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1-1-2007

## Divorce - Spousal Support: By Abolishing the Disadvantaged Spouse Doctrine, the North Dakota Supreme Court Reconstructs the Requirements for Rehabilitative Spousal Support

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### Recommended Citation

Elsberry, Elizabeth (2007) "Divorce - Spousal Support: By Abolishing the Disadvantaged Spouse Doctrine, the North Dakota Supreme Court Reconstructs the Requirements for Rehabilitative Spousal Support," *North Dakota Law Review*. Vol. 83 : No. 4 , Article 7.

Available at: <https://commons.und.edu/ndlr/vol83/iss4/7>

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DIVORCE—SPOUSAL SUPPORT:  
BY ABOLISHING THE DISADVANTAGED SPOUSE  
DOCTRINE, THE NORTH DAKOTA SUPREME COURT  
RECONSTRUCTS THE REQUIREMENTS FOR  
REHABILITATIVE SPOUSAL SUPPORT  
*SACK V. SACK*, 2006 ND 57, 711 N.W.2D 157

I. FACTS

Trent and Theresa moved in together in 1993.<sup>1</sup> At the time, both were enrolled in college.<sup>2</sup> Trent attended a technical college, and he earned a degree in heavy equipment operation.<sup>3</sup> Theresa attended Interstate Business College, and she studied to become certified in secretarial work.<sup>4</sup> Theresa received incomplete grades in several of her classes.<sup>5</sup> She asserted that Trent told her if she retook the courses, it would be a waste of her time.<sup>6</sup> Theresa dropped out of college in 1994.<sup>7</sup> She stated that Trent encouraged her to quit college.<sup>8</sup> Trent denied this and insisted that he did not influence Theresa's decision to quit school.<sup>9</sup>

On November 21, 1998, Trent and Theresa married.<sup>10</sup> They subsequently had three children.<sup>11</sup> Trent worked throughout their marriage.<sup>12</sup>

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1. *Sack v. Sack*, 2006 ND 57, ¶ 2, 711 N.W.2d 157, 158; *see generally* Appellee & Cross-Appellant's Brief at 2, *Sack*, 711 N.W.2d 157 (No. 20050167) (asserting that they "knew each other since July of 1993 and outside of a three month time period in 1995, lived together and acted like a married couple").

2. *Sack*, ¶ 3, 711 N.W.2d at 158.

3. *Id.*

4. *See id.* (stating Theresa attended a business college and took courses in secretarial work); Findings of Fact, Conclusions of Law & Order for Judgment at 1, *Sack*, 2006 ND 57, 711 N.W.2d 157 (No. 20050167) (explaining that Theresa studied at Interstate Business College).

5. Finding of Fact, Conclusions of Law & Order for Judgment, *supra* note 4, at 1.

6. *Id.*

7. *Sack*, ¶ 3, 711 N.W.2d at 158.

8. *See id.* (explaining that Theresa claimed that Trent told her "anybody can get a job, that a [degree] wouldn't do it").

9. *Id.*

10. Appellee & Cross-Appellant's Brief, *supra* note 1, at 2.

11. *Sack*, ¶ 2, 711 N.W.2d at 158.

12. *See id.* ¶ 4 (explaining that Trent's fluctuating work schedule prevented Theresa from working full-time). Additionally, Theresa contended that "[w]hen she worked, the children were put into day care . . ." Appellee & Cross-Appellant's Brief, *supra* note 1, at 2. Theresa also asserted that "Trent wanted [her] to continue working as a seasonal employee so that she could be at home with the children." *Id.*

His inconsistent work schedule prevented Theresa from working full-time.<sup>13</sup> Even though she did not work full-time, Theresa had a variety of part-time jobs periodically throughout their marriage.<sup>14</sup> Additionally, Theresa cared for their children when she was not working.<sup>15</sup>

Theresa filed for divorce in 2003.<sup>16</sup> At the time, Trent worked,<sup>17</sup> but Theresa was unemployed.<sup>18</sup> Before trial, the parties settled several issues, including: “child custody, visitation, child support, health insurance, medical expenses not covered by insurance, . . . tax exemptions[.]” and nearly all of the marital property issues.<sup>19</sup> This left three issues unresolved at the time of trial: debt allocation, spousal support, and a portion of the property distribution.<sup>20</sup>

When the trial court contemplated whether Theresa deserved spousal support, it considered the *Ruff-Fischer* guidelines.<sup>21</sup> The trial court applied the following *Ruff-Fischer* guidelines to the case: “the earning abilities of the parties, the duration of the marriage, the parties’ station [sic] in life, and the circumstances and necessities of each.”<sup>22</sup> In addition to implementing

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13. *Sack*, ¶ 4, 711 N.W.2d at 158.

14. *See generally id.* (explaining that Theresa held seasonal and temporary jobs throughout the marriage and never earned more than \$18,500 per year); Findings of Fact, Conclusions of Law & Order for Judgment, *supra* note 4, at 1 (“From 1994 to the present, Theresa had a series of ‘seasonal’ jobs in secretarial, data entry, and as a 911 dispatcher.”).

15. *Sack*, ¶ 4, 711 N.W.2d at 158.

16. *Id.* ¶ 2.

17. *See generally id.* ¶ 4 (noting that at the time of trial Trent worked); Findings of Fact, Conclusions of Law & Order for Judgment, *supra* note 4, at 2 (stating that Trent worked for BNI Coal at the time of trial).

18. *Sack*, ¶ 4, 711 N.W.2d at 158. “At the time of trial, Theresa was unemployed. Theresa has searched for jobs in Center, Hazen, and Stanton, but has been unable to find a job that would pay enough to cover child care expenses.” Findings of Fact, Conclusions of Law & Order for Judgment, *supra* note 4, at 2. Theresa argued that even if she worked she could only earn minimum wage, because she did not have a college degree. Appellee & Cross-Appellant’s Brief, *supra* note 1, at 3.

19. Findings of Fact, Conclusions of Law & Order for Judgment, *supra* note 4, at 1.

20. *Id.*

21. *Id.* at 7-9; *see generally* Haugeberg v. Haugeberg, 258 N.W.2d 657, 667 (N.D. 1977) (Vogel, J., dissenting) (referring to the factors adopted by the *Ruff* court and altered by the *Fischer* court as the “*Ruff-Fischer* guidelines”); *Fischer v. Fischer*, 139 N.W.2d 845, 847 (N.D. 1966) (restating the factors adopted by the *Ruff* court, and adding the factor “and such other matters as may be material”); *Ruff v. Ruff*, 52 N.W.2d 107, 111 (N.D. 1952) (adopting a set of factors from Nebraska that are used to allocate property distribution and spousal support).

22. Findings of Fact, Conclusions of Law & Order for Judgment, *supra* note 4, at 7. The trial court only analyzed the dispositive *Ruff-Fischer* guidelines, because a specific finding on each *Ruff-Fischer* guideline is not required. *Id.* (citing *Staley v. Staley*, 2004 ND 195, ¶ 8, 688 N.W.2d 182, 185). When analyzing the *Ruff-Fischer* guidelines, the trial court found that Trent’s earning ability greatly exceeded Theresa’s. *Id.* at 7-8. Trent had a larger earning capacity than Theresa, because at the time of trial Trent earned \$60,000 per year, while Theresa only had the ability to earn minimum wage. *Sack*, ¶ 13, 711 N.W.2d at 160. The trial court also concluded their marriage was “relatively short-term.” Findings of Fact, Conclusions of Law & Order for Judgment,

the *Ruff-Fischer* guidelines to determine whether Theresa deserved spousal support, the trial court utilized the disadvantaged spouse doctrine.<sup>23</sup> When analyzing the disadvantaged spouse doctrine, the trial court held:

Theresa is a disadvantaged spouse to the extent that her income earning capacity is substantially less than Trent's. While the marriage did not directly cause the disparity, the disparity exists. Nothing stopped Theresa from going to school, however, it would have been very difficult and expensive for her to do so with four children at home. The family would have had to pay day-care costs that they did not have with Theresa working part-time. In that way, Theresa contributed to the marriage both financially and as a homemaker.<sup>24</sup>

After considering both the *Ruff-Fischer* guidelines and the disadvantaged spouse doctrine, the trial court determined that Theresa deserved rehabilitative spousal support rather than permanent spousal support.<sup>25</sup> The trial court ordered Trent to pay Theresa rehabilitative spousal support for six years.<sup>26</sup>

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*supra* note 4, at 8. As for their stations in life, the court determined that they "lived a middle class lifestyle, and built up a fair amount of debt." *Id.* In addition, the trial court found:

Theresa has health issues including migraine headaches that incapacitate her several times per year. If Theresa were to be employed, her job would have to pay her enough for her to afford day-care. Theresa wants to go to college for a nursing degree. She thinks it will take her "six years at the most" to complete her degree.

*Id.*

23. *Id.* at 6 (citing *Striefel v. Striefel*, 2004 ND 210, ¶ 16, 689 N.W.2d 415, 421) (stating that a spouse must be a disadvantaged spouse to receive rehabilitative spousal support, then defining a disadvantaged spouse as one "who foregoes opportunities or loses advantages as a consequence of the marriage, and who contributed during the marriage to the supporting spouse's increased earning capacity . . ."); see generally *Sack*, ¶¶ 9, 12, 711 N.W.2d at 159-60 (labeling the definition of a disadvantaged spouse the disadvantaged spouse doctrine).

24. Findings of Fact, Conclusions of Law & Order for Judgment, *supra* note 4, at 7. Trent and Theresa had three children together, and Theresa had a child from a former partner; therefore Theresa had four children at home. Appellant's Brief at 4, *Sack*, 711 N.W.2d 157 (No. 20050167).

25. Findings of Fact, Conclusions of Law & Order for Judgment, *supra* note 4, at 9. Two types of spousal support are available in North Dakota: permanent spousal support and rehabilitative spousal support. *Sommer v. Sommer*, 2001 ND 191, ¶ 14, 636 N.W.2d 423, 429. Permanent spousal support is awarded when a "disadvantaged spouse cannot be equitably rehabilitated to make up for the opportunities lost in the course of the marriage." *Id.* Conversely, rehabilitative spousal support is awarded "when it is possible to restore an economically disadvantaged spouse to independent economic status or to equalize the burden of divorce by increasing the disadvantaged spouse's earning capacity." *Id.*

26. *Sack*, ¶ 1, 711 N.W.2d at 158; see generally Findings of Fact, Conclusions of Law & Order for Judgment, *supra* note 4, at 9 (explaining that Theresa deserved rehabilitative spousal support for six years because it would take her six years to earn her nursing degree).

Trent appealed the trial court's decision regarding rehabilitative spousal support to the North Dakota Supreme Court.<sup>27</sup> In Trent's opinion, Theresa did not deserve rehabilitative spousal support because the trial court erroneously deemed her disadvantaged.<sup>28</sup> Trent argued that Theresa was not disadvantaged because she chose to drop out of college before they married and because she worked during their marriage.<sup>29</sup> Additionally, Trent argued that the trial court erred when it deemed Theresa disadvantaged because "she did not directly contribute to his increased earning capacity."<sup>30</sup>

The North Dakota Supreme Court addressed Trent's arguments regarding rehabilitative spousal support, but the court did not initially resolve the issue of whether Theresa deserved rehabilitative spousal support.<sup>31</sup> Instead, the North Dakota Supreme Court first examined the practicality of the disadvantaged spouse doctrine.<sup>32</sup> After a thorough analysis of the doctrine, the court abandoned it.<sup>33</sup> Additionally, the court reiterated that an award of rehabilitative spousal support should be based on an examination of the *Ruff-Fischer* guidelines.<sup>34</sup> Ultimately, the North Dakota Supreme Court affirmed Theresa's award of rehabilitative spousal support, but under the *Ruff-Fischer* guidelines, rather than a combination of the *Ruff-Fischer* guidelines and the disadvantaged spouse doctrine.<sup>35</sup>

## II. LEGAL BACKGROUND

To fully appreciate the outcome of *Sack v. Sack*,<sup>36</sup> an understanding of the legal history that preceded *Sack* is necessary.<sup>37</sup> First, the origin of

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27. *Sack*, ¶ 1, 711 N.W.2d at 158.

28. *Id.*; see generally *Sommer*, ¶ 8, 636 N.W.2d at 427 (citing *Johnson v. Johnson*, 2000 ND 170, ¶ 49, 617 N.W.2d 97, 111) ("Spousal support determinations are treated as findings of fact which will not be set aside on appeal unless clearly erroneous.").

29. Appellant's Brief, *supra* note 24, at 5.

30. *Sack*, ¶ 10, 711 N.W.2d at 159. At the time of trial Trent earned \$60,000 per year, and Theresa was unemployed. *Id.* ¶ 4, 711 N.W.2d at 158.

31. See *id.* ¶¶ 9, 10, 711 N.W.2d at 159 (explaining that an analysis of the practicality of the disadvantaged spouse doctrine must be completed before examining the award of rehabilitative spousal support).

32. *Id.* ¶ 6. The North Dakota Supreme Court decided to analyze the practicality of the disadvantaged spouse doctrine because of the issues brought forth by the parties and the court's duty to properly apply the law. *Id.*

33. *Id.* ¶ 12, 711 N.W.2d at 160.

34. *Id.* ¶ 11.

35. *Id.* ¶ 14, 711 N.W.2d at 160-61.

36. 2006 ND 57, 711 N.W.2d 157.

