding Tom's dissipation of the marital estate and disobeying orders; finalize and file response.	0.50	\$175.00
6/23/2025	MAM	E-mail Anna a copy of our response we filed and advise on hearing.	0.10	\$35.00
6/27/2025	MAM	Review file to prepare for hearing and review and forward e-mails on Tom's Zoom appearance.	0.10	\$35.00
6/29/2025	MAM	Review Tom's reply affidavit and send to Anna for her review; briefly review Supreme Court case cited by Tom and e-mail with Anna regarding hearing tomorrow.	0.20	\$70.00
6/30/2025	MAM	Prepare for, travel to and from, and attend hearing on motion regarding bond.	2.50	\$875.00
7/2/2025	MAM	Prepare order from the hearing on Tom's motion to stay judgment and for supersedeas bond and e-mail draft order to Anna for her review and approval; telephone conference with Anna and revise order to address post-judgment interest; e-mail opposing counsel draft order.	0.90	\$315.00
7/9/2025	MAM	Review correspondence from opposing counsel approving proposed order and file proposed order; review correspondence retracting approval and contact clerk to reject proposed order.	0.10	\$35.00

7/14/2025	MAM	E-mail correspondence with Anna and opposing counsel regarding status of our proposed order.	0.10	\$35.00
7/15/2025	MAM	Review e-mail from Anna regarding Tom's proposed order; review redlined order; draft e-mail to the Judge with my proposed order; review Judge's response; review signed order; prepare and file notice of entry.	0.40	\$140.00
7/16/2025	MAM	E-mail correspondence with Anna regarding the signed order and notice of entry we filed.	0.10	\$35.00
7/23/2025	MAM	Read and respond to e-mail from opposing counsel requesting extension for Supreme Court brief due to health concerns; e-mail with Anna regarding the same; review and forward proposed stipulation and referenced statute; sign and return stipulation; e-mail correspondence regarding outstanding trust account transfer and attorney fee payment and checking on status of bond.	0.30	\$105.00
7/24/2025	MAM	Review and forward e-mail from Supreme Court clerk with new deadline for appellant brief.	0.10	\$35.00
7/26/2025	MAM	Review and forward Tom's motion to enlarge length of brief and e-mail correspondence with Anna regarding the same.	0.10	\$35.00
8/11/2025	MAM	Review e-mail and voicemail from Anna and correspondence regarding collection efforts we can take for certain portions of the judgment not otherwise stayed.	0.20	\$70.00
8/13/2025	MAM	E-mail correspondence with Anna to discuss collection efforts; request writ of execution to move forward with next steps.	0.10	\$35.00
8/13/2025	JAB	Review final divorce judgment and recent order on supersedeas bond. Phone call with Anna Cameron to discuss next steps for collections on judgment.	0.80	\$180.00
8/14/2025	JAB	Research South Dakota law for transcription of judgment between counties. Draft letter to Lincoln County Clerk of Courts requesting transcription of judgment from Lincoln to Minnehaha. E-mail correspondence to Ms. Cameron with update on the same.	0.70	\$157.50

8/19/2025	MAM	Revise and finalize letter to clerk requesting we transcribe Lincoln County judgment to Minnehaha County and work on draft letter to sheriff with list of accounts awarded to Tom that the sheriff may seize.	0.20	\$70.00
8/20/2025	MAM	Continue work on letter to sheriff with accounts and account statements for writ of execution; e-mail correspondence with Anna and Jacqueline regarding the same.	0.20	\$70.00
8/20/2025	JAB	Provide description to Attorney Munson regarding details for transcribing judgment to Minnehaha County and subsequent request for writ from Lincoln County. Review and suggested revisions for letter to Sheriff's Office regarding writ of execution.	0.20	\$45.00
8/21/2025	MAM	Review Anna's approval of our draft letter to the sheriff requesting execution of judgment on Tom's assigned accounts; work on transcribing judgment to Minnehaha County and issuing writ to Minnehaha County sheriff.	0.10	\$35.00
8/22/2025	MAM	Review and forward notice from Supreme Court granting extended brief and setting new deadline for brief.	0.10	\$35.00
9/11/2025	JAB	Work with Assistant Lund to send updated writ of execution and list of bank accounts to Sheriff's Office for execution. E-mail correspondence to Ms. Cameron with update on status of execution and timeframe for next steps.	0.30	\$67.50
9/15/2025	MAM	Correspondence regarding writ of execution issued and proceeding with collection efforts.	0.10	\$35.00
9/22/2025	MAM	Review appellant's brief and Greg's motion and affidavit to withdraw as Tom's attorney; e-mail correspondence with Anna regarding the same; review and forward notice from Supreme Court that brief has been rejected and new deadline provided; update deadlines and advise Anna.	0.40	\$140.00
9/22/2025	JAB	Left voicemail for Mike Brenden at Sheriff's Office regarding writ of execution.	0.10	\$22.50

