**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**December 12, 2017**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal No. 2015AP1466** **Cir. Ct. No. 1998FA689**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

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**IN RE THE MARRIAGE OF:**

**ROBIN LANETTE NORTH,**

**PETITIONER-RESPONDENT,**

**V.**

**SPENCER TODD FARRIS,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County: MAXINE A. WHITE, Judge. *Affirmed in part, reversed in part, and cause remanded with directions*.

Before Brennan, P.J., Kessler and Brash, JJ.

¶1 PER CURIAM. This matter returns to this court for review after being remanded for an evidentiary hearing and additional fact finding. Spencer Todd Farris had appealed a circuit court order that he pay his former wife, Robin Lanette North, $24,681.03 for expenses relating to the college education of their daughter, Natalie, pursuant to a marital settlement agreement (MSA) entered into by Farris and North at the time of their divorce.

¶2 In an order by this court filed June 27, 2016 (2016 Order), we found that the specific provision of the MSA relating to college expenses was ambiguous, and that the record was "insufficient to permit this court to resolve the parties' dispute." We therefore remanded the matter "to permit the circuit court to take testimony, receive evidence, and make findings about the parties' intent" with regard to the obligations for college expenses incurred by Farris under the MSA. We retained jurisdiction of the appeal.

¶3 On remand, the circuit court[1] conducted an evidentiary hearing and made extensive and thorough findings of fact and conclusions of law, and calculated the amount it believes that Farris still owes North for Natalie's college expenses. Upon review, we affirm those findings and conclusions, but adjust the calculations made by the remand court, as discussed below.

[1] The initial order was entered by the Honorable Maxine A. White; on remand, the evidentiary hearing was before the Honorable Kevin E. Martens, who then subsequently issued the findings of fact and conclusions of law as directed in our 2016 Order.

## BACKGROUND

¶4 Farris and North were married in December 1984, and divorced in August 1998. During their marriage they had two daughters, Melanie (born in 1987) and Natalie (born in 1991).

¶5 The MSA entered into by Farris and North at the time of their divorce contained a provision relating to the payment of college expenses for their daughters:

> 10. College Education. [Farris] shall pay the cost of tuition and books for the college education of the parties[']minor children for a period of time not exceed five (5) years based upon the tuition then being charged to attend the University of Wisconsin[-]Madison. The parties shall share in their children's expenses for room and board as their circumstances allow.

The MSA was drafted by Farris, an attorney. Neither Farris nor North was represented by counsel at the time they entered into the MSA.

¶6 This matter involves only Natalie's college expenses; there is no dispute relating to the payment of Melanie's college expenses. In the fall of 2009, Natalie began attending the University of Wisconsin-Madison, graduating in May 2014. Within this time frame, Natalie completed her education in ten fall/spring semesters, together with three summer sessions. During this tenure she switched majors, changing from a business major to a double major in philosophy and history. She also obtained five "certificates," similar to completing a minor. Additionally, Natalie has Tourette syndrome, which "could affect her academic performance in circumstances of increased stress and anxiety."

¶7 In his appeal, Farris argues that he had agreed, under the MSA, to pay for five "school years" of college for his daughters, or in other words, ten full-

time semesters. However, because Natalie also attended three summer sessions in addition to ten fall/spring semesters, Farris asserts that North is attempting to be reimbursed for five "calendar years" of expenses.

¶8 Farris previously presented this argument before a family court commissioner in response to a motion for contempt filed by North in September 2014. In an order dated January 7, 2015, the court commissioner agreed with Farris, finding that since he had already paid for eight fall/spring semesters along with the three summer sessions that Natalie had attended, Farris had fulfilled his obligations under the MSA that required him to pay for five years of expenses.

¶9 North then moved for *de novo* review of the court commissioner's order. After hearing limited testimony, and without making any findings of fact, the circuit court reversed the court commissioner, concluding that Farris was obligated to pay for Natalie's college expenses for five calendar years as opposed to five school years. Farris appealed, and we remanded the matter in our 2016 Order for an evidentiary hearing.