37. See generally *Sack*, ¶¶ 7-9, 711 N.W.2d at 159 (discussing the origin of the term disadvantaged spouse and the development of the disadvantaged spouse doctrine).

spousal support, which is also known as alimony, is examined.<sup>38</sup> Then, the development and use of the *Ruff-Fischer* guidelines is explained.<sup>39</sup> Additionally, a review of the derivation of rehabilitative spousal support in North Dakota illustrates the justifications for the disadvantaged spouse doctrine.<sup>40</sup> Furthermore, the development and use of the disadvantaged spouse doctrine is analyzed.<sup>41</sup>

#### A. THE ORIGIN AND HISTORY OF SPOUSAL SUPPORT

Spousal support originated in the ecclesiastical courts of England in the eighteenth century.<sup>42</sup> The ecclesiastical courts did not have the power to grant a divorce but could grant a legal separation.<sup>43</sup> Such legal separation, known as divorce *a mensa et thoro*, permitted parties to live separately, while conserving the marital bond.<sup>44</sup> Consequently, a husband's legal obligation to support his wife survived legal separation.<sup>45</sup> The ecclesiastical courts justified the ongoing support obligation, because post legal separation, the husband retained control over all property obtained prior to and

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38. See discussion *infra* Part II.A (examining the origin and history of spousal support). The legal history leading up to *Sack* is easier to follow if the term "alimony" is understood. See *Rustand v. Rustand*, 379 N.W.2d 806, 807 (N.D. 1986) (citing *Seabold v. Seabold*, 348 N.W.2d 920, 924 (N.D. 1984)) (describing alimony as "a confusing array of connotations"). Alimony is often used as a synonym to spousal support, meaning it does not include property distribution. BLACK'S LAW DICTIONARY 80 (8th ed. 2004) (defining alimony as "[a] court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced. Alimony is distinct from a property settlement."). To the contrary, the North Dakota Supreme Court has held that alimony does not have a technical definition, and it may include or be a combination of "property division, spousal support, or child support . . ." *Redlin v. Redlin*, 436 N.W.2d 5, 8 (N.D. 1989) (citing *Lipp v. Lipp*, 355 N.W.2d 817, 821 (N.D. 1984)). Because the term "alimony" does not have a uniform definition, the North Dakota Supreme Court prefers that the term not be used. *Baker v. Baker*, 1997 ND 135, ¶ 7, 566 N.W.2d 806, 809; *Rustand*, 379 N.W.2d at 809. The North Dakota Supreme Court noted that when possible, the term "spousal support" should be used rather than alimony, because it is more precise and specific. *Jochim v. Jochim*, 306 N.W.2d 196, 199 n.5 (N.D. 1981). To support the North Dakota Supreme Court's dicta, this comment will use the term spousal support rather than alimony. See *id.* (explaining that the term spousal support is preferred over the term alimony).

39. See discussion *infra* Part II.B (analyzing the origin and development of the *Ruff-Fischer* guidelines).

40. See discussion *infra* Part II.C (explaining the progress of rehabilitative spousal support).

41. See discussion *infra* Part II.D (discussing the evolution of the disadvantaged spouse doctrine).

42. IRA MARK ELLMAN ET AL., FAMILY LAW: CASES, TEXT, PROBLEMS 363 (Matthew Bender & Co. 4th ed. 2004) (1998).

43. DAVID STEWART, THE LAW OF MARRIAGE AND DIVORCE AS ESTABLISHED IN ENGLAND AND THE UNITED STATES 326 (Sumner Whitney & Co. 1884).

44. 2 HOMER H. CLARK, JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 220 (2d ed. 1987).

45. *Id.*

during the marriage.<sup>46</sup> Additionally, the ecclesiastical courts permitted such support because women rarely worked outside the home.<sup>47</sup>

American lawmakers recognized the concept of support, and many states enacted spousal support statutes in the late nineteenth century.<sup>48</sup> However, there was a significant difference between a legal separation granted by the ecclesiastical courts and a divorce granted in America.<sup>49</sup> Unlike the ecclesiastical courts, American courts had the power to grant an absolute divorce, which destroyed the marital bond entirely.<sup>50</sup> Because of this disparity, the rationale for post-divorce spousal support in America was less clear.<sup>51</sup> On the other hand, in both the ecclesiastical courts and American courts, spousal support was justified because a wife's property became her husband's upon marriage.<sup>52</sup> Accordingly, both the ecclesiastical courts and American courts granted spousal support to counter the one-sided property laws.<sup>53</sup>

Similar to other American jurisdictions, in 1877 the Dakota Territory enacted a statute that permitted spousal support.<sup>54</sup> The statute provided:

Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance *to the wife for her support during her life, or for a shorter period, as the court may deem just*, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.<sup>55</sup>

This statute remained unchanged throughout the existence of the Dakota Territory.<sup>56</sup> In 1889, the United States government divided the Dakota

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46. *Id.* at 221.

47. *Id.*

48. STEWART, *supra* note 43, at 329-32 nn.2-26.

49. Mary Frances Lyle & Jeffrey L. Levy, *From Riches to Rags: Does Rehabilitative Alimony Need to Be Rehabilitated?*, 38 FAM. L.Q. 3, 5 (2004).

50. CLARK, *supra* note 44, at 221.

51. *Id.*

52. Lyle & Levy, *supra* note 49, at 6 (citing JOEL PRENTISS BISHOP, COMMENTARIES ON THE LAW OF MARRIAGE AND DIVORCE § 369 (1864)).

53. *Id.*

54. REVISED CODES OF THE TERRITORY OF DAKOTA 219 (2d ed. 1877) (repealed 1887); *see* STEWART, *supra* note 44, at 329-30 (stating that by 1883, twenty-four states had statutes that allowed for spousal support). It can be inferred that the Dakota Territory's spousal support statute originated in the ecclesiastical courts. *See generally* Geo. H. Hand, *Preface* to REVISED CODES OF THE TERRITORY OF DAKOTA, at iii, iv-v (2d ed. 1877) (repealed 1887) (explaining that the civil code of the Dakota Territory was adopted from California); STUART, *supra* note 43, at 330 (stating that California's spousal support law was based on ecclesiastical law).

55. REVISED CODES OF THE TERRITORY OF DAKOTA 219 (2d ed. 1877) (emphasis added).

56. COMPILED LAWS OF DAKOTA § 2584 (1887), *repealed* by 1889 N.D. LAWS 13.

Territory, and North Dakota became a state.<sup>57</sup> North Dakota's first code, the Revised Codes of the State of North Dakota, encompassed many of the Dakota Territory's laws.<sup>58</sup> This codification included an exact replica of the spousal support law of the Dakota Territory.<sup>59</sup> In 1911, the North Dakota Legislature amended the spousal support statute.<sup>60</sup> The legislature added a provision regarding the division of marital property, and the terms husband and wife were removed, which made the statute gender neutral.<sup>61</sup> For the next ninety years, the statute remained virtually unchanged.<sup>62</sup>

From 1911 through 2001, one statute governed property division, child support, and spousal support.<sup>63</sup> In 2001, the Legislative Council recognized that this arrangement caused confusion, so it advised the North Dakota Legislature to create a new statute, exclusively for spousal support.<sup>64</sup> The

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57. 1889 N.D. LAWS 3. The Enabling Act, which was approved February 22, 1889, stated: *Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That [sic] the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana, and Washington, as at present described may become the States of North Dakota, South Dakota, Montana and Washington respectively, as hereinafter provided.*

*Id.*

58. See Burke Corbet, Geo. W. Newton, & Charles F. Amidon, *Preface* to REVISED CODES OF THE STATE OF NORTH DAKOTA, at iii, vi (1895) (repealed 1899) (explaining that once North Dakota became a state, it was essential that the laws of the Dakota Territory be developed into a constitution and revised statutes).

59. REVISED CODES OF THE STATE OF NORTH DAKOTA § 2761 (1895) (repealed 1899). The statute provided:

When a divorce is granted for an offense of the husband the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support during her life or for a shorter period as the court may deem just, having regard to the circumstances of the parties respectively; and the court may from time to time modify its orders in these respects.

*Id.*; REVISED CODES OF THE TERRITORY OF DAKOTA 219 (2d ed. 1877) (repealed 1889).

60. 1911 N.D. LAWS 284.

61. *Id.*; COMPILED LAWS OF NORTH DAKOTA § 4405 (1913) (repealed 1943). The newly amended spousal support statute provided:

When divorce is granted, the court shall make such equitable *distribution of the property of the parties* thereto as may seem just and proper and *may compel either of such parties* to provide for the maintenance of the children of the marriage, and make such suitable allowances *to the other party* for support during life or for a shorter period as to the court may seem just, having regard to the circumstances of the parties respectively; [sic] and the court may from time to time modify its orders in these respects.

*Id.* (emphasis added).

62. COMPILED LAWS OF NORTH DAKOTA § 4405 (1913); N.D. CENT. CODE § 14-05-24 (1997) (amended 2001). In 1943, the statute was slightly altered, but the amendment concerned property division, not spousal support. N.D. REV. CODE § 14-0524 (1943) (repealed 1987).

63. COMPILED LAWS OF NORTH DAKOTA § 4405 (1913); N.D. CENT. CODE § 14-05-24 (1997) (amended 2001).

64. See REPORT OF THE NORTH DAKOTA LEGISLATIVE COUNCIL 2001, 279 (2001) [hereinafter LEGISLATIVE COUNCIL REPORT] (recommending that spousal support, child support, and property division all be addressed in different sections of the North Dakota Century Code).



North Dakota Legislature acknowledged the Council's suggestion, and created section 14-05-24.1 of the North Dakota Century Code, solely addressing spousal support.<sup>65</sup> Since this amendment, the statute has remained unchanged, and provides as follows: "Taking into consideration the circumstances of the parties, the court may require one party to pay spousal support to the other party for any period of time. The court may modify its spousal support orders."<sup>66</sup>

Although North Dakota statutory law permits courts to award spousal support, statutory guidance regarding the allocation of spousal support is absent.<sup>67</sup> In 1952, the North Dakota Supreme Court adopted a set of guidelines for courts to use when allocating spousal support.<sup>68</sup> The factors have come to be known as the *Ruff-Fischer* guidelines.<sup>69</sup>

#### B. THE DEVELOPMENT AND USE OF THE *RUFF-FISCHER* GUIDELINES

The *Ruff-Fischer* guidelines originated in *Ruff v. Ruff*,<sup>70</sup> a 1952 North Dakota Supreme Court divorce case.<sup>71</sup> In *Ruff*, the ex-husband appealed the trial court's decision, arguing that the trial court did not divide the parties' marital property equitably or properly.<sup>72</sup> The North Dakota Supreme Court explained that a "rigid rule" for allocating property did not exist.<sup>73</sup> The North Dakota Supreme Court added that courts are statutorily required to allocate property in a "just and proper manner."<sup>74</sup> To supplement its

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65. 2001 N.D. LAWS 493.

66. N.D. CENT. CODE § 14-05-24.1 (2005).

67. *Id.*; see generally LEGISLATIVE COUNCIL REPORT 2001, *supra* note 64, at 278 (explaining that the Property Division and Spousal Support Working Group recognized that statutory guidelines for allocating spousal support are nonexistent in North Dakota). The Working Group also discovered that "no state has adopted a comprehensive and fair set of guidelines." LEGISLATIVE COUNCIL REPORT 2001, *supra* note 64, at 278.

68. See *Ruff v. Ruff*, 52 N.W.2d 107, 111 (N.D. 1952) (adopting factors from Nebraska that can be used to allocate property distribution and spousal support).

69. See generally *Haugeberg v. Haugeberg*, 258 N.W.2d 657, 667 (N.D. 1977) (Vogel, J., dissenting) (referring to the factors adopted by the *Ruff* court and altered by the *Fischer* court as the "*Ruff-Fischer* guidelines"); *Fischer v. Fischer*, 139 N.W.2d 845, 847 (N.D. 1966) (reiterating the factors adopted by the *Ruff* court, and adding the factor "and such other factors as may be material"); *Ruff*, 52 N.W.2d at 111 (listing factors that the Nebraska courts use to distribute spousal support and marital property).

70. 52 N.W.2d 107 (N.D. 1952).

71. See *Ruff*, 52 N.W.2d at 111 (adopting a set of factors from Nebraska that are used to divide marital property and allocate spousal support).

72. *Id.* at 108.

73. *Id.* at 111 (citing *Casciola v. Casciola*, 27 N.W.2d 65, 66 (Mich. 1947); *Byrne v. Byrne*, 24 N.W.2d 173, 175 (Mich. 1946); *Jensen v. Jensen*, 15 N.W.2d 57, 61 (Neb. 1944); *Caldwell v. Caldwell*, 237 N.W. 568, 569 (S.D. 1931)).

