IN THE SUPREME COURT FOR OF IOWA
SUPREME COURT NO. 20-0090
Dubuque County No. CDDM016001

Upon the Petition of
SURAJ GEORGE PAZHOOR,
Appellee/Petitioner,

And Concerning
HANCY CHENNIKKARA,
f.k.a. HANCY CHENNIKKARA PAZHOOR,
Appellant/Respondent.

APPEAL FROM THE IOWA DISTRICT COURT
FOR DUBUQUE COUNTY
HONORABLE JUDGE MICHAEL J. SHUBATT

APPELLANT/RESPONDENT'S PROOF BRIEF

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PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on April 10, 2020, I, the undersigned party or person acting in their behalf, did serve the within Appellant/Respondent's Proof Brief on all other parties to this matter by mailing of one (1) copy thereof to the following counsel for said parties at their respective address, to wit: Mr. Darin S. Harmon, Kintzinger Law Firm, PLC, 100 West 12th Street, Dubuque, IA 52004-0703.

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I further certify that on April 10, 2020, I will file this document EDMS with the Clerk of the Supreme Court.

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ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost of printing the necessary copies of the preceding Appellant/Respondent's Proof Brief was $_____.

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TABLE OF CONTENTS WITH PAGE REFERENCES

TABLE OF AUTHORITIES

CASES

STATUTES & RULES

SECONDARY SOURCES

STATEMENT OF ISSUES FOR REVIEW

I. THE COURT ERRED IN AWARDING SHARED PHYSICAL CARE

In re Marriage of Burham, 283 N.W.2d 269 (Iowa 1979)

In re Marriage of Coulter, 502 N.W.2d 168 (Iowa App. 1993)

In re Marriage of Godber, 851 N.W.2d 546 (Iowa App. 2014)

In re Marriage of Grady-Woods, 577 N.W.2d 851 (Iowa App. 1998)

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

In re Marriage of Hynick, 727 N.W.2d 575 (Iowa 2007).

In re Marriage of Roberts, 545 N.W.2d 340 (Iowa App. 1996)

1997 Iowa Acts ch. 175, § 199

2004 Iowa Acts ch. 1169, § 1 (now codified as Iowa Code § 598.41(5) (2017))

Iowa R. App. P. 6.904(3)(g)

Iowa R. App. P. 6.904(3)(o)

Iowa R. App. P. 6.907

Section 598.1(4), Code of Iowa

Section 598.41(3), Code of Iowa

A. Shared Care Is Not Appropriate Under the Factors Enumerated in Hansen

In re Marriage of Bangs, 776 N.W.2d 111, *2 (Iowa App. 2009)

In re Marriage of Berning, 745 N.W.2d 90 (Iowa App. 2007)

In re Marriage of Courtade, 560 N.W.2d 36, 38 (Iowa App. 1996)

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

1. Approximation

In re Marriage of Coulter, 502 N.W.2d 168 (Iowa App. 1993)

In re Marriage of Decker, 666 N.W.2d 175 (Iowa App. 2003)

In re Marriage of Hansen, 886 N.W.2d 868 (Iowa App. 2016)

In re Marriage of Hartwig, 888 N.W.2d 681, 2016 Iowa App. LEXIS 1013

In re Marriage of Leib, 888 N.W.2d 681 (Table) (Iowa App. 2016)

In re Marriage of Luethje, 2020 Iowa App. LEXIS 102

In re Marriage of Powers, 752 N.W.2d 23 (Table) (Iowa 2008)

In re Marriage of Smith, 860 N.W.2d 343, 2014 Iowa App. LEXIS 1192

In re Marriage of Walton, 577 N.W.2d 869 (Iowa. App. 1998)

In re Marriage of Weidner, 338 N.W.2d 351 (Iowa App. 1983)

In re Marriage of Williams, 589 N.W.2d 759 (Iowa App. 1998)

Pauscher v. Pauscher, 886 N.W.2d 617 (Iowa Ct. App. 2016) (Table)

2. Communication and Mutual Respect

3. Degree of Conflict

4. General Approach to Daily Matters

II. THE DISTRICT COURT'S ALIMONY AWARD IS INEQUITABLE AND CONTRARY TO IOWA STATUTORY AND CASE LAW

Gust, 858 N.W.2d at 410

In re Marriage of Anliker, 694 N.W.2d 535 (Iowa 2005)

In re Marriage of Becker, 756 N.W.2d 822 (Iowa 2008)

In re Marriage of Clinton, 579 N.W.2d 835 (Iowa App. 1998)

In re Marriage of Day, 2008 WL 4725286 (Iowa App. 2008)

In re Marriage of Friedman, 466 N.W.2d 689 (Iowa 1991)

In re Marriage of Kurtt, 561 N.W.2d 385 (Iowa App. 1997)

In re Marriage of Steenhoek, 305 N.W.2d 448 (Iowa 1981)

Ryan v. Wright, 919 N.W.2d 638 (Table) (Iowa App. 2018)

598.21A(1), Code of Iowa

Iowa Code §598.21A

§598.21A(1)(a) – "The length of the marriage"

Gust, 858 N.W.2d at 410

In re Marriage of Arevalo and Arevalo-Luna, 908 N.W.2d 881, 2017 Iowa App. LEXIS 908, 2017 WL 4050076 (Iowa Ct. App. 2017)

In re Marriage of Nelson, 885 N.W.2d 219, 2016 Iowa App. LEXIS 604, 2016 WL 3269573 (Iowa Ct. App. 2016)

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

In re Marriage of Walker, 856 N.W.2d 383, 2014 Iowa App. LEXIS 961, 2014 WL 4937727 (Iowa Ct. App. 2014)

In re Marriage of Richter, 823 N.W.2d 418, 2012 Iowa App. LEXIS 874, 2012 WL 4901097 (Iowa Ct. App. 2012)

In re Marriage of Schachtner, No. 08-1417, 2009 Iowa App. LEXIS 692, 2009 WL 2170240 (Iowa Ct. App. July 22, 2009)

In re Marriage of Ware, 924 N.W.2d 535, 2018 Iowa App. LEXIS 814

§598.21A(1)(b) – "The age and physical and emotional health of the parties."

§598.21A(1)(c) – "The distribution of property made pursuant to section 598.21."

Hansen v. Hansen, 924 N.W.2d 873, 2018 Iowa App. LEXIS 921

In re Marriage of Mauer, 874 N.W.2d 103 (Iowa 2016)

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

§598.21A(1)(d) – "The educational level of each party at the time of the marriage and at the time the action is commenced."

§598.21A(1)(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."

§598.21A(1)(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."

§598.21A(1)(j) – "Other factors the court may determine to be relevant in an individual case."

In re Marriage of Becker, 756 N.W.2d 822 (Iowa 2008)

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

In re Marriage of Frick, 2019 Iowa App. LEXIS 58

In re Marriage of Horstmann, 263 N.W.2d 885 (Iowa 1978)

Gust, 858 N.W.2d 402, 416 (Iowa 2015)

Johnson v. Johnson, 2015 Iowa App. LEXIS 378

Mauer, 874 N.W.2d at 108

In re Marriage of Wilson, 2015 Iowa. App. LEXIS 307

Iowa Code §598.21A(1)(f)

Calculating American Academy of Matrimonial Lawyers (AAML) Maintenance at https://calculators.law/docs/calculating-aaml-maintenance

Mary K. Kisthardt, *Re-thinking Alimony: The AAML's Considerations for Calculating Alimony, Spousal Support or Maintenance*, 21 J. Am. Acad. Matrimonial Law. 61, app. A (2008)

III. THE DISTRICT COURT ERRED IN CALCULATING SURAJ'S MEDICAL SUPPORT

In re Marriage of Guyer, 522 N.W.2d 818 (Iowa 1994)

IV. THE DISTRICT COURT ERRED IN NOT AWARDING HANCY ATTORNEY'S FEES

In re Marriage of Carter, 2019 Iowa App. LEXIS 1127

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

In re Marriage of Geil, 509 N.W.2d 738 (Iowa 1993)

In re Marriage of Kurtt, 561 N.W.2d 385 (Iowa App. 1997)

In re Marriage of Wessels, 542 N.W.2d 486 (Iowa 1995)

V. HANCY SHOULD BE AWARDED APPELLATE ATTORNEY'S FEES

In re Marriage of Ask, 551 N.W.2d 643 (Iowa 1996)

In re Marriage of Gaer, 476 N.W.2d 324 (Iowa 1991)

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

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 12,295 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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Routing Statement

Pursuant to Iowa R. App. P. 6.1101(2)(c), cases involving questions of existing legal principal are ordinarily transferred to the Court of Appeals.

Statement of the Case

This is an appeal from a Findings of Fact, Conclusions of Law & Decree issued by the Honorable Michael J. Shubatt and filed October 18, 2019. (Decree, 10.18.19).

On August 31, 2018, Suraj George Pazhoor ("Suraj") filed a Petition for Dissolution of Marriage. (Petition, 8.31.18). Hancy Chennikkara Pazhoor k.n.a. Hancy Chennikkara ("Hancy") filed her Answer and Counterclaim on September 18, 2018. (Answer, 9.18.18).

On March 11, 2019, Suraj filed a Motion for Temporary Matters Hearing to "determine the issues of temporary custody, visitation and support and how the marital bills will be paid in the interim" noting he "desires to move from the family residence as the living situation is not good for the parties or the children." (Motion, 3.11.19). A hearing was initially scheduled for April 8, 2019, at 2:30 p.m. but was continued twice before ultimately taken off of the docket. (Order, 3.20.19; Order, 3.28.19; Order, 4.16.19; Order, 5.13.19).

