

IN THE SUPREME COURT OF IOWA

IN RE THE MARRIAGE OF ANDREA KAY MANN AND STEVEN ROBERT MANN

Upon the Petition of

ANDREA KAY MANN,
Petitioner-Appellee,

And Concerning

STEVEN ROBERT MANN
Respondent-Appellant.

SUPREME COURT NO. 18-1910

Dickinson County No.
CDCD003148

APPEAL FROM THE IOWA DISTRICT COURT FOR DICKINSON COUNTY
THE HONORABLE CARL J. PETERSEN

APPELLANT'S BRIEF AND ARGUMENT

MATTHEW G. SEASE

KEMP & SEASE

The Rumely Building

104 SW 4th Street, Suite A

Des Moines, Iowa 50309

Phone: (515) 883-2222

Fax: (515) 883-2233

msease@kempsease.com

ATTORNEYS APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
STATEMENT OF THE ISSUES	4
ROUTING STATEMENT	5
STATEMENT OF THE CASE	5
Nature of the Case.....	5
Course of the Proceedings	5
Statement of the Facts.....	6
ARGUMENT	9
I. THE DISTRICT COURT ERRED IN DENYING STEVEN’S REQUEST FOR ALIMONY	9
Preservation of Error:	9
Standard of Review:	9
Discussion:	9
II. THE DISTRICT COURT ERRED IN MAKING AN INEQUITABLE PROPERTY DISTRUBTION	16
Preservation of Error:	16
Standard of Review:	17
Discussion:	17
CONCLUSION	20
ATTORNEY’S COST CERTIFICATE	22
CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS	23
CERTIFICATE OF SERVICE AND CERTIFICATE OF FILING	24

TABLE OF AUTHORITIES

Cases

<i>Fenchel v. Fenchel</i> , 268 N.W.2d 207 (Iowa 1978)	12
<i>In re Marriage of Gust</i> , 858 N.W.2d 402 (Iowa 2015)	9
<i>In re Marriage of Gust</i> , 858 N.W.2d 402 (Iowa 2015)	9, 10, 16, 17
<i>In re Marriage of Hansen</i> , 733 N.W.2d 683 (Iowa 2007)	14
<i>In re Marriage of Hettinga</i> , 574 N.W.2d 920 (Iowa App. 1997).....	10
<i>In re Marriage of Hoffman</i> , 493 N.W.2d 84 (Iowa App. 1992).....	17
<i>In re Marriage of Russell</i> , 473 N.W.2d 244 (Iowa App. 1991)	17
<i>In re Marriage of Schenkelberg</i> , 824 N.W.2d 481 (Iowa 2012)	11
<i>In re Marriage of Worthington</i> , 504 N.W.2d 147 (Iowa App. 1993)	4
<i>Meier v. Senecaut</i> , 641 N.W.2d 532 (Iowa 2002)	9, 17
<i>Metz v. Amoco Oil Co.</i> , 581 N.W.2d 597 (Iowa 1998)	9, 17

Statutes

Iowa Code § 598.21A(1)	10, 11, 15
------------------------------	------------

Rules

Iowa R. App. P. 6.1101.....	5
Iowa R. App. P. 6.907.....	9

STATEMENT OF THE ISSUES

I. DID THE DISTRICT COURT ERR IN DENYING STEVEN'S REQUEST FOR ALIMONY?

Cases

Fenchel v. Fenchel, 268 N.W.2d 207 (Iowa 1978)

In re Marriage of Gust, 858 N.W.2d 402 (Iowa 2015)

In re Marriage of Gust, 858 N.W.2d 402 (Iowa 2015)

In re Marriage of Hansen, 733 N.W.2d 683 (Iowa 2007)

In re Marriage of Hettinga, 574 N.W.2d 920 (Iowa App. 1997)

In re Marriage of Schenkelberg, 824 N.W.2d 481 (Iowa 2012)

In re Marriage of Worthington, 504 N.W.2d 147 (Iowa App. 1993)

Meier v. Senecaut, 641 N.W.2d 532 (Iowa 2002)

Metz v. Amoco Oil Co., 581 N.W.2d 597 (Iowa 1998)

Statutes

Iowa Code § 598.21A(1)

II. DID THE DISTRICT COURT ERR IN ITS PROPERTY DISTRIBUTION DETERMINATIONS?

Cases

In re Marriage of Hoffman, 493 N.W.2d 84 (Iowa App. 1992)

