

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 RESISTANCE TO APPLICATION FOR FURTHER REVIEW
OF THE COURT OF APPEALS DECISION DATED NOVEMBER 6, 2019

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STATEMENT OF THE ISSUES

I. DID THE COURT OF APPEALS ERR IN AWARDING STEVEN MANN SPOUSAL SUPPORT?

Cases

In re Marriage of Bechthold, 2018 WL 5849006 (Iowa App.)

In re Marriage of Goodwin, 606 N.W.2d 315(Iowa 2000)

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

In re Marriage of Larson, 2015 WL 5965116 (Iowa App.)

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

In re Marriage of Stenzel, 908 N.W.2d 524 (Iowa App. 2018)

In re Marriage of Williams, 199 N.W.2d 339 (Iowa 1972)

In re Marriage of Witherly, 867 N.W.2d 856 (Iowa App. 2015)

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

Statutes

Iowa Code § 598.21A(1)

STATEMENT AGAINST FURTHER REVIEW

Despite Andrea's arguments to the contrary, this case does not warrant a grant of further review. Iowa R. App. P. 6.1103(1)(b). Originally, Andrea agreed to referring this matter to the Iowa Court of Appeals as it applies only existing legal principles. In fact, in this case, the Court of Appeals relied primarily on this Court's well-established prior precedent to determine that Steven should be awarded spousal support. In particular, the Court of Appeals correctly relied upon this Court's prior precedent of *In re Marriage of Shenkelberg*, 824 N.W.2d 481 (Iowa 2012) and *In re Marriage of Gust*, 858 N.W.2d 402 (Iowa 2015). Andrea does not argue for any meaningful changes in any of these precedents.

Andrea also asserts that there is a changing legal principle regarding the award of spousal support following purported claims of domestic violence. This issue has not been sufficiently preserved or argued by any party in the course of these proceedings. Likewise, the issue was only mentioned in the dissent of the Court of Appeals opinion where it was recognized that both the majority and district court correctly applied the law in Iowa. Accordingly, there are no grounds to justify further review by this Court.

ARGUMENT AGAINST FURTHER REVIEW

I. THE COURT OF APPEALS CORRECTLY HELD THAT STEVEN SHOULD BE AWARDED SPOUSAL SUPPORT.

Steven agrees entirely with the well-reasoned analysis of the Court of Appeals in determining that Steven should be awarded spousal support in this matter. However, it is important to note several inaccuracies of Andrea's application for further review. Preliminarily, it is worth noting that Andrea's primary concern appears to be an argument of the facts rather than a legal argument to support the need for further review. Additionally, several of the facts are not even supported in the record. For example, when complaining about the duration of the alimony, Andrea states that the skills necessary to learn the information "can be acquired in an afternoon seminar or workshop." (Application P. 18-19). There is no citation to the record to any such assertions and there does not appear to be anything in the record to support this assertion.

Andrea also mischaracterizes the underlying principles of spousal support as a requirement of showing a "need" for spousal support. This argument has been previously addressed by the Iowa Court of Appeals in a case cited by Andrea. In *In re Marriage of Stenzel*, the spouse ordered to pay alimony argued that there is a requirement to establish a "need for the spousal support and not the ability to pay because there is no division of future earnings." 908 N.W.2d 524, 532 (Iowa App. 2018). The Iowa Court of Appeals recognized that the purpose of spousal support

is not necessary a showing of need, but instead to maintain “a continuation of lifestyle enjoyed during the marriage.” *Id.* Accordingly, one of the central questions to the spousal support analysis is not necessarily the true needs of the party to survive, but instead the needs of the party to maintain the lifestyle that was in existence during the marriage.

The opportunities for Steven to obtain employment that will allow him to maintain the lifestyle during their marriage 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). These facts put this case on all fours with *In re Marriage of Shenkelberg*, 824 N.W.2d 481 (Iowa 2012).

In *Shenkelberg*, this Court recognized that the “comparative income of the spouses is another factor for the court to consider when evaluating an award of spousal support. (Citation omitted). Here, [the husband’s] income during the marriage was substantial, while [the wife’s] was negligible. At age fifty-seven, with her education and employment history, even with some retraining, it is unlikely [she] will ever be able to generate enough income to support herself in the style that [the husband] did during the marriage.” *Id.* at 486-487. Andrea does not argue that *Shenkelberg* was wrongly decided, but simply argues that it is inapposite with this

case. This is simply not the case and should not serve as a basis for the granting of further review in this matter.

