

IN THE SUPREME COURT OF IOWA

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NO. 18-1910

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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.

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APPEAL FROM THE IOWA DISTRICT COURT  
IN AND FOR DICKINSON COUNTY  
THE HONORABLE CARL J. PETERSEN, JUDGE

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APPELLEE'S BRIEF

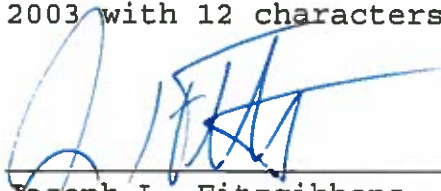
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Joseph L. Fitzgibbons AT0002442  
Fitzgibbons Law Firm, L.L.C.  
108 North 7<sup>th</sup> Street  
P.O. Box 496  
Estherville, IA 51334-0496  
Telephone: 712-362-7215  
Facsimile: 712-362-3526  
Email: [jfitz@fitzgibbonslawfirm.com](mailto:jfitz@fitzgibbonslawfirm.com)  
ATTORNEYS FOR PETITIONER/  
APPELLEE

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Joseph L. Fitzgibbons AT0002442  
Fitzgibbons Law Firm, L.L.C.  
108 North 7th Street  
P.O. Box 496  
Estherville, Iowa 51334-0496  
Telephone: 712-362-7215  
Facsimile: 712-362-3526  
Email: [jfitz@fitzgibbonslawfirm.com](mailto:jfitz@fitzgibbonslawfirm.com)  
ATTORNEYS FOR PETITIONER/APPELLEE

February 25, 2019  
Date

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STATEMENT OF THE ISSUES

A. THE TRIAL COURT CORRECTLY DETERMINED NO TYPE OF ALIMONY WAS APPROPRIATE IN THIS CASE.

Cases:

*In Re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976)

*In Re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989)

*In Re Marriage of Hayne*, 334 N.W.2d 347, 351 (Iowa App. 1983)

*In Re Marriage of Walton*, 577 N.W.2d 869, 871 (Ia. Ct. App. 1998)

*In Re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa App. 1993)

*In Re Marriage of Williams*, 449 N.W.2d 878, 883 (Iowa App. 1989)

Other Authorities:

Iowa Code 598.21A(1)(a)-(j) (2013)

B. THE PARTIES' STIPULATIONS AND THE COURT'S DETERMINATIONS RESULTED IN AN EQUITABLE PROPERTY DISTRIBUTION.

Cases:

*In Re Marriage of McDermott*, 827 N.W.2d 671, 679 (Iowa 2013)

*In Re Marriage of Walton*, 577 N.W.2d 869, 871 (Ia. Ct. App. 1998)

C. ANDREA IS ENTITLED TO BE REIMBURSED FOR THE COST OF THIS APPEAL, INCLUDING ATTORNEY FEES, FOR BEING REQUIRED TO DEFEND THE TRIAL COURT'S RULING.

Cases:

*In Re Marriage of Castle*, 312 N.W.2d 147, 150 (Ia. Ct. App. 1981)

*In Re Marriage of Kern*, 408 N.W.2d 387, 390 (Ia. Ct. App. 1987)

**ROUTING STATEMENT**

Transfer of this case to the Court of Appeals is appropriate as it presents the application of existing legal principles. See, Iowa Rules of Appellate Procedure, Rule 6.1101(3).

**I. STATEMENT OF THE CASE**

Andrea Kay Mann (hereinafter "Andrea") is in agreement with the Statement of the Case submitted by Steven Robert Mann (hereinafter "Steven"). Andrea would only add that at the time of filing of the Petition for Dissolution of Marriage, an injunction was requested and granted to remove Steven from the marital home and prevent his return as a result of an incident on November 18, 2017 involving Steven putting his hands around Andrea's throat and telling her she was going to f-ing die. (Supp. App. pp. 12-13). At trial, Steven acknowledged that during the course of the marriage,

he had placed his hands around Andrea's neck, choking her, as many as five times. (Supp. App. p. 34). The injunction is still in place.

## II. STATEMENT OF THE FACTS

Steven and Andrea were married in 2002. (Supp. App. p. 7). At the time of the trial, Steven was 49 years old and Andrea was 41 years old. (Supp. App. p. 27). Steven and Andrea have two boys aged seven and three. (Supp. App. p. 10). At the time of the trial, the parties resided in Spirit Lake, Iowa. (Supp. App. p. 5).

