



STATE OF MICHIGAN  
IN THE COURT OF APPEALS

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[Redacted]

Plaintiff-Appellant,

-vs-

[Redacted]

Defendant-Appellee.

Court of Appeals No.

Wayne County Circuit Court  
No. [Redacted]  
Hon. [Redacted]

[Redacted]

Attorney for Plaintiff-Appellant

[Redacted]

[Redacted]

Attorney for Defendant-Appellee

[Redacted]

PLAINTIFF-APPELLANT'S BRIEF ON APPEAL



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- Exhibit A - Judgment Of Divorce, dated [REDACTED]
- Exhibit B - Uniform Spousal Support Order, dated [REDACTED]
- Exhibit C - Divorce Trial Volume [REDACTED], dated [REDACTED]
- Exhibit D - Divorce Trial Volume [REDACTED], dated [REDACTED]
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- Exhibit G - Motion To Stay Enforcement Of Judgment Of Divorce, dated [REDACTED]
- Exhibit H - Brief In Support Of Response In Opposition To Plaintiff's Motion To Stay Enforcement Of Judgment Of Divorce Or, In The Alternative, If Stay Grant, Require Bond, dated [REDACTED]
- A Copy Of The Trial Court's Docket Sheet



## STATEMENT OF JURISDICTION

Plaintiff-Appellant (“Appellant”) filed for divorce from Defendant-Appellee (“Appellee”) in the Wayne County Circuit Court on [REDACTED]. Following a three-day trial, the Circuit Court entered a Judgment of Divorce on [REDACTED]. On [REDACTED], Appellant filed a Motion to Stay the Circuit Court’s Judgment in the Circuit Court and a timely Claim of Appeal in this Court. On [REDACTED] the Circuit Court denied Appellant’s motion to stay. Now, Appellant has filed the instant Brief on Appeal. This Court has jurisdiction to consider the Appellant's brief as it is related to a final judgement of the Circuit Court. MCR 7.203(A)(1); MCR 7.202(6)(a)(1).



**STATEMENT OF QUESTION PRESENTED**

- I. WAS THE CIRCUIT COURT'S ORDER THAT PLAINTIFF-APPELLANT PAY SPOUSAL SUPPORT TO DEFENDANT-APPELLEE INEQUITABLE AND CLEARLY ERRONEOUS?

Plaintiff-Appellant answers, "Yes".



## INTRODUCTION

In this appeal from a judgement of divorce, Appellant asks this Court to review and reverse the Wayne County Circuit Court’s (the “Circuit Court”) ruling, ordering Appellant to pay spousal support to Appellee. See generally Judgment Of Divorce, dated [REDACTED] (the “Judgment”), attached hereto as Exhibit A; see also Uniform Spousal Support Order, dated [REDACTED] (the “Support Order”), attached hereto as Exhibit B.

The instant Plaintiff-Appellant’s Brief On Appeal (the “Brief”) will establish that the Circuit Court’s decision regarding spousal support in this matter runs contrary to the vast majority of factors that a circuit court considers when making a spousal support determination.<sup>1</sup> Indeed, although the Circuit Court mentioned the factors to consider when making a spousal support determination, the Circuit Court either failed to address, or provided only a cursory mention of the great majority of the factors. Instead, the Circuit Court’s decision regarding spousal support was based on analysis: (1) contrary to certain facts presented at trial; (2) not supported by evidence presented at trial; (3) which placed undue or disproportionate emphasis on evidence of abuse presented in this matter; and (4) regarding a factor outside of the normal factors considered by circuit courts. The Circuit Court’s faulty analysis in this matter lead to the Judgment and Support Order where Appellant must now pay spousal support much greater than that contemplated by the [REDACTED] calculations in this matter.

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<sup>1</sup> (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity. *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).







TT Vol [REDACTED], at 33 (Appellant testified that [REDACTED] purchase [REDACTED]).

The couple moved into the Marital Home in [REDACTED], and both Appellant and Appellee contributed to improvements made to the Marital Home. See TT Vol [REDACTED], at 30.

Sadly, in the early stages of their marriage, Appellee complained of [REDACTED] TT Vol [REDACTED], 33-36 (Appellant: [REDACTED] [REDACTED].”). Appellee’s [REDACTED] caused her to struggle to take care of the Marital Home. *Id.*, at 33-34 (Appellant: [REDACTED] [REDACTED].”).

