IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 18-1910

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.

PETITIONER/APPELLEE'S APPLICATION FOR FURTHER REVIEW FROM A DECISION OF THE IOWA COURT OF APPEALS DATED NOVEMBER 6, 2019

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QUESTIONS PRESENTED FOR REVIEW

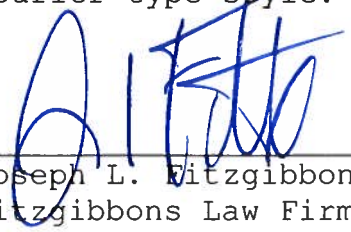
I. THE COURT OF APPEALS' DECISION IS IN CONFLICT WITH PRIOR PRECEDENT REGARDING ALIMONY AS RELATES TO A SHOWING OF NEED OF THE PARTY REQUESTING THE ALIMONY, CONSIDERING THE LENGTH OF THE MARRIAGE, CALCULATION OF THE AMOUNT OF SUPPORT AND THE EDUCATION OF A PARTY AS A FACTOR IN ITS DETERMINATIONS.

II. THE COURT OF APPEALS' DECISION REFUSES TO CONTEMPLATE THE CHANGING LEGAL PRINCIPLE OF INCLUDING DOMESTIC ABUSE AS A FACTOR IN DETERMINING ALIMONY AWARDS.

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

1. This Application for Further Review meets the type-volume limitations of Iowa R.App.P. 6.903(1)(g)(2) because this brief uses a monospaced typeface and contains 419 lines of text, excluding the parts of the Application exempted by Iowa R.App.P. 6.903(1)(g)(2).

2. This Application 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 this Application has been prepared in a monospaced typeface using Microsoft Office Word 2003 with 12 characters per inch using Courier type-style.



November 21, 2019

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STATEMENTS SUPPORTING FURTHER REVIEW

The decision rendered by the Court of Appeals majority conflicts with prior precedent. The majority's decision fails to account for the prerequisite showing of need by a party seeking alimony. The decision is therefore in conflict with this well-established prerequisite in the cases of *In Re Marriage of Gust*, 858 N.W.2d 402 (Iowa 2015); *In Re Marriage of Shenkelberg*, 824 N.W.2d 481 (Iowa 2012); and, *In Re Marriage of Stenzel*, 908 N.W.2d 524 (Ia. Ct. App. 2018). If alimony is to be determined simply by a mathematical calculation, as the majority did in this case, without a showing of need, then the Supreme Court should review this case and make that decision accordingly to properly educate practitioners and parties alike. Otherwise, the Supreme Court should accept review of the case to correct the conflict in the law created by the majority's decision.

Furthermore, the majority's decision is in conflict with prior precedent which indicates that the parties education acquired during the marriage is an appropriate factor in determining an alimony award. The majority's decision to consider Andrea's earning potential based upon her education acquired before the marriage is in conflict with the cases of

In Re Marriage of Francis, 442 N.W.2d 59 (Iowa 1989); *In Re Marriage of Mouw*, 561 N.W.2d 100 (Ia. Ct. App. 1997); and, *In Re Marriage of Clinton*, 579 N.W.2d 835 (Ia. Ct. App. 1988).

Lastly, changing legal principles require domestic abuse during a marriage to be considered as a factor by the Court in determining alimony awards upon the dissolution of marriage. As stated by the dissenting opinion, the current law of Iowa is to not consider domestic abuse in awarding alimony; however, the prevalence of the problem and the changing societal attitudes should cause the Court to rethink this policy.

STATEMENT OF THE CASE

The parties' dissolution of marriage trial was held August 8, 2018. Based upon the testimony of the parties and other witnesses, the exhibits offered at trial and upon the trial court's judgment of the credibility of the testimony and evidence, a Decree of Dissolution of Marriage was entered October 5, 2018. In the Decree, the trial court equitably and logically determined no alimony award was appropriate under the circumstances. Respondent/Appellant, Steven Mann

(hereinafter "Steven"), filed Notice of Appeal November 1, 2018.