Andrea has a bachelor's degree in business management from Augsburg College obtained before the marriage. (Supp. App. p. 6). She began working for Polaris Industries as a payroll clerk in March of 2004, worked numerous jobs in accounting and became a senior financial analyst. In 2015, she became plant controller and in 2017 accepted a job as materials manager. (Supp. App. p. 8).

Andrea claims a monthly income of \$6,337.00 while Steven claims her income is \$6,482.00 per month. (App. p. 24; Supp. App. 25, 26). Andrea's monthly expenses total \$6,047.00. (Supp. App. p. 26). She is responsible for childcare expenses, insurance, clothing, school lunches and



registration and all extra-curricular activities while Steven pays nothing. (Supp. App. pp. 23-24). She also contributes \$100.00 per paycheck per child for college savings. (Supp. App. p. 18). The parties separated on December 1, 2017 and since that date Andrea paid all childcare and household expenses, and Steven made no contribution for child support or household expenses. (Supp. App. pp. 10-11, 14, 17). Even though the Court entered an injunction banning Steven from the household, his obligation to support the children and household remained.

Steven mows lawns and removes snow for income. (Supp. App. pp. 9, 32-33). Andrea has never known Steven to be fully employed. (Supp. App. p. 9). Steven has always been fifty percent employed throughout the course of the year. (Supp. App. p. 22). While Steven states he works less now than he used to because of the boys (Supp. App. p. 30), the record is clear he has maintained 75 customers for mowing, minor landscaping and snow removal since before the children were born. (App. pp. 104-106, 117-118; Supp. App. p. 9). Steven's work allowed him great flexibility so he could take on some parenting responsibilities while still fully servicing his clientele. (Supp. App. pp. 15-16).

Steven's income has some difficulties in its determination; however, Steven admits that Andrea knows his income. (Supp. App. p. 39). Steven's income was hard to calculate because he had performed no billing for the entire year of 2018 up to the trial date for the clients he serviced during that period. (Supp. App. pp. 20, 37). Steven testified that, for the first time in over a year, he sent out bills for his business on the eve of trial. (Supp. App. pp. 35-37).

Andrea, beyond her fulltime employment with Polaris, performed the billing for Steven's lawn service without compensation. (Supp. App. p. 19). Based on her knowledge of Steven's income, Andrea believes there was an additional \$50,000.00 of accounts receivables that were not billed for the year 2017. (Supp. App. p. 28). Receivables for the year 2018 up to the time of trial total \$66,000.00 and a total of receivables outstanding exceeds \$100,000.00. (App. p. 107; Supp. App. p. 19). With appropriate billing practices, Andrea estimates Steven's income at \$5,000.00 per month. (App. p. 24; Supp. App. p. 26). Steven estimates the value of his accounts receivable to be \$46,000.00. (Supp. App. p. 29).

Steven indicated guns increase in value over time and he purchased many guns during the marriage ranging from \$1,000.00 to \$2,000.00 each. (Supp. App. p. 21). The Court valued the guns at \$5,000.00. (App. p. 143). Steven offered no testimony as to the number of guns purchased during the marriage or the cost of each. Steven testified that if he had shared custody, he would not request alimony. (Supp. App. p. 38). He also filed a Financial Affidavit (App. pp. 20-22) and Pretrial Stipulation (App. pp. 155-159) that did not identify any request for alimony. Additional relevant facts may be included in the Argument section below.

### III. ARGUMENT

The record clearly supports the trial court's denial of Steven's request for alimony. Likewise, the record evidences a fair and equitable distribution of the marital property by the trial court. Lastly, Andrea is entitled to be reimbursed for costs of the appeal, including attorney fees, in defending the trial court's ruling.

#### A. THE TRIAL COURT CORRECTLY DETERMINED NO TYPE OF ALIMONY WAS APPROPRIATE IN THIS CASE.

Andrea agrees the issue of alimony was raised and decided by the District Court and therefore error was preserved.

Andrea also agrees that the standard of review in equity cases is de novo, noting that the findings of the Trial Court are given deference because the Court had the opportunity to observe the demeanor of the parties and evaluate them as custodian, to judge the credibility of the witnesses, and to gauge the weight of the evidence. *In Re Marriage of Walton* 577 N.W.2d 869, 871 (Ia. Ct. App. 1998).

