

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

CASE NO. 08-10-C-373

Kirsten K. Baesler, Plaintiff,

vs.

Lowell L. Baesler, Defendant.

AFFIDAVIT OF KIRSTEN K. BAESLER

STATE OF NORTH DAKOTA)
 : ss.
COUNTY OF BURLEIGH)

KIRSTEN K. BAESLER, being first duly sworn on oath, deposes and states as follows:

1. I am the plaintiff in this case. I am married to Lowell, and together we have three sons, only two of whom are still minors. The minor children are our twins, M.B. and C.B., who are 16 years old and in the 10th grade.

2. At this time we are all living in the same home. It is tremendously stressful for all of us, and I am asking the court to have Lowell reside elsewhere while this is pending, to leave the boys in my primary care, and to sort out some financial issues.

3. Lowell works for Tesoro as an Operations Supervisor. His hours vary as do the days he works. Lowell is a shift worker and every 12 days he is gone for 12 hours a night for 4 nights. My work schedule is more flexible and conducive to being the present parent. I work for the Bismarck Public schools as a library media specialist and assistant principal. My hours are 8:00 a.m. to 4 p.m.

4. Although both Lowell and I love our children, I have always been the parent in charge of them. Throughout the years Lowell has relied on me to keep him informed about what is going on with them in their school work and extra/co-curricular

RECEIVED & FILED

MAR 12 2010

activities. I do their scheduling for school, practices, social events, and church activities. I have been their primary caregiver from the time they were born. Our children will be best cared for by me. Staying in the house is least disruptive for the children and their daily routine for school, church, and friends. Beyond that, the boys want desperately to stay in the house and with me.

5. I am asking that the court designate me as the primary residential parent as well as the decision-maker. Of course I would work to keep Lowell in the loop on decisions.

6. Unfortunately, Lowell has a serious drinking problem. He is unstable and inconsistent in his interaction with the boys. He has an established history of alcohol and drug abuse (with arrests and convictions), as well as a pattern and history of absences over the past 21 years. He has gone through drug and alcohol treatment 3 different times at 3 different facilities but is now drinking again. Here is what has been going on in the past six months:

- a. In October, November, and December he was noticeably drinking again, increasing as the months progressed. In January I talked to him about his drinking; he admitted he was drinking again. On January 8th I suggested he go to AA, but he did not.
- b. He came home from New Leipzig drunk on January 9th and 10th.
- c. On January 11th he was drinking when I went to work. That evening the boys went sled riding and I returned to work. He locked all of us out of the house and went to sleep which is unusual because we don't consistently lock our doors and we never do when one of us isn't home yet. The boys arrived home first and were not able to wake him. They were finally able to wake him by calling the house from their cell phones and pounding very hard on the door. He let them in and relocked the doors even though I was still not home.
- d. On Tuesday January 12th he left for somewhere telling the boys he was going snowboarding in Montana and then changed it to South Dakota but said he would be home on Saturday for work. I did not hear from him, but he did text the boys. Then he came home unexpectedly at 4:00 a.m.

- Friday. M.B. and I went to Minneapolis to visit our oldest son, and C.B. went to Williston and Belcourt to play in a basketball game that weekend.
- e. On January 16 he told me through a text message that he was not happy and needs to move on with his life. He called a friend to come over; then told the friend I'm having an affair, and he is filing for divorce.
 - f. On January 19 M.B. told me that he was talking very destructively about me to his parents within earshot of him and C.B. and that he, M.B., heard everything he was saying about me.
 - g. On January 22 I attended my son's basketball game. Lowell showed up visibly impaired and smelling of alcohol. I left the game early to attend the Chamber Annual Meeting and received a text from M.B. saying they knew Dad was drunk tonight. According to C.B., Lowell kept M.B. in his shop for over an hour "talking to him." Even though he said he wanted to keep the boys out of this, he showed M.B. the mediation e-mail and "explained his side of things to him" while he was drunk. I came home from the Chamber meeting, and Lowell verbally attacked me making accusations and saying he was praying for me, told me what a bad mother I was for leaving the game while he stayed and spent the whole evening with his boys. I attempted to ignore him, took a shower, and laid on the couch. He told me to prepare to get woken up every 15 minutes by him because he was going to make the next six hours of my life hell like I had made the past 21 years of his life hell. I phoned police to attempt to reason with him and get to bed. They talked to him and me and left. Lowell came to the couch waking me up every 15 minutes until about 4:30 that morning and saying mean and nasty things. At one point he told me I would sign the mediation papers and agree to what he proposed or I would first find out what he was capable of doing to me.
 - h. The evening of January 23 I came home from school and found Lowell with an AA buddy and a garbage sack full of empty liquor bottles on the table. The AA buddy was sober, and I was encouraged thinking Lowell was receiving recovery help again. Lowell was intoxicated, but the buddy

was taking him to an AA meeting. M.B. and I went to C.B.'s basketball game. Lowell and his buddy went to the AA meeting and the Wizards game. When Lowell got home he left again and returned to the house at 1:20 a.m. or so. He smelled of alcohol and was acting strange, so rather than have another confrontation and wake the boys, I left and went for a drive waiting for him to fall asleep. The next day at lunch I found out that he woke the boys anyway to tell them I had left and wanting to know if they knew where I went.

- i. January 24: I looked into alternative housing for the boys and I. I attempted to have a conversation with Lowell about our next steps. He said he was on the phone visiting with friends and family and didn't want to discuss it. I said, "The boys love and need you. I want them to love and need you, but we cannot live in the same house anymore. I have a firm grasp on the kids' day to day activities, needs, and academic struggles. I have a good working relationship with their teachers and understand their day-to-day needs for school, church, and activities. It makes the most sense for them to stay with me. They want more than anything to stay in this house, their home, during the interim, but we may have to move. Would you please move out so the kids can stay in their home?" Lowell came in from the shop at about 5:15 and passed out on the living room couch, slept until about 8:00, just as we eating a late supper, left for a while about 10:00 and came home and went to bed.
- j. On January 25 I received a text from Lowell at work about 8:30 pm wanting to know where I was, saying it would have been a good night to talk. Lowell came down to the family room at about 11:30 pm to talk. He spent much time name-calling but, once I convinced him that I didn't want to "take him to the cleaners," he asked me if Thursday or Friday would work to meet with the mediator. I said sure. He asked me to contact one since he didn't know much about the free session available. I said I would. He asked if I would let him know, and I said "of course." I went to sleep until he woke me up again at 3:30 that morning again wanting to

know "how I could do this to my family and if I didn't have a conscience?" I asked him if he didn't have a conscience all the times he got drunk and turned his back on the promises he made us while he was at Hazelden; he finally went to sleep at about 4:30.

- k. On February 12, 2010, Lowell left again to visit a friend in South Dakota. He left on Friday. When M.B. asked him when he would be home, he replied that he wasn't sure. This bothered M.B. because he felt that wasn't a fair answer and it left him feeling uncertain. Lowell returned on Monday evening, February 15.
- l. On February 25, 2010, Lowell was drunk and verbally assaulted M.B., saying he (M.B.) was *pretty fucked up*, among other things. I asked him to sleep on the couch (I was tired of it), and he said *don't worry I won't be here too much longer*.

7. When Lowell is actively drinking, he is manipulative and dangerous and does not have the boys' best interest in mind. With Lowell's drinking, his work schedule, and the boys own schedules and activities, a rigid schedule would not be workable. At their age, I think the boys can make arrangements with Lowell for time with him, as long as I am aware of when they are to be with him. At that time he can make arrangements with me to see them with the final decision being mine. I would want the court to order that Lowell cannot drink for 8 hours before any visit or during the visit.

8. When I told Lowell I wanted a divorce, shortly before the complaint was served on him, he went off the deep end, financially. After he received the papers it was even worse.

9. On January 20, 2010, I received a notice that he had transferred over \$18,000 dollars from our joint savings accounts. He took this from all our accounts even though he had contributed only to one of them. I want these funds put back. They are my entire life's savings besides my retirement fund. It is wrong that, after working hard for 21 years, I now have no reserves and have to live paycheck to paycheck; hand-to-mouth.

10. The next day I discovered that over \$50,000 in savings bonds were missing from our safe in the basement. I had purchased \$100 savings bonds every two weeks since our oldest son was 6 months old for their college education. That son is now 21 years old. I want these savings bonds either returned to me or placed with a reliable, agreed upon third person until this matter is done.

11. On February 6, 2010, I received a letter in the mail from the Chase credit card company notifying me of my new PIN number for my credit card. I am the primary credit card holder, and Lowell is secondary. I did not make this request. I spoke with a Chase representative and was informed that Lowell made this request for the PIN on January 31, 2010. They suggested that I immediately change the generic PIN they had mailed me to a PIN only I knew. I did this.

12. On February 12, 2010, the day the papers were served I received a text at 6:43 p.m. from Chase Credit Card Fraud Division asking if I was attempting to make cash advances from my Chase credit card. I responded "no." They immediately called me and ran through a list of several attempts to advance a total of \$80,000 from that card. The attempts were made from Prairie Nights Casino at exactly the time period Lowell would be in that area on his way to Pierre, South Dakota, to visit his friend. They were also at the same time American Express later informed me that Lowell had successfully incurred \$2,579.65 at Prairie Knights Casino on a credit card that I am the primary cardholder and he is a secondary cardholder. The Chase card cash advances were blocked. The company cancelled the card and has sent me a new one.

13. On February 14, 2010, as I sat down to pay our household bills, I logged into Wells Fargo and saw that Lowell had telephone transferred \$4,000 from our joint checking account sometime during the night before. He left only \$285. The entire amount of ALL of my BPS paychecks are direct deposited into this checking account, and three of the other accounts he cleaned out on January 20.

14. On February 17, 2010, I received an e-mail alert from Wells Fargo that our joint checking account had a negative balance of \$96.91. I logged into my accounts online to transfer money from that remaining in my savings accounts Lowell had left in place. I then discovered that those five savings accounts no longer existed. I spoke with a representative at Wells Fargo who informed me that, on February 16, 2010,

Lowell transferred the following amounts from joint savings into another account of his that I don't have access to and closed these accounts:

Savings Account # X6893	\$1,684.11
Savings Account # X6901	1,654.23
Savings Account # X4927	3,017.85
Savings Account # X0456	100.14
Savings Account # X7673	<u>+1,485.55</u>
Total:	\$7,941.88

These funds should also be returned to me.

15. American Express informed me that Lowell had incurred \$2,579.65 in charges and cash advances at Prairie Nights Casino on February 12, 2010. I had no money available to pay this because he drained all of our accounts. We have never had to pay interest on a credit card because we responsibly pay the balance every month. Because Lowell stopped depositing any funds into our checking account back in January, withdrew \$4,000 that was in our checking account leaving only \$285 in it in early February and cleaned out the savings accounts I borrowed \$5,000 from my father and \$1,000 from my sister to pay current household expenses and credit card charges for household and living expenses that were incurred during December and January which were now coming due. For the first time in my adult life I was faced with debt I could not pay off. Attached are the notes I signed to my sister and father. I did not pay the \$2,579 charge that Lowell incurred for cash advances and fees on the American Express. I want Lowell to pay the \$2,579.00 charge he incurred on my American Express credit card at Prairie Knights Casino on February 12, 2010. Since Lowell was living in the house during December, January, and February I want Lowell to help repay the loans from my father and sister because he is responsible for many of the charges on the credit cards and benefited from the purchases yet he did not contribute to the payments.

16. Lowell makes around \$105,000 (2008). I make around \$38,000 from teaching and from my position on the Mandan School Board. Because I don't have his 2009 W-2, I can only go from the 2008 W-2 by which Lowell's child support should be \$1,795 per month. (See attached computation).


	Kirsten and Children	Lowell
Net Income	\$2,589	\$6,323
Interim Order Payments	0	0
Child Support	1,795	-1,795
Mortgage	0	-648
Property Taxes	0	-295
House Insurance	-185	0
Automobile Insurance	-108	0
Utilities	-531	0
Cell Phone	-200	-100
TOTAL	\$3,360	\$3,485

17. In addition to the house, we also own farm property. I want the use of the house and buildings on our property at 1809 12th Avenue SE in Mandan, North Dakota. Lowell should have use of the farm property.

18. I would like the use of the Nissan Maxima, which I always drive, and will be responsible for lease payments. Lowell should have the use of the Silverado pickup and be responsible for payments on it. The boys should continue to have use of the Ford Probe. We also own a boat. I would suggest that we alternate weekends on the use of the boat. Both Lowell and I can use the boat.

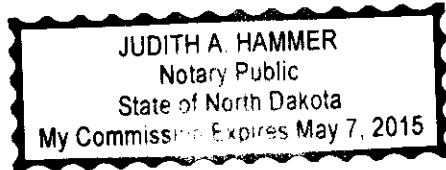
19. Lowell should pay for his vehicle insurance and the twins' vehicle insurance. I will pay for my vehicle insurance. We have the expense of the house and, until the property is distributed, have to pay for the cost of it. I don't have enough income even with the child support to take care of it alone. To share those costs I ask that he pay for the mortgage payment and property taxes, and I pay for the house insurance, electricity, heat, water, garbage, and telephone. Our medical and dental insurance will be maintained through each of us, and we would divide the children's prescriptions and all medical and dental costs equally. Lowell had been depositing \$4,200 each month into the account for our expenses, so I know he can afford to do so.

Dated this 10 day of March, 2010.


Kirsten K. Baesler

Subscribed and sworn to before me this 10 day of March, 2010.

SEAL:



Judith A Hammer
Notary Public
State of North Dakota
My Commission Expires: 5-7-2015


[View Billing Statements](#)
[View Tutorial](#) [Download Print](#) [Year-End Summary](#)
CARD ACTIVITY for **KIRSTEN K BAESLER** TIME PERIOD

NARROW RESULTS

Gold Delta SkyMiles® 61008 (All Cards)

Current Statement

Jan 19, 2010 to Feb
16, 2010
[Search Transactions](#)
[Other Filters](#)

 TRANSACTION VIEW
 DETAILS BY: [CATEGORY](#) [MERCHANT](#) [CARDMEMBER](#)
[GRAPH
ON](#)

1 - 22 of 22 Transactions

<input type="checkbox"/>	Date	Description	Cardmember	Amount \$
<input type="checkbox"/>	02/16/2010	Tue Periodic FINANCE CHARGE	KIRSTEN K BAESLER	8.92
<input type="checkbox"/>	02/15/2010	Mon DAN'S SUPERMARKET #0MANDAN	KIRSTEN K BAESLER	20.13
<input type="checkbox"/>	02/15/2010	Mon SOUTHSIDE TESORO TESMANDAN	KIRSTEN K BAESLER	73.99
<input type="checkbox"/>	02/13/2010	Sat DAN'S SUPERMARKET #0MANDAN	KIRSTEN K BAESLER	32.27
<input type="checkbox"/>	02/12/2010	Fri LANDERS CONOCO 00837BISMARCK	KIRSTEN K BAESLER	6.47
<input type="checkbox"/>	02/12/2010	Fri WAL-MART 1534 BISMARCK ND	KIRSTEN K BAESLER	49.97
<input type="checkbox"/>	02/11/2010	Thu MR. DELICIOUS 542929BISMARCK	KIRSTEN K BAESLER	50.00
<input type="checkbox"/>	02/09/2010	Tue TARGET T-2194 2194 BISMARCK	KIRSTEN K BAESLER	27.41
<input type="checkbox"/>	02/08/2010	Mon KMART 4272 KMART #04BISMARCK	KIRSTEN K BAESLER	-21.18
<input type="checkbox"/>	02/05/2010	Fri KMART 4272 KMART #04BISMARCK	KIRSTEN K BAESLER	78.84
<input type="checkbox"/>	02/02/2010	* Tue AUTOPAY PAYMENT RECEIVED - THANK YOU	KIRSTEN K BAESLER	-2,236.59
<input type="checkbox"/>	01/29/2010	Fri WAL-MART 3648 BISMARCK N ND	KIRSTEN K BAESLER	24.56
<input type="checkbox"/>	01/28/2010	Thu EYECARE PROFESSIONALMANDAN	KIRSTEN K BAESLER	30.00
<input type="checkbox"/>	01/28/2010	Thu USPS 370944090103048BISMARCK	KIRSTEN K BAESLER	13.30
<input type="checkbox"/>	01/23/2010	Sat WAL-MART 3648 BISMARCK N ND	KIRSTEN K BAESLER	105.20
<input type="checkbox"/>	01/22/2010	Fri BONANZA 09MANDAN	KIRSTEN K BAESLER	22.75
<input type="checkbox"/>	02/12/2010	Fri Cash Advance Fee Reference Number : 320100440640000162 Category: Fees & Adjustments Print	LOWELL BAESLER	15.05
<input type="checkbox"/>	02/12/2010	Fri Cash Advance Fee Reference Number : 320100440640000160 Category: Fees & Adjustments Print	LOWELL BAESLER	30.05
<input type="checkbox"/>	02/12/2010	Fri Cash Advance Fee Reference Number : 320100440640000161 Category: Fees & Adjustments Print	LOWELL BAESLER	30.05
<input type="checkbox"/>	02/12/2010	Fri ND FORT YATES GCA* PRAIRIE KNIGHTUS Doing Business As : NEW MERCHANT Reference Number : 320100440253492497 Dispute/Inquire about this charge Category: Other - Miscellaneous Print	LOWELL BAESLER	501.50
<input type="checkbox"/>	02/12/2010	Fri ND FORT YATES GCA* PRAIRIE KNIGHTUS Doing Business As : NEW MERCHANT Reference Number : 320100440253492495 Dispute/Inquire about this charge Category: Other - Miscellaneous Print	LOWELL BAESLER	1,001.50
<input type="checkbox"/>	02/12/2010	Fri ND FORT YATES GCA* PRAIRIE KNIGHTUS Doing Business As : NEW MERCHANT Reference Number : 320100440253492496 Dispute/Inquire about this charge Category: Other - Miscellaneous Print	LOWELL BAESLER	1,001.50

1 - 22 of 22 Transactions

[View Your Billing Statement For This Period](#)

Previous Balance as of Jan 18 2,236.59

[Annual Percentage Rate Summary](#)

Payments -2,236.59

Charges 3,123.46

Credits -21.18

New Balance 3,102.28

Minimum Due 62.00

Closing Date: Feb 16, 2010

Request a Line Increase Payment Due Date: 03/13/10

 PAY
 BILL

[Dispute/Inquire about Account Activity](#)

* Indicates posting date

ACTIVITY BY CARD

Cardmember Name	Payments \$	Charges \$	Credits \$
KIRSTEN K BAESLER	-2,236.59	543.81	-21.18
LOWELL BAESLER	0.00	2,579.65	0.00
Total	-2,236.59	3,123.46	-21.18

The Ladders
ONLY \$100K+ JOBS

**DON'T MISS OUT.**
Your \$100K+ career experts

FIND A GREAT JOB NOW »

Transaction details

CANCEL

PRINT

Please wait. Loading preview data ...

FEEDBACK

[About American Express](#) | [Careers @ American Express](#) | [Affiliate Program](#) | [Fraud Protection Center](#) | [Resources for Cardmembers](#) | [Credit Card Reform](#) | [American Express Labs](#)
View [Website Rules and Regulations](#), [Intellectual Property](#) and [Privacy Statement](#) of American Express. Copyright © 1995 - 2010 American Express Company. All Rights Reserved. Users of this site agree to be bound by the terms of the American Express Web Site Rules and Regulations.

I do hereby state that on this date, I did loan Kirsten K. Baesler the amount of

Five thousand dollars (\$5,000.⁰⁰)

Dated Feb. 15, 2010

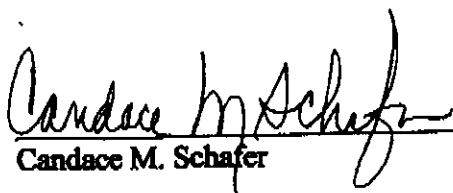
John A. Schafer
John A. Schafer

Received: Kirsten K Baesler

Dated Feb. 15, 2010

I do hereby state that on this date, I did loan Kirsten K. Bacsler the amount of One Thousand Dollars (\$1,000.00).

Dated February, 15, 2010.


Candace M. Schafer

CK.# 4291

Received 2/15/10
Kirsten K. Bacsler

**CHILD SUPPORT GUIDELINES
WORKSHEET**

(N.D. Admin. Code ch. 75-02-04.1)

NONCUSTODIAL PARENT/OBLIGOR: Lowell
CUSTODIAL PARENT/OBLIGEE: Kirsten

1. GROSS ANNUAL EMPLOYMENT INCOME:

Actual 105,183
Source of financial data used:
2008 W-2
Imputed (from Schedule A)
Total gross annual employment income 105,183

2. OTHER GROSS ANNUAL INCOME:

Children's benefits -01(3)&(5)
Military Subsistence -01(5)
Spousal Support (Alimony) -01(5)
Unemployment/Workers Comp. Benefits -01(5)
Social Security Benefits -01(5)
Pensions/Veterans Benefits/Retirement Income -01(5)
Refundable Tax Credits -01(5)
Dividends and Interest -01(5)
In-Kind Income -01(5)&(6)
Other
Total other gross annual income

3. ANNUAL NET INCOME FROM SELF-EMPLOYMENT(from Schedule B)

4. TOTAL GROSS ANNUAL INCOME (total of Lines 1, 2 and 3) 105,183

5. ANNUAL DEDUCTIONS:

Federal income tax obligation
(from Schedule 1) -01(7)(a) 18,531
State income tax obligation
(from Schedule 1) -01(7)(b) 2,734
FICA/Medicare/RRTA -01(7)(c) 8,046
Self-employment tax -01(7)(c)
Health insurance for children
(from Schedule 2) -01(7)(d)
Other medical expenses for children -01(7)(e)
Required union dues and
occupational license fees -01(7)(f)
Required retirement contributions -01(7)(g)
Required employee expenses -01(7)(h)&(i)
Total annual deductions 29,311

6. TOTAL NET ANNUAL INCOME (Line 4 less Line 5) 75,872

7. TOTAL NET MONTHLY INCOME (Line 6 ÷ 12) 6,323

GUIDELINES APPLICATION:

Number of children for whom support is being determined. 2

Support amount from guidelines - 10. 1,795

Multiple families (Schedule C). _____

Extended visitation (Schedule D). _____

Split custody -03*

1. Support obligation due from obligor. _____

2. Support obligation due from obligee. _____

3. Split custody support amount. _____

(Subtract the lesser obligation from the greater obligation
(Lines 1 and 2))

Equal Physical Custody -08.2*

1. Support obligation due from obligor. _____

2. Support obligation due from obligee. _____

3. Equal physical custody support amount. _____

(Subtract the lesser obligation from the greater obligation
(Lines 1 and 2))

*Split custody means the parents have more than one child in common and each parent has custody of at least one child. Equal physical custody means each parent has physical custody of their child, or if there are multiple children, of all their children exactly fifty percent of the time. In split custody and equal physical custody situations, each parent is both obligee and obligor. Accordingly, a separate worksheet must be completed for each parent.

Foster Care (Schedule E). _____

CHILD SUPPORT AMOUNT 1,795

Comments:

CHILD SUPPORT GUIDELINES
SCHEDULE 1 - HYPOTHETICAL FEDERAL AND STATE INCOME TAX
(N.D. Admin. Code § 75-02-04.1-01(7)(a) and (b))

NONCUSTODIAL PARENT/OBLIGOR: Lowell
CUSTODIAL PARENT/OBLIGEE: Kirsten

This schedule is for use in determining the hypothetical federal and state income tax deductions from gross income

Federal -01(7)(a)

1.	Total gross annual income.	<u>105,183</u>
2.	Amount of Line 1 not subject to income tax per IRC.	<u> </u>
3.	Amount of deductions allowed in arriving at "adjusted gross income" per IRC (i.e., from 2009 1040 form, line 36)	<u> </u>
4.	Total of Line 2 plus Line 3	<u> </u>
5.	Gross annual income subject to hypothetical federal income tax (line 1 - Line 4).	<u>105,183</u>
6.	Deductions:	
	Standard deduction (tax filing status of single)	<u>5,700</u>
	One exemption for the obligor.	<u>3,650</u>
	One additional exemption for each "child".	<u>3,650</u>
	("child" as defined in -01(01))*	
	# exemptions <u>1</u>	
	Total deductions.	<u>13,000</u>
7.	Line 5 less Line 6	<u>92,183</u>
8.	Apply Line 7 to tax tables for a single individual	<u>19,531</u>
9.	Child Tax Credit (for each qualifying child for whom an exemption was considered in line 6).	<u>1,000</u>
	# qualifying children <u>1</u>	
10.	Line 8 less Line 9 (Hypothetical Federal Income Tax Obligation)	<u>18,531</u>

*If, pursuant to court order, the obligee and obligor alternate claiming the exemption for a child, the amount is equal to one-half of the exemption for such child. Indicate here whether or not claiming the exemption for any child is alternated:

 Yes, claiming the exemption is alternated; number of children whose exemption is alternated:
 X No, claiming the exemption is not alternated

Income for the determination of the Earned Income Credit 105,183
Children claimed for the determination of the Earned Income Credit

State -01(7)(b)

Line 8 from above X .14 2,734

THIS AMOUNT IS THE DEDUCTION FOR THE HYPOTHETICAL STATE INCOME TAX OBLIGATION. RECORD THIS AMOUNT ON THE WORKSHEET, PAGE 1.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Kirsten K. Baesler,

)

Case No. 08-10-C-373

)

Plaintiff,

)

vs.

)

AFFIDAVIT OF LOWELL L. BAESLER

)

IN RESPONSE TO AFFIDAVIT OF

)

KIRSTEN K. BAESLER

Lowell L. Baesler,

)

)

Defendant.

)

STATE OF NORTH DAKOTA)

)ss.

COUNTY OF BURLEIGH)

I, Lowell L. Baesler, being first duly sworn, depose and state that I am the defendant in the above entitled matter and that I give this response in reply to plaintiff's motion for an interim order in the same numbered paragraphs as was used in the affidavit of Kirsten K. Baesler, as follows:

No 1: The information that Kirsten supplies is correct.

No. 2: This is not correct. I have been residing outside of our marital home since March 4, 2010. I still go to the shop located in the backyard of our Mandan home to finish rebuilding our oldest son's truck that was totaled out in an accident. I have about 300 hours of work invested so far and the truck is still not done. This project was started in November. I can provide both pictures and receipts to prove the amount of time and money spent on it. I will need to continue to have access to the shop where this vehicle is

RECEIVED & FILED

MAR 26 2010

17

Clerk of Crt. Burleigh Co.

located. I do not know why Kirsten would say that I was still residing at the marital home when I moved on March 4th. She signed her affidavit on March 10th.

No. 3: This is not correct. I do work for Tesoro Corporation as an Operations Supervisor. My hours do not vary however. I work a consistent four days on, four days off with rotating days and nights. I do not work overtime since my promotion to a salaried position in May of 2009. Kirsten's hours are supposed to be 8:00 a.m. to 4:00 p.m. but she is rarely ever at home. She is involved in many, many activities outside of her regular employment. The following is copied and pasted from her online LinkedIn Biography (See Attached as Exhibit A):

- State Board of Directors at North Dakota School Board Association
- School Library Media Specialist at Bismarck Public Schools
- School Board President at Mandan Public School District
- American Library Association, North Dakota Library Association, Mountain Plains Library Association, Treasure Mountain Research Retreat, North Dakota Association of Technology Leaders, North Dakota Curriculum Initiative Council, National Education Association, North Dakota Education Association, North Dakota Association for Supervision and Curriculum Development, High Plains Regional Technology Education Learning Associates Network, American Legion Auxiliary, NSBA Federal Relations Network, Morton Sioux Special Education Unit, NDSBA Government Affairs Committee
- Co-chair for City of Mandan's Market Street Strategic Planning Steering Committee, Mentor for Valley City State University's Library Program, New Teacher Mentor for Bismarck Public Schools,

NDSBA Veteran Board Member with Distinction, Mandan Public Library Board of Trustees President, Constitution, Bylaws and Policies Chairperson for the Executive Board of the ND Library Association, National Affiliate Advocacy representative for Mandan Schools, Mandan Progress Organization Board of Directors

No. 4: I do love my children. In the past, I have worked excessive hours of overtime to support my family financially and pay for Kirsten's college education and political objectives. I have always worked as much as I thought I was capable of doing to provide finances as I could. I never passed up the opportunity to work overtime and take on additional responsibilities when it was available. Unfortunately, this required extensive absences by me from my family. This has now changed since my promotion to a salaried position in May of 2009. I cannot address her last statement, "the boys want desperately to stay in the house with me". I am trying to avoid conversations with the boys about the divorce and would rather keep them out of this as much as possible. I wish she would also. Furthermore, I would question the truthfulness of that statement in any event. She has a way of spinning things to fit her needs/wants and hers only and if this were to become an issue I think it is one that should be probed only by some outside professionals.