The issues on appeal were limited to the District Court's denial of alimony and the propriety of the property distribution determinations. The Court of Appeals issued its decision November 6, 2019 affirming the District Court's property distribution, but reversing with respect to the decision to deny alimony to Steven. Petitioner/Appellee, Andrea K. Mann's (hereinafter "Andrea"), Petition for Rehearing with the Court of Appeals filed November 11, 2019 was denied by order entered November 12, 2019. Andrea now applies to the Supreme Court for further review.

STATEMENT OF FACTS

Steven and Andrea were married in 2002. (Sup. App. p. 7). At the time of the trial, Steven was 49 years old and Andrea was 41 years old. (Sup. App. p. 27). Andrea has a bachelor's degree in business management from Augsburg College **obtained before the marriage**. (Sup. 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. (Sup. 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; Sup. App. pp. 25-26). Andrea's monthly expenses total $6,047.00. (Sup. App. p. 26). She is responsible for childcare expenses, insurance, clothing, school lunches and registration and all extracurricular activities while Steven pays nothing. (Sup. App. pp. 23-24). She also contributes $100.00 per paycheck per child for college savings. (Sup. 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. (Sup. App. pp. 10-11, 14, 17).

Steven mows lawns and removes snow for income and has done so since the age of 12. (Tr. p. 175, Sup. App. pp. 9, 32-33). Steven has never been fully employed and has always been 50 percent employed throughout the course of any given year. Nevertheless, the children were placed in daycare paid by Andrea, even when Steven was not working. (Sup. App. pp. 9, 22). Steven was responsible for billing his customers for 20 years prior to the marriage, but during the marriage Andrea

billed the customers using a billing program. (Tr. pp. 32, 209-210). Steven performed no billing for the entire year of 2018 up to the trial date for clients he serviced during that period. (Sup. App. pp. 20, 37). Steven was able to send out bills for his business, for the first time in over a year, on the eve of trial. (Sup. App. pp. 35-37). The record lacks any evidence that Steven was unable to bill his customers during this period of time.

Steven filed a Financial Affidavit and Pretrial Stipulation that did not identify any need or specific request for alimony. (App. pp. 20-22; 155-159). Steven's Exhibit 101 is a Summary of Income differences and a monthly amount based on 31% of the income differences. (App. p. 116). Neither exhibit 101 nor Steven's Financial Affidavit list any monthly expenses or otherwise indicate a need for spousal support in any amount and certainly do not provide a factual basis for the proposed amounts of support.

ARGUMENT

In this 2 - 1 decision, the majority of the panel determined alimony should have been awarded. The award by the majority seems to be in direct conflict with well-

established precedent requiring a showing of need by a party requesting alimony and in reliance upon Andrea's premarital education in making its award. Furthermore, Andrea believes the law should reflect the changing societal views that the domestic abuse she suffered during the marriage should be considered by the Court in determining alimony.

I. THE COURT OF APPEALS' DECISION IS IN CONFLICT WITH PRIOR PRECEDENT REGARDING ALIMONY AS RELATES TO A SHOWING OF NEED OF THE PARTY REQUESTING THE ALIMONY, CONSIDERING THE LENGTH OF THE MARRIAGE, CALCULATION OF THE AMOUNT OF SUPPORT AND THE EDUCATION OF A PARTY AS A FACTOR IN ITS DETERMINATIONS.

The majority recognized the District Court has "considerable latitude" in making an award of spousal support. (Decision p. 3). The dissent went further and recognized the trial judge is greatly helped in making a wise decision about the parties by listening to them and watching them in person and is best positioned to evaluate the needs of the parties. (Decision p. 11). Despite these overarching principles the Court of Appeals' decision necessarily ignored the trial court's wide latitude and disregards the district court's ability to observe the parties, balance the parties' needs and render a wise and equitable decision based thereon.

Interestingly, the Court of Appeals passed upon seven factors which Steven had argued justified an award of traditional alimony. Those seven factors are paraphrasings of those contained within Iowa Code §598.21A(1)(a-g). Those factors include:

a. The length of the marriage;

b. The disparity between the spouses' earnings;

c. The fact that most of the couples' assets were accumulated during the marriage;

d. A claimed inequitable property distribution;

e. The disparity in the parties' education;

f. The age difference between the parties; and

g. One party's ability to pay spousal support.