On August 11, 2019, a two-day trial commenced. The parties unsuccessfully completed mediation prior to trial and filed a Pretrial Stipulation. (Notice, 8.8.19; Pretrial Stipulation, 8.12.19). The parties acknowledged that they could not reach an agreement as to physical care, visitation, child support, dependency exemptions, alimony, insurance, property and debt allocation, and attorney's fees. (Pretrial Stipulation, 8.12.19).

Following a two-day trial, the Court filed its Decree on October 18, 2019. (Decree, 10.18.19). In the Decree, the Court awarded the parties' shared physical care, equally divided the marital estate, awarded Hancy rehabilitative alimony in the amount of $7,500 per month for 5 years, and denied her attorney's fees. (Decree, 10.18.19). Hancy filed her 1.904 Motion on November 4, 2019, seeking not only a modification of the Court's ruling, but also requested the Court reopen the record to address tens of thousands of dollars of money missing from accounts that were awarded to her in the Decree. (Motion, 11.4.19). Suraj filed his Resistance on November 6, 2019, and Hancy responded on November 13, 2019. (Resistance, 11.6.19; Response 11.13.19). On December 17, 2019, the Court filed its Order re: 1.904 denying the majority of Hancy's motion with the exception of correcting a scrivener's error and including an expense sharing provision. (Order, 12.17.19),

A timely appeal was filed. (Notice, 1.15.20).

Statement of the Facts

Hancy was born on October 24, 1978, in Chicago, Illinois. (Vol. 1, Tr. 76). At the time of the divorce, she resided in the marital residence at 2076 Hidden Meadows Drive in Asbury, Iowa. (Vol. 1, pg. 76). She graduated from high school in Lisle, Illinois, and immediately enrolled in medical school in India. (Vol. 1, pg. 82). Hancy completed medical school in India in 7 years and got a Bachelor's Degree in Medicine and Surgery ("MBBS").[1] (Vo1. 1, pgs. 82-83; Vol. 2, pg. 160). She completed medical school before marrying Suraj and completed her internship, in India, after. (Vol. 1, pg. 83). It was a "generalized internship" with the first three months practicing in rural settings and the remaining year in a multi-specialty rotation. (Vol. 1, pg. 84). Upon completion of her internship in India, she became a registered physician in India and had intentions of becoming a cardiac surgeon in the United States. (Vol. 1, pg. 86, 97). However, this never materialized, Hancy never obtained her license to practice in the United States. (Vol. 1, pg. 86).

Suraj was born August 15, 1976, in Bangalore, India. (Vol. 1, pg. 9). He went to medical school in Russia and after graduation, returned to India to

[1] Hancy explained "[t]he way to compare it to an American standard is basically what a medical student in American would come out with after medical school but still not considered an MD." (Vol. 2, pg. 161).

complete his internship. (Vol. 1, pg. 84). Hancy and Suraj married on May 30, 2002 in Banglaore. (Vol. 1, pgs. 16, 79). The marriage was arranged by their traditional Indian families. (Vol. 1, pgs. 17, 79). After approximately a year of marriage, they moved to Naperville, Illinois. (Vol. 1, pg. 85).

Initially, the parties lived with Hancy's parents in Naperville. (Vol. 1, pg. 101). They lived there for 1 year until they moved into an apartment, where they also lived for a year until Hancy's parents purchased a condo for the two of them to live in using Hancy's investment savings. (Vol. 1, pg. 102; 120). Hancy's mother testified the condo was purchased "for my daughter's happiness because so she live in a good house before. So it is not a loan. It's you, given to." (Vol. 2, pg. 11). The parties remained in this condo until Suraj completed his residency. (Vol. 1, pg. 102).

When they first moved to the United States, both Hancy and Suraj began studying for the United States Medical Licensing Exam (hereinafter "USMLE"). The USMLE is a four-part test. (Vol. 1, pg. 86). The first 3 tests are broken into two steps: (1) Step 1 is one written exam; and (2) Step 2 consists of two exams, one oral and one written. (Vol. 1, pgs. 86, 88). The last test is taken after residency is completed. (Vol. 1, pg. 88). Both took Kaplan courses to assist them in their studies, which were paid for out of Hancy's

non-marital savings. (Vol. 1, pg. 99). Hancy passed Step 1 and the oral portion of Step 2. (Vol. 1, pg. 87).

While Hancy was studying for the written exam of Step 2, she not only learned the joyous news that she was pregnant with N.K.P. (after previously suffering an ectopic pregnancy) but also the devastating news that her father had pancreatic cancer. (Vol. 1, pgs. 87). At this time, Suraj having passed his boards, was a full-time resident at Loyola, splitting his time between the condo in Naperville, and a studio apartment in downtown Chicago. (Vol. 1, pgs. 87; 90). Suraj obtained his residency with help from Hancy and her family's connections and Hancy introduced him to cardiologist Dr. Enas A. Enas, her mentor (and her father's cardiologist), with whom Suraj subsequently co-published articles. (Vol. 1, pgs. 91-92).

Hancy took the written exam of Step 2 the first time, while pregnant with N.K.P., and failed. (Vol. 1, pg. 87). After she gave birth, she tried to study for the exam, while also primarily caring for N.K.P., acting as caretaker and confidante for her ailing father, and assisting her mentor, Dr. Enas, in journal editing. (Vol. 1, pg. 87, 89-90). On the day of the exam, she got on the train, went to the testing facility, and immediately left and went to church. (Vol. 1, pg. 90). She could not take the test; her confidence was gone. (Vol. 1, pg. 90, 105). It was the last time Hancy studied for or took an exam. (Vol.

1, pg. 108). She never did receive her license to practice in the United States and her exam results have all expired. (Vol. 1, pg. 85, 93).

After Suraj finished his residency, Hancy, assisted him with the final USMLE exam by organizing, compiling, formatting, and completing his final PowerPoint presentation. (Vol. 1, pg. 99-100). She then actively participated in his job hunt by drafting, editing, and updating his resume; uploading the same onto various online recruiter databases; and personally reaching out to contacts to secure interviews. (Vol. 1, pg. 147). Suraj ultimately received 2 offers, one from a group in South Bend, Indiana, and one in Monroe, Wisconsin. (Vol. 1, pg. 104). Hancy researched both prospects and reviewed the contracts. (Vol. 1, pg. 148). N.K.P. was just shy of her 3rd birthday when Suraj and Hancy sat down with her mother and brother and Suraj's brother to decide what option was best for the young family. (Vol. 1, pg. 103-104). Hancy was concerned about leaving Chicago, where the parties' entire support system resided. (Vol. 1, pg. 104). Ultimately, it was decided the Wisconsin option was better and the parties moved to Verona, where they lived for 10 months before purchasing a condo in Oregon, Wisconsin. (Vol. 1, pg. 103). With her support system gone, a young daughter to raise, and the financial constrictions the parties were under, the parties mutually agreed Hancy would put her medical pursuits aside to support the family, allowing Suraj to focus

on his burgeoning career. (Vol. 1, pg. 105-106). She never did return to medicine.

Hancy and Suraj are the parents of two children, a daughter, N.K.P., age 11, born in 2008, and a son, N.G.Z.P., age 6, born in 2013. (Vol. 1, pgs. 28-29; 78; Ex. UU). N.K.P. is a "fun", "bubbly" and "kind heart[ed]" young lady. (Vol. 2, pg. 33). She is currently involved in volleyball and ballet. (Vol. 1, pg. 218-219). In the summers, she participates in Holy Family camps, show choir camps, mathletes, sports camps, horse camps, and swimming lessons. (Vol. 1, pg. 219). Up until 6 months prior to trial, Hancy was responsible for registering N.K.P. for all her activities and ensuring attendance and participation. (Vol. 1, pg. 219-220; Ex. X). Hancy made it to each ballet practice and performance. (Vol. 1, pg. 220). Only in the months prior to trial did Suraj make an attempt to attend rehearsals and performances. (Vol. 1, pg. 220).

N.G.Z.P.. is described as a little "spit fire", "Nashone was the first one to jump into the Red Sea when Moses split it, and [N.G.Z.P.] does jump head first into everything." (Vol. 1, pg. 220). At the time of the divorce, he was involved in soccer, karate, and swimming lessons. (Vol. 1, pg. 221-222). He too participated in summer camps, including math and science camps and horse camp. (Vol. 1, pg. 221).

Hancy is described as "very warm, fun-loving, [and] very conscientious of her kids and their needs." (Vol. 2, pg. 33). She is involved in the PSA, volunteers to chaperone field trips, participates in in-class science experiments and reading presentations, helps put worksheets together, volunteers with N.K.P.'s ballet by stitching and fitting costumes and working as a stage hand, she is the consummate "soccer mom" for N.G.Z.P., and she was a girl scout leader for a year. (Vol. 2, pg. 80-81). She participates in choir at the church and teaches religious education. (Vol. 1, pg. 113, 231). Hancy suffers from migraines and spondylolysis (crack or stress fracture in one of the vertebrae) with a spondylolisthesis (slipped disc). (Vol. 1, pg. 107). *See also* Spondylolysis and Spondylolisthesis at https://orthoinfo.aaos.org/en/diseases--conditions/spondylolysis-and-spondylolisthesis/. The latter causes not only chronic back pain but also acute episodes which leave her essentially immobile. (Vol. 1, pg. 108). Her last acute migraine episode was in November prior to trial and in April, 2019, she saw her primary care physician, partially to determine whether her migraines were related to her menstrual cycle. (Vol. 2, pgs. 176-177).

At the time of the divorce, Hancy had two part-time jobs. She was a barista at a local coffee shop, Charlotte's Coffee House, and she also taught CCD and confirmation at the Church of the Resurrection in Dubuque. (Vol.