74. *Id.* (citing N.D. REV. CODE § 14-0524 (1943) (superseded 1987)). Section 14-0524 of the North Dakota Revised Code distinctly gave North Dakota courts the authority to make

holding that property must be divided justly and properly, the North Dakota Supreme Court cited to and adopted factors that Nebraska courts use when distributing marital property and allocating spousal support.<sup>75</sup> The factors include:

The respective ages of the parties to the marriage; their earning ability; the duration of and the conduct of each 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 that time, its income-producing capacity, if any, and whether accumulated or acquired before or after the marriage; and from all such elements the court should determine the rights of the parties and all other matters pertaining to the case.<sup>76</sup>

The *Ruff* court applied the above listed factors to the facts of the case.<sup>77</sup> After the *Ruff* court used the newly adopted factors, it deemed the trial court's distribution of property to be just and proper.<sup>78</sup> The North Dakota Supreme Court continued to apply these newly adopted factors.<sup>79</sup> On occasion, the court listed the factors verbatim.<sup>80</sup>

In 1966, the North Dakota Supreme Court decided *Fischer v. Fischer*,<sup>81</sup> and the court slightly altered the factors adopted by the *Ruff* court.<sup>82</sup> In *Fischer*, the North Dakota Supreme Court eliminated the factor "and from all such elements the court should determine the rights of the parties and all other matters pertaining to the case."<sup>83</sup> After eliminating this factor, the court added the catchall "and such other matters as may be material."<sup>84</sup> North Dakota courts repeatedly used the factors adopted by the court in *Ruff*

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determinations regarding property division, spousal support, and child support, with the condition that the outcome had to be just. N.D. REV. CODE § 14-0524 (1943).

75. *Ruff*, 52 N.W.2d at 111 (citing *Holmes v. Holmes*, 41 N.W.2d 919, 920 (Neb. 1950); *Ristow v. Ristow*, 41 N.W.2d 924, 926 (Neb. 1950)).

76. *Id.* (citing *Holmes*, 41 N.W.2d at 920; *Ristow*, 41 N.W.2d at 926).

77. *Id.* at 112.

78. *Id.* at 111-12.

79. *E.g.*, *Fleck v. Fleck*, 58 N.W.2d 765, 773-74 (N.D. 1953) (explaining that when dividing marital property, the parties' ages, health, earning capacities, debt, and length of marriage are all taken into consideration).

80. *E.g.*, *Nicholson v. Nicholson*, 126 N.W.2d 904, 908 (N.D. 1964) (quoting *Ruff*, 52 N.W.2d at 111) (enumerating the factors adopted by the *Ruff* court); *Dahl v. Dahl*, 97 N.W.2d 844, 847 (N.D. 1959) (citing *Ruff*, 52 N.W.2d at 111) (listing the factors that the North Dakota Supreme Court adopted in *Ruff*).

81. 139 N.W.2d 845 (N.D. 1966).

82. *See Fischer*, 139 N.W.2d at 847 (listing the factors that the North Dakota Supreme Court adopted in *Ruff*, and adding "and such other matters as may be material").

83. *Id.* (citing *Ruff*, 52 N.W.2d at 111).

84. *Id.* The *Fischer* court did not assert any reason for making this alteration. *Id.*

and altered by the court in *Fischer* to allocate spousal support and to distribute marital property.<sup>85</sup> Since the factors were modified, they have remained unchanged, and are as follows:

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.<sup>86</sup>

Subsequently, the factors acquired by the *Ruff* court and revised by the *Fischer* court became known as the *Ruff-Fischer* guidelines.<sup>87</sup> In the 1977 divorce case *Haugeberg v. Haugeberg*,<sup>88</sup> Justice Vogel dissented, and discussed the factors adopted by the *Ruff* court and altered by the *Fischer* court.<sup>89</sup> Justice Vogel referred to these factors as the “*Ruff-Fischer* guidelines.”<sup>90</sup> From *Haugeberg* forward, North Dakota courts continuously referred to the factors as the *Ruff-Fischer* guidelines.<sup>91</sup> Over the years, North Dakota courts have applied the *Ruff-Fischer* guidelines to resolve a variety of issues that frequent divorce cases, including division of property, child support, and spousal support.<sup>92</sup> The North Dakota Supreme Court has

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85. *See, e.g.*, *Johnson v. Johnson*, 211 N.W.2d 759, 762 (N.D. 1973) (applying the factors to determine spousal support); *Novlesky v. Novlesky*, 206 N.W.2d 865, 869 (N.D. 1973) (using the factors to distribute marital property); *Johnson v. Davis*, 140 N.W.2d 703, 707 (N.D. 1966) (applying the factors to divide marital property).

86. *E.g.*, *Staley v. Staley*, 2004 ND 195, ¶ 8, 688 N.W.2d 182, 184-85 (citing *Sommer v. Sommer*, 2001 ND 191, ¶ 9, 636 N.W.2d 423, 427; *Fischer*, 139 N.W.2d at 847; *Ruff*, 52 N.W.2d at 111) (applying the factors adopted by the *Ruff* court and altered by the *Fischer* court when analyzing spousal support).

87. *See Haugeberg v. Haugeberg*, 258 N.W.2d 657, 667 (N.D. 1977) (Vogel, J., dissenting) (referring to the factors used by the *Ruff* court and the *Fischer* court as the “*Ruff-Fischer* guidelines”).

88. 258 N.W.2d 657 (N.D. 1977).

89. *Haugeberg*, 258 N.W.2d at 667 n.1 (Vogel, J., dissenting).

90. *Id.* at 667 (Vogel, J., dissenting).

91. *E.g.*, *Sack*, ¶ 11, 711 N.W.2d at 160 (referring to the factors as the *Ruff-Fischer* guidelines); *Van Klootwyk v. Van Klootwyk*, 1997 ND 88, ¶ 14, 563 N.W.2d 377, 380 (describing the factors as the *Ruff-Fischer* guidelines); *Smith v. Smith* 326 N.W.2d 697, 700 (N.D. 1982) (identifying the factors as the *Ruff-Fischer* guidelines).

92. *See, e.g.*, *Beals v. Beals*, 517 N.W.2d 413, 415-16 (N.D. 1994) (using the *Ruff-Fischer* guidelines to allocate spousal support); *Jondahl v. Jondahl*, 344 N.W.2d 63, 72 (N.D. 1984) (explaining that the *Ruff-Fischer* guidelines can be used to determine spousal support and child support); *Martin v. Martin*, 307 N.W.2d 541, 543-44 (N.D. 1981) (noting that the *Ruff-Fischer* guidelines can be considered when distributing marital property). It is logical that North Dakota courts used one set of guidelines to distribute child support, spousal support, and marital property, because one statute governed these issues up until 2001. *See supra* text accompanying notes 63-66 (explaining that from 1911 through 2001 one statute governed division of property, child

consistently held that spousal support and the distribution of marital property must be analyzed together; therefore it is logical that one set of guidelines govern both.<sup>93</sup> As North Dakota divorce law developed, spousal support eventually turned into two types of support: rehabilitative and permanent.<sup>94</sup> Courts continued to use the *Ruff-Fischer* guidelines when allocating both types of spousal support.<sup>95</sup>

### C. THE DEVELOPMENT OF REHABILITATIVE AND PERMANENT SPOUSAL SUPPORT IN NORTH DAKOTA

The North Dakota Supreme Court decided *Bingert v. Bingert*<sup>96</sup> in 1976.<sup>97</sup> In *Bingert*, the parties divorced, and the trial court ordered the ex-husband, Nick, to pay spousal support to his ex-wife, Delta.<sup>98</sup> Nick appealed this decision to the North Dakota Supreme Court, and challenged the constitutionality of North Dakota's spousal support statute.<sup>99</sup> Nick asserted

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support, and spousal support, then in 2001 the North Dakota Legislature enacted a new statute to solely address spousal support).

93. *E.g.*, *Ingebretson v. Ingebretson*, 2005 ND 41, ¶ 10, 693 N.W.2d 1, 5 (holding that issues regarding spousal support and property division must be examined together); *Sommers v. Sommers*, 2003 ND 77, ¶ 15, 660 N.W.2d 586, 592 (explaining that property division and spousal support must be analyzed collectively); *Fox v. Fox*, 1999 ND 68, ¶ 22, 592 N.W.2d 541, 548 (stating that questions of property distribution and spousal support must be examined together); *Schmaltz v. Schmaltz*, 1998 ND 212, ¶ 17, 586 N.W.2d 852, 856 (holding that issues of property division and spousal support cannot be analyzed separately).

94. *See* *Gooselaw v. Gooselaw*, 320 N.W.2d 490, 493 (N.D.1982) (noting that the purpose of spousal support was rehabilitation, while at the same time affirming the trial court's award of spousal support for life). From *Gooselaw* forward, North Dakota courts have awarded rehabilitative spousal support to disadvantaged spouses who are capable of rehabilitation, and permanent spousal support to disadvantaged spouses who cannot be rehabilitated. *Schaff v. Schaff*, 449 N.W.2d 570, 572 (N.D. 1989). The North Dakota Supreme Court currently views "permanent spousal support and rehabilitative spousal support as two distinct remedies." *Sommer v. Sommer*, 2001 ND 191, ¶ 14, 636 N.W.2d 423, 429 (citing *Riehl v. Riehl*, 1999 ND 107, ¶ 11, 595 N.W.2d 10, 14). "Permanent spousal support is generally appropriate when the disadvantaged spouse cannot be equitably rehabilitated to make up for the opportunities lost in the course of the marriage." *Id.* (citing *Riehl*, ¶ 18, 595 N.W.2d at 15). "In contrast, rehabilitative spousal support is appropriate 'when it is possible to restore an economically disadvantaged spouse to independent economic status or to equalize the burden of divorce by increasing the disadvantaged spouse's earning capacity.'" *Id.* (quoting *Riehl*, ¶ 18, 595 N.W.2d at 14).

95. *See, e.g.*, *Beals*, 517 N.W.2d at 416 (applying the *Ruff-Fischer* guidelines when allocating rehabilitative spousal support); *Routledge v. Routledge*, 377 N.W.2d 542, 545 (N.D. 1985) (applying the *Ruff-Fischer* guidelines when determining permanent spousal support).

96. 247 N.W.2d 464 (N.D. 1976).

97. *Bingert*, 247 N.W.2d at 466.

98. *Id.*

99. *Id.* at 468. North Dakota's spousal support statute provided:

When divorce is granted, the court shall make such equitable distribution of the real and personal property of the parties as may seem just and proper, and may compel either of the parties to provide for the maintenance of the children of the marriage, and to make such suitable allowances to the other party for support during life or for a shorter period as to the court may seem just, having regard to the circumstances of the

that the spousal support statute was a continuation of the marital support statute.<sup>100</sup> He averred that the marital support statute was unconstitutional because it discriminated on the basis of sex.<sup>101</sup> Since Nick viewed the spousal support statute as an extension of the marital support statute, he perceived the spousal support statute to be unconstitutional as well.<sup>102</sup>

The North Dakota Supreme Court disagreed with Nick's argument and found the spousal support statute and the marital support statute to be completely independent from each other.<sup>103</sup> In addition, the court stated: "We believe that the trend in modern domestic-relations law is to treat [spousal support] as a method for *rehabilitating* the party *disadvantaged* by the divorce."<sup>104</sup> The North Dakota Supreme Court recognized that its finding paralleled the Uniform Marriage and Divorce Act.<sup>105</sup> The *Bingert* holding is analogous to the Act, because the Act is silent as to whether spousal support is a continuation of marital support.<sup>106</sup> Additionally, the

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parties respectively. The court from time to time may modify its orders in these respects.

N.D. CENT. CODE § 14-05-24 (1971), *amended* by 2001 N.D. LAWS 494.

100. *Bingert*, 247 N.W.2d at 468. The marital support statute provided: "The husband must support himself and his wife out of his property or by his labor. The wife must support the husband, when he has not deserted her, out of her separate property, when he has no separate property and he is unable from infirmity to support himself." N.D. CENT. CODE § 14-07-03 (1971), *amended* by 1983 N.D. LAWS 448. The statute currently provides: "The husband and wife have a mutual duty to support each other out of their individual property and labor." N.D. CENT. CODE § 14-07-03 (2005).

101. *Bingert*, 247 N.W.2d at 468. After making this argument, Nick cited to *Reed v. Reed*, arguing that the cases were similar. *Id.* (citing *Reed v. Reed*, 404 U.S. 71, 76 (1971)). In *Reed*, the United States Supreme Court found that gender is irrelevant when it comes to estate administration. *Reed*, 404 U.S. at 76. Accordingly, the United States Supreme Court held that the estate statute that preferred men over women violated the Equal Protection Clause of the Fourteenth Amendment. *Id.*

102. *Bingert*, 247 N.W.2d at 468.

103. *Id.* at 468-69. The court asserted that it based the holding on case law and statutory law, but it did not cite cases or statutes. *Id.* at 468.

104. *Id.* at 469 (emphasis added).

105. *Id.* The court stated that North Dakota did not adopt the Uniform Marriage and Divorce Act, but added that several states did. *Id.* See also UNIFORM MARRIAGE AND DIVORCE ACT § 308 (1971) (explaining when a request for rehabilitative spousal support should be granted).

106. *Bingert v. Bingert*, 247 N.W.2d 464, 468-69 (N.D. 1976). It can be inferred that the North Dakota Supreme Court specifically referred to section 308 of the Uniform Marriage and Divorce Act, which provides:

(a) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(1) lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs, and

(2) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home,

*Bingert* holding and the Act are similar because the Act suggests that spousal support should be awarded to parties who deserve compensation.<sup>107</sup> Ultimately, the North Dakota Supreme Court deemed the spousal support statute constitutional.<sup>108</sup>

*Bingert* is a noteworthy decision in North Dakota divorce jurisprudence for two reasons: First, *Bingert* confirmed the constitutionality of spousal support, and second, the court referenced the notion that the purpose of spousal support involves rehabilitating a disadvantaged spouse.<sup>109</sup> Post-*Bingert*, the North Dakota Supreme Court consistently asserted that the purpose of spousal support was to rehabilitate a spouse disadvantaged by the divorce.<sup>110</sup>

The North Dakota Supreme Court decided *Gooselaw v. Gooselaw*<sup>111</sup> in 1982.<sup>112</sup> In *Gooselaw*, the trial court awarded the ex-wife, Dolores, spousal

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(b) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors including:

- (1) the financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
- (2) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
- (3) the standard of living established during the marriage;
- (4) the duration of the marriage;
- (5) the age, and the physical and emotional condition of the spouse seeking maintenance; and
- (6) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

UNIFORM MARRIAGE AND DIVORCE ACT § 308 (1971).

