IN THE SUPREME COURT OF IOWA

No. 20-0090
Dubuque County No. CDDM016001

IN RE THE MARRIAGE OF SURAJ GEORGE PAZHOOR AND HANCY CHENNIKKARA PAZHOOR

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

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

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

APPELLEE'S FINAL BRIEF

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ROUTING STATEMENT

Pursuant to Iowa Rule App. P. 6.1101(3), cases presenting the application of existing legal principles shall ordinarily be transferred to the Court of Appeals. This case involves application of existing legal principles and is appropriate for transfer.

STATEMENT OF THE CASE

Suraj agrees with Hancy's statement of the case.

STATEMENT OF THE FACTS

Suraj does not agree with Hancy's statement of the facts.

Suraj George Pazhoor ("Suraj") was born on August 15, 1976 and is a native of India (Transcript v. I p. 8:23-9:7). After struggling during his final years of high school (in India, final years of high school are considered to be college) Suraj learned to speak Russian so that he could attend medical school in Russia and become a doctor. (Transcript v. I p. 10:20-11:3). Suraj then went to Switzerland, where his aunts, who practice in the medical field and reside there, helped him obtain a research position. (Transcript v. I p. 11:18-12:8). Upon leaving Switzerland, Suraj returned to India to complete his internship and started work as a volunteer. (Transcript v. I p. 13:5-7). Suraj admits that

"[he] was not the most brightest, but [he] could get away with [his] hard work." (Transcript v. I p. 14:20-23).

Hancy Chennikkara Pazhoor n/k/a Hancy Chennikkara ("Hancy") was born on October 24, 1978 in Chicago, Illinois. (Transcript v. I p. 76:6-14). Hancy went to high school at Benet Academy in Lisle, Illinois and then went immediately to medical school. (Transcript v. I p. 82:4-9). Hancy was admitted to a medical school in India after making a monetary donation of approximately $76,000. (Transcript v. I p. 82:10-24). The medical school was a six-and-a-half-year program, taught in English. (Transcript v. I p. 83:2-10). After six-years of medical training, Hancy completed a one-year internship in India (Transcript v. I p. 83:2-13).

Hancy and Suraj first met during the first three-months of Hancy's internship. (Transcript v. I p. 84:2-9). Suraj was two years senior to Hancy and had already completed his training in Russia when the two of them met. (Transcript v. I p. 84:10-25). On May 30th, 2002 Hancy and Suraj were married in an arranged marriage, only months after meeting. (Transcript v. I p. 17:1-17. Transcript v. I p. 79:6-9). Such a marriage ensured that Suraj and Hancy had the same religion and background. (Transcript v. I p. 17:3-14). "[I]t happened that my grandmother met her uncle in a baptism ceremony and said I have a doctor, and they said, you know, I have a doctor who's looking to get

married, and if you are okay, we can talk about it." (Transcript v. I p. 17:3-14). The couple were married in multiple traditional Indian ceremonies, where Hancy's family adorned her with jewelry worth approximately $50,000. (Transcript v. I p. 18:5-21).

Suraj and Hancy spent their first year of marriage living in Bangalore, India with Suraj's parents. (Transcript v. I p. 103:17-20). Hancy first and next Suraj came to the United States in 2003, spending their first year living with Hancy's parents, and then in an apartment for the next two-years (Transcript v. I p. 100:24-101:21). Next, the couple bought a condo in Naperville, where they resided for five-years. (Transcript v. I p. 102:6-11).

Suraj and Hancy studied together to take their medical boards in the United States. (Transcript v. I p. 22:8-23:2). The medical board process involved completing a multi-part test. (Transcript v. I p. 26:10-27:3). The first time the two of them sat for part one of the exam, neither Suraj nor Hancy passed. (Transcript v. I p. 23:7-15). Upon a second attempt, both passed, with Hancy actually scoring higher than Suraj. (Transcript v. I p. 23:16-22). After failing one of the next parts of the test, Hancy decided not to continue: "[t]he second time I . . . literally took the train, went to the testing place, and turned around and went to church 'cause I couldn't do it." (Transcript v. I p. 90:17-23).

Suraj ultimately passed his required tests and started a residency at Loyola. (Transcript v. I p. 26:14-16. Transcript v. I p. 90:5-16). The couple's first child, N.K.P. was born in 2008. (Transcript v. I p. 28:1-15). Hancy continued to study, and meanwhile was contacted by her mentor Dr. Enas "who would sometimes call [her] to help him with medical journal editing and whatnot." (Transcript v. I p. 89:16-90:4). Hancy has known Dr. Enas since she was in the eighth grade. (Transcript v. I p. 92:6-19). Dr. Enas was a "known cardiologist by all Indians." (Transcript v. II p. 112:24-113:2). As a result, Hancy is a published medical author, having co-authored three medical articles with Dr. Enas, the last such article being published in 2010. (Transcript v. I p. 92:20-93:3). According to Hancy, getting your name as co-author on a medical journal "carries a lot of weight in the world when you're applying for residency." (Transcript v. I p. 92:11-19).

Following his residency, Suraj and Hancy decided together that he would take a job at the Monroe Clinic, in Monroe, Wisconsin. (Transcript v. I p. 100:14-20). Making that move was the result of a "round table conference with [Hancy's] mother, [her] brother, and [Suraj's] brother, and all five of [them] sat around the table and [they] discussed the pluses and minuses of each and every job offer, position, location, and what the plan would be moving forward." (Transcript v. I p. 104:20-105:7). Hancy testified that it was

understood that she would not be moving forward with her medical career at that time, as her "fears" and "trepidation" were holding her back. (Transcript v. I p. 105:8-25). She also testified that "for sure" she could go back in the future to try to study and do something else. (Transcript v. I p. 105:22-24).

Instead of Monroe, the couple moved to Verona, Wisconsin, because, Hancy testified: "I needed a city. So it's a suburb of Madison." (Transcript v. I p. 102:17-21). After renting for ten months, the couple bought a house in Oregon, Wisconsin. (Transcript v. I p. 102:22-103:5). The couple resided at that house for three years, while Suraj continued to work at the Monroe Clinic. (Transcript v. I p. 103:4-11).

