

DATE: March 16,2021

TO: North Dakota Senate Human Services Committee

FROM: Joe Sheehan

RE: Testimony for HB 1254

Dear Chairwoman Lee and members of the Human Services Committee

I am testifying in favor of HB 1254 and the necessary changes this bill offers to protect North Dakota families in the future. In the current law, 14-05-14.1, the district courts have nearly unlimited authority to award lifetime spousal support, change spousal support to life time after the original judgement, and raise the support originally awarded based on new financial circumstances after the divorce. Under the current law, the district courts have the power to tether divorced spouses together in lifetime conflict that is unhealthy and bleeds out the family's future. It bleeds out the financial future for the family while making attorneys tens upon tens of thousands of dollars.

In 2014, I left my marriage. I was not perfect in our marriage, but my ex-wife also had an undisclosed mental illness. We were not healthy partners, and we were damaging to our family. I believe there is a need for spousal support. My ex-wife already attained her Master's degree and a career. However, she became a stay at home mom after our 2<sup>nd</sup> daughter was born. She was a stay at home mom for about 7 years before we separated. I believe I made every attempt to settle our divorce outside of the court. My offer included more than 90% of our assets and spousal support for a period of time that would allow her to renew any certifications or get a new education to support herself. She refused this offer. She refused to settle. She preferred to take it to the court and see if she could get a lifetime award.

The court battle drug on from the divorce filing in 2014 to a trial date of June 2016. In the end, she was awarded lifetime spousal support. However, the court costs were astronomical. We were ordered to sell a Florida condo, worth about \$235,000 just to pay our attorney fees. This equaled nearly 30% of our family wealth. I grieve the loss of opportunity to my children. To pay this to attorney's instead of my daughters' college educations still pains me.

Most of my career I have been paid on commission. My industry, the mortgage industry, ebbs and flows on Federal Reserve actions and economic cycles. At the time of my divorce, I enjoyed one of the largest booms in my industry. However, the Federal Reserve starting changing policy in 2016 and as business in my sector contracted so did my income. By January of 2018, my income had fallen to less than half of what it was the year the divorce was filed. After my child support and spousal support were drawn, I had enough money to pay my house payment and approximately \$890 to pay all bills and buy food for myself and my daughters, whom I have 50% of the time.

I was advised by my attorney that I couldn't apply for a review until I could prove the change in my income was permanent. I finally filed for review in October 2018. The court date was set for August of 2019. I received the modification to reduce my support at the beginning of 2020. I was forced to live on \$890 for more than 26 months. I amassed more than \$50000 in additional court costs and nearly drained what was left of my retirement. Again, I offered to settle. One such settlement included additional money from my retirement and 10% of my income going forward. My intention was to keep the money in my family instead of giving it to attorneys. Again, my ex-wife refused to settle, in the absence of good law that incentivizes the parties to settle, why not try her chances in court? Since 2014 the fight over spousal support has squandered my children's future and my family has been in court for more than half of the past 6 years. Our lives have been riddled with tension between myself, my ex-wife and my children. As long as we have a persistent and inevitable court fight to look forward to there is no real peace.

We try to move on from the past and get closure, but this difficult when you are permanently shackled to your past. I am really afraid of being more successful (perverse incentive in reverse). More income will mean another review. It will mean more time in court. It will mean more resources spent on lawyers instead of my children. It will mean more tension and pain for my daughters. I would like to move forward and build a new life with my fiancé, but I never know how much money I will have. When I get reviewed, will the court award the original amount of support? Will the court increase that original amount to also make me match the old child support amount? The uncertainty makes it impossible for my family to plan a future for college educations, a new marriage, retirement etc. etc.

Since my testimony to the house, I have heard opposition to this bill state, "this is just one case and it doesn't happen very often". First, what does that have to do with whether this is good or bad law? Second, this assertion is not true. The North Dakota Supreme Court continues to revisit this issue as I will illustrate later. Is this where we want our Supreme Court spending time? Embroiled in the mix of individual families versus giving direction on wider broader issues facing justice in the state. Justice Sandstrom's dissenting opinion in *Stock vs. Stock* literally cites legislative reform as a critical necessity.