107. See *Bingert*, 247 N.W.2d at 469 (“The trend in modern domestic-relations law is to treat alimony as a method for rehabilitating the party disadvantaged by the divorce.”); UNIFORM MARRIAGE AND DIVORCE ACT § 308 (1971) (providing that courts should order spousal support only if the spouse requesting support has an insufficient amount of property and cannot support himself).

108. *Bingert*, 247 N.W.2d at 469. When analyzing the constitutionality of N.D. CENT. CODE § 14-05-24, the *Bingert* court found the statute to be gender neutral on its face. *Id.* The court also cited to case law where the North Dakota Supreme Court ordered an ex-wife to pay spousal support to her ex-husband. *Id.* (citing *Hagert v. Hagert*, 133 N.W. 1035, 1041 (N.D. 1911); *McLean v. McLean*, 290 N.W. 913, 925 (N.D. 1940)). The above-mentioned holdings supported the *Bingert* court’s finding that the spousal support statute did not unconstitutionally discriminate on the basis of sex. *Bingert*, 247 N.W.2d at 469.

109. *Id.*

110. *E.g.*, *Gooselaw v. Gooselaw*, 320 N.W.2d 490, 493 (N.D. 1982) (holding that spousal support is a method of rehabilitation for disadvantage spouses); *Martin v. Martin*, 307 N.W.2d 541, 544 (N.D. 1981) (explaining that the purpose of spousal support is rehabilitation); *Jochim v. Jochim*, 306 N.W.2d 196, 199 (N.D. 1981) (holding that the purpose of spousal support is rehabilitation); *Williams v. Williams*, 302 N.W.2d 754, 758 (N.D. 1981) (deeming rehabilitation to be the purpose of spousal support).

111. 320 N.W.2d 490 (N.D. 1982).

support for life.<sup>113</sup> Donald, the ex-husband, appealed, arguing that the allocation of spousal support for life was clearly erroneous.<sup>114</sup> When analyzing this issue, the North Dakota Supreme Court followed precedent created by the *Bingert* court, and noted that the purpose of spousal support was rehabilitation.<sup>115</sup> Even so, the North Dakota Supreme Court affirmed the trial court's award of spousal support for life, because the court found that Dolores could not be rehabilitated.<sup>116</sup> From *Gooselaw* forward, North Dakota courts awarded two types of spousal support.<sup>117</sup> North Dakota courts awarded spousal support for life, also known as permanent spousal support, when disadvantaged spouses could not be rehabilitated.<sup>118</sup> Courts awarded rehabilitative spousal support to disadvantaged spouses who were capable of rehabilitation.<sup>119</sup>

Following *Gooselaw*, in 1985, *Bullock v. Bullock*<sup>120</sup> appeared before the North Dakota Supreme Court.<sup>121</sup> For the first time, the court clearly defined rehabilitative spousal support.<sup>122</sup> The *Bullock* court held: "Rehabilitative spousal support is designed to provide education, training, or experience that will enable the disadvantaged spouse to achieve 'suitable' and 'appropriate' self-support."<sup>123</sup> The court has continued to apply this same

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112. *Gooselaw*, 320 N.W.2d at 490.

113. *Id.*

114. *Id.*

115. *Id.* at 493 (citing *Bingert v. Bingert*, 247 N.W.2d 464, 469 (N.D. 1976)).

116. *Id.*

117. *See, e.g.*, *Schaff v. Schaff*, 449 N.W.2d 570, 571-72 (N.D. 1989) (noting that courts can award either rehabilitative spousal support or permanent spousal support).

118. *E.g.*, *Schaff*, 449 N.W.2d at 572 (holding that permanent spousal support can be allocated to spouses who cannot be rehabilitated).

119. *E.g.*, *Oviatt v. Oviatt*, 355 N.W.2d 825, 827 (N.D. 1984) (explaining that rehabilitative spousal support is available for disadvantage spouses who are capable of rehabilitation).

120. 376 N.W.2d 30 (N.D. 1985).

121. *Bullock*, 376 N.W.2d at 31.

122. *Id.*

123. *Id.* (quoting Marcia O'Kelly, *Three Concepts of Alimony in North Dakota Law*, 1 UND L. FACULTY J. 69, 75 (1982)). The North Dakota Supreme Court adopted this definition of rehabilitative spousal support from the article "Three Concepts of Alimony in North Dakota Law" by former Professor O'Kelly of the University of North Dakota School of Law.) O'Kelly, *supra*, at 75. In this article, Professor O'Kelly noted that two distinct theories guided the allocation of rehabilitative spousal support. *Id.* The first theory was a minimalist doctrine. *Id.* According to the minimalist doctrine, rehabilitative spousal support has served its purpose as soon as the receiving spouse is capable of being self-sufficient. *Id.* According to the second theory, the purpose of rehabilitative spousal support is to "provide education, training, or experience that will enable the disadvantaged spouse to achieve 'suitable' and 'appropriate' self-support." *Id.* (citing UNIFORM MARRIAGE AND DIVORCE ACT § 308 (1971)). Professor O'Kelly argued that the second theory, the theory which promotes self-sufficiency, was more equitable than the minimalist doctrine. *Id.* The court in *Bullock* apparently agreed. *Bullock*, 376 N.W.2d at 31. The North Dakota Supreme Court continued to reject the minimalist doctrine and applied the more equitable approach adopted by the *Bullock* court. *E.g.*, *DeMers v. DeMers*, 2006 ND 142, ¶ 22, 717 N.W.2d 545, 554 (explaining the North Dakota Supreme Court consistently rejects the minimalist

definition of rehabilitative spousal support, as stated in *Bullock*.<sup>124</sup> As North Dakota divorce jurisprudence progressed, the North Dakota Supreme Court developed guidelines for allocating rehabilitative spousal support.<sup>125</sup>

#### D. THE DEVELOPMENT AND USE OF THE DISADVANTAGED SPOUSE DOCTRINE

For nearly a decade, the North Dakota Supreme Court reiterated that the purpose of spousal support was to rehabilitate spouses who were disadvantaged as a result of divorce.<sup>126</sup> In 1994, the North Dakota Supreme Court decided *Wiege v. Wiege*,<sup>127</sup> and the court turned this rehabilitative purpose into a requirement.<sup>128</sup> In *Wiege*, the trial court determined that divorce disadvantaged the ex-wife, Dianne, because her ex-husband, Larry, had a greater earning capacity.<sup>129</sup> Consequently, the trial court ordered Larry to pay Dianne rehabilitative spousal support.<sup>130</sup> Larry appealed and argued that the trial court erroneously deemed Dianne disadvantaged.<sup>131</sup>

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doctrine); *Shields v. Shields*, 2003 ND 16, ¶ 13, 656 N.W.2d 712, 717 (finding that the North Dakota Supreme Court uses the “equitable approach” rather than the minimalist doctrine); *McDowell v. McDowell*, 2001 ND 176, ¶ 12, 635 N.W.2d 139, 145 (holding that the North Dakota Supreme Court has rejected the minimalist doctrine and uses the “equitable approach”); *Riehl v. Riehl*, 1999 ND 107, ¶ 12, 595 N.W.2d 10, 14 (employing the “equitable approach” rather than the minimalist doctrine).

124. *E.g.*, *LaVoi v. LaVoi*, 505 N.W.2d 384, 386 (N.D. 1993) (reiterating the definition of rehabilitative spousal support); *Wahlberg v. Wahlberg*, 479 N.W.2d 143, 144-45 (N.D. 1992) (stating the definition of rehabilitative spousal support); *Hanson v. Hanson*, 404 N.W.2d 460, 466 (N.D. 1987) (utilizing the definition of rehabilitative spousal support); *Rustand v. Rustand*, 379 N.W.2d 806, 807 (N.D. 1986) (explaining the definition of rehabilitative spousal support).

125. *See generally* *Van Klootwyk v. Van Klootwyk*, 1997 ND 88, ¶ 16, 563 N.W.2d 377, 380 (adopting a definition of a disadvantaged spouse); *Wiege v. Wiege*, 518 N.W.2d 708, 711 (N.D. 1994) (holding that a spouse must be disadvantaged to receive spousal support).

126. *E.g.*, *LaVoi*, 505 N.W.2d at 386 (stating the definition of rehabilitative spousal support); *Wahlberg*, 479 N.W.2d at 144-45 (reiterating the definition of rehabilitative spousal support); *Hanson v. Hanson*, 404 N.W.2d 460, 466 (N.D. 1987) (defining rehabilitative spousal support); *Rustand*, 379 N.W.2d at 807 (explaining the definition of rehabilitative spousal support).

127. 518 N.W.2d 708 (N.D. 1994).

128. *See Wiege*, 518 N.W.2d at 711, *overruled by* *Sack v. Sack*, 2006 ND 57, ¶ 14, 711 N.W.2d 157, 161 (citing *Weir v. Weir*, 374 N.W.2d 858, 862 (N.D. 1985)) (“A spouse must be disadvantaged as a result of the divorce for rehabilitation or maintenance to be appropriate.”).

129. *Id.* at 710. The trial court found that the ex-husband, Larry, earned \$18.90 per hour, while Dianne earned \$4.90 per hour. *Id.* The trial court also concluded that for Dianne to increase her income, she would have to get a college degree. *Id.* However, she could not quit work to attend college because she needed her medical benefits. *Id.* From this, the trial court deemed her disadvantaged. *Id.*

130. *See id.* at 711 (explaining that both Dianne and Larry interpreted the trial court’s award as including both rehabilitative and permanent spousal support).

131. *Id.* at 710.



Hence, in Larry's opinion, Dianne did not deserve rehabilitative spousal support.<sup>132</sup>

The North Dakota Supreme Court followed precedent and held that the *Ruff-Fischer* guidelines needed to be evaluated when allocating spousal support.<sup>133</sup> The court also reiterated that “[t]he purpose of rehabilitative support is to provide a disadvantaged spouse the opportunity to become self-supporting through additional training, education, or experience.”<sup>134</sup> The court went one step further, and declared that “[a] spouse *must* be disadvantaged as a result of the divorce for [rehabilitative spousal support] to be appropriate.”<sup>135</sup> Even though the *Wiese* court cited North Dakota case law after this declaration, this was the first time that the North Dakota Supreme Court directly held that a spouse *must* be disadvantaged in order to receive rehabilitative spousal support.<sup>136</sup>

Several years after the court decided that a spouse must be disadvantaged in order to be awarded rehabilitative spousal support, the court again altered the guidelines for rehabilitative spousal support.<sup>137</sup> In the 1997 divorce case *Van Klootwyk v. Van Klootwyk*,<sup>138</sup> the ex-wife, Michelle, appealed the trial court's denial of her request for rehabilitative spousal support.<sup>139</sup> When analyzing this issue, the North Dakota Supreme Court applied the *Ruff-Fischer* guidelines.<sup>140</sup> The court then followed the precedent set forth in *Wiese* and analyzed whether the divorce disadvantaged

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132. *Id.* Additionally, Larry argued that Dianne did not deserve permanent support because she had the ability to be rehabilitated. *Id.*

133. *Id.* at 712.

134. *Id.* (citing *LaVoi v. LaVoi*, 505 N.W.2d 384, 386 (N.D. 1993); *Rustand v. Rustand*, 379 N.W.2d 806, 807 (N.D. 1986)). The purpose of rehabilitative spousal support, as stated by the *Wiese* court, parallels the purpose of rehabilitative spousal support adopted by the *Bullock* court. *Bullock v. Bullock*, 376 N.W.2d 30, 31 (N.D. 1985).

135. *Wiese*, 518 N.W.2d at 711 (citing *Weir v. Weir*, 374 N.W.2d 858, 862 (N.D. 1985)) (emphasis added).

136. *Id.* After declaring that “[a] spouse *must* be disadvantaged” before receiving spousal support, the North Dakota Supreme Court cited *Weir v. Weir*. *Id.* (citing *Weir*, 374 N.W.2d at 862) (emphasis added). In *Weir*, the ex-husband, Patrick, appealed to the North Dakota Supreme Court, and argued that the trial court erroneously awarded his ex-wife, Rebecca, spousal support. *Weir*, 374 N.W.2d at 862. The North Dakota Supreme Court held in *Weir* that the *Ruff-Fischer* guidelines need to be examined when allocating spousal support, then added, “[w]e have recognized that one of the functions of spousal support is rehabilitation of the party who has been disadvantaged by the divorce.” *Id.* This illustrates that even though the *Wiese* court cited *Weir* after holding that “[a] spouse must be disadvantaged” before receiving spousal support, in actuality, *Wiese* was the first North Dakota case to deem a finding of disadvantaged a requirement. *Wiese*, 518 N.W.2d at 711.

137. *See Van Klootwyk v. Van Klootwyk*, 1997 ND 88, ¶ 16, 563 N.W.2d 377, 380 (defining the phrase “disadvantaged spouse”).

138. 1997 ND 88, 563 N.W.2d 377.