Appellant did his best to help Appellee, by encouraging Appellee spend time with family and friends, and even made efforts to encourage Appellee to go to school. *Id.*, at 34, 36 (Appellant:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The marriage had issues aside from Appellee’s complaints of [REDACTED] There were issues with Appellee’s parents. TT Vol [REDACTED], at 36-38 (Appellant discussing the relationship with Appellee’s family: “[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]



██████████ And, regrettably, Appellant physically abused Appellee. *Id.*, at 45 (██████████

██████████ ‘██████████

So, on ██████████, just ██████████ after their wedding and two months after the couple moved into the Marital Home, Appellee left Appellant and moved back in with her parents. *Id.*, at 31; see also TT Vol █, at 24, 74 (Appellee ██████████

██████████

██████████.

Appellant was unable to reconcile with Appellee, who ultimately filed criminal charges against Appellant. TT Vol █, at 46 (Appellant: ██████████

██████████

██████████

██████████); TT Vol █, at 19 (Appellee’s testimony: █ ██████████

██████████

██████████ After realizing that there was no chance to reconcile with Appellee, Appellant filed for divorce █ ██████████. TT Vol █, at 24.

After leaving Appellant, Appellee obtained a personal protection order against Appellant and Appellant was convicted of █ misdemeanors, and sentenced to serve ██████████ in jail, with work release granted on weekdays. TT Vol █, at 47-49. Although Appellant was granted work-release, his jailing and the COVID-19 pandemic were detrimental to his ability to earn a living. TT Vol █, at 52-53. This caused Appellant to miss mortgage payments, which lead the Marital Home to fall into foreclosure. TT Vol █, at 31-32.



By the time the trial in this matter began, on [REDACTED], Appellee had moved to [REDACTED] R [REDACTED] to begin medical school; she did not attend Wayne State University, where Appellant had helped her by getting her meetings with certain deans. TT Vol [REDACTED], at 64-65.

The issues at trial were the enforcement of the [REDACTED] Agreement, the division of the marital property, which included the Marital Home, Appellant's [REDACTED] account related to his career as a [REDACTED], and various personal property, the division of various credit card debts, and whether to award spousal support. TT Vol [REDACTED], at 4-5. The trial took place over three days and consisted of only two witnesses, Appellant and Appellee. See generally TT Vol [REDACTED], TT Vol [REDACTED], and TT Vol [REDACTED].

On the final day of the trial, the Circuit Court issued its ruling. TT Vol [REDACTED], at 54-66. The Circuit Court enforced the [REDACTED] Agreement and ordered Appellant to pay Appellee [REDACTED] TT Vol [REDACTED], at 55-58 (note on page 57, the Circuit Court wished it could have granted Appellee [REDACTED] see also Judgment at 2-3. The Circuit Court also ordered Appellant: (1) to pay [REDACTED] [REDACTED] which represented half of the equity in the Marital Home; (2) to [REDACTED] \$ [REDACTED] represented the value of half of [REDACTED] [REDACTED] account; (3) to pay [REDACTED] toward Appellee's credit card debt; and (4) to return certain personal items to Appellee. TT Vol [REDACTED], at 58-59; see also Judgment at 2-3.

Next, the Circuit Court issued its ruling on the matter of spousal support. TT Vol [REDACTED], at 59-67. The Circuit Court's initial rationale was contrary to certain facts presented at trial. *Id.*, at 60 (' [REDACTED]

[REDACTED] Of course, as noted above, Appellant clearly testified that he encouraged Appellee to do whatever she wanted with her life, set up meetings for her with Wayne State University deans, and even filled out her university application. TT Vol [REDACTED], at 34-36.

Then, the Circuit Court began to pontificate and all but diagnose, without any prompting, that physical abuse of Appellee was a factor in her [REDACTED] *Id.*, at 61-62, The Circuit Court's discussion regarding Appellee's [REDACTED] was not supported by evidence presented at trial, particularly where neither party brought forth evidence related to the cause of Appellee's [REDACTED]. Indeed, no expert on the subject was called to the stand to testify about [REDACTED] in general or Appellee's [REDACTED] specifically. See generally TT Vol [REDACTED] and TT Vol [REDACTED]. Further, where the Circuit Court attempted to connect physical abuse with Appellee's [REDACTED] because [REDACTED] upon any testimony or evidence presented at the trial. TT Vol [REDACTED], at 62; see also generally TT Vol [REDACTED], at 45-49; TT Vol [REDACTED], at 24-25; TT Vol [REDACTED], at 18-20 (none of the mentions of abuse discuss the temporal relationship between the abuse and Appellee's complaints of [REDACTED] which, as discussed above, began very early in the marriage).