The couple's second child, N.G.Z.P. was born in 2013. (Transcript v. I p. 28:16-29:6). Hancy decided on her own that she was going to be a stay at home mom. (Transcript v. I p. 29:10-14). Suraj had multiple conversations with Hancy about resuming her studies, hoping that once N.K.P. grew up a bit, they would both be doctors. (Transcript v. I p. 29:10-21). However, Suraj ultimately left the decision to Hancy, and it seemed like "she never talked about it." (Transcript v. I p. 29:15-21).

Suraj testified that N.K.P. was the couple's "dream come true." (Transcript v. I p. 37:15-25). Likewise, Suraj describes N.G.Z.P. as being "out of this world," with his own personality "like an older adult." (Transcript v. I

p. 41:15-42:4). N.G.Z.P needs “so much cuddling, so much love” and “would never go to bed without [Suraj] taking him to bed.” (Transcript v. I p. 42:5-13).

N.K.P. had development issues related to ear infections and ultimately required the placement of tubes in her ears. (Transcript v. I p. 38:1-22). While enrolled in 4-K in Madison, Wisconsin, because of speech issues N.K.P was placed into an IEP. (Transcript v. I p. 212:10-25). While Suraj was working (and ultimately providing for the family), Hancy had the time to meet with teachers and doctors to set up the IEP. (Transcript v. I p. 213:18-24).

Hancy agreed that it is “very important” to both her and Suraj, “as both being physicians,” that their children excel academically. (Transcript v. I p. 214:17-20). The two mutually decided to hold N.K.P. back a year, with her being a bit behind academically, and being a “cut-off baby” (meaning she had a late birthday). (Transcript v. I p. 214:4-215:16).

Suraj joined Grand River Medical Group (GRMG) in Dubuque, Iowa as a physician in 2016. (App. 655-80). The couple bought a home in Dubuque in June 2016. (Transcript v. I p. 103:12-16). Suraj is well respected in his field and received the prestigious Caring Hearts Award. (Transcript v. I p. 31:18-32:7). Suraj works on a week-on, week-off schedule, which he makes himself. (Transcript v. I p. 32:8-13). During his weeks off, Suraj has tried to be

involved in his children's lives as much as possible. (Transcript v. I p. 47:24-48:2). He testified that he can't imagine not having his kids to see when he comes home from work. (Transcript v. I p. 44:12-25). Suraj believes that the children would suffer not having him in their lives as much as possible. (Transcript v. I p. 45:1-13).

In December 2017, Hancy was charged with child endangerment. (Transcript v. II p. 77:3-11). Hancy left N.G.Z.P sleeping in her car while she ran into Target for some Starbucks. (Transcript v. II p. 77:15-78:4). Someone had called the police upon seeing the three-year old child unattended. (Transcript v. II p. 78:5-11). Hancy received a deferred judgment on her child endangerment charge, which she completed successfully, resulting in its expungement. (Transcript v. II p. 78:17-25). Hancy did not tell Suraj about this incident until later when she learned there was a warrant for her arrest. (Transcript v. II p. 166:6-167:23).

On Mother's Day of 2018, in front of the children, Hancy accused Suraj of having an affair. (Transcript v. II p. 141:7-14). A few months later, Suraj filed for divorce. (Transcript v. II p. 141:17-19). During the pendency of the dissolution, Suraj worked extra shifts as a result of home life not being the greatest, and having to pay for both his and Hancy's attorney bills. (Transcript v. II p. 143:3-12. Transcript v. II p. 132:20-25). The parties have paid

attorney's fees up to the time of trial with marital funds and Hancy charged a $10,000 attorney fee bill just prior to trial. (Transcript v. II p. 142:18-143:2). Going forward Suraj's schedule will continue to be week-on, week-off, and he made a plan to make that work, including providing Hancy his schedule three-months in advance. (Transcript v. II p. 143:19-144:9).

The Pazhoor family recently obtained counseling from Yvette Saugling, a qualified mental health therapist. (Transcript v. I p. 195:1-11). Yvette testified that Hancy and Suraj are both good parents. (Transcript v. I p. 201:8-10). When asked whether they are each involved parents, she responded "[v]ery much so." (Transcript v. I p. 201:11-12).

Suraj described Hancy as "super intelligent," and agreed she is very capable of working. (Transcript v. I p. 22:3-5). Hancy currently works at Church of the Resurrection and Charlotte's Coffee House. (Transcript v. I p. 109:14-111:7). Hancy formerly volunteered at the Church but has recently asked to be paid. (Transcript v. I p. 113:5-20). At Charlotte's Coffee House, Hancy works as a barista making $8 per hour. (Transcript v. I p. 109:14-111:7).

Despite Hancy's minimal employment, she has a 10% ownership interest in real estate holding companies established by her family known as Batavia Commons and ZNE, LLC. (Transcript v. II p. 15:19-21:16). Each of

these entities own a strip mall, with Batavia Commons having been formed in 2013 and ZNE, LLC having been formed in 2016. (Transcript v. II p. 19:7-21:16). Hancy earned over $23,000 from family businesses in 2015, over $78,000 in 2016 and over $15,000 in 2017. (Transcript v. II p. 172:13-174:3).

Suraj's gross compensation in 2018 was $500,742.19. (Transcript v. II p. 89:14-16). Suraj's compensation varies depending on how many wRVUs he works. (Transcript v. II p. 88:8-13). wRVUs are Medicare "work relative units." (Transcript v. II p. 99:17-19). Benefits of Suraj's employment, such as health insurance, are not reflected directly on Suraj's paychecks as a deduction, but ultimately affect his compensation because they are taken into account when his wRVUs are calculated. (Transcript v. II p. 122:18-123:7).

Suraj believes that Hancy is easily capable of employment earning at least $100,000 per year. (Transcript v. I p. 52:18-21). Suraj testified as to a multitude of jobs in his industry that Hancy would be eligible for, even though the last time Hancy studied medicine was in 2014. (Transcript v. I p. 53:5-54:5. Transcript v. I p. 94:3-10). A friend of Hancy's approached her recently about a position in public health, thinking that Hancy's experience and medical background would be a good fit. (Transcript v. I p. 133:7-16). Hancy stated that this is something that she would want to do and that she is interested

in pursuing a master's degree in public health. (Transcript v. II p. 162:9-22. Transcript v. I p. 133:3-16).