139. *Van Klootwyk*, ¶ 1, 563 N.W.2d at 378.

140. *Id.* ¶ 14, 563 N.W.2d at 380 (citing *Lill v. Lill*, 520 N.W.2d 855, 856 (N.D. 1994)).

Michelle.<sup>141</sup> After reviewing North Dakota precedent, the court determined that a disadvantaged spouse is one “who has foregone opportunities or lost advantages as a consequence of the marriage and who has contributed during the marriage to the supporting spouse’s increased earning capacity.”<sup>142</sup> This definition of disadvantaged spouse is also known as the disadvantaged spouse doctrine.<sup>143</sup>

Subsequently, the *Van Klootwyk* court applied the disadvantaged spouse doctrine to the facts of the case.<sup>144</sup> The court noted that Michelle relocated numerous times throughout their marriage for the benefit of Robert’s career.<sup>145</sup> The court also explained that Robert’s earning ability increased as a result of the relocations.<sup>146</sup> The disparity in their earning capacities, and the reasons for the disparities, caused the North Dakota Supreme Court to ultimately label Michelle a disadvantaged spouse.<sup>147</sup> Accordingly, after analyzing the *Ruff-Fischer* guidelines and deeming Michelle disadvantaged pursuant to the disadvantaged spouse doctrine, the North Dakota Supreme Court awarded Michelle rehabilitative spousal support.<sup>148</sup>

North Dakota courts continued to apply both the disadvantaged spouse doctrine and the *Ruff-Fischer* guidelines when analyzing awards of rehabilitative spousal support.<sup>149</sup> Additionally, the courts used both of these doctrines when reviewing awards of permanent spousal support.<sup>150</sup> The North

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141. *Id.* ¶¶ 16-17.

142. *Id.* ¶ 16 (citing *Wahlberg v. Wahlberg*, 479 N.W.2d 143, 145 (N.D. 1992)). The court in *Van Klootwyk* reviewed *Wahlberg* before it defined the phrase disadvantaged spouse. *Id.* (citing *Wahlberg*, 479 N.W.2d at 145). In *Wahlberg*, James, the ex-husband, argued that Judy, the ex-wife, did not deserve rehabilitative spousal support because rehabilitative spousal support is for “parties that have foregone opportunities or lost advantages as a consequence of the marriage.” *Wahlberg*, 479 N.W.2d at 145 (citing *Ness v. Ness*, 467 N.W.2d 716, 718 (N.D. 1991)). James also argued that rehabilitative spousal support is for “parties that have contributed during the marriage to the supporting spouse’s increased earning capacity . . . .” *Id.* (citing *Hanson v. Hanson*, 404 N.W.2d 460, 466 (N.D. 1987)).

143. *See Sack v. Sack*, 2006 ND 57, ¶¶ 9, 12, 711 N.W.2d 157, 159-60 (reiterating the definition of a disadvantaged spouse and then labeling this definition the disadvantaged spouse doctrine).

144. *Van Klootwyk*, ¶ 17, 563 N.W.2d at 380-81.

145. *Id.* at 380.

146. *See id.* ¶¶ 4-5, 563 N.W.2d at 378-79 (stating that the family moved often because of Robert’s career, and by the time of trial he earned \$76,000 per year, while Michelle had the ability to earn roughly \$30,000 per year).

147. *Id.* ¶ 18, 563 N.W.2d at 381.

148. *Id.* ¶ 22, 563 N.W.2d at 382.

149. *See e.g.*, *Riehl v. Riehl*, 1999 ND 107, ¶¶ 8, 9, 14, 595 N.W.2d 10, 13-14 (using the *Ruff-Fischer* guidelines and the disadvantaged spouse doctrine to allocate rehabilitative spousal support).

150. *See e.g.*, *Sommer v. Sommer*, 2001 ND 191, ¶¶ 9, 10, 14, 636 N.W.2d 423, 427-29 (analyzing the *Ruff-Fischer* guidelines and the disadvantaged spouse doctrine when reviewing the trial court’s award of permanent spousal support).

Dakota Supreme Court addressed this notion of analyzing two separate doctrines to resolve one issue in *Sack*.<sup>151</sup>

### III. ANALYSIS

In *Sack*, Justice Crothers authored the majority opinion, while Justice Maring and Justice Kaspner joined.<sup>152</sup> The majority held that the disadvantaged spouse doctrine was no longer a viable doctrine.<sup>153</sup> At the same time, the majority affirmed the trial court's decision to grant Theresa rehabilitative spousal support.<sup>154</sup> Chief Justice VandeWalle concurred with the result, but did not file a separate concurring opinion.<sup>155</sup> Justice Sandstrom dissented.<sup>156</sup>

#### A. MAJORITY OPINION

In *Sack*, the primary issue presented to the North Dakota Supreme Court was whether the trial court properly awarded Theresa rehabilitative spousal support.<sup>157</sup> Before deciding this issue, the North Dakota Supreme Court analyzed the history of the disadvantaged spouse doctrine.<sup>158</sup> Then, the court applied the disadvantaged spouse doctrine to the facts of the case.<sup>159</sup> Next, the court discussed the *Ruff-Fischer* guidelines.<sup>160</sup> The *Sack* court explained that the *Ruff-Fischer* guidelines provide a comprehensive examination of rehabilitative spousal support, therefore the court questioned the practicality of the disadvantaged spouse doctrine.<sup>161</sup> Finally, the North Dakota Supreme Court decided the paramount issue of whether Theresa deserved rehabilitative spousal support.<sup>162</sup>

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151. *Sack v. Sack*, 2006 ND 57, ¶ 11, 711 N.W.2d 157, 160.

152. *Id.* ¶¶ 1, 18, 711 N.W.2d at 158, 161.

153. *Id.* ¶ 12, 711 N.W.2d at 160.

154. *Id.* ¶ 17, 711 N.W.2d at 161.

155. *Id.* ¶ 18.

156. *Id.*

157. *Id.* ¶ 1, 711 N.W.2d at 158. In addition to analyzing spousal support, the majority briefly addressed the issue of whether the trial court erroneously divided the marital property. *Id.* ¶¶ 15-16, 711 N.W.2d at 161. After little discussion, the court affirmed the trial court's decision on division of marital property. *Id.* ¶ 16.

158. *Id.* ¶¶ 7-9, 711 N.W.2d at 159.

159. *Id.* ¶ 10, 711 N.W.2d at 159-60.

160. *Id.* ¶ 11, 711 N.W.2d at 160.

161. *Id.* ¶¶ 11-12.

162. *Id.* ¶¶ 13-14, 711 N.W.2d at 160-61.

### 1. *Analysis of the History of the Disadvantaged Spouse Doctrine*

First, the North Dakota Supreme Court analyzed the history of the phrase “disadvantaged spouse.”<sup>163</sup> The court noted that the term “disadvantaged spouse” originated in the 1985 case *Bullock*, as a descriptive term.<sup>164</sup> The *Sack* court explained that prior to 1985, North Dakota courts labeled spouses disadvantaged.<sup>165</sup> However, the North Dakota Supreme Court did not use the phrase “disadvantaged spouse” verbatim before 1985.<sup>166</sup>

Additionally, the *Sack* court stated that from 1985 through 1994, North Dakota courts continued to use the phrase “disadvantaged spouse” as a descriptive term.<sup>167</sup> The *Sack* court explained that in its 1994 *Wiege* decision, a finding of a “disadvantaged spouse” became a prerequisite to an award of rehabilitative spousal support.<sup>168</sup> The *Sack* court stated that post-*Wiege*, before awarding rehabilitative spousal support, trial courts consistently determined whether a spouse seeking rehabilitative spousal support was a “disadvantaged spouse.”<sup>169</sup> Next, the *Sack* court reiterated that the North Dakota Supreme Court defines a disadvantaged spouse as one who has “foregone opportunities or lost advantages as a consequence of the marriage and . . . has contributed during the marriage to the supporting spouse’s increased earning capacity.”<sup>170</sup> The *Sack* court labeled this definition of a disadvantaged spouse the disadvantaged spouse doctrine.<sup>171</sup> Subsequently, the North Dakota Supreme Court analyzed the facts of the case under the disadvantaged spouse doctrine.<sup>172</sup>

### 2. *Application of the Disadvantage Spouse Doctrine to the Facts of Sack*

The North Dakota Supreme Court recognized that the trial court followed *Wiege* by analyzing whether Theresa was disadvantaged pursuant

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163. *Id.* ¶ 7, 711 N.W.2d at 159.

164. *Id.* In *Bullock v. Bullock*, the North Dakota Supreme Court used the phrase “disadvantaged spouse” for the first time. *Bullock*, 376 N.W.2d 30, 31 (N.D. 1985).

165. *Sack*, 711 N.W.2d at 159 n.1.

166. *Id.*

167. *See id.* ¶ 8, 711 N.W.2d at 159 (stating the correlation between rehabilitative spousal support and the phrase disadvantaged spouse changed in *Wiege v. Wiege*, 518 N.W.2d 708, 711 (N.D. 1994)).

168. *Id.*; *see supra* text accompanying notes 129-31 (explaining that the North Dakota Supreme Court changed “disadvantaged spouse” from a descriptive term to a requirement when it decided *Wiege*).

169. *Sack*, ¶ 9, 711 N.W.2d at 159.

170. *Id.* (citing *Weigel v. Weigel*, 2000 ND 16, ¶ 11, 604 N.W.2d 462, 466).

171. *Id.* ¶ 12, 711 N.W.2d at 160.

172. *Id.* ¶ 10, 711 N.W.2d at 159.

to the disadvantaged spouse doctrine.<sup>173</sup> The trial court deemed Theresa to be disadvantaged because she spent a considerable amount of time working as a homemaker, rather than being employed full-time outside the home.<sup>174</sup> On appeal, Trent argued that the trial court improperly labeled Theresa disadvantaged, because she did not directly contribute to the increase in his earning ability.<sup>175</sup>

The North Dakota Supreme Court disagreed with Trent's assertion that Theresa's role as a homemaker and care provider for their children did not allow Trent to advance his career.<sup>176</sup> Therefore, the North Dakota Supreme Court ruled in favor of Theresa and held that she directly contributed to Trent's earning ability by being a homemaker and a care provider for their children.<sup>177</sup> Accordingly, the North Dakota Supreme Court determined that the trial court correctly found Theresa to be disadvantaged via the disadvantaged spouse doctrine.<sup>178</sup> After affirming the trial court's decision to label Theresa a disadvantage spouse, the *Sack* court's discussion turned to the *Ruff-Fischer* guidelines.<sup>179</sup>

### 3. *Examination of the Ruff-Fischer Guidelines*

The *Sack* court noted that precedent compels an award of rehabilitative spousal support to be based on not only the disadvantaged spouse doctrine, but the *Ruff-Fischer* guidelines as well.<sup>180</sup> The *Sack* court enumerated all of the factors included in the *Ruff-Fischer* guidelines.<sup>181</sup> After doing so, the court emphasized that the *Ruff-Fischer* guidelines provide a comprehensive analysis of whether a spouse seeking support is entitled to an award of rehabilitative spousal support.<sup>182</sup>

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173. *See id.* §§ 9-10 (confirming that a disadvantaged spouse is one who has “foregone opportunities or lost advantages as a consequence of the marriage and has contributed during the marriage to the supporting spouse’s increased earning capacity”). The *Sack* court labeled this definition of disadvantaged spouse the disadvantaged spouse doctrine. *Id.* § 12, 711 N.W.2d at 160.

174. *Id.* § 10, 711 N.W.2d at 159.

175. *Id.*

176. *Id.*

177. *Id.* at 159-60.

178. *Id.* at 160.

179. *Id.* § 11.

180. *Id.*

181. *Id.*

182. *Id.*

#### 4. *Inquiry into the Viability of the Disadvantaged Spouse Doctrine*

After recognizing that the *Ruff-Fischer* guidelines are a comprehensive tool that can be used to determine whether a spouse deserves rehabilitative spousal support, the North Dakota Supreme Court examined the practicality of the disadvantaged spouse doctrine.<sup>183</sup> The court justified its decision to do so because of the “issues framed by the parties” and the court’s “duty to correctly apply the law.”<sup>184</sup> The court explained that if the *Ruff-Fischer* guidelines were solely used, rather than both the *Ruff-Fischer* guidelines and the disadvantaged spouse doctrine, then parties’ and courts’ workloads would decrease.<sup>185</sup> The North Dakota Supreme Court predicted that workloads would decrease because analyzing both the *Ruff-Fischer* guidelines and the disadvantaged spouse doctrine can be repetitive.<sup>186</sup> Furthermore, the court stated that requiring two separate findings contradicts precedent, because “rigid rules” should not be used to award rehabilitative spousal support.<sup>187</sup>

After analyzing the practicality of using both the *Ruff-Fischer* guidelines and the disadvantaged spouse doctrine, the *Sack* court remarked that if it abolished the disadvantaged spouse doctrine, it would overturn twelve years of precedent.<sup>188</sup> However, the *Sack* court cited a United States Supreme Court dissent by Justice Black in *Francis v. Southern Pacific Co.*<sup>189</sup> that supported abolishment of the disadvantaged spouse doctrine.<sup>190</sup> The North Dakota Supreme Court relied on Justice Black’s dissent that suggested if law is supported by precedent and nothing else, then abandonment

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183. *Id.*

184. *Id.* ¶ 6, 711 N.W.2d at 159; see Appellant’s Brief, *supra* note 24, at 1 (stating that the issue on appeal was “[w]hether Theresa Sack is a disadvantaged spouse entitling her to spousal support”); Appellee & Cross-Appellant’s Brief, *supra* note 1, at 1 (stating that the issues for the court to review were “[w]hether the [d]istrict [c]ourt properly awarded spousal support” and “[w]hether the [d]istrict [c]ourt properly divided the parties’ assets”).