1, pg. 109, 113). Having previously volunteered at Resurrection, her position became paid in 2019. (Vol. 1, pg. 113-114). As for her position at Charlotte's, she was approached by the owner who believed her personality would "be a great fit in our Charlotte's family." (Vol. 1, pg. 110). Hancy's job at Resurrection requires her to teach every Wednesday and Sunday night (during the school year) and her hours at Charlotte's fluctuate. (Vol. 1, pg. 111). However, she was unable to ever work more than twenty hours a week every other week at Charlotte's due to Suraj's ever-changing work schedule. (Vol. 1, pg. 111). During the pendency of the divorce proceedings, Hancy also had an informal interview at Mercy Medical Center in Dubuque for a patient's advocate position. (Vol. 1, pg. 131). However, the position required a nursing degree and her foreign medical license did not satisfy this prerequisite. (Vol. 1, pg. 131).

As stated above, after completing his residency at Loyola, Suraj obtained a job with a group located in Monroe, Wisconsin. (Vol 1, pg. 100). While in Monroe, he was promoted to Director of Hospitalist Fellowship Program. (Vol 1, pg. 30; Ex. GG). But he and Hancy continued to look for opportunities for growth, so when a recruiter from Dubuque contacted them, the parties took their next step forward. (Vol 1, pg. 150). When Suraj voiced concern that he could not do the job, Hancy assured him that she would

"support you 100 percent." (Vol 1, pg. 150). The parties moved to Dubuque, Iowa, in 2016, when Suraj was hired as an internist and Medical Director of the Grand River Medical Group (hereinafter "GRMG"). Since he began his medical career in 2012, Suraj's income has increased exponentially. (Exs. BB, EE, GG). In 2012, his social security statement reflected taxed social security earnings at approximately $110,100. (Ex. EE). During that time, Suraj had salary only as he had no ownership interest at the Monroe clinic. (Vol 2, pg. 96). At the time of trial, it was stipulated Suraj's income totaled $500,742.19, broken down as $322,714.45 in clinical compensation, $96,080 as Medical Director Compensation, and $81,947.74 in various corporate distributions. (Ex. BB). This is a 355% increase in compensation. (Exs. BB, EE). Suraj's Medical Director compensation increased from $36,000 in 2016, to $96,080 in 2019, a 167% increase. (Vol. 2, pg. 101; Exs. BB, JJ-1).

Suraj regularly works 12 to 14 hours a day. (Vol. 1, pg. 191). He testified his work schedule is week on, week off. (Vol. 1, pg. 112). He also testified that he is only required to be at work during his clinical, or on-call, weeks and on his off week, he is able to work from home to be with the children. (Vol. 1, pgs. 32-33). According to Hancy and her personal observations during the marriage, she did not know working from home was even an option available to him. (Vol. 2, pg. 62-63). In fact, while Suraj's

schedule has always been alternate weeks, that has "[a]lmost never" been his actual schedule. (Vol. 1, pg. 112; Vol. 2, pg. 56-63; Exs. Y, Z). Suraj admits that going back to 2016, the days actually worked was rarely actually week on, week off. (Vol. 2, pg. 113; Exs. Y, Z). Even on his "off-weeks", Suraj goes into work 3 to 4 days a week for administrative work or meetings, leaving around 6:45/6:50 a.m. and returning between 12:00 p.m. to 4:00 p.m. (Vol. 1, pg. 112; Vol. 2, pg. 59-60; Exs. Y, Z). Or, he would pick up extra shifts. (Vol. 2, pg. 60). In fact, the month prior to trial, he worked all but 8 days, despite only being scheduled for alternating weeks. (Vol. 1, pg. 112: Ex. Z). On the rare days he did not work, it was his time to "relax, so I'm relaxing." (Vol 2, pg. 65). He would not actively engage in the children or their activities, instead he would workout, watch TV, or socialize. (Vol. 2, pg. 65). When Hancy asked him to help or come to a dance recital or gymnastic meet, he would retort with "[i]t must be nice if you and I could switch places, and if I was just sitting at home all day, I would do that…" (Vol 2, pg. 65).

Throughout the parties' marriage, Hancy was the primary care taker of the parties' children. She was responsible for medical appointments, dentist[2]

[2] Suraj took N.G.Z.P. to a dentist appointment for the first time ever in June, 2019, because Hancy was able to combine N.G.Z.P.'s appointment with Suraj's. (Vol. 1, pg. 227). This was the only time Suraj had ever taken one of the children to a dentist's appointment. (Vol. 1, pg. 227).

and orthodontist appointments, homework, feeding and bathing, getting ready for school, etc. (Vol. 1, pg. 226-233). She is actively and enthusiastically involved in their extracurricular activities, volunteering and participating. (Vol 2, pg. 81). Hancy's role as primary caregiver was specifically agreed to between the parties – Suraj would focus on his career and would be the breadwinner of the family, Hancy would take care of everything else. (Vol. 1, pg. 151; 226-233; Vol. 2, pg. 113-114). And it is this arrangement the children understand – instinctively they go to Hancy for questions, comfort, and care. (Vol. 1, pg. 233). Even during the 2 to 3 days a week on Suraj's off-weeks when he did not go into the office, she was still responsible for caring and transporting the children. (Vol. 2, pg. 64-65).

When N.K.P. was little, Hancy noticed her speech was delayed. (Vol. 1, pg. 210). When daycare began asking N.K.P. to repeat herself, Hancy took her to a pediatrician. (Vol. 1, pg. 210). Insisting on a referral, she was able to get N.K.P. to an ENT and speech specialists who discovered that, as a result of numerous ear infections as a baby, N.K.P.'s ear canal was full of fluid and tubes were required. (Vol. 1, pg. 211).

As a result of her hearing issues, N.K.P. suffered speech delays and required additional help. (Vol. 1, pg. 212). Therefore, when Hancy enrolled N.K.P. in 4-K in Madison, she asked her teacher to keep an eye out for any

concerns. (Vol. 1, pg. 212). Halfway through that year, it was felt an Individualized Education Program ("IEP") was necessary for N.K.P. (Vol. 1, pg. 212-213). The IEP process started in Madison but was required to restart in Oregon, Wisconsin, when the parties' moved. (Vol. 1, pg. 213). Between Suraj and Hancy, it was Hancy who met with the teachers, specialists, and IEP staff in both Madison and Oregon. (Vol. 1, pg. 213).

N.K.P. finished her second grade in Oregon, Wisconsin, when Suraj got the job with the GRMG in Dubuque. (Vol. 1, pg. 214). While in tune socially, N.K.P. was still academically behind, and with an August birthday, the parties had to decide whether to start her in Dubuque in 3rd grade, or have her repeat 2nd grade. (Vol. 1, pg. 214). Hancy consulted with N.K.P.'s 2nd grade teacher in Wisconsin and Dubuque educators so to be fully informed and then relayed the information back to Suraj. (Vol. 1, pg. 214-215). With all the information before them, the parties' decided to hold N.K.P. back. (Vol. 1, pg. 215). After making this decision, Hancy coordinated between the schools in both Iowa and Wisconsin as well as Keystone Education Services to facilitate the transfer. (Vol. 1, pg. 215). She was solely responsible for meeting with school officials and therapists. (Vol. 1, pg. 215-216). She was the only parent who ever met with IEP staff or attended meetings. (Vol. 1, pg. 215-216). N.K.P.'s IEP therapist never met Suraj. (Vol 2, pg. 38).

After 6 months in the Dubuque Community School District and working with Keystone, N.K.P. graduated from her IEP. (Vol. 1, pg. 216). However, she still struggled with her math. (Vol. 1, pg. 216). Therefore, Hancy approached N.K.P.'s 3rd-grade teacher, Jeremy Hoffman, and got her extra math tutoring. (Vol. 1, pg. 216-217). She continued the tutoring into fourth grade with Kelly Shulte, a teacher at Senior High School in Dubuque. (Vol. 1, pg. 218). Ms. Shulte was referred to Hancy by Kim Nelson, a life coach at Senior and friend of Hancy's, whose daughter was also experiencing math issues. (Vol. 1, pg. 218). N.K.P. continues to see Ms. Shulte once a week. (Vol. 1, pg. 218).

At trial, Suraj argued Hancy's income should be imputed at $100,000 or $200,000, believing her medical degree justified this income. (Vol. 2, pg. 105; Ex. 2). Hancy's non-investment annual income has never exceeded $3,854, and that was in 1996, when she was 18 years old. (Ex. DD). Between 2008 and 2017, her earned income was $0.00. (Ex. DD).

In order for Hancy to become a licensed physician, she would have to retake each of her exams. (Vol. 1, pgs. 94-96). Each step of the testing process requires months of intensive studying and must be taken in sequential order. (Vol. 1, pg. 94-95). Before applying for the next test, one has to wait for the results of the preceding, which can take months. (Vol. 1, pg. 94-95). Then, the

steps start all over again – application, studying, testing, waiting. (Vol. 1, pg. 94-95). On average, it takes 3 years to complete the first 3 parts of the exam. (Vol. 1, pg. 95). Hancy would then have to be accepted into a residency program (of which there are none in Dubuque) which takes on average 2 years, and then successfully complete residency, which can range anywhere from 3 to 7 years, depending on the area of expertise. (Vol. 1, pg. 96). All in all, it would take Hancy at a minimum 8 years before she could theoretically practice medicine. (Vol. 1, pg. 98). And even then, there is no guarantee she would be able to find a job in the tri-state area. (Vol. 1, pg. 98).

