**IN THE SUPREME COURT OF IOWA**

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

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| **Upon the Petition of** | ) | |
| | ) | |
| **SURAJ GEORGE PAZHOOR,** | ) | |
| | ) | |
| **Applicant/Petitioner/Appellee,** | ) | |
| | ) | |
| **and Concerning** | ) | **S.C. NO. 20-0090** |
| | ) | |
| **HANCY CHENNIKKARA PAZHOOR n/k/a HANCY CHENNIKKARA,** | ) | |
| | ) | |
| **Resister/Respondent/Appellant.** | ) | |

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

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# APPELLEE'S APPLICATION FOR FURTHER REVIEW OF THE COURT OF APPEALS' RULING, FILED JANUARY 21, 2021

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# Questions Presented

1. Was it error for the court of appeals to increase the trial court's spousal support award by 169% when the support recipient does not need $1,212,000 in total support paid over 12 years?

2. Should the Iowa Supreme Court formally recognize transitional alimony as a specific type of spousal support and did the court of appeals inequitably modify the district court's equitable transitional spousal support award?

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## Statement Supporting Further Review

This case is not about an ex-husband's refusal to pay spousal support. The district court ordered the ex-husband to pay his ex-wife $7,500 monthly in spousal support for five years, totaling $450,000. Only the ex-wife appealed. The court of appeals increased the award payable in different increments over twelve years totaling $1,212,000 – a 169% increase. The court of appeals improperly applied the criteria of Iowa Code section 598.21A(1) to the facts of this case to determine spousal support. Both parties earned their medical degrees before the marriage. At the time of trial, they had been married seventeen years, aged 43 and 41 years-old, in good health, and would share physical care of their two children. Though the alimony-recipient had rarely worked outside the home during their marriage, the court of appeals' decision improperly determined the recipient's need for such a sizable award which conflicts with *In re Marriage of Mann*, 943 N.W.2d 15 (Iowa 2020); *In re Marriage of Mauer*, 874 N.W.2d 103 (Iowa 2016); *In re Marriage of Gust*, 858 N.W.2d 402 (Iowa 2015); *In re Marriage of Witherly*, 867 N.W.2d 856 (Iowa Ct. App. 2015); *see* Iowa Code § 598.21A(1) (2021). This Court should grant further review to correct the conflict in law created by the court of appeals' decision. *See* Iowa R. App. P. 6.1103(1)(b)(1).

When applying Iowa Code section 568.21A(1), Iowa courts recognize three types of spousal support: rehabilitative, reimbursement, and traditional. *In re*

*Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004). This Court has held that "there is nothing in our case law that requires us, or any other court in this state, to award only one type of support" or to "characterize the support award as purely" one form or another. *In re Marriage of Becker*, 756 N.W.2d 822, 827 (Iowa 2008). However, the court of appeals' award, which it called "hybrid spousal support", blends two types of alimony – traditional and rehabilitative – to the point of dismantling any distinction between them. That is in error. By expanding the district court's five-year award to twelve years, when this was a seventeen-year marriage, the court of appeals created an inequitable remedy unjustified by the facts.

The district court called its alimony award "rehabilitative" but it is more akin to transitional alimony. Recently, this Court mentioned "transitional alimony is usually appropriate in the context of a traditional marriage where a spouse has surrendered economic opportunities and needs a period of time to get retooled to enter the work force", but did not formally adopt nor define it as a fourth type of alimony. *Mann*, 943 N.W.2d at 23 (citing *Becker*, 756 N.W.2d at 826–27). Despite this lack of formal recognition, the court of appeals has stated Iowa has "four categories of spousal support: traditional, rehabilitative, reimbursement, or *transitional*." *In re Marriage of Garmoe*, No. 19-1122, 2020 WL 1888774, at *2 (Iowa Ct. App. 2020); *see In re Marriage of Brown*, No. 19-0705, 2020 WL 569344, at *6

(Iowa Ct. App. 2020); *In re Marriage of Jenn*, No. 18-1458, 2019 WL 5424938, at *2 (Iowa Ct. App. 2019). Prior to *Garmoe* and *Jenn*, in a concurring opinion filed while on the court of appeals, Justice McDonald concluded rehabilitative alimony and transitional alimony are different. *In re Marriage of Baccam*, No. 17-1252, 2018 WL 5850224, at *9 (Iowa Ct. App. 2018) (McDonald, J., dissenting) (citations omitted). Considering *Mann* and recent other appellate opinions, this Court should review this case to formally adopt transitional alimony as a fourth category of spousal support, vacate the spousal support provisions of the court of appeals' ruling, and affirm the district court's spousal support award. *See* R. 6.1103(1)(b)(4).