¶10 In our order, we directed the remand court to make findings of fact and conclusions of law based on the testimony and evidence received at the evidentiary hearing. Those findings and conclusions were to include: (1) the parties' intent with regard to the MSA provision relating to college expenses, including the time frame of Farris's obligation for payment of tuition and books, as well as the scope of the parties' responsibilities with regard to room and board expenses; (2) the specific semesters that Natalie attended college and, of those, the number of semesters for which Farris was obligated to pay for her tuition and books under the MSA; (3) the expenses that Natalie actually incurred for tuition, books, and room and board from January 2012 through her graduation in May

2014; (4) the reasonableness of the claimed expenses for Natalie's room and board during that time frame; and (5) an allocation of responsibility for each of the parties for Natalie's room and board expenses pursuant to the MSA for that time frame.

¶11 We also directed the remand court to review and consider the family court commissioner's decision of January 7, 2015. The circuit court had stated that it would not consider the proceedings before the court commissioner because it believed that would be an error of law. In our order, we disagreed with the circuit court's interpretation of the relevant statute, WIS. STAT. § 757.69(8) (2015-16).[2] That statute affords any party, upon motion, to have the court commissioner's decision reviewed by a judge in the appropriate branch of the circuit court. ***Id.*** We stated that the circuit court's construction of that statute as forbidding review of the court commissioner's decision was erroneous, and thus ordered the remand court to review and consider the decision.

¶12 The remand court reviewed and considered the family court commissioner's decision in accordance with our 2016 Order. However, it found that decision unpersuasive, noting that there had been no evidentiary hearing in front of the court commissioner, and thus the commissioner had not had the benefit of hearing testimony and receiving evidence in making its determination.

[2] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

**Evidentiary Hearing on Remand**

¶13 After the evidentiary hearing, the remand court determined that the parties' intent at the time the MSA was signed was that Farris would pay for tuition and books for five *calendar* years. In coming to this conclusion, the remand court pointed to evidence that the parties wished to have their children graduate from college debt-free, and found that North had testified credibly that she intended the MSA provision to cover five calendar years because that allowed for "delays in access to required classes and non-traditional degree paths." Furthermore, the remand court pointed out that at the time of the hearing, Farris had tendered payment for eight fall/spring semesters and three summer sessions, for a total of eleven academic periods, and that he had not objected at the time he made those payments that his obligation was for only ten academic semesters. The court further noted that summer sessions involve fewer courses and lower tuition.

¶14 The remand court also received evidence regarding the total amount of college expenses incurred by Natalie, and the portion of those expenses that had already been paid by Farris. First, with regard to the costs for tuition and books, which Farris is obligated to pay in full pursuant to the MSA, the circuit court found that Farris had reimbursed North for the following:

- Full cost of tuition and books for the 2009-10 school year (two academic semesters);
- Full cost of tuition and books for the 2010 summer session;
- Full cost of tuition and books for the 2010-11 school year (two academic semesters);
- Full cost of tuition and books for the 2011 summer session;
- Full cost of tuition and books for the 2011-12 school year (two academic semesters) less $150;
- Full cost of tuition and books for the 2012-13 school year (two academic semesters); and

- Full cost of tuition and books for the 2013 summer session.

Natalie did not attend classes during the 2012 summer session due to medical withdrawal.

¶15 Based on these findings, the remand court determined that Farris is required to reimburse North for the full cost of tuition and books for the 2013-14 school year, plus the $150 shortfall for the 2011-12 school year.

¶16 With regard to Natalie's room and board expenses, the remand court noted the parties' practice of North making the payments for room and board, and then seeking reimbursement from Farris for one-half of those expenses. The remand court also noted an earlier decision by a family court commissioner, dated December 18, 2009, which ordered Farris to pay one-half of the room and board costs incurred by the children, pursuant to the MSA.