Next, the Circuit Court discussed 14 factors that it is supposed to consider when deciding whether to award spousal support. TT Vol [REDACTED], at 62 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

However, the Circuit Court placed inordinate weight on abuse in this matter and ignored, or only provided a cursory mention of, the vast majority of the 14 factors. *Id.*, at 63-67. The Circuit Court's analysis completely ignored: (1) contribution to the joint estate; (2) how





the time of the drafting of this Brief the Circuit Court had not yet issued a written judgment. Now, Appellant brings the instant Brief and respectfully requests, for the reasons set forth below, that this honorable Court review and reverse the Circuit Court's decision related to spousal support or grant any other relief that this Court deems appropriate.

### **STANDARD OF REVIEW**

In Michigan, there is a “longstanding rule that the division of marital property or an award of alimony is a matter within the trial court's discretion.” *McLain v McLain*, 108 Mich App 166, 168-69; 310 NW2d 316 (1981); citing *Wilcox v Wilcox*, 100 Mich App 75, 87; 298 NW2d 667 (1980), *vacated on other grounds* 411 Mich 856 (1981), and cases cited therein. “An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes.” *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). “The object in awarding spousal support is to balance the incomes and needs of the parties so that neither will be impoverished; spousal support is to be based on what is just and reasonable under the circumstances of the case.” *Berger v Berger*, 277 Mich App 700, 726; 747 NW2d 336 (2008). The Michigan Court of Appeals reviews for clear error the trial court's factual findings regarding spousal support. *Id.* at 727. A finding is clearly erroneous if, after reviewing the entire record, the Court is left with the definite and firm conviction that a mistake was made. *Woodington*, 288 Mich App at 355.

### **ARGUMENT**

#### **I. THE CIRCUIT COURT'S ORDER THAT PLAINTIFF-APPELLANT PAY SPOUSAL SUPPORT TO DEFENDANT-APPELLEE WAS INEQUITABLE AND CLEARLY ERRONEOUS.**



In light of all the facts set forth at the trial in this matter, the Circuit Court’s order that Appellant pay spousal support to Appellee was inequitable and clearly erroneous, and requires reversal, particularly where the Circuit Court’s decision regarding spousal support was based on analysis: (1) contrary to certain facts presented at trial; (2) not supported by evidence presented at trial; (3) which placed inordinate weight on evidence of abuse presented in this matter; and (4) regarding issues outside of the normal factors considered by circuit courts. MCL 552.23(1) ([u]pon entry of a judgment of divorce or separate maintenance, ... the court may also award ... spousal support ... after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case); see also *Olson*, 256 Mich App at 631, *supra* (factors to be considered are: (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity.); *Woodington*, 288 Mich App at 355 (a finding is clearly erroneous if, after reviewing the entire record, the Court of Appeals is left with the definite and firm conviction that a mistake was made).

The object of a spousal support award is to “balance the incomes and needs of the parties in a way that will not impoverish either party, on the basis of what is just and reasonable under the circumstances of the case.” *Myland v Myland*, 290 Mich App 691, 695; 804 NW2d 124 (2010) (quotation marks and citation omitted). The trial court is not required to make findings



regarding every factor, but “should make specific factual findings regarding the factors that are relevant to the particular case.” *Korth v Korth*, 256 Mich App 286, 289; 662 NW2d 111 (2003). In determining whether to award spousal support the trial court should consider principles similar to those considered in property distribution. *Hanaway v Hanaway*, 208 Mich. App. 278, 295; 527 N.W.2d 792 (1995); see also *Bone v Bone*, 148 Mich App 834, 837; 385 NW2d 706 (1986) (in short-term, childless marriages, with few economic consequences, premarital property is often returned to the parties and only the assets that are accumulated during the marriage are divided between the parties).

A review of this matter under the *Olson* factors supports a finding of no spousal support, or at least a finding of less spousal support than was awarded by the Circuit Court. See Spousal Order, at 1 (the Circuit Court ordered Appellant to pay \$1,604 per month to Appellee for four years). For example, based on evidence presented at the trial in this matter: (1) the length of marriage was brief (the couple separated after only 14 months of marriage); TT Vol ■, at 54; (2) Appellee’s needs are few (Appellee never requested temporary support during the divorce and works a salaried job in which she testified her income supported all of her expenses); TT Vol ■, at 64-65; (3) both Appellant and Appellee are young (Appellant was born on ■■■■■■■■■■, and Appellee ■■■■■■■■■■); TT Vol ■, at 5; TT Vol ■, at 62; (4) the representation of Appellant’s ability to pay spousal support was inaccurate (Appellant is making substantially less money (approximately 30% less) than the overstated ■■■■■ Calculations presented by Appellee at trial);<sup>3</sup> see also TT Vol ■, at 46-55; TT Vol ■, at 5-8; (5) Appellee was granted greater support than her present situation requires (Appellee testified that ■■■■■■■■■■ ■■■■■■■■■■ yet the Circuit Court still included

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<sup>3</sup> ■■■■■■■■■■ recommended a ■■■■■/month award for a maximum of 3 years. Yet the Court proceeded to award ■■■■■■■■■■.