## Statement of the Case

Applicant, Suraj George Pazhoor ("Suraj"), and Resister, Hancy Chennikkara Pazhoor n/k/a Hancy Chennikkara (hereinafter "Hancy"), tried their dissolution of marriage action to the honorable Michael J. Shubatt on August 13-14, 2019. The district court filed its dissolution decree on October 18, 2019. (App. at 48-64.) The court weighed the evidence, made certain credibility decisions, and filed an equitable decree. The court granted the parties shared physical care of the parties' two minor children, divided their property, and ordered Suraj to pay Hancy child support and spousal support. Relevant to this application, Suraj did not appeal, but Hancy appealed several provisions of the decree, particularly the district court's spousal support award.

At trial, the parties agreed that Hancy should receive spousal support, but they disagreed on the amount and duration. Suraj requested the trial court order him to pay Hancy $5,000 monthly for five years – **$300,000 total** (5000x12x5). (App. at 53; Ct. App. Ruling p7.) In contrast, Hancy asked for "traditional support in the amount of $12,000.00 per [month.]"[1] (App. at 53; *see* Ct. App. Ruling p7.) The district court concluded that alimony "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." (App. at 54.) It ordered Suraj to pay Hancy "five years of rehabilitative alimony at $7,500 per month" – $**450,000 total** (7500x12x5). (App. at 55; *see* Ct. App. Ruling p7.) The district court explained: "This will allow Hancy to maintain her current lifestyle while she pursues additional education and finds and settles in to a new position." (App. at 54; *see* Ct. App. Ruling p7.) Only Hancy appealed.

This Court transferred the case to the Iowa Court of Appeals. On January 21, 2021, the court of appeals increased Suraj's spousal support obligation by

[1] The court of appeals incorrectly stated that Hancy asked the trial court to award her "traditional support" of "$12,000 per *year*." (Ct. App. Ruling p7 (emphasis added).) The trial record reflects Hancy asked for $12,000 per *month*. (App. at 53.)

169%. (Ct. App. Ruling p17-18.) It concluded that Hancy should receive "an award of hybrid spousal support" of:

> $9000.00 per month for a period of seven years, which amount will then be reduced to $8000.00 per month for a period of three years, then reduced to $7000.00 per month for two years, at which time the spousal support obligation will terminate at the expiration of the twelve-year term

– **$1,212,000 total** ((9000x12x7)+(8000x12x3)+(7000x12x2)). (Ct. App. Ruling p17-18.) Also, the court appeals ruled:

> In the event Hancy remarries after the first seven-year period, but before expiration or satisfaction of the twelve-year spousal-support obligation, the support obligation shall terminate so long as Suraj is current on his obligations for support. In the event of the death of either party, the spousal support obligation shall terminate.

(Ct. App. Ruling p18.) Suraj applies for further review.

## Statement of the Facts

Arranged by their families, the parties married in May 2002. When the district court ended their seventeen-year marriage in October 2019, Suraj was 43, Hancy was nearly 41, and their two children were 11 and 6 years-old. Suraj was in good health. Suraj is a medical doctor practicing in Dubuque. Though Hancy had health issues in the past, those issues did not affect her at the time of trial and would not detrimentally affect her ability to work outside the home in the future.