¶17 The evidence received by the remand court regarding Natalie's room and board expenses reflected that Farris had reimbursed North for the following room and board expenses:

- One-half of room and board costs for the 2009-10 school year (two academic semesters);
- One-half of room and board costs for the 2010 summer session;
- One-half of room and board costs for the 2010-11 school year (two academic semesters);
- One-half of room and board costs for the 2011 summer session; and
- One-half of room and board costs for the 2011-12 school year (two academic semesters).

¶18 Natalie lived on campus for her first year of school, with the amount allocated for room and board determined by the university. After that, Natalie moved into an apartment and was provided a food allowance by North. The remand court reviewed the amounts that Farris had already reimbursed to North

for room and board to calculate reasonable amounts for rent and a food allowance, and then calculated the amount that Farris was to reimburse North to cover those expenses for the 2012-13 school year, the 2013 summer session, and the 2013-14 school year. The remand court also applied a credit to Farris for room and board expenses that he had paid for the 2012-13 school year based on "Cost of Attendance" information procured from the UW-Madison website. However, the remand court found that Farris was not obligated to pay for room and board for the summer of 2012 since Natalie was not enrolled in classes during that summer.

¶19 To determine whether Farris's circumstances allowed for him to contribute to Natalie's room and board expense, as set forth in the MSA, the remand court considered Farris's financial status. This included consideration of his income, his current wife's income, the balance in his checking account, the fact that he was contributing to a 401(k), and that he took annual vacations and owned a twenty-eight foot sailboat. The remand court therefore concluded that Farris was financially able to provide for one-half of the room and board expenses.

¶20 In total, the remand court concluded that Farris is required to reimburse North:

- $10,553.36 for tuition for the 2013-14 school year;
- $837.67 for books for the 2013-14 school year; and
- $9130.00 for one-half of room and board expenses for Fall 2012 through Spring 2014.

Thus, the remand court calculated that Farris owes North a total of $20,521.03. We now resume our review of the matter.

## DISCUSSION

¶21 The parties both submitted Statements of Objections to the findings of fact and conclusions of law of the remand court. A circuit court's findings of fact "may not be disturbed unless they are 'clearly erroneous.'" ***State v. Benton***, 2001 WI App 81, ¶5, 243 Wis. 2d 54, 625 N.W.2d 923 (citation omitted). "'A factual finding is not clearly erroneous merely because a different fact-finder could draw different inferences from the record.'" ***Bray v. Gateway Ins. Co.***, 2010 WI App 22, ¶24, 323 Wis. 2d 421, 779 N.W.2d 695 (citation and brackets omitted). In other words, "we are bound to accept the [circuit] court's inferences unless they are incredible as a matter of law." ***State v. Wenk***, 2001 WI App 268, ¶8, 248 Wis. 2d 714, 637 N.W.2d 417. In contrast, our review of the circuit court's conclusions of law is *de novo*. *See* ***Badger State Agri-Credit & Realty, Inc. v. Lubahn***, 122 Wis. 2d 718, 723, 365 N.W.2d 616 (Ct. App. 1985).

¶22 Additionally, as we stated in our 2016 Order, a marital settlement agreement is a type of contract, and our review of the construction of a contract is a question of law that we review *de novo*. *See* ***Taylor v. Taylor***, 2002 WI App 253, ¶7, 258 Wis. 2d 290, 653 N.W.2d 524. "The primary goal in contract interpretation is to 'give effect to the parties' intent, as expressed in the contractual language.'" ***Maryland Arms Ltd. P'ship v. Connell***, 2010 WI 64, ¶22, 326 Wis. 2d 300, 786 N.W.2d 15 (citation omitted). If the contract terms "'are clear and unambiguous, we construe the contract according to its literal terms.'" ***Id.***, ¶23 (citation omitted). In contrast, contract language is ambiguous "if it is reasonably susceptible to more than one meaning." ***Taylor***, 258 Wis. 2d 290, ¶7.

¶23 In our 2016 Order, we found that the MSA provision relating to the payment of college expenses by the parties was ambiguous. When contract

language is deemed to be ambiguous, "'two further rules [of construction] are applicable: (1) evidence extrinsic to the contract itself may be used to determine the parties' intent and (2) ambiguous contracts are interpreted against the drafter.'" ***Maryland Arms***, 326 Wis. 2d 300, ¶23 (citation omitted).