In re Marriage of Russell, 473 N.W.2d 244 (Iowa App. 1991)

Meier v. Senecaut, 641 N.W.2d 532 (Iowa 2002)

Metz v. Amoco Oil Co., 581 N.W.2d 597 (Iowa 1998)

ROUTING STATEMENT

Transfer to the Court of Appeals would be appropriate as this case presents issues that require the application of existing legal principles. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

This is an appeal from a Decree of Dissolution of Marriage entered October 5, 2018, in the District Court for Dickinson County, Iowa, the Honorable Judge Carl J. Petersen presiding. The district court order dissolved the marriage of Andrea K. Mann (“Andrea”) and Steven R. Mann (“Steven”). The district court awarded Andrea primary physical care of the parties’ children. The district court also ordered a property distribution but declined to award Steven any alimony.

Course of the Proceedings

Andrea filed a Petition for Dissolution of Marriage on December 4, 2017. (APP - 4, Petition). At the same time, Andrea sought and obtained an *ex parte* injunction, prohibiting Steven from “coming upon or entering the home of [Andrea] and the children” and prohibited Steven from having any contact with Andrea or the children. (APP - 8, Writ of Temporary Injunction). Steven filed an Answer on December 8, 2017. (APP - 10, Answer). On December 14, 2017, the parties filed a stipulation of temporary matters in which the parties agreed to visitation, child

support and modifying the injunction. (APP - 13, Temp. Stip.). The matter proceeded to trial on August 8, 2018. (APP - 16, Order Setting Hearing). The district court entered a decree on October 5, 2018, dissolving the parties' marriage. (APP - 123, Decree). Steven filed a timely notice of appeal on November 1, 2018. (APP - 161, Notice of Appeal).

Statement of the Facts

Steven and Andrea were married in 2002. (Tr. P. 7). At the time of the trial, Steven was forty-nine (49) years old and Andrea was forty-one (41) years old. (Tr. P. 94). Steve and Andrea have two boys aged seven (7) and three (3). (Tr. P. 14). Steven also has an older adult son that was the result of a one (1) year marriage prior to meeting Andrea. (Tr. P. 154). At the time of the trial, the parties resided in Spirit Lake, Iowa. (Tr. P. 4).

Steven started a lawn mowing business when he was twelve (12) years old in 1981. (Tr. P. 175). Steven turned this lawn mowing business into his career and has made that his primary occupation his entire adult life. (Tr. P. 174-175). During the winter months he also provides a snow removal service. (Tr. P. 13). Throughout the course of their marriage, Steven handled the day to operations of his lawn mowing/snow removal business, while Andrea would do all of the billing to the customers. (Tr. P. 32). As the owner of his own business, Steven has great flexibility and as a result of that he provided much of the primary care to the children.

(Tr. P. 157; Tr. P. 159-160; Tr. P. 168). This would include getting the boys ready in the morning, daycare drop-offs and pickups, preparing meals and getting the boys to bed. (Tr. P. 157; Tr. P. 159-160).

The parties would argue on a regular basis and it would primarily be regarding Stevens inability to earn money and send out bills to customers. (Tr. P. 111; Tr. P. 164). At times, the arguments would get heated and Andrea would call Steven names. (Tr. P. 163). The parties would also get physical with each other. This would include Andrea slapping Steven and kneeling him in the groin and Steven placing his hands around Andrea's neck. (Tr. P. 163; Tr. P. 178-179; Tr. P. 16). At no time did either party ever call the police and no party has any criminal record. (Tr. P. 43; Tr. P. 175; Tr. P. 89). The last incidence of this type of behavior culminated in Andrea filing this petition for dissolution and obtaining an *ex parte* injunction against Steven. (Tr. P. 16). As a result of the injunction, Steven went twenty-one (21) days without seeing his children. (Tr. P. 162).

Starting in 2004, Andrea obtained employment with Polaris Industries in Spirit Lake, Iowa as a payroll clerk. (Tr. P. 8). Over the last fourteen (14) years, Andrea has worked her way up in the organization and was currently the materials manager of the entire factory. (Tr. P. 8-9). As the materials manager, Andrea is expected to work at least forty-five (45) hours a week and travels an average of one

workday a month. (Tr. P. 27-28). She would also have to work extremely late, many times past 10:00 p.m. (Tr. P. 104-105; Tr. P. 159).