The Circuit Court’s analysis was not supported by evidence presented at trial, particularly where it linked Appellee’s ██████████ to physical abuse. Shockingly, the Circuit Court all but diagnosed, without any prompting, that physical abuse of Appellee was a factor in her ██████████ *Id.*, at 61-62, There was no evidence at trial to support the Circuit Court’s discussion regarding Appellee’s ██████████ particularly where neither party brought forth evidence related to the cause or duration of Appellee’s ██████████ See generally TT Vol █; TT Vol █. Indeed, no expert on the subject was called to the stand to testify about ██████████ in general or Appellee’s ██████████ specifically. *Id.* Further, where the Circuit Court attempted to connect physical abuse with Appellee’s ██████████ because “██████████,” this connection is not based upon any testimony or evidence presented at the trial. TT Vol █, at 62; see also generally TT Vol █, at 45-49; TT Vol █, at 24-25; TT Vol █, at 18-20 (none of the mentions of abuse discuss the temporal relationship between the abuse and Appellee’s ██████████ which, as discussed above, began very early in the marriage). The Circuit Court’s psychological analysis was outside of its expertise and an award of spousal support on its basis was clearly erroneous, and is evidence of undue or disproportionate emphasis being placed on the evidence of abuse in this matter. *Myland*, 290 Mich App at 695 (the Circuit Court’s analysis does not “balance the incomes and needs of the parties in a way that will not impoverish either party, on the basis of what is just and reasonable under the circumstances of the case.”).

The Circuit Court’s analysis erroneously placed an inordinate weight on evidence of abuse and ignored, or only provided a cursory mention of, the vast majority of the 14 factors, even where a factor was relevant. As noted in the Statement Of Facts, *supra*, the Circuit Court’s analysis of the factors circuit courts consider when making a spousal support determination completely ignored, or only made a cursory mention regarding, many of the 14 factors stated by

the Circuit Court. See Statement Of Facts, *supra*; see also TT Vol ■, at 63-67. The Circuit Court's analysis justifiably ignored: (1) how cohabitation affects a party's financial status; but should have provided some analysis regarding: (2) contribution to the joint estate; (3) general principals of equity; and should have provided more than a mere cursory mention of: (4) the length of the marriage in this matter; (5) the ability of the parties to work; (6) the parties ages; and (7) the prior standard of living of the parties and whether either party is responsible for the support of others. *Korth*, 256 Mich App at 289 (the trial court is not required to make findings regarding every factor, but "should make specific factual findings regarding the factors that are relevant to the particular case."). And, (3)-(7), above, weigh heavily in favor of no or little spousal support, as noted below and throughout this Brief. The Circuit Court briefly mentioned: (8) the health of the parties, but appeared to ignore that Appellee, who testified that she had ■ testified that her condition does not prevent her from working and causes no restrictions whatsoever. TT Vol ■, at 63-64. The Circuit Court did not appear to worry much for: (9) the source and amount of the property award, making only a passing mention of it during the Circuit Court's ruling. TT Vol ■, at 64. Regarding (10) the ability to pay support, the Circuit Court accused Appellant of taking a new job after Appellee left him so that he could ■ but, provided no evidence from trial for this opinion, and ignored that Appellant's lifestyle completely changed when he was sentenced to jail and is only free to work on weekdays via work release. *Id.*, at 66. A trial court may impute additional income to arrive at an award of spousal support, but the Circuit Court here imputed a level of intent not supported by any evidence. *Moore v Moore*, 242 Mich App 652, 655; 619 NW2d 723 (2000), citing *Healy v Healy*, 175 Mich App 187, 191; 437 NW2d 355 (1989) ("The voluntary reduction of income