During the pendency of the divorce, Hancy started looking into obtaining a Master's in Public Health. (Vol. 1, pg. 133). Specifically, she looked at online programs at Creighton University, George Washington University, Loyola University, and Benedictine University. (Vol. 1, pg. 133; Ex. TT). However, before she could apply for these programs, her credits from India would need to be transferred - "which is not easy at all." (Vol. 1, pg. 134). After her credentials are transferred, they have to be reviewed and approved - all before she can even apply. (Vol. 1, pg. 134). If her credits are not transferrable or approved, she would have to complete undergraduate courses. (Vol. 1, pg. 134-135). Assuming everything worked out perfectly –

a highly unlikely scenario – it would take her 2 to 3 years taking a full course load to obtain a Master's in Public Health. (Vol. 1, pg. 137).

Suraj, and seemingly the Court, faulted Hancy for not re-starting her education and/or re-training immediately upon Suraj filing for divorce. (Vol. 1, pg. 135) The divorce and the betrayal that caused the same came as a complete shock for Hancy and the children. (Vol. 1, pg. 135-136). It took her months of counseling to come to terms with the betrayal, which is when N.K.P. began to struggle with the collapse of the family unit. Therefore, in September, 2019, Hancy scheduled N.K.P. to meet with mental health therapist, Yvette Saeugling. (Vol. 1, pg. 195; 206). Initially, Suraj believed counseling for N.K.P. was a waste of money, only coming around after witnessing the improvement in N.K.P. (Vol. 1, pg. 207).

Yvette Saeugling obtain her master's degree from the University of Iowa, graduating in 1994 and has been a mental health therapist since graduation. (Vol. 1, pg. 195). Per her normal protocol, Ms. Saeugling initially met with Hancy, the parent who initiated services. (Vol. 1, pg. 199). She then began non-direct play therapy with N.K.P. so that "she could play out her emotions." (Vol. 1, pg. 199). She then transitioned to direct therapy so N.K.P. could "identify confusion, questions she wanted to ask each parent." (Vol. 1, pg. 199). Mrs. Saeugling noted "there wasn't a lot of communication

between" N.K.P. and Suraj as Suraj had been more distant in his relationship with her. (Vol. 1, pg. 198). When asked by Attorney Harmon "why the relationship [between N.K.P. and Suraj] was damaged, Mrs. Saeugling answered:

> "I don't know if it was damaged, but it was just very distant. And dad worked a lot. It was a very traditional set-up. Mom was caring for the children. So I don't think she had the opportunity to build the type of relationship she had with mom."

(Vol. 1, pg. 198).

While Suraj focused on his career, Hancy focused on home. In addition to caring for the children, described above, she was responsible for the logistics of each move – from Chicago, to Verona, to Oregon, to Dubuque, including packing, scheduling, finding rentals or potential homes for sale, negotiating contracts. (Vol. 1, pg. 151). She was responsible for paying bills, obtaining and keeping insurance, taxes, groceries, cleaning – "everything." (Vol. 1, pg. 151). She entertained Suraj's colleagues, introducing some to authentic Indian cuisine. (Vol. 1, pg. 148). She turned their daughter's small birthday party into a 65-person party wherein the entire neighborhood was invited, which included leading members of the medical community in Dubuque, "for the benefit of putting [Suraj] in the right light for the

community. (Vol 1, pg. 149). She supported him wholeheartedly – "100 percent" - in his professional pursuits. (Vol. 1, pg. 150).

As a result of Suraj's dedication to his job and Hancy's dedication to the home, the parties built a lavish, unbudgeted lifestyle. (Vol. 1, pg. 152). They live in a 5,600 square foot house on the 4th hole of the Meadows Golf Course in Asbury, Iowa. (Vol. 1, pg. 152). Both had access to credit cards and enjoyed shopping. (Vol. 1, pg. 152). They visited Suraj's parents in India if not every year, then every other. (Vol. 1, pg. 152). Hancy testified they tried to spend Christmas with Suraj's parents, which is peak travel season. (Vol 1, pg. 153). A single ticket to India can cost $1,800. (Vol. 1, pg. 153). Further, in the winter, when they got "cabin fever", they traveled to somewhere warm, staying in nothing less than four-star accommodations. (Vol. 1, pg.153). Suraj drives a Tesla Model S, which is a self-driving model. (Vol. 1, pg. 65).

Argument

I. The Court Erred in Awarding Shared Physical Care

Preservation for Appellate Review: The issue of physical custody was addressed and ruled on in the District Court's Findings of Fact, Conclusions of Law & Decree, filed October 18, 2019. (Decree, 10.18.19). The issue was preserved for review in the Notice of Appeal, filed on January 15, 2020. (Notice, 1.15.20).

Scope and Standard of Appellate Review: Pursuant to Iowa R. App. P. 6.907, the scope of review in equity cases is *de novo*. The Appellate Court examines the entire record and adjudicates anew the issues properly presented on appeal. *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852 (Iowa App. 1998). Although weight is given to the District Court's findings regarding credibility, the Appellate Court is not bound by them. Iowa R. App. P. 6.904(3)(g). The District Court made no credibility findings in this case.

Argument. The Iowa Legislature defines "joint physical care" (also known as "shared physical care") as:

> An award of physical care of a minor child to both joint legal custodial parents under which both parents have rights and responsibilities toward the child including, but not limited to, shared parenting time with the child, maintaining homes for the child, providing routine care for the child and under which neither parent has physical care rights superior to those of the other parent.

Section 598.1(4), Code of Iowa. *See also In re Marriage of Hynick*, 727 N.W.2d 575, 579 (Iowa 2007).

Prior to 1997, Iowa case law largely disfavored shared care. *See In re Marriage of Burham*, 283 N.W.2d 269 (Iowa 1979); *In re Marriage of Roberts*, 545 N.W.2d 340 (Iowa App. 1996); *In re Marriage of Coulter*, 502 N.W.2d 168 (Iowa App. 1993). In 1997 and 2004, the Iowa Legislature amended Chapter 598 to expand the Court's powers in awarding shared care.

1997 Iowa Acts ch. 175, § 199; 2004 Iowa Acts ch. 1169, § 1 (now codified as Iowa Code § 598.41(5) (2013)).

In 2007, the Iowa Supreme Court decided *In re Marriage of Hansen*, 733 N.W.2d 683 (Iowa 2007). *Hansen* analyzed the history of shared care in Iowa, the effect of the 1997 and 2004 amendments, and provided instruction for Courts on how to determine whether shared care is appropriate. *Id*. Specifically, the Court held that the 1997 and 2004 amendments did not substantively change the law concerning shared care:

> While the amendments clearly require the courts consider joint physical care at the request of any party and that it make specific findings when joint physical care is rejected, the legislation reiterates the traditional standard – the best interest of the child – which appellate courts in the past have found rarely served by joint physical care. The amendments only require the courts to consider and explain the basis of decisions to deny physical care.

Id. at 692. *See also* Iowa R. App. P. 6.904(3)(o) ("In child custody cases, the first and governing consideration of the courts is the best interests of the child."); *In re Marriage of Godber*, 851 N.W.2d 546, *2 (Iowa App. 2014) ("There is no presumption in favor of joint physical care.").

The District Court's award of shared care in this case was improper for the following reasons: (1) shared physical care is not appropriate under the

factors set forth in *Hansen*; and (2) shared physical care is not appropriate under the factors enumerated in Section 598.41(3), Code of Iowa.

A. Shared Care Is Not Appropriate Under the Factors Enumerated in *Hansen*

In *Hansen*, the Iowa Supreme Court devised a non-exclusive list of factors to consider when deciding whether shared physical care is in a child's best interest: (1) the "approximation" factor; (2) the parties' ability to communicate and show mutual respect to one another; (3) the degree of conflict between the parties; and (4) whether the parties are in general agreement about their approach to daily matters. 733 N.W.2d at 699-99. *See also In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa App. 2007). Consideration of these factors ensures the accomplishment of the ultimate goal of any physical care determination – placing the children in an environment most likely to bring them to "healthy physical, mental, and social maturity." *In re Marriage of Bangs*, 776 N.W.2d 111, *2 (Iowa App. 2009) (*citing In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa App. 1996).

1. Approximation

In deciding whether to award shared physical care, "stability and continuity of caregiving have traditionally been primary factors." *Hansen*, 733 N.W.2d at 696 (*citing In re Marriage of Decker*, 666 N.W.2d 175, 178-80 (Iowa App. 2003) (past primary caregiving is a factor given heavy weight in

custody matters*); In re Marriage of Williams*, 589 N.W.2d 759, 762 (Iowa App. 1998) (great emphasis placed on achieving emotional stability for children); *In re Marriage of Coulter*, 502 N.W.2d 168, 171 (Iowa App. 1993) (stability "cannot be overemphasized"). To ensure stability and continuity of caregiving, the Court looks to the past caretaking patterns of the parties as "the successful caregiving by one spouse in the past is a strong predictor that future care of the children will be of the same quality." *Hansen*, 733 N.W.2d at 697 (*citing In re Marriage of Walton*, 577 N.W.2d 869, 871 (Iowa. App. 1998)). This "approximation principal" provides an objective standard for the Court to use when determining what physical care award will ensure the children are raised to the best possible physical, mental, and social maturity:

> We continue to believe that stability and continuity of caregiving are important factors that must be considered in custody and care decisions. As noted by a leading scholar, "past caretaking patterns likely are a fairly reliable proxy of the intangible qualities such as parental abilities and emotional bonds that are so difficult for courts to ascertain." While no post-divorce physical care arrangement will be identical to predissolution experience, preservation of the greatest amount of stability possible is a desirable goal. In contrast, imposing a new physical care arrangement on children that significantly contrasts from their past experience can be unsettling, cause serious emotional harm, and thus not be in the child's best interest.