ARGUMENT

I. The District Court Correctly Awarded Shared Physical Care

A. Standard of Review and Error Preservation

A dissolution action is equitable in nature and is subject to *de novo* review. *In re Marriage of Francis*, 442 N.W.2d 59, 61 (Iowa 1989). "Because the district court is in a unique position to hear the evidence, we defer to the district court's determinations of credibility." *In re Marriage of Toop*, No. 19-0543, 2020 WL 110352, *2 (Iowa Ct. App. 2020) (final publication decision pending). "While our review is de novo, the district court is given latitude to make determinations, which we will disturb only if equity has not been done." *Id.*

Suraj agrees that alleged error was properly preserved as a 1.904 motion and subsequent Notice of Appeal were each timely filed.

B. Argument

Until amendments to Chapter 598 of the Iowa Code in 1997 and 2004, the Iowa Court disfavored joint physical care, considering it not to be in the best interest of children. *In re Marriage of Hansen*, 733 N.W.2d 683, 691

(Iowa 2007). The Supreme Court reexamined this stance in 2007, citing "changing social conditions and ongoing legal and research developments." *Id. at* 693.

> Increasingly in Iowa and across the nation, our family structures have become more diverse. While some families function along traditional lines with a primary breadwinner and primary caregiver, other families employ a more undifferentiated role for spouses or even reverse "traditional" roles. A one-size-fits-all approach in which joint physical care is universally disfavored is thus subject to serious question given current social realities.

Id. Studies suggesting that a child could only bond with a single "psychological parent" were called into question. *Id.* The Court implemented a multi-factored test to guide future courts in considering joint physical care. *Id.* at 697. These factors are "(1) 'approximation'—what has been the historical care giving arrangement for the child between the two parties; (2) the ability of the spouses to communicate and show mutual respect; (3) the degree of conflict between the parents; and (4) 'the degree to which the parents are in general agreement about their approach to daily matters.'" *In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007) (citing *Hansen*, 733 N.W.2d at 697-99).

The first factor, 'approximation' originated from the American Law Institute (ALI)'s *Principles of Family Law* publication. *Hansen*, 733 N.W.2d

at 697. The ALI's publication had "adopted the general rule that custodial responsibility should be allocated 'so that the proportion of custodial time the child spends with each parent approximates the proportion of time each parent spent performing caretaking functions for the child prior to the parents' separation.'" *Id.* (citing American Law Institute, *Principles of the Law of Family Dissolution* § 2:08, 178 (2000)). Though the Court implemented an "approximation rule" in its test, it noted that the Iowa Code and case law requires "a multi-factored test where no one criterion is determinative." *Hansen,* 733 N.W.2d at 697. The Court stated that "[a]ny wholesale adoption of the approximation rule would require legislative action." *Id.* Accordingly, approximation itself should not be the dispositive factor in any determination of whether shared custody is appropriate. "[T]he court must consider all the circumstances of the case, be aware of the emotional bonds between the parents and children, and make a determination that will be in the best interest of the children." *Toop*, No. 19-0543, 2020 WL 110352 at *3.

Application of the *Hansen* factors to Suraj and Hancy's children N.K.P. and N.G.Z.P.'s best interest strongly favors shared care. It is true that Hancy and Suraj made an agreement that Suraj was to concentrate on his career while Hancy was to concentrate on the home. (Transcript v. I p. 105:8-106:5). However, this is merely indicative of the level of cooperation and trust the

parties have in matters concerning their children. Suraj admits that "Hancy's a great mom." (Transcript v. I p. 44:12-25). While Suraj provided for his family, he remained active in the children's lives. For instance, while Hancy may have been the one to take the children to doctor's appointments, Suraj had discussions with his colleague doctors that very few parents are able to:

> Attorney Weiss: "Do you know who [N.K.P.'s] doctors are?"
>
> Suraj: "Yes."
>
> Attorney Weiss: "Who?"
>
> Suraj: "They are my friends. They are from GRMG. Initially they both were with Brian Nelson. Then it is Sarah Jacobitz and Brian Nelson. So this is -- I'm a doctor. So when I'm at home, when she says I'm taking the kid to the doctor's appointment, my idea is totally different how -- what your thoughts might be. It's not the same way that anyone else's thoughts are.
>
> So, for example, what happens is I meet them at lunch. I ask them what happened during the doctor's appointment. I talk to them. They are my colleagues. I asked them what happened. They keep me up to date. Or if they see me and say, you know what? I just saw your kid, and this is what was going on."

(Transcript v. II p. 136:3-18). Suraj also testified as to actively being involved with the children, playing in the yard, and participating in their learning and development. (Transcript v. I p. 43:12-44:11). The counselor, Yvette Saugling testified that both are good parents and actively involved with the children.

(Transcript v. I p. 201:8-12). Hancy herself testified that the children love Suraj and enjoy spending time with him. (Transcript v. II p. 177:15-178:2). When asked whether Suraj is a good dad, Hancy replied: "[w]hen he's available, yes." (Transcript v. II p. 178:1-2). Hancy also admitted that "[f]or the last six months," Suraj had been making himself more available to the children. (Transcript v. II p. 178:3-5).

One parent's position as the historic primary caregiver "is one of a raft of factors" for the Court's consideration of an award of physical care. *Calmer v. Good*, No. 15-0010, 2015 WL 4936125 at *3 (Iowa Ct. App 2015). The primary concern must be the best interest of the children. "If the court denies the request for joint physical care, the determination shall be accompanied by specific findings of fact and conclusions of law that the awarding of joint physical care is not in the best interest of the child." Iowa Code § 598.41(5)(a). The District Court properly found this case was appropriate for shared physical care due to the absence of such facts.

Moving to the second *Hansen* factor of conflict, Hancy identified only one single "conflict" as affecting the parties. This "conflict" is that after Suraj took more responsibility for driving N.G.Z.P. to extracurricular activities, Suraj raised the concern that N.G.Z.P.'s weekly Thursday soccer season interfered with N.G.Z.P.'s scheduled karate on Tuesdays and Thursdays.