No. 5: This is incorrect. I disagree that Kirsten should have sole custody and decision making responsibility. I say this because Kirsten fails

to keep me in the loop when she is in charge. She travelled to Washington D.C. in late January and did not even tell me in advance. I did not know her itinerary, length of stay, flight schedules, accommodations, or emergency contact information. On February 4th and 5th she stayed at a motel in Bismarck without notifying me or telling me that the boys would be staying with her on the 5th. On February 23-24 she left without notifying me and even the boys had two different understandings about where she went. They were unsure whether they would be staying with their aunt. She took the boys on an overnight trip to Dickinson without notifying me. This last weekend, March 13-14, she took the boys to St. Paul Minnesota without notifying me. On March 16th I learned from our son that she was taking the boys to Grand Forks on March 19-21. I could go on and on. I do not believe for a minute that she will make an effort to keep me in the "loop" in the future. Nothing from her past behavior indicates she has any intention or desire to do so in the future. Most of the time her own children don't know where she is, what she is doing, or when she will come home. (See attached Exhibit B, confusing emailed copies of text messages between my son and myself. These involve an incident where no one knew what was going on because Kirsten did not tell any of us.

No. 6: This is incorrect. In the early fall of 2007, I voluntarily took an evaluation at Whole Person Counseling Services in Bismarck. They recommended that I take some low level outpatient classes with them. I began these sessions and everything was going well. Eventually, Kirsten inserted herself and interfered in my counseling program. I believe she has an obsessive need to exert control. When this happened I felt I had no choice but to discontinue my program at Whole Person and seek treatment at Hazelden Addiction Treatment Center in Center City, Minnesota.

I entered Hazelden, on my own free will, in November 2007 and was discharged with staff approval in late December 2007. Hazelden recommended that no further treatment was necessary. I asked for a recovery coach and voluntarily enrolled in their online MORE (My Ongoing Recovery Program) system which I continue to work on to this day. Prior to my discharge, I had a meeting with my recovery coach and told him that I was worried about my relationship with Kirsten and had listed this on my recovery plan. I asked him if there were other programs back in Bismarck that I could voluntarily attend with the use of my insurance. Together, we were able to find out that Heartview had a follow-up aftercare program in Bismarck. This was no requirement for me to attend that program but I enrolled anyway.

After returning from Minnesota, I met with Heartview representatives and began a six month aftercare program. I finished that in June of 2008 and agreed to random drug and alcohol screening the whole time. Kirsten dismisses and belittles my effort as one of my having gone through treatment three times at three different facilities. I continue to have a sponsor, attend AA /NA meetings, and also have random drug/alcohol testing at work as part of a drug free workplace policy.

- a. Kirsten's discussion under sub a is incorrect. If she knew I was drinking, why did she wait until January to talk to me about it?

October, November and December were each of the months that I confronted Kirsten about her drinking and specifically about her driving drunk on November 2009. That night I heard the garage door open. It was election night and I believe she had spent the night at the Seven Seas awaiting the election results. I went to meet her when she came home to give her a kiss. The stench of alcohol was overwhelming and she could hardly stand up. She walked into the house bouncing off the car and doorway on her way to the shower. She was totally trashed! I confronted her about this and about the other time I knew she had also drove drunk a few weeks before. She

admitted that she was drinking too much and said that she would stop. In December, while I was working nights, she went to the 50th birthday party of a legislator from Mandan. The boys were worried about her and did not know when she was coming home, so I phoned her on her cell phone at the party at 12:30 a.m. It was obvious that she was drunk. She was slurring her words badly and needed to make two attempts at even telling me where she was. I asked her not to drive. She outright lied to me and said she had not been drinking. I phoned my AA sponsor and left him an urgent message to call me back. He accidentally phoned Kirsten while she was driving and he too could tell that she was drunk. She later admitted that she had been drinking.

- b. The assertion in this paragraph is also incorrect. On January 9th and 10th I took off work under the Family 40 Leave Policy. (See attached Exhibit C, Display Recorded Absences, showing I was gone from work on January 9-11th) I needed to care for my mother and father. My mother had just been discharged from the hospital, having had full shoulder replacement surgery and my father was unable to care for her because of a severe

nosebleed. My parents do not drink or keep alcohol in their apartment. On January 10, 2010, I came home unannounced from caring for my elderly parents. It was early evening and Kirsten was in the shower. I used the upstairs bathroom and noticed her cell phone lying on the counter. I picked it up and looked at her inbox of text messages. It became obvious that Kirsten was having an affair. I went to the bathroom where she was showering and began to read the texts. She looked like a deer in the headlights and came running out of the shower naked with soap still in her hair. She had been caught red-handed. The text messages revealed a man that referred to her as "Babe". There was discussion about her body and "missing her already". He also said, "After all this time, it still works out for us. It's like we were meant to be." I left the house to talk to her sister. Later that evening, I confronted her and she admitted she was having an affair. When I asked her questions about the relationship she told me that she was confused and offered no explanations whatsoever. I was devastated. I insisted that the boys be told about this and she admitted it to the twins that same night. I bought some beer and retreated to my shop to

think. The next morning she phoned our oldest son in Minnesota and told him that she had been having an affair.

c. This statement is also incorrect. Again on January 11th, I left early in the morning to care for my parents and to have my father to a doctor appointment in Elgin at 9:00 a.m. I had not been in touch with members of our family because of the trauma I was in from the night before. I was very angry with Kirsten and wanted to avoid any interaction at that point. I locked the doors of the house at 1:00 a.m. because I assumed that no one would be coming home any more after that hour. It was way past the boys' curfew. I was awakened by the boys knocking on the door and the phone ringing. I let the boys in. I relocked the doors at 1:30 a.m. and went to bed. Kirsten later came home and slept on the couch. She continued to do that until I left the house permanently on March 4th.

d. This statement is also incorrect. I told the boys I was going snowboarding at Terry Peak. Kirsten texted me to say that she "made a mistake" and "didn't know what she was thinking". I texted her that I was in the Black Hills "where our marriage began" almost 21 years ago when we were on our honeymoon.

I stayed two nights and did some snowboarding and gambling to take my mind off of things back home. I came home on January 15th,

- e. This is incorrect. I did text Kirsten to tell her that I couldn't do this with her any longer and that I needed to get on with my life. Beyond that, she is lying about what I did. How would she even know since she was 450+ miles away in Minneapolis as she stated in 6 d.?
- f. This is hearsay. My parents and I talked about Kirsten's absences from the house and her inappropriate behavior. They shared with me what they had observed on January 5th while I was away. On January 5, I travelled with Kirsten's father to Mott, ND for a military funeral. The family asked me to be a member of the Honor Guard squad. I have always agreed to do this for a fallen fellow veteran. This man also happened to be a dear friend of both her father and me. We got stranded there because of a bad blizzard. My parents were staying with us so that my mother could be sure to get to her surgery appointment the next day. My mother and father told me that Kirsten first came home about 9:30 p.m. They said that the boys did not

know where she was. When she finally arrived she only stayed for 15-20 minutes to briefly talk with the boys before leaving again. My mother and father both thought this was odd behavior since there was a blizzard. They said Kirsten did not come back home until 1:00 a.m. They heard the garage door open. I was upset to hear about her being gone so much while there was a blizzard and upset that our children didn't know where she was.

- g. This is incorrect. Kirsten made a brief **appearance** at the game but left shortly after it started. She arrived home at 11:30 p.m. and it was obvious that she had been drinking. We both had been drinking. I told Kirsten that I should make a big deal about her drinking like she did about mine. Kirsten admitted that she had been drinking. I continued to confront her about this and why it was always okay for her to go missing and be out drinking. She then called 911 and told them that her husband was very intoxicated and she needed help. Before the police arrived I told Kirsten that I knew she was calling the police to get the call on record and make me look bad. I sat in the kitchen and didn't say another word. When the police

arrived, she told them that she accidentally dialed 911 and meant to dial 663. She told them that I wouldn't let her get to sleep. They asked me why and I told them that she was having an affair and came home late tonight, after being out drinking again. I said that I had a right to confront the mother of my children about these matters. They scolded Kirsten for using the 911 system just because she couldn't get to sleep. I have a copy of the police report that lists nothing of Kirsten's story. (See attached Exhibit D police report) I did not wake her every 15 minutes until 4:30 a.m. as she alleges.

- h. This is incorrect. I did call an AA friend to tell him that I was so upset with Kirsten and wanted him to come over. He agreed to come over and, when he arrived he asked me to dump a full bottle of alcohol I had before me down the sink. I agreed that it would solve nothing and did dump the full bottle. We talked things over and I cried a lot. I was grateful for his friendship and gave him some deer sausage, elk burger, slim jims and smoked salmon. I put these items in a **grocery** bag and he put the empty bottle of rum with it. Kirsten came home and my friend and I left for an AA meeting and basketball game. After

the game, I went to my shop to work and continued to talk with my AA friend on the phone. I came into the house at 11:00 p.m. and Kirsten was getting ready to go out. I made myself some leftovers and sat in front of the computer to read the news. I never said a word. Kirsten dressed in provocative clothing and left the house shortly after 11:00 p.m. One of our sons woke up at 11:30 p.m. I asked him why he wasn't sleeping. He said he couldn't sleep. I asked him why not. He told me he couldn't sleep because he was upset. I asked what was upsetting him. He told me that his mother stated to him that she had to leave for fear of his father. I comforted him and asked him to try and get some sleep. I called my AA friend back and explained everything to him. I awoke to Kirsten using the shower at 3:30 a.m. My AA friend and I talked about this accounting of events.

- i. This is incorrect. Kirsten did mention the housing arrangements and I told her that she should move out because she is never there anyway. She indicated that the boys told her they did not want to leave the house. I said that the boys were not the ones that needed to leave. She became irate and burst

into profanity as I left to go the shop. She indicates that I came in from the shop at 5:15 p.m. and passed out. This is absolutely not true. I worked a 12 hour daylight shift that day and have the records to prove it. On January 24th I worked 7:00 a.m. to 7:00 p.m. (See attached Operating Schedule as Exhibit E)

- j. This is incorrect. Kirsten did not come home. I was working in my shop. Later that night, I did ask her how she could do this to our family and she did turn the tables and make it all about me again, accusing me of being drunk all the time. She uses her accusations against me to justify her own reckless and inappropriate behaviors. This all happened on January 25th. I later discovered that she had written Sherry Mills Moore a check for \$5,000 the very next day on January 26th.
- k. This is correct. Kirsten had the divorce papers served on me and I was very upset.
- l. This is incorrect. Kirsten was not even home. This is an accounting provided by M.B. not her. My personal notes address the issue with M.B. and the date was February 26th not February 25th.

No. 7: I disagree with her statement entirely. Kirsten is rarely home. She argues excessively with the children. She has an obsessive need to exert control over all people and situations in her life. I believe that she has an issue with alcohol abuse and specifically driving when drinking. I am very concerned that she would not cooperate in any visitation program the Court might adopt. I feel I have made some right choices and positive changes in my life but she has not.

No. 8: This is incorrect. I was the one who told Kirsten that I wanted a divorce. I sent a mediation proposal to her on January 18th and she replied on January 20th at 9:28 a.m. Kirsten replied "OK" and said that she would evaluate the suggestion of mediation. (See attached Exhibit F)

No. 9: This is incorrect. Again, Kirsten had this information already. The mediation proposal sent to her on January 18th indicated that I had transferred this money as a precautionary measure and under the advisement of a Wells Fargo PMA Banking Specialist. The specialist advised transferring all the money and closing the accounts. I decided to transfer just under half of the joint funds. (See attached Exhibit F)

No. 10: This is incorrect. Kirsten was notified on January 18th that I would be inventorying, valuing, and dividing these bonds. I said this will be

a more complex process given the fact that Kirsten would endorse and deposit my payroll check without my approval. Kirsten would subsequently buy these bonds in her name only even though we agreed to be buyer and co-buyer. These bonds were always bought with my payroll check. Furthermore, we had decided not to use these bonds for education expenses. The state of the economy made these bonds a good long term investment. It is more feasible to borrow money at low rates than to cash in mature bonds that are earning compounding interest rates. I have discussed this with her extensively. Subsequently, our oldest son completed 2 years of college without the use of these bonds. These bonds need to be divided or sold and the proceeds split equally. (See attached Exhibit F)

No. 11: This is incorrect. I would like to see a copy of this letter from Chase Credit Card Company regarding the allegation that I made this request. Furthermore, Kirsten was the primary holder on both the Chase card and the American Express card. Representatives told me that I was only a gifted card user much as an employer would give to an employee. That arrangement made it impossible for me to jointly manage and/or monitor expenditures even though these cards were auto paid from the joint family checking account that I transferred my payroll to. I did not even have the authority to stop the auto pay arrangement.

No. 12: This is incorrect. I never attempted to get \$80,000 from a card that has a \$25,000 credit limit. That is not possible? I did a point of sale transaction at the Casino so that I could get some cash. They made several attempts but were never able to get cash from this card. I did access \$2500 from the American Express card.

No. 13: I did transfer \$4000 dollars from the joint checking account and also closed the other accounts. This was again done under advisement of a Wells Fargo PMA Banking Specialist. All of these transactions took place the same day the divorce papers were served on February 12th. The reason was that I had no authority to shutdown the auto pay on the credit cards. Wells Fargo told me that if the auto pays over drafted the joint account the law gave them the authority to access the funds from any other joint account within the Wells Fargo system.

No. 14: This is incorrect. All of the transactions were initiated on February 12th. President's Day (February 15th) prevented these transactions from being completed until February 16th. Wells Fargo can verify that these transactions were initiated on February 12th. Kirsten also states that she was going to access funds from the remaining accounts that I had left in place but in No. 13 claims that I had "cleaned out" these accounts on January 20th.

She contradicts her own prior claims. I can obtain statements from Wells Fargo if needed.

No. 15: I disagree. I know Kirsten was in possession of checks totaling over \$5000. She also had kept \$500 in cash that our oldest son gave her to pay us back for helping him out. The bank records also showed excessive ATM transactions. Prior to the joint checking account going negative, I asked her if she intended to put any of those monies into that account and she replied "no". I then had Wells Fargo remove my name from the account to avoid credit reporting issues.

No. 16: This is incorrect. Kirsten **knows** that when I took a promotion in May 2009 that my salary would be \$90,700. We had extensive discussions regarding this matter. The pay cut reflects the fact that I no longer will work overtime. I had worked excessive hours in the past to pay for her educational expenses and political career objectives. Kirsten states her monthly gross income is \$3,966. Her own documents show her annual income is \$47,592. I believe that even that amount understates her true income but in any event it is not the \$38,000 she claims it is. She recently was promoted to Assistant Principal and has taken on additional Board and Committee assignments as well as mentoring college students. I believe

these will provide additional income to her and her self reporting does not reflect any additional income from her new positions.

No. 17: I disagree. I do want to keep the farmstead. It has been in my family for 5 generations. This property is neither income producing nor inhabitable but represents my heritage. The farm property was a gifted purchase from my parents. I will need to continue to have access to the house and outbuildings at 1809 12th Ave. SE.

No. 18: I disagree. The 2009 Nissan Maxima is leased under both of our names. The 2007 Chevrolet Silverado is leased to Kirsten only. Furthermore, the amount owing on the lease of the Silverado is up-side down to its value because of excessive mileage placed on it for various family purposes. I estimate a \$3-4,000 payment will need to be made when the lease comes due in September 2010. The boat is in my name only. I work 4 weekends off and 4 weekends on. Kirsten's proposal for alternating week use would allow me use of the boat on just 2 weekends in the upcoming July. The boat has a loan on it that represents the approximate book value of it. The loan payoff is \$6,278.12. I would assume the loan and possession of the boat. If this is not acceptable, I propose we split the loan and sell the boat. Kirsten does not know how to operate this boat or have the

means to tow it. I do not want the problems and headaches of joint ownership and use of a boat.

No. 19: I disagree. Kirsten had been depositing only \$1,650 monthly from her payroll to the joint family checking account. It appears to me this represents about 41.6% of her gross monthly income. I have deposited \$2,100 every 2 weeks, equaling 26 deposits per year. This \$4,550 monthly represents about 61% of my gross monthly income. This arrangement if continued would be categorically unfair for me. (See attached Exhibit G)

Kirsten has a history of inappropriate relations with other men outside of our marriage. She engages in bizarre behavior and reckless actions. She has an obsessive need to exert control over people and situations. I have confronted her on a number of occasions regarding her relations with other men. There are a number of such occasions where I personally witnessed her conduct and there were others that other people told me about. At one time Kirsten volunteered to me "if you hear the latest rumor about me having an affair with Jim" do not believe it. I thought this was odd. We have had many arguments about her never being at home and about the fact that she is always going out drinking after her meetings or work. She keeps odd and excessive hours away from home even after I have expressed to her

that I do not feel this is good for our family. When I have raised the subject she becomes very defensive, argumentative, and does it even more often thereafter. She lies about where she has been and what she was doing. I've asked her numerous times "swear to God you are telling the truth" and she would say "yes". I would then prove that she was lying and she would have a moment of truth and admit that she was with another man. She was caught with another man by our oldest son. I was working nights and none of the boys knew where she was and she wouldn't answer any calls to her cell phone. This is common practice when I work the night shifts. I sent our son to try and find her because I was worried. He phoned me that he found her car at a bar. The bar was closed. He waited for her and told me via cell phone that a strange man had dropped her off at 2:00 a.m. and she was drunk. Our son asked her not to drive but she wouldn't listen and drove impaired anyway. The next morning her clothes smelled of men's cologne and she eventually admitted, after many attempts to lie, that she had spent the evening parked with this man in a SUV outside of the Lonesome Dove Bar in Mandan. I can and will elaborate further on these events involving her infidelity if need be. This issue and fights about it go back to at least 2004.

I know that people in divorce often accuse each other of being liars and the accusation may not mean much to the Court but I feel I must make the accusation against Kirsten anyway. She has a major problem with telling the truth and after the experiences I have had with her over the many years that I have been married to her I feel I can safely say she is a pathological liar. I will give just one example.

In the early summer of 2007, Kirsten told me that she had found a lump in her breast, consulted a doctor, and she would need to have surgery. She said they would remove the lump and gather tissue samples from both breasts to check for cancer. I was devastated. I began a prayer group with neighbors, friends, coworkers, my family and their church. When I told Kirsten I had started a prayer group she became very angry with me and said "how could you?" She was mad that I would share personal information about her. This was confusing to me. I was very concerned and worried about the lump. I just wanted people to pray that she would be OK. Kirsten scheduled the surgery for a day that I was working. I told her I would take the time off of work to be with her. She **insisted** that I didn't and that our oldest son would give her a ride. Kirsten had the surgery and I saw her that night after work with a chest bandage on. She told me that there would be swelling from the surgery and this would take some time to subside. Every

day Kirsten would look in the mirror and cry, saying how she hated the mess the surgery had made. I comforted her and told her that we would give it time. If further surgery would be needed to correct things cosmetically, we would look into that.

Two weeks had passed and my sister saw Kirsten. She made a comment that Kirsten looked great with the work she had done to her breasts. Kirsten said "oh no, my God I would never do that. This is swelling and scar tissue from biopsy samples taken when I had a lump removed." My sister felt terrible and apologized to her and me for jumping to conclusions. My neighbor's wife also asked her if she had augmentation work done and again she made her feel bad about the inquiry, as well. Nearly a month had passed and the swelling was not going away. I asked Kirsten if she consulted her doctor about the test results and when the swelling would go down. She said the tests were benign and her doctor said the swelling would take more time to dissipate but the scar tissue would likely remain. I was relieved about the tests results and hugged her telling her that she looked fine.

Kirsten soon was gone a lot and was starting to wear provocative clothing. We started fighting about this and I went to stay with my sister for

a couple days to get away. My sister told me that I needed to confront Kirsten about having breast implants. She was sure that Kirsten had them and was familiar with it because she had them done herself, in the past. I confronted Kirsten as though I **knew** she had implants. Once again, when caught, she had a moment of truth and confessed to making the whole story up about the lump, cancer scare, and the tissue samples. She had chosen to have large breast implants put in. I was almost more devastated with this bizarre lie than the original scenario she presented. A lot of people know this story and are still aghast about it to this day. Furthermore, Kirsten did not need to have implants. Her breasts used to be proportionate to her size and I always complimented her for having a nice body.

In recent months Kirsten has been gone even more than in the past. She continued to keep odd/late hours and party with friends, fellow board members and public figures from Mandan. I have caught her driving drunk numerous times and she has often lied about it at least for a time. I could call the bars and they would confirm that she was there and drinking. She began wearing even more provocative and revealing clothing. She would wear skimpy shirts that said things like "Notorious" and "Wish You Were Here" slogans printed across her newly enhanced breasts. It became obvious to me that she was "playing the field" and had the surgery done for this reason.

We began to fight even more. I became increasingly depressed and felt more and more inadequate.

Kirsten has never been willing to admit to her role or contribution to the problems in our marriage. To her it has always been about me and never her. She plays the victim when confronted about her misdoings. She may confess the truth but she never apologizes for what she has done or how she has hurt someone. My attempts to discuss any of these matters with her have almost always ended up in a fight with her claiming everything she does is caused by my drinking too much.

It finally did get through to me that what I had to do take any use of alcohol by me out of the equation. I felt that only then would I be able to convince Kirsten that she needed to change her behavior, as well.

In the early fall of 2007, I took an evaluation at Whole Person counseling services in Bismarck. They recommended that I take some low level outpatient classes with them. I began these sessions and everything seemed to be going well. Eventually Kirsten inserted herself into the program I had begun. It was obvious she needed to control that too. The counselors I was seeing were told false things about me. The situation was poisoned by Kirsten's injection of herself into the situation. I phoned Whole

Person and told them that I would not be coming back and was going to seek treatment out of state at Hazelden Addiction Treatment Center in Center City, Minnesota.

I entered Hazelden in November 2007 and was discharged with staff approval in late December 2007. Hazelden recommended that no further treatment would be necessary. I had a recovery coach and enrolled in their online MORE programs which I continue to attend to this day. Prior to my discharge, I had a meeting with my recovery coach and told him that I was worried about my relationship with Kirsten. I asked him if there were other programs back in Bismarck that I could continue to attend with the use of my insurance. Together, we were able to find out that Heartview had a treatment aftercare program at their Bismarck facility. After returning from Minnesota, I met with Heartview representatives and began their six month aftercare program. I finished that in June of 2008, I agreed to random drug and alcohol screening the whole time. Kirsten dismisses this effort that I made to better myself by suggesting that I have tried to deal with alcohol by going to treatment three times at three different facilities. This is a distressing misrepresentation of the facts I have just outlined above. I continue to have a sponsor, attend AA, and also have random drug and alcohol testing at work as a drug free workplace policy.

Kirsten has continued to party even as I have dealt with the issue of alcohol use. My sponsor and recovery coach advised me to confront her about this. I did and Kirsten became very agitated and mad at me. She said "fine then" and would show me that she does not have to drink. She said it meant nothing to her to stop. After I had been through treatment this became an increasing point of contention for us.

Kirsten continued to drink and exhibit reckless behavior. I would confront her and she would lie and we would argue about it. By the fall of 2009, Kirsten was going out more and more. She was drinking more and more and would often be out until 2:00 a.m. or 3:00 a.m. in the morning.

In November 2009, I heard the garage open one night and went to meet her and give her a kiss. The stench of alcohol was overwhelming and Kirsten could barely stand. She walked into the house bouncing off the car and doorway on her way to the shower. She was trashed.

I confronted her about this and the other times that I knew she had been driving drunk. She lied about the extent to which she was drinking but also said she would stop. In December, again while I was working nights, she went to a 50th birthday party of a legislator-friend from Mandan. Our sons did not know when she was coming home and wanted to know. I

phoned her on her cell phone at 12:30 a.m. She was obviously drunk. I asked her not to drive. She lied and said she was not drinking. I phoned my AA sponsor and left him an urgent message to call me back. He accidentally phoned Kirsten while she was driving and it was obvious to him also that she was drunk, too.

The time she is away from the home is staggering. The boys have been conditioned to believe that she is either at a meeting or working, no matter what time of the day or night it is. I would call from work at 1:00 a.m. or 2:00 a.m. and she would not answer her cell phone. Sometimes the boys would answer and say they didn't know where she was either.

I started to become suspicious that Kirsten was having an affair. On January 10, 2010, I came home unannounced from caring for my elderly parents. It was early evening and Kirsten was in the shower. I used the upstairs bathroom and noticed her cell phone lying on the counter. I picked it up and looked at her inbox of text messages. It became obvious that SHE was having an affair. I went to the bathroom where she was showering and began to read the texts on her phone to her. She looked like a deer in the headlights. She came running out of the shower naked with soap still in her hair. She realized she had been caught red-handed. The text messages

revealed a man that referred to her as Babe. There was discussion about her body and “missing her already”. He also said, “After all this time, it still works out for us. It’s like we were meant to be.” Later I was at her sister’s house when Kirsten called there. She attempted to cover up her infidelity but later I confronted her with it and she admitted she was having an affair. She told our sons about it including our oldest son in Minnesota.

Since that time, Kirsten has been on a rampage to try to and turn the focus, blame and attention back to me by using false allegations and accusations. She makes statements to the children such as “dad must be drunk again.” She is trying now to protect her public image. Having an affair made public would be damaging to her future occupation and political ambitions. We have invested a substantial amount of money in her education and in her political career. She always said that when she gets a good position I would no longer have to continue the shift work I have been doing for 20 some years.

The following are a timeline of additional events that have transpired between Kirsten and me:

January 26, 2010: Kirsten drained the special account we had created to pay for house insurance and taxes. She transferred an additional \$700

from our regular savings account. I discovered on January 31st that this money was needed to cover a \$5,000 check to her attorney.

February 4, 2010: I came home from an evening basketball game to find divorce papers lying on the kitchen table. These papers had been drawn up on January 26th. One of our sons told me his mother had shown him the papers that morning before school and asked him to preview them and tell her what he thought. He told me he had a bad day at school because of this. Kirsten did not come home and instead spent the next two nights at a motel.

February 10, 2010: This is our wedding anniversary. I went to Prairie Knights Casino for a couple hours in the morning to take my mind off of Kirsten. I spent the afternoon, evening, and most of the night with my sponsor. I was crying a lot and having a very tough time accepting the destruction of our marriage. That night, I observed Kirsten texting at 12:30 a.m. I watched her without her knowledge for over a half an hour. I finally said that it didn't look like she was bothered at all by the fact that it was our anniversary. She replied, "Nope". I went to my shop and cried some more.

February 11, 2010: I made a roast with potatoes and carrots for the boys. I put the roast in the oven and spent the rest of the afternoon and evening with my parents. Later that evening, the boys and I sat at the table,

prayed, and began to eat at 7:00 p.m. Kirsten came home and went straight to the shower. Kirsten gets out of shower and comes to the table and is very disruptive and argumentative. Kirsten confronts me about the divorce paperwork in front of the boys. I asked her to agree not to do this in front of the boys. Kirsten breaks into a burst of profanity. She says "Fuck" countless times and told me to "shut the fuck up". I retreated to my shop to call my sponsor and avoid exposing the boys to her behavior. My sponsor tells me that Kirsten had confronted his girlfriend who is a co-worker of Kirsten's. Kirsten told his girlfriend that I was drinking the whole day before, our anniversary. Both my sponsor and his girlfriend were dumbfounded by this accusation because they both knew that I had spent the day with him.

February 12, 2010: Kirsten confronts me at 7:30 a.m. and said she wants this marriage over as soon as possible. She accused me of being "drunker than shit" at the supper table the night before. Kirsten tells me her lawyer wants the paperwork signed. I told her I didn't have an appointment with a lawyer yet. The divorce papers were served on me 3 hours later. I discovered that Kirsten had opened a new US Bank account and transferred all of our joint reward points to her new card. She had also initiated closure on the only joint credit card we had. US Bank said there was nothing they

could do for me. I called a Wells Fargo banking specialist to explain and he advised me to close all joint accounts and transfer the funds to a personal account before it was too late. I closed all accounts but the joint checking account which could not be closed because of pending transactions. I packed some bags and left for South Dakota to visit my best friend. I stopped at the casino on the way and tried to get cash with the Visa credit card. They could not process the transaction so I got \$2,500 cash with the American Express card. I did some gambling but retained the balance and used it for living expenses in the coming weeks until I had my own checking account.