9/23/2025	MAM	Review and forward notice of appearance for new attorney representing Tom; review Anna's response to the same; review and forward motion to quash and my initial thoughts.	0.50	\$175.00
9/23/2025	JAB	Phone call with Mike Brenden at Minnehaha County Sheriff's Office regarding details for writ of execution.	0.20	\$45.00
9/24/2025	MAM	Review and forward e-mail correspondence between Supreme Court clerk and new counsel regarding new filing deadline; review amended brief filed; review rejection notice for amended brief; e-mails with Anna regarding the same.	0.20	\$70.00
9/24/2025	EVL	Researched whether it was necessary to file a response to the recent motions from the opposing party (Brewer's motion to withdraw, Tom's motion to quash Brewer's affidavit and disallow Brewer from filing an appellate brief) and wrote a memo summarizing findings and potential response options.	2.00	\$450.00
9/25/2025	MAM	Read response from Anna agreeing not to file a response to the motion to quash or motion to withdraw; discussion with Emalee regarding courtesy response and her drafting the same; review and forward e-mails between clerk and Tom's new attorney; review Anna's e-mails regarding the same.	0.40	\$140.00
9/25/2025	EVL	Confirmed whether the appellee's filing deadline is extended when the appellant is granted an extension to file an amended brief.	0.43	\$96.75
9/25/2025	EVL	Researched responding to appellate motions to quash/strike affidavits. Started drafting proposed response to recent motions.	0.00	\$0.00
9/26/2025	EVL	Researched waiver of attorney-client confidentiality and SD case law about failing to cite authority. Finished drafting proposed response to motion to quash affidavit and disallow filing of appellate brief.	0.00	\$0.00
9/26/2025	MAM	Review rejected brief filed by Greg and discussion regarding disposition of trust account funds held with Greg's office.	0.10	\$35.00

9/29/2025	EVL	Reviewed proposed responses to recent motions and emailed them to MAM to consider.	0.00	\$0.00
9/29/2025	MAM	Review e-mail and proposed responses regarding pending supreme court motion to quash.	0.10	\$35.00
10/2/2025	EVL	Review Appellant's brief in preparation for the Appellee's response brief and start outlining issues.	3.00	\$675.00
10/3/2025	EVL	Review case file for trial court documents to prepare response to appellant's brief; identify and annotate evidence/filings contradicting appellant's claims.	0.34	\$76.50
10/3/2025	MAM	Review and forward final brief received from Tom and update on execution of accounts.	0.10	\$35.00
10/3/2025	JAB	Phone call with Mike Brenden at Minnehaha County Sheriff's Office regarding status update on writ of execution against bank accounts. Update to Ms. Cameron with analysis on potential next collection steps.	0.50	\$112.50
10/6/2025	MAM	Review Anna's response to execution results and inquiry regarding execution of investment accounts.	0.10	\$35.00
10/6/2025	JAB	E-mail correspondence to and from Anna Cameron to discuss options for execution and post-judgment discovery.	0.20	\$45.00
10/8/2025	EVL	Begin drafting Appellee's brief and work on condensing and clarifying appellant's arguments to more appropriately address them.	3.00	\$675.00
10/10/2025	EVL	Reviewed transcript of Mr. Nelson's trial testimony to find evidence supporting the court's finding of comingling. Reviewed Mr. Nelson's report. Searched case law on marital vs. separate property.	2.20	\$495.00
10/12/2025	EVL	Reviewed Trial Transcripts, researched SD case law on non-marital vs. marital property determinations	2.50	\$562.50

10/13/2025 EVL	Expanded the outline for appellate brief to incorporate additional legal arguments. Researched case law on commingling of assets in divorce proceedings. Researched South Dakota's "all property" rule and its interaction with the requirement to distinguish marital from separate property prior to division. Began compiling and integrating relevant case quotes into the brief outline.	7.00	\$1,575.00
10/14/2025 EVL	Drafted statement of the case and started drafting the fact section of the appellate brief, consulting the trial record as needed.	4.70	\$1,057.50
10/20/2025 EVL	Continued drafting fact section of appellate brief.	2.50	\$562.50
10/20/2025 MAM	Work on Supreme Court brief.	0.30	\$105.00
10/21/2025 MAM	Discussion regarding execution on judgment and Anna's options at this time.	0.10	\$35.00
10/21/2025 EVL	Continued drafting factual background for brief, adding citations to the settled record.	0.00	\$0.00
10/21/2025 JAB	Prep for and attend phone call with Ms. Cameron to discuss collection options. Comprehensive e-mail to Attorney Munson with anticipated next steps for review and approval in light of pending Supreme Court Appeal.	0.90	\$202.50
10/22/2025 EVL	Finished drafting fact section for brief, focusing on the circuit court's findings of fact and conclusions of law and Tom's motion to reopen the record.	8.00	\$1,800.00
10/22/2025 JAB	Review Lincoln County Judgment and location of farm ground awarded in divorce. E-mail correspondence to Ms. Cameron with update on next steps in light of appeal.	0.30	\$67.50
10/23/2025 EVL	Drafted argument for the first issue in the appellate brief with case and statute citations.	1.75	\$393.75
10/24/2025 EVL	Finished drafting argument for issue 1. Drafted arguments for issues 2 and 3. Started drafting arguments for issue 4 concerning Palm desert Condo and the Farmland.	7.20	\$1,620.00