Hancy is well educated having completed medical school in India in seven years. She completed medical school before the marriage and her internship after

the marriage. She became a registered physician in India. When the parties relocated to the United States, Hancy began the process to take her medical boards. Though she passed one board, she quit taking them. Due to caring for her ill father and becoming pregnant with their first child, Hancy never obtained her license to practice in the United States. Beginning in 2008, based in part on her fear of pursuing forward with her medical career, the parties decided Hancy would care for their home and children. From 2008 through 2017, Hancy earned no income. (App. at 635-38.) For Hancy now to obtain her license to practice medicine, she effectively would have to start over with education, internships, and passing boards. Hancy has considered pursuing a Master of Public Health degree that would take 2-3 years attending fulltime. (App. at 49, 702-25.) Hancy suffered from migraines and spondylolisthesis in the past, but had not endured any effects for years prior to the divorce trial.

## Argument

### 1. Was it error for the court of appeals to increase the trial court's spousal support award by 169% when the support recipient does not need $1,212,000 in total support paid over 12 years?

This Court has routinely held "while our review is de novo, we have emphasized that we accord the trial court considerable latitude. We will disturb the trial court's order only when there has been a failure to do equity." *Gust*, 858

N.W.2d at 406 (citations and internal quotation marks omitted); *accord Mauer*, 874 N.W.2d at 106. As the *Gust* Court emphasized:

> "This deference to the trial court's determination is decidedly in the public interest. When appellate courts unduly refine these important, but often conjectural, judgment calls, they thereby foster appeals in hosts of cases, at staggering expense to the parties wholly disproportionate to any benefit they might hope to realize."

*Gust* at 407 (quoting *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996)). "The legislature has not authorized Iowa courts to employ any fixed or mathematical formula in applying spousal support. Rather, it has instructed courts to equitably award spousal support by considering each" criterion of Iowa Code section 598.21A(1). *Mauer* at 107 (citations omitted). A court must consider the factors listed in Iowa Code section 598.21A (2021) when determining what spousal support, if any, is justified. *Mauer* at 106-07.

When applying those statutory factors, Iowa courts recognize three types of spousal support: rehabilitative, reimbursement, and traditional. *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004). "Each type of spousal support has a different goal." *Becker*, 756 N.W.2d at 826.

> *Rehabilitative alimony* serves to support an economically dependent spouse through a limited period of education and retraining. Its objective is self-sufficiency. An award of *reimbursement alimony* is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *Traditional alimony* is payable for life or for so long as a dependent spouse is incapable of self-support. The amount of

> alimony awarded and its duration will differ according to the purpose it is designed to serve.

*In re Marriage of O'Rourke*, 547 N.W.2d 864, 866–67 (Iowa Ct. App. 1996) (emphasis in original citing *In re Marriage of Francis*, 442 N.W.2d 59, 63-64 (Iowa 1989)). Those three types are not exclusive of each other, this Court stated:

> there is nothing in our case law that requires us, or any other court of this state, to award only one type of support. What we are required to do is to consider the factors mandated by the legislature contained in [§ 598.21A(1)] when considering a spousal support award.

*Becker*, 756 N.W.2d at 827.

Both the district court and court of appeals properly rejected Hancy's request for permanent or traditional alimony. *See Gust*, 858 N.W.2d at 408 (noting traditional support is generally for an indefinite duration). Reimbursement alimony also is not justified because Hancy's economic sacrifices did not pay for Suraj's advanced degree – both parties completed medical school prior to the marriage. *See Francis*, 442 N.W.2d at 64. The district court and court of appeals then crafted an award based on Hancy's desire to return to school with the goal of achieving self-sufficiency but imposed a definite end, both "hallmarks of rehabilitative alimony." *Witherly*, 867 N.W.2d at 859. The district court's award accomplishes this goal. *See id.*

At the time of trial, Suraj earned an annual income of $500,742.18. (Ct. App. Ruling p6.) The court of appeals concluded Hancy's annual "gross income

to be $23,115.00." (Ct. App. Ruling p14.) At nearly 41 years-old, Hancy has many years ahead of her to improve her education and earning potential, so she is capable of self-support. Though Hancy is entitled to alimony to compensate for lost earning capacity during the marriage, she is young, healthy, and already achieved a medical degree. In five years (when the district court's alimony award expires), she will be only 46 years-old, more educated, and able to earn greater income, and the children will be older which lessens the demands on her ability to work outside the home. Stretching that award to 12 years is unjustified considering those factors. She will not take twelve years to attain necessary education and experience to improve her financial situation. Further, Iowa law does not require Suraj to pay so much spousal support – maintaining Hancy's lifestyle as well as his own twelve years after their divorce when both parties will only be in their early fifties. This is not a case where Hancy is close to retirement, wholly dependent on Suraj's income, and little chance to improve herself. Her education, age, and health, justify five years of spousal support, not twelve. The district court's award of $7500 monthly for five years permits Hancy to maintain her lifestyle while providing income to support herself and paying for additional education. Considering the parties' ages, good health, and Hancy's ability to substantially increase her earning capacity in the next few years, a twelve-year alimony award is not justified.