February 14, 2010: Our son texted me and is cussing me out for taking the money. His language was very inappropriate. I told him that this did not concern him and he should not worry. He accused me of taking **his** money, which was not true. I told him I would be home the next day.

February 15, 2010: Kirsten shuts down my cell phone while I was in South Dakota. I had been texting the boys to keep in touch. The cell phone was in her name as well as the credit cards. The cell bill had already been paid. She shut my phone to stay in control. This was also a night that she used much profanity in front of the boys again. She finally came home when

I was talking to our son about his disrespect. While I was doing that Kirsten was smiling. I asked her if she enjoyed him treating me like that. She replied, "Yes". I continued to tell him that he needed a moral backbone and lying would get him nowhere. She became irate and burst into profanity once again. She got in my face again and said things like, "Get the fuck out", "leave us the fuck alone", and "shut the fuck up", among many other things. I told her to "go do some texting babe". She then said, "Oh yea, oh yea, I will and I'm going to fuck so much and I'm done having regrets." Both of our sons heard her say this. Our other son came downstairs and told his mother that he could not concentrate because of all the yelling and profanity. He scolded her for the use of profanity and the yelling. He said that he couldn't even get his homework done because of this.

February 16, 2010: My sponsor and I agreed to put our relationship on hold because Kirsten continually talks to his girlfriend, trying to "win" her over. Kirsten gave out her cell phone number to my sponsor's girlfriend and asked her to have my sponsor call her. She also shared e-mails with her and other co-workers that she had sent to her attorney. This is a total loss of confidentiality and anonymity.

February 17, 2010: Our oldest son called me and is very upset because his mother called him to say that she would need to take money from his account to pay for an overdraft. This was not true. She was in possession of at least \$5-6,000 in cash and checks that she refused to deposit in the account.

February 20, 2010: Kirsten confronted me about paying some bills. I told her to let me know in writing what my share was and I would pay them. Kirsten became agitated and made derogatory remarks about my mother. I again retreated to my shop. I discovered that a \$50 gift card, that my brother gave me for Christmas, was missing as well as \$300 cash from my truck.

February 26, 2010: I tried to talk to our son about his showing of disrespect towards me. I told him that something was wrong in his head if he really believed that all I've taught him in 16 years was lying and manipulation. I also said that lying and disrespect would not serve him well in the future. He became upset and so I apologized for confronting him. He later spoke to his older brother and accused me of saying he was fucked in the head and would never amount to anything.

March 1, 2010: I was doing laundry and discovered a coffee mug with booze in it. I asked our son about it when he came home from school. He assured me that neither he nor his brother would sneak alcohol in that manner with coffee but said he would ask his mother about it. Kirsten came home, as I was in the shop, for about 15-20 minutes and left again. I asked C.B. if he talked about the coffee mug. He said that he had and his mother was "lying and backpedaling" about it. Kirsten had told C.B. that it must be his dad's. She said she doesn't drink hard liquor and only drinks wine and beer once in a while. Shortly after leaving the house she called him back to admit that it was her coffee and brandy. She said she had been drinking it while doing laundry on February 28th. C.B. asked why she lied and she became defensive. C.B. ended the conversation and told me that his mother was texting him and threatening to take away his cell phone. Kirsten was gone all night and the boys told me that she was on a limo ride to surrounding small towns. Kirsten came home sometime after 1:00 a.m.

March 2, 2010: Kirsten was gone until 11:00 p.m. Neither the boys nor I knew where she was.

March 4, 2010: I moved out of the house.

Further affiant saith not.

Dated this 25th day of March 2010.

Lowell L. Baesler

LOWELL L. BAESLER

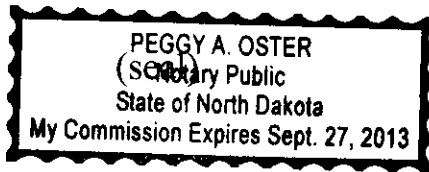
Subscribed and sworn to before me this 25th March 2010.

Peggy A. Oster

Notary Public

Burleigh County, ND

My commission expire: 9-27-2013



STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT
CASE NO. 08-10-C-373

Kirsten K. Baesler, Plaintiff,

vs.

Lowell L. Baesler, Defendant.

SUPPLEMENTAL AFFIDAVIT OF KIRSTEN K. BAESLER

STATE OF NORTH DAKOTA)
 : ss.
COUNTY OF BURLEIGH)

KIRSTEN K. BAESLER, being first duly sworn on oath, deposes and states as follows:

1. Lowell's affidavit is filled with inaccuracies and false statements. I file this affidavit to respond to his.

PARENTING RIGHTS AND RESPONSIBILITIES

2. Lowell says that he is not residing at our home. He may be sleeping elsewhere, but he is in our family home and at our homestead at all hours, without letting me know. This makes our everyday living unsettled and without privacy.

3. With the exception of a few days, he has been in our house every day since March 4 and prior to that. He comes and goes at all times. During the weekend of March 19, 20, and 21 while the twins and I were in the eastern part of the state with our oldest son, Lowell invited guests to stay overnight at the house. He enters the house routinely when no one is home. He has not ever informed me that he has moved out, nor given us a forwarding residential address. He has removed some of his clothing and personal care items, but the majority of his personal items still remain at the house. I assume he is sleeping somewhere, but I do not know where. When we

RECEIVED & FILED

APR 21 2010 30

returned from M.B.'s statewide North Dakota Farmer's Union advisory council meeting at the Comfort Inn Suites in Bismarck on Sunday, March 28, in the afternoon, Lowell was there. He has been at the house from early in the morning or until late at night – depending on the shift that he is working almost every day.

4. It is true that he does spend the majority of his time in the shop located in the backyard, but that is when I am at home. When I am not home, he comes into the house as he pleases. His shop has no bathroom or water so he also comes into the house for those needs.

5. This has become additionally problematic for our middle child, M.B., who is very unhappy and upset with Lowell. On March 21, 2010, M.B. told him that he does not want Lowell to contact him in any way – text, phone, or in person - until he is back in recovery. Lowell is still contacting him, sending numerous texts to his phone almost daily and some at very odd hours such as 3, 4, and 5 o'clock in the morning. It was very uncomfortable for M.B. to come home and have his father at the homestead again. M.B. asked me to leave as quickly as possible until his father left.

6. It is true that Lowell is working on a truck in the shop, but the boys have told me it is very near completion. In addition, there is no urgency to get that truck finished. It belongs to our oldest son, L.B. L.B. lives in St. Paul and is not even sure he wants to pay the fees of licensing and insuring it while he's living there. If Lowell can't make arrangements to work on this truck at another location, then he can continue to do so in the shop but, in respect to M.B.'s requests, I would ask that Lowell let us know at least 24 hours in advance that he is going to be in the shop and when he plans to leave. That would help all of us be prepared for him being there.

7. Availability to the children. I don't want to get into an argument about descriptions. To me, a 12-hour, 4-on 4-off, day shifts to night shifts schedule is very much a varying schedule. Compared to that, my hours and days for my primary employment are pretty straightforward. I work 8:00 a.m. to 4:00 p.m., Monday through Friday. Like most professionals, I have additional "duties as assigned." There are evening parent-teacher conferences, music programs, curriculum meetings, and professional development requirements mandated by my employer.

8. The reason Lowell may interpret that I am never home is that I am also very involved in the activities of my children and often volunteer for things their organizations need help with, such as the MHS Band Boosters, Mandan HS Activities Recreation Club, and I will now also be volunteering to assist at their track meets this Spring. If I am not home when Lowell believes I should be, it may also be because when the boys aren't home anyway because they are busy with football, basketball, or track practice. I take advantage of that time to do grocery and household shopping at places like Wal-Mart. If I can't get away from my work during my lunch hour, I must do this after work.

9. The meetings and organizations Lowell has listed in his affidavit and Exhibit A represent over two decades worth of involvement. Very few of them are time consuming and many are completed projects or simply memberships. Over 90 percent of them are directly related to better learning opportunities for children. I have always understood that my primary job is raising my children and anything I volunteer to involve myself in must contribute to making me a better mother; local libraries and local educational activities directly impact my children. This list could also include my involvement as the boys' Cub Scout leader for four years, their park district basketball coach, their classroom home mother for their entire K-6 grade career, their youth soccer coach, their First Communion/First Penance leader, their PTO president for four years, their Art in the Classroom guest teacher, a group leader for their Junior High CCD instruction, their Junior High dance chaperone for all dances during their 7th and 8th grade career, and their Cal Ripken program volunteer. To sum up, yes, I am busy, but I am busy to raise the best kids I can raise and provide them with the best opportunities available. Our children are appropriately cared for and supervised when in my care. They are also 16 years old and sophomores in high school so, even if I am gone at some time they are home, they are certainly old enough to be home alone for a piece of time while I am at a meeting.

10. Lowell has worked excessive overtime, but I do not agree that it was done to benefit his family. He has always been driven to build his retirement and investment accounts as much and as quickly as he could. He worked overtime to build his personal

accounts while his contribution to the family remained stable, no matter how many hours he worked.

11.11. Even when Lowell did get days off, he very clearly and unequivocally informed us that those were *his* days off and he would do with them as he pleased. Most often, he went fishing or hunting for days at a time. This established a solid routine in our family that I was the parent most available to the boys when they needed or wanted something. I will say that the fishing and hunting activity did diminish after he received his first DUI and again after he received his second DUI. He could not drive to do these things because he lost his license for six months and then again for another two years. He was not able to drive to fishing or hunting spots any more. This situation also more firmly established the routine and expectation in our family that I was the one able to meet their needs when they needed something, such as coordinating their schedules for school, activities, church, or socially.

12. Additionally, even though Lowell was at home more during the time he didn't have his license, he was not with the family. He was in his shop in the backyard. This shop has a refrigerator, television, and internet access. If the boys wanted to see or talk to him, they had to go out to the shop. Lowell has never been an integral part of the day-to-day lives of any of his sons. This is why the boys have told me that they "want to stay in their home with me." Because this would be the most like they've known for the past 16 years. Lowell suspects the "truthfulness" of this statement and accuses me of discussing the divorce with our sons. I have always and will continue to listen to my boys when they tell me something about their feelings and desires. I did not solicit this response from them; it is what they told me.

13. Lowell is completely inaccurate when he states that I do not keep him in the loop when I am in charge. He is absolutely false when he claims that I travelled to Washington, D.C., in late January and did not inform him in advance. First of all, I have travelled to D.C. those exact same days for the past four years for the ND Education fly-in. He has even travelled with me to visit a friend of his in Washington during one of those years. In addition, the airline arrangements for this year's dates were made in November 2009 and put on our family calendar immediately. Lowell and I were still communicating well during November and, when we were tentatively planning our

annual vacation together that we usually plan for early February, I talked about the Washington, D.C., commitment numerous times.

14. Lowell states in his affidavit that he "did not know my itinerary, length of stay, flight schedules, accommodations, or emergency contact information." He may not have but, just to get the information straight, I left on my trip on January 29, 2010. Just two weeks earlier Lowell had told me he was not happy in our marriage and was moving on with his life. He sent me a proposal on January 18th and on the 20th had transferred over \$18,000 from our joint accounts into a single savings account which was only in his name. Other than as necessary for the children, he really did not need, nor did it seem right to tell him, the details of my itinerary.

15. The children, my sister, and my father all had the necessary information concerning my travel and lodging arrangements. He had already established by that point that our travel did not really require that kind of exchange of information. On January 11th, Lowell left Mandan and didn't return until 4:00 a.m. on January 15th. At first he told one of our sons that he was going to Montana to go snowboarding. Then that plan changed, and he decided to go somewhere in South Dakota. The only information he told the boys was that he would be back in time to work on Saturday, but even this changed because he arrived back home, pulling into our garage at 4:00 a.m. on Friday morning. He never communicated any plans to me, much less provided me with his itinerary, length of stay, driving schedules, accommodations, or emergency contact information. Having set the pattern and given his declaration that the marriage was over, I thought I gave him enough information. He always has my cell phone number, and I always have it with me. In fact, he continually harassed me with texts for the first 48 hours I was in D.C., and he woke M.B. and C.B. up numerous times the first evening I was gone, asking them if they had heard from me. He continued to wake them even after they begged him to let them sleep and not come downstairs anymore where they also had friends sleeping who were spending the night.

16. Regarding the hotel stay on February 5th, the North Dakota School Board Association was paying for a hotel room for me and my families. I asked the boys if they wanted to stay at the Doublewood and invite a friend for the night. They were excited about this, and so I was excited too. The boys were in constant contact with

their father and, since he was at the house, they told him what the plans were for the night. I did not see any reason to re-tell the same information he already knew. The same thing is true for our stay in Dickinson. The purpose of our trip to Dickinson was to fulfill a promise made to M.B. last fall. M.B. asked that, if he kept his grades up and was, therefore, able to take and pass his drivers' test, he and C.B. could go to Dickinson and spend the night so they could see and go to a movie with two girls they had met at Farmers Union camp during the summer of 2009. I told them they could go to Dickinson, but they couldn't travel alone. If they were okay with me driving them and spending the night also, we would do that. M.B. did keep his grades up for the entire first semester and did pass his driver's test. I kept my promise to M.B. He arranged the dates to meet his friends. I drove them and stayed with them, and we returned on Sunday afternoon. I asked the boys if they had told their Dad what we were doing. They both said yes. Once again, I did not feel the need to re-tell Lowell information he already knew. The same is true for our visit to St. Paul to see the boys' older brother, Lee. It was the twins' spring break and the planning for this visit occurred weeks prior. Again, I asked the boys if their father knew they were leaving to see Lee. Again they said yes.

17. I should also add that I have tried to call Lowell on numerous times and immediately was sent to his voice mailbox. I tried to call him the weekend of March 26th and I called him again immediately after I received a text message from him. Again I went to his voice mailbox. Here is what the text said:

Lowell: Where r u guys?

Kirsten: I just left u a voicemail on your cell phone. C.B. and I are with M.B. at his ND Farmers Union Sr Youth Advisory Board mtg. Call if u have any questions. M.B. is done tomorrow @ noon. I assumed one of the boys had let u know like they did when I asked them if they let you know that we were going to Grand Forks before we left last weekend. I shouldn't make that assumption any more. We will need to devise a reasonable plan to communicate with each other about our boys. It is our responsibility to communicate about our boys. It is not their responsibility. It is our responsibility. You had been communicating with them

previously. I wasn't aware that had ceased. Now that I am aware of that it is our responsibility.

18. I did communicate very clearly that I would be in Grand Forks for one night for library professional development, and I made appropriate arrangements with my boys, but I will attempt to reply to Lowell's accounts on this. When this training was first scheduled, Lowell and I weren't experiencing the level of difficulty we are experiencing now. He was scheduled to be off, so I consented to those dates for training. During January and February his schedule became erratic again. He never told me this, but I have heard through the boys and Lowell's co-workers that he took over four weeks off from work starting in early January until February 17th through a combination of vacation and sickness and disability leave. His final days of leave were just before my scheduled training. Because Lowell was not informing me of anything that he was doing or anywhere that he was going, I figured I better have some discussion with M.B. and C.B. about staying with my sister, Candy. This is not unusual. The boys have stayed with her numerous times when Lowell and I have been out of town together, so this arrangement would not be unusual for them. The plans were in place, if their father was not home that evening they were to stay with their Aunt Candy that night and I did communicate very clearly that I would be in Grand Forks for one night for library professional development and that I would be home from Grand Forks by the time they got home from school the next day. The communication was obviously lost to the ears of a 16-year old, and I will take full responsibility for that. I have taken steps to improve our communication methods, and we have learned from that incident. Texts are a very unreliable way to effectively and accurately communicate important information, and I do not understand why Lowell cannot seem to communicate any other way anymore.

19. He was at the house every day, and I have waved and greeted him in the driveway. He absolutely ignores me. As I stated, he refuses to answer my calls. He only communicates with me on rare occasions through text or e-mail and only to ask me questions. He has never shared any information with me.

20. He rarely speaks face-to-face or voice-to-voice with his sons anymore. For example, when we arrived home this afternoon, instead of greeting his son, Lowell texted them, even though Lowell was in the shop and the twins were in the house. A

simple phone call to me that evening during the Grand Forks training would have cleared everything up and all of his questions would have been answered but, instead of asking me questions he had, he asked the boys. I have stated over and over again as I've responded to Lowell's e-mails and texts that he can call me anytime and ask me anything about the boys if he feels he doesn't have information.

21. Lowell did not voluntarily take an evaluation the fall of 2007 at Whole Person Counseling Services in Bismarck. The Court ordered that he take an evaluation after he was convicted of his second DUI in March of 2007. He lost his license in April, yet he waited months to even get an evaluation. I don't see how he thinks that I "inserted myself into Lowell's counseling program" as he attests. John and Louise at Whole Person recommended that Lowell have his spouse attend the sessions with him and, when he asked me to attend with him, I did. There were other obligations I would rather have fulfilled than going to Whole Person with Lowell, but I really believed the investment of time to our marriage and to the recovery of my husband was ultimately the most important responsibility I had in my life. I remember being very sad one night during a session because I was missing the boys' first band concert of the year. I asked my sister to attend in my absence, and I had made prior arrangements to have the band instructor get me a copy of the audio tape that was recorded, but I still felt bad because I wasn't there.

22. Lowell's account of what happened to cause his near dismissal from the program at Whole Person is a total fabrication. I would believe, if necessary, Lowell's counseling records could be obtained from Whole Person and this is what the records would tell you. Lowell was put on "probation" in the program from John and Louise for continuing to drink while he was in their treatment program. He had been showing up for the sessions with alcohol on his breath, and they felt he was not being honest with them or himself. The final straw was when our oldest son, Lee, asked to come to one of Lowell's session at Whole Person and confront his father about his lack of recovery. I normally drove Lowell to and from work each day and to and from wherever else he needed to be, but that particular evening he got a ride from a co-worker because Lowell was angry at me. Lowell had been drinking when he showed up at Whole Person. John and Louise gave him one more final warning and opportunity. He signed an

agreement that evening with Whole Person agreeing that he would not drink anymore. That was a Monday night. That Saturday I went to my first Al-Anon meeting. On Sunday, Lowell was out in his shop and invited me to come out to talk about something. As we were talking, I saw the beer can he had been drinking from. I calmly walked out of the shop.

23. When Lowell states he entered Hazelden Treatment Center of his own free will, he is correct. He asked me to lie to John and Louise and, after just one Al-Anon meeting, I knew I couldn't do that. He was going to be kicked out of the Whole Person program. The boys and I had started counseling during the summer of 2007, and our counselor had told us about Hazelden and had given me brochures and a videotape about it. I shared this with Lowell in July or August of 2007, but he was not at all interested. When Lowell knew that he would no longer be able to continue his treatment at Whole Person, he called me at work that Monday and asked if I could help him get "to that place you told me about." I immediately took sick leave from work and went home to begin what turned out to be a nightmarish process of getting the prior-approval forms and physician referral processes in place for insurance. Luckily, Hazelden had an opening, and I drove Lowell to Minnesota. Lowell asked the boys and I to attend the family portion of the Hazelden program and, even though the boys didn't want to miss school, we all took sick leave and attended the week-long family session to support Lowell. Lowell was very committed to his recovery for the first six months or so, and we enjoyed a nice reprieve from the insanity.

24. Lowell made it very clear during his treatment that he would not be able to handle it if I drank at all anymore either, even though I drank socially. He said he couldn't stand the thought of me being able to do something that we used to enjoy together. This concerned me, but I wanted my marriage to last so I relented. We enjoyed several months of sobriety and recovery together as a family. Lowell's first slip came six months after his return from Hazelden in June of 2008. He had another bout and a few drunken weeks the fall of 2008 during hunting season. To my knowledge, things were good again until the summer of 2009 when the boys discovered him drinking one night when they had friends over and one of their friends, who is aware that Lowell is supposed to be recovering, asked the boys if their Dad was drunk.

25. Even though Lowell claims to have an NA/AA sponsor and attends AA/NA meetings, this again is not true. He stopped attending AA meetings regularly about four months after his return from Hazelden. He cited his irregular work schedule or his lack of a driver's license as reasons why he couldn't attend. He never got a sponsor like Hazelden strongly recommended. The person he had called his "sponsor" is one of his fellow Hazelden patients who he went through treatment with at exactly the same time so they were in exactly the same stages. This is not recognized as a sponsor in the AA program. Lowell claims to be attending meetings, and maybe he is now. Lowell had not attended an AA or NA meeting in about 12 months. Even the man he claims as a sponsor expressed concern about Lowell's absence from meeting attendance to me last August when he came to spend the weekend with us. Lowell had told him there just weren't very many around and, with his work schedule, he had to miss most of them. There is an AA or NA meeting everyday in this community. If you want to get to a meeting, you can get to one. In summation, the three different facilities I was referring to in my affidavit were 1) his failed attempt with DE Counseling Services after his first DUI; 2) his failed attempt at Whole Person after his second DUI; and 3) now, since he is drinking again, his failed attempt with Hazelden, and with the Heartview follow-up.

26. Lowell asked, "If I knew he was drinking again in October why did I wait until January to talk to him about it?" The answer to that is very simple. I have learned from Al-Anon that confronting him about it would get me nowhere. I chose to focus on accepting the things I cannot change, and I knew through years of experience that confronting him about his drinking and drawing a line in the sand that I was not ready to hold firm would do no good. I was holding out hope that he would get himself back into the program and again begin his recovery.

27. Lowell's storytelling about me "bouncing off my car and doorway on my way to the shower" and being "totally trashed" is absurd. This is a deflection of attention from his drinking problem. His counselor at Hazelden told me during my one-on-one session during family week that the biggest obstacles that Lowell faces in having a successful long-term recovery are his arrogance - thinking he was "too smart" for the program - and his intense need to have control. Lowell never wanted me to drink again because, as he said, if he couldn't drink with me he couldn't stand it if I drank at all. I

am a social drinker and, once I realized Lowell was drinking secretly again, I decided it was okay for me to have a glass of wine every so often. I do not drive drunk. The examples Lowell give are simply times Lowell was upset with me for doing something he didn't want me to do. He was losing his control over my decision-making.

28. Despite what he claims, Lowell was drunk when I came from work on January 8th. He had been arguing with his sister, who lives in NY, all day about their sick parents. I could tell by his very aggressive and mean words that he had been drinking. Lowell tries to give the impression that his parents don't use alcohol and, therefore, he couldn't have been drinking. His parents may not keep alcohol in their apartment and they may not drink as much as they used to, in fact, his father may not drink at all anymore, but they do drink and used to have alcohol at their farm all the time. The New Leipzig bar is just 1½ blocks from their apartment, and there are numerous bars and off-sale businesses on the way to and from New Leipzig. Lowell used to close down the New Leipzig bar every time we went to visit his family.

29. I want to say as clearly as I possibly can that I have never, ever, had an affair or been unfaithful to Lowell. The text he read on my phone was admittedly flirtatious and complimentary to me. It is true that I offered no explanations to Lowell, but I at no time have ever had an affair. Lowell claiming that I admitted that to him is once again absolutely untrue. There are times that Lowell has badgered and badgered and badgered all of us in this house trying to get us to see things "his way." We know that he won't stop until we finally say "ok, you're right." I may have said something like that sarcastically during one of our subsequent arguments in January, but I never had an affair and never was unfaithful to Lowell.

30. That night, at Lowell's insistence, I told the twins that I had been having an electronic conversation with someone that was flirtatious. They asked me some questions, and I answered them honestly and as openly as reasonable for two 16-year olds. M.B. and C.B. asked me to stop communicating with him. I did. They are more important to me than anything. and I knew it was best for their well-being.

31. I did telephone our son in Minnesota to inform him of what was happening but, once again, I never told him I was having an affair. Those are Lowell's words.

32. As to subsection C, I have no response to Lowell's statements. What I said in my original affidavit is a true account of what happened.

33. In subsection D, I also stand by what I said in this paragraph, and I will add that I did respond to a text Lowell had sent. I said "it was a mistake for me to have had that flirtatious exchange" and "it wasn't clear thinking." I asked him to enter back into a recovery program, and I told him I would begin counseling so we could fix our own problems first and then begin to put our marriage back together. He didn't respond. His statements in his affidavit support my statements that he left on the 11th and returned at 4:00 a.m. on the 15th. I never did know where he went though. He told me he was "where our marriage began," and I thought he was in Flasher because that is where the church is where we got married. I finally figured out where he was after C.B. told me his Dad had sent a picture text of Lowell by a rail jump he had successfully hit while snowboarding at Terry Peak.

34. In subsection D, I believe the statements made were said by Lowell's friend, Todd. Todd's wife, Laurie, is a good friend of mine. Laurie called me that evening and told me Todd was called by Lowell earlier that day and asked to come over to talk. When Todd got home, Laurie was told by Todd that Lowell told him I was having an affair and he was filing for divorce.

35. Lowell says that my son's comments are hearsay. He is making what my attorney says is an excited utterance. My son is telling me about his feelings and how it hurt him. I have no idea what the rest of Lowell's response to subsection F has to do with anything. Lowell's parents did stay with us that night. The boys and I didn't return from C.B.'s basketball game against Minot until 9:30. This is all true but, since M.B. and I drove home in the same vehicle that night and had sat together for almost all of the game that evening, except when M.B. wandered off with friends for a while, I know it is a lie when Lowell states the boys told his parents they "didn't know where I was." Either Lowell is lying or his mother and father are lying. I got the boys settled, but I had a huge open house planned in the library the next morning to display new books we had just received to our teachers, and I needed to get supplies and refreshments for that event. I had originally planned to get up super early and get everything I needed before I went to work but, since my in-laws had unexpectedly decided to stay at our house and the

boys wouldn't be alone, I decided to get everything I needed before going to bed that night. I went to the store, bought my supplies, and came home. I was only gone as long as it takes to drive to Bismarck, get that done, and drive home. Again Lowell (or his parents) are making up so much of this story. My children are always informed of where I am at, and I am only a single cell phone call away. If they can't immediately recall where I am at the moment, it is because they are more concerned about the grade they got on their algebra exam or if they will be able to get a better height in the pole vault next week than they are about keeping track of their Mom's whereabouts every moment of the day. They know they can reach me and that they can count on me at any moment of every day.

36. With regard to subsection G, I don't know what Lowell thinks is incorrect about this one. Is he saying M.B. didn't text me saying his Dad was drunk again, because he did? Is he saying he didn't keep M.B. in the shop for over an hour, because he did? Is he saying he didn't show M.B. the mediation proposal because M.B. can quote phrases from it verbatim?

37. Lowell seems to want to make a big deal about me drinking at the Chamber Annual Meeting. He states in his affidavit "it was obvious that she had been drinking." I had a glass of wine before dinner and then another half a glass throughout dinner, the presentation, and the entertainment. This was over the course of approximately five hours. Lowell readily states in his affidavit "I told Kirsten that I should make a big deal about her drinking like she did about mine."

He states "she admitted she had been drinking." Yes I did, because I had 1½ glasses of wine. I was not "missing" as he states. There were hundreds of people at the Civic Center, the invitation to the event had been on the refrigerator for weeks, and it was written on the family calendar. Sometimes Lowell only sees, reads, hears, and remembers what he wants to.

38. He states things very clearly in his affidavit when he writes "I continued to confront her about this and why it was always okay for her to go missing and be out drinking?" Lowell is obsessed with not being able to drink. He wants to know why it's okay for me to drink? Our oldest son, who has been in a successful active program of recovery since July 2009, states that is one of the most longing questions every

alcoholic asks themselves, "Why can't I be like everyone else and stop after a couple? Why can they drink and I can't?"

39. I did call the police one night and asked them for their help. I did not do it to make Lowell look bad as he claims. I did it because I wanted some sleep, and I wanted some uninterrupted sleep for my boys. The officers had to tell Lowell to quit interrupting me numerous times and to politely ask him to let me finish answering their questions. I never told the police I accidentally dialed 911 instead of 663. That's quite a difference, and I don't think you can make a mistake between the two. I did tell them I thought I should call 911, and they informed me that, unless I felt that I was in immediate danger, I should call the regular police station number. I told them I did not know that and thanked them for the information. Lowell paints a different picture when he says the police "scolded" me for using 911. As he stated in his affidavit, Lowell did tell the police officers the lies about me having an affair, he did say that I was out drinking and that he had a right to confront the mother of his children about these matters.