Hansen, 733 N.W.2d at 696-97. Internal citations omitted.

The importance of stability in a child's life "cannot be overemphasized." *In re Marriage of Coulter*, 502 N.W.2d 168, 171 (Iowa App. 1993). *See also In re Marriage of Weidner*, 338 N.W.2d 351, 360 (Iowa App. 1983). Hancy is the parent ablest to bring N.K.P. and N.G.Z.P. to "health, both physically and mentally, and to social maturity." *Hansen*, 733 N.W.2d at 695. As Justice Wiggins noted in his dissent in *In re Marriage of Powers*:

> Although past caretaking patterns may be an indicator of future conduct, the evidence presented at trial can and should be used to overcome past caretaking in custody decisions if the evidence establishes that the parent has created a situation where the parent will be unable to best minister to the long-range best interests of the children. In other words, our primary concern is with the children's future care and well-being.

752 N.W.2d 23 (Table), *3 (Iowa 2008). *See also In re Marriage of Leib*, 888 N.W.2d 681 (Table), *4 (Iowa App. 2016) *citing In re Marriage of Williams*, 589 N.W.2d 759, 761 (Iowa App. 1998) ("Not all [*Hansen*] factors are given equal consideration, and the weight of each factor depends on the specific facts and circumstances of each case.").

There is simply no question that, since the birth of N.K.P., Hancy has been the children's primary care provider. With very few exceptions, she was solely responsible for the everyday care of the children; for their educational

needs, including enrolling them for school, working with IEP providers, and signing them up for extra education assistance; for their medical and dental needs; and for their extracurricular needs and activities. She is who the children instinctively go to. (Vol. 1, pgs. 212, 213, 216-217, 223, 226- 227; Vol. 2, pgs. 80-81). She was involved in every aspect of their lives, not only as a transporter, but as an active participant. She volunteers at school, participates in classroom science experiments, participates in their tutoring, volunteers to help in extracurricular activities, and is their biggest cheerleader. (Vol. 1, pgs. 212, 213, 216-217, 223, 226- 227; Vol. 2, pgs. 80-81). She has a particularly close relationship with N.K.P., as confirmed by N.K.P.'s counselor, Yvette Saeugling. (Vol. 1, pg. 198). Ms. Saeugling also confirmed that the relationship between N.K.P. and Suraj was distant, and despite an attempt by Suraj's attorney to pin the cause on Hancy, Ms. Saeugling disagreed. (Vol. 1, pg. 198). The distant relationship between N.K.P. and Suraj was due to Suraj's work schedule and the resulting lack of development of their relationship. (Vol. 1, pg. 198).

Kimberly Nelson, a life coach and mental health therapist at Hillcrest, testified that she met Hancy and the Pazhoor children at a Mental Health America kids' expo, and then reconnected at ballet rehearsals. (Vol. 2, pg. 31). N.K.P. and Kimberly's daughter, C.N., are friends and not only are in ballet

together, but also math tutoring and choir camp. (Vol. 2, pg. 32). Kimberly sees Hancy and the kids a couple times a week, not only in educational and extracurricular settings, but also socially, when they will have play-dates at the park or Creative Adventure Lab. (Vol. 2, pg. 32). Kimberly described Hancy as "very warm, fun-loving, very conscientious of her kids and their needs. She's lovely. She's lovely with the kids. They clearly love being around her." (Vol 2, pg. 33).

Courtney Draude was N.K.P.'s speech language pathologist at Keystone Area Education Agency. (Vol. 2, pgs. 35-36). She met with N.K.P. and Hancy to help set up N.K.P.'s IEP in Iowa and then met with N.K.P. twice a week while the IEP was in place. (Vol. 2, pg. 37). During the IEP process, parental involvement was important: "[t]he more parental involvement the better, because in Iowa I work with the students usually about twice a week, but that's a really small amount of time, and so it's really the carryover that the rest of the people involved with the student that makes the large difference." (Vol. 2, pg. 38). Between Suraj and Hancy, it was Hancy who worked with N.K.P. and was the "carryover" referenced above that factored into N.K.P. graduating from her IEP in only 6 months. (Vol. 2, pg. 38). Ms. Draude described her observations and interactions with Hancy as "engaged, attentive, caring." (Vol. 2, pg. 38). She also observed Hancy and the Pazhoor

children outside the IEP setting – volunteering and participating in Girl Scouts and book fairs. (Vol. 2, pg. 39). During the entire IEP process, from initiation to graduation, Ms. Draude never met Suraj. (Vol. 2, pg. 38).

Heather Klinge works with the Parents-as-Teachers program at Four Oaks in Dubuque. (Vol. 2, pg. 41). Parents-as-Teachers is a free, voluntary program for four-year-old preschoolers. (Vol. 2, pg. 41). Twice a month, Ms. Klinge goes into the home and works on language, social, and motor skills, as well as kindergarten preparation. (Vol. 2, pg. 42). The child is also visited once a month at school so as to observe interactions with teachers and other children. (Vol. 2, pg. 42). Hancy signed N.G.Z.P. up for this program when enrolling him for preschool. (Vol. 2, pg. 43). A parent is required to participate in the program as "the parent is the first teacher." (Vol. 2, pg. 44). When Ms. Klinge worked with N.G.Z.P., she only worked with Hancy. (Vol. 2, pg. 44). She testified that there were times when Suraj would answer the door but he never participated in any of the programming, despite being home at the time. (Vol. 2, pg. 44). Ms. Klinge observed Hancy was "very interactive" with N.G.Z.P. as well as "silly and funny and laughing, and you know, she encouraged him." (Vol. 2, pg. 45).

Wendy Osterberger is the Director of Religious Education at the Church of the Resurrection in Dubuque and is in charge of religious education

from kindergarten through 8th grade. (Vol. 2, pg. 48). She got to know Hancy, when in 2017, Hancy approached her to volunteer as a catechist.[3] (Vol. 2, pg. 48). In her role as Director and in working with Hancy, she got to know the Pazhoor children "very well", describing her observations: "So, first of all, any time I see Hancy, I see the two kids. Like, that is – they are just all three together all of the time." (Vol. 2, pg. 50). The children would help Ms. Osterberger setup and tear down before and after their own religious education classes. (Vol. 2, pg. 50). During all the years Ms. Osterberger has worked with and known Hancy and the children, she met Suraj only one time, when he dropped the children off. (Vol. 2, pg. 51).

Recent decisions by the appellate courts reflect the importance of the approximation factor in determining who can best minister to the needs of the children. In *In re Marriage of Luethje*, the Court applied the *Hansen* factors and reversed an award of shared care where the mother had been the historical caregiver of the children, had a close relationship with the children who were dependent on her, encouraged contact between the children and their father, and whose work schedule was flexible to the needs of the children, while the father worked up to 70 hours a week. 2020 Iowa App. LEXIS 102, *6-*7. In

[3] Hancy also volunteers at the vacation Bible school during the summer. (Vol. 2, pg. 52).

In re Marriage of Hartwig, the Court of Appeals affirmed a primary care placement to a mother where the "record supports the conclusion [mother] was the primary caregiver of the children in their day-to-day care" despite the fact that the "record demonstrates the parties are able to co-parent more or less agreeably, we nonetheless conclude the facts present in this case establish it is in the children's best interests that the physical care be with [mother]." 888 N.W.2d 681, 2016 Iowa App. LEXIS 1013, *9.

In *Pauscher v. Pauscher*, the Court reversed the award of physical care to father and awarded mother physical care where mother, who had been the historical caregiver of the children, who "thrived while in [mother's] physical care." 886 N.W.2d 617, *6 (Iowa Ct. App. 2016) (Table). The mother in *Pauscher* also encouraged visitation between the children and their father and notified the father of what is going on with the children, despite poor communication. Likewise, Hancy encourages visitation with Suraj and the children, even leaving the home during the pendency of the dissolution so that Suraj and the children could have uninterrupted time together. (Vol. 1, pg. 231-233). Hancy is also dedicated to ensuring the children continue to have a relationship with Suraj's family, scheduling birthday parties and holidays with her former brother and sister-in-law, and godchildren. (Vol. 1, pg. 206). *See also In re Marriage of Hansen*, 886 N.W.2d 868, 875 (Iowa App. 2016)

(affirming placement of children in the primary care of mother who had been the historical caregiver); *In re Marriage of Smith*, 860 N.W.2d 343, 2014 Iowa App. LEXIS 1192. *8-*9. (affirmed physical care to mother who was historical caregiver, engaged in activities with the children, was responsible for medical appointments and encouraged visitation between the child and father).

2. Communication and Mutual Respect

The primary mode of communication between Hancy and Suraj was text messaging, as Suraj would not answer his phone when at work. (Vol. 2, pg. 70-71). Hancy testified that she frequently made decisions without communicating with Suraj because she either could not get ahold of him or he would be too tired to talk:

> **Attorney Weiss**: "Okay. So when he comes home at night and you see him, do you catch him up on what happened that day with the kids and what's going on with their lives and stuff like that?"
>
> **Hancy**: "No."
>
> **Attorney Weiss**: "Why don't you guys communicate like that at the end of the day?"
>
> **Hancy**: "Because he says he's tired. He doesn't want to think about anything. He doesn't want to do any talking. He's been talking all day with patients, patient families. And so anything of substance I usually wait until his off days of off weekends where he has gotten his – well, that first off I don't

> say anything. Again, his downtime and that. So I have to play catch-up."
>
> **Attorney Weiss**: "So, for example, when you decided to sign [N.G.Z.P..] up for Parent As Teachers, did you do that after conversing with Dr. Pazhoor or is that something you did on your own accord?"
>
> **Hancy**: "No. I made that decision myself, because by the time be and I would have that kind of communication, the deadlines already happened where I needed to submit those forms. So it had happened throughout our history after we had children that I have to make these executive decisions without him. And he's understood that and accepted that role because his responsibility was that and this was my responsibility. And unless there was a major decision, for example, holding our daughter back or buying a big ticket item or something in that extent, most of the time I had to take that I make the decision for the house."
>
> **Attorney Weiss**: "And that's never been an issue up until recently?"
>
> **Hancy**: "Yeah."