As Andrea continued to rise the corporate ranks at Polaris Industries, her salary naturally increased significantly. During the first years of their marriage and prior to starting at Polaris Industries, Andrea was making just over \$20,000 a year. (Tr. P. 96). In her current role as materials manager, Andrea is making approximately \$118,000 per year plus full benefits and stock options. (Tr. P. 40; Tr. P. 73; Tr. P. 98; APP - 116, Exhibit 101). Much of Andrea's success is attributed to Steven's willingness to stay home with their boys so that she could continue to work the long hours required of her job. (Tr. P. 189).

On the other hand, Steven has not enjoyed the same economic growth as Andrea. At the start of their marriage, Steven was out-earning Andrea. (Tr. P. 176). However, within a couple of years of Andrea working at Polaris, her income began to exceed Stevens. (Tr. P. 176). At the time of the trial, Steven admitted that in two of the last three years, he has reported a loss in income on the family's taxes. (Tr. P. 184; APP – 27 – 80, Exhibits 1 – 3). Additionally, at the time of the trial, Steven was struggling with sending invoices/billings to clients because of his unfamiliarity with the billing program that Andrea had previously handled for the past sixteen (16) years. (Tr. P. 209-210). This resulted in a large accounts receivable for Steven's

business at the time of the trial. (APP - 117, Exhibit 103; Tr. P. 158). Despite this large difference in income, the district court declined to award Steven any alimony.

Many additional relevant facts are discussed within the Argument section, *infra*.

ARGUMENT

I. THE DISTRICT COURT ERRED IN DENYING STEVEN'S REQUEST FOR ALIMONY.

Preservation of Error:

The issue of alimony was raised and decided before the district court, thus error was preserved. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). (“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”) (citing *Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 600 (Iowa 1998)).

Standard of Review:

Iowa R. of App. P. 6.907 provides: “Review in equity cases shall be de novo.” Iowa R. App. P. 6.907 (2017). The appellate court is to “give weight to the factual determinations made by the district court; however, their findings are not binding upon [this Court].” *In re Marriage of Gust*, 858 N.W.2d 402, 406 (Iowa 2015).

Discussion:

Generally speaking, three types of spousal support are available: traditional, rehabilitative, and reimbursement. *Id.* at 408. In this case, Steven has requested

spousal support. “The purpose of a traditional or permanent alimony award is to provide the receiving spouse with support comparable to what he or she would receive if the marriage continued.” *Id.* (quoting *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa App. 1997)). “Traditional support is ordinarily of unlimited or indefinite duration.” *Id.*

In determining an award of spousal support, prior caselaw bears little weight and instead, each determination must be based upon its own independent facts. *Id.* However, Iowa Code § 598.21A(1) provides the general guidance for the Court to determine an award of alimony. *Id.* The factors to be considered are as follows:

- a. The length of the marriage.
- b. The age and physical and emotional health of the parties.
- c. The distribution of property made pursuant to section 598.21.
- d. The educational level of each party at the time of marriage and at the time the action is commenced.
- e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.

- g. The tax consequences to each party.
- h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.
- i. The provisions of an antenuptial agreement.
- j. Other factors the court may determine to be relevant in an individual case.

Iowa Code § 598.21A(1).

At the trial, Steven requested an award of alimony, which was ultimately denied by the district court:

Traditional alimony would not be appropriate based upon the length of the marriage and the earning capacity of both parties. Rehabilitative alimony is not appropriate based upon the parties current employment circumstances. Finally, Steven is not entitled to reimbursement alimony. The record before the Court does not demonstrate that Steven is in need of alimony.

(APP – 146-147, Decree P. 24-25). The district court erred in this holding for several reasons.

First, the district court was incorrect in holding that a marriage of sixteen (16) years is insufficient amount of time to award traditional alimony. The Iowa Supreme Court has repeatedly recognized that marriages of sixteen (16) years is a sufficient amount of time to award traditional alimony. *In re Marriage of Schenkelberg*, 824 N.W.2d 481, 486 (Iowa 2012); *see also Fenchel v. Fenchel*, 268 N.W.2d 207, 210

(Iowa 1978). Second, the district court was incorrect in asserting that Steven has a similar earning capacity as Andrea. (APP – 146-147, Decree P. 24-25). The earning capacity between Steven and Andrea is significant and sways heavily towards awarding Steven alimony.