40. After the police left, Lowell did wake me every 15 minutes like he said he would and M.B. finally came downstairs to sleep beside me that night so he would stop.

41. Subsection H: I will not disagree with what Lowell said about the earlier part of the evening. Everything he said he did with his AA friend may be true but, once his AA friend dropped him off after the Wizards game, Lowell did go out to the shop and began drinking. I saw him with a drink through my kitchen window as I was cleaning up the kitchen. I made up my mind that I was not going to make the boys go through another sleepless night like they had the night before. When Lowell came into the house, I was going to leave and spend the night in my office at my school. I told the boys what my plans were so they wouldn't think I'd left without saying something to them. I couldn't bear the thought of another night filled with Lowell waking me and subsequently waking the boys. If Lowell thought I was dressed *provocatively*, I am surprised. I was wearing what I had worn all day and the way I had been dressing for years, but he had never told me I looked provocative before.

I slept at my office until just before 5:00 when I came home, showered, and got the kids ready for the day. My library assistant can corroborate this incident and the

other times I've spent the night at my office before Lowell went to Hazelden and now again since January, as she is the one that finds my pillow, blanket, and space heater out the mornings after I've had to escape my house.

42. Subsection I: Everything about my affidavit is true. Lowell was "scheduled" to be on shift that day, but he had already begun his sick, disability, and vacation leave.

43. Subsection J: I don't know why Lowell says this is incorrect. If I did not come home like he states in his affidavit, how could he go on to say that "I did ask her how she could do this to our family." His claim that my subsection J is incorrect and then going on to claim we did have that conversation is confusing.

44. Subsection K: M.B. and C.B. both verified to me orally that their Dad was very verbally abusive to M.B. that evening. M.B. has documented this experience in writing, which is attached. (Attachment A). There is a long history of M.B. enduring verbal abuse from Lowell. Attached is a letter from the school counselor documenting a fight M.B. had with his father one morning before school four years ago. (Attachment B) M.B. was afraid to go home after school that day for fear of his father and the altercation continuing. Also, when Lowell was in treatment at Hazelden in 2007, M.B. and C.B. talked about how Lowell told M.B. "he would bury him and watch him be put in the ground before he let him grow up to disrespect his father like he does."

45. Lowell keeps repeating that I am never home. It is true that I am home much less now when he is at the house stalking me and taking notes on what I am doing. When Lowell is not here, all I want to do is stay home and get caught up on laundry, bill paying, etc. I do not argue excessively with the children, and I am confident they would say we have a very good relationship. Would they say I nag them sometimes? Yes, of course they would, and I do, but I don't think that reminding the boys to study for their Spanish test, or to pick up the basement like I asked them to, or to put their dirty dishes in the sink is arguing with them excessively. While I suppose the boys would prefer not to be parented on these issues, it is part of my job as a parent.

46. I don't agree with Lowell that I want control over people and situations in my life. My goal is to guide my kids as they make the inevitable mistakes we all make in life.

47. As to my drinking, simply put, I may have a glass of wine or an occasional beer with colleagues or friends, but I go weeks even months at a time without doing it at all. I will concede that during the months of February and March I was making more contact with friends and trying to be more social/ joining more groups for supper and participating in more social activities to attempt to reconnect with a network of friendly support to help me through what has been a tougher time in my life. But these social events weren't centered around nor did they always include and drinking of any sort. I would also find things to do, people to see to keep me busy and get me away from the house because Lowell was always here. It was very uncomfortable and I didn't want to be there if he was there. Now that Lowell is involved in a shutdown at the refinery and is not stopping by the house all the time I am feeling more comfortable to be home and have enjoyed just being by myself or with the boys.

48. On the other hand, Lowell has two DUI's - the first in 2006, and the second in 2007. One of the DUI's happened as the result of an accident when our son was a passenger in his vehicle at the time. To me, this shows not only that Lowell has been caught driving while intoxicated, but also that he endangered our child while doing so. The night Lowell crashed while Lee was in the vehicle Lowell claimed he wasn't that drunk, and even our son said he seemed fine, yet his BAC level was extremely high. I don't want anything like that happening ever again to one or our other sons. Also earlier in his life he was arrested for and convicted of possession of drugs, possession of paraphernalia, receiving controlled substance through federal postal service and possession of drugs.

49. M.B. told Lowell on Sunday, March 21, 2010, that he wanted no more contact with him until he started a treatment program again and established a long and secure history of sobriety. M.B. was extremely

upset to see Lowell drinking in shop again that night, and he came into the house crying uncontrollably after making this statement. He remained almost inconsolable for most of the evening and ended up lying on the downstairs chair while I lay on the

downstairs couch before he was able to calm down enough to fall asleep. He is confident this is what he needs to do for himself. He is very firm on this issue, and he has stood his ground on many attempts this week by Lowell to change his mind. For example, Lowell texted M.B. that he is making him sad and making him cry a lot. M.B. texted back that he is not making him sad or cry. He told him that he was doing that to himself by making the choices he's making. M.B. has made repeated requests to his Dad this week through text messages asking his Dad to STOP texting him until he gets back into treatment.

50. As I stated in my original affidavit, at their age, I think the boys can make their arrangements with Lowell for time with him as long as I am aware of when they are to be with him and the final decision will be mine, but I would want to respect any of my sons' wishes also when they choose to not spend time with their father. I would most certainly want the court to order that Lowell cannot drink for eight hours before or during any visit with them.

51. Lowell's concerns that I would not cooperate with any visitation program the court adopts are unfounded. The boys have always been given my blessing when they have informed me of one or two invitations they have accepted to do something with their Dad. In fact I want to go out of my way to help maintain a healthy relationship for them with their father. For example, early in March I spoke with our son in Minnesota. He had concerns about leaving Lowell alone on Easter. I told our son I could make dinner and invite Dad if he would like for me to do that. Our son said that he would like that, so on Monday, March 22, 2010, I e-mailed Lowell and shared my conversation with L.B. and told Lowell that I would be happy to make Easter Dinner for all of us. I requested that he please let me know if he was off shift and, if so, if he would come. Lowell did not respond. L.B. has attempted to get Lowell to commit one way or the other and Lowell has not been willing. It is not me that would be uncooperative in a visitation program.

52. Lowell contends that I have a history of bizarre behavior and inappropriate relations with men. These relationships and behaviors occur in Lowell's head. Lowell's paranoia and jealousy increased as his methamphetamine use increased. He began using mind altering drugs like acid, crack, cocaine, mushrooms, speed, marijuana, etc.

a long time ago, but his use of methamphetamine increased after his sister, who lives in Mandan, began dating a dealer and became a heavy user and dealer herself. In 2007, Lowell's sister was convicted, placed on probation, and served a sentence for possession and I believe intent to sell methamphetamine in Morton County.

I will not deny that I do enjoy talking to people immensely. I am a very social person who loves to learn as much about all different kinds of people as I can. Lowell mentions an incident where I supposedly made a statement warning him about hearing I was having an affair with Jim. That is not what occurred at all. After Lowell returned from treatment at Hazelden, I had heard a rumor that Lowell was telling people at the refinery that he was gone from work for a month because I was having an affair with Jim, and he needed to "get away" for a while. Using what I had learned during family week at Hazelden about honest communication, I asked Lowell about this allegation, and he denied spreading that rumor. I believed him and left it at that. Lowell is correct that we used to have many arguments about me going out with friends after work or meetings for something to eat and sometimes having a drink. Lowell would get upset because he would never want to join us, but would want me to come home and be with him where he was drinking alone in his shop. He would get angry when I wouldn't drink with him. If I drank at all, I was a "social" drinker and wanted to do more visiting than drinking. Lowell needed to isolate himself and drink alone. That's where the arguments arose.

53. I have never, ever, admitted that I was with another man because it has never ever happened. When Lowell states I was caught with another man by our oldest son, it just demonstrates just how low he is willing to stoop or how ill he is if he really believes that. The incident that Lowell is referring to occurred in June 2007. Ellen Huber, Laurie Leingang, Sandy Tibke, Jim Neubauer, Tim Kenyon, and I all attended a Mandan City Commission meeting regarding the diesel oil spill clean-up. As we sometimes did, the group went to get something to eat after the meeting. We went to Westside Grill & Bar in Mandan. After we ate, we decided to go to the Lonesome Dove to listen to a band. We drove in one vehicle from Westside to Lonesome Dove. We visited there until it was time to go home. Our 17-year old son had been sent by his father to check up on me. L.B. will tell you that it was not a strange man who dropped

me off, but four women and two men who he saw that night. He knew all of us except possibly one person. The statement that I smelled of men's cologne and that I eventually admitted to spending the evening parked outside the Lonesome Dove with a man all evening is complete fabrication. I would never do something like that.

54. I also I believe Lowell has cheated on me many, many times since the beginning of our marriage. The night after I gave birth to Lee, our oldest son, Lee had a fever, and we couldn't get in touch with Lowell to let him know. Eventually my friend found him sleeping at a woman named Suzanne Kline's house. He said he was just there with his friend Tony Walth, but I don't believe him. Also, when the twins were infants and Lee was just a toddler, Lowell would disappear for days at a time telling me he was ice fishing with Shane Colis or he and Shane were making bait deliveries to stores in Jamestown or Pick City or South Dakota. I received anonymous phone calls for a period of months during that time asking me if I knew what my husband was doing or making the statement that I should check to see what my husband was doing. Well, with three small children, I didn't have much time to do any spying, but a couple of times when he said he was going to be at Shane's trailer I drove by Shane's and Lowell's pickup truck was never there. He is accusing me of something he's done, not something I've ever done.

55. As my network of friends and colleagues grew, Lowell's level of self-isolation grew and his use of paranoia causing methamphetamine increased to peak heights during the summer and fall of 2007. I only found this out after the fact during his treatment at Hazelden, but it all made sense. That is why he was able to stay up all night drinking and continue drinking all day the next day, too.

56. Lowell's account of what happened in the early summer of 2007 regarding my breast implants is not accurate. Parts of his story are true, most are not. Did they find a lump on my breast? Yes. Did I need to have surgery for that? No. They monitored it, and it dissipated. After that incident, it got me thinking about a breast enhancement, and I decided I might want one. Did Lowell start a "Prayer Group" with our church, family, and friends? No. Lowell has never started a prayer group in his life. I was upset when his Mom asked me about it on Lee's graduation. It was Lee's day and, in addition, it was not Lowell's to share. Did Lowell tell me he would take time off

work to be with me? Never. I had to be deathly sick or flat on my back to get him to take time off for me. Lowell would not even take me to the emergency room after a serious boating accident in June 2005 on the Missouri River. He was operating our boat while he was intoxicated and hit a sandbar while driving very fast. I hit my head on the boat's windshield and suffered a large cut to my head and forehead. It took Lowell about 1 hour to get the boat unbeached but even after we got it back to the dock and loaded onto the trailer Lowell wouldn't take me to the hospital. He said they would cite him for BUI and stated "Our summer fun would be over." Lowell drove home and once we got home our oldest son L.B., who was 16 at the time drove me to the St. Alexius Emergency room where I received over 30 stitches. The night after the accident, he invited a friend of his to go on the river. I was very jumpy after the accident and told him I didn't want to go out in the boat again. His statement to me was that just because I didn't want to go to the river anymore didn't mean that he should have to stop. He and his friend spent the evening and late into the night on the river while I stayed at home with the boys. Lowell's concern for me and my health is not the picture that he paints. Was I immediately honest with Lowell about what I had done? No. Why? Because I was unsure of his reaction, but I really wanted to do this for myself so I went ahead and made the appointment before I chickened out. As expected, when I was able to tell Lowell, he freaked out and insisted that I must have had someone else pay for them and that's how he was going to prove I had a boyfriend. When I showed him the deposited check I had used from my mother's estate gift to pay for it myself, he became angry that I didn't let him pay for it saying he was going to do that for me on my 40th birthday. To me, it was kind of a last gift from my mother to her daughter.

57. Lowell has lied to me many times over the years. He told everyone about having hired a private detective that provided photographs of me with another man. When he told our boys this story and they pressed to see the pictures, he was never able to produce them and said he would show them to everyone at the "right time." During our family week at Hazelden, Lowell admitted to making up that story and apologized for saying that to the boys. They accepted his apology, and I thought our family had moved on, but now, two years later, the same deranged thinking and terrible accusations arise again.

58. I do not disagree that Lowell told me he wanted a divorce. He did tell me that in January. I am simply saying that, when I told him I wanted one too, he went off the deep end financially, and it escalated after official papers were served.

59. Again, I am just simply saying that, on January 20, 2010, I received official notice from my bank that Lowell had transferred over \$18,000 from my savings accounts. Lowell states in his affidavit that he had already informed me of the transfer as a "precautionary measure." This is true, but Lowell has told me a lot of things he was going to do over the years and has never followed through. I find it ironic that Lowell says it was a precautionary measure because he was worried about me spending money irrationally, yet the only funds I've withdrawn have been used to secure legal counsel for this divorce, as allowed by law, while Lowell has withdrawn money and used some of it to gamble on a number of occasions, and then can't remember where some of it went.

60. On the bonds, when Lowell notified me on January 18 that he would be "inventorying, valuing, and dividing these bonds" as he states in his affidavit, nowhere in his notice to me does it say he is going to take those bonds. I did not understand nor approve of him removing the bonds. I would like to see all the bonds held by a third party and not used.

61. The fact that some of the bonds are in my name and some are in both names is historical water under the bridge and unnecessary to argue over. As a married couple, they are both of our assets, and we would both be considered owners until a legal issue arose to separate them. This was explained to me years ago by the person selling me the bonds, which is why I never got too bent out of shape about it when the seller at the bank forgot to ask if there was a co-owner and sometimes Lowell's did not happen to appear on that particular bond. As married people accumulating assets, the bonds would be considered a joint asset. It is one of those things that, because it had to do with money, Lowell was obsessed about it and had to have it done his way.

62. I agree the bonds will need to be dealt with in this divorce but, since Lowell has taken the bonds from the house there is no way to tell for certain how many there were when he took them from the safe, I would ask the court to order that Lowell

obtain the records from Wells Fargo (which is where all the bonds were purchased that we bought). In addition, there were several other bonds purchased by my father for the boys that should also be accounted for. All the bonds should be reconciled with the purchases since 1989.

63. If they are simply divided between us, what will be available for the boys' college education? The reason I bought those bonds was for the boy's education.

64. Lowell's account of the Chase credit card is absolutely incorrect. (His affidavit paragraph numbers 11 and 12). I have the letter from Chase dated January 31, 2010, stating they are writing me in response for a request for a new PIN. (See Attachment C). Additionally, on March 27, 2010, I spoke with a Customer Service Representative from Chase. I have subpoenaed from Chase written documentation of their internal record of calls and attempted transactions made on our Chase credit card. These records from Chase will document:

- A recorded call made by Lowell Baesler on 1/31/2010 requesting a PIN a new PIN number for our account ending in 3230;
- A recorded call made by Kirsten Baesler on 2/6/2010 informing Chase that she had not requested a PIN change and the Chase employee advising her to change the PIN provided in the letter to something only known to her (which I did immediately);
- A recorded call by Lowell Baesler on 2/12/2010 attempting to close the credit card account and Chase informing him that he was only a secondary card holder on that account and only the primary account holder (Kirsten Baesler) could close the account;
- The attempted call to 701-667-1091 (Baesler home phone) and the text message sent to 701-527-5664 (Kirsten's cell) by Chase Fraud division the evening of 2/12/2010 inquiring if I was trying to make several cash advance attempts on the Chase credit card at Prairie Knights Casino;
- A record of the time and the place of several cash advance attempts with improper PIN information at Prairie Knights Casino on 2/12/2010. These attempts equal over \$80,000;

- A recorded call made by Kirsten Baesler on 2/15/10 removing Lowell as a secondary card holder (I only removed him after I e-mailed and received an okay from my attorney).

65. The same attempt to close the American Express card was made on February 12, 2010. Both of these attempts were made without my knowledge and without notification even though they were attempted after the Summons was served on February 10, 2010, which states that no unnecessary expenditure of funds should occur. I would believe that cash advances for gambling would be considered an unnecessary expenditure of funds.

66. Lowell says he made the transfers from our joint account to his separate account on February 12 after he was served the divorce papers. The electronic stamp says they occurred by a telephone transfer during the night before February 14. Documentation should be provided that this is the truth. In either case, Lowell removed the money after he had been served a legal document telling him it was illegal to do that, yet he did it anyway. His affidavit indicates to me that, if he had been able to, he would have also closed the checking account and left his family with no money, even though I had been contributing to those joint accounts for over 20 years and with very recent deposit of over \$1,600 to the checking account alone along with another \$900 to the savings accounts.

67. I would like Lowell to provide the verification from Wells Fargo that these transactions were initiated on February 12 along with documentation of his advisement that he received from a Wells Fargo employee to do this and their rationale behind their advice that contradicts state law. I did make an error in saying Lowell "cleaned out" the accounts on January 20; he didn't clean them out until February 17.

68. With regard to paragraph number 15 of Lowell's affidavit, Lowell's response is once again very confusing to me. He claims I have things I do not have. The focus of this bullet point is the fact that Lowell made a cash advance on the American Express card at Prairie Knights Casino to gamble and that advance has now accumulated fees and charges totaling over \$3,000. He incurred those charges after the Summons informed him of the law not allowing him to do such things. Lowell should

be solely responsible for those charges and clear my credit card immediately. I have asked him to do so, but he has not.

69. Lowell claims there are excessive ATM charges on our joint checking account. I have reviewed the records that I have available and see no excessive ATM transactions. Since Lowell has taken almost all of the paper records, I can no longer access the electronic records because the accounts are closed. He will need to provide the documentation. I believe he is wrong in characterizing the withdrawals as excessive.

70. For No. 16, I am going off of Lowell's 2009 tax statement and W-2s. I think this is the fairest way to calculate his salary. It is true that he has taken a different position that doesn't allow him to make more money working overtime, but he now receives bonuses and stock payments in his new position as a supervisor. If Lowell would return the documents he took from the safe, I would be able to access my most recent W-2 form from BPS and MPS. All of my extra-duty pay for assistant principal, mentoring, and committee work is included in my monthly paychecks as well as any reimbursements that I receive. I do not receive separate checks for this work. When I work from my monthly paychecks to determine my income, all of it is included as it is in the W-2's.

71. I am not sure about Lowell's statement (No. 18), that the Silverado is leased only to me. That is not the information I received from Ressler Chevrolet, the GMAC leasing agent, when I called and inquired about this in February 2010. I was told the lease is in both of our names, but I was listed as primary. The reason I was listed as primary was because when we had to turn back our other leased pickup truck when Lowell got his license plates taken away on that vehicle for his second DUI. In order to get new license plates for this truck, they had to put me down as primary owner. Ressler told me that we were both lessees on the 2007 Chevrolet Silverado.

72. If Lowell wants to arrange for more weekends with the boat in July, I am open to that possibility. I do know how to operate this boat and have the means to tow it. I want to use the boat with the boys. I am confident that we know or would be able to figure out how to operate and tow it. If Lowell does not want the problems and headaches of joint use and ownership of the boat, I would be agreeable to selling the

boat, paying off the loan, and splitting any remaining profit or sharing in any additional loan costs depending on what we get from the sale of the boat.

73. Lowell's Affidavit, paragraph 19: Lowell again inaccurately reports my income deposited into our joint accounts. My paystubs document that 100 percent of my paycheck was and always had been deposited into joint family accounts. Approximately \$1,650 went into the checking account each month, \$400 went into our joint savings account labeled "vacation" every month, \$200 went into our joint savings account labeled "regular savings" every month for rainy day expenditures, and \$300 went into our joint savings account labeled "Christmas" every month. These amounts were direct deposited, and no other money went anywhere else. After insurances and withholdings were taken out, 100 percent went into our joint accounts since I began working for BPS 17 years ago. The savings accounts mentioned above are the savings accounts Lowell cleaned out and transferred to his sole account. Bank records will show he never contributed to those accounts.

Lowell states that he has worked to pay for my college education. This is simply untrue. He went to college first to get his power plant degree, and I worked. Sometimes I worked two jobs in addition to caring for our first toddler son. We took out student loans for Lowell, and we paid those back together. I continued to work and went back to college ten years later for my undergraduate teaching/library degree, but I never quit working. In 2007 I received a full scholarship from the Laura Bush Foundation for all library classes to obtain my Master's degree from Valley City State University. The Bush scholarship didn't cover the four EDUC courses required for the degree, so I applied for and received two additional scholarships from the North Dakota Farm Bureau and the North Dakota Library Associations to cover the costs of those credits. I have been very frugal and searched for textbooks available for lending from libraries across the country for those that were required for my classes. Since my classes were online and I had internet access at work, there was no additional expense created for my family in that area until we decided to get internet access at our home for personal reasons.

74. I used the special account we created for house insurance and taxes to pay my attorney after discussing it with her because the regular savings account that I normally would deposit into and use for such purposes had been depleted by Lowell earlier that month. I took from the only joint account that had sufficient funds in it. My understanding is that this transaction is allowed by law and the Summons.

75. Initially I gave Lowell the Summons and Complaint on February 4. On February 12 when I asked what his plans were to address the divorce papers he played like he hadn't seen them, saying "Papers? What papers? I didn't get any papers? You can't prove that I saw any papers." I said "well then," and he finished my sentence for me by saying "... guess you'll have to serve them on me." I said, "yes, that's right," and he replied "Well, good luck with that. I won't be around and I won't be answering the door." I called Sherry's office immediately after that and asked them to get things going as quickly as possible; it was obvious Lowell was not going to be cooperative.

76. Then Lowell says that, on February 12, 2010, he discovered that I had opened a new US Bank account and transferred all of our joint rewards to my new card and that I had initiated closure to the only joint credit card we had. He states US Bank said there was nothing they could do about it. Lowell goes on to base all of his rationale and justification for closing our joint savings and checking account on what he says happened with US Bank Visa.

On Saturday March 27, 2010, I telephoned US Bank and spoke to Supervisor Cliff, Employee ID #77991, who researched the calls made about our joint account. The first call received within the last eight months regarding this account was made by Lowell Baesler on February 12, 2010. Lowell inquired about opening a new account and wanting to know if he could roll the airline miles from the old account to the new account he was opening. The US Bank employee informed Lowell that could not be done and that his points on the existing account would be lost. He asked them to open a new account in his name only and close the joint account. They verified with him that he understood that his points would be lost and he confirmed that he understood this but to close the account anyway. They closed the account and opened a new account in his name that day, February 12, 2010.

The next call they have about this joint account is when I called on February 15, 2010, after verifying with Sherry that it would be ok to remove Lowell from any credit cards I had. The US Bank records show that I called to close the joint account and that the US Bank employee informed me that that account had already been closed by a Mr. Lowell Baesler on February 12, 2010.

This is exactly the opposite of what Lowell says happened. He says I was the one that contacted US Bank initiating the closure of the account and that I wanted the airline points.

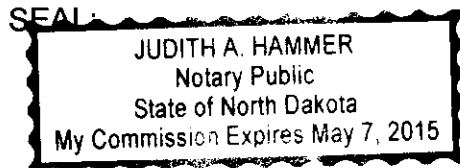
77. I discontinued Lowell's cell phone only after discussing it with my attorney and explaining I was left with only \$285 in my checking account until I figured something out and didn't want to be paying his cell bill anymore. My attorney said that wouldn't be breaking the Summons so I did.

78. I am asking the court to grant the interim order I requested. We need financial certainty and personal security. Our children need to continue to have me in charge and to have safe parenting time with their father. The financial assets he has taken should be returned to the accounts. The savings bonds should be deposited with John Schafer or Candace Schafer, a reliable third person, for safe keeping.

Dated this 21st day of April, 2010.

Kirsten K. Baesler
Kirsten K. Baesler

Subscribed and sworn to before me this 21 day of April, 2010.



Judith A. Hammer
Notary Public

State of North Dakota

My Commission Expires:

May 7, 2015

REDACTED

Thursday February 25, 2010 – Dad came home from work went immediately out to shop..at about 8:00 he came inside and asked where Mom was .. he started laying into me calling me lazy..messed up.. missing school assignments...said I have a superficial mom....who is a superficial wife....it was OBVIOUS he was drinking.said I would never make it anywhere. I said I was sure I would make it somewhere. He laughed at me and said "yeah right, we'll see." I told him I would go further than he did. He called me lazy, said I had a fucked up work ethic. Kept asking me why I wasn't helping fix the truck...told me we had a verbal agreement and I haven't lifted a finger to help him..I told him the agreement was I would help if I had time...he said I'd done nothing the last 48 hours..I said I've been home sick with a fever and aches...I asked him what he does around here especially when he is working..I told him nothing! Still expects us to shovel and stuff while he sits in shop and smokes on his days off!

He again said I have a superficial Mom...and I said well I have a superficial Dad who says he'll quit drinking and never does, I have a superficial Dad who takes off for days at a time without telling us when he'll be back; I have a superficial Dad who takes all the money from the family accounts and puts them in his own name; ...I told him "see how well you taught me to give it right back to you?"

Said "you're pretty fucked up!" I asked "I'm pretty fucked up? You're pretty fucked up" He told me you go look in the mirror...I said you go look in the mirror..he said you come with me...He said what do you see...?? He said I see a kid who disrespects his father then put his arm around me...I said I see a pretty good looking kid..I tried to wriggle away ...this really pissed him off and he said "are you going to run to your mother and tell her that I "manhandled you?!" ... I said "no" ...then he said "you have a cheating mother who works too much; doesn't communicate to me where she is at...then told me that I was lazy and haven't lifted a finger to help with the truck in 48 hours...I said I've been home from school sick Dad!...he said you don't look too sick to me now...I said that's because I'm coming out of it...then he said you're right you are sick..but not that kind of sick..then put his finger to his forehead temple and made the finger/swirling crazy sign and told me that I was "THAT" kind of sick...I asked him how much he's been drinking and he went "baah Haahhh. That's right! Wait till you're Mom comes home you can talk to her about that." I asked so you're not drunk...he laughed at me again..I asked him to take a breathalyzer and he turned it on me and said I'll take a breathalyzer if you do...I said go ahead! I WILL! I haven't drunk a thing! He walked out to shop and ignored me to avoid. He comes back in and starts to tell me how bad I am again...I said you are just making me even more sure you're drunk...he said I was avoiding breathalyzer I told him he was!...he said even if I don't blow a 0.0 you'll find something else to pin me on..so it doesn't matter...I said he was just avoiding it because he knows he is drunk again.

All is see is a 16 year old with a lazy attitude and a fucked up work ethic.

Mom came home after conferences and he is pissed. She asked him to sleep on the couch...she is tired of sleeping on the couch and if he is going to continue to stay at the house he should take turns...he said don't worry I won't be here too much longer....Mom let it go.

Dad came downstairs while Mom was in the shower and told me he was sorry..I told him I'm tired of hearing he's sorry all the time and then him doing the same thing over and over again...he said that's all

he's got...that's all he can do is keep saying he's sorry..I said "Well it's not enough." He told me he didn't mean to say I was fucked up he meant that the things I do are fucked up..I told him that's not what he said and that he repeated it like 8 times so I don't think I misunderstood him...he said I must have misperceived what he meant...I told him I perceived it perfectly and now he is just trying to change his story and make me and himself believe something else so he looks like a good guy again.

He went upstairs.

He came down from upstairs after getting ready for bed and asked me for a hug..I gave it to him and he started repeating exactly the same thing he said a 10 minutes earlier...I told him I'm tired of hearing he's sorry all the time and then him doing the same thing over and over again...he said that's all he's got...that's all he can do is keep saying he's sorry..I said "Well it's not enough." He told me he didn't mean to say I was fucked up he meant that the things I do are fucked up..I told him that's not what he said and that he repeated it like 8 times so I don't think I misunderstood him. I tried leaving the room to go downstairs and do homework but he followed me

Mom interrupted and told Dad not to badger me...she asked him to talk to me when he hadn't been drinking. they started arguing

Mom went down stairs to Family room and I did too. Dad came downstairs and told me again that he just was upset that I wasn't helping him fix the truck of Lee's that he was fixing. He didn't mean to say the things he said...and that he was sorry..I told him again it wasn't enough...Mom got involved and told him to leave me alone. ...I asked her to be quiet and said that I could handle it...that dad wasn't making any sense and was drinking...I told her she didn't need to stick up for me...she told me she was going to because I was just a child and shouldn't have to deal with a grownup who had drinking...Dad heard this and told mom the "drinking" bit was a dead mule and to quit "riding that horse"..I started screaming at Dad to "Just get out! Leave us alone!" He smiled at Mom and said I bet you're happy...Mom said "no I'm not happy...I promised myself and Lee that I would never make any more of my kids live through this alcoholic nightmare like Lee had to do. You can't even talk without slurring and you are badgering and bullying our kids at 11 o'clock at night!.."