(Vol. 2, pgs. 71-72).

3. Degree of Conflict

While there is not a lot of conflict between the parties, it is largely due to the lack of communication. The parties do disagree about the extracurricular activities the children are involved in as N.G.Z.P. is double booked during part of the year due to overlaps in his soccer and karate

schedules. (Vol. 1, pgs. 222-223). N.G.Z.P. is passionate about both, so Hancy did her best to coordinate both schedules and was doing so exclusively for months until Suraj, during the pendency of the divorce, asked to take a more active role. (Vol. 1, pg. 223-224). When he realized how much running was required in order to ensure the kids were able to participate in each of their activities, he raised the issue. (Vol. 1, pg. 223-224).

4. General Approach to Daily Matters

The final factor enumerated in *Hansen* is "the degree to which the parents are in general agreement about their approach to daily matters." 733 N.W.2d at 699. There is little argument between Suraj and Hancy regarding child rearing as all rearing and, therefore, deferral to the same has been made by Hancy. (Vol. 2, pgs. 71-72). Contrary to Suraj's argument, this is not because Hancy is over-bearing. It is because this was the role Hancy always had in the marriage – the role they agreed she would have. (Vol. 1, pg. 105-106). There was testimony from both parents about the importance of education and math in their culture, but it was Hancy to ensure the children received extra tutoring or teacher involvement. (Vol. 1, pg. 216-218; Vol 2, pg. 44).

The District Court's award of shared care upturns the roles and responsibilities that have been in place between Suraj and Hancy for over a

decade. And, it disrupts the everyday life and routine the Pazhoor children have come to rely and thrived upon. In the end, it ensures the “stability and continuity of caregiving” the children need to realize physical, mental, and social maturity and emphasized by the Court are abolished.

II. The District Court’s Alimony Award is Inequitable and Contrary to Iowa Statutory and Case Law

Preservation for Appellate Review. The parties were in disagreement at trial as to the appropriate amount and duration of alimony, each provided evidence and argument on the issue, and the disagreement was acknowledged by the District Court and ruled upon. (Decree, 10.18.19).

Scope and Standard of Appellate Review. Dissolution of marriage proceedings are equitable actions and are subject to de novo review. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa App. 1997). "We apply this standard to the economic provisions of the decree as well as to the spousal support provisions." *In re Marriage of Friedman*, 466 N.W.2d 689, 691 (Iowa 1991). "We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented." *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981).

Argument. The District Court may award alimony for a limited or indefinite length of time after considering those factors enumerated in section 598.21A(1), Code of Iowa. Section 598.21A(1) "mandates consideration of a

number of factors, such as the length of the marriage, the parties' ages and health, the earning capacity of the spouse seeking support, and that spouse's ability to become self-sufficient." *In re Marriage of Day*, 2008 WL 4725286 *4 (Iowa App. 2008).

Alimony "is used as a means of compensating the party who leaves the marriage at a financial disadvantage, particularly where there is a large disparity in earnings." *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa App. 1998). It "is a stipend to a spouse in lieu of the other spouse's legal obligation for support." *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). The factors outlined in §598.21A are applied to the three types of spousal support recognized by Iowa courts: traditional, rehabilitative, and reimbursement. *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008). The Court may award a combination of types of spousal support if deemed appropriate. *Id.* at 827. Hancy is entitled to alimony under each of the recognized categories of support so to (1) maintain her standard of living, (2) reimburse her for the increase in her spouse's earning capacity and her non-marital contributions to the marriage, and (3) help her get back on her feet.

The Supreme Court recently revisited the Iowa statutory and case law framework applicable when analyzing alimony in its *Gust* decision:

> First, our caselaw demonstrates that duration of the marriage is an important factor for an award of

traditional spousal support. Traditional spousal support is often used in long-term marriages where life patterns have been largely set and "the earning potential of both spouses can be predicted with some reliability." Further, particularly in a traditional marriage, when the parties agree a spouse should stay home to raise children, the economic consequences of absence from the workplace can be substantial. While neither we nor the legislature have established a fixed formula, the shorter the marriage, the less likely a court is to award traditional spousal support. Generally speaking, marriages lasting twenty or more years commonly cross the durational threshold and merit serious consideration for traditional spousal support.

Second, the cases emphasize that in marriages of relatively long duration, "[t]he imposition and length of an award of traditional alimony is primarily predicated on need and ability." For over forty years, by virtue of both judicial decision and legislative provision, the yardstick for determining need has been the ability of a spouse to become self-sufficient at "a standard of living reasonably comparable to that enjoyed during the marriage." The standard for determining need is thus objectively and measurably based upon the predivorce experience and private decisions of the parties, not on some externally discovered and imposed approach to need, such as subsistence or adequate living standards or amorphous notions of self-sufficiency.

In determining need, we focus on the earning capability of the spouses, not necessarily on actual income. In marriages of long duration, the historical record ordinarily provides an objective starting point for determining earning capacity of persons with work experience. In order to establish

> earning capability for persons without work experience or who are arguably unemployed, the parties may use vocational and other experts to assist the court in making the determination.
>
> With respect to ability to pay, we have noted that "[f]ollowing a marriage of long duration, we have affirmed awards both of alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great." Where there is a substantial disparity, we do not employ a mathematical formula to determine the amount of spousal support. We have, however, approved spousal support where it amounts to approximately thirty-one percent of the difference in annual income between spouses. Where a spouse does not have the ability to pay traditional spousal support, however, none will be awarded.
>
> With respect to duration, we have observed that an award of traditional spousal support is normally payable until the death of either party, the payee's remarriage, or until the dependent is capable of self-support at the lifestyle to which the party was accustomed during the marriage. In order to limit or end traditional support, the evidence must establish that the payee spouse has the capacity to close the gap between income and need or show that it is fair to require him or her alone to bear the remaining gap between income and reasonable needs. Spousal support may end, however, where the record shows that a payee spouse has or will at some point reach a position where self-support at a standard of living comparable to that enjoyed in the marriage is attainable.

858 N.W.2d 402, 410 – 412 (Iowa 2015). Internal citations omitted.

Under the factors outlined in Iowa Code §598.21A and *Gust*, the District Court's alimony award in this case is inequitable. However, before addressing those factors, the District Court erred in imputing a $40,000 income to Hancy. (Decree, 10.18.19). The Court found she was capable of working full time at $12.00 per hour, "if she chooses" to and imputed an annual income of $24,960, exclusive of her non-marital business income. In fact, at the time of the divorce, Hancy's four sources of income were $8,320 annually from Charlotte's Coffee Shop, $918 annually from Resurrection, $425 in annual rental income from the Naperville condo, and $13,838 in average passive business income from 2 non-marital LLCs. (Vol 2, pgs. 7-8; Exs. A, pg. 23; B, pgs. 12- 13; C, pgs. 9, 33; LL, MM; Proposed CSG, 8.12.19). Her total combined income is approximately $23,500. (Proposed CSG, 8.12.19). The $9,300 in wages is the most Hancy has made in her entire life. (Ex. DD). There was no testimony that Hancy had a self-inflicted reduction in her income. *See* *Ryan v. Wright*, 919 N.W.2d 638 (Table) (Iowa App. 2018) (reversed imputation of income on to father where the record did not support the imputation and there was no evidence of underemployment or of self-inflicted reduction in income). The District Court's imputation is further unreasonable considering that it's rehabilitative alimony award requires her to take a fulltime course load to obtain her master's degree and

find employment which will compensate her to a level similar to Suraj's, all in the next 5 years. (Decree, 10.18.19). The appellate court should use Hancy's actual income of $23,500.

Hancy does not challenge the Court's award of rehabilitative alimony as the same is warranted. However, the facts of this case demand a combination of traditional, reimbursement, and rehabilitative alimony.

§598.21A(1)(a) – "The length of the marriage": This was a 17-year marriage and while *Gust* discussed marriages of 20 years or longer, meeting this anniversary is not to be interpreted as a "precondition to justify traditional alimony." *In re Marriage of Ware*, 924 N.W.2d 535, 2018 Iowa App. LEXIS 814, *11, *citing* *In re Marriage of Arevalo and Arevalo-Luna*, 908 N.W.2d 881, 2017 Iowa App. LEXIS 908, 2017 WL 4050076, at *3 (Iowa Ct. App. 2017); *In re Marriage of Nelson*, 885 N.W.2d 219, 2016 Iowa App. LEXIS 604, 2016 WL 3269573, at *3 (Iowa Ct. App. 2016) ("[D]uration of the marriage is only a single factor to consider in the multifactor statutory framework."). After 17 years of a "traditional" marriage, traditional spousal support is warranted. *See, e.g., In re Marriage of Schenkelberg*, 824 N.W.2d 481, 486 (Iowa 2012) (affirming traditional alimony following a 16-year marriage); *In re Marriage of Walker*, 856 N.W.2d 383, 2014 Iowa App. LEXIS 961, 2014 WL 4937727, at *9 (Iowa Ct. App. 2014) (affirming

traditional alimony award following 10-year marriage); *In re Marriage of Richter*, 823 N.W.2d 418, 2012 Iowa App. LEXIS 874, 2012 WL 4901097, at *4 (Iowa Ct. App. 2012) (affirming traditional alimony following 12-year marriage); *In re Marriage of Schachtner*, No. 08-1417, 2009 Iowa App. LEXIS 692, 2009 WL 2170240, at *3 (Iowa Ct. App. July 22, 2009) (awarding traditional alimony following 17-year marriage based on former wife's inability to maintain standard of living enjoyed during the marriage).