It was undisputed that Andrea has a reported historical income of over \$100,000 per year over the past four years. (APP - 116, Exhibit 101; APP – 27 – 80, Exhibits 1-3; Tr. P. 98). Steven on the other hand has generated nowhere near this level of income. Indeed, over the same time period as Andrea, Steven has never reported an income of greater than \$16,847.00. (APP - 116, Exhibit 101). Indeed, during cross-examination, Andrea’s counsel asserted (and Steven agreed) that Steven actually reported a loss in 2015 and 2017. (Tr. P. 184; APP – 27, Exhibit 1; APP - 80, Exhibit 3). As acknowledged by Andrea, Steven has consistently made anywhere between \$92,000 to \$128,000 less per year than Andrea. (APP - 117, Exhibit 101). This disparity grew throughout the marriage as a result of Andrea’s continued employment growth and Steven’s remaining with the children to allow Andrea to seek promotions. (Tr. P. 189).

It is also important to note that the parties had little to no assets at the beginning of the marriage and instead, the assets they were able to obtain all occurred during the course of the marriage. (Tr. P. 7). At the time of the trial, these assets totaled approximately \$950,000 with only approximately \$220,000-\$235,000 in

debts. (APP - 152, Stipulation of Assets). As such the parties had obtained a certain style of living that Steven will have no opportunity to recapture.

The opportunities for Steven to obtain employment that will allow him to return to a similar style of living is bleak. Steven does not have a college degree and has worked in the same business since he was twelve (12) years old. (Tr. P. 12; Tr. P. 175). Andrea, on the other hand, has a college degree and has continually been promoted within Polaris Industries. (Tr. P. 5; Tr. P. 8-9). Further, Andrea seeks to continue to obtain promotions within Polaris Industries with the hopes of becoming a production manager. (Tr. P. 10). Currently there are only two individuals above Andrea's current employment as a materials manager. (Tr. P. 105).

Indeed, during the trial, Andrea never asserted that Steven could obtain the same level of wages/salary as Andrea. Instead, Andrea asserted that Steven's earning potential would be \$5,000 per month or \$60,000 per year. (Tr. P. 90). This amount is still approximately half of Andrea's yearly salary. (APP - 116, Exhibit 101; APP - 27 - 80, Exhibits 1-3). Further, during the course of the trial, Andrea and her counsel suggested that Mr. Mann could obtain employment doing manufacturing work throughout the Spirit Lake, Iowa area at a rate of \$15 per hour or \$600 per week or \$31,200 per year. (Tr. P. 91-92). Indeed, the district court ultimately imputed an annual salary of \$36,000 on Steven. (APP - 137, Decree P. 15). Yet, Andrea makes nearly four (4) times that amount per year. Of course, this

does not include all of the additional benefits, such as stock options, that are available through Andrea's employment that are not available to Steven. (Tr. P. 73). Simply put, Andrea and Steven are on the completely opposite ends of the employment spectrum and as such, Steven should be awarded traditional alimony. *See, In re Marriage of Hansen*, 733 N.W.2d 683, 704 (Iowa 2007) (affirming an award of \$500 per month when one party's income was \$46,300 and the other party's income was only \$18,900). This is further exasperated by the eight (8) year age difference between Steven (49) and Andrea (41), making it difficult for Steven to enter into any new career path.

Further, Andrea has the reasonable ability to pay an award of alimony to Steven. Andrea asserted that her monthly obligations were approximately \$6,000.00. (Tr. P. 89; APP – 119, Amended Financial Affidavit). While, Steven questions the validity of some of these request (for example claiming \$200 per month in gas when her work is less than two (2) miles away from her house), there remains plenty of income remaining to satisfy an alimony payment. (Tr. P. 128). Andrea claimed that her monthly salary from Polaris Industries is \$6,337 or \$76,044 per year. (Tr. P. 89; APP - 119, Amended Financial Affidavit). However, the district court correctly disregarded this assertion and held that Andrea's yearly is \$118,000. (APP - 137, Decree P. 15). Unlike Andrea's assertion, the district court's decision is actually supported in the record. According to the parties' joint tax returns,

Andrea consistently made over \$100,000. (APP – 27 – 80, Exhibit 1-3). Additionally, Andrea eventually admitted that Stevens’ calculations were correct. (APP - 116, Exhibit 101; Tr. P. 98). Further, a review of Andrea’s paystub shows that she was paid approximately \$6,800 for a thirteen (13) day pay period in July 2018 and her year to date payment was approximately \$137,000.00. (APP - 102, Exhibit 8). Assuming the district court’s determination of Andrea’s yearly salary is correct, Andrea is obtaining approximately \$9,800.00 per month in income with only approximately \$6,000 per month in expenses. (Tr. P. 89; APP - 137, Decree P. 15). Accordingly, Andrea certainly has sufficient funds to satisfy an alimony award.