After hearing all of the testimony and judging the credibility of the witnesses, the trial court correctly gauged the weight of the evidence and appropriately determined Steven was not entitled to alimony of any sort. The trial court aptly cited the law with respect to alimony

*It is well settled that alimony is not an absolute right, and any award depends upon the circumstances of each particular case. In Re Marriage of Fleener,* 247 N.W.2d 219, 290 (sic) (Iowa 1976). The Iowa courts have recognized three different types of alimony; each of which is awarded to accomplish a different purpose. Rehabilitative alimony is awarded for the purpose of supporting an economically dependent spouse through a limited period of re-education or re-training for the job market. *In Re Marriage of Francis,* 442 N.W.2d 59, 63 (Iowa 1989). Reimbursement alimony is awarded to compensate a spouse for economic sacrifices made during the marriage, which directly increased the future earning capacity of the other spouse. *Id.* at 64. The final type of alimony is traditional alimony, which is an allowance for a former spouse in lieu of a legal obligation for support. *In Re Marriage of Williams,* 449 N.W.2d 878, 883 (Iowa App. 1984) (sic).

When determining the appropriateness of traditional alimony, this court must consider the (1) earning capacity of each party, and (2) their present standards of living and ability to pay balanced against their relative needs. *Id.* The ". . . spouse with a lesser earning capacity is entitled to be supported for a reasonable time in a manner as closely resembling the standards existing during the marriage as possible without destroying the right of the party providing the income to enjoy at least a comparable standard of living as well." *In Re Marriage Hayne*, 334 N.W.2d 347, 351 (Iowa App. 1983).

In marriages of long duration where earning disparity between the parties is great, both alimony and a nearly equal property division may be appropriate. *In Re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa App. 1993). Furthermore, "traditional alimony is appropriate in long-term marriages where life patterns have largely been set and the earning potential of both spouses can be predicted with some reliability." *In Re Marriage of Francis*, 442 N.W.2d 59, 62-63 (Iowa 1989). Finally, the discretionary award of alimony is only to be made after the court considers those factors listed in Iowa Code Section 598.21A(1)(a) thru (j) (2013).

(App. pp. 145-146.)

The Court appropriately determined "the record before the Court does not demonstrate that Steven is in need of alimony." (App. p. 147). The Court based its determinations on a number of factors including that Steven's employment circumstances have not changed over the period of the marriage. Steven continues to be content in servicing the

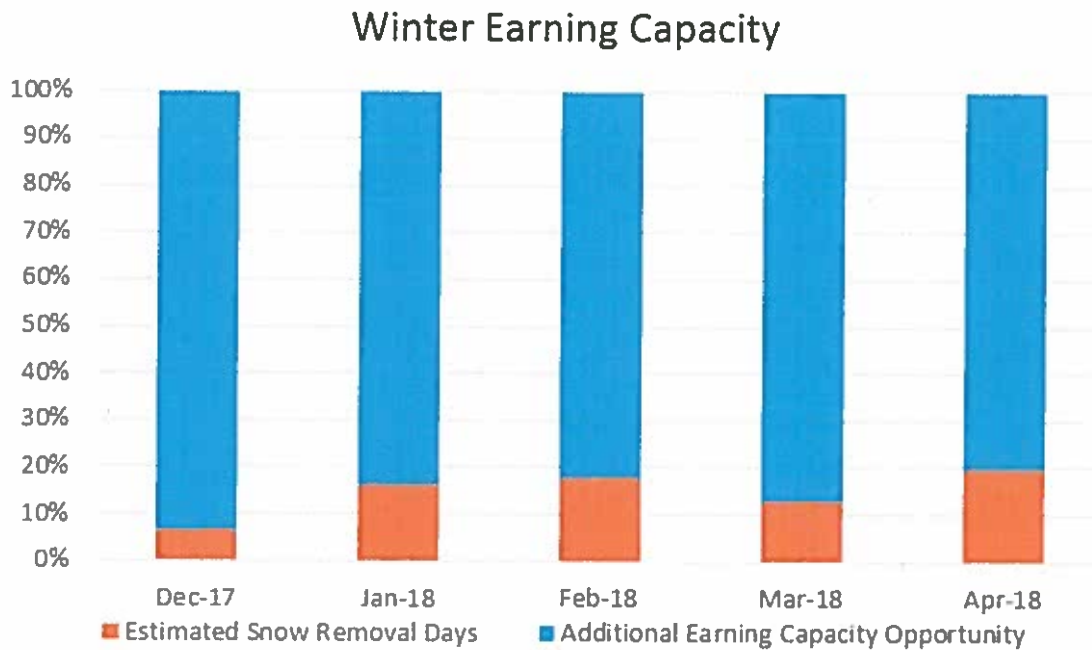
same customers that he has served throughout the length of the marriage. While his schedule in serving his customers is flexible, allowing him to attend to the needs of the children when necessary, the record does not bear out that his attendance to children's needs in any way has limited the work required to service Steven's list of customers or affected his income received in doing so. The Court sagely reasoned "Steven did not sacrifice for Andrea to improve her earning capacity." (App. p. 146). Reimbursement alimony is simply not appropriate in this instance.