(Transcript v. I p. 222:6-223:21). This is a reasonable concern and hardly points to any degree of conflict that would warrant the Court's consideration in applying the *Hansen* factors.

Assessing the third *Hansen* factor of communication and mutual respect, Hancy was critical only of that the parties often communicated via text message. A busy doctor's preference to communicate via text message when he is at his workplace is far from indicative of a problem in communication. It is easy to imagine a text message being a quicker way of corresponding with someone than having to find the time and privacy to make a phone call. Suraj's testimony makes this clear: "you cannot talk while you are seeing a patient or in a meeting, so sometimes I text back and say 'I'll call you back,' and then I call her back. If I was able to text, I text." (Transcript v. II p. 135:1-9). Text messaging is far from an inappropriate means of communication; arguably it facilitates an ongoing dialogue in which parents might discuss things of which they would not necessarily have taken the time out of their day to make a phone call. The Court applied the *Hansen* factors to the context of text messaging in *In re Marriage of Toop,* considering: "[w]hat is apparent from the texts is these two parents are often working together and communicating relatively well and almost exclusively about the children. Although some frustrations between the parents are evident, the evidence does

not show a high degree of conflict or inability to cooperate." *Toop*, No. 19-0543, 2020 WL 110352 at *3. Further, Suraj testified that he is also always available via pager, and specifically asked Hancy to use that method of contact in an emergency. (Transcript v. II p. 145:24-146:11).

The final *Hansen* factor is "the degree to which the parents are in general agreement about their approach to daily matters." *In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007) (citing *Hansen*, 733 N.W.2d at 697-99). This aspect overwhelmingly favors shared care. In fact, Suraj and Hancy's arranged marriage nearly assured as much. (*See* Transcript v. I p. 17:3-14). Suraj and Hancy come from the same religion. (Transcript v. I p. 17:3-14). It is very important to both of them that their children excel academically. (Transcript v. I p. 214:18-20). N.K.P. and N.G.Z.P. love both of their parents, and both Suraj and Hancy love their children. (Transcript v. I p. 47:12-17. Transcript v. II p. 177:15-25). Suraj and Hancy are each "very much" involved parents with the best interests of their kids at heart. (Transcript v. I p. 201:11-17). The parties also agree on the schooling of their children. Suraj and Hancy mutually decided to hold N.K.P. back a year in school. (Transcript v. I p. 214:4-215:16).

Suraj's structured week-on, week-off schedule is ideal for shared care. Suraj has an entire week at a time to share his love and attention with the

children, without interruption. As in *Toop*, and pursuant to Iowa Code § 598.1(1), "[b]oth the parents and the children will benefit from a structured custodial schedule to ensure maximum contact between each parent and the children." *Toop*, No. 19-0543, 2020 WL 110352 at *3. Likewise, "[t]he district court had the opportunity to evaluate the witnesses and determined shared physical care was the best arrangement for the children." *Id.* As to Suraj and Hancy, the District Court specifically concluded:

> Both Suraj and Hancy have genuine love for the children. Both are fully capable of caring for the children's physical, mental and emotional needs. Both are positive role models. They are the exact type of parents that Iowa appellate courts have decided should have joint physical care of their children, and so it shall be.

(App. 51). The District Court's findings carry significant weight: "a trial court, as first-hand observer of witnesses, holds a distinct advantage over an appellate court, which necessarily must rely on a cold transcript." *In re Marriage of Udelhofen*, 444 N.W.2d 473, 474 (Iowa 1989).

Shared physical care is in the best interest of N.K.P. and N.G.Z.P. The Iowa legislature's very definition of "best interest of the child" includes "the opportunity for maximum continuous physical and emotional contact possible with both parents." Iowa Code § 598.1(1). The District Court's award of shared physical care has done equity. The District Court's latitude to make

determinations should be disturbed "only if equity has not been done." *Toop*, No. 19-0543, 2020 WL 110352 at *2 (citing *In re Marriage of Okland*, 699 N.W.2d 260, 263 (Iowa 2005)). The District Court's award of shared care should accordingly be affirmed.

II. The District Court's Alimony Award was Proper and Equitable

A. Standard of Review and Error Preservation

A dissolution action is equitable in nature and is subject to *de novo* review. *In re Marriage of Francis*, 442 N.W.2d 59, 61 (Iowa 1989). However, the district court has "considerable latitude" in determining an appropriate award of alimony, and that determination will only be disturbed when there has been a failure to do equity. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

Suraj agrees that alleged error was properly preserved as a 1.904 motion and subsequent Notice of Appeal were each timely filed.

B. Argument

The Iowa legislature has empowered Iowa Courts to require alimony support payments be made to either party in a dissolution, after the Court considers *all* of the factors enumerated in Iowa Code § 598.21A(1). *See In re Marriage of Gust*, 858 N.W.2d 402, 408 (Iowa 2015) ("the various factors listed in Iowa Code Section 598.21A(1) cannot be considered in isolation

from each other"). An award of support payments in a particular case lies at the discretion of the Court, who "must decide each case based upon its own particular circumstances, and . . . precedent may be of little value in deciding each case." *In re Marriage of Gust*, 858 N.W.2d 402, 408 (Iowa 2015).

Hancy is requesting that this Court disturb the District Court's alimony award and increase it significantly on the basis of guidelines offered by the American Academy of Matrimonial Lawyers (AAML). While a few states have allowed a determination of alimony to be reduced to a mathematical formula, "[t]he legislature has not authorized Iowa courts to employ any fixed or mathematical formula in applying spousal support." *In re Marriage of Mauer*, 874 N.W.2d 103, 107 (Iowa 2016). In *Mauer*, the Supreme Court clarified the usage of guidelines, such as those issued by the AAML to calculating an alimony obligation. *Mauer*, 874 N.W.2d 103 at 108. The Court analyzed its prior decision in *Gust*, which acknowledged that the AAML guidelines "are not Iowa law and therefore clearly are not binding on Iowa courts." *Id.* The Court indicated that "because [the guidelines] are not Iowa law, they can serve neither as the starting point for a trial court nor as the decisive factor for a reviewing court on appeal." *Id.*

Iowa Code § 598.21A(1) has resulted in three kinds of spousal support being identified by the Iowa Court: traditional, rehabilitative, and

reimbursement. *Gust*, 858 N.W.2d at 408. "Each type of spousal support has a different goal." *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008). "Alimony is not an absolute right; an award depends upon the circumstances of each particular case." *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa Ct. App. 1997).