Though the court of appeals weighed the several factors of section 598.21A(1) in order to determine spousal support was appropriate, the income disparity between the parties led the court to an inequitable result by overcompensating to remedy that difference. The court of appeals correctly concluded, "Suraj will unquestionably continue to have a much higher income. We find this factor weighs in favor of a spousal-support award in some form." (Ct. App. Ruling p15-16.) However, the court of appeals' 169% increase to the district court's award is unjustified and exceeds what is necessary for Hancy to maintain her lifestyle while updating her education toward the goal of self-sufficiency.

The other criteria support an alimony award, but not at the level rendered by the court of appeals. Though Hancy suffered from migraines and a back condition, both the district court and court of appeals correctly found that Hancy's health did not detrimentally affect her ability to work outside the home in the future. (Ct. App. Ruling p2-3; App at 54.); *see* Iowa Code § 598.21A(1)(b) (2021). Both parties completed medical school before they married and attended internships after they married. Early in their marriage, Hancy passed two of four medical boards, but due to her family commitments, she abandoned further efforts. (Ct. App. Ruling p3 n.1.) Later Hancy returned to her studies but she had an "overwhelming" fear of failing, so she quit. (Ct. App. Ruling p3.) Immediately

prior to trial, Hancy had explored pursuing a master's degree in public health as compared to obtaining a medical license, but had not decided which path. She testified her credits may not transfer; if not, then she would have to retake undergraduate courses. She expected it to take two to three years on a fulltime basis to complete. Based on her education, there was evidence Hancy could immediately return to the medical field in a non-clinical role. (Ct. App. Ruling p5); § 598.21A(1)(d), (e), & (f).

The court of appeals found Hancy annually received $23,115.00 in wage and passive investment income**.** (Ct. App. Ruling p13-14 (note omitted & emphasis added).) Iowa courts must consider alimony and property division together. Iowa Code § 598.21(5)(h) & § 598.21A(1)(c) (2021); *see In re Marriage of Dahl*, 418 N.W.2d 358, 359 (Iowa Ct. App. 1987). The court of appeals correctly found Hancy left the marriage "with substantial assets … netting roughly $337,754.50 from marital property and … her premarital business … [and other] assets totaling $136,565.12." (Ct. App. Ruling p16.) Investing those assets would provide additional income. (*See* App. 48-64.) With $23,115 plus an annual $90,000 in alimony as the district court awarded would leave Hancy with $113,115 annual income or $9,426.25 monthly, not including any additional investment income. She also receives $527.22 monthly for child support which brings her total monthly income to $9,953.47. (Ct. App. Ruling p20.) Both child and spousal

support income are tax free to her. *Mann*, 943 N.W.2d at 21; *see* Iowa Code § 598.21A(1)(g) (2021) (the court must consider the tax consequences to each party).

When determining the appropriateness of alimony, the court considers "'(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other.'" *O'Rourke*, 547 N.W.2d at 866 (citations omitted). "[T]he 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.'" *Gust*, 858 N.W.2d at 411. In her appellate brief, Hancy argued her monthly expenses are $10,244.61, which *included* $3,551.98 monthly for future tuition. Thus, $7500 in monthly alimony combined with her other income permits Hancy to maintain her standard of living while working toward self-sufficiency. *See* Iowa Code § 598.21A(1)(f) (2021); *Witherly*, 867 N.W.2d at 859-60 (reducing the district court's rehabilitative alimony award from $2600 monthly until the recipient turned 65 years-old (she was 49 at trial) to $2600 monthly for five years and $1300 a month thereafter until the recipient turned sixty-five, remarried, or if either party dies).