The Court also astutely noted that Andrea's earning capacity improved over time through her own determination. While her dedication to her employer created more opportunities for Steven to actually parent, those parenting opportunities in no way hampered Steven's ability to earn. Steven continues to earn in the same capacity as always serving his clientele and with the same resulting income.

The winter months serve as an example of Steven's complacency regarding his income. Despite good paying seasonal employment being available, Steven testified he would not consider enhancing his income. Though Steven was not working in the winter months, he would still send the

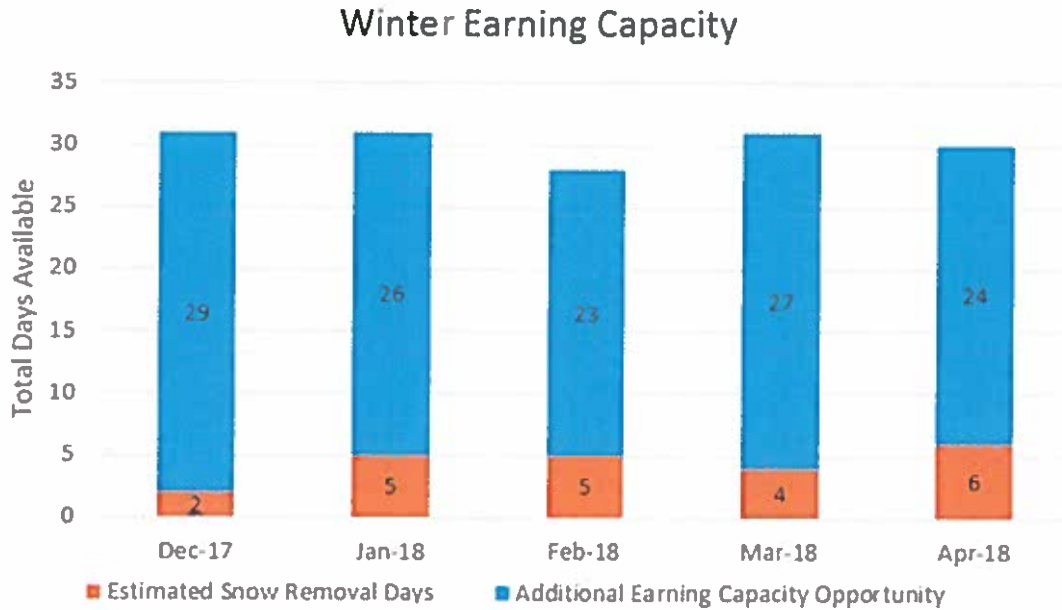
children to the daycare for which Andrea paid. The graphs below show (A) the percentage of days Steven was idle and (B) the number of days Steven was idle despite the children being in school or daycare. Steven has not demonstrated the need for alimony. To the contrary, Steven's indolence is clear and the trial court obviously felt it would be improper to reward Steven's idleness with an award of alimony.

(A) Percentage of idle days for Steven December-April:



Source: Exhibit 31; National Weather Service Records

(B) Number of idle days for Steven December-April:



The purpose of alimony is not to penalize one party's industriousness to subsidize the other party's lack thereof. The record makes clear Steven is content to continue servicing the same customers and is not seeking to expand or enhance his earning capacity. The record is quite clear Steven has the opportunity to obtain seasonal employment during the winter months, but that he is simply not willing to do so. Steven is not financially dependent and has ample opportunity to increase his earnings through his own means. The Court recognized that the property distribution created largely by Andrea's industriousness, as well as the parties' incomes and earning capacities, demonstrated that Steven is not in need



of alimony. The trial court's decision in this regard should not be disturbed on appeal.