§598.21A(1)(b) – "The age and physical and emotional health of the parties." Both Suraj and Hancy were in their early forties at the time of the divorce. (Vol. 1, pgs. 9, 76). Other than concerns about drinking, Suraj has no health issues. (Vol. 2, pg. 178-179). Hancy suffers from back pain and migraines, which can cause immobility and result in missed work. (Vol. 1, pgs. 107-108; Vol. 2, pgs. 176-177). She is otherwise healthy.

§598.21A(1)(c) – "The distribution of property made pursuant to section 598.21." Of the $2.2M in gross, marital and non-marital, assets, $2M (approx. 90%) of that are non-liquid assets, with over $1.5M in real estate and GRMG Shares alone. The parties have very little in retirement assets, marital or non-marital, and relatively little in liquid assets which could be invested. *See In re Marriage of Mauer*, 874 N.W.2d 103, 110 (Iowa 2016).

The Court's property award to Hancy was attached to the Decree. (Decree, 10.18.19). Of the marital property awarded to Hancy, the Naperville condo and the Chrysler Pacifica are non-liquid assets, the retirement accounts are subject to income tax and early withdrawal penalties, and the total liquid assets, including Respondent's premarital and nonmarital property and the $143,977.15 equalizing payment, total approximately $350,000 in investable preretirement assets. (Decree 10.18.19). It appears the District Court assumed Respondent would invest and draw interest income off of her liquid assets, which is not a reasonable assumption considering she will need those assets to eventually purchase a home. Further, $350,000 is not a large amount to invest and, assuming a 4% rate of return, it equates to $14,000 in potential taxable income. *See* *Hansen v. Hansen*, 924 N.W.2d 873, 2018 Iowa App. LEXIS 921, *35-36. Further, the District Court's alimony award tasked Hancy with completing school within 5 years, but fails to provide support sufficient for her to do so without dipping into her liquid assets.

The District Court awarded Hancy $7,500 a month in rehabilitative alimony for 5 years. This award effectively makes her indigent when the Court considers her reasonable monthly expenses. Using the Court's imputation of income of $40,000, which is subject to appeal, a $7,500 a month alimony award results in adjusted net monthly income of $10,429.66 to Hancy,

compared to $18,716.89 to Suraj. (1.904 Motion, 11.4.19). Taking into consideration the District Court's child support award of $643.00 per month, Hancy's net monthly income increases to $11,072.66, compared to Suraj's $18,073.89. (1.904 Motion, 11.4.19).

From Hancy's net monthly income, the following are her minimal, reasonable, and relatively static monthly expenses:

House Rent/Payment	$1,700 (Exhibit RR, pg. 7)
Renter's Insurance	$180 (Affidavit of Financial Status, filed August 12, 2019
Electricity, Oil, Gas	$672 (Affidavit of Financial Status, filed August 12, 2019)
Water, Garbage, Sewer	$44 (Affidavit of Financial Status, filed August 12, 2019
Telephone	$172 (Affidavit of Financial Status, filed August 12, 2019
Meals and Food	$1,000 (Affidavit of Financial Status, filed August 12, 2019
Car Insurance	$134.67 (Affidavit of Financial Status, filed August 12, 2019
Car Payments	$847.88 (Affidavit of Financial Status, filed August 12, 2019
Car Registration	$33.58 (Affidavit of Financial Status, filed August 12, 2019

Gas/Oil for Car	$250 (Affidavit of Financial Status, filed August 12, 2019
Parking Fees	$50 (Affidavit of Financial Status, filed August 12, 2019
Health Insurance/out-of-pocket medical expenses	$700 (Affidavit of Financial Status, filed August 12, 2019
Dental/Orthodontia	$83.33 (Affidavit of Financial Status, filed August 12, 2019
Drugs, prescription medication, medicine	$50 (Affidavit of Financial Status, filed August 12, 2019
Optical/Optometrist	$50 (Affidavit of Financial Status, filed August 12, 2019
School activities/supplies/lunches	$22.50 (Affidavit of Financial Status, filed August 12, 2019
Classes, lessons, tutors (speech)	$288 (Affidavit of Financial Status, filed August 12, 2019
Daycare	$200 (Affidavit of Financial Status, filed August 12, 2019
Cable satellite TV, Internet, XM	$214.67 (Affidavit of Financial Status, filed August 12, 2019
Tuition	$3,551.98 (Ex. TT; average monthly cost of tuition, to wit: [($46,000 + $44,900 + $54,295 + $25,300) ÷ 4] ÷ 12 months)
Monthly Expenses	**$10,244.61**

These minimal monthly expenses leave Hancy approximately $830.00 a month to pay for all other expenses related to her and her children, including clothing, club membership dues, incidentals, personal grooming products, laundry, allowances, life insurance, babysitting, church donations, gifts for the kids' birthday and Christmas, etc… (Affidavit of Financial Status, filed August 12, 2019). If the Court uses Hancy's actual annual income of $23,500, she is actually $212.17 in the red each month. (1.904 Motion, 11.4.19). To cover these remaining expenses, Hancy either has to incur debt or use her liquid assets and there is nothing remaining to save, invest, or to donate to church. *See In re Marriage of Stenzel*, 908 N.W.2d 524, 535-536 (Iowa App. 2018). Suraj will have more than enough in net monthly income to continue to live, post-dissolution, the exact lifestyle he did pre-dissolution, including living in an approximately $1M home, accruing retirement benefits, and continuing to save, invest, and donate. (Vol. 1, pgs. 118-125; Ex. 1).

§598.21A(1)(d) – "The educational level of each party at the time of the marriage and at the time the action is commenced." At the time of the parties' marriage, both had completed medical school, Suraj in Russia and Hancy in India, and were interning. (Vol 1, pgs. 83-84). However, only Suraj completed the USMLE and became a licensed doctor in the United States.

(Vol. 1, pg. 26-27). Hancy never did and all prior test results have expired. (Vol. 1, pg. 83, 93, 108).

§598.21A(1)(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." As has been thoroughly outlined above, Hancy does not have the educational background, training, skills, or experience to ever have an earning capacity comparable to what the parties had during the marriage. She did not complete the USMLE, her test scores are expired, she has not picked up a book to study since before N.G.Z.P. was born. (Vol 1, pg. 83, 93, 108). She was out of the workforce for 10 years before the commencement of the divorce. (Ex. DD; FF). She dedicated her life to raising the children and taking care of the home while Suraj advanced in his career.

§598.21A(1)(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." Hancy will, simply put, never become self-supporting as

a standard comparable to what she experienced during the marriage. Even if she was able to obtain a position in the field of Public Health at the very top income level - $80,000 - this will still not allow her to enjoy a standard of living reasonably comparable to what she enjoyed during the marriage. (Vol. 2, pg. 163-164).[4]

§598.21A(1)(j) – "Other factors the court may determine to be relevant in an individual case." It cannot be understated that the parties' roles in their marriage was an agreement between the two of them – Suraj concentrated on work and Hancy concentrated on home. Both excelled in their fields but only one was compensated. While there may not have been an explicit agreement for reciprocation or compensation as contemplated under section 598.21A, it was implicit that with Hancy managing the home, Suraj would have the ability to concentrate exclusively on his work, thereby increasing his income which flowed into the home and benefited the family. Suraj would not have been able to build his practice and increase his earnings by 355% without Hancy at home, supporting him and raising the children.

The goal of traditional spousal support is to support a spouse so long as they are incapable of self-support. *Becker*, 756 N.W.2d at 826. This self-

[4] Hancy testified that starting levels in the public health sector range from $25,000 to $80,000. (Vol. 2, pgs. 163-164).

support includes a spouse's expenses "to maintain a standard of living reasonably comparable to that she enjoyed during the marriage." *Id.* at 827; *see* Iowa Code §598.21A(1)(f). By failing to award traditional alimony, the District Court ignores this long-held directive.

Hancy also qualifies for reimbursement alimony. The goal of reimbursement alimony is to pay back the spouse receiving the support for contributions made to increasing the other spouse's income. *Becker*, 756 N.W.2d at 827. This type of alimony is "predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other." *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989). Therefore, this award should not be modified or terminated "until full compensation is achieved." *Id.* The increase in earning capacity of one spouse should be considered in both awarding reimbursement alimony and in equitable distribution of assets. *Id., citing In re Marriage of Horstmann*, 263 N.W.2d 885, 891 (Iowa 1978).

In addition to Hancy caring for the children and household while Suraj increased his earning capacity and the parties' agreement that Hancy would forgo proceeding with her medical career upon Suraj obtaining employment in Wisconsin, Hancy forfeited accumulating income and retirement assets in her own name. She also exhausted significant premarital and non-marital

assets for the benefit of the marriage. When Hancy was little, her parents opened numerous UTMA accounts, which they continuously rolled over into high interest CDs. (Vol. 2, pg. 6). These accounts were eventually cashed out and deposited into Hancy's Lisle Bank accounts, along with her non-marital LLC distributions. (Vol 1, pgs. 172-176; Exs. U, V, W,). From these non-marital accounts, Hancy withdrew money to pay for the daycare of N.K.P., to pay credit card debt, living expenses, etc. when the parties lived in Naperville neither were working. (Vol. 1, pg. 176). She also took $9,000 from this account as seed money for Suraj's Wells Fargo IRA #3208. (Vol. 1, 160-161). She sold $10,688 in jewelry gifted to her before her wedding for the down-payment on the parties' Oregon home. (Vol. 1, pgs. 164-165; Ex. D).