Finally, another factor to consider is the ultimate property distribution between the parties. Iowa Code § 598.21A(1)(c). This factor again weighs in favor of Steven. A majority of the assets awarded to Steven are nonliquid and are nonrevenue generating. (APP – 142 – 143, Decree P. 20-21). Most of the assets awarded are the vehicles and machinery necessary for Steven to continue his business, but not generate revenue independently. (APP – 142 – 143, Decree P. 20-21). Further, the assets which are liquid, are mostly retirement accounts which cannot be truly liquidated without severe tax penalties. (APP – 142 – 143, Decree P. 20-21). Steven was also left with all of the parties’ marital debt obligations, totaling more than \$57,000. (APP – 143 – 144, Decree P. 21-22). When considering these assets and obligations in the entirety, Steven should be awarded alimony.

At the trial, Steven presented several options for awarded alimony, however left the ultimate amount to be determined by the district court. (Tr. P. 175-176). The Iowa Supreme Court has “approved spousal support where it amounts to approximately thirty-one percent of the difference in annual income between spouses.” *In re Marriage of Gust*, 858 N.W.2d 402, 412 (Iowa 2015) (citing *In re Marriage of Michael*, 839 N.W.2d 630, 638 & n. 7 (Iowa 2013)). Using that formula, Steven presented a request of alimony from anywhere between \$2,395 per month to \$3,329 per month. (APP - 116, Exhibit 101). To maintain a status of living comparable to that enjoyed by the parties throughout the course of their sixteen (16) years of marriage, Steven requests that this Court reverse the district court and award alimony consistent with these calculations.

II. THE DISTRICT COURT ERRED IN MAKING AN INEQUITABLE PROPERTY DISTRIBUTION.

Preservation of Error:

Division of the parties’ property was raised and decided before the district court, thus error was preserved. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). (“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”) (citing *Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 600 (Iowa 1998)).

Standard of Review:

Iowa R. of App. P. 6.907 provides: “Review in equity cases shall be de novo.” Iowa R. App. P. 6.907 (2017). The appellate court is to “give weight to the factual determinations made by the district court; however, their findings are not binding upon [this Court].” *In re Marriage of Gust*, 858 N.W.2d 402, 406 (Iowa 2015).

Discussion:

“The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. Iowa courts do not require an equal division or percentage distribution. The determining factor is what is fair and equitable in each particular circumstance.” *In re Marriage of Hoffman*, 493 N.W.2d 84, 87-88 (Iowa App. 1992) (citing *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991)). In this case, the district court erred in making two key property determinations that require reversal by this Court.

First, the district court determined that the parties marital assets regarding firearms totaled \$5,000.00. (APP – 143, Decree P. 21). There is no evidence in the record to support this determination. During trial, Andrea could not provide any credible testimony regarding the value of these firearms but estimated their value at \$20,000. (Tr. P. 80; APP - 152, Stipulation of Assets). Her trial testimony was as follows:

Q. Guns. You have put a value of \$20,000 on the guns; is that correct?

A. Yes.

Q. Have they been appraised in any manner?

A. Not that I'm aware of.

Q. How did you come up with that value?

A. So Steve has told me throughout the years that guns only increase in value, and that was part of his justify – justification on purchasing guns throughout our marriage. I know that he has many guns in his possession. I am not aware of the value of each one of them, but I know throughout the course of our marriage he has purchased guns that range anywhere from a thousand to two thousand dollars.

(Tr. P. 80). Andrea acknowledged that several of the firearms were in Steven's possession prior to their marriage, but had no idea as to the value of any of them.

(Tr. P. 113). Simply put, Andrea had no basis whatsoever to testify or present any evidence that the guns were valued at \$20,000.

Steven testified that the firearms that were actually marital property only had a value of \$1,000. (Tr. P. 164). The remaining guns were brought into the marriage. (Tr. P. 163). Steven has been a hunter his entire life and did not marry Andrea until he was approximately thirty-three (33) years old. (Tr. P. 163). As a result, he "had a considerable amount of guns" that predate the marriage. (Tr. P. 163). Andrea did not contest this fact. (Tr. P. 113). Yet, with no evidence whatsoever to support a different amount, the district court placed a value of the firearms of \$5,000 and awarded this asset entirely to Steven. (APP - 143, Decree P. 21).