If the parties are relatively close to retirement, then retirement is a significant factor in determining the duration of the support. *See Mauer*, 874 N.W.2d at 112 (Iowa 2016) ("Based on these facts and circumstances, we

conclude section 598.21A(1) requires us to account for the retirement of both parties in setting spousal support.") The opposite should also be true – if the parties are many years from retirement, then that should be a consideration in the duration of the support. Hancy was more than 25 years from retirement. Hancy has years earning her own wages and contributing toward her own retirement savings. The court of appeals' increase in the district court's alimony award is unjustified and inequitable. This Court should grant further review to vacate the court of appeal's alimony modification and affirm the district court.

## 2. Should the Iowa Supreme Court formally recognize transitional alimony as a specific type of spousal support and did the court of appeals inequitably modify the district court's equitable transitional spousal support award?

In several recent unpublished opinions filed by the Iowa Court of Appeals, that court has found a fourth category of alimony – transitional – to provide a basis for limited alimony awards because the facts do not fit into three existing categories of spousal support. *See, e.g.*, *Garmoe*, 2020 WL 1888774, at *2; *Brown*, 2020 WL 569344, at *6; *Jenn*, 2019 WL 5424938, at *2; *In re Marriage of Hansen*, No. 17-0889, 2018 WL 4922992, at *16 (Iowa Ct. App. 2018) (McDonald, J., concurring specially) (recognizing transitional support as a form of spousal support); *In re Marriage of Lange*, No. 16-1484, 2017 WL 6033733, at *3 (Iowa Ct. App. 2017) ("Jessica does not need traditional rehabilitative support so much as

transitional support while finding suitable employment."). This Court made clear in *Becker* that any court may award any type of alimony that the facts justify an award under section 598.21A(1). *Becker*, 756 N.W.2d at 827-28; *accord Gust*, 858 N.W.2d at 408 (noting categories of spousal support might "overlap" in some cases); *see Witherly*, 867 N.W.2d at 859-60 (stating "the moniker assigned to the spousal support award" is a "red herring" and noting *Gust* Court "recently reiterated our obligation to follow [section 598.21A] in the absence of legislation adopting a different standard"). However, recognizing transitional alimony as a fourth category will significantly help future courts and practitioners in fashioning an equitable award.

In a concurrence in *Hansen*, Justice McDonald, then as a member of the court of appeals, noted that Iowa's "caselaw has been somewhat inconsistent in discussing transitional spousal support. At least some of our cases recognize transitional support as distinct fourth category of spousal support." *Hansen*, 2018 WL 4922992, at *16 (McDonald, J., concurring specially); *see Lange*, 2017 WL 6033733, at *3. At times, Iowa courts have interchangeably used the terms "transitional alimony" and "rehabilitative alimony". *In re Marriage of Smith*, 573 N.W.2d 924, 926-27 (Iowa 1996); *In re Marriage of Russell*, 473 N.W.2d 244, 247 (Iowa Ct. App. 1991). However, Justice McDonald concluded, "transitional spousal support is separate and distinct from rehabilitative spousal support."

*Hansen*, 2018 WL 4922992, at *17. In a later case, contrasting rehabilitative alimony from transitional alimony, Justice McDonald opined:

> [T]ransitional support applies where the recipient spouse may already have the capacity for self-support at the time of dissolution but needs short-term assistance in transitioning from married status to single status due to the economic dislocation caused by the dissolution of marriage. The critical consideration is whether the recipient party has sufficient income and/or liquid assets to transition from married life to single life without undue hardship.

*In re Marriage of Baccam*, No. 17-1252, 2018 WL 5850224, at *9 (Iowa Ct. App. Nov. 7, 2018) (McDonald, J., dissenting) (citations omitted). Justice McDonald identified specific considerations for a court when determining whether to award transitional alimony stating it:

> applies where the recipient spouse may already have the capacity for self-support at the time of dissolution but needs short-term assistance in transitioning from married status to single status due to the economic and situational consequences of dissolution. The critical consideration is whether the recipient party has sufficient income and/or liquid assets to transition from married life to single life without undue hardship.

*Id.* (ultimately concluding transitional alimony was not warranted in that case).