185. See *Sack*, ¶ 11, 711 N.W.2d at 160 (stating that a separate finding “appears to be no more than a repetitive and onerous exercise for the parties and the courts”).

186. *Id.*

187. *Id.* (citing *Beals v. Beals*, 517 N.W.2d 413, 416 (N.D. 1994)). “Nor is a separate test consistent with our case law which has clearly, though sporadically, emphasized the lack of ‘rigid rules for determining whether or not to award [spousal support] and the amount of such an award.’” *Id.* (quoting *Beals*, 517 N.W.2d at 416) (alteration in original).

188. *Id.* ¶ 12. First, the *Sack* court pointed out that a finding of disadvantaged became a requirement in 1994. *Id.* ¶ 8, 711 N.W.2d at 159 (citing *Wiede v. Wiede*, 518 N.W.2d 708, 711 (N.D. 1994)). Then, the court disposed of this requirement. *Id.* ¶ 12, 711 N.W.2d at 160.

189. 333 U.S. 445 (1948).

190. *Sack*, ¶ 12, 711 N.W.2d at 160 (quoting *Francis v. S. Pac. Co.*, 333 U.S. 445, 471 (1948) (Black, J., dissenting) (“When precedent and precedent alone is all the argument that can be made to support a court-fashioned rule, it is time for the rule’s creator to destroy it.”)).

of the law is appropriate.<sup>191</sup> The court used this suggestion as a foundation and added to it by labeling the disadvantaged spouse doctrine an “obliteration of the underlying concept of rehabilitative spousal support.”<sup>192</sup> Accordingly, the *Sack* court abolished the disadvantaged spouse doctrine.<sup>193</sup> At the same time, the court reiterated the importance of applying the *Ruff-Fischer* guidelines when awarding rehabilitative spousal support.<sup>194</sup>

#### 5. *Issue of Whether Theresa Deserved Rehabilitative Spousal Support*

After the *Sack* court abandoned the disadvantaged spouse doctrine, the court’s analysis turned to whether Theresa deserved rehabilitative spousal support under the *Ruff-Fischer* guidelines.<sup>195</sup> The court made the following findings pursuant to the *Ruff-Fischer* guidelines: Theresa had less “earning capacity” than Trent; even though the marriage was relatively short, the parties cohabitated for a substantial amount of time; Theresa had health issues while Trent did not; and Theresa had a considerable amount of debt.<sup>196</sup> After analyzing the facts of the case under the *Ruff-Fischer* guidelines, the court determined that Theresa deserved rehabilitative spousal support.<sup>197</sup> Even though the trial court employed a doctrine that was abolished on appeal, a comprehensive analysis under the *Ruff-Fischer* guidelines compelled the majority to affirm the trial court’s award of rehabilitative spousal support.<sup>198</sup>

#### B. JUSTICE SANDSTROM’S DISSENT

Justice Sandstrom dissented from the majority opinion for four reasons.<sup>199</sup> First, Justice Sandstrom asserted that the parties did not challenge the viability of the disadvantaged spouse doctrine.<sup>200</sup> Second, Justice

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191. *Id.* (citing *Francis*, 333 U.S. at 471).

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.* ¶ 13.

196. *Id.* The court noted that Trent made \$60,000 per year, while Theresa only had the ability to earn minimum wage. *Id.* This finding appears to be based on the *Ruff-Fischer* guideline, “[the parties’] earning abilit[ies] . . .” *Id.* ¶ 11. The court also found that the parties lived together for ten years. *Id.* ¶ 13. This is referring to the *Ruff-Fischer* guideline addressing “the duration of the marriage . . .” *Id.* ¶ 11. Additionally, the court considered the *Ruff-Fischer* guidelines regarding the “health and physical condition [of the parties,]” and “[the parties’] financial circumstances . . .” *Id.*

197. *Id.* ¶ 14, 711 N.W.2d at 160-61.

198. *Id.* at 161.

199. *Id.* ¶ 19 (Sandstrom, J., dissenting).

200. *Id.*

Sandstrom stated that the issues raised by the parties could have been resolved without analyzing the viability of the disadvantaged spouse doctrine.<sup>201</sup> Third, Justice Sandstrom questioned whether the majority correctly analyzed the origin of the disadvantaged spouse doctrine.<sup>202</sup> Finally, Justice Sandstrom explained that the majority's holding defied the North Dakota Legislature's intent.<sup>203</sup>

First, Justice Sandstrom explained that neither Trent nor Theresa challenged the viability of the disadvantaged spouse doctrine at the trial court level or on appeal.<sup>204</sup> Accordingly, in Justice Sandstrom's view, the majority should not have analyzed the practicality of the disadvantaged spouse doctrine.<sup>205</sup> To support his proposition, Justice Sandstrom cited North Dakota case law that prohibits the North Dakota Supreme Court from addressing issues that the parties did not raise at the trial level.<sup>206</sup> Additionally, Justice Sandstrom noted that the North Dakota Supreme Court may not decide issues on appeal that have not been brought forth by at least one of the parties.<sup>207</sup> According to this perspective, the majority erred when it questioned the practicality of the disadvantaged spouse doctrine, and therefore, the majority mistakenly abandoned the disadvantaged spouse doctrine.<sup>208</sup>

Second, Justice Sandstrom contended that *Sack* could have been decided without analyzing the disadvantaged spouse doctrine.<sup>209</sup> Justice Sandstrom noted that the trial court followed precedent by analyzing the *Ruff-Fischer* guidelines and the disadvantaged spouse doctrine.<sup>210</sup> In

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201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.* ¶ 20. Trent raised the issue of “[w]hether Theresa Sack is a disadvantaged spouse entitling her to spousal support.” Appellant’s Brief, *supra* note 24, at 1. Theresa framed the issues as “[w]hether the [d]istrict [c]ourt properly awarded spousal support” and “[w]hether the [d]istrict [c]ourt properly divided the parties’ assets.” Appellee & Cross-Appellant’s Brief, *supra* note 1, at 1.

205. *Sack*, ¶ 20, 711 N.W.2d at 161 (Sandstrom, J., dissenting) (indicating that the parties did not challenge the viability of the disadvantaged spouse doctrine).

206. *Id.* (citing *Wenzel v. Wenzel*, 469 N.W.2d 156, 158 (N.D. 1991)). In *Wenzel*, a custody hearing case, the appellant argued that she should be granted a new trial because the trial judge was prejudice against her boyfriend. *Wenzel*, 469 N.W.2d at 158. She did not raise this issue at the trial level. *Id.* As a result, the North Dakota Supreme Court refused to review this issue because “issues not raised in the trial court cannot be raised for the first time on appeal.” *Id.* (quoting *Illies v. Illies*, 462 N.W.2d 878, 881 (N.D. 1990)).

207. *Sack*, ¶ 20, 711 N.W.2d at 161 (Sandstrom, J., dissenting) (citing *Owens v. State*, 2001 ND 15, ¶ 32, 621 N.W.2d 566, 572 (VandeWalle, J., concurring)). “We decide only issues which have been thoroughly briefed and argued.” *Owens*, 2001 ND 15, ¶ 32, 621 N.W.2d at 572.

208. *Sack*, ¶ 20, 711 N.W.2d at 161 (Sandstrom, J., dissenting) (“The majority has impermissibly extended its reach into an issue not properly before this Court.”).

209. *Id.* ¶ 21.

210. *Id.*



addition, he observed that even though the majority abolished the disadvantaged spouse doctrine, the majority ultimately affirmed the trial court's decision.<sup>211</sup> From this, Justice Sandstrom disapproved of the majority's decision to analyze the viability of the disadvantaged spouse doctrine, because it did not have to be analyzed to resolve the issue of whether Theresa deserved rehabilitative spousal support.<sup>212</sup> To support his view, Justice Sandstrom cited precedent that would tend to prohibit the North Dakota Supreme Court from addressing issues that do not have to be resolved to decide a case.<sup>213</sup>

Third, Justice Sandstrom asserted that the majority misinterpreted the history of the disadvantaged spouse doctrine.<sup>214</sup> He explained that although the majority stated that the disadvantaged spouse doctrine originated in 1985, in actuality, the doctrine appeared in North Dakota case law nearly a decade prior.<sup>215</sup> For support of this assertion, Justice Sandstrom cited "*Entitlements to Spousal Support After Divorce*."<sup>216</sup> He acknowledged Professor O'Kelly's assertion that the roots of the disadvantaged spouse doctrine originated in the 1976 North Dakota Supreme Court case *Bingert*.<sup>217</sup> Justice Sandstrom stated that in North Dakota's jurisprudence from *Bingert* to *Bullock*, which spanned from 1976 to 1985, North Dakota courts analyzed whether a spouse receiving rehabilitative spousal support was disadvantaged.<sup>218</sup> Hence, in Justice Sandstrom's opinion, notions of the disadvantaged spouse doctrine appeared in North Dakota case law prior

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211. *See id.* (noting that the majority found that the award of rehabilitative spousal support that the trial court awarded Theresa was not clearly erroneous).

212. *Id.* at 161-62.

213. *Id.* at 162 (citing *Olander Contracting Co. v. Gail Wachter Invs.*, 2002 ND 65, ¶ 48, 643 N.W.2d 29, 44). In *Olander*, the North Dakota Supreme Court held: "We need not address questions, the answers to which are unnecessary to the determination of an appeal." *Olander*, ¶ 48, 643 N.W.2d at 44 (citing *Johnson v. Johnson*, 2001 ND 109, ¶ 13, 627 N.W.2d 779, 782; *Hosp. Servs., Inc. v. Brooks*, 229 N.W.2d 69, 71 (N.D. 1975)).

214. *Sack*, ¶ 22, 711 N.W.2d at 162 (Sandstrom, J., dissenting).

215. *Id.* ¶ 23.

216. *Id.* ¶ 24 (citing Marcia O'Kelly, *Entitlements to Spousal Support After Divorce*, 61 N.D. L. REV. 225 (1985)).

217. *Id.* ¶ 25 (citing O'Kelly, *supra* note 217, at 240); O'Kelly, *supra* note 216 at 241 (quoting *Bingert v. Bingert*, 247 N.W.2d 464, 468 (N.D. 1976) (noting that when analyzing the constitutionality of spousal support, the *Bingert* court stated "the trend in modern domestic-relations law is to treat alimony as a method for rehabilitating the party disadvantaged by the divorce")). Professor O'Kelly added that the notion of treating spousal support as a method of rehabilitation continued to develop, and numerous times, the North Dakota Supreme Court held "that 'the function of alimony' is to rehabilitate the party disadvantaged by the divorce." O'Kelly, *supra* note 216 at 241 (citing *Martin v. Martin*, 307 N.W.2d 541, 544 (N.D. 1981); *Jochim v. Jochim*, 306 N.W.2d 196, 199 (N.D. 1981); *Williams v. Williams*, 302 N.W.2d 754, 758 (N.D. 1981)).

218. *Sack*, ¶ 27, 711 N.W.2d at 163 (Sandstrom, J., dissenting).

to 1985.<sup>219</sup> Accordingly, in Justice Sandstrom's view, the majority did not thoroughly analyze the history of the disadvantaged spouse doctrine.<sup>220</sup>

Finally, Justice Sandstrom asserted that the holding of *Sack* defied the North Dakota Legislature's intent.<sup>221</sup> The focus of his argument was on the legislature's decision to split the spousal support and property division statute, which occurred in 2001.<sup>222</sup> Justice Sandstrom noted that during the 2001 North Dakota Legislative Session, the Senate Judiciary Committee heard testimony regarding division of the statute.<sup>223</sup> A proponent of the division testified that the change was "a house-keeping measure, simply intended to 'clean up and coordinate' the family law statutes without making any substantive changes."<sup>224</sup> Justice Sandstrom inferred that the proponent's testimony referenced the court's longtime use of the disadvantaged spouse doctrine.<sup>225</sup> Accordingly, Justice Sandstrom concluded that when the majority abolished the disadvantaged spouse doctrine, it disregarded the legislature's intent.<sup>226</sup>

#### IV. IMPACT

It is probable that the *Sack* holding will affect future North Dakota divorce cases in three ways.<sup>227</sup> First, the *Sack* decision will cause North Dakota courts to rely solely on the *Ruff-Fischer* guidelines when allocating rehabilitative spousal support.<sup>228</sup> Second, the outcome of *Sack* applies not only to rehabilitative spousal support, but to permanent spousal support as well.<sup>229</sup> Third, the *Sack* decision simplifies how attorneys and judges will analyze divorce cases.<sup>230</sup>

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219. *Id.*

220. *Id.* ¶ 28.

221. *Id.* ¶ 29.

222. *Id.* §§ 32-33, 711 N.W.2d at 163-64.

223. *Id.* ¶ 32, 711 N.W.2d at 164.

224. *Id.*

225. *Id.* at ¶ 33.

226. *Id.*

227. *See generally* Ulsaker v. White, 2006 ND 133, ¶ 8, 717 N.W.2d 567, 571 (applying the *Sack* holding when analyzing permanent spousal support); *Sack*, ¶ 12, 711 N.W.2d at 160 (holding that rehabilitative spousal support is to be allocated pursuant to an analysis of the *Ruff-Fischer* guidelines and suggesting that this holding will lessen the complexity of divorce cases for judges and parties).