10/24/2025 JAB	Begin drafting Subpoena to FB&T, Notice of Intent to Serve Subpoena, and Admission of Service.	0.60	\$135.00
10/24/2025 EVL	Researched cases to support arguments for Issues 1-4, including rules for determining marital vs. non-marital property, asset division, scope of court's authority, contract interpretation, and parol evidence rule.	1.40	\$315.00
10/25/2025 EVL	Continued drafting argument for issue four, focusing specifically on the Farmland.	2.20	\$495.00
10/27/2025 EVL	Drafted appellate brief. Completed issue four, addressing the classification and valuation of farmland, condominiums, and ethanol investments. Began drafting issue five, focusing on the waiver of support and its implications.	4.10	\$922.50
10/27/2025 EVL	Researched legal standards and case law addressing income earned during marriage, focusing on identifying a specific rule or authoritative quote. Examined judicial interpretations of donative intent to assess its relevance in determining whether property is classified as marital or non-marital. Investigated the distinction between alimony and property division to respond to Tom's argument that issue of support was waived.	1.60	\$360.00
10/27/2025 MAM	Review and revise subpoena and notice of intent to bank to request statements.	0.10	\$35.00
10/27/2025 JAB	Finalize drafting Subpoena to FB&T, Notice of Intent to Serve Subpoena, and Admission of Service.	0.80	\$180.00
10/29/2025 EVL	Continued drafting appellate brief. Expanded discussion of financial need and support for issue 5. Reviewed and incorporated attorney fee calculations for Anna. Drafted rule statement for issue six regarding attorney fees. Drafted argument for issue 6.	3.10	\$697.50
10/29/2025 EVL	Researched Attorney Fee awards in divorces under SD law.	0.40	\$90.00
10/30/2025 EVL	Edited appellate brief, added TOC, Title Page, Issues, citations, headings, etc.	8.00	\$1,800.00

10/31/2025	EVL	Reviewed Appellee Brief Draft. Condensed repetitive information to meet word limits. Refined conclusions for arguments under each issue. Edited case citations. Built TOA. Drafted statement of the legal issues and the jurisdictional statement.	0.00	\$0.00
10/31/2025	EVL	Researched case law discussing the equitable division of retirement accounts and the waiver of an argument on appeal for failing to cite supporting authority.	0.42	\$94.50
11/3/2025	MAM	Read Tom's appellant brief and our draft appellee brief and work on revisions.	1.70	\$595.00
11/3/2025	JAB	Send subpoena duces tecum and admission of service to Krista Tschetter, General Counsel at FB&T.	0.20	\$45.00
11/3/2025	EVL	Finished editing citations to the record, appellant's brief, and appendix. Added additional text under issue 1 to argue that the court did not abuse its discretion in finding that Tom's ethanol investment transactions violated the TRO.	4.15	\$933.75
11/4/2025	MAM	Discussion regarding revisions needed for appellee brief.	0.20	\$70.00
11/4/2025	EVL	Revised appellee brief based on MAM's notes.	1.45	\$326.25
11/4/2025	EVL	Researched scope of TRO and added SDCL 25-4-33.1 to brief. Researched case law about not deducting tax consequences from value of asset in divorce.	3.60	\$810.00
11/5/2025	MAM	Review and revise appellee brief.	0.50	\$175.00
11/6/2025	MAM	Continue revising appellee brief and e-mail correspondence with Anna regarding the same.	1.00	\$350.00
11/7/2025	MAM	Draft motion and affidavit for attorney fees.	0.20	\$70.00
11/7/2025	MAM	Continue drafting appellee brief.	1.50	\$525.00
11/10/2025	EVL	Reviewed the settled record to try and find evidence showing that Anna had to pay Tom's registration fees and other expenses.	0.50	\$112.50
11/10/2025	EVL	Added text to the brief to address Tom's argument regarding the court's consideration of joint tax filings.	0.40	\$90.00

11/10/2025 MAM

Finish drafting our Supreme Court brief and dismissals with Emalee regarding final revisions and cite checking needed; e-mail correspondence with Anna regarding the same.