Notably, the Iowa Supreme Court has *not* expressly recognized transitional alimony. *See Hansen*, 2018 WL 4922992, at *16-*17 (McDonald, J., concurring). In a post-*Hansen* opinion, then-Judge McDonald noted:

> Even if *Becker* allowed for non-categorical forms of spousal support, the circumstances justifying such an award should be extraordinary. We should not be quick to recognize new categories of spousal

> support. Nor should we be too lax in applying the generally-recognized categories to the facts of a particular case. Among the galaxy of cases, the generally-recognized categories of support are constellations providing guidance in navigating the otherwise uncharted waters of spousal support.

*Baccam*, 2018 WL 5850224, at *10 (McDonald, J., dissenting). Since Justice McDonald joined the Iowa Supreme Court in 2019, the court of appeals in unpublished opinions has recognized transitional alimony as a fourth type. *Garmoe*, 2020 WL 1888774, at *2 ("Cases applying [the § 598.21A(1)] factors have identified 'four categories of spousal support: traditional, rehabilitative, reimbursement, or transitional.'"); *Brown*, 2020 WL 569344, at *6 n.7; *Jenn*, 2019 WL 5424938, at *2-*3 ("We have recognized transitional support as a fourth category of spousal support."). This Court should formally recognize and define transitional alimony as a fourth category of spousal support that will help future courts and practitioners in fashioning an equitable remedy and help avoid "extraordinary" "non-categorical forms of spousal support". *See Baccam*, 2018 WL 5850224, at *10 (McDonald, J., dissenting).

With the property, child support, and her employment income, it is reasonably feasible that within five years of the divorce Hancy will become "self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage". *See* § 598.21A(1)(f). Particularly, the $90,000 in annual alimony ordered by the district court is tax free. *See Mann*, 943 N.W.2d at 21. Applied to

this case, the district court's spousal support is an equitable transitional alimony award because Hancy already has the capacity for self-support, but she needs short-term assistance to update her education and avoid spending her liquid assets to transition from married to single life. *See Baccam*, 2018 WL 5850224, at *9 (McDonald, J., dissenting). In contrast, the court of appeals' increase in amount and duration is excessive and unnecessary considering Hancy's previous education, her relatively young age, and years of future employability at a much higher level than her current job as a part-time church teacher and barista. This Court should grant further review to clarify whether transitional alimony is a fourth category of alimony as suggested by the several recent unpublished Iowa Court of Appeals' opinions, and then affirm the district court's spousal support award as transitional alimony.

## Conclusion

Based on the foregoing, this Court should grant further review, vacate the court of appeals decision regarding the spousal support provisions, and affirm the district court's alimony award and all other provisions.

Respectfully submitted,

/s/ Andrew B. Howie

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## Certificate of Service

Pursuant to Iowa Appellate Procedure 6.701 and 6.901, the undersigned hereby certifies that on the 9th day of February 2021, the Resistance to Application for Further Review was filed with the Supreme Court via EDMS and electronically served on all parties of record.

/s/ Andrew B. Howie
Andrew B. Howie

## Certificate of Compliance with Typeface Requirements, And Type-Volume Limitation

This resistance complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

[X] this resistance has been prepared in a proportionally spaced typeface using Garamond in 14 point, and contains 4,055 words, excluding the parts of the resistance exempted by Iowa R. App. P. 6.1103(4)(a), or

[ ] this resistance has been prepared in a monospaced typeface using Garamond in 14 point, and contains ____lines of text, excluding the parts of the resistance exempted by Iowa R. App. P. 6.1103(4)(a).

/s/ Andrew B. Howie — February 9, 2021
Signature — Date

**IN THE COURT OF APPEALS OF IOWA**

No. 20-0090
Filed January 21, 2021

**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 PAZHOOR, n/k/a HANCY CHENNIKKARA,**
Respondent-Appellant.

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Appeal from the Iowa District Court for Dubuque County, Michael J. Shubatt, Judge.

Hancy Chennikkara appeals the decree dissolving her marriage to Suraj Pazhoor. **AFFIRMED AS MODIFIED.**

Jenny L. Weiss of Fuerste, Carew, Juergens & Sudmeier, P.C., Dubuque, for appellant.