The trial court did not feel compelled to reward Steven for the abuse that resulted in his removal from the marital home followed by his refusal to contribute to the support of his children and the household. Steven's shenanigans in clouding his income and accounts receivable value and attempting to use alimony as a bargaining chip for custody obviously prompted the trial court to find Steven's request for alimony to be meritless.

**B. THE PARTIES' STIPULATIONS AND THE COURT'S DETERMINATIONS RESULTED IN AN EQUITABLE PROPERTY DISTRIBUTION.**

Andrea agrees that the division of the parties' property was raised and decided before the District Court followed by the timely filing of the Notice of Appeal. Thus, error with respect to the property distribution was properly preserved for appellate review. Andrea also agrees that the standard of review and equity cases is de novo, noting that the findings of the trial court are given deference because the District Court had the opportunity to observe the demeanor of the parties and evaluate them, to judge the credibility of the witnesses, and to gauge the weight of the evidence. In

*Re Marriage of Walton*, 577 N.W.2d 869, 871 (Ia. Ct. App. 1998). Furthermore, appellate courts refuse to disturb the District Court's valuation of assets included in the marital estate when it is within the range of permissible evidence. *In Re Marriage of McDermott* 827 N.W.2d 671, 679 (Iowa 2013).

Steven complains that the trial court mis-valued firearms (marital) and the value of the accounts receivable for Steve Mann Mowing. Steven does not complain that the trial court erred in the division of the assets or in the valuations of any of the other assets. Steven's complaint regarding the distribution of property is limited to the valuation of the firearms and accounts receivable. Neither party had the firearms appraised. Nor did either party itemize the firearms, provide the court with a number of firearms or separately value any of the firearms. The parties merely stipulated marital assets Item No. 24 "guns" valued by Andrea at \$20,000.00 and valued by Steven at \$1,000.00. (App. p. 152).

Andrea testified that Steven purchased multiple guns during the marriage ranging in price from \$1,000.00 to \$2,000.00. (Supp. App. p. 21). Furthermore, Steven told Andrea that guns increase in value over time. *Id.* It was

not unreasonable for her to estimate that the total value of the multiple guns purchased by Steven amounted to \$20,000 over the 16 year marriage.

Steven on the other hand, without itemizing or separately valuing, or even identifying any of the guns purchased during the marriage, valued the guns in the aggregate at \$1,000.00. (App. p. 152; Supp. App. p. 31). Given the facts presented to the Court, Steven's valuation only makes sense if a single gun was purchased during the marriage. The testimony reveals otherwise.

Based on the evidence presented at trial that multiple guns were purchased during the marriage and that the purchase price of each of the guns ranged from \$1,000.00 to \$2,000.00, and that the guns would increase in value over time, the trial court reasonably valued the guns at \$5,000.00. The trial court's valuation of the guns is much closer to Steven's than it is to that of Andrea. The trial court's valuation of the guns is well within the range of the permissible evidence and should not be disturbed by the Appellate Court.

Likewise, the trial court's valuation of the accounts receivable for Steve Mann Mowing was within the range of permissible evidence. Steven testified unequivocally that

Andrea was well aware of Steven's earnings. (Supp. App. p. 39). For years, Andrea had performed the billing for Steven's lawn service. (Supp. App. p. 19). The undisputed testimony at trial was that Steven had not billed his clients for his services for the entire year of 2018 up to the trial date. (Supp. App. pp. 20, 37). Given Andrea's familiarity with the billing for Steven's mowing business, she recognized a deficiency of \$50,000.00 in the accounts receivables from the year 2017 and an additional \$66,000.00 in accounts receivables for the year 2018. (App. p. 107; Supp. App. pp. 19, 28). Andrea's calculations were based on a conservative estimate of one mowing per week per client, and snow removal based on National Weather Service documentation. (App. pp. 108-115). These were not simply numbers she pulled out of the air and submitted to the trial court.

Steven submitted Exhibit 103 (App. p. 117) and stated his accounts receivable to be valued at \$47,495.56. The testimony in the case was that Steve Mann Mowing had approximately 75 clients. Exhibit 103 (App. p. 117) lists only 51 clients. It would not be unreasonable given the record for the Court to determine that Exhibit 103 (App. p. 117) was not a complete and accurate list of all customers of

Steve Mann Mowing or a complete list of outstanding accounts receivable. Clearly, Steven was not only hiding the ball on the number of his customers, but also was less than transparent on the amount of his income and accounts receivable. There was further testimony that Steven had a joint venture with Greg Dean and had purchased Greg Dean's interest in the joint venture and acquired the accounts thereof. The trial court's determination of the valuation of accounts receivable at \$66,000.00 is within the range of the permissible evidence and the reviewing court should refuse to disturb that determination.