Mom and Dad argued for about another 45 minutes and Mom just quit. She made cookies and Dad went to shop. Dad came in from shop 2 hours later and tried to wake Mom up to tell her something. She didn't wake up or at least she didn't say anything to him and he went to bed.

I think Dad got up late for work...

M B

2/26/00

March 11, 2010

REDACTED

To Whom It May Concern:

Kirsten Baesler has requested a written statement regarding a situation I dealt with in my capacity as Fort Lincoln Elementary school counselor involving her minor son, Mr. B. I have agreed to provide such account to the best of my recollection.

Mr. B was a sixth grade student at Fort Lincoln Elementary during the 2005-2006 school term. One morning Mr. B came to school tardy. He was crying and appeared upset. The office staff requested my assistance. We went into the privacy of the conference room located off the main office. Mr. B told me he and his father had a verbal altercation before he left for school. He said his father became quite loud and vocal. Mr. B said he left for school but was distressed about the episode with his father. He expressed further apprehension about going home after school and having the conflict continue. Mr. B went to his classroom after he calmed down.

I reached Mr. B's mother on her cell phone and informed her about the morning incident. Mrs. Baesler assured me she would deal with the situation. I offered further assistance if needed.

Sincerely,



Darlene LaQua

School Counselor

Fort Lincoln Elementary

ATTACHMENT B

Cardmember Service
P.O. Box 15298
Wilmington, DE 19850-5298
(800) 537-7783
Visit us online at www.chase.com/united



January 31, 2010



03686 RCS 001 003 03110 - NNNNNNNNNNN
KIRSTEN K BAESLER
1809 12TH AVE SE
MANDAN ND 58554-4864

**Important information is
provided below regarding
your account.**

RE: Your account ending in 3230

Dear KIRSTEN K BAESLER:

As your credit card company, we value your business. We are writing in response to your request for a Personal Identification Number (PIN) for your above-noted account.

We want to confirm that the PIN assigned to your account is 3985. To ensure the security of your account, please keep this information in a secure location and do not carry it with your card. If you wish to change your PIN, please call 1-800-297-4970 and have your assigned PIN available. We hope you will now enjoy the convenience of using your card to complete a variety of transactions at thousands of automated teller machines (ATMs) available to you.

Your satisfaction is important to us. If you have any questions, please call us at the toll-free number noted above. For your convenience, we are available 24 hours a day to assist you.

Sincerely,

Cardmember Service

ATTACHMENT C

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Kirsten K. Baesler,

) Case No. 08-10-C-373

)

Plaintiff,

) SUPPLEMENTAL AFFIDAVIT OF

) LOWELL L. BAESLER IN

vs.

) RESPONSE TO AFFIDAVIT OF

) KIRSTEN K. BAESLER

Lowell L. Baesler,

)

)

Defendant.

)

STATE OF NORTH DAKOTA)

)ss.

COUNTY OF BURLEIGH)

I, Lowell L. Baesler, being first duly sworn, depose and state that I am the defendant in the above-entitled matter and that I give this affidavit as a supplement to my previous affidavits in response to Kirsten's request for an interim order. There have been a number of significant changes that necessitate this update and I wish to stipulate to a number of the requests Kirsten has made in her application to the Court to facilitate the hearing.

Kirsten asks for \$1,795.00 in monthly Interim Support. I am now on a fixed monthly income without overtime pay as was the case in the past. My net income amounts to just under \$5,000 a month. I previously presented a statement of my necessary monthly expenses dated March 25, 2010. It is extremely conservative and in some cases does not include actual expenses I know I am going to have. Now I am paying rent to a friend to live with him.

RECEIVED & FILED

APR 21 2010 31

Clk. of Crt. Burleigh Co.

I do not have a home of my own because I feel I cannot afford it. But even my previous statement shows I need \$3,634.00 monthly to meet my necessary monthly expenses. \$1400 of this is for fixed monthly payments over which I have no control. That includes my rent payment and monthly payments on my vehicle, on the boat and for insurance to cover both of these. The amounts are \$650 for my rent, \$428 for my vehicle lease, \$157 for vehicle insurance, \$144 for the boat payment and \$30 for boat insurance for a total of \$1,400.

If I have to pay \$1,795 in interim support plus the home mortgage of \$648 these two together total \$2,557. This would leave me with only \$2,400 from my take home pay of \$5,000 monthly. \$2,400 is insufficient to meet necessary monthly expenses of \$3,634.00. I have no objection to paying interim support in a reasonable amount but I ask that the court take into consideration the realities of my financial circumstance when establishing the amount. Kirsten's has a good income as well. She has take home pay of \$2,789 monthly according to her affidavit of March 10, 2010. I believe this is W-2 income from her employment and may not include 1099 income that she also receives. I believe she includes in her Necessary Monthly Expense report filed with the Court historical amounts based on what she withdrew temporarily from our marital accounts as an advance on

expenses she was about to incur and that she did not subsequently restore those payments to our marital accounts when she has been reimbursed by the school or any of the other entities from which she receives expense reimbursement.

I am willing to stipulate to the following so that the Court can concentrate on matters that are in contention:

1. If my support payment is reasonable I have no objection to be responsible for making the mortgage payment on our marital home.
2. I will pay my own cell phone expense.
3. I will continue to pay medical insurance premiums.
4. I will pay half of the uninsured medicals and co-pays for our minor children.
5. I will pay for insurance on my truck and on the boat.
6. I will pay my truck payment and the boat payment.

I agree Kirsten can pay the following as she has said she would in the documents she has filed:

1. Kirsten can pay her own health insurance premiums.
2. She can pay her own car insurance.
3. She can pay the insurance on the residential home.
4. She can pay for cell phone service for herself and the children.

In addition I agree that during this interim period she may have primary parental responsibility. I believe that I can work out visitation with my sons on my own as I have tried to do since leaving the marital home. Our twin sons, MB and CB are 16 years old and are intelligent and strong minded. MB is alienated from me to a point where he will not speak to me. CB and I are on relatively good terms and we have been able to arrange time together. I believe we will be able to continue to do that. I will continue to try and get MB to communicate with me. Kirsten wants a provision restricting all use of alcohol by me during any time with them and I have no objection to that. She asks that this be for eight hours prior to any time I am going to be with them and during the time I am actually with them and I would ask that the same provision apply to her.

I agree Kirsten may have exclusive use of the marital home but want to be able to go to our outdoor garage-shop facility where I have all my tools and have work in progress. I agree I should have use of the farm property. I agree she should have use of the Nissan. I agree I should have use of the Silverado. I agree our sons should have use of the Probe.

I continue to have strong objection to any alternating access and use of the boat. Kirsten has never had an interest in it. She does not know how to drive it or maintain it. She has no vehicle that can tow it. Boats are high

maintenance and its care and maintenance would be a source of constant friction if its use was to be shared. I would like to be able to have exclusive use of it for the upcoming boating season but if there is some reason I cannot I would ask that it be sold and the proceeds if any put in escrow.

Kirsten asks that I return \$38,000 she claims I took and that she have free access to the use of it. I did not transfer \$38,000 and do not have such to return. The accounts I had transferred to my name alone came closer to \$29,000.00. Roughly \$18,000 came from our Wells Fargo PMA account, \$4,000 came from our checking account and \$7,000 came from various other savings accounts we held jointly. In asserting that there was \$38,000 Kirsten must have relied upon bank statements that reflected totals before she withdrew \$5,000 for her attorney fees and removed from our joint control another \$5,000 that were our son's savings. I do not know what had become of those.

Of the \$29,000 I used \$12,000 to pay marital bills. This would leave \$17,000.00. I paid \$5,000 in attorney fees. This would leave \$12,000. I have deposited some of my pay checks into this account and that would have increased the balances but last Monday I also wrote a check to Kirsten for \$10,000 and gave it to her. There is only \$5,000 in the savings account at the present time. I have some outstanding bills that must be paid and I may need

to invade this account if my salary does not cover them as I receive it and as these bills come due.

At the present time I have approximately \$11,000 in cash in a safe at the friend's house where I am temporarily living. I have \$5,000 in a savings account at Wells Fargo and there is \$3,700 in a checking account at Wells Fargo. The \$3,700 however is subject to approximately \$2,700 in withdrawals for automatic credit card payments so there is really only about \$1000 in that checking account. I have no other funds in any accounts.

Kirsten has asked that I return to her possession certain savings bonds that I removed from our home for safekeeping when I left. I believe these total something over \$40,000 in value. These have been purchased over the past 15 years by regular purchase from money I received for employment. When I bought them I did so in both of our names. When Kirsten took payroll money of mine and went to the bank to purchase bonds she sometimes bought them in her name alone. I promise to safe keep them until the Court has issued a division of our marital property but if for some reason that is not sufficient I would ask that the bonds be put in a secure place of a third party such as a bank safety deposit box that requires two keys, one for me and one for her. If that must be done I would ask that they be first

inventoried so we will both know what to include on the 8.3 Property and Debt listing as an asset and at what value.

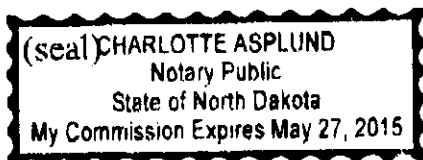
I did take our bank statements and credit card statements when I left the marital home and have them where I am living. I would have no objection to making them available to Kirsten and her counsel for their review and copying at my lawyer's office during normal business hours.

Dated this 21st day of April 2010.

L. Baesler
LOWELL L. BAESLER

Subscribed and sworn to before me this 21 April 2010.

Charlotte Asplund
Notary Public
Burleigh County, ND
My commission expires: 5-27-15



STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

CASE NO. 08-10-C-373

Kirsten K. Baesler, Plaintiff,

vs.

Lowell L. Baesler, Defendant.

PLAINTIFF'S POST TRIAL BRIEF

Kirsten and Lowell Baesler grew up together, having married very young. When they married 22 years ago, Kirsten was working, going to school, and pregnant. Over the past 22 years, they have built up an estate worth nearly \$700,000, risen in their careers, and raised three sons. By any measure, this is a long-term marriage, and for a division of property to be equitable it must be equal.

At issue is the division of property, worth of some assets, how to allocate the debts, and the appropriate amount and length of spousal support. Complicating, somewhat, the property distribution are the adjustments that need to be made because of diminishment of family assets from the time of the inception of the divorce to the time of trial.

The parties agreed that the primary residential responsibility would remain with Kirsten. The boys turn 18 in July of 2011. Because they still have a year of high school left, child support needs to be paid to Kirsten from Lowell through May of 2012. The parties agree the child support amount is \$1,710 per month. Both parties would carry the boys' health insurance (as they have in the past), and all medical, dental, optical, prescriptive, counseling, orthodontic and mental health costs would be divided equally between the parents.

PROPERTY DISTRIBUTION

RUFF-FISCHER FACTORS

The guide for deciding both property distribution and spousal support comes from the *Ruff-Fischer* factors. The *Ruff-Fischer* factors include:

The respective ages of the parties, their earning ability, the duration of the marriage and conduct of the parties during the marriage, their station in life, the circumstances and necessities of each, their health and physical condition, their financial circumstances as shown by the property owned at the time, its value at the time, its income-producing capacity, if any, whether accumulated before or after the marriage, and such other matters as may be material.

Lorenz v. Lorenz, 2007 ND 49, ¶ 6, 729 N.W.2d 692.

Before the distribution can be made, the values need to be determined. Fortunately, the parties agree on nearly all values. The exceptions are the Grant County land and the lease value of the Maxima. They disagree on how some items should be treated, but not as to the values.

VALUATION DISPUTES

The Grant County land consists of two contiguous parcels of approximately 80 acres each. They purchased 80 acres (S½NE¼), consisting primarily of pasture land, from Lowell's parents. (Exhibit 3). By warranty deed, they also own the north 80 acres (N½NE¼), consisting of farmland and the deteriorating buildings, subject to a life estate in Lowell's parents. (Exhibit 2). Lowell places no value on the North half and ballparks the South half. At trial he acknowledged that his value was in part sentiment, in part based upon property tax value, and it did not represent fair market value.

The measure of property value is fair market value. Evenson, v. Evenson, 2007 ND 194, ¶ 6, 742 N.W.2d 829, 833. Neither sentiment nor property tax value equate to fair market value. Allied Appraisals, Inc. appraised the fair market value of the Grant County land. They found the fair market value of the South half as a fee simple ownership. They placed a value on the North half, which accounted for the life estate. Both were done as required by the standards of the appraisal industry. Mr. Stenseth, who finalized the appraisal, testified to his education and years of experience, and they are also outlined on pages 36-42 of Plaintiff's Exhibit 1.

The highest and best use of the property is as agricultural property. (Exhibit 1, page 6). Whether it is being used as such is irrelevant to the value which needs to look to the best use in determining what a buyer in an open market under all conditions requisite to a fair sale, each acting prudently and knowledgeably, would pay, assuming the price is not affected by undue stimulus. (Exhibit 1, page 1). To argue actual use is irrelevant is to suggest that a house has no value if it is vacant because it is not being used as a home.

Allied Appraisal looked to the soil types, the geography, and the location of the property. They analyzed the value from a cost approach, income approach, and comparable sales approach. (Exhibit 1, page 2). To do so, they looked at public records (Register of Deeds/County Recorder, County Treasurer, FSA, NRCS records for soil types), confidential information from personal interviews, and professional publications. Additionally, they used personal knowledge and interpretation. The data was researched and verified through reliable sources. (Exhibit 1, page 3).

The cost approach is used primarily to determine and support the cost of the land. The income approach is based on the potential cash rent value of the property. To compute the income value, he looked to the potential income stream if capitalized using a capitalization rate derived from comparable sales analysis, as well as rental data gathered from local land owners and operators. (Exhibit 1, page 4). They verify the accuracy by cross checking with other land appraisers and published agricultural surveys, as well as other sources. They added no value for the buildings because of their conditions. Because the pasture land fencing is inadequate, the value was discounted by cost of replacement.

The cost approach yielded a full value of \$103,000. The income method, \$100,000. The comparable approach, \$103,000. (Exhibit 1, pp 20-30). Ultimately, Allied Appraisal gave the sales approach and the income approach the most weight and appraised the land (if fee simple) at \$103,000.

Because the North half is not fee simple, Allied Appraisal had to compute the value of Lowell and Kirsten's remainder interest. That was done from the two different sides of the coin. First, they looked to the value of the life estate and subtracted it from the fee simple value. Second, they looked at what would be the actual value of a full

interest at the time it converts to a fee simple value. Both required Allied to find the life expectancy of the holders of the life estate. The longest of those is 14.97 years (rounded to 15 years).

Using the first method, present value of cash flows, they determined that the net annual income from the property currently would be \$2,303. Applying first a growth factor based on the typical lease period and an average growth of \$2.50 a year, then a discount factor of 4 percent (because the money would be a stream of income), they determined the net present value of the life estate to be \$29,185, rounded to \$30,000. Subtracting that \$30,000 from the fee simple value of \$67,000 leaves a remainder interest of \$37,000 for the North half. Adding the South half value of \$36,000 gives a total value of \$73,000.

The second method looks at what a buyer would pay now for a fee simple interest in 15 years. The appraiser started by looking at the historical increase in value for cropland in Grant County (6.05 percent) and applying the increase to the fee simple value of \$67,000. That yields a \$162,000 future value. Because the buyer would not need to pay for another 15 years, it needs to be reduced to present value (what would need to be socked away today with interest at the rate of 10 percent per annum for a period of 15 years). The result is that the value of the land is \$38,781, rounded to \$39,000. Again, adding in the South half value gives a total of \$75,000. The appraiser then valued the total parcel, subject to the life estate at \$74,000.

The work of a highly trained objective third party expert is certainly subject to more weight than the sentimental hipshot of Lowell. Sure, an owner is allowed to testify to the value of his or her own property, but that window into evidence does not automatically drag expertise along with it. Presumably an owner is allowed to talk about the value of his or her own property because they are familiar with the property and its use. This concept has certainly lost its footings now that the owner may not be an occupant of the land nor have any particular contemporary experience with the kind of business and income the property generates. As a distant sentimental owner, Lowell certainly falls outside the circle of knowledge that the traditional owner was presumed to possess. The court should value the land at \$74,000.

Kirsten leases a 2009 Nissan Maxima that has another year on it. The payoff at the time of trial was \$22,558. The value as of trial was \$22,075. Kirsten based both numbers on her conversation with the leaseholder, who also provided her with the NADA Used Car Value. (Exhibit 117). Lowell used the clean retail value, which packs in a profit for the retailer. Kirsten used the trade-in value, which tracks that which a buyer would pay.

NATURE OF PROPERTY

The other property issues fall to disputes over what is, and is not, in existence in the category of retirement assets; who used or disposed of what during the period between the inception of the divorce and trial; and, how it should be distributed.

Defined Benefit Plans (#10, #12 and #7). Lowell has worked for most of his adult life for the refinery, all of it married to Kirsten. During that time, the refinery changed hands several times. As a result, he has pension/retirement assets from Amoco, BP, and now Tesoro. Kirsten's position is simple, all retirement assets, hers and Lowell's, should be thrown into the pot for division. This includes the defined benefits of the two predecessor companies (Items #8, 9, and 12). Lowell contends that, if #7 is divided, there will be no #10 or #12. Despite volumes of discovery requests, Kirsten does not have any information, other than Lowell's testimony at trial, to confirm that. If it is in fact correct, she asks that the court divide #7. But, if it is incorrect, then she simply asks that the court order a Bullock (marital fractional formula) division of #10 and #12 and an actual division of #7. Nothing is lost by her request. A great deal may be lost by Lowell's.

Item #11, the Tesoro defined benefit pension, is not tied to #7, #10, or #12. That should be divided by a marital fractional formula.

USE OF PROPERTY

When the demise of the marriage came to a head, Lowell created a shell game of the parties' accounts. He emptied many joint accounts, opened accounts only in his name, transferred assets, stored cash, and took and stashed the parties' savings bonds. This frenzy of finances made it very difficult to recreate the parties' financial status at the time of the divorce. That morass, he suggests, should simply be ignored, allowing him to keep, without offset, \$27,000 of the parties' joint assets. (Exhibit 111).

In addition, during the divorce waiting period and contrary to restrictions of the summons, he withdrew \$9,273 from two of the retirement savings plans. (Exhibit 114).

Savings bonds. From the time of their youngest child's birth, the parties regularly purchased savings bonds to use for the children's college. After he was served with the summons and complaint, Lowell took all the bonds and moved them to a friend's house. He claims not to have inventoried them at the time. After the court's interim order required them to be placed into a bank safety deposit box, Lowell returned all the bonds listed in Exhibit 112. This exhibit shows those bonds which were in the US Bank safe deposit box, as inventoried by Kirsten, her sister Candace Shafer, and a bank officer. Exhibit 112 also includes the list of bonds reported on Kirsten's Social Security number purchased from January of 1987 through May of 2010. Despite her request that Lowell also request this disclosure from the Treasury, he failed to do so. As a result, it is impossible to tell if Lowell cashed or withheld any savings bonds.

Kirsten specifically requests that the court order Lowell to request within 30 days that the United States Treasury report all the savings bonds purchased under Lowell's Social Security number or his name from January of 1987 to the present. If any bonds are missing, Lowell would be required to pay one-half the face value of the bonds to Kirsten within 90 days of entry of judgment. If he fails to do so, all savings bonds would be Kirsten's.

Additionally, the savings bonds were purchased for the children's education. One of their children is in college and the other two seniors in high school. She asks that the court divide the savings bonds into thirds, one-third to each child. The oldest child's one-third would first be used to pay off his college loan (Item 169, \$11,064, Exhibit 121). If the funds are not used when the twins reach age 30, they would be divided equally between Kirsten and Lowell.

Parties' Accounts. On January 8, 2010, the parties had \$34,000 in their accounts. Kirsten withdrew \$3,900 for attorney's fees. Lowell took the remaining \$29,840. Upon court order he returned \$21,000, leaving \$8,840 missing. The accounts he took included #7673, the Christmas savings account of \$1,485; #6893, the proceeds remaining from a home equity loan at \$10,684; #6901, the vacation savings of \$10,654; #5109 of \$4,000 (moved to his own account); and #4927 \$3,017 (also moved to his own

account). In addition, at the time the divorce began, Lowell had \$18,162 in his account #5188. This leaves a total of \$26,996 he took and did not return. All of this is documented in Exhibit 111. These funds should be considered economic misconduct and a pre-distribution to Lowell, which is certainly permissible within the constraints of *Ruff-Fischer*. Hitz v. Hitz, 2008 ND 58, 746 N.W.2d, 732.

Unreported Withdrawals from Thrift Savings. Seven months after the inception of the divorce, in July of 2010, Lowell withdrew \$2,989 from the Tesoro Corporation Thrift Plan (Exhibit 113). Despite the prohibitions of the summons and the interim order and the requirements of discovery, as well as those of the summons that he report this, he failed to do so. Then, later, in January of 2011, he took another \$6,284 from the BP Savings and Retirement Plan. Again, he did not report this. Both acts run firmly contrary to the summons and the interim order. He attempts to mitigate his contempt by complaining that he had to pay taxes on these withdrawals and that he paid bills with them. First, he has not yet filed his taxes for either 2010 or 2011. Second, any taxes on the funds are just one consequence of his dishonesty. Third, he was earning over \$96,000 at the time, had modest living expenses, paid off his credit card every month, and had \$18,000 in his bank account just prior to trial. The only conclusion that can be reached is that he hoped to get by with taking the money, that Kirsten would not notice, and that he could just keep this \$9,000.

Unexplained drop in asset balance. With this backdrop of deception, just days before exchanging bank statements to verify account balances, Lowell's account dropped by \$10,100.00 from #5188 and \$6,000.00 from #1775. It couldn't have been used for attorney's fees, his attorney's fee statement shows he paid only \$6,487.19, and he testified he paid the fees much earlier than the last month. Any other use than attorneys fees is prohibited by the summons.

Because of his ongoing course of deception to Kirsten and to the court, Lowell's assets should include the following:

	Specific Funds	Totals
Joint Bank Accounts		
#7673	\$ 1,485	
#6893	10,684	
#6901	10,654	
#5109	4,000	
#4927	+ 3,017	
Total	\$29,840	
Returned by court order	-21,000	\$ 8,840
Lowell's Bank Account #5188	\$18, 161	18,161
Withdrawals from Retirements		
Tesoro Thrift Savings Plan	\$2,989	
BP Savings Plan	+6,284	9,273
Recent Withdrawals from Wells Fargo		
Withdrawals from Account #5188	\$10,100	
Withdrawals from Account #1775	+ 6,000	+16,100
TOTALS OF PRE-DISTRIBUTIONS		\$52,374

Lowell would argue that Kirsten's Dakota Community Bank falls into this same category. On January 8, 2010, Kirsten did have an account with \$5,195 in it. Within the next few weeks, she deposited a \$3,000 gift from her father. Over the course of time she used that to keep up with the bills, to repair the kitchen sink, furnace, and other appliances in the family home. Rather than to engage in a qualitative dispute about the use of the funds, however, she agrees that she, too, should be deemed to have a pre-distribution of \$8,195.

With the exception of the balancing to be done with the financial assets to make an equitable distribution, the parties seem to agree on who gets what asset. The only exception is with the freezer. He wants his wild game out of the freezer. She has no objection, but has filled the freezer since the time of separation with other food and does not want to have to now give that she purchased to Lowell.

Further, Lowell has Kirsten's father's gun, a Korean War issue .270 deer rifle. She asks that he turn the gun over to Mr. Nodland after which Candace Schafer or John Schafer will retrieve it from Mr. Nodland's office.

DEBTS

The debt side of the ledger similarly raises few issues as to amount and allocation.

SLND debt (Item 121). All their lives, the children were promised a college education by Kirsten and Lowell. Lowell would have the children borrow money, attend school, and then repay the child the loan amount if the grades were satisfactory. Unfortunately, the savings bonds set aside for this for their oldest son were tied up in the divorce. Beyond that, Lee could only get a loan for school if a parent co-signed. Kirsten co-signed rather than to have Lee discontinue college. The correct amount is \$11,064, not the \$14,000 listed on the property and debt listing. Rather than to leave that a contingency for Kirsten, she asks the court to order this to be paid off with the savings bonds and considered part of Lee's share of those bonds. If the court handles it as a straight debt and Lee someday pays it, Kirsten will have had an unfair corresponding increase in assets. On the other hand, if the court ignores it and she ends up paying it, the reverse inequity arises. If paid now with funds saved for that purpose, the contingency nature is resolved.

Kirsten's Loans. When the divorce began, Lowell held all the joint funds hostage. Not only did Kirsten incur expenses trying to reconstruct the financial mess, but she had little to use for her own fees and less to fall back on for ordinary expenses of the children and herself. As she expected, Lowell paid no child support until forced to in the interim hearing. The initial hearing was delayed, and her needs and fears rose further. To mitigate that concern and meet the needs of herself and the children, she borrowed money from both her sister and her father, Candace and John Schafer. She signed promissory notes to both of them for each extension of funds. (Exhibits 119 and 120). Even though incurred after the inception of the divorce, these needs were rooted in maintaining the family property and the family itself and should be considered to be family debt. For example, Kirsten alone paid for the personal and real property appraisals to the tune of \$2,125. (Exhibit 4). Because of these appraisals, the parties were able to close the gap on their disagreement over values which saved both of them money and time. Despite the differences in their income positions, Kirsten is not asking

for attorney's fees, but rather that these debts to John and Candace be treated as family debts.

Credit Cards. On the other hand, she thinks the credit card debts of both herself and Lowell should be separate personal obligations and not balanced by property. Specifically, her Chase #3238 (Item 173) and American Express X4256 (Item 177) are hers alone. Lowell's US Bank account #9848 (Item 174) is paid off each month, so this constitutes just his expenses of last month. This should be his alone. For that reason, in the attached distribution proposal each is listed at zero.

Although Kirsten submitted her proposed distribution at trial, there are a few adjustments given the evidence. Her proposed distribution now is attached to this brief as Attachment A.

2010 Taxes. The only remaining property issues are with regard to the parties' 2010 taxes. They filed for an extension because they could not agree on how to have them prepared. Kirsten is amenable to filing jointly with Lowell, dividing the cost of preparation and any refund. She is not comfortable having Lowell prepare the returns and rather would have him propose three certified public accountants or accounting firms in the Bismarck-Mandan area. From these, she will select one. The parties would divide the cost. If Lowell is unwilling to do this, she would file claiming both boys. Going forward, each would claim one child as long as that child is eligible. When an even number is ineligible, Lowell would claim the larger number for odd-numbered years and Kirsten for even-numbered years.

SPOUSAL SUPPORT

Throughout their relationship and marriage of 22 years, Kirsten and Lowell made decisions based on what seemed best for them at the time as a family. Some of those decisions had a strong impact on where each is after the divorce. Because of those family choices, Kirsten finds herself in a position where the income differential will leave her with a disparate and inequitable burden of the post-divorce ability to meet her needs. This is the precise reason the law provides for spousal support.

Rehabilitative spousal support is awarded to equalize the burdens of divorce or to restore an economically disadvantaged spouse to independent status by providing a disadvantaged spouse an opportunity to acquire an education, training, work skills, or experience to become self-

supporting. Paulson, 2010 ND 100, ¶ 11, 783 N.W.2d 262 (quoting Wagner v. Wagner, 2007 ND 33, ¶ 8, 728 N.W.2d 318). Rehabilitative support is appropriate when one spouse has bypassed opportunities or lost advantages as a consequence of the marriage or when one spouse has contributed during the marriage to the other's increased earning capacity or moved to further the other's career. Paulson, at ¶ 11 (quoting Moilan v. Moilan, 1999 ND 103, ¶ 11, 598 N.W.2d 81).

Permanent spousal support is appropriate 'when the economically disadvantaged spouse cannot be equitably rehabilitated to make up for the opportunities and development lost during the course of the marriage.' Duff, 2010 ND 247, ¶ 15, 792 N.W.2d 916 (quoting Wagner v. Wagner, 2007 ND 33, ¶ 8, 728 N.W.2d 318). [P]ermanent spousal support... provide[s] traditional maintenance for a spouse incapable of adequate rehabilitation or self-support. Duff, at ¶ 15 (quoting Wagner, at ¶ 8). Even when a spouse is capable of rehabilitation, permanent spousal support may be an appropriate remedy to ensure the parties equitably share the overall reduction in their separate standards of living. Duff, at ¶ 15 (quoting Wold v. Wold, 2008 ND 14, ¶ 14, 744 N.W.2d 541).