Regarding, "whether or not this is good law", I would like to assert the spousal support law is ill defined relying too much on the individual personalities of judiciary to apply discretion. Rather than being based on sound guidance in the law to create uniformity and fairness, each case is like a snowflake unique and wildly different from case to case driven by individual use of discretion and precedence. As Justice Sandstrom states, "the result could have been substantially different had the parties had a different judge, or possibly even the same judge on a different day" (*Stock vs. Stock*). Judges are not Lords or Kings meant to rule us with discretionary authority. The court is a steward of the laws written by the people to protect the people. Justices only apply discretion in the absence of good law. I am not lecturing you on your role, I am simply encouraging you to act with the full authority of the people to protect families and futures from imperfect and fallible individuals that should not have nearly unlimited

discretionary authority over the rest of our lives. We did not commit a capital crime; we tragically failed a marriage.

Secondly, I will address the idea that this is rare and that I am just one case. The North Dakota Supreme Court just heard oral arguments for Wilprecht vs Wilprecht in November of 2020. The court remanded the case back to the district court in December. Consequently, this family is still in conflict and hemorrhaging resources. In the meantime, the North Dakota Supreme Court just heard oral arguments on February 4<sup>th</sup>, 2021 for Kaspari vs Kaspari. The case law on spousal support cited in Kaspari vs Kaspari alone includes 21 prior spousal support cases as precedence. Seventeen of these cases tried since 2002 and eleven of them tried since 2008. Again, do we want our court's precious time spent revisiting never ending conflict over spousal support? Shouldn't there be some resolution and finality when the divorce opinion is finalized?

Furthermore, I will assert after many conversations with attorneys, the appeals are stifled due to the inadequacy of the law. The current scope of the law renders so much discretion to the district court the only justifiable reason for appeal is "abuse of discretion". Any attorney will tell you this is the hardest appeal to win. Attorneys are reluctant to appeal because proving the district court violated it's discretion requires an obvious erroneous misapplication of a wide open law and past precedence. Furthermore, the supreme court isn't likely to overturn the lower court but remand the case back to the court. Even in cases where the Supreme Court may disagree with the decision by the lower court, it will not overturn the decision, but send the decision back to the court so that the judge can show his or her work differently. This is the case in Wilprecht vs Wilprecht. The supporter is still likely to have his support raised, the judge just needs to justify it differently. The money train to the attorneys just keeps rolling out of this family's pocket.

Finally, the current law contributes to what is called "perverse incentives". In other words, the supported spouse has an incentive to forgo self-improvement or advancement to the highest level of his or her potential. In my case, my ex-spouse held a master's degree in Counseling. She could have chosen to become a certified therapist. Therapists are in high demand and enjoy a standard of living similar to my current income. Instead, she chose to get a Master's in Education to become a part time guidance counselor at a private school. The Ruff-Fischer guidelines for spousal support are based on two North Dakota Supreme Court Cases in 1952 and 1958. The average lifespan in 1950 was 62 years old compared to today's lifespan of 79 years old. The Ruff – Fischer rules were written in a time of segregation in the south and the best career aspirations for women were very limited. Aren't we proud to live in a time that is different? We live in an age where the fastest growing home ownership demographic is single women. We have a country that has now realized a woman vice president and a black president. Certainly, spousal support is needed and should be required when appropriate for a "limited period of time" as our statute states. In the future women will increasingly be the primary breadwinner and will be required to pay support more frequently as they rapidly advance to careers in the medical field and build successful businesses. In any case, the support paid should be temporary

and rehabilitative as North Dakota law intends, not driven willy nilly, case to case by judicial precedence.

I ask the committee to support HB 1254 in support of children and future of families effected by divorce in North Dakota. This bill isn't about reducing support to the supporting party. It's about bringing clarity to the law so the wealth and resources that belong to a family and the future of it's children are not siphoned into the pockets of attorneys. I ask this committee to support HB 1254 to change the law because the current law is not fair, and it tethers and entangles couples together permanently in unhealthy conflict. It incentivizes going to court to play the "spousal support lottery" (Justice Sandstrom Stock vs Stock) instead of settling outside of court. My friend Monte Rogneby, the attorney that argued that case, said to me, "Joe every spousal support claim is at least a million-dollar claim. In the absence of predictability, it is malpractice to settle. Why not go to court and see what you can get"? Specificity to the law will encourage parties to settle. This law will keep more financial resources in the family to be used for the children's future. The outcome of the current law is endless reviews as financial situations change and family resources bleed into the pockets of attorneys while closure on the traumatic end of a marriage is denied.

Respectfully

Joe Sheehan