may be considered in determining the proper amount of alimony. If . . . a party has voluntarily reduced the party's income, the court may impute additional income in order to arrive at an appropriate alimony award.”). The Circuit Court even admitted that (11) the present situation of the parties and (12) the needs of the parties, belie an outcome of no support, but gave this very little weight. *Id.*, at 67. Instead, the Circuit Court found that (13) past relations and conduct of Appellant, and (14) Appellant’s fault outweighed all other factors and awarded spousal support to Appellee for the duration of her medical school education. *Id.*, at 67 (“notwithstanding the fact that each parties (sic) present situation and needs might mitigate a different direction. At the end of the day, there is fault in causing divorce has a significant consequence.”). Indeed, the bulk of the Circuit Court’s analysis focused on Appellant’s conduct and intentionally ignores that most of the 14 factors stated by the Circuit Court favor a ruling of no support, or support for a much shorter duration. *Id.*, at 61-67. The Circuit Court’s decision to place inordinate weight on abuse in this matter was clearly erroneous and does not support an award of spousal support in this matter. See *Hosted v Hosted*, \_\_\_NW2d\_\_\_; 2011 Mich App LEXIS 2277, at \*10-12 (Ct App, Dec. 20, 2011) (where this Court vacated the spousal support award and remanded the matter back to the trial court, because the “trial court failed to make specific findings of fact for the relevant factors regarding spousal support either in its opinion or during the hearing on defendant's motion.”); but see *Woude-Leerentveld v Leerentveld*, \_\_\_NW2d\_\_\_; 2005 Mich App LEXIS 889, at \*7-8 (Ct App, Apr. 5, 2005) (in a case that involved physical abuse and infidelity, this Court upheld the division of property where, unlike the Circuit Court here, the trial court “also discussed other relevant factors” in addition to the issue of fault. “Rather than making fault a focal issue the trial court simply discussed it as one of the factors contributing to the ultimate distribution of assets and liabilities between the parties.”).

Finally, the Circuit Court’s analysis regarding a factor outside of the *Olson* factors was erroneous, particularly where the Circuit Court stated that one factor it based its decision regarding spousal support on was the [REDACTED]’ plan.” TT Vol [REDACTED], at 63, 65 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]). It is entirely unclear why the Circuit Court considered the [REDACTED] plan” and why it gave this factor so much weight.<sup>6</sup> To start, that the Circuit Court considers the plan for Appellee to attend medical school as the [REDACTED]” directly contradicts the plan that the Circuit Court inadvertently ascribed to Appellant (the already refuted plan for Appellee to be a stay-at-home wife), it also goes way beyond what the couple had actually planned, should their plan even be considered. Appellant absolutely encouraged Appellee to go to school, even setting up meetings with [REDACTED] [REDACTED] deans for Appellee, and filling out her application. TT Vol [REDACTED], at 34, 36. But, Appellant did not plan for Appellee to go to school on the other side of the state, where her rent expenses make up over two-thirds of the spousal support awarded by the Circuit Court. TT Vol [REDACTED], at 64 (Appellee testified that [REDACTED]);<sup>7</sup> see also Support Order, at 1 (the Circuit Court ordered Appellant to pay [REDACTED] to Appellee for [REDACTED] years). Indeed, in theory, under the Circuit Court’s analysis, Appellant would be responsible for Appellee’s expenses for [REDACTED] anywhere in the world.<sup>8</sup> Further, general principals of equity disfavor ordering Appellant to cover Appellee’s living expenses while she attempts to obtain a degree that

<sup>6</sup> Maybe this was the Circuit Court weighing general principals of equity, but that is mere conjecture, because the Circuit Court did not explain under which factor the “[REDACTED] plan” lies. TT Vol III, 63, 65.

<sup>7</sup> If Appellee were enrolled at [REDACTED] State, which has a medical school, she could save rent money by living with her parents.

<sup>8</sup> Appellant is lucky Appellee did not choose to attend [REDACTED]  
[REDACTED] Most Expensive Cities in the U.S., dated August 5, 2020, <https://bungalow.com/articles/10-most-expensive-cities-in-the-u-s>.



she did not begin until [REDACTED] months after separating from Appellant; TT Vol [REDACTED], at 75-76. For these reasons, the Circuit Court’s analysis, based on the [REDACTED] plan” was clearly erroneous, and does not support an order to pay spousal support in this matter. *Myland*, 290 Mich App at 695 (in a spousal support determination, the trial court should [REDACTED]

[REDACTED]

*Woodington*, 288 Mich App at 355 (a finding is clearly erroneous if, after reviewing the entire record, the Court is left with the definite and firm conviction that a mistake was made).

For the reasons set forth above, Plaintiff respectfully requests that this honorable Court review and reverse the Circuit Court’s decision related to spousal support or grant any other relief that this Court deems appropriate.

**CONCLUSION**

WHEREFORE, Plaintiff respectfully requests that this honorable Court grant Plaintiff-Appellant’s Brief on Appeal.

Respectfully Submitted,

\_\_\_\_\_  
 [REDACTED]  
 Attorney for Plaintiff  
 [REDACTED], MI [REDACTED]

Dated: [REDACTED]