> [T]he legislature has recognized that support after the marriage is dissolved is a two-way street. When a marriage is dissolved, neither party usually has as much money available for self support as was true before the breakup. Also, prior plans as to support may have to be abandoned. Consequently, both parties, if they are in reasonable health, need to earn up to their capacities in order to pay their own present bills and not lean unduly on the other party for permanent support.

In re Marriage of Wegner, 434 N.W.2d 397, 399 (Iowa 1988).

Application of the circumstances herein to the goals of alimony, and the entirety of the § 598.21A(1) factors, as the legislature has required, demonstrates that the District Court has already made a fair and equitable award of alimony that should not be disturbed.

1. Traditional Alimony

Traditional alimony is "payable for life or so long as a spouse is incapable of self-support." *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989). Such alimony is appropriate where "life patterns have largely been set and the earning potential of both spouses can be predicted with some

reliability." *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997). Even traditional alimony can be limited in duration when equity so requires. While traditional alimony "is ordinarily unlimited in duration except upon the remarriage of the payee spouse, or death of either party," the Court has recognized that there can be exceptions to that general rule. *Gust*, 858 N.W.2d 402 at 415.

In re Marriage of Becker is one such exception, involving the divorce of Fred and Laura Becker, which followed a twenty-two-year marriage. 756 N.W.2d 822, 825. At the time of dissolution, Fred's earning capacity exceeded $500,000, and Laura soon began part-time work at a department store earning $8.00 per hour. *Id.* Laura had her bachelor's degree already and wanted to work in marketing. *Id.* However, trial testimony indicated that "in today's market a person needs a master's degree for an entry level job in the field of marketing." *Id.* at 827. The Court ultimately applied what they considered a combination of both rehabilitative and traditional support, with three-years of support at $8,000 per month and a remaining seven years at $5,000 per month. *Id.* The initial three-years were intended to "allow Laura to obtain the education necessary to resume the career she abandoned," while the remaining support was to "give Laura time to develop her earning capacity past an entry level position" at which point she could "become self-supporting at a standard

of living reasonably comparable to the standard of living she enjoyed during the marriage." *Id.* at 827. The Court found that such an award best reflected the factors mandated by the legislature. *Id.* at 828.

The goal here should similarly be to allow Hancy to utilize her existing education and to become self-supporting. Traditional alimony, and even the length of alimony awarded in *Becker*, however, would have been improper for a marriage of the duration of Suraj and Hancy's. This is why the District Court rejected Hancy's similar arguments made both at trial and in her post-trial motion and awarded alimony of a more limited duration. In *Gust*, the Supreme Court indicated that while there is no fixed formula, "[g]enerally speaking, marriages lasting twenty or more years commonly cross the durational threshold and merit serious consideration for spousal support." *Gust*, 858 N.W.2d at 410-11. Suraj and Hancy were married for 17-years. (App. 54). This falls below what the Court has interpreted as a "twenty-year durational threshold" of *Gust* and should not warrant such consideration. *See In re Marriage of Monat*, No. 18-0884, 2019 WL 1057310 *5 (Iowa Ct. App. 2019).

In addition to the length of the marriage, among the enumerated considerations the Court must weigh in § 598.21A(1) are "b. The age and physical and emotional health of the parties." Iowa Code § 598.21A(1). The

application of many analogous considerations are demonstrated in *In re Marriage of Milton*. *Milton* involves the dissolution of a twenty-one-year marriage, after which Kevin was forty-four years of age and Brenda was forty-three. *In re Marriage of Milton*, No. 00-0617, 2002 WL 1840858 at *1 (Iowa Ct. App. 2002). For several years during the marriage, Brenda had worked part time so that she could be home with their child. *Id.* Just before trial, Kevin's salary was about $125,000 per year, with Brenda's being under $28,000. *Id.* While Brenda testified that "she has been diagnosed with fibromyalgia and has some arthritis, anxiety, and panic disorders . . . she has nevertheless been able to work full-time and does not expect her health to affect her full-time employment in the future." *Id.* The Court ultimately awarded what it called "primarily rehabilitative" alimony in the amount of $1,500 per month for a period not to exceed seven years. *Id.* at *2. Kevin argued that no alimony at all should have been awarded to Brenda, since they each were awarded net property of approximately $300,000. *Id.* at *2-3. The Court agreed that an award of rehabilitative alimony was proper, noting that the amount awarded was "rather large" but not an abuse of the trial court's discretion. *Id.* at *4. The Court noted Brenda's age of forty-three years of age and current salary, indicating:

> She is interested in and capable of acquiring further education and increasing her earning capacity and

> income. Her earning potential is not set and limited for the rest of her life and the lengthy award of rehabilitative alimony will allow her to acquire whatever further education she deserves and increase her earning capacity. She is capable of self-support, and with the additional education facilitated by rehabilitative alimony will be capable of self-support at a higher standard of living. The goal of the alimony award in this case should be and is economic independence.

Id. at *5.

Likewise, Hancy has left the marriage with close to $340,000, not including her extensive non-marital cash and investments. (App. 54). At the time of trial, Hancy was only 40-years old. (Transcript v. I p. 76:12). Hancy is interested in and wants to pursue a master's program, which would significantly increase her earning capacity and income. (Transcript v. I p. 133:4-16). Hancy is intelligent and very well equipped to be capable of self-support. Though Hancy claims to have back issues, Suraj testified that he is unaware of Hancy having missed any work, or any of the kids' activities or church activities in the last six-years. (Transcript v. II p. 152:3-23). If a 43-year old with an associate's degree, as in *Milton,* can be rehabilitated after a 21-year marriage, surely too can a 40-year old, following a 17-year marriage, who has practiced as a full-fledged doctor and is a published medical author. (Transcript v. I p. 21:4-17). Traditional alimony is simply unnecessary for Hancy's economic independence.