Becker v. Becker, 2011 ND 107, ¶¶29, 30. In deciding whether to award spousal support, the court must consider the *Ruff-Fischer* guidelines, including the respective ages of the parties, their earning ability, the duration of the marriage and conduct of the parties during the marriage, their station in life, the circumstances and necessities of each, their health and physical condition, their financial circumstances as shown by the property owned at the time, its value at the time, its income-producing capacity, if any, whether accumulated before or after the marriage, and such other matters as may be material. The court also must consider the needs of the spouse seeking support and the ability of the other spouse to pay. Duff v. Duff, 2010 ND 247, ¶ 14, 792 N.W.2d 916.

Kirsten is asking the court to award her \$1,200 a month beginning the first day of the month after the child support is to cease (anticipated to be May 2012) for 15 years or until she dies or remarries. When Kirsten was a freshman at the University of North Dakota, she became pregnant with their oldest child. She quit and attended classes at BSC. Shortly after, she and Lowell married. It made the most sense to them for Lowell to go to school first. He attended and completed the power plant technology course and got a job at Tesoro where he has been ever since. Then Kirsten returned to school and got her bachelor's degree. During this period of time, she had the twins after which she stayed home with the children and worked as a part of the school library system. She

did her student teaching in the Spring of 2001 and went to work as a Library Media Specialist in the fall of 2001. She was accepted at Clarion University to work on her master's degree, but at the same time Lowell was eligible to get additional schooling to enhance his position at Tesoro. With both parties working, Lowell taking classes, and three busy children, Kirsten had to wait and turned down the Clarion opportunity. Lowell then took two classes online. In 2007 Kirsten began her master's degree program through Valley City State University, completing it in 2010. Her master's degree program was paid for by grants from Laura Bush, the Farm Bureau, the North Dakota Library Association, and the Bismarck Public Schools. The Baeslers were required to spend less than \$500 of their own money for her degree and it moved her up \$5,000 a year on the pay scale (Exhibit 8). Kirsten is now the assistant principal at a grade school in addition to her librarian position.

Throughout his time at the refinery, Lowell has worked shift work with a varied schedule of hours and days worked. In no small part he was able to do so because Kirsten was available to care for and tend to the needs of the children. He now earns about \$97,000 annually to Kirsten's \$50,000. Kirsten is at the top of her field, absent more education. Had she been in the school system earlier, when Lowell entered the work field after his education, she would be 11 years ahead. Those family decisions enhanced the family unit, but created lost advantages and bypassed opportunities for Kirsten.

Entwined with the earlier promotion of Lowell's career over Kirsten's is the conduct factor. Not only did Kirsten have to shoulder the lion's share of parenting, while working around Lowell's shifts at work, but she had to deal with the cost, both emotional and financial, of his alcoholism and criminal conduct. Early in the marriage Lowell had drug charges. Later in the marriage he had DUI's and treatment for alcohol and drug abuse. Within the past ten years Lowell was also using methamphetamines. He participated in treatment at Whole Person, Heartview, and Hazelden. At each of these Kirsten participated fully in the family component, as did the children. Lowell's sobriety was short-lived. Even if considered a disease, the result of his chemical dependency was to leave Kirsten saddled with more responsibility. She had to make up for the

shortfalls in stability Lowell's usage created for the family which, in turn, gave her less time, energy, and money to enhance her own income-producing ability.

The parties have a long marriage, are of equivalent age, and both of good health. Both parties are looking at an equal division of the property, which primarily consists of their family home and retirements. Neither would be receiving strong income-producing property. The predominant factors then are the lifestyle of the parties, to some degree Lowell's misconduct, and the income disparity.

As is clear from the value of their marital estate, the parties do not live a profligate lifestyle. Both submitted budgets to the court that reflect some modesty in standard. With the children, Kirsten needs \$7,280 per month and without closer to \$5,800. Lowell says he needs \$6,393 per month (without deducting the child support). He includes the purchase of a house, furniture, a truck, the boat, and his attorney's fees. Excluding the purchases and debts by both parties, Lowell's monthly expenses are \$4,575 and Kirsten's are \$4,777 (without the children). Obviously, both parties need to have housing.

Kirsten is asking for spousal support to start after the child support stops. At that point, assuming no raises, Lowell's net income is \$6,044 per month and Kirsten's is \$3,229 (Exhibit 7). If there were no spousal support, Lowell would have an excess of \$1,469 each month above his \$4,575 in expenses. Kirsten would have a shortfall of \$1,548 each month. Looking at it from after tax cash flow perspective leaves the parties as follows:

CASH FLOW TO EACH PARTY WITH NO SPOUSAL SUPPORT

	Kirsten	Lowell
Net Income	3,229	6,044
Expenses	-4,777	-4,575
Total	-1,548	1,469

CASHFLOW TO EACH PARTY WITH \$1,200 SPOUSAL SUPPORT

	Kirsten	Lowell
Net Income	4,109	6,386
Spousal Support	0	-1,200
Total	4,109	5,186
Expenses	-4,777	-4,575
Net	-332	611

As the tables above indicate, either way Kirsten will have to scale back her expenses but Lowell will not, because he has a surplus. The equitable sharing of the overall reduction in their separate standards of living is a specific purpose of spousal support. Duff, at ¶ 15; Wold v. Wold, 2008 ND 14, ¶ 14, 744 N.W.2d 541; Becker v. Becker, 2011 ND 107, ¶¶29, 30. The inability of rehabilitative spousal support to allow the parties to achieve this sharing is the role of permanent spousal support.

Looking at it from another perspective, the parties have a significant disparity in their incomes. No, the goal is not to equalize the incomes, but the disparity remains pivotal. *Also significant to the determination of spousal support is whether there is a substantial disparity in earning capacity, and where there is a substantial income disparity which cannot be readily adjusted by property division or rehabilitative support, permanent spousal support may be appropriate.* Fox, at ¶ 21; Donarski, at ¶ 6. Moilan v. Moilan, 1999 ND 103, ¶ 11, 598 N.W.2d 81. See also, Kautzman v. Kautzman, 1998 ND 192, ¶ 11, 585 N.W.2d 561. Even after payment of spousal support, Lowell will net over \$1,000 each month more than will Kirsten.

In many respects, spousal support is the job security of marriage. Decisions were made by Kirsten and Lowell that have left Kirsten unable to shoulder her financial needs, and Lowell more than able to do so.

As explained by Justice Levine in her concurrence in Wiege v. Wiege, 518 N.W.2d 708, 712 (N.D.1994):

That mutual decision is of benefit to both partners during the life of the marriage but dissolution of the marriage is a different story. Permanent

support is the price to be paid for the earlier mutual decision about the role to be played by each marital partner when, in fact, the economically disadvantaged partner cannot obtain, after training and reasonable time, the income necessary to live a life comparable to the one prior to divorce or comparable to the higher earner's post-divorce reduced standard of living. (*Citations omitted.*)

Fox v. Fox, 2001 ND 88, ¶ 24, 626 N.W.2d 660.

The law backs up the appropriate nature of spousal support in this case. Given the length of the marriage and disparate earning abilities of the parties and taking into consideration the lifestyle of the parties, an application of the *Ruff-Fisher* factors makes Kirsten's request fair and equitable.

Dated this 29 day of June, 2011.



SHERRY MILLS MOORE (ID No. 03595)

Attorney for the Plaintiff

P.O. Box 4144

BISMARCK ND 58502-4144

(701) 222-4777

sherry@millsmoorelaw.com

ATTACHMENT A

KIRSTEN'S PROPOSED DISTRIBUTION

REAL PROPERTY	HUSBAND	WIFE	COURT
1. 1809 12 th Ave SE – Mandan		168,000	
2. NE ¼ Grant County	74,000		
TOTAL REAL PROPERTY:	74,000	168,000	

RETIREMENT ASSETS	HUSBAND	WIFE	COURT
3. NDPERS (W)		7,219	
4. NDTFFR (W)		33,646	
5. Waddell & Reed (W) 2 Combined		22,864	
6. Tesoro TSP (Fidelity Inv.) (H)	126,394	58,000	
7. BP Accumulation Plan (H)	20,726	20,727	
8. BP ESP (Fidelity Inv.)(H)	62,456	62,455	
9. Amoco Employee Savings (H)	½	½	
10. BP Pension Def. Benefit (H)	½	½	
11. Tesoro Pension Def. Benefit (H)	½	½	
12. Amoco Pension Def. Benefit (H)	½	½	
TOTAL RETIREMENT ASSETS:	209,576	204,911	

FINANCIAL ASSETS	HUSBAND	WIFE	COURT
13. Series EE US Sav. Bonds			Children's College Lee
14. Series EE US Sav. Bonds			
15. Series EE US Sav. Bonds			
16. Wells Fargo Savings-1636)(J)		11,014	
17. Dakota Comm. Bank- CD (J)		3,238	
18. Starion Savings-3189 (W)		10,016	
19. Wells Fargo Checking-7735 (W)		1,299	
20. Wells Fargo Checking-1775(H)	812	0	
21. Wells Fargo Savings-5188(H)	195	0	
22. Wells Fargo Trade 1444(H)	956	0	
23. Knights of Columbus PI-4928(W)		3,093	
24. Knights of Columbus PI-0892(W)		1,373	
25. MetLife Policy - #1810 (H)	No cash value		
26. Prudential - Policy #4499 (H)			
27. YRC Worldwide			
28. Dakota Comm. Savings(W)8710			
29. Reliance Star 1,2,3 Policies (W)			
30. Nat'l Ed. Assoc. (W)			
31. Nodak Farm Bureau			
32. American Legion (2 policies)(H)			
TOTAL FINANCIAL ASSETS:	1,963	30,033	

VEHICLES	HUSBAND	WIFE	COURT
33. 2007 Chevy Silverado (H)	21,395	0	
34. 2009 Nissan Maxima (W)	0	0	
35. 1991 Ford Probe (H)(twins' car)	1,325	0	
36. 2004 Glastron mx-175 Ski Boat (H)	7,450	0	
37. 2001 Honda 80cc motorbike (H)	810	0	
38. 2003 Honda CRF230 motorbike (H)	940	0	
39. 1963 Studebaker Lark (H)	0	0	
40. 1992 Honda 50 cc dirt bike (H)	500	0	
TOTAL VEHICLES:	32,420	0	

PERSONAL PROPERTY (W)	HUSBAND	WIFE	COURT
Items 43, 44, 45, 47-49, 51-54, 56-59, 61-81, 83-100, 145-158		6,740	
Items 42, 46, 50, 55, 60, 82, 101-144, 159-167	2,956		

DEBTS	HUSBAND	WIFE	COURT
41. Wells Fargo Home Eq Loan (J)		45,350	
42. SLND (co-signor for Lee) (W)	Pay with Savings Bonds		
43. CapCU (boat loan) (J)	4,904	0	
44. John Schafer (W)	0	20,000	
45. Candace Schafer (W)	0	4,490	
46. Chase-3238 (W)	0	0	Kirsten's
47. US Bank (H) Credit Card 9848	0	0	Lowell's
48. US Bank 2007 Chev. 919	20,382	0	
49. Nissan Lease Payment Debt	0	0	
50. American Express (W)	0	0	Kirsten's
TOTAL DEBTS:	25,286	69,840	

SUMMARY	HUSBAND	WIFE	COURT
51. REAL PROPERTY	74,000	168,000	
52. RETIREMENT ASSETS	209,576	204,911	
53. FINANCIAL ASSETS	1,963	30,033	
54. VEHICLES	32,420	0	
55. PERSONAL PROPERTY (2,956	6,740	
56. DEBTS	- 25,286	-69,840	-
57. EQUITY	295,629	339,844	
58. PREDISTRIBUTIONS	+ 52,654	+ 8,195	
NET DISTRIBUTION TO EACH	348,283	348,039	

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Kirsten K. Baesler,

Plaintiff,

vs.

Lowell L. Baesler,

Defendant.

Case No. 08-10-C-00373

DEFENDANT'S POST
TRIAL BRIEF

Defendant has nine issues he will discuss in this Post Trial Brief.

I. FARM LAND IN GRANT COUNTY, NORTH DAKOTA:

As a part of its decision in this case the court is asked to decide an issue related to 160 acres of land in Grant County, North Dakota. There are two separate tracts of 80 acres each. They each have different backgrounds and values and they need to be treated differently.

The two tracts do form one contiguous quarter section of land in Grant County. They are the following:

- a. N ½ of NE ¼ Section 31, Township 135, Range 90
- b. S ½ of NE ¼ Section 31, Township 135, Range 90

This property has been in Lowell's family for four generations. Assuming it is not needed for elderly care of his parents it will be passed on to the parties' three children making it five generations. Lowell believes the fair thing that should be done in this case is that no value should be assessed to either party as a distribution of marital assets to him or her. It should be

left as presently titled so that it is available to Lowell's parents for elder care as always intended and if not used for that so that it can be passed on to the parties children. There are many reasons for this position.

a. UNIT No. 1: The N $\frac{1}{2}$ of NE $\frac{1}{4}$ of 31-135-90 consists of 80 acres conveyed to Lowell as a gift. It is encumbered by a life estate reserved by the grantors, his parents. It remains fully encumbered to this date with the rights of his parents to live upon it and use it until their deaths.

When this conveyance was made Lowell and his three siblings met with their parents in a family meeting. Each of the four children received a gift of 80 acres from their parents encumbered by the same reservation of a life estate. The parents made this choice upon an attorney's advice. Only the 4 children met with the parents at the time this gift was made. Kirsten was not included in this family meeting. Lowell's share was put in his name alone. It was done by the parents so that they would be in a position to control how much of this asset, and when, it might be needed for their nursing home care or other late in life needs.

Thereafter no marital funds of Lowell and Kirsten were ever put into these 80 acres. Lowell and Kirsten never used these premises. None of Lowell and Kirsten's marital funds were ever spent for improvements. No income to Lowell or Kirsten has ever been derived from this tract. They have never paid any of the taxes on it. It is effectively awaiting inheritance

by Lowell if he outlives his parents. This contingency can only be predicted by use of standard life expectancy tables. A standard jury instruction in N.D. routinely tells jurors that the estimates in such tables may or may not hold true in any particular case.

b. UNIT No. 2: The other 80 acres the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 31, Township 135, Range 90, was purchased by Lowell from his parents for the sole purpose of having it available for late in life needs of his parents and to keep it in the family to be someday devised to his sons. Should that become its fate it would achieve 5th generation ownership. It was never purchased for personal gain by Lowell. It is the other 80 acres in the quarter section of land that was gifted to Lowell subject to his parent's life estate. Lowell wanted to keep the entire quarter in the family so he purchased it on a contract for deed in his name alone. The total purchase price was \$17,000 with payments to be made over time. At the time of the purchase Lowell committed to taking on extra overtime hours at work to cover the payments. \$17,000 was the amount the lawyer recommended be paid so that it would not be considered as a transfer without consideration subject to claims of health care providers or some such creditors. It might be claimed that it is pasture land but it has not been used as such. It has produced no income since Lowell purchased it. It was not purchased for that purpose. That it was not purchased as an asset that would earn income is shown by the fact it has

never been rented out or used for any purpose. No marital funds have been put into improvements. A small amount totaling a few hundred dollars have been paid annually for the land tax.

Kirsten's evidence by way of an appraisal submitted on the alleged value of these 80 acres has to be the weakest and most suspect as has ever been laid down in a courtroom as "expert testimony". All of the testimony was hearsay. While the opinions of experts may be based upon just about anything except astrology in this case the official testifier presented at trial had never seen the land about which he was opining. Nor had he ever talked to anybody familiar with the land itself. He just rubber stamped what his new apprentice wrote in a report about it. His apprentice had never seen the land either. It was totally covered with snow when she went to view it. Neither of them had any knowledge of the productivity or potential for productivity of that particular farm.

The "expert" was simply a court testifier. He said that in doing her work the apprentice used the traditional "three part" approach to appraising. The three approaches often invoked by appraisers are "cost", "income", and "comparable sales". After introducing the claim that his apprentice used this traditional approach he immediately acknowledged there had been no "cost" analysis at all. He said this was because it was felt that approach would not

apply. Consequently, the appraisal performed relied exclusively upon the “income” and “comparable sales” legs of the standard three legged stool.

He then he admitted he did not know the actual rental, the terms of rental or the period of the rental currently in place for either tract. He said his apprentice used a county average for rent. No weight was given to the “taxable valuation” shown on the tax statements. He testified that taxable valuations mean nothing.

Both of these properties are essentially family inheritance that have little value to Lowell other than a desire to preserve them as a generational family heirloom. It is true they are in his name but they are in his name for reasons other than increasing his assets, his income or his net worth. Now Kirsten wants half of these items. They are in part an asset that is not yet his, one that may never be his, one that is not now income producing, one that is not projected to be income producing, one that is being held as a safety net for his parent’s future needs. And one that may or may not be his inheritance. Lowell on the other hand will obviously receive no share of the inheritance she will probably receive in the future. There was testimony that her mother has already passed on. There was testimony that her father is in his 80’s. Lowell’s testimony was that her father is a wealthy man. This testimony went unchallenged.

We acknowledge that the Grant County real estate must be included in the assets that the court *considers* when it makes a fair and equitable division. But it must do so taking into consideration the Guidelines as construed in *Ruff-Fisher*. See Bladow v. Bladow, 2003 ND 123, 665 N.W.2d 724. In Gaulrapp v. Gaulrapp, 510 N.W.2d 620 the Court said:

“The trial court must consider all of the real and personal property accumulated by the parties as part of their marital estate, regardless of the source....” Anderson v. Anderson, 368 N.W.2d at 568. Separate property, whether inherited or otherwise, must initially be included in the marital estate. *Id.* As we held in Freed v. Freed, 454 N.W.2d 516, 520 (N.D. 1990), only after all assets are included in the marital estate can a trial court apply the Ruff-Fisher guidelines and consider the sources of the property in making an equitable distribution.”. [emphasis added]

The Fisher-Ruff Guidelines state that gifting and inheritance are factors that can and should be considered by a court in doing an analysis for purposes of making a fair and equitable property division. The Court has stated expressly that the origin of the property owned by the parties can be considered by the trial court under the guidelines, Winter v. Winter, 338 N.W.2d 819, 822 (N.D.1983). Olson v. Olson, 445 N.W.2d 1, 4 (N.D.1989) the Court has said that “inherited property should be set aside to the heir where fairly possible.”

The sharing of gifted and inherited property is certainly permitted in North Dakota and required when it is necessary for a fair and equitable

division. Such is not the case here. There are many factors related to the origin, the purposes and the usage of the Grant County land in this case that make it unique and especially qualified for the directive on inherited property given by the Supreme Court in Olson v Olson, Id. We ask that the Court not award Kirsten half of the Grant County land. That is what it would be doing if it off-set some value attributable to this land by gifting other property to Kirsten as an off-set.

II. THE RETIREMENT ASSETS:

Lowell's first request as pertains to the RETIREMENT ASSETS listed on the 8.3 Property and Debt Listing is that certain items simply be removed. These include the following:

1. Items No. 9 and No. 12 does not exist and should be stricken. All Amoco accounts were renamed and merged and they do not exist.
2. Item No. 7 is the same as Item 10. Either Item 7 or Item 10 has to be omitted. Lowell has a choice between two options. One can be selected but both cannot be. If item No. 7 is selected and the asset is liquidated for cash item No. 10 is no longer available and would not exist. If item No. 10 is selected and there is no cash liquidation the pay-out comes at some future date (retirement) in accord with the provisions of an employers defined benefit plan.

We ask the court to omit Items No. 9 and No. 12 and to rely upon the values that have been assigned to No. 3 through No. 8 on the 8.3 Property and Debt Listing.

III. FINANCIAL ASSETS:

As for Item Nos. 13 through 15 it is Lowell's position that both parties should obtain a listing of all Bonds purchased by them in which their individual Social Security numbers have been used at the time of purchase. Lowell has applied for this listing from the government office that records them. Kirsten provided a listing at the time of trial but we are not at all sure her listing records all bond purchased as opposed to all bonds still in existence. Such a listing would not track bonds that may have been purchased but were subsequently liquidated and the parties are entitled to know whether either of them have cashed in Bonds and have not reported or accounted for the liquidation to their spouse. This process need not hold up entry of a decree if the decree provides that whatever is determined to be the Bonds that have been purchased will be split 50-50 between the two of them. If a dispute arises concerning the Bonds after entry of the decree that cannot be resolved by the parties they can return to the Court for direction.

The Bonds should be considered in such a manner that the total tax burden related to all the Bonds falls equally on both parties. Some calculation will need to be made to arrive at an equal net value to each of them for these bonds. This is because the tax consequence falls directly on the person whose name is on the Bond and the total number of Bonds and total value attributable to each is not equal. The equalization of the net value is something the court could direct be done.

Lowell asks that the court not concern itself with how these bonds will or will not be used or dedicated to the college education of the children. Each of the parties should get half of all of the bonds and each should be guided by his or her feeling of responsibility insofar as what support each will provide for their children's college education.

In summary all Financial Assets listed as Item Nos. 13 through 28 should be divided equally between the parties.

IV. VEHICLES:

1. Lowell asks that Kirsten's car be shown as an asset worth \$26,100 as shown on Item No. 34 under Vehicles in the 8.3 Property and Debt Listing. Lowell produced a Kelley Blue Book exhibit to show that \$26,100 is the fair market value of this vehicle and even though it is leased the pay-off for Kirsten would be \$22,558, as shown on Item No. 176. The difference is equity that should show up by a proper entry of both asset value and debt.

2. The evidence shows that Lowell's pickup has a value of \$21,395. (Item No. 33 under Vehicles) and the debt against it is \$20,382. (Item No. 175 under Debts) The difference is the net equity that should show up by a proper entry of both asset and debt.

a. It was conceded the Studebaker has no value.

- b. It was agreed the twins should have the Probe.
- c. It was conceded the Honda dirt bike has no value.

V. PERSONAL PROPERTY:

- a. The parties have agreed to a division of all their other personal property.

VI. DEBTS:

1. Lowell does not accept that the \$14,000 shown on line 169 under Debts is a debt that should be shared. This is not the same as saying he will not support his son in college in Colorado. His objection is to the way this debt was created without his input. There are a series of reasons his objection is valid. These include the following:
 - a. The primary debtor is Lee.
 - b. Lowell was not asked if he would agree to guarantee this loan.
 - c. He and Kirsten have different ideas about how they should finance their children's education.
 - d. Kirsten's request involves entanglement of the parties and reasons for disputes to arise into the future.
2. Kirsten should pay her own American Express Credit Card and her Chase card and Lowell should have to assume responsibility for his US Bank Credit Card. These should simply be removed from the 8.3. The parties have been charging on these cards since the divorce was commenced and more than likely continue to charge and pay on them monthly even since the trial.
3. Kirsten should assume any debts she may have with her family members. Such debts should always be highly suspect in a divorce situation where family members are the alleged creditor. In this case we know that a substantial amount of the debt alleged to be owing to Kirsten's father was for attorney fees. Attorney fees should be considered by the court separately from assets and debts. A party should not be allowed to assure collection of attorney fees by unilaterally borrowing money from a family member and then including it as a marital debt on the 8.3 Property and Debt Listing. In

this context such alleged marital debt is not enhanced by cancelled checks or promissory notes that appear to attest to an alleged debt. It is really an advance self award of attorney fees to avoid the scrutiny that the Courts give to such awards in cases of divorce.

VII. THE ISSUE OF FAULT:

North Dakota still includes “fault” as one of the factors that can be considered in a court’s decision in divorces. Considerable evidence was submitted that could only be considered under a category labeled “Fault”. Such evidence requires some scrutiny in this case including a balancing of fault by each of them and a consideration of the nature of the “fault” if such is to be considered at all.

1. Kirsten obviously beseeches the Court to consider Lowell’s use of alcohol as a “fault” factor in this case. At the same time she acknowledged at trial that alcohol addiction is a disease. She also acknowledged that she herself used alcohol to excess on occasion. It never became an issue at Lowell’s place of employment. Nevertheless it became an issue in the marriage and in 2005 Lowell agreed that he would enter counseling and rehabilitation. He testified that at the time he was subjected to some unusual stresses because of the relationship that had developed at his home. In a relatively short period of time he got two DUIs. Kirsten acknowledged that on occasions she has also driven drunk so the difference between the two is that he got caught and she didn’t. She accused Lowell of use of controlled

substances but she admitted that she too had engaged in such illegal behavior during the marriage albeit some 10 years ago. He acknowledged his usage and voluntarily sought treatment. He went to the intensive inpatient treatment center in Minnesota called Hazelton and thereafter enrolled in an aftercare program at Heartview. He acknowledged that he suffered at least two relapses after this treatment. Lowell does not believe addiction is an active problem for him today. He does attend AA meetings. It should be significant that he has worked in a high paying, hard work, high stress, long-hours job for 21 years. He has risen to a management position. He has never received a reprimand from his employer in all of those 21 years. This would be an unusual phenomenon if in fact he was a hard-core practicing alcoholic or had not gained control of such usage through AA, counseling and treatment.

2. There is no indication that Kirsten's infidelity is in any way disease related. Kirsten admitted that starting in the summer of 2009 she rekindled an old relationship with a man with whom she had maintained a close friendship relationship for years. She would not acknowledge that she was the sole contributing factor but admitted contributing to the fact this man has obtained a divorce since they rekindled their relationship. She claims that until May of 2010 after the divorce was started there was no intimacy with this man. There is no reason to believe her however. It was in January of

2010 before the divorce was commenced that Lowell discovered a text message on her cell phone that for all purposes spelled intimacy. He had suspected an affair long before that but after he saw the text messaging in January of 2010 he no longer had any doubt. If she would lie about it not starting until May there is no reason to believe that it only started in January either.

Initially when confronted Kirsten denied it but eventually there were admissions. Then she said it was a mistake. As far back as 2008 she had acknowledged in a text message that they had two obstacles to overcome in their marriage. She admitted on cross exam that the two obstacles she was referring to in that text message were her relationship with this other man and Lowell's use of alcohol.

There are other reasons to disbelieve Kirsten. She took trips with her lover and lied about it to her children and her sister. She had breast augmentation surgery and hid the financial part of that event from Lowell. When Lowell discovered she had some medical procedure she lied and told him she had a lump in her breast removed. She admitted that throughout the marriage she had lied to Lowell and he had lied to her.

In short this is not a divorce in which an imbalance of "fault" should be a factor that impacts the outcome in any way.

VIII. FINANCIAL MANIPULATION:

It is obvious both parties have engaged in some financial manipulations during this marriage and even after the divorce was started. When confronted with Kirsten's manipulations and an explanation was asked for what happened to the money her answer is only in the most general of terms indicated that she spent it. When she is unable or unwilling to explain her disposition of funds even though we know she accessed them. She just wants us to accept her testimony as true.

When asked to explain her disposition of \$9,764 she withdrew from her secret bank account on July 13, 2010 (the day after she failed to disclose the existence of that account in a deposition) Kirsten said she had spent it on "various things". This was long after commencement of the divorce. In spite of this she complains that Lowell has not adequately explained his use of money he withdrew after he was served with the Summons.

It is true Lowell withdrew \$9,000 from their account on two occasions in January of 2010 for a total of \$18,000. She now wants those funds to be considered an "advance of marital funds". This was an account into which his employer automatically deposited his payroll. It was then automatically transferred or passed through to their joint checking account. Nevertheless Kirsten wants the \$18,000 in the first account and the \$18,000 in the account

to which it was transferred both considered as advance distributions to him of marital assets.

On top of this Lowell did explain the disposition of funds better than she did. He explained that there was in fact more money in these accounts than the \$18,000 she wants considered twice. He explained that \$21,000 went to restore funds after Kirsten complained that he had taken funds at an Interim Hearing. An \$11,000 account was set up at the bank. This asset now appears on the 8.3 under Financial Assets. In addition, \$10,000 was given to Kirsten. She does not deny that she received this. After these dispositions there was still about \$9,000. This was also Lowell's regular monthly household living account. He spent it on "various things". Kirsten now wants that \$9,000 considered as an advance distribution of marital assets to him. Lowell explained from the witness stand, under oath, that he over \$11,000 in receipts in the papers he brought to court vouching for things he had paid including real estate taxes on the marital home, mortgage payments on the marital home, MDU bills on the marital home and on his living expenses, repairs for their son's car, rent, food, a snowboarding vacation to South Dakota and other "various things".