## I. Farris's Objections

¶24 Farris's objections generally relate to the findings of fact made by the remand court with regard to its determination of the intent of the parties relative the five-year time frame set forth in the provision of the MSA for the payment of college expenses. As noted above, we found that provision to be ambiguous because the five year time frame was not defined in the MSA, and thus could refer to either five school years, five calendar years, or even five periods of 365 days each. We therefore directed the remand court to "take testimony, receive evidence, and make findings about the parties' intent with regard to Farris's obligation to pay the cost of college tuition and books 'for a period of time not to exceed five (5) years.'"

¶25 The remand court then properly used the extrinsic evidence gathered at the hearing to resolve the ambiguity in the MSA provision. For example, the remand court pointed to evidence that the parties wished to have their children graduate from college debt-free; it noted North's credible testimony that "she wanted to give both children five calendar years to finish college to accommodate circumstances like delays in access to required classes and non-traditional degree paths," as well as an email from Farris to Melanie telling her that she would "have a debt-free start for [her] grown-up life."

¶26 The remand court also considered that Farris had paid for all five years of Melanie's college expenses without objection. Furthermore, the remand

court recognized that at the time of the hearing, Farris had tendered payment for eight fall/spring semesters and three summer sessions, for a total of eleven academic periods, and that he had not objected at the time he made those payments that his obligation was for only ten academic semesters. Additionally, for purposes of making its credibility assessment, the remand court acknowledged evidence that Farris had withheld payments for Natalie's tuition, contrary to the MSA, as leverage for increased contact with Natalie. The court further noted in its conclusions that because the MSA provision had been deemed ambiguous, the MSA had to be construed against Farris, who had drafted the agreement. *See* ***Maryland Arms***, 326 Wis. 2d 300, ¶23.

¶27 The remand court considered all of this evidence in its conclusion that the parties' intent in the disputed MSA provision was for Farris to pay for the children's tuition and books for five *calendar* years of college. Indeed, all of this evidence supports this finding. Any conflicts in testimony, as argued by the parties in their Statements of Objections, were properly resolved by the remand court. *See* ***Dickman v. Vollmer***, 2007 WI App 141, ¶14, 303 Wis. 2d 241, 736 N.W.2d 202. In sum, the remand court's findings were certainly not incredible as a matter of law, and therefore not erroneous. *See* ***Wenk***, 248 Wis. 2d 714, ¶8.

## II. North's Objections

¶28 North's objections stem from the remand court's findings relating to Natalie's room and board expenses; she argues that the remand court's determination that each party was to pay one-half of those expenses was not based on the parties' circumstances, as required under the MSA. Instead, North suggests that Farris should be obligated to pay the entire amount of Natalie's room and board.

¶29 To advance her argument, North asserts several evidentiary errors on the part of the remand court, such as denying her motion to compel ten years of tax returns from Farris five days before the evidentiary hearing. She also objects to the remand court's allowing the admission of "Exhibit 7," a tabbed, indexed exhibit of documentation relevant to the issues in dispute that was submitted by Farris at the remand hearing.

¶30 "When reviewing a question on the admissibility of evidence, an appellate court must determine whether the court exercised its discretion in accordance with accepted legal standards and with the facts of record." ***State v. Brecht***, 143 Wis. 2d 297, 320, 421 N.W.2d 96 (1988). Whether to grant or deny a motion to compel is also within the discretion of the circuit court. ***Franzen v. Children's Hosp. of Wis., Inc.***, 169 Wis. 2d 366, 376, 485 N.W.2d 603 (Ct. App. 1992). This court will uphold a discretionary decision "'if the circuit court has examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.'" ***Hefty v. Strickhouser***, 2008 WI 96, ¶28, 312 Wis. 2d 530, 752 N.W.2d 820 (citation omitted).