Darin S. Harmon and Jeremy N. Gallagher of Kintzinger, Harmon, Konrardy, P.L.C., Dubuque, for appellee.

Heard by Mullins, P.J., and May and Schumacher, JJ.

**MULLINS, Presiding Judge.**

Hancy Chennikkara appeals the decree dissolving her marriage to Suraj Pazhoor. Hancy argues the court erred in (1) placing the parties' children in their shared physical care, (2) awarding her an inadequate spousal-support award, (3) calculating Suraj's medical-support obligation, and (4) not awarding her attorney fees. Hancy requests an award of appellate attorney fees.

## I. Background Facts and Proceedings

The parties met in 2002 and were married a few months later. At the time of their marriage, both parties were finishing their medical educations in India. The marriage ultimately produced two children—a daughter, born in 2008, and a son, born in 2013. There is no question both parties are loving and devoted parents and the children are bonded to them.

At the time of the dissolution trial, Suraj was almost forty-three years of age and in good physical health. Suraj was born and raised in India. Following his formative education, Suraj pursued medical school in Russia, which he successfully completed in seven years. Thereafter, Suraj worked in a research position in Switzerland for about one year before returning to India to participate in an internship for about another year. He took his medical boards in India, but he did not pass.

Hancy was forty at the time of trial. Hancy suffers from migraines from time to time. At the time of trial, she was migraine free for six months. Suraj was of the belief she had not had a migraine for six or seven years. Hancy also suffered a fall while in medical school, resulting in a back condition, "spondylosis with a spondylothesis." According to Hancy, the condition causes "extremely debilitating"

"acute chronic episodes," the last of which she experienced roughly four months before trial. Suraj testified he had not heard Hancy complain about her back in nine or ten years. Hancy was born and raised in the Chicago, Illinois area. After graduating from high school, she went directly to medical school in India. She completed the educational portion of the program in six years, after which she married Suraj. She then completed the one-year internship portion of the program after the parties were married.

After the parties married, they moved to the United States in 2003, where they lived with Hancy's parents in Illinois. Both parties began studying for their medical boards in the United States. The parties lived with Hancy's parents for one year, then an apartment for two years, and then a condo. Neither passed the boards the first time they tried. Suraj passed his boards in 2007, but Hancy did not.[1] Hancy was preparing to take the exam again, but then her father was diagnosed with cancer and she learned she was pregnant. After giving birth, Hancy continued to study, but her fear of failing again was "overwhelming." Thereafter, Hancy was a stay-at-home mom. She has not furthered her education. Her passage of certain parts of the boards has expired, so if she were to decide to revive her efforts to become a licensed physician, she would have to start all over.

The parties moved to Wisconsin in 2012 following Suraj's completion of residency, where Suraj took a job in a hospital. They lived in Wisconsin just shy

[1] The medical boards consist of four parts. To apply for residency, one must pass the first three parts, and then the final part is completed at the end of residency. Hancy was successful on her first attempt at the first exam, while Suraj did not successfully complete until his second go around. Both passed the second part of the boards their first try. Hancy was never able to successfully complete the third part of the exam.

of four years, after which they moved to Dubuque, Iowa, where Suraj obtained new employment. Suraj continues to work in Dubuque as the director and lead hospitalist of a medical group, in which he is a partner. He testified he commonly works twelve to fourteen hours per day, and works seven days and then has seven days off. Sometimes Suraj has to go in for meetings or tend to other emergency matters during his week off. According to Hancy, until recently, Suraj continued to work three or four of the seven days off. Suraj agreed in his testimony that, historically, he does not regularly work a week on and then have a week off. He later testified he had to take extra shifts because the group was not fully-staffed. Hancy also testified that, on the days Suraj did not work, he would not assist with getting the children up and ready for school, transporting them, taking them to appointments, or assisting with homework. Hancy explained Suraj preferred to spend his time away from work relaxing, and he would usually work out, watch television, or go out. Suraj's annual income in 2018 amounted to $500,742.19. Through the time of trial in August 2019, Suraj's income for calendar year 2019 amounted to $252,172.51. He testified, based on what he earned so far, he anticipated he would have an ultimate annual income for 2019 in the amount of $415,152.00.