Each of them appears to have been trying to stash some cash for a rainy day they supposed was coming. Money was transferred by both of them from one account to another. The trail is difficult to follow. Neither

pot should call the other kettle black. At this point they have both sworn under oath that they have no accounts other than those that appear on the 8.3 Property and Debt Listing. There is no evidence to support any claim that hidden funds exist in some undisclosed account. They both appear to have spent whatever was available to them. We submit the Court should not guess from this jumble of accounts what the outcome would be if there were a certified, in depth audit of both of them. The division of marital assets should be made on the basis of what is known to exist and not speculation.

If someone is not to be believed about lack of financial candor the better candidate for that position would be Kirsten. Her many lies and duplicities would make her more suspect. When his world was coming apart in January of 2010 Lowell withdrew \$18,000 from their account. That was half of what was in the account. He testified that he even e-mailed Kirsten telling her that he had done so. There was no denial of that testimony.

Item No. 28: When we discussed Financial Assets above we did not discuss Item No. 28 the secretive bank account that Kirsten maintained at Dakota Community Bank. It had some \$9,764 in it when she closed it. Our position in our discussion of that category of accounts was that it should just remain an asset that would be divided 50-50. Kirsten's explanation for having the statements for this account sent to another address was that it had

funds in it that were business related. This is hardly an explanation because it also had substantial amounts in it that were marital property. Into this account she deposited reimbursement checks received by herself and by Lowell. Money for travel, meals and motels that was spent to attend business or professional meetings was paid for out of family funds (by family credit card) but when the reimbursement came in that money went into her secret account. What Lowell was able to ascertain after he learned of this secret account was that she deposited at least the following:

- a. As discussed above expense checks from associations that had reimbursed her for travel, and other expenses for attending meeting.
- b. Blue Cross Refunds that came in Lowell's name that she forged and deposited.
- c. Heartview Refunds that came in his name.
- d. Insurance received for damage to a vehicle from an accident.
- e. Refund to Lowell for expenses he incurred coaching.

When Kirsten was asked about "other" possible accounts in discovery she failed to disclose her secret account. She withdrew everything from this account on July 13, 2010 the day after her deposition was taken and she was asked about all of her accounts. She acknowledged at trial that at times there was considerable more in this account. Lowell did their taxes. She did not disclose or provide the information about interest earned on this account to Lowell so that it could be properly reported on their joint tax return.

IX. SPOUSAL SUPPORT

Kirsten wants \$180,000 in spousal support. Her claim appears to be based exclusively upon an assertion that she was prevented from entering Clarion College in September of 2005 because of Lowell objected to the cost and there was an agreement he would go first for his BA and when he was done she would go next to pursue her Masters.

This is all a total fabrication. Lowell had been put into a management position prior to the fall of 2004 and had little if any management skills or knowledge. He learned there were two courses offered on line that taught management techniques. His employer offered to pay for them. He enrolled, did the courses on-line, received a 4.0 grade-point average and pursued education no further. Attendance at these two courses was never a part of any plan that he would enroll in a program leading to a Degree let alone a plan that he would get to go first. He took one of these courses in the fall semester of 2004 and the other in the spring of 2005. That was it.

Nevertheless, Kirsten testified that their agreement that he go first for his Bachelors and that this prevented her from entry into the Masters Program at Clarion College. This was in September of 2005 and Lowell had already completed the one remaining class he was taking three months before in May. But she testified that somebody had to take care of the children while Lowell worked and went to school and since he was going

first to get his BA she had to delay pursuing her own advancement. She has had an extreme difficulty telling the truth throughout these proceedings.

The truth is that by the time she claims she would have entered Clarion College in September of 2005 Lowell had already finished the last of two management courses he took on line. By September of 2005 he had finished the last of the two classes three months earlier. Her claims that income is inevitably lost for the next 10 years because she was delayed in entry into a higher income track with the Bismarck School system is bogus. It is made for the sole purpose of supporting an argument that she should get \$180,000 in spousal support.

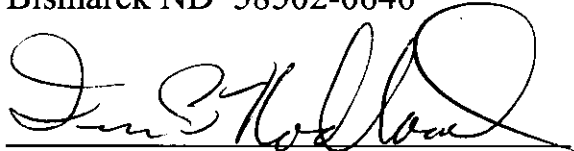
There was no objection to the cost of entry into the Master's program. Lowell has always supported her educational pursuits. She got her Bachelor's degree during the marriage. Lowell expressed strong feelings about the need for education in the modern world. There is no credible evidence he ever discouraged her from pursuing her own professional advancement. Upon cross examination she acknowledged that they did have discussion about her getting her degree so that hopefully Lowell could pull back from the onerous schedule of shift and overtime work he had pursued for over 21 years. Her story about missing the higher salary track with the Bismarck School system as a sacrifice to Lowell's advancement is 100% is pure and simply a fabrication.

She is an Assistant Principal making nearly \$50,000 a year. There is every reason to believe she could become a Principal in the near future if she should choose to pursue such a course. She is obviously smart, ambitious and career oriented. There is nothing to hold her back from soon pursuing a PhD if chose to do so. Their 17 year old twins turn 18 in July of 2011. She has a longstanding relationship with another man that has been intimate for at least the past two years and probably longer.

There should be no award of spousal support in this case.

Dated this 30th day of June 2011.

IRVIN B. NODLAND, PC
Attorneys for Defendant
109 North 4th Street Suite 300
PO Box 640
Bismarck ND 58502-0640

A handwritten signature in black ink, appearing to read "Irvin B. Nodland", written over a horizontal line.

BY: IRVIN B. NODLAND
State Bar ID No. 02729

IN DISTRICT COURT

SOUTH CENTRAL JUDICIAL DISTRICT

Kirsten K. Baesler,

Plaintiff,

VS.

Lowell L. Baesler,

Defendant.

Case No. 08-10-C-00373

))))))))

**) LOWELL'S REQUEST FOR
) PROPERTY TO KIRSTEN
) USING HIS VALUES**

ASSETS:

REAL ESTATE

1. 1809 12 TH Avenue SE Mandan	<u>\$168,000</u>
TOTAL	<u>\$168,000</u>

RETIREMENT ASSEST

(One-half of all retirement accounts below)

3. NDPERS	\$3,610	(\$7,219)
4. NDTFFR	\$16,823	(\$33,646)
5. Waddell & Reed	\$11,432	(\$22,864)
6. Tesoro TSP	\$92,197	(\$184,394.01)
7. BP Accumulation Plan	\$20,727	(\$41,452.80)
8. BP ESP (Fidelity)	<u>\$62,456</u>	<u>(\$124,910.88)</u>
TOTAL	\$207,245	

FINANCIAL ASSETS

(One-half of all Financial Assets)

13. Series EE US Sav. Bonds	\$8,350	(\$16,700)
14. Series EE US Sav. Bonds	\$24,475	(\$48,950)
15. Series EE US Sav. Bonds	\$100	(\$200)
16. Wells Fargo Savings 1636 (J)	\$5,507	(\$11,014)
17. Dakota Comm. CD (J)	\$1,619	(\$3,238)
18. Starion Savings 3189(W)	\$5,008	(\$10,016)

19. Wells Fargo Checking 7735 (W)	\$650	(\$1,299)
20. Wells Fargo Checking 1775	\$406	(\$812)
21. Wells Fargo Savings 5188	\$98	(195)
22. Wells Fargo Trade 1444	\$478	(\$956)
23. Knights of Columbus 4928	\$1,547	(\$3,093)
24. Knights of Columbus 0892	\$687	(\$1,373)
28. Dakota Comm Savings 8710	<u>\$4,882</u>	(\$9,764)
TOTAL	\$53,807	

VEHICLES

34. 2009 Nissan Maxima	<u>\$26,100</u>
TOTAL	\$26,100

PERSONAL PROPERTY (W)

41. Buffet	\$150
43. Rocking Chair	\$20
44. Leather Couch	\$100
45. Upholstered Chair	\$30
47. 2 Floor Lamps	\$10
48. TV w/wall Mount	\$10
49. Apple Box	\$5
51. Wood Bench	\$10
52. Misc. Decorative Items	\$50
53. Dining Table w/6 Chairs	\$125
54. 2 Bar Stools	\$25
56. Small TV	\$10
57. Computer Desk	\$40
58. Dell Computer	\$50
59. Kitchen Ware	\$100
61. Currier Piano w/Bench	\$150
62. Wood Toy Box	\$5
63. Sony Wall Mount TV	\$300
64. Leather Sectional w/Ottomans	\$400
65. 2 Floor Lamps	\$25
66. Corner Wood Cabinet	\$75
67. Misc. VHS Movies	\$10
68. Small Wood Stand	\$5
69. Whirlpool Washer & Dryer	\$200
70. Bathroom Scale	\$25

71. Misc. Bathroom Supplies	\$25
72. Twin bed, Recliner, etc.	\$100
73. Eureka Upright Vacuum	\$40
74. Totes (mementos) etc.	\$100
75. Luggage	\$20
77. Futon, Sectional & Plaid Couch	\$150
79. Metal Shelf	\$5
80. Chest of Drawers	\$10
81. 2 File Cabinets	\$25
83. Bedding & Misc.	\$20
84. Kitchenware, small appliances	\$40
85. Sentry Gun Safe	\$300
86. Ruger 10/22 Carbine .22 LR	\$225
87. Full Bed, Chest Dresser etc.	\$200
88. Oval Framed free Stand Mirror	\$50
89. Misc. Decorative items, pic.	\$50
90. Hall Table	\$15
91. Crosley Radio	\$25
92. Master Bedroom Set	\$100
93. Misc. Electronics	\$100
94. Troy-bilt 824 Snow Blower	\$400
95. Misc. Yard Tools	\$50
96. Misc. Coolers	\$50
97. Gas Cans	\$5
98. Cream Can	\$5
99. Misc. Tools	\$20
100. Extension Ladder	\$25
102. Chain Saw	\$40
145. Lawn Chairs, etc.	\$50
146. Char Broil Grill	\$60
147. Honda Lawn Mower	\$125
148. Cooler	\$5
149. Helmet	\$10
150. Air Tanks	\$5
151. Coleman Lantern	\$10
152. Gas Motor	\$10
153. Car Top Carrier	\$25
154. Weed Eater	\$20
155. Minn-Kota Trolling Motor	\$100
156. Shovels, Rakes, Hoses, etc.	\$45
157. Wedding Ring	\$100

158. Jewelry		<u>\$2,000</u>
	TOTAL	\$6,690

DEBTS

168. Wells Fargo Home Equity Loan		\$45,350
169. SLND		\$ 0
171. John Schafer		\$ 0
172. Candace Schafer		\$ 0
173. Chase 3238		\$ 0
176. Nissan Lease Payment Debt		\$22,558
177. American Express		<u>\$ 0</u>
	TOTAL	\$67,908

ASSETS		\$461,842
DEBTS		<u>-\$ 67,908</u>
	TOTAL	\$393,934

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Kirsten K. Baesler,

)

Case No. 08-10-C-00373

)

Plaintiff,

)

vs.

)

) LOWELL'S REQUEST FOR

) PROPERTY USING HIS VALUES

Lowell L. Baesler,

)

)

Defendant.

)

ASSETS:

REAL ESTATE

2. NE ¼ Grant County

a. 80 Acres

b. 80 Acres Trust

\$25,000

TOTAL \$25,000

RETIREMENT ASSEST

(One-half of all retirement accounts below)

3. NDPERS	\$3,610	(\$7,219)
4. NDTFFR	\$16,823	(\$33,646)
5. Waddell & Reed	\$11,432	(\$22,864)
6. Tesoro TSP	\$92,197	(\$184,394.01)
7. BP Accumulation Plan	\$20,727	(\$41,452.80)
8. BP ESP (Fidelity)	<u>\$62,456</u>	(\$124,910.88)
TOTAL	<u>\$207,245</u>	

FINANCIAL ASSETS

(One-half of all Financial Assets)

13. Series EE US Sav. Bonds	\$8,350	(\$16,700)
14. Series EE US Sav. Bonds	\$24,475	(\$48,950)
15. Series EE US Sav. Bonds	\$100	(\$200)
16. Wells Fargo Savings 1636 (J)	\$5,507	(\$11,014)
17. Dakota Comm. CD (J)	\$1,619	(\$3,238)

18. Starion Savings 3189(W)	\$5,008	(\$10,016)
19. Wells Fargo Checking 7735 (W)	\$650	(\$1,299)
20. Wells Fargo Checking 1775	\$406	(\$812)
21. Wells Fargo Savings 5188	\$98	(195)
22. Wells Fargo Trade 1444	\$478	(\$956)
23. Knights of Columbus 4928	\$1,547	(\$3,093)
24. Knights of Columbus 0892	\$687	(\$1,373)
28. Dakota Comm Savings 8710	<u>\$4,882</u>	(\$9,764)
TOTAL	\$53,807	

VEHICLES

33. 2007 Chevy Silverado	\$21,395
36. 2004 Glastron Boat	\$7,450
37. 2001 Honda 80cc Motorbike	\$810
38. 2003 Honda CRF230 Motorbike	\$940
39. 1963 Studebaker Lark	<u>\$ 0</u>
TOTAL	\$30,595

PERSONAL PROPERTY (W)

42. Ant Crosley Radio	\$50
46. Ant. Drop Front Desk	\$100
50. Ant. Baby Stroller	\$50
55. The Last Supper Picture	\$25
60. Misc. Decorative items	\$50
78. Chest Freezer w/contents	\$50
82. Locker	\$10
101. Step Ladder	\$25
103. Promark Stacking Tool Chest	\$100
104. Game Table	\$15
105. Medal Gas Can	\$5
106. 2 Old Lanterns	\$15
107. Misc. Coolers	\$25
108. 6 Lockers	\$60
109. Fishing Rods, Reels, Tackle	\$200
110. Protech Table Saw	\$60
111. Shop Vac	\$20
113. 3 Wood Stools	\$15
114. Draw Knife	\$5

115. Cleaver	\$5
116. Delta Chop Saw	\$100
117. 2 Oil Spouts	\$2
118. Keg Pierce	\$5
119. Metal Tins	\$5
120. Ant. Scale	\$5
121. J D Sockets w/metal box	\$5
122. Door Handle	\$5
123. Volkswagon Toy Car	\$5
124. OTC Tool Box	\$25
125. Beer & Coke Bottles	\$25
126. Bad Ass Coffee Co Bag	\$5
127. Blue Wall Cabinet w/Misc. Supp	\$100
128. Misc. Tools	\$125
129. Wall Organizer w/Nails, etc.	\$10
130. Creeper	\$20
131. GE Stereo System	\$10
132. Peg BD w/elec Sm Hand Tools	\$125
133. Craftsman Air Compressor	\$125
134. Piggy Air Tank	\$30
135. 6" Swivel Vise	\$25
136. Misc. (Saws, Hammers, etc.)	\$150
137. Dremel	\$25
138. Misc. (Solder gun, clock, etc.)	\$30
139. Floor Jack	\$20
140. Misc. (Sprayers, Fert. Sprdr)	\$75
141. 18v Recip Saw	\$50
142. Upright Vacuum	\$5
143. Misc. Camping Equipment	\$50
144. Anvil	<u>\$20</u>
TOTAL	\$2,067

All memorabilia and other items taken from the farm that is not listed.

PERSONAL PROPERTY (H)

159. Keurig Coffee Maker	\$20
160. Alarm Clock	\$0
161. Wedding ring	\$100
162. 4 Watches	\$100
163. Winc/Remington 12 ga. Shotgun	\$140

164. SKS Assault Rifle	\$275
166. 9 mm Handgun	\$270
167. 500 Rounds SKS Ammunition	<u>\$120</u>
TOTAL	\$1,025

DEBTS

170. CapCU (Boat Loan)	\$4,904.59
174. US Bank Credit Card (H) 9848	\$2,019.21
175. US Bank 2007 Chev. 919	<u>\$20,382</u>
TOTAL	\$27,305

ASSETS	\$319,739
DEBTS	- <u>\$27,305</u>
TOTAL	\$292,434

IN DISTRICT COURT

SOUTH CENTRAL JUDICIAL DISTRICT

)

)

)

)

2) RECAPITULATION

)

)

)

)

)

\$ 319,739

-\$ 27,305

\$ 292,434

\$ 292,434

\$ 461,842

-\$ 67,908

\$ 393,934

\$ 292,434

\$ 393,934

\$ 101,500 ÷ 2 = \$50,750 TO LOWELL

\$ 101,500 ÷ 2 = \$50,750 TO LOWELL

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 08-10-C-373

Kirsten K. Baesler, Plaintiff,

vs.

Lowell L. Baesler, Defendant.

FINDING OF FACT CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

A hearing was held on May 12, 2011, with Sherry Mills Moore appearing with Kirsten Baesler (Kirsten), and Irv Nodland appearing with Lowell Baesler (Lowell). The parties provided testimony and exhibits to the Court. In addition, the parties requested to file post trial briefs which were filed after a stipulated extension due to the flood issues in Bismarck on June 30, 2011.

FINDINGS OF FACT

1. The parties were married February 10, 1989.
2. Three children were born of this marriage with the oldest born in 1989 and the two youngest, twins, have turned 18 this July, but will be seniors in high school this year.
3. Both parties were 42 years of age at the time of the hearing and both are in good health.
4. Kirsten has a master's degree and is an assistant principal at Pioneer and Wilmore schools as well as a Library/media specialist. Kirsten obtained her bachelor's degree while working and being a mother. She also obtained her masters while working and being a mother. She makes around \$50,000 a year.
5. Kirsten is also on the Mandan School Board and receives \$200 a month as compensation.
6. Lowell has worked at the Tesoro refinery since 1990. Lowell graduated

RECEIVED & FILED

AUG 12 2011

Clk. of Crt. Burleigh Co.

from the power plant tech program at BSC. He makes around \$95,000 to \$100,000 per year.

7. The parties have 80 acres of farm land in Grant County they purchased while married from Lowell's parents. The parties also have another 80 acres in Grant County which was gifted to Lowell from his parents, with the parents maintaining a life estate.
8. The parties agreed the primary residential responsibility will remain with Kirsten for the twins. The parties agreed Lowell will pay support of \$1,710 per month. Both parties will carry the children on their health insurance and will equally divide all medical, dental, optical, etc.
9. The parties have agreed on all values to property except for the Grant county land and the lease value of the Maxima in Kirsten's possession.
10. **Grant County Land:** Kirsten argues the land has a value as testified to by her appraiser, Stuart Stenseth. This value took into account the life estate of the 1 tract and a value of \$74,000 was testified to by the appraiser for both tracts. Lowell disagrees with the value and testified the land should not be included in the marital estate as it is farmland handed down through family generations. Lowell urges the Court to not include this land in the marital property for a number of reasons. The first reason is the land is held by Lowell for possible elder care for his parents. The Court finds this argument to be unconvincing. One 80 acre parcel was purchased by Lowell and the other was gifted to Lowell with his parents maintaining a life estate in the property. Nothing requires Lowell to use the land for his parents elder care except the life estate would require any rents to be used for his parents possible care. The second reason is the appraiser's assistant did all the leg work and did not testify. Kirsten's appraiser testified his apprentice did gather the information and created the appraisal. He further testified he had reviewed the appraisal and approved of the work done in the appraisal. The Court listened to Mr. Stenseth's testimony and reviewed the appraisal report. Lowell provides nothing other than his testimony as to how he believes the property is not capable of producing

income and that he only paid \$17,000 for the one parcel. The Court is left with only one appraisal done by a certified appraiser and his apprentice. The Court finds the value placed on the property by Mr. Stenseth is the appropriate value of the property.

11. **Nissan lease:** Kirsten's vehicle is subject to a lease. The parties disagree as to the value of the car and as how to list the lease under the debt and asset listing. Lowell places a \$26,100 value on the car and Kirsten places a value of \$22,075 upon the car. Payoff on the car is \$22,558. One party uses an average trade in value and the other uses a clean retail value. The Court finds the value used by Lowell is appropriate as a similar value was used for the pickup Lowell drives. This will simply allow for an equal listing of assets and debt.
12. **Cash Assets:** Kirsten alleges Lowell moved finances around taking funds from joint accounts and placing them in accounts controlled by him alone. Kirsten also alleges Lowell withdrew \$9,273 from two retirement accounts. In reviewing exhibit 111 the parties in January of 2010 had over \$55,000 in accounts with Wells Fargo. There were 5 separate accounts. Lowell moved monies from one account to another, which totaled \$29,840. Lowell's bank account #5188 contained over \$18,000 in it when this movement of money started. The Court ordered \$21,000 paid back and this amount was paid. Lowell later removed \$9,273 from retirement accounts during the pendency of this action. Shortly before trial Lowell again moves monies around to the tune of \$16,000 from his personal accounts. Kirsten argues Lowell should be considered as having taken these amounts as predisposition equaling \$52,374. Lowell argues he informed Kirsten he was moving \$18,000 and that the funds he has moved are funds he received as payment from his employment. At trial Lowell indicated he had a box full of receipts to show what he used over \$11,000 for, but no evidence of this was provided to the Court. From the evidence presented to the Court through bank statements, it would appear Lowell has spent or hidden \$52,374 and this will be considered a pre-distribution of

funds to Lowell in dividing the marital estate. Kirsten's Dakota Community Bank account is of a similar nature and Kirsten will be charged with a \$8,195 pre-distribution in this case.

13. **Savings bond:** The parties have put aside savings bonds for their children's education. There is an unknown as to how many bonds should actually be in existence. Lowell moved the bonds from the safety security box when the divorce was filed. Kirsten has obtained a listing of bonds tied to her social security number. Lowell indicates in his post-trial brief he has done the same. The Court has not received any further listing regarding the bond listing for Lowell. Kirsten desires the Court to divide the bonds between the three children and any not used be divided between the parties at a later date. Lowell would prefer the bonds be divided between the parties as assets.
14. **SLND Debt:** Kirsten co-signed a college loan for the parties oldest son. The amount of this debt is \$11,064. Kirsten requests the Court to pay off the amount with a portion of the savings bonds.
15. **Kirsten's Loans:** Kirsten borrowed funds from her father and sister. These are listed as \$20,000 and \$4,490 respectively. Kirsten indicates she did not receive child support immediately and Lowell's moving of money around in accounts caused her to incur these amounts. Kirsten requests these amounts be listed as marital debts due to how she incurred them. The Court is not satisfied with any details provided as to where these funds were spent. Similar to Lowell moving money around and being unable to show where that money has gone. The Court will not list these debts as marital debts. Kirsten's loans are treated similar to Lowell's movement of money and inability to show the Court where the funds went.
16. **Fault:** Lowell has battled an addiction issue during the marriage. He has been convicted of driving under the influence and received treatment due to this addiction issue. Kirsten has assisted Lowell through these times. Kirsten has had an affair with a long-time friend. Kirsten has hidden the spending of funds for cosmetic surgery. Both have hidden financial

expenditures from the other. Both are at fault for the marriage issues and neither will be penalized by the Court for the marital conduct.

Conclusions of Law:

The Court must consider the Ruff-Fisher guidelines in determining the property division and on the issue of spousal support. Overland v. Overland, 2008 ND 6; Ruff v. Ruff, 78 ND 775; Fischer v. Fischer, 139 N.W.2d 845. The two are separate considerations, but are also interrelated. Lorenz v. Lorenz, 2007 ND 49, 729 N.W.2d 692. In this matter the parties have approximately a \$700,000 marital estate. Ruff-Fischer guidelines are used in determining the property division and the issue of spousal support.

1. The respective ages of the parties

Both parties were 42 at the time of trial.

2. Their earning ability

Lowell earns approximately \$95,000-\$100,000 per year and Kirsten approximately \$50,000. Lowell has worked at the refinery throughout the marriage. Kirsten has worked for Bismarck Public Schools and has obtained a masters degree while working.

3. Duration of the marriage

The parties have been married for 22+ years.

4. Conduct of each during marriage

Both parties allege misconduct on the other party. Lowell has had addiction problems resulting in criminal charges and the necessity of treatment. Kirsten has become involved in an affair towards the end of the marriage. Kirsten hid the use of finances to obtain cosmetic surgery. The Court does note the parties have saved money during their marriage and both have progressed in their careers.

5. The parties' station in life

The parties have lived in Bismarck for most of their marriage. They have enjoyed a middle income life. Both have worked during the marriage. Kirsten worked while Lowell went to school for his technical degree. Kirsten finished her college education while the parties were married and obtained a masters degree while the parties were

married. The parties have amassed retirement funds, real property and personal property.

6. The circumstances and necessities of each

Both will have to work until an appropriate retirement age.

7. The parties' health and physical condition

Both are in good physical and mental health.

8. Financial circumstances as shown by property owned at the time, its value at the time, its income-producing capacity, if any, and whether it was accumulated or acquired before or after the marriage

The Rule 8.3 Property and Debt Listing sets out the property of the parties and its value. The Grant County property has been with the parties since 2001 either by deed or contract for deed. This is considered marital property. The Court does grant the property to Lowell in an attempt to keep the property within the family. The Court has attached an Asset and Debt Distribution placing property with each party and the Court's goal has been to evenly distribute the marital estate. Any defined benefit plan shall be divided with a marital fractional formula. Kirsten shall be entitled to a one-half portion of any benefits of any defined retirement plan including items #10, #11, and #12 in the 8.3 debt listing. The Court has through the findings of fact found both parties have received a pre-disposition of assets and this is noted in the Asset and Debt Distribution document.

The Court has addressed the issue of the EE Savings Bonds by simply dividing these items between the two parties as assets. The parties are now free to avail themselves of using these items to assist their children in going to college in the manner they each feel is appropriate. This resolves the issue yet allows the parties to use the bonds with the tax free benefit if used for the appropriate college payments.

The Court has also determined the loan taken out by the parties oldest son to attend college is not a debt of the marriage. No conversation or agreement was reached to include this in the marital estate. Kirsten co-signed the loan and the loan belongs to the oldest son. If either parties decides to assist him by using bonds, they are free to do so. The debt is found to not be part of the marital estate.

The parties have raised an issue regarding game contained in the freezer maintained at the family home. Kirsten is to provide any wild game remaining in the

freezer and have one of the boys take the same to Lowell within 10 days of this judgment.

Lowell is also to provide Kirsten's father's .270 Korean War issue rifle to Mr. Nodland's office allowing one of the Schafer's to pick up the rifle. This shall be accomplished within 10 days of this order.

The Court does not grant Kirsten's request that loans she has obtained from her sister and father be made marital debts. As stated before, the Court finds the explanation for these debts incurred after the divorce was filed as insufficient to label them marital debts. Just as the Court has found Lowell has spent a large amount of money without a satisfactory explanation, the Court finds Kirsten's use of these loans to be her debt.

TAXES 2010: The parties are to file their 2010 taxes jointly with a professional preparing the documents. As Kirsten requests Lowell will provide the names of three tax preparers and Kirsten shall pick one of the preparers. For tax purposes the parties will each claim a child and if the number of children to be claimed is an odd number Lowell will claim the extra child.

Spousal Support:

The parties differ on the point of spousal support. Kirsten desires permanent spousal support arguing she has been disadvantaged by the marriage. Kirsten points out Lowell was the first to go to college in their marriage while she worked. She then went to college while Lowell worked and climbed the ladder at the refinery. Kirsten also argues Lowell's conduct regarding his addiction issues has caused her to miss out on opportunities as she was shouldering more responsibility when Lowell was in treatment and she participated in the family component of the treatment programs Lowell attended. Kirsten points out if she had gone to school first, she would be further along a higher income track with BPS. Kirsten further points to the amount of disposable income Lowell has after he no longer has to pay child support.

The Court does find Kirsten has been disadvantaged by the marriage and her career has suffered. If Kirsten had been the one to attend school earlier she would have been farther along the pay tracks in her current employment or actually been further along in an administrative role. Kirsten makes less than Lowell even though she has a bachelors and masters degree. Having found spousal support is appropriate in this

matter the Court must determine if rehabilitative or permanent support should be awarded. "Rehabilitative spousal support is awarded to equalize the burdens of divorce or to restore an economically disadvantaged spouse to independent status by providing a disadvantaged spouse an opportunity to acquire an education, training, work skills, or experience to become self-supporting" Paulson v. Paulson, 2010 ND 100, 783 N.W. 2d 262. "Rehabilitative support is appropriate when one spouse has bypassed opportunities or lost advantages as a consequence of the marriage or when one spouse has contributed during the marriage to the other's increased earning capacity or moved to further the other's career." Moilan v. Moilan, 1999 ND 103, 598 N.W.2d 81. Kirsten is 40 years old and has done well throughout the marriage in juggling the children with Lowell's work schedule and she has continued to move forward in her education and employment. The Court finds Kirsten has the ability to move forward after the marriage and has the ability to increase her income with rehabilitative support from Lowell.