228. *See Sack*, ¶ 12, 711 N.W.2d at 160 (abandoning the disadvantaged spouse doctrine and holding that the *Ruff-Fischer* guidelines are to be followed when analyzing rehabilitative spousal support).

229. *See id.* ("[W]e elect to dispose of the 'disadvantaged spouse' doctrine and reemphasize the importance of a comprehensive analysis under the *Ruff-Fischer* guidelines when determining the appropriateness of *rehabilitative* spousal support.") (second emphasis added). In the divorce case *Ulsaker*, the trial court awarded the wife permanent spousal support. *Ulsaker*, ¶ 8, 717 N.W.2d at 571. When analyzing this award of permanent spousal support, the North Dakota

A. AWARDS OF REHABILITATIVE SPOUSAL SUPPORT ARE BASED SOLELY ON THE *RUFF-FISCHER* GUIDELINES

First, *Sack* will impact future North Dakota divorce cases because the *Sack* court confirmed how rehabilitative spousal support should be analyzed.<sup>231</sup> Prior to *Sack*, the North Dakota Supreme Court occasionally based awards of rehabilitative spousal support exclusively on the disadvantaged spouse doctrine.<sup>232</sup> In other pre-*Sack* cases, the North Dakota Supreme Court relied on both the disadvantaged spouse doctrine and the *Ruff-Fischer* guidelines when analyzing rehabilitative spousal support.<sup>233</sup> In *Sack*, the North Dakota Supreme Court held that awards of rehabilitative spousal support are to be based solely on the *Ruff-Fischer* guidelines.<sup>234</sup> Since *Sack*, this holding has been cited numerous times.<sup>235</sup>

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Supreme Court cited *Sack*, and held that “[a]n award of spousal support is to be based on consideration of the *Ruff-Fischer* guidelines.” *Id.* ¶ 20 (citing *Sack*, ¶ 11, 711 N.W.2d at 160).

230. *Sack*, ¶ 11, 711 N.W.2d at 160. Post-*Sack*, when analyzing rehabilitative spousal support, one doctrine has to be analyzed rather than two. *Id.* If one doctrine is analyzed rather than two, the process of allocating spousal support is likely to be less tedious. *See id.* (stating that analyzing both the *Ruff-Fischer* guidelines and the disadvantaged spouse doctrine is repetitive).

231. *Id.* ¶ 12.

232. *See, e.g.*, *Johnson v. Johnson*, 2002 ND 151, ¶¶ 25-26, 652 N.W.2d 315, 322 (affirming the trial court’s refusal to award rehabilitative spousal support because the divorce did not disadvantage the wife); *Kautzman v. Kautzman*, 1998 ND 192, ¶ 20, 585 N.W.2d 561, 567 (finding the divorce would disadvantage the wife, thereby affirming the award of spousal support); *Bakes v. Bakes*, 532 N.W.2d 666, 668 (N.D. 1995) (affirming the trial court’s award of rehabilitative spousal support after confirming that the divorce disadvantaged the wife); *Welder v. Welder*, 520 N.W.2d 813, 819 (N.D. 1994) (reversing the trial court’s decision not to award wife spousal support because “[she lost] opportunities and . . . advantages as a consequence of the marriage,” and therefore was disadvantaged).

233. *See, e.g.*, *Weigel v. Weigel*, 2000 ND 16, ¶¶ 6, 11, 604 N.W.2d 462, 465-66 (analyzing wife’s award of spousal support per the *Ruff-Fischer* guidelines, then determining that the trial court correctly deemed her disadvantaged); *Brown v. Brown*, 1999 ND 199, ¶¶ 31-32, 600 N.W.2d 869, 875-76 (holding that trial courts must use the *Ruff-Fischer* guidelines when determining spousal support, and holding that a spouse must be disadvantaged to receive spousal support); *Riehl v. Riehl*, 1999 ND 107, ¶¶ 8-9, 595 N.W.2d 10, 13 (stating trial courts must utilize the *Ruff-Fischer* guidelines when awarding spousal support, then agreeing with the trial court’s finding that the divorce disadvantaged the wife).

234. *Sack*, ¶ 12, 711 N.W.2d at 160.

235. *See Donlin v. Donlin*, 2007 ND 5, ¶ 15, 2007 WL 64188, at \*3 (citing *Sack*, ¶ 12, 711 N.W.2d at 160) (“In determining spousal support, the district court must consider the relevant factors under the *Ruff-Fischer* guidelines.”); *Hagel v. Hagel*, 2006 ND 181, ¶ 11, 721 N.W.2d 1, 5 (citing *Sack*, ¶¶ 11-12, 711 N.W.2d at 160) (“A separate finding that a spouse is ‘disadvantaged’ is not necessary for an award of spousal support.”); *Ulsaker*, ¶ 20, 717 N.W.2d at 573 (citing *Sack*, ¶¶ 11-12, 711 N.W.2d at 160) (holding that an award of spousal support is to be based solely on the *Ruff-Fischer* guidelines, not on a finding of disadvantage); *DeMers v. DeMers*, 2006 ND 142, ¶ 21, 717 N.W.2d 545, 554 (citing *Sack*, ¶¶ 11-12, 711 N.W.2d at 160) (noting that a finding of “disadvantaged” is not a prerequisite to an allocation of spousal support); *Kostelecky v. Kostelecky*, 2006 ND 120, ¶ 12, 714 N.W.2d 845, 849 (citing *Sack*, ¶ 12, 711 N.W.2d at 160) (“A majority of this [c]ourt recently eliminated the requirement for a district court to make a specific finding of a ‘disadvantaged spouse’ before awarding spousal support.”). *Sack* was also cited in

In *Kostelecky v. Kostelecky*,<sup>236</sup> the trial court awarded the ex-wife, Pamela, rehabilitative spousal support for six years.<sup>237</sup> The ex-husband, Kim, appealed, and argued that the trial court mistakenly awarded Pamela rehabilitative spousal support.<sup>238</sup> The North Dakota Supreme Court held that the trial court's justifications for awarding spousal support were not sufficient, and therefore it reversed and remanded the issue of rehabilitative spousal support.<sup>239</sup> In doing so, the North Dakota Supreme Court cited *Sack*, and noted that the *Sack* court abolished the disadvantaged spouse doctrine, and held that rehabilitative spousal support should be analyzed under the *Ruff-Fischer* guidelines.<sup>240</sup> Accordingly, when the North Dakota Supreme Court remanded *Kostelecky* to the trial court, it ordered the trial court to reanalyze the rehabilitative spousal support award under the *Ruff-Fischer* guidelines.<sup>241</sup>

Additionally, in *DeMers v. DeMers*,<sup>242</sup> the trial court awarded the ex-wife, Sue, rehabilitative spousal support in the amount of \$1200 per month for twelve months.<sup>243</sup> Sue appealed and argued that the award of spousal support did not satisfy her needs.<sup>244</sup> The North Dakota Supreme Court noted that the trial court used both the disadvantaged spouse doctrine and the *Ruff-Fischer* guidelines when it examined the issue of rehabilitative spousal support.<sup>245</sup> The North Dakota Supreme Court cited *Sack* and stated that a finding of "disadvantaged" is no longer a prerequisite to an award of rehabilitative spousal support.<sup>246</sup> Accordingly, the trial court unnecessarily analyzed the disadvantaged spouse doctrine.<sup>247</sup> Even so, the North Dakota Supreme Court affirmed the trial court's decision, because the trial court correctly examined the *Ruff-Fischer* guidelines when it awarded Sue rehabilitative spousal support.<sup>248</sup>

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*Marquette v. Marquette*, but the citation referenced property division. *Marquette*, 2006 ND 154, ¶ 13, 719 N.W.2d 321, 325 (citing *Sack*, ¶ 15, 711 N.W.2d at 161).

236. 2006 ND 120, 714 N.W.2d 845.

237. *Kostelecky*, ¶ 16, 714 N.W.2d at 849.

238. *Id.* ¶ 11, 714 N.W.2d at 848.

239. *Id.* ¶ 19, 714 N.W.2d at 850.

240. *Id.* ¶ 15, 714 N.W.2d at 849.

241. *Id.* ¶ 19, 714 N.W.2d at 850.

242. 2006 ND 142, 717 N.W.2d 545.

243. *DeMers*, ¶ 21, 717 N.W.2d at 554.

244. *See id.* ¶ 22 (stating that Sue argued that the trial court inappropriately took a minimalist approach when analyzing rehabilitative spousal support).

245. *Id.* ¶¶ 21, 23.

246. *Id.* ¶ 21 (citing *Sack v. Sack*, 2006 ND 57, ¶¶ 11-12, 711 N.W.2d 157, 160).

247. *Id.*

248. *Id.* ¶ 23.

Furthermore in *Hagel v. Hagel*,<sup>249</sup> the ex-wife, Jean, requested the trial court to award her spousal support.<sup>250</sup> When analyzing whether Jean deserved spousal support, the trial court examined the disadvantaged spouse doctrine.<sup>251</sup> The trial court's decision occurred pre-*Sack*, therefore it appropriately examined the disadvantaged spouse doctrine.<sup>252</sup> The trial court found Jean to be a disadvantaged spouse, but did not award her spousal support.<sup>253</sup> Jean appealed, and argued that the trial court wrongfully denied her request for spousal support.<sup>254</sup>

*Hagel* appeared before the North Dakota Supreme Court post-*Sack*.<sup>255</sup> The North Dakota Supreme Court cited *Sack*, and held that the *Ruff-Fischer* guidelines govern awards of spousal support, and a finding of "disadvantaged" is no longer required.<sup>256</sup> The North Dakota Supreme Court explained that the trial court found Jean to be entitled to spousal support, yet still denied her request.<sup>257</sup> Accordingly, the North Dakota Supreme Court reversed the trial court's decision to deny Jean spousal support and remanded the case for reevaluation and further clarification.<sup>258</sup> When the North Dakota Supreme Court remanded the case, it advised the trial court to reanalyze the issue of spousal support pursuant to the *Ruff-Fischer* guidelines.<sup>259</sup>

Additionally, in *Donlin v. Donlin*,<sup>260</sup> the trial court awarded the ex-wife, June, spousal support in the amount of \$600 per month for three years.<sup>261</sup> June appealed the trial court's decision to the North Dakota Supreme Court and argued that the award of spousal support did not provide adequate compensation.<sup>262</sup> When analyzing this issue, the North Dakota Supreme Court cited *Sack* and held that an award of spousal support must be analyzed according to the *Ruff-Fischer* guidelines.<sup>263</sup> The court

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249. 2006 ND 181, 721 N.W.2d 1.

250. *Hagel*, ¶ 4, 721 N.W.2d at 3.

251. *See id.* (noting that the trial court found Jean to be a disadvantaged spouse).

252. *Id.* ¶ 13, 721 N.W.2d at 5.

253. *Id.* ¶ 14.

254. *Id.* ¶ 10, 721 N.W.2d at 4.

255. *Id.* ¶ 13, 721 N.W.2d at 5.

256. *Id.* ¶ 11 (citing *Sack v. Sack*, 2006 ND ¶¶ 11-12, 711 N.W.2d at 160).

257. *Id.* ¶ 14.

258. *Id.*

259. *See id.* ¶¶ 11, 14, 721 N.W.2d at 5 (stating that the *Ruff-Fischer* guidelines govern awards of spousal support, and then remanding the issue of spousal support to the trial court).

260. 2007 ND 5, 725 N.W.2d 905.

261. *Donlin*, ¶ 14, 725 N.W.2d at 909.

262. *Id.*

263. *Id.* ¶ 15, 725 N.W.2d at 909 (citing *Sack v. Sack*, 2006 ND 157, ¶ 12, 711 N.W.2d 157, 160).

analyzed the facts of the case under the *Ruff-Fischer* guidelines and affirmed the trial court's award of rehabilitative spousal support.<sup>264</sup>

*Kostelecky, DeMers, Hagel, and Donlin* pertain to the allocation of rehabilitative spousal support.<sup>265</sup> These cases illustrate that post-*Sack*, awards of rehabilitative spousal support are analyzed pursuant to the *Ruff-Fischer* guidelines.<sup>266</sup> Additionally, this holding extends to permanent spousal support.<sup>267</sup>

#### B. EXTENSION TO PERMANENT SPOUSAL SUPPORT

Second, although *Sack* involved rehabilitative spousal support, the *Sack* holding applies to permanent spousal support as well.<sup>268</sup> The *Sack* court explicitly held, "we elect to dispose of the 'disadvantaged spouse' doctrine and reemphasize the importance of a comprehensive analysis under the *Ruff-Fischer* guidelines when determining the appropriateness of *rehabilitative spousal support*."<sup>269</sup> In *Ulsaker v. White*,<sup>270</sup> the trial court ordered the ex-husband, Larry, to pay the ex-wife, True Bright, spousal support in the amount of "\$1,000 per month for life, or until [True Bright] remarried."<sup>271</sup> This is a clear example of permanent spousal support rather than rehabilitative spousal support.<sup>272</sup> True Bright appealed the trial court's decision and argued that the award of spousal support did not satisfy her needs.<sup>273</sup> Even

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264. *Id.* ¶ 17, 725 N.W.2d at 910.