Of these seven factors, the 2 - 1 majority concluded that three of the factors supported an award of spousal support. "We conclude Steven is entitled to spousal support based on the length of the marriage and the earnings disparity, together with Andrea's education and her prospect for

advancement and enhanced earnings." (Decision p. 8). Disregarding that four of the factors did not support an alimony award, it will be shown that the majority's award of alimony is in conflict with well settled precedent.

A. The majority decision conflicts with precedent requiring a showing of need factoring in length of marriage and amount to be awarded.

The majority's analysis of the duration of this marriage is puzzling. Marriages lasting 20 or more years commonly cross the durational threshold and merit serious consideration for traditional spousal support. (Decision p. 3 citing, *In Re Marriage of Gust*, 858 N.W.2d 402, 410 (Iowa 2015)). The dissent recognized that the purpose behind this type of alimony based on the duration of marriage is to compensate one spouse for sacrificing a career to run the family household. (Decision p. 14). Neither party in this case removed themselves or even restricted themselves from the workplace for the sake of the other or the household. To the contrary, Andrea diligently worked throughout the marriage and provided the vast majority of childcare while Steve lived a life of considerable indolence, choosing to work infrequently and rarely, if ever, billing for his labor

resulting in an undue burden on Andrea to be responsible for virtually all family expenses and childcare.

The Mann's' marriage fell four years short of a 20 year threshold, but the majority did cite precedent for traditional spousal support being awarded in a marriage lasting 16 years. *See*, Decision p. 3. The majority cites *In Re Marriage of Shenkelberg* as validating an award of alimony in this case. However, the circumstances of the *Shenkelberg* marriage are so dissimilar to the Mann marriage that the majority's decision is actually in conflict with it.

The *Shenkelberg* case involved a 57 year old wife that was unlikely of being able to support herself. *See, In Re Marriage of Shenkelberg*, 824 N.W.2d 481, 487 (Iowa 2012). Clearly, with respect to the Manns, Steven was able to support himself for 20 years prior to the marriage, through the marriage, and beyond. The majority concedes Steven "was not incapable of self-support in the long term." (Decision p. 8). The duration of the Mann marriage is <u>not</u> a supporting factor for the award of spousal support.

Undoubtedly, a disparity of income exists between Steven and Andrea. However, this disparity is not a product of the marriage. Andrea's income is not the result of anything

Steven did or did not do. Certainly, Steven's income is not impacted by anything Andrea has done or did not do. Their respective incomes are simply a product of each party's willingness to work in the field each has chosen.

Put differently, Andrea's greater income is not the result of any assistance, contribution or sacrifice made by Steven. The disparity in incomes is, however, a direct result of Steven's unwillingness to work full time, unwillingness to accept additional seasonal employment to supplement his income and his unwillingness to re-educate or retrain himself in a different and higher paying occupation. Steven is content and complacent to perform the same trade he started as a 12 year old despite the limited income potential in that field. He makes an adequate living and the disparity in incomes is by his own choosing and should not be a basis for Steven to share in Andrea's industriousness.

None of the purposes of spousal support are served by an award to Steven in this case. Steven is capable of self-support and has done so for many years, making him ineligible for traditional spousal support. Rehabilitative alimony is also unwarranted as Steven has continued in the same trade within the marriage and without the marriage with no desire

to seek re-education or retraining. Nor, has Steven made any economic sacrifices entitling him to reimbursement alimony.

The majority has awarded spousal support to Steven in the amount of $2,395.00 for three years. The majority feels this "should afford Steven sufficient time to learn the bookkeeping and accounting side of his business." (Decision p. 9). The majority also states Steven "simply needed time to gain the business acumen Andrea exercised during the marriage." (Decision p. 8). Assuming alimony should be awarded in this case, which Andrea vehemently denies, the amount and duration appear to be based upon misconstrued facts.

The majority appears to mistakenly believe Steven's income was impacted as a result of Andrea no longer doing his billing and bookkeeping, that somehow Steven was unable to bill his customers for work that he had performed while the parties were separated. The trial court saw Steven's failure to bill for what is was, a farce, a purposeful ploy to lower his income heading into trial as a means of reducing his child support payment. It was only when his bluff was called at trial that Steven proclaimed an inability to operate the software that would allow him to bill his clients. Despite

that proclaimed inability, Steven did bill his clients on the eve of trial.