Gust merely indicates that a twenty-year or more marriage merits "serious consideration" for traditional spousal support. It is not a mandate; in fact, the only mandate comes from the legislature in that the Court must examine *all* of the factors of § 589.21(A)(1). *See* Iowa Code § 598.21A(1). In this examination, "[t]he most heavily weighted factors are the length of the marriage and the earning capacities of the spouses" *In re Marriage of Olsen*, No. 18-1491, 2019 WL 3317336 *2 (Iowa Ct. App. 2019) (citing *Mauer,* 874 N.W.2d at 107) (emphasis added). The Pazhoor marriage fails the "duration threshold" of *Gust,* and even if it had not, the remaining considerations demonstrate that traditional alimony remains inappropriate. This is not the case of a frailing spouse who is incapable of self-support and who would require traditional alimony to continue her current lifestyle, nor is Hancy's current income indicative of her future income potential. An award of traditional alimony should be based on need and ability. *Gust,* 858 N.W.2d 402 at 410. "In determining need, we focus on the earning capability of the spouses, not necessarily on actual income." *Id.*

Hancy equally fails the test for need. Hancy is a licensed medical practitioner in India, after having completed a six-and-a-half-year medical school program (Transcript v. II p. 161:14-16. Transcript v. I p. 83:2-10). Hancy has a cardiologist for a mentor, with whom she coauthored three

publications; something that in her own words "carries a lot of weight in the world when you're applying for residency." (Transcript v. I p. 92:6-24). The rehabilitative alimony awarded by the District Court fairly and equitably allows Hancy to utilize her extensive background and training, including her status as a published author, ensuring her self-sufficiency. Both the amount and duration of alimony allows Hancy to complete her plan stated at trial to pursue a master's degree in public health. (Transcript v. II p. 162:9-163:17). The District Court properly denied an award of traditional alimony.

2. Rehabilitative Alimony

Rehabilitative alimony is a way of "supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting." *Francis*, 442 N.W.2d 59 at 63. The goal of rehabilitative alimony is self-sufficiency. *Id.* at 64. As discussed above, the Court should prefer rehabilitative alimony, even in a relatively long-term marriage, when economic independence is feasible. *See In re Marriage of Milton*, No. 00-0617, 2002 WL 1840858 at *5.

Another case, *In re Marriage of Monat* involved the 10-year marriage of Ben and Heather, during which Ben worked for John Deere and completed his bachelor's degree and MBA. No. 18-0884, 2019 WL 1057310 *1 (Iowa

Ct. App. 2019). Both degrees were paid for by John Deere. *Id.* The Court awarded Heather $1,000 per month in alimony for a period of approximately 32 months. *Id.* at *2. Ben argued on appeal that Heather "was able to work fulltime and currently is not." *Id.* at *5. He also argued that "Heather does not qualify for any of the recognized forms of spousal support and could support herself if she chose to go back to work full time." *Id.* The Court considered the application of each type of alimony, first looking to traditional support, and noting that the marriage fell short of the twenty-year durational threshold. *Id*. Next, in its consideration of rehabilitative alimony, the Court determined that since Heather "already has her graduate degree and sufficient work experience to enter the labor market," that type of support was also inapplicable. *Id*. Considering reimbursement alimony, the Court determined that "[a]lthough Ben obtained his degrees over the course of the marriage he did so at no cost and did not recently graduate." *Id*. The Court finally looked to a "lesser known" form of spousal support called transitional support, which it also rejected. *Id.*

Transitional support has been inconsistently addressed by Iowa Courts, but seen by most Iowa Courts as either being interchangeable with rehabilitative support, or a subset of rehabilitative support. *See In re Marriage of Hansen*, No. 17-0889, 2018 WL 4922992 *16 (Iowa Ct. App. 2018)

(McDonald, J., concurring specially). The Court ultimately determined in *Monat* that it was inequitable for any spousal support to be awarded to Heather. *Monat*, No. 18-0884, 2019 WL 1057310 *5. Striking the District Court's award of alimony entirely, the Court of Appeals looked to the purpose of the award and found that it was "not intended assist Heather in overcoming the economic dislocations associated with dissolution of the marriage." *Id.* "Instead, the district court awarded support to allow Heather to continue with the parties' historical care-giving practices until the younger child started school." *Id.*

Suraj does not dispute that Hancy is in need of a limited period of rehabilitation in order to enter the workforce, which is exactly what the District Court has provided her. Hancy's situation, in fact, presents the ideal scenario for rehabilitation. Hancy already has a medical degree. *Monat* is distinguishable only because unlike Heather, Hancy is not equipped to immediately enter the workplace. A limited duration of rehabilitative alimony will allow Hancy to "earn up to [her] capabilities" and "not lean unduly" on Suraj. *See Wegner*, 434 N.W.2d at 399. The increased alimony award Hancy seeks on appeal would not serve to motivate her to utilize the skills she is already equipped with, but rather would only serve to support her complacency. It is illogical to consider any argument premised upon the

earnings of someone with a medical degree temporarily working at a coffee shop. Any award to Hancy must be commensurate with that which will allow her to utilize her existing skillset.

An appropriate balancing of these considerations can also be found in *In re Marriage of Lange*. *Lange* involved the eleven-year marriage of Kyle and Jessica, following which Kyle was 37 and Jessica 38. *In re Marriage of Lange*, No. 16-1484, 2017 WL 6033733 *1 (Iowa Ct. App. 2017). Both parties had undergraduate and graduate degrees from Iowa State University. *Id.* Kyle's income was over $154,000 annually. *Id.* Jessica's was just over $57,000, until she "quit her employment to become a stay-at-home mother until her children were independent." *Id.* The District Court awarded Jessica $2,000 per month in alimony for a period of 24-months. *Id.* at *3. The Court referred to *Becker*, noting that "[s]ince the goal of rehabilitative support is self-sufficiency, the award should be of an appropriate duration for the 'realistic needs of the economically dependent spouse.'" *Id.* (quoting *Becker*, 756 N.W.2d at 826). The Court considered that Jessica had received "significant assets as a result of the division of the parties' property," and further considered the age and health of the parties, that the marriage was "not of a long duration," and that Jessica had an advanced degree, in addition to her employment history, and her brief (approximately 1-year) absence from

the workforce. *Lange,* No. 16-1484, 2017 WL 6033833 at *3. The Court ultimately concluded that "[r]ehabilitative alimony in the amount of $2,000 a month for twenty-four-months is equitable under the circumstances provided." *Id.*