2.40

\$840.00

Fees Total

107.44 \$27,292.00

Total of
Circled
Entries =

\$20,341.50

Expenses

Entry ID	Date	Phase	Description	Amount
215162	6/30/2025	CA110 - Out-of-Town Travel	MAM mileage from travel to Canton, SD	\$31.49
223100	8/13/2025	CA112 - Court Fee	Court Fee - Fee for Writ of Execution Request	\$5.00
227186	8/22/2025	CA154 - SD EFile	SD EFile - Transcript of Judgment Request	\$10.35
232274	9/11/2025	CA17 - Sheriff's Fee	Execution of a Writ	\$105.00
Expenses Total			4.00	\$151.84

DISBURSEMENT SUMMARY**Staff Summary**

Initials	Name	Hours	Rate	Amount
EVL	Emalee V Larson-Sudenga	75.94	\$225.00	\$17,086.50
JAB	Jacquelyn Bouwman	5.80	\$225.00	\$1,305.00
JJF	Jordan Feist	0.50	\$330.00	\$165.00
SAL	Seth Lopour	1.30	\$285.00	\$370.50
MAM	Shelly Munson	23.90	\$350.00	\$8,365.00

Expense Items	Charges
CA110 - Out-of-Town Travel	\$31.49
CA112 - Court Fee	\$5.00
CA154 - SD EFile	\$10.35
CA17 - Sheriff's Fee	\$105.00
Total:	\$151.84

Payments & Credits (\$0.00)

Payments and Credits

Date
3/6/2025

Type	Notes	Amount
Payment	Payment from Client Trust	(\$809.57)

4/4/2025	Payment	Payment from Client Trust	(\$1,704.51)
5/2/2025	Payment	Payment from Client Trust	(\$580.91)
6/9/2025	Payment	Payment from Client Trust	(\$223.02)
7/3/2025	Payment	Payment from Client Trust	(\$2,111.79)
8/5/2025	Payment	Payment from Client Trust	(\$812.06)
9/4/2025	Payment	Payment from Client Trust	(\$756.10)
10/3/2025	Payment	Payment from Client Trust	(\$1,498.08)
11/10/2025	Payment	Payment from Client Trust	(\$4,626.85)

TRUST ACTIVITY

<u>Date</u>	<u>Type</u>	<u>Notes</u>	<u>Amount</u>
3/6/2025	Apply To Payment	Bill from Client Trust	(-\$809.57)
4/4/2025	Apply To Payment	Bill from Client Trust	(-\$1,704.51)
4/4/2025	Disburse	Anna M. (-\$85,000.00) Funds Clayton - Anna Clayton v. Thomas Clayton - 062489	
5/2/2025	Apply To Payment	Bill from Client Trust	(-\$580.91)
6/9/2025	Apply To Payment	Bill from Client Trust	(-\$223.02)

7/3/2025	Apply To Payment (-\$2,111.79)
	Bill from Client Trust
8/5/2025	Apply To Payment (-\$812.06)
	Bill from Client Trust
9/4/2025	Apply To Payment (-\$756.10)
	Bill from Client Trust
10/3/2025	Apply To Payment (-\$1,498.08)
	Bill from Client Trust
11/10/2025	Apply To Payment (-\$4,626.85)
	Bill from Client Trust
	Total Trust Transactions (\$98,122.89)
	Current Trust Balance \$0.00

Effective April 1, 2025, please note that all electronic payments, including credit card payments by phone, online credit card payments, ACH, and other forms of electronic payments will be subject to a convenience fee equal to 3% of the payment amount.

Woods, Fuller, Shultz & Smith will be accepting online credit card payments, effective April 1, 2025. If you would like to have this payment option, please email a request to invoices@woodsfuller.com, Please include your name and invoice number with your request.

We appreciate your prompt payment.

Accounts Not Paid within 30 Days Shall Accrue A Late Payment charge at 1% Rate Per Month.

Matter Statement of Account

RE: Anna M. Clayton - Anna Clayton v. Thomas Clayton - 062489

Balance as of 11/10/2025

All Bills

<u>Date</u>	<u>Invoice</u>	<u>Amount</u>	<u>Paid</u>	<u>Balance</u>
11/10/2025	202536688	\$16,200.54	\$4,626.85	\$11,573.69
10/3/2025	202534114	\$1,498.08	\$1,498.08	\$0.00
9/4/2025	202530513	\$756.10	\$756.10	\$0.00
8/5/2025	202528608	\$812.06	\$812.06	\$0.00
7/3/2025	202527062	\$2,111.79	\$2,111.79	\$0.00
6/9/2025	202524674	\$223.02	\$223.02	\$0.00
5/2/2025	202521004	\$580.91	\$580.91	\$0.00
4/4/2025	202519600	\$1,704.51	\$1,704.51	\$0.00
3/6/2025	202516198	\$809.57	\$809.57	\$0.00
			Balance Due	\$11,573.69