Andrea also appears to assert that the fact that her marriage with Steven was sixteen (16) years and not the twenty (20) outlined in *In re Marriage of Gust*, that the duration factor is inapplicable. This is simply not the case. As outlined by the Iowa Court of Appeals in *In re Marriage of Witherly*, the twenty (20) year threshold is used as a basis for the America Academy of Matrimonial Lawyers to initiate the unlimited spousal support duration. 867 N.W.2d 856, 860 (Iowa App. 2015). That is not to say that cases of less duration require no alimony. Instead, as the Court of Appeals recognized in *Witherly*, marriages of sixteen (16) and seventeen (17) years are not considered short and they routinely allow for an award of alimony. *Id.* at 860.

Similarly, Andrea criticizes the Court of Appeals for applying a thirty-one percent (31%) threshold determination. This again is an unfair criticism. First, this Court in *In re Marriage of Gust* explicitly recognized that an award of alimony equal to thirty-one percent of the income differences may be an appropriate award. 858 N.W.2d at 412. This percentage has never been interpreted as a per se requirement for alimony, but instead can establish “a ‘reasonable guide’ and ‘useful tool to get us in the ‘ballpark.’” *In re Marriage of Bechthold*, 2018 WL 5849006, at *8 (Iowa App.) (quoting *In re Marriage of Larson*, 2015 WL 5965116, at *7-8 (Iowa App.)).

The thirty-one percent (31%) guide is always applied with the backdrop of the Iowa Code § 598.21A(1) factors, which remain controlling. *Id.* That is exactly what occurred in this case. The Iowa Court of Appeals did a thorough analysis of the Iowa Code § 598.21A(1) factors and determined that thirty-one percent (31%) (based upon Steven’s request at the trial court) was appropriate. Accordingly, this Court should deny Andrea’s request for further review.

II. THE ISSUE OF DOMESTIC ABUSE AND SPOUSAL SUPPORT WAS NOT PRESERVED AND NOT ADDRESSED BY ANY PARTY

In his brief before the Court of Appeals, Andrea did not request that allegations of domestic abuse be a factor to be considered in determining whether spousal support should be awarded. In fact, in her entire argument section in her original brief, the only mention of domestic abuse and how it related to spousal support was the following sentence: “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.” (Appellee Brief P. 17). Andrea did not cite any case law and did not provide any support to her argument now (for the first time in these proceedings) that domestic abuse should be a factor considered in the spousal support determinations. Further, even the dissent in the Court of Appeals opinion recognized that both the district court and the majority of the Court of Appeals properly applied the law to this issue. (Opinion P. 11).

In 2000, this Court recognized that Iowa is a no-fault divorce state and that the consideration of evidence such as domestic abuse must be rejected “because it would introduce the concept of fault into a dissolution-of-marriage action, a model rejected by our legislature in 1970.” *In re Marriage of Goodwin*, 606 N.W.2d 315, 323-24 (Iowa 2000). Similarly, as recognized by the dissent in this case, this Court in 1972 “made it clear that under Iowa’s modern dissolution statute, ‘the guilty party concept must be eliminated’ and, moreover, ‘evidence of the conduct of the parties insofar as it tends to place fault for the marriage breakdown on either spouse must also be rejected as a factor in awarding property settlement or an allowance of alimony or support money.’” (Opinion P. 17)(quoting *In re Marriage of Williams*, 199 N.W.2d 339, 345 (Iowa 1972)). Andrea is now asking this Court to ignore nearly fifty (50) years of legislative language and intent and write an additional factor in the spousal support determination. This Court should not disregard the legislatures clear rejection of including this factor and this Court should not disregard nearly fifty (50) years of precedent. Accordingly, this Court should deny Andrea’s application for further review.

CONCLUSION

Steven respectfully requests this Court deny Andrea’s application for further review.

Respectfully Submitted,

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ATTORNEY'S COST CERTIFICATE

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

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Dated: December 2, 2109

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CERTIFICATE OF SERVICE AND CERTIFICATE OF FILING

I certify on December 2, 2019, I will serve this brief on the Appellee's Attorney, Joseph L. Fitzgibbons, by electronically filing it.

I further certify that on December 2, 2019, I will electronically file this document with the Clerk of the Iowa Supreme Court.

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