Likewise, any assessment of Hancy's needs demands an examination of other resources she has available to her. "We consider alimony and property division together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another." *In re Marriage of McLaughlin,* 526 N.W.2d 342, 345 (Iowa Ct. App 1994). Hancy's ownership interest in real estate holding companies established by her parents and the significant non-marital cash and investments she is leaving the marriage with also cannot be ignored. (*See* Transcript v. II p. 15:19-21:16; App. 54). The District Court properly took into consideration all of these factors, balancing exactly what § 589.21(A)(1) requires. (*See* § 589.21(A)(1), providing that "[u]pon every judgment of annulment, dissolution, or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following . . ."). In fact, the District Court specifically listed the factual considerations it found relevant to each of § 589.21(A)(1)(a)-(f) in its Conclusions of Law:

- (a) requires consideration of "[t]he length of the marriage." The Court concluded "[t]his was a 17-year marriage." (App. 54).
- (b) requires consideration of "[t]he age and physical and emotional health of the parties." The Court concluded "Hancy was 40 years old at the time of trial and in generally good health, apart from occasional migraines and back pain." (App. 54).
- (c) requires consideration of "[t]he distribution of property made pursuant to section 598.21." The Court concluded "[Hancy] is leaving the marriage with a net award of close to $340,000, approximately $40,000 for her one-half of Suraj's 401(k) (which was not valued in the table of assets), her non-marital cash and investments totaling $136,565, and her interests in two real estate holding companies (ZNE LLC and Batavia Commons LLC – also not valued in the table of assets), and the passive income from those entities." (App. 54).
- (d) requires consideration of "[t]he education level of each party at the time of marriage and at the time the action is commenced." The Court concluded "[b]oth parties are educated, having each obtained medical degrees prior to the marriage." (App. 54).

- (e) requires consideration of "[t]he 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 to party to find appropriate employment." The Court concluded "Suraj's earning capacity is significantly higher than Hancy's because he passed his boards and pursued what has turned out to be a successful medical career, whereas Hancy did not pass her boards and chose to stay at home to raise the parties' children". (App. 54).
- (f) requires consideration of "[t]he 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." The Court concluded:

> Hancy's earning capacity is significantly higher than the de minimis income she is currently earning. She certainly is capable of working for a number of years. While she may not be able [sic] pursue a traditional career as a physician, there is no reason that she cannot obtain a Master of Public Health degree in 2-3 years. This would allow her to work in any number of a variety of positions in the health care field. Whether she chooses to do that is up to her, of course, but that ability in and of itself

> obviously is a factor in determining the appropriate amount of alimony.
>
> Spousal support is appropriate, but only for a rehabilitative period that will allow Hancy to pursue further education and a job in which she can use her prior medical education. Between the income she will earn from a job in the health care field and all of the assets she is taking with her from the marriage, the Court concludes that she ultimately will be self-supporting at a standard of living reasonably comparable to that which she enjoyed during the marriage. (App. 54).

In properly balancing these legislatively mandated factors, the Court's award has provided both the "incentive and opportunity" for Hancy to become self-supporting. See *Francis,* 442 N.W.2d 59 at 63. The District Court's award of rehabilitative alimony is fair and equitable and should be affirmed both in amount and duration.

3. Reimbursement Alimony

Reimbursement alimony is "predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other." *Francis,* 442 N.W.2d 59 at 64. Hancy appears to misapply the implications of *Francis* and *Becker* in citing them as supportive of reimbursement alimony. *Becker* merely defines reimbursement alimony, stating that it "allows the spouse receiving the support to share in the other spouse's future earnings in exchange for the receiving spouse's contributions

to the source of that income." *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008). Accordingly, if Suraj had obtained his medical degree during the marriage to Hancy's detriment, this type of alimony *might* be appropriate. However, that is far from what actually occurred in this marriage.

Suraj had already completed medical school before he met Hancy. (Transcript v. I p. 84:10-13). Because of his low grades in 11th and 12th grade, Suraj had to learn Russian to even attend medical school. (Transcript v. I p. 10:7-21). Suraj completed medical school as an investment to his parents, who were from a "very middle class family," who was not well-off enough to even be able to afford meat every day. (Transcript v. I p. 9:8-10:19). Suraj's parents were motivated by their desire to see their son be educated. (Transcript v. I p 10:1-6). In debt themselves, Suraj's parents nevertheless paid off the entirety of his medical school loans. (Transcript v. I p. 20:4-16).

In *Monat*, discussed above, the Court quickly dismissed the possibility of reimbursement support. *Monat,* No. 18-0884, 2019 WL 1057310 at *5. In that case, the husband Ben obtained both a bachelor's degree and an MBA over the course of the marriage, but these were paid for by his employer John Deere, and Ben "did not recently graduate." *Id.*

Hancy insists that she is eligible for reimbursement alimony based on alleged economic sacrifices and the standard of living in the marriage, but that

argument is not the appropriate standard for reimbursement alimony. *In re Marriage of Rourke* specifically considered that the wife, Linda, "has been compensated for contributions she made to Joseph's earning capacity as a result of the comfortable lifestyle she enjoyed during their twenty-seven-year marriage and the amount of property she received." 547 N.W.2d 864, 867 (Iowa Ct. App. 1996). The *Rourke* court refused to order both traditional and reimbursement alimony.

Likewise, Hancy has already been adequately compensated both in the lifestyle she lived, and in the assets she is walking away from the marriage with. The District Court found that "[i]n recent years, the parties have lived a lifestyle commensurate with their wealth." (App. 50). Having not contributed to Suraj's education nor suffered any economic sacrifice, Hancy is simply ineligible for this type of alimony. Hancy should be denied reimbursement alimony.