The majority failed to bear in mind that Steven serviced, managed and billed all of his customers for 20 years prior to his marriage to Andrea. His feigned inability to operate the billing software used by Andrea in his business does not impact his income stream or potential. He had other methods at his disposal to bill his customers and collect on his accounts receivables; however, he simply did not want to show that income heading into trial. Steven already well knows the bookkeeping and accounting side of his business.

At issue here is not Steven's "business acumen." Steven has for decades, and will continue into the future to service the same customers he always has and receive the same proceeds from servicing those customers. At issue may be Steven's ability to operate the billing software that was used by Andrea to make that task easier for him, but no "business acumen" is going to enhance Steven's income over the next three years or at any time into the future. If the issue is Steven's ability to operate the billing software, the Court of Appeal's decision to award spousal support over three years seems utterly excessive in duration as well as in the amount.

Steven's competent use of the software can be acquired in an afternoon seminar or workshop. It should not require three years to learn how to use the billing software. Steven could practically become CPA certified in that amount of time though again he expresses no such interest in re-educating or retraining himself.

The amount of monthly support awarded by the majority of the panel is also puzzling and in contravention of case law precedent. The majority recognizes that the law of Iowa is to not employ a mathematical formula to determine the amount of spousal support. *In Re Marriage of Gust*, 858 N.W.2d 402, 411-12 (Iowa 2015). Yet, the decision to award $2,395.00 per month "represents thirty-one percent of the lowest income difference between Andrea and Steven's earnings in the four years preceding the dissolution trial." (Ruling p. 9). The amount awarded by the Court of Appeals is completely arbitrary and absent any showing by Steven that he has a need for the support. *See, Gust*, 858 N.W.2d 402, 411; *In Re Marriage of Stenzel*, 908 N.W.2d 524, 533-34 (Ia. Ct. App. 2018) (the imposition and length of an award of alimony is primarily predicated on need and ability). If the law in Iowa in determining alimony is to simply perform a mathematical

operation based on disparity in income without consideration for a party's need, then the Supreme Court must review this decision and rule accordingly. Otherwise, further review should be taken to correct this Court of Appeals decision.

The trial court, who was in the best position to judge the credibility of the witnesses and balance the needs of the parties, determined the "record before the court does not demonstrate that Steven is in need of alimony." (App. p. 147). Even the majority of the Court of Appeals panel concedes Steven is self-supportive, i.e., no need for support from others. The majority has injudiciously abandoned the principles of equity and of giving deference to the District Court to substitute its own judgment and make an award of alimony without any showing of need, contrary to Iowa law. To award $2,395.00 per month for three years essentially to allow Steven to learn how to use billing software is arbitrary and excessive.

It is quite telling that the record is devoid of any evidence of Steven's expenses. His Financial Affidavit lists no expenses. The request for alimony was a mere bargaining chip for joint physical care. **STEVE TESTIFIED THAT HIS REQUEST FOR ALIMONY WAS A MERE BARGAINING CHIP FOR JOINT**

PHYSICAL CARE AND NOT BASED ON NEED. Sup. App. p. 38). Furthermore, Steven's Appellate Brief does nothing to argue or cite to the record any evidence of Steven's need for spousal support. The reason is clear; he simply has no need for support, and he completely failed at trial in his burden of proof of that issue. The majority's award of alimony is in conflict with prior precedent requiring a showing of need for alimony.

B. The majority's reliance upon Andrea's education leading to increased income potential as a factor supporting spousal support award is contrary to prior precedent.

The majority states Andrea's "education enhanced her earning capacity and is a factor favoring an award of spousal support to Steven." (Decision p. 6). As authority for this statement, the majority cites *In Re Marriage of Clinton*, 579 N.W.2d 835, 838 (Iowa Ct. App. 1988). As with the duration of marriage factor, the authority cited by the majority does not support the position. The Court in the *Clinton* case observed "each party has chosen his or her respective field. Their entry into their chosen field was the result of certain personal aptitudes and abilities. The fact the field of one may generate more income than the field of the other is not

the controlling factor in the alimony award where both parties have the education and potential to support for themselves a very adequate living." *In Re Marriage of Clinton*, 579 N.W.2d at 838. As indicated previously, the majority concedes Steven has the ability to support himself in the long term.