**C. ANDREA IS ENTITLED TO BE REIMBURSED FOR THE COST OF THIS APPEAL, INCLUDING ATTORNEY FEES, FOR BEING REQUIRED TO DEFEND THE TRIAL COURT'S RULING.**

An award of attorney fees is not a matter of right, but rests within the Court's discretion and the parties' financial positions. *In Re Marriage of Kern*, 408 N.W.2d 387, 390 (Ia. Ct. App. 1987). The Court considers the needs of the party making the request, the ability of the other party to pay and whether the party making the request is obligated to defend the District Court's decision on appeal. *In Re Marriage of Castle*, 312 N.W.2d 147, 150 (Ia. Ct. App. 1981).

Undoubtedly, Andrea was required on this appeal to defend the District Court's decision. Nearly the entirety of her brief was spent citing the Court's rulings, and providing support for the Court's determinations. The record would reflect that Andrea has a monthly income of \$6,337.70 a month and monthly expenses of \$6,047.00. (App. pp. 23-26; Supp. App. p. 25). Steven has a monthly income of \$5,000.00 and no monthly expenses. (App. pp. 20-22; Supp. App. p. 26). Steven should be required to pay reasonable appellate attorney fees to Andrea.

#### IV. CONCLUSION

Andrea respectfully requests this Court affirm the trial court's Decree of Dissolution of Marriage entered October 5, 2018. The Trial Court correctly determined Steven was not entitled to, nor does he need, alimony. Furthermore, the Trial Court's findings with respect to the valuations of guns purchased during the marriage and Steve Mann Mowing accounts receivable are well within the range of the permissible evidence and therefore should remain undisturbed. Lastly, Steven should be required to pay all, or at least a portion of, Andrea's reasonable appellate attorney fees.

V. REQUEST FOR SUBMISSION WITHOUT ORAL ARGUMENT

Andrea does not believe that oral argument will provide further guidance to the Court with respect to these issues and therefore does not request oral argument. However, if the Court determines that oral argument would be appropriate and allows Steven oral argument, then Andrea also hereby requests to be heard in oral argument.




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Joseph L. Fitzgibbons AT0002442  
Fitzgibbons Law Firm, L.L.C.  
108 North Seventh Street  
P.O. Box 496  
Estherville, Iowa 51334  
Telephone: 712-362-7215  
Facsimile: 712-362-3526  
Email: [jfitz@fitzgibbonslawfirm.com](mailto:jfitz@fitzgibbonslawfirm.com)  
ATTORNEYS FOR PETITIONER/APPELLEE

**ATTORNEY'S COST CERTIFICATE**

I hereby certify that the actual cost of printing the necessary copies of the foregoing Appellee's Proof Brief is \$-0-.




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Joseph L. Fitzgibbons AT0002442  
Fitzgibbons Law Firm, L.L.C.  
108 North Seventh Street  
P.O. Box 496  
Estherville, Iowa 51334  
Telephone: 712-362-7215  
Facsimile: 712-362-3526  
Email: [jfitz@fitzgibbonslawfirm.com](mailto:jfitz@fitzgibbonslawfirm.com)  
ATTORNEYS FOR PETITIONER/APPELLEE

**VIII. CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on the 25<sup>th</sup> day of February, 2019, I electronically filed the foregoing Brief with the Clerk of the Supreme Court using the electronic case filing system (EDMS) which will send notification of such filing to the following:

Matthew G. Sease (via email: [msease@kempsease.com](mailto:msease@kempsease.com))



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Joseph L. Fitzgibbons AT0002442  
Fitzgibbons Law Firm, L.L.C.  
108 North Seventh Street  
P.O. Box 496  
Estherville, Iowa 51334  
Telephone: 712-362-7215  
Facsimile: 712-362-3526  
Email: [jfitz@fitzgibbonslawfirm.com](mailto:jfitz@fitzgibbonslawfirm.com)  
ATTORNEYS FOR PETITIONER/APPELLEE