III. The District Court Correctly Calculated Suraj's Medical Support

A. Standard of Review and Error Preservation

Economic provisions in a dissolution action are subject to *de novo* review. *In re Marriage of Gaer,* 476 N.W.2d 324, 326 (Iowa 1991). "There are no hard and fast rules governing the economic provisions in a dissolution

action; each decision depends upon the unique circumstances and facts relevant to each issue." *Id.*

Suraj disagrees that error has been preserved, as Hancy cites no authority in her argument. Rule 6.903(2)(g)(3) provides that in an argument, "[f]ailure to cite authority in support of an issue may be deemed waiver of that issue." Iowa R. App. P. 6.903(2)(g)(3).

B. Argument

Alternatively, should the Court find that error was preserved and the issue not waived, the District Court nevertheless calculated support properly. Iowa's Child Support Guidelines define "net monthly income" as "gross monthly income less specifically enumerated deductions." *In re Marriage of Van Veldhuizen*, No. 14-0305, 2014 WL 6682332 at * 7. Among these enumerated deductions is "[c]ash medical support ordered in this pending matter as determined by the medical support table in rule 9.12," Iowa Ct. R. 9.5. The District Court properly included $363 per month as being an "Allowable Children's Portion of Health Insurance." (*See* App. 63). This amount was the result of calculating the actual cost of a family plan ($519) at GRMG and subtracting the cost for a single plan ($156). (*See* App. 82-85).

Suraj would be compensated more but for this health insurance obligation. (Transcript v. II p. 122:18-123:7). *In re Marriage of Gaer* analyzed

the calculation of net income available for child support in the context of depreciation. 476 N.W.2d 324, 328 (Iowa 1991). The *Gaer* Court looked to authority from other jurisdictions, considering that "[d]epreciation is a mere book figure which does not either reduce the actual dollar income of the defendant or involve an actual cash expenditure when taken." *Gaer*, 476 N.W.2d at 328 (quoting *Stoner v. Stoner*, 307 A.2d 146, 151 (Conn. 1972)). Even so, the *Gaer* court stopped short of disallowing even depreciation. *Gaer*, 476 N.W.2d at 328-29. The Court instead adopted a "flexible approach," leaving much to the Court's discretion, finding it to be "consistent with the flexibility our guidelines provide to deviate from them when equity and justice demand it." *Id.* at 328.

Equity requires consideration of the actual cost of Suraj's health insurance. This is not a "mere book figure," as discussed in *Gaer*. *See Gaer*, 476, N.W.2d at 328. Hancy is asking the Court to ignore what actually reduces Suraj's income. The District Court properly concluded that health insurance coverage is not free to Suraj and that its inclusion is "appropriate in the child support calculations." (App. 88). To ignore that cost to Suraj would be inequitable.

Even though Hancy has cited no authority for her position, and pursuant to Rule 6.903(2)(g)(3) this issue should be deemed waived, Hancy's

position is unsustainable. The Court should affirm the District Court's child support calculations.

IV. The District Court Did Not Err in its Award of Attorney's Fees

A. Standard of Review and Error Preservation

"An award of attorney fees rests in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion." *In re Marriage of Romanelli,* 570 N.W.2d 761, 765 (Iowa 1997). "The controlling factor in awards of attorney fees is the ability to pay the fees." *Id.* "The court should make an attorney fee award which is fair and reasonable in light of the parties' financial positions." *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 854 (Iowa Ct. App. 1998).

Suraj agrees that alleged error was properly preserved as a 1.904 motion and subsequent Notice of Appeal were each timely filed.

B. Argument

The District Court properly exercised its discretion in its award of attorney's fees. The Court concluded: "[a]ll of the attorney fees to this point have been paid by Suraj from marital assets. The parties each have been awarded enough assets to pay their own attorneys for whatever remains unpaid." (App. 54). Suraj already has more than carried his burden in attorney's fees. Even on the eve of trial, a $10,000 charge showed up on his

credit card for Hancy's attorney's fees. (Transcript v. II p. 142:18-21). Suraj testified that prior to trial, any active bill Hancy had incurred was paid when it was presented. (Transcript v. I p. 57:19-58:7).

Hancy's apparent position that she and her attorney allegedly did most of the work required for trial, backed up by her voluminous quantity of exhibits, is not the applicable standard. In assessing the proper standard of "ability to pay the fees," pursuant to *Romanelli*, there has been no abuse of discretion. *See Romanelli*, 570 N.W.2d at 765 (Iowa 1997). Hancy is leaving the marriage with significant assets. (App. 54). She also has significant non-marital assets which enhance her ability to pay. Both parties had to prepare for and participate in trial. Conversely, Suraj's efficiency and efficacy in presenting his case has no relevance to an award of attorney's fees. Hancy's request to disturb the District Court's discretion in awarding attorney's fees should be denied.

V. Appellate Attorney's Fees

An award of appellate attorney's fees rests within the discretion of the Appellate Court. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997) "In determining whether to award appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend

the decision of the trial court on appeal." *Id.* at 389 (citing *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa Ct. App. 1994)). (emphasis added).

Suraj asks that each party pay their own appellate attorney's fees. As discussed above, Hancy is leaving the marriage with a significant net award in addition to her significant non-marital funds. (App. 54). Hancy is fully able to pay her own fees. Suraj was obligated to defend a fair and equitable decision of the District Court. Hancy's request for appellate attorney's fees should be denied.

CONCLUSION AND RELIEF SOUGHT

The decision of the District Court should be affirmed in all aspects, and each party should be required to pay their own appellate attorney's fees.

CONDITIONAL REQUEST FOR ORAL ARGUMENT

If oral argument would be helpful to the Court in determining a proper resolution of the issues herein, the undersigned requests to be heard at oral argument.

CERTIFICATE OF COST

The undersigned hereby certifies that the cost of printing this brief in final form was the sum of $0.00.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)*(d)* and 6.903(1)(*g)*(1) or (2) because:

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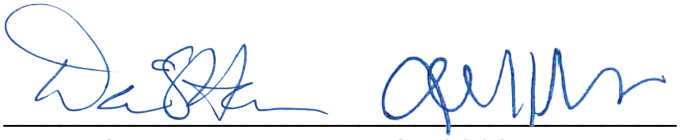
CERTIFICATE OF SERVICE AND FILING

The undersigned hereby certifies that this Appellee's Proof Brief is being eFiled with the Clerk of the Supreme Court of Iowa via EDMS, on this 22nd day of May, 2020, which will send notification to counsel of record.



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