Similarly, the district court determined that Steven's accounts receivable for his lawn mowing business was \$66,000. (APP - 143, Decree P. 21). This was in error and not supported in the record. During the trial, despite not having any access to the lawn mowing/snow removal business financials, Andrea testified that the accounts receivable should have totaled \$100,000. (Tr. P. 81). She also presented an estimate of \$66,000 before sales tax which she recreated. (APP - 107, Exhibit 25; Tr. P. 58). Andrea's testimony on how she recreated this estimate was as follows:

- A. This is based on his customer list when I was providing the billing for Steve Mann Mowing. This is an estimation of what I believe his accounts receivable to be in 2018. This is assuming mowing times of one time per week, and it's also a conservative view of what I believe the snow removal would be based on National Weather Service documentation I was able to obtain.

(Tr. P. 58). It is important to recall that Andrea had no knowledge of the billing after the parties' separation in late 2017. Instead, this information is based entirely upon conjecture as to what Andrea believed the billing should be, rather than any factual information.

Steven actually presented the billing statements to the district court and testified what the accounts receivable actually was at the time of the trial. As of August 7, 2018 (the day before the trial), Steve Mann Mowing's accounts receivable totaled \$47,495.56. (APP - 117, Exhibit 103). This information came directly from

Steven and was printed from his accounting software. (Tr. P. 164). Despite having this credible evidence showing the actual accounts receivable, the district court disregarded this information and instead followed Andrea's estimation. (APP - 143, Decree P. 21). The district court also awarded all of these accounts receivable to Steven and created an unnecessary inflation to Steven's assets of \$18,504.44. ($\$66,000 - \$47,495.56 = \$18,504.44$).

In combining the improper valuation of the firearms (\$4,000) and the improper valuation of the accounts receivable from the lawn mowing/snow removal (\$18,504.44), Steven's award was erroneously inflated by \$22,504.44 in assets that are not supported by in the record. This necessarily reduces Steven's property distribution award to \$332,509.56 ($\$355,014 - \$22,504.44$). (APP – 142 – 144, Decree P. 20-22). Andrea was awarded \$363,617 in assets creating a discrepancy of \$31,107.44 between the parties. In order to equalize the property distribution between the parties, Steven requests that the equalization payment be increased to \$15,553.72.

CONCLUSION

Steven respectfully requests this Court reverse the district court and award Steven spousal support consistent with the needs of Steven to maintain a reasonable style of life prior to the parties' dissolution of marriage. Steven further respectfully requests this Court modify the property distribution to accurately reflect the actual

evidence presented at trial and award an equalization payment of \$15,533.72 to Steven.

REQUEST FOR ORAL ARGUMENT

Steven respectfully requests oral argument in this matter.

Respectfully Submitted,

KEMP & SEASE
The Rumely Building
104 SW 4th Street, Suite A
Des Moines, Iowa 50309
Ph: (515) 883-2222
Fx: (515) 883-2233
msease@kempsease.com
ckemp@kempsease.com

By: 

MATTHEW G. SEASE
Attorney for Respondent-Appellant

ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$0.00, as it was electronically filed.

KEMP & SEASE
The Rumely Building
104 SW 4th Street, Suite A
Des Moines, Iowa 50309
Ph: (515) 883-2222
Fx: (515) 883-2233
msease@kempsease.com

By:



MATTHEW G. SEASE
Attorney for Respondent-Appellant

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE
REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

[X] This brief contains 3,911 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1)

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman, font 14 point.

Dated: March 5, 2019

KEMP & SEASE
The Rumely Building
104 SW 4th Street, Suite A
Des Moines, Iowa 50309
Ph: (515) 883-2222
Fx: (515) 883-2233
msease@kempsease.com

By:



MATTHEW G. SEASE
Attorney for Respondent-Appellant

CERTIFICATE OF SERVICE AND CERTIFICATE OF FILING

I certify on March 5, 2019, I will serve this brief on the Appellee's Attorney, Joseph L. Fitzgibbons, by electronically filing it.

I further certify that on March 5, 2019, I will electronically file this document with the Clerk of the Iowa Supreme Court.

KEMP & SEASE
The Rumely Building
104 SW 4th Street, Suite A
Des Moines, Iowa 50309
Ph: (515) 883-2222
Fx: (515) 883-2233
msease@kempsease.com

By:



MATTHEW G. SEASE
Attorney for Respondent-Appellant