The Court finds Lowell shall pay rehabilitative support to Kirsten for 30 months beginning the first day of the month after the child support is to cease (anticipated May 2012). The amount will be \$1,200 per month. This will allow Kirsten once the twins have graduated from high school to move forward and obtain further education to improve employment opportunities. This could include further education such as a doctorate to allow her to become a principal or other position within BPS or in another field.

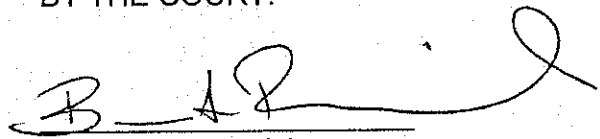
Attorneys Fees:

Each party shall pay their own attorneys fees. The property settlement leaves Kirsten with cash to accomplish this and Lowell's higher income allows for him to pay his own fees.

Counsel for Kirsten shall prepare a Judgment consistent with this order.

Dated August 11, 2011.

BY THE COURT:



Bruce A. Romanick
District Judge

xc: Moore
Nodland

COURTS ASSET AND DEBT DISTRIBUTION

REAL PROPERTY	HUSBAND	WIFE
1. 1809 12 TH AVE SE Mandan		\$168,000
2. NE ¼ Grant County	\$74,000	
Total Real Property	\$74,000	\$168,000

RETIREMENT ASSETS	HUSBAND	WIFE
3. NDPERS		7,219
4. NDTFFR		33,646
5. Wadell & Reed		22,864
6. Tesoro TSP (Fidelity Inv)(QRDO)	184,394	0
7. BP Accumulation Plan	20,726	20,727
8. BP ESP (Fidelity Inv)	62,456	62,455
9. Amoco Employee Savings		
10. BP Pension Def. Benefit		
11. Tesoro Pension Def. Benefit		
12. Amoco Pension Def. Benefit		
TOTAL RETIREMENT ASSETS	267,576	146,911

FINANCIAL ASSETS	HUSBAND	WIFE
13. Series EE US Savings Bonds	8,350	8,350
14. Series EE US Savings Bonds	24,475	24,475
15. Series EE US Savings Bonds	100	100
16. Wells Fargo Savings 1636	0	11,014
17. Dakota Community Bank	0	3,238
18. Starion Savings 3189	0	10,016
19. Wells Fargo Checking 7735	0	1,299
20. Wells Fargo Checking 1775	812	0
21. Wells Fargo Savings 5188	195	0
22. Wells Fargo Trade	956	0

23.Knights of Columbus PI-4928	0	3,093
24.Knights of Columbus PI-0892	0	1,373
25. Met Life Policy	0	0
26. Prudential Policy		
27.YRC Worldwide		
28.Dakota Community Savings		
29.Reliance Star		
30.National Education Ass		
31.Nodak Farm Breau		
32.American Legion (2 Policies)		
TOTAL FINANCIAL ASSETS:	34,888	62,958

VEHICLES	HUSBAND	WIFE
33. 2007 Chevy Silverado	21,395	
34. 2009 Nissan Maxima	0	26,100
35. 1991 Ford Probe	0	0
36. 2004 Glastron MX-175	7,450	0
37. 2001 Honda 80cc motorbike	810	0
38. 2003 Honda CRF230 motorbike	940	0
39. 1963 Studebaker Lark	0	0
40. 1992 Honda 50cc dirt bike	500	0
TOTAL VEHICLES	31,095	26,100

PERSONAL PROEPRTY	HUSBAND	WIFE
Items 43-45,47-49,51-54,56-59,61-91,83-100,145-158		6,740
42,46,50,55,60,82,101-144,159-167	2,956	0
TOTAL PEROSONAL PROPERTY	2,956	6,740

DEBTS	HUSBAND	WIFE
41. Wells Fargo Home Equity Loan		45,350
42. SLND (Lee)	0	0

43. CapCU (boat loan)	4,904	0
44. John Schafer	0	0
45. Candace Schafer	0	0
46. Chase 3238	0	0
47. US Bank Credit Card	0	0
48. US Bank 2007 Chev	20,382	0
49. Nissan Lease Debt	0	22,558
50. American Express	0	0
TOTAL DEBTS:	25,286	67,908

SUMMARY	HUSBAND	WIFE
51. Real Property	74,000	168,000
52. Retirement Assets	267,576	146,911
53. Financial Assets	34,888	62,958
54. Vehicles	31,095	26,100
55. Personal Property	2,956	6,740
56. Debts	-25,286	-67,908
57. Predistributions	52,654	8,195

58. Total net property	437,883	350,996
Adjustment(#6 Tesoro TSP)QRDO	-43,443.50	43,443.50
	394,440	394,440

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

CASE NO. 08-10-C-373

Kirsten K. Baesler, Plaintiff,

vs.

Lowell L. Baesler, Defendant.

JUDGMENT

This action, having been filed in this Court in the Burleigh County Courthouse in the City of Bismarck and the State of North Dakota, the defendant having been served with the summons and complaint, a hearing was held on May 12, 2011, with Sherry Mills Moore appearing with Kirsten K. Baesler (Kirsten) and Irvin B. Nodland appearing with Lowell L. Baesler (Lowell). The parties provided testimony and exhibits to the Court. In addition, the parties requested to file post trial briefs which were filed after a stipulated extension due to the flood issues in Bismarck on June 30, 2011, and the Court, having heard the evidence and being fully advised in the premises, and having issued its Findings of Fact, Conclusions of Law and Order for Judgment dated August 11, 2011, hereby orders Judgment entered as follows:

NOW, THEREFORE, IT IS

ADJUDGED, DETERMINED, AND DECREED THAT:

1. The Court has jurisdiction of the parties and of the subject matter of this action.

2. There are irreconcilable differences between the parties. Each party is hereby granted an absolute divorce from the other on the grounds of irreconcilable differences.

3. **Real Property.** Kirsten is awarded all right, title, and interest in 1809 12th Avenue SE, Mandan, ND, 58554, legally described as follows:

Lot Eleven (11), Block One (1), Emberland West Addition, City of Mandan,
County of Morton, State of North Dakota

RECEIVED & FILED

SEP 15 2011

Clk. of Cir. Burleigh Co.

Kirsten is fully responsible for all debt and expense associated with this property including the home equity loan with Wells Fargo. Lowell will sign and return a quit claim deed within ten days of being presented with the same.

Lowell is awarded all right, title, and interest in the Grant County land which is legally described as follows:

Sec. 34-135-90 Northeast Quarter (NE¼), County of Grant, State of North Dakota

Lowell is fully responsible for all debt and expense associated with this property. Kirsten will sign and return a quit claim deed within ten days of being presented with the same.

4. **Personal Property.** Kirsten is awarded Items 43, 44, 45, 47-49, 51-54, 56-59, 61-81, 83-100, and 145-158 from the Property and Debt Listing. Lowell is awarded Items 42, 46, 50, 55, 60, 82, 101-144, and 159-167 from the Property and Debt Listing. Lowell will retrieve any items still in Kirsten's possession no later than September 30, 2011. He will make arrangements with Kirsten to retrieve them at a time that works for Kirsten. If he has not retrieved them by September 30, 2011, they will be Kirsten's. Kirsten is to provide any wild game remaining in the freezer and have one of the boys take the same to Lowell within ten days of this judgment. Lowell is also to provide Kirsten's father's .270 Korean War issue rifle to Mr. Nodland's office, allowing one of the Schafers to pick up the rifle. This shall be accomplished within ten days of this Judgment.

5. **Financial Assets.**

a. **Savings Bonds.** The parties own Series EE US Savings bonds jointly and individually. All Series EE US Savings bonds shall be divided equally between Kirsten and Lowell using the current value of each bond. Within 60 days of entry of Judgment, Lowell will provide Kirsten with documents from the US Treasury showing all savings bonds purchased with his social security number. Within 60 days of entry of judgment, Kirsten will provide Lowell with documents from the US Treasury showing all savings bonds purchased with her social security number. These will all be divided equally between the parties within 120 days of entry of judgment.

b. **Kirsten's Accounts.** Kirsten is awarded the Wells Fargo Savings *****1636, Dakota Community Bank CD, Starion Savings ****3189, Wells Fargo

Checking *****7735, and the Knights of Columbus life insurance policies #4928 and #0892.

c. **Lowell's Accounts.** Lowell is awarded the Wells Fargo Checking ****1775, Wells Fargo Savings ****5188, and Wells Fargo Trade ****1444.

6. **Retirement Accounts.**

a. **Kirsten's Accounts.** Kirsten receives sole interest in NDPERS, NDTFFR, and Waddell & Reed. In addition, she receives \$43,443.50 from Lowell's Tesoro Thrift Savings Plan, one-half (½) of the BP Accumulation Plan, and one-half (½) of the BP ESP plan. She is also entitled to a marital fractional formula applied to the Amoco Employee Savings, BP Pension Defined Benefit, Tesoro Pension Defined Benefit, and the Amoco Pension Defined Benefit. Her interest in these pension and retirement benefits shall be divided to her with Qualified Domestic Relations Orders. Both parties will cooperate in the QDRO process, and the Court will retain jurisdiction over the assets until this division is effectuated.

b. **Lowell's Accounts.** Lowell receives the remaining balance of his Tesoro Thrift Savings Plan (after deduction of Kirsten's share of \$43,443.50), one-half (½) of the BP Accumulation Plan, and one-half (½) of the BP ESP Plan. He is also entitled to a marital fractional formula applied to the Amoco Employee Savings, BP Pension Defined Benefit, Tesoro Pension Defined Benefit, and the Amoco Pension Defined Benefit.

7. **Vehicles.** Kirsten has all right, title, and interest in the 2009 Nissan Maxima and the debt which is attendant to that vehicle. Lowell has all right, title, and interest in the 2007 Chevy Silverado, the 2004 Glastron MX-175, the 2001 Honda motorbike, the 2003 Honda CRF-230, the 1963 Studebaker Lark, and the 1992 Honda 50 cc bike, subject to all debt attendant to these items. The Ford Probe is awarded equally to the twins.

8. **Debts.** Kirsten is solely responsible for the Wells Fargo Home Equity loan, the debts to John and Candace Schafer, her Chase credit card, the Nissan lease, and her American Express. Lowell is solely responsible for the Capital Credit Union boat loan, US Bank credit card, and US Bank loan on the Chevy. Neither party will incur credit in the name of the other party.

Each of the parties shall be solely responsible for the obligations assumed above and shall hold the other harmless with respect thereto, including attorney's fees and costs for the defense thereof. Neither party will incur any further debts or obligations for which the other party may be liable to a third party. In the event either party fails to abide by their debt responsibilities as designated herein, resulting in the necessity of an Order to Show Cause, the party failing to abide by their assumed obligations shall pay reasonable attorneys fees and costs necessary in bringing an Order to Show Cause Petition, upon a court's finding that the Order to Show Cause is justified.

9. **Taxes 2010.** The parties are to file their 2010 taxes jointly with a professional preparing the documents. No later than September 15, 2011, Lowell will provide the names of three tax preparers, and Kirsten shall pick one of the preparers. Each party will pay half the cost of preparation. Each party shall receive half the tax refunds for 2010. Within five days of receipt of the refund, the party receiving it shall endorse it and turn it over to his or her attorney who shall send it to the other attorney who shall get the endorsement, put it into the trust account. Once the check has cleared, the attorney shall then issue a check for one-half to each party. For tax purposes, the parties will each claim a child. If the child is graduated from high school, the parties will be able to claim that child only if the party can prove that they paid the majority of college or living expenses; and, if the number of children to be claimed is an odd number, Lowell will claim the extra child. If the odd number child is graduated from high school, Lowell will be able to claim that child only if Lowell can prove that he paid the majority of their college or living expenses.

10. **Child Support.**

a. **Amount.** Lowell shall pay child support in the amount of \$1,710 per month for the support of the parties' minor children. His child support obligation is based on an average net income of \$6,000 per month and applying the North Dakota Child Support Guidelines to reach a child support amount of \$1,710. Support payments shall commence on the first day of the month following entry of judgment by automatic income withholding order.

b. **Interest.** Pursuant to N.D.C.C. § 14-09-08.19, interest will accrue if the support obligation is not timely paid.

c. **Identifying Information.** Pursuant to N.D.C.C. § 14-09-08.1, the identification information is provided in a separate filing filed with the court pursuant to court rule. Kirsten and Lowell shall give notice of any change of address, telephone number, and/or employment within ten (10) days of any such change to the State Disbursement Unit at the address listed below for sending child support payments. Lowell shall keep the Clerk of this Court and the State Disbursement Unit informed of any employment-related health insurance to which he has access.

d. **Duration.** Lowell's obligation to pay child support shall continue until the end of the month in which the children turn 18, unless they have not yet graduated from high school. In that event, Lowell's obligation to pay support for the children shall continue until the end of the month during which each child is graduated from high school or attains the age of 19 years, whichever occurs first, if: (1) the child is enrolled and attending high school and is 18 years of age prior to the date the child is expected to be graduated; and (2) the child resides with Kirsten at which point it shall be set for the other child. Support will continue for the other child until the child turns 18, unless the child has not yet graduated from high school. In that event, Lowell's obligation to pay support for the child shall continue until the end of the month during which the child is graduated from high school or attains the age of 19 years, whichever occurs first, if: (1) the child is enrolled and attending high school and is 18 years of age prior to the date the child is expected to be graduated; and (2) the child resides with Kirsten at which point it shall cease.

e. **Form of Child Support Payments.** All child support payments required by the Judgment shall be paid by certified check, money order, or personal check payable to the State Disbursement Unit for remittance to the obligee. Payments shall be sent to:

State Disbursement Unit
P.O. Box 7280
Bismarck, ND 58507-7280

f. **Notice of Income Withholding Provision.** Pursuant to N.D.C.C. § 14-09-09.24, the Judgment shall act as an immediate Order to withhold wages or other income for the child support ordered herein. Accordingly, Lowell's employer shall withhold child support as ordered pursuant to the Judgment and transmit such child

support payments to the State Disbursement Unit, P.O. Box 7280, Bismarck, ND 58507-7280.

g. **Modification of Support Obligation.** The parties are notified that child support may, in addition to any other basis for modification, be amended under the provisions of N.D.C.C. § 14-09-08.9, which provides, in relevant part, that:

"An obligor or an obligee may request review under section 16 of chapter 148 of the 1989 Session Laws or section 14-09-08.4, by applying to the child support agency for child support services, and indicating, in the manner there provided, a desire to have a child support order reviewed. ... If a party to a child support matter is receiving services from the child support agency and an order for current child support has issued out of that matter, the child support agency shall provide notice of the right to request a review or further review of that child support order, to the obligor and obligee, not more than three years after the most recent child support order, review of that child support order, or notice of right to request a review of that child support order."

The parties are further informed that they may seek review of a current child support obligation at any time upon a showing of a material change of circumstances and pursuant to N.D.C.C. § 14-09-08.4 if the order sought to be amended was entered at least one year before the filing of a motion or petition for amendment the order will be reviewed without a showing of a material change of circumstances. Section 14-09-08.4, N.D.C.C., requires the child support agency to seek review of every child support order no less frequently than 36 months after the establishment of the order or review of the order by the Court or child support agency unless (a) neither the obligor nor the obligee has requested review or (b) In the case of an order with respect to which there is in effect an assignment under Chapter 50-9, N.D.C.C., relating to Aid to Dependent Children or Chapter 50-24.1, N.D.C.C., relating to Medical Assistance for Needy Persons, the child support agency has determined that a review is not in the best interest of the child and neither the obligor nor the obligee has requested review. Interest accrues on any unpaid child support.

11. **Medical and Health Insurance and Medical Expenses.** As long as they are eligible for coverage, both parents will provide the children with medical insurance. Both parties shall be entitled to all documentation related thereto, including the policy, benefits manuals, claims cards and forms, and all other documents. While the children are still in high school, the parties will equally pay the children's medical, dental,

orthodontic, prescriptive, optical, counseling, psychiatric, and psychological patient-responsibility costs. A party seeking reimbursement for such uninsured expenses shall provide due documentation of the bills and insurance benefit statements in question to the other. The other shall provide reimbursement within thirty (30) days of receipt of such request. Either party may submit claims to deal directly with and receive payments from the child's insurer(s). The Court shall maintain continuing jurisdiction for purposes of issuing a Qualified Medical Child Support Order (QMSCO), if necessary, to effectuate the terms of this provision.

12. **Parenting.** The parties' youngest children are now age 18. Kirsten is their primary parent.

13. **Spousal support.** Lowell shall pay rehabilitative spousal support to Kirsten in the amount of \$1,200 a month for 30 months beginning the first day of the month after the child support is to cease (anticipated May 2012) and continuing each and every month for 30 months. Spousal support will be paid through the State Disbursement Unit through an income withholding order.


14. **Attorney's Fees.** Each party shall pay his or her own attorney's fees and costs.

15. **Confidential Information.** This has been provided to the Court through a Confidential Information Form in accordance with N.D.R.Ct. 3.4.

WITNESS THE HONORABLE BRUCE A. ROMANICK, JUDGE OF THE DISTRICT COURT, SOUTH CENTRAL JUDICIAL DISTRICT, BURLEIGH COUNTY, BISMARCK, NORTH DAKOTA, AND THE SEAL OF SAID COURT OF BURLEIGH COUNTY, NORTH DAKOTA.

Dated this 13th day of September, 2011.

(SEAL)



DEBRA SIMENSON
CLERK OF THE DISTRICT COURT

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

CASE NO. 08-10-C-1000873

Kirsten K. Baesler, Plaintiff,

vs.

Lowell L. Baesler, Defendant.

COMPLAINT

Now comes the Plaintiff by and through her attorney, Sherry Mills Moore, and for her cause of action against the Defendant, alleges and states that:

1. The Plaintiff and Defendant were married at Flasher, North Dakota, on February 10, 1989, and ever since that time they have been and now are husband and wife.

2. Both parties are citizens of the United States and residents of the State of North Dakota and have been for more than six months last past.

3. Three children have been born of the marriage, only two of whom are minors namely: M.B., born in 1993; and C.B., born in 1993.

4. Primary residential responsibility and decision-making responsibility of the minor children should be with the Plaintiff in the children's best interest.

5. The Defendant should pay child support in accordance with the child support guidelines and the laws of the State of North Dakota.

6. There are irreconcilable differences between the parties entitling the Plaintiff to a divorce from the Defendant.

7. The parties have accumulated property and debt that requires a division.

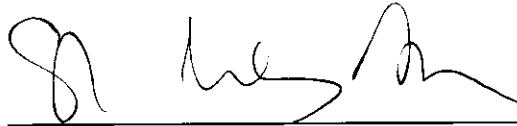
8. The Plaintiff needs spousal support, and the Defendant has the ability to pay spousal support.

FEB 13 2010

CLERK OF COURT

WHEREFORE, Plaintiff asks that she be granted a divorce from the Defendant, primary residential responsibility and decision-making responsibility of the minor children, child support, spousal support, her attorney's fees, and an equitable property division, together with such other and further relief as the Court may deem proper.

Dated this 24 day of January, 2010.



SHERRY MILLS MOORE (ID NO. 03595)

Attorney for the Plaintiff

P.O. Box 4144

Bismarck, N.D. 58502-4144

(701) 222-4777

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Kristen K. Baesler,

Plaintiff,

vs.

Lowell L. Baesler,

Defendant.

Case No. 10-C-373

ANSWER TO COMPLAINT

For his answer to the Complaint, defendant states the following:

1.

Admits Paragraphs 1, 2, 3, 6 and 7 of the Complaint.

2.

Denies Paragraphs 4, 5, and 8 of the Complaint.

3.

Wherefore defendant requests entry of a final decree of divorce that includes provision for an equitable division of property and debt, and provision for the best interest of the minor children.

Dated this 25th day of February 2010.

IRVIN B. NODLAND, PC
Attorneys for Defendant
109 North 4th Street Suite 300
PO Box 640
Bismarck, ND 58502-0640


BY: IRVIN B. NODLAND ID NO. 02729

RECEIVED & FILED

MAR 04 2010

Clk. of Crt. Burleigh Co.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

CASE NO. 08-10-C-373

Kirsten K. Baesler, Plaintiff,

vs.

Lowell L. Baesler, Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION TO FREEZE
ALL RETIREMENT ASSETS AND FOR DISCLOSURE OF
INFORMATION**

The Judgment of divorce was entered in this matter on September 13, 2011.

The plaintiff, Kirsten K. Baesler ("Kirsten"), filed a motion requesting the Court to freeze the retirement and pension assets of the defendant, Lowell L. Baesler ("Lowell"), to order the retirement plan consultants and/or plan administrators to disclose information regarding Lowell's retirement accounts, and to award her attorney fees and costs for having to bring this motion. The defendant filed no response.

The Court, having received and considered **PLAINTIFF'S MOTION TO FREEZE ALL RETIREMENT ASSETS AND TO ORDER DISCLOSURE OF INFORMATION**, and there appearing good and sufficient basis for the same,

HEREBY ORDERS that:

1. Lowell's BP Employee Savings Plan, BP Retirement Accumulation Plan, Amoco Employee Savings Plan, BP Pension Defined Benefit, Amoco Pension Defined Benefit, Tesoro Thrift Savings Plan, and Tesoro Pension Defined Benefit are hereby frozen and no withdrawals shall be allowed from these accounts until further order of this Court.

2. Fidelity Investments, Buck Consultants, Tesoro Refining & Marketing Co., Tesoro Retirement Service Center, Tesoro Mandan Refinery, BP, BP Retirement Services, Amoco, and their retirement plan consultants and/or plan administrators are hereby ordered to disclose the following information to the plaintiff and her attorney:

RECEIVED & FILED

JAN 10 2012

- a. Copies of all transmission and transaction documents for any and all investment, 401(k), annuity, or retirement accounts (including BP Employee Savings Plan, BP Retirement Accumulation Plan, Amoco Employee Savings, BP Pension Defined Benefit, Amoco Pension Defined Benefit, Tesoro Thrift Savings Plan, and Tesoro Pension Defined Benefit) (open or closed), from January 1, 2011, to the present including the following:
- 1) Request for transfer or payments;
 - 2) Date of payments;
 - 3) Payments;
 - 4) Transfer;
 - 5) Balance in account.
- b. Statements for each account (any and all investment, 401(k), annuity, or retirement accounts (including BP Employee Savings Plan, BP Retirement Accumulation Plan, Amoco Employee Savings, BP Pension Defined Benefit, Amoco Pension Defined Benefit, Tesoro Thrift Savings Plan, and Tesoro Pension Defined Benefit) (open or closed)) from January 1, 2011, to the present.
- c. Correspondence concerning the account (any and all investment, 401(k), annuity, or retirement accounts (including BP Employee Savings Plan, BP Retirement Accumulation Plan, Amoco Employee Savings, BP Pension Defined Benefit, Amoco Pension Defined Benefit, Tesoro Thrift Savings Plan, and Tesoro Pension Defined Benefit) (open or closed)) from January 1, 2011, to the present.

3. Because of Lowell's theft of assets, Kirsten is awarded her attorney's fees and costs attendant to this motion in the amount of \$1,000, which Lowell shall pay within ten (10) days of entry of this Order.

Dated this 9 day of Jan, 2011.

BY THE COURT:



BRUCE A. ROMANICK
JUDGE OF THE DISTRICT COURT

em; Moore
Nodland

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Kirsten K. Baesler,

Plaintiff,

vs.

Lowell L. Baesler,

Defendant.

Case No. 08-10-C-00373

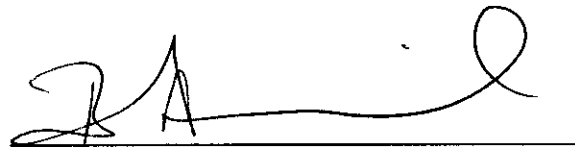
ORDER ALLOWING
WITHDRAWAL AS COUNSEL

Counsel for Defendant has submitted a motion to withdraw as counsel pursuant to the provisions of Rule 11.2 of the North Dakota Rules of Court.

FOR GOOD CAUSE BEING SHOWN, the motion is hereby GRANTED that Attorney Irvin B. Nodland be allowed to withdraw as counsel for Lowell L. Baesler. FURTHER, Defendant, Lowell L. Baesler shall not have final distribution awarded to him unless and until he has made full payment of his outstanding bill for legal fees and costs to Irvin B. Nodland.

Dated this 11 day of APR, 2012.

BY THE COURT:



JUDGE OF THE DISTRICT COURT

cc: Nodland

RECEIVED & FILED

APR 11 2012

Clk. of Crt. Burleigh Co.

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 08-10-C-373

Kirsten K. Baesler, Plaintiff,

vs.

Lowell L. Baesler, Defendant.

ORDER FOR AMENDED JUDGMENT

Kirsten has filed a motion to amend the Judgment to allow her to receive alternative assets to compensate her for assets Lowell has either spent, concealed, stolen or misappropriated.

Lowell has not responded to the motion.

The Court in its final Order of September 13, 2011, required Kirsten to receive 43,443.50 from Lowell's Tesoro Thrift Savings Plan, ½ of the BP Accumulation Plan, and ½ of the BP ESP plan. The Court further ordered an accounting of the couples Series EE bonds to be split between the parties.

Kirsten states the Accumulation Plan and the ESP plan have been cleaned out. The bonds were converted by Lowell to electronic instruments and cashed. Lowell has been convicted of class B felony theft of these bonds.

The Accumulation Plan at time of trial was valued at \$124,910.88 and the ESP Plan was valued at \$41,454.00. Kirsten's half would have been \$62,455.44 and \$20,727.00. The value of the bonds was \$65,650, with Kirsten's share being \$32,825.00.

Lowell was ordered to pay \$1,200 per month for spousal support and has paid no amount. The order was for 30 months. Total owed to Kirsten would be \$36,000 for spousal support.

Lowell has paid none of the children's medical expenses of which he was ordered to share evenly. He owes \$1,168.80.

RECEIVED & FILED

MAR 20 2013

Clk of Dist. Burleigh Co.

Lowell has not returned the .270 Korean war era rifle belonging to Kirsten's father.

Lowell has acted in direct opposition to the Court's asset distribution. He has converted or hidden assets. The Court finds under NDCC 14-05-24 the actions of Lowell allow the Court to re-allocate the asset division initially set out in the Court's initial order. Lowell has blatantly stolen or spent assets, which did not belong to him per the Court's order.

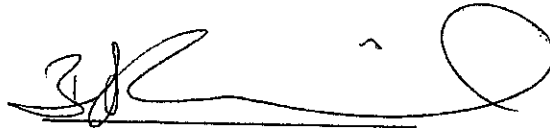
The Court finds Lowell has misappropriated \$62,455.44, \$20,727.00, and \$32,825.00 of assets Ordered into the possession of Kirsten. Lowell has not paid and will not pay \$36,000.00 in spousal support and the \$1,168.00 of his share of medical expenses. The total of these amounts are \$153,176.24 and added to the amount of \$43,443.50 the Court awarded to Kirsten from the Tesoro Thrift Savings Plan the amount needed to place Kirsten in the same or similar position she would have been in had Lowell not flaunted the Court's Order would be \$196,619.74.

To place Kirsten in this position, the Court awards Kirsten the total amount currently in the Tesoro Thrift Savings Plan of \$134,394.00. This still leaves a shortfall of \$62,225.74. The only other asset available is the land in Grant County. The property was valued at trial in the amount of \$74,000.00 and awarded to Lowell. 80 acres of the Grant County property is held in a life estate with Lowell's parents. Even though the value of the property may be \$74,000.00 Kirsten can do nothing at this time with the 80 acres subject to the life estate. The Court does find it appropriate to amend the asset allocation to award the Grant County property to Kirsten. The Court also finds Kirsten has expended attorney's fees in the neighborhood of \$4,000.00 and this is due to the actions of Lowell. The award of the Grant County land asset to Kirsten is to cover the shortfall of \$62,225.74 and any attorney's fees incurred by Kirsten. In awarding this the Court takes into account the amount of attorney's fees and the value of the Grant County property subject to the life estate.

Counsel for Kirsten shall prepare and amended judgment in accordance with this Order.

Dated March 22, 2013.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'BR' followed by a large loop, written over a horizontal line.

Bruce A. Romanick
District Judge

xc: Moore
Lowell Baesler