While Suraj's career has blossomed, Hancy has supported him and tended to the logistics of the moves from state to state, finances, childcare, and the children's development. She has also had a hand in advancing Suraj's career. Historically, Hancy has been the parent who has tended to and organized the children's education, extracurricular activities, and medical care. Hancy worked at a church as a teacher and a coffee shop as a barista at the time of trial. Hancy

brings in $918.00 per year working at the church. She earns $8.00 per hour at the coffee shop and agreed she would be able to work twenty hours per week. The district court awarded Hancy a marital condominium in Illinois, which the evidence suggests nets $490.00 in annual income. Hancy also has passive income from business interests gifted to her that averaged $13,838.00 in annual net income over the last few years. Hancy has been exploring the possibility of pursuing a master's degree in public health, although she had not decided what type of career she would pursue with such a degree. She testified the programs she was considering would need to determine her medical school credits are transferable before she could enter any of the programs. If the credits are determined to not be transferable, then she would need to take undergraduate courses. The programs she was considering would take two to three years to complete on a full-time basis. Suraj was of the opinion Hancy could obtain employment providing $100,000.00 to $200,000.00 in annual income in a nonclinical medical role.

On mother's day, in May 2018, Hancy accused Suraj of having an extramarital affair.[2] According to Suraj, this accusation was made in front of the children, who were "traumatized." Suraj petitioned for the dissolution of the parties' marriage in August. Suraj requested the children be placed in the parties' joint physical care, and Hancy requested the children be placed in her physical care, subject to Suraj's right to visitation. The parties continued to reside together in the marital home through March 2019, at which point Suraj moved for an order

[2] We expressly note Iowa is a no-fault dissolution-of-marriage state. *See In re Marriage of Fennelly*, 737 N.W.2d 97, 103 (Iowa 2007). "[W]e only consider a party's indiscretions if [a] child was harmed by the behavior." *In re Marriage of Rothfus*, No. 13-1745, 2014 WL 2885340, at *4 (Iowa Ct. App. June 25, 2014).

concerning temporary custody, visitation, and support. In May, Suraj withdrew his request for a temporary order, noting the parties agreed to continue to reside together until their marriage was dissolved.

The matter proceeded to a trial over two days in August. Following trial, the court awarded the parties joint legal custody and placed the children in the parties' joint physical care. While the court acknowledged "Hancy has been the primary caregiver for the children," and such circumstance "does not favor shared care," the court pointed out other factors—the parties' ability to communicate respectfully, the low level of conflict between the parents, and their general agreement on child-rearing practices—weighed in favor of a joint-physical-care arrangement.

For purposes of child support, the court found Suraj's income to be $500,742.18. The court rejected Suraj's position that Hancy could obtain employment in the medical field that would provide her with a six-figure annual income.[3] However, the court found "Hancy is capable of earning more than she is currently earning" and she is "capable of working full time at an hourly rate of $12.00." Thus, the court assigned Hancy an imputed income of $24,960.00. Coupled with her rent income from the condo and passive-business-interest income, the court assigned Hancy a total annual income of $40,000.00 for child-support purposes. The court found Suraj's insurance premium attributable to the children was $363.00 per month. Factoring that figure into the child-support

[3] At trial, Suraj requested the court to assign Hancy with $200,000.00 in imputed income based on her medical degree and his opinion she could obtain positions in the medical field.

guidelines resulted in Hancy having a health-insurance add on obligation in the amount of $129.89.

On the issue of spousal support, Hancy requested traditional support in the amount of $12,000.00 per year. Suraj proposed monthly support of $5000.00 for five years. Weighing the factors contained in Iowa Code section 598.21A(1) (2018), the court concluded an award of spousal support was appropriate, "but only for a rehabilitative period that will allow Hancy to pursue further education and which she can use her prior medical education." The court awarded Hancy monthly rehabilitative spousal support of $7500.00 for five years. The court denied Hancy's request for an award of attorney fees.

Hancy filed a motion to reconsider, enlarge, or amend, pursuant to Iowa Rule of Civil Procedure 1.904(2). Hancy argued allowing Suraj a deduction