The Court in *Clinton* further observed "the education Patricia **obtained during the marriage** will enhance her future earnings and is a proper factor to consider in assessing the equity of the economic provisions of the dissolution decree." *Id.* citing, *In Re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989) (emphasis added). Andrea's education in business management was completed prior to the marriage. Steven did nothing to contribute to the equity created by Andrea in her own self-worth. While Steven is able to earn an adequate living in his field, no reason exists for Steven to share in the fruits of Andrea's field simply because it generates more income. *See, In Re Marriage of Mouw*, 561 N.W.2d 100, 102 (Iowa Ct. App. 1997) (education of a party **during the marriage** which affects the party's income potential is an appropriate factor to consider in determining alimony). The Court of Appeals' decision contravenes this prior precedent regarding a party's education.

II. THE COURT OF APPEALS' DECISION REFUSES TO CONTEMPLATE THE CHANGING LEGAL PRINCIPLE OF INCLUDING DOMESTIC ABUSE AS A FACTOR IN DETERMINING ALIMONY AWARDS.

The trial court considered Steven's domestic abuse in relation to child custody.[1] The trial court did not consider the domestic abuse in making its decisions regarding the property settlement or denial of Steven's request for alimony. Likewise, the majority opinion was silent as to the domestic abuse suffered during the Mann marriage. Andrea feels, and the dissent suggests, making domestic abuse a factor to be considered by the Court in awarding alimony may be appropriate.

Undoubtedly, the record is undisputed that Andrea suffered domestic abuse throughout the marriage to Steven. Steven's request for alimony in the marriage stems from his desire for dominion and control over Andrea. Any "need" Steven has for alimony is impositional and not financial. Alimony does not allow for a complete severance between the parties and allows Steven to retain a vestige of control over Andrea.

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[1] Child custody is not in issue on appeal.

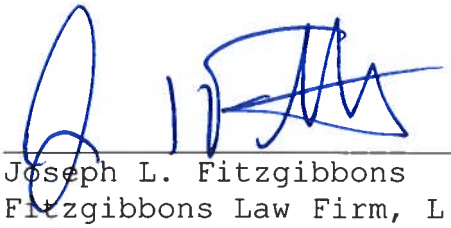
An unwarranted award of alimony, especially in the absence of any showing of need for the support, to a serial abuser is a dangerous precedent. For one spouse to suffer at the hands of the other spouse during the marriage and upon the dissolution of the marriage being ordered to financially reward the abusive spouse is utterly demoralizing, vanquishing and inequitable. No logical reason exists to prevent a court from considering domestic abuse in its determination of an alimony award. Our laws are meant to reflect societal values. The dissent cites to California's Family Code §4325 which creates a rebuttable presumption against spousal support to an abusive spouse. Domestic abuse is no longer an issue which society requires to be kept in be closet. Abusers need to be brought to light and appropriately penalized including the potential for disqualification to receive spousal support.

Consideration of domestic abuse in alimony award determinations does not offend the "no fault" structure of Iowa's dissolution of marriage statute. Domestic abuse need not enter into the equation for the determination of whether or not a marriage should be dissolved. The marriage is dissolved simply by one party deeming the marriage to be over.

Domestic abuse is a factor in determining custody of children in Iowa and no reason exists not to make it a factor in a determination of an alimony award. The law should not defy logic and should properly serve the society subjected to it. Domestic violence should receive no reward.

CONCLUSION

Andrea respectfully requests this Court grant her Application for Further Review, lend deference to the trial court's findings and allow the wide latitude our law provides to the trial court to do equity between the parties, thereby reversing the Court of Appeals decision which contravenes prevailing precedent.



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ATTORNEY'S COST CERTIFICATE

I hereby certify that the actual cost of printing the necessary copies of the foregoing Petitioner/Appellee's

Application for Further Review is $-0-.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 21st day of November, 2019, I electronically filed the foregoing Petitioner/Appellee's Application for Further Review with the Clerk of the Supreme Court using the electronic case filing system (EDMS) which will send notification of such filing to the following:

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