¶31 In our review of the record, we find no erroneous exercise of discretion on the part of the remand court in its evidentiary rulings. In denying North's motion to compel, the court determined that there was no basis for extending the time for additional discovery, a decision well within its discretion. It also found the request to be overly broad. With regard to admitting Exhibit 7, counsel for North had attempted to admit only certain tabs, which seemed to lead to some confusion. Instead, the remand court admitted the entire exhibit, noting that some of the documents were already in the court file. The court further stated that the exhibit was subject to the redaction of information not germane to the

issues, if necessary. Again, this decision was a reasonable and rational demonstration of the court's discretion. *See* ***Hefty***, 312 Wis. 2d 530, ¶28.

¶32 North also seeks reimbursement for room and board during the summer 2012 session, when Natalie withdrew from summer classes for medical reasons. The remand court found that the MSA could "only be reasonably construed as obligating the parties to pay for room and board incurred during periods of college enrollment," and thus Farris is not required to reimburse North for room and board expenses for that summer. We agree with this interpretation.

¶33 In fact, the remand court formed well-reasoned findings and conclusions regarding all of the room and board expenses. It considered the parties' past practice of North paying the room and board expenses up front and then subsequently seeking reimbursement from Farris for one-half of those expenses. The remand court also looked to an order of a family court commissioner dated December 18, 2009, which directed Farris to pay one-half of those expenses.[3] Again, we find that the remand court's findings were based on relevant evidence and not incredible as a matter of law; therefore they were not erroneous. *See* ***Wenk***, 248 Wis. 2d 714, ¶8.

[3] On this point, North argues that a subsequent order of the same family court commissioner entered on March 9, 2010, ordered that Farris pay all of the room and board expenses. We disagree with this interpretation. That order was issued in response to a hearing requested by North to clarify the December 18, 2009 order. Farris failed to appear at the March 9 hearing due to his misunderstanding of the proceedings. Farris asserts that the March 9 order concerned the manner of payment of Farris's contribution of the room and board expenses, not his share of the expenses. We agree with that interpretation of the order.

## III. Conclusions of Law

¶34 With regard to the remand court's conclusions of law, we uphold its determination that the parties' intent in the provision of the MSA regarding the time frame for payment of college expenses was five *calendar* years, for the reasons discussed above. We also affirm the amounts for tuition and books that the remand court ordered Farris to reimburse North.

¶35 However, we disagree with the remand court's calculations for room and board, as it appears that the remand court included reimbursement beyond Natalie's graduation. Specifically, in reviewing the amounts for room and board for the 2013-14 school year, the remand court included reimbursement for room and board through August 2014, even though Natalie graduated in May 2014. Moreover, the remand court stated in its findings and conclusions that the time frame for reimbursement was to be through "Natalie's graduation" and "spring 2014."

¶36 Therefore, we adjust the amount that Farris is to reimburse North for room and board for the 2013-14 school from $4925 to $4432.50.[4] With that adjustment, the total owed by Farris for Natalie's room and board expenses for the disputed time frame from fall 2012 through her graduation in May 2014 is

[4] This amount was calculated as follows:

- Rent for August 2013-May 2014: $635/mo x 9 mos ÷ 2 = $2857.50
- Food Allowance for August 2013-May 2014: $350/mo x 9 mos ÷ 2 = $1575.00

Thus, the total Room and Board expenses owed by Farris for the 2013-14 school year is $4432.50.

$8637.50.[5] Accordingly, the total amount owed by Farris to North for reimbursement of Natalie's college expenses, including tuition and books, is $20,028.53.

¶37 In sum, we partially reverse the order the of the trial court. This matter is remanded with directions to prepare an order which affirms the remand court's findings of fact and conclusions of law with the exception of the calculations for room in board, which are to be adjusted as set forth above. No costs to either party.

*By the Court.*—Order affirmed in part, reversed in part, and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[5] This includes a credit of $3895 for room and board expenses paid by Farris to North in September 2014, which was based on information regarding the cost of attendance as posted on the University of Wisconsin-Madison website.