The Court's alimony award is even more unreasonable considering that, in 2018, the year Suraj filed for divorce, he invested $111,111.84 in after-tax dollars in an attempt at "amateur" investing on his E-Trade account. (Vol. 2, pgs. 115-117; Exs. WW, WW-1, WW-2).

Finally, the District Court's alimony award fails the "reality check" provided by the American Academy of Matrimonial Lawyers' [AAML] Spousal Support Guidelines. While not binding on the Court, the "AAML guidelines 'provide a useful reality check" with respect to alimony. *Mauer*, 874 N.W.2d at 108. (Iowa 2016). *See also* *Gust*, 858 N.W.2d 402, 416, n.2

(Iowa 2015); *In re Marriage of Frick*, 2019 Iowa App. LEXIS 58, n. 4; *Johnson v. Johnson*, 2015 Iowa App. LEXIS 378, n. 2; *In re Marriage of Wilson*, 2015 Iowa. App. LEXIS 307, *6-*7. The AAML guidelines *See also* Calculating American Academy of Matrimonial Lawyers (AAML) Maintenance at https://calculators.law/docs/calculating-aaml-maintenance. To compute alimony under the AAML, the Court takes 30% of the obligor's gross income and subtract 20% of the obligee's gross income. *Boemio v. Boemio*, 414 Md. 118, 129 (Md. App. 2010), *citing* Mary K. Kisthardt, *Re-thinking Alimony: The AAML's Considerations for Calculating Alimony, Spousal Support or Maintenance*, 21 J. Am. Acad. Matrimonial Law. 61, app. A (2008). As long as this number does not exceed 40% of the combined gross income of the parties, it is reasonable. *Id*. As for duration, "the AAML guidelines suggest multiplying the length of the marriage by one of the following factors: for to three years, a factor of 0.3; for three to ten years, a factor of 0.5; for ten to twenty years, a factor of 0.75; and for more than twenty years, permanent alimony." *Id*. Pursuant to the AAML guidelines, a reasonable spousal support obligation from Suraj to Hancy is $142,222.65 annually ($11,851.89 monthly) using the District Court's imputed income of $40,000, or $145,522.60 annually ($12,126.88 monthly) if the Court uses her

actual income. The appropriate duration would be 12.75 years (75% of 17 years).

The District Court's alimony award and the assumptions it used when calculating ensures Hancy will never again enjoy a standard of living comparable to what she enjoyed during the marriage. In failing to award reimbursement alimony, the District Court ignored the premarital and non-marital assets Hancy contributed to the marriage to support the parties' during Suraj's education and early days of employment. Finally, while rehabilitative alimony is appropriate, in awarding it alone, with no consideration for traditional or reimbursement alimony, the District Court not only ignored the facts of the case, but also the reality of and roadblock to even applying to the programs and that in order to complete the program in the time the Court prescribed, she would have to take a full course load every semester, a task made almost impossible by the Court's income imputation which also assumes Hancy works fulltime. In the end, the Court made assumptions and imputations on Hancy that are unreasonable and impractical.

III. The District Court erred in Calculating Suraj's Medical Support

Preservation for Appellate Review. The parties were in disagreement at trial as to whether Suraj was entitled to any credit for out-of-pocket medical premium payments, each provided evidence and argument on the issue, and

the disagreement was acknowledged by the District Court and ruled upon. (Decree, 10.18.19; Order, 12.17.19).

Scope and Standard of Appellate Review. Child support questions are reviewed de novo. *In re Marriage of Guyer*, 522 N.W.2d 818, 820 (Iowa 1994).

Argument. In calculating Suraj's child support obligation, the Court included a monthly health insurance premium of $363.00 per month, based on the fact that Suraj, as full partner of GRMG, has the cost of his health insurance worked into his overhead cost. (Order, 12.17.19). While this may be true, this is what the employer pays or are "covered" medical expenses and is a benefit of his employment, not what actually comes out of his pocket. (Exs. KK and XX). Suraj pays no out-of-pocket costs for the health insurance for himself or his children. (Vol 2, pg. 93; Ex. KK, XX). Suraj presented no testimony at trial of how these costs, and the costs for his other partners, are allocated among the partners or how this affects his wRVUs. The Court erred in allowing Suraj a medical support premium deduction on his child support guidelines when coverage is provided as a benefit of his employment and not an out-of-pocket expense. Further, the Court's reasoning is tantamount to double-dipping. Suraj testified that his medical premiums are considered in calculating his wRVUs. (Vol. 2, pg. 123). wRVUs, or work relative value

units, is a standard measure of physician productivity that are used to calculate Medicare reimbursement and is partially determined by GRMG. (Vol. 2, pgs. 87, 99). Suraj's wRVUs reimbursement is reflected in his clinical compensation, which in 2017 was approximately $322,000. (Vol. 2, pg. 90; Ex. BB). In other words, according to Suraj, his wRVUs would be higher and, therefore, his clinical compensation would be higher but for the medical insurance. (Vol. 2, pg. 123). Therefore, the cost of health insurance is already reflected in his lower wRVUs and corresponding lower clinic compensation. (Vol. 2, pg. 123). This in turn results in a lower income used to calculate child support and a lower child support obligation. Allowing Suraj to deduct the premiums a second time is double-dipping.

IV. The District Court Erred in Not Awarding Hancy Attorney's Fees.

Preservation for Appellate Review. The parties were in disagreement at trial as to whether Hancy should be awarded attorney's fees, each provided evidence and argument on the issue, and the disagreement was acknowledged by the District Court and ruled upon. (Decree, 10.18.19; Order, 12.17.19).

Scope and Standard of Appellate Review. Dissolution of marriage proceedings are equitable actions and are subject to de novo review. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa App. 1997). The decision to award attorney fees in dissolution actions is within the direction of the trial

court. *In re Marriage of Carter*, 2019 Iowa App. LEXIS 1127, *1, *citing* *In re Marriage of Francis*, 442 N.W.2d 59, 67 (Iowa 1989). The appellate court will only disturb an award of attorney fees if the trial court abuses that discretion. *Id*.

Argument. The trial court failure to award Hancy attorney's fees was an abuse of discretion. At the end of the second day of trial, the judge advised that it would determine whether to award fees in its decision and then, at that time, allow the parties an opportunity to supplement the record with their Attorney Fee Affidavits. (Vol. 2, pg. 199). The Court then denied Hancy's request for attorney's fees, noting that "all of the attorney fees to this point have been paid by Suraj from marital assets." (Decree, 10.18.19). Unfortunately, as a result, the record does not contain information on how much each party paid in attorney's fees.

Further, both parties used marital assets during the pendency of the divorce to pay their attorney fees. These fees were not paid by Suraj, contrary to the District Court's assertion. They were paid by the marital estate.

Trial attorney fees are based on a party's ability to pay. *In re Marriage of Geil*, 509 N.W.2d 738, 743 (Iowa 1993). In assessing a parties' ability to pay, the court must consider not only financial circumstances of each party

but also their respective ability to pay. *In re Marriage of Wessels*, 542 N.W.2d 486, 491 (Iowa 1995).

This case involved a myriad of issues – custody, visitation, child support, spousal support, $2.2M in total assets, and pre-marital and non-marital issues that required the reviewing and compilation of decades worth of financial statements. (Pretrial Stipulation, 8.12.19; Trial Brief, 8.19.19; Exs. N, O, P, Q, R, S, V, W, NN, OO). All of this information was compiled and presented by Hancy and her attorney, as evidenced by the 49 exhibits she introduced at trial, compared to the 7 introduced by Suraj and his attorney. (Vol. 1, pg. 2). Trial consisted of 2 days, where both parties called numerous witnesses. Both parties were asked to submit post-trial briefs. (Vol. 2, pg. 198). It is inequitable, considering not only the work performed and fees incurred by Hancy to prepare for and participate in trial, to not award her fees when Suraj, making half a million dollars annually compared to Hancy's $23,500, is more than able to pay and is and remains in a superior economic position.

V. Hancy Should be Awarded Appellate Attorney's Fees.

Hancy respectfully requests an award of appellate attorney's fees of $_____. An award of appellate fees is discretionary. *In re Marriage of Ask*, 551 N.W.2d 643, 646 (Iowa 1996). Proper considerations

include Hancy's needs and the ability of Suraj to pay. *See In re Marriage of Gaer*, 476 N.W.2d 324, 326 (Iowa 1991). As noted above, Suraj's income far and away exceeds Hancy's and he has the ability to contribute toward Hancy's fees on appeal. Upon submission of the Final Brief, Appendix, and Reply Brief, Hancy's attorney will submit a verified statement of services rendered and time spent.

Conclusion and Requested Relief

Hancy respectfully requests this Court (1) reverse the District Court's award of shared physical care and award primary physical care to Hancy subject to visitation to Suraj; (2) modify the District Court's alimony payment to award her a combination of traditional, reimbursement, and rehabilitative alimony in an amount of $12,000 for at least 12 years; (3) reverse the District Court's decision granting Suraj a deduction for medical premiums; and (4) reverse the District Court's denial of trial attorney's fees as an abuse of discretion and award Hancy $13,000 in trial attorney fees. Finally, Hancy requests an award of appellate attorney's fees in the amount not less than $_____ and any other relief the Court deems just and equitable.

Request for Oral Submission

Hancy respectfully requests oral arguments before the Court.