265. *Id.*; *Hagel v. Hagel*, 2006 ND 181, ¶ 11, 721 N.W.2d 1, 5; *DeMers v. DeMers*, 2006 ND 142, ¶ 21, 717 N.W.2d 545, 554; *Kostelecky v. Kostelecky*, 2006 ND 120, ¶ 15, 714 N.W.2d 845, 849.

266. *E.g., Donlin*, ¶ 15, 725 N.W.2d at 909 (citing *Sack v. Sack*, 2006 ND 157, ¶ 12, 711 N.W.2d 157, 160) (holding that allocations of rehabilitative spousal support are to be based on the *Ruff-Fischer* guidelines); *Hagel*, ¶ 11, 721 at 5 (advising the trial court to use the *Ruff-Fischer* guidelines when reanalyzing the issue of rehabilitative spousal support); *DeMers*, ¶ 21, 717 N.W.2d at 554 (stating that rehabilitative spousal support is to be based on the *Ruff-Fischer* guidelines); *Kostelecky*, ¶ 15, 714 N.W.2d at 849 (ordering the trial court to analyze the *Ruff-Fischer* guidelines when reexamining the issue of rehabilitative spousal support).

267. *See Ulsaker v. White*, 2006 ND 133, ¶¶ 8, 20, 717 N.W.2d 567, 571, 573 (citing *Sack*, ¶ 11, 711 N.W.2d at 160) (utilizing the *Sack* holding when examining permanent spousal support).

268. *See generally id.* ¶ 8, 717 N.W.2d at 571 (adopting the *Sack* holding when analyzing permanent spousal support); *Sack*, ¶ 12, 711 N.W.2d at 160 (abolishing the disadvantaged spouse doctrine and holding that rehabilitative spousal support is to be awarded per the *Ruff-Fischer* guidelines).

269. *Sack*, ¶ 12, 711 N.W.2d at 160 (second emphasis added).

270. 2006 ND 133, 717 N.W.2d 567.

271. *Ulsaker*, ¶ 6, 717 N.W.2d at 570.

272. *See generally Sommer v. Sommer*, 2001 ND 191, ¶ 14, 636 N.W.2d 423, 429 (declaring that permanent spousal support is awarded when a "disadvantaged spouse cannot be equitably rehabilitated to make up for the opportunities lost in the course of the marriage"). To the contrary, rehabilitative spousal support is awarded "when it is possible to restore an economically disadvantaged spouse to independent economic status or to equalize the burden of divorce by increasing the disadvantaged spouse's earning capacity." *Id.*

273. *Ulsaker*, ¶ 1, 717 N.W.2d at 569.

though the trial court awarded permanent spousal support rather than rehabilitative spousal support, when analyzing the award on appeal, the North Dakota Supreme Court cited *Sack* and held: “An award of spousal support is to be based on consideration of the *Ruff-Fischer* guidelines.”<sup>274</sup> The *Ulsaker* court added that “[a] separate finding that a spouse is ‘disadvantaged’ is not necessary for an award of support.”<sup>275</sup> Furthermore, the *Ulsaker* court remanded the issue of spousal support to the trial court, and instructed the trial court to apply the *Ruff-Fischer* guidelines when analyzing the issue of spousal support.<sup>276</sup>

In *Wagner v. Wagner*,<sup>277</sup> the trial court ordered ex-husband James to pay ex-wife Marilee rehabilitative spousal support.<sup>278</sup> Marilee appealed to the North Dakota Supreme Court, and argued that the trial court mistakenly awarded her rehabilitative spousal support rather than permanent spousal support.<sup>279</sup> In analyzing which type of spousal support Marilee was entitled to, the North Dakota Supreme Court cited *Sack* and held that courts are no longer required to “make a separate finding that a spouse is ‘disadvantaged’” when awarding spousal support.<sup>280</sup> Because the *Ulsaker* and *Wagner* courts applied the *Sack* holding when analyzing permanent spousal support, it can be inferred that the *Sack* holding applies to both rehabilitative and permanent spousal support.<sup>281</sup>

### C. SIMPLIFICATION OF DIVORCE PROCEEDINGS

Finally, *Sack* will simplify how attorneys and judges analyze divorce cases.<sup>282</sup> Prior to *Sack*, the North Dakota Supreme Court often examined both the *Ruff-Fischer* guidelines and the disadvantaged spouse doctrine in

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274. *Id.* ¶ 20, 717 N.W.2d at 573 (citing *Sack*, ¶ 12, 711 N.W.2d at 160; *Staley v. Staley*, 2004 ND 195, ¶ 8, 688 N.W.2d 182, 184).

275. *Id.* (citing *Sack*, ¶ 12, 711 N.W.2d at 160).

276. *Id.* ¶ 21.

277. 2007 ND 33, 728 N.W.2d 318.

278. *Wagner*, ¶ 3, 728 N.W.2d at 320.

279. *Id.* ¶ 4.

280. *Id.* ¶ 6, 728 N.W.2d at 321 (citing *Sack*, ¶ 11, 711 N.W.2d at 160).

281. *See generally id.* (citing *Sack*, ¶ 11, 711 N.W.2d at 160) (analyzing both rehabilitative spousal support and permanent spousal support, and noting that a finding of “disadvantaged” is not required); *Ulsaker*, ¶¶ 8, 20, 717 N.W.2d at 571, 573 (citing *Sack*, ¶ 11, 711 N.W.2d at 160) (noting the *Sack* holding when analyzing permanent spousal support); *Sack*, ¶ 12, 711 N.W.2d at 160 (“[W]e elect to dispose of the ‘disadvantaged spouse’ doctrine and reemphasize the importance of a comprehensive analysis under the *Ruff-Fischer* guidelines when determining the appropriateness of rehabilitative spousal support.”).

282. *Sack*, ¶ 12, 711 N.W.2d at 160. Post-*Sack*, when analyzing rehabilitative spousal support, one doctrine has to be analyzed rather than two. *Id.* If one doctrine is analyzed rather than two, the process of allocating spousal support is likely to be less complex. *Id.*

detail when analyzing rehabilitative spousal support.<sup>283</sup> In reality, both analyses addressed several of the same pertinent factors.<sup>284</sup> Post-*Sack*, all of the material facts and circumstances of a case are accounted for in one analysis, that being the *Ruff-Fischer* guidelines.<sup>285</sup>

Additionally, *Sack* may simplify how attorneys and judges analyze divorce cases because post-*Sack*, the *Ruff-Fischer* guidelines can be used exclusively to resolve issues regarding the division of property and both types of spousal support: rehabilitative and permanent.<sup>286</sup> The North Dakota Supreme Court has consistently held that spousal support and the distribution of marital property must be analyzed together.<sup>287</sup> Accordingly, since spousal support and property distribution are evaluated collectively, it is logical that the *Ruff-Fischer* guidelines govern the allocation of both.<sup>288</sup>

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283. See, e.g., *Weigel v. Weigel*, 2000 ND 16, ¶¶ 6, 11, 604 N.W.2d 462, 465-66 (analyzing ex-wife's award of spousal support per the *Ruff-Fischer* guidelines, then determining that the trial court correctly deemed her disadvantaged); *Brown v. Brown*, 1999 ND 199, ¶¶ 31-32, 600 N.W.2d 869, 875-76 (holding trial courts must use the *Ruff-Fischer* guidelines when determining spousal support, and holding that a spouse must be disadvantaged to receive spousal support); *Riehl v. Riehl*, 1999 ND 107, ¶¶ 8-9, 595 N.W.2d 10, 13 (stating trial courts must utilize the *Ruff-Fischer* guidelines when awarding spousal support then agreeing with the trial court's finding that the divorce disadvantaged the wife); see also Findings of Fact, Conclusions of Law & Order for Judgment, *supra* note 4, at 7-9 (utilizing the disadvantaged spouse doctrine and the *Ruff-Fischer* guidelines).

284. Findings of Fact, Conclusions of Law & Order for Judgment, *supra* note 4, at 7-8. The trial court addressed the parties' earning capacities and education under the disadvantaged spouse doctrine and the *Ruff-Fischer* guidelines. *Id.* Judge Sonja Clapp has presumed that even though a separate finding of disadvantaged is no longer required, whether a spouse is disadvantaged is still analyzed within the context of the *Ruff-Fischer* guidelines. Interview with Judge Sonja Clapp, Dist. Judge, Grand Forks Dist. Court, in Grand Forks, N.D. (Dec. 15, 2006). The following *Ruff-Fischer* guidelines take into consideration whether a spouse is disadvantaged: the parties' stations in life, the circumstances and necessities of each party, and the parties' health and physical condition. *Id.*

285. *Sack*, ¶ 12, 711 N.W.2d at 160 (stating that the *Ruff-Fischer* guidelines are to be used when allocating rehabilitative spousal support).

286. See generally *Ulsaker*, ¶ 21, 717 N.W.2d at 573 (directing the trial court to follow the *Ruff-Fischer* guidelines when reanalyzing permanent spousal support on remand); *Sack*, ¶ 12, 711 N.W.2d at 160 (stating the *Ruff-Fischer* guidelines need to be analyzed when allocating rehabilitative spousal support); *Kautzman v. Kautzman*, 1998 ND 192, ¶ 9, 585 N.W.2d 561, 564 (explaining that courts are to utilize the *Ruff-Fischer* guidelines when distributing marital property).

287. E.g., *Ingebretson v. Ingebretson*, 2005 ND 41, ¶ 10, 693 N.W.2d 1, 5 (holding issues regarding spousal support and property division must be examined together); *Sommers v. Sommers*, 2003 ND 77, ¶ 15, 660 N.W.2d 586, 592 (explaining that property division and spousal support must be analyzed collectively); *Fox v. Fox*, 1999 ND 68, ¶ 22, 592 N.W.2d 541, 548 (stating questions of property distribution and spousal support must be analyzed together); *Schmaltz v. Schmaltz*, 1998 ND 212, ¶ 17, 586 N.W.2d 852, 856 (explaining that issues of property division and spousal support cannot be analyzed separately).

288. See, e.g., *Ulsaker*, ¶¶ 17, 21, 717 N.W.2d at 573 (reversing the issue of division of property and explaining to the trial court that a change in the property distribution may compel the award of spousal support to be altered). The North Dakota Supreme Court remanded the issues of property division and spousal support to the trial court, and instructed the trial court to utilize the *Ruff-Fischer* guidelines to allocate both. *Id.*



The North Dakota Supreme Court addressed this simplification.<sup>289</sup> In *Ulsaker*, the ex-wife, True Bright, appealed the trial court's decisions regarding the division of marital property and spousal support.<sup>290</sup> The North Dakota Supreme Court reversed and remanded the trial court's decision regarding marital property and instructed the trial court to follow the *Ruff-Fischer* guidelines on remand.<sup>291</sup> Then, the North Dakota Supreme Court noted that division of marital property and the allocation of spousal support must be analyzed jointly.<sup>292</sup> The court stated that since the distribution of property might be altered on remand, then the award of spousal support may have to change as well.<sup>293</sup> Accordingly, the North Dakota Supreme Court instructed the trial court to follow the *Ruff-Fischer* guidelines when analyzing spousal support on remand.<sup>294</sup> The *Ulsaker* court's instructions to the trial court are an illustration of how the *Sack* holding simplifies divorce proceedings.<sup>295</sup>

## V. CONCLUSION

In *Sack*, the North Dakota Supreme Court abandoned the disadvantaged spouse doctrine and reemphasized the need to use the *Ruff-Fischer* guidelines when evaluating rehabilitative spousal support.<sup>296</sup> Consequently, the *Sack* court altered how rehabilitative spousal support is examined.<sup>297</sup> In coming to this conclusion, it abolished a doctrine used by North Dakota courts for over ten years.<sup>298</sup> However, the dissent asserted that the viability of the disadvantaged spouse doctrine should not have been

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289. *See id.* (stating that the *Ruff-Fischer* guidelines are to be used to distribute marital property, and are to be used to allocate spousal support).

290. *Id.* ¶ 1, 717 N.W.2d at 569.

291. *See id.* ¶¶ 17-18, N.W.2d at 573 (holding that the *Ruff-Fischer* guidelines govern the division of marital property, and remanding the issue regarding the distribution of marital property to the trial court).

292. *Id.* ¶ 20.

293. *Id.* ¶ 21.

294. *See id.* ¶¶ 17, 21, 717 N.W.2d at 573 (holding that the *Ruff-Fischer* guidelines govern the distribution of marital property, and the *Ruff-Fischer* guidelines need to be considered when allocating spousal support).

295. *See generally id.* (stating that the *Ruff-Fischer* guidelines need to be followed when analyzing division of marital property and spousal support); *Sack v. Sack*, 2006 ND 57, ¶ 12, 711 N.W.2d 157, 160 (abandoning the disadvantaged spouse doctrine and declaring that awards of rehabilitative spousal support are to be allocated after an analysis of the *Ruff-Fischer* guidelines).

296. *Sack*, ¶ 12, 711 N.W.2d at 160.

297. *Id.*

298. *See id.* ¶¶ 8, 12, 711 N.W.2d at 159-60 (noting that a finding of disadvantaged became a requirement in 1994, and then the court abolished this requirement).

addressed.<sup>299</sup> In the end, Theresa's award of rehabilitative spousal support was affirmed, but solely under an analysis of the *Ruff-Fischer* guidelines.<sup>300</sup>

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299. *Id.* ¶ 20, 711 N.W.2d at 161 (Sandstrom, J., dissenting).

300. *Id.* ¶ 14, 711 N.W.2d at 160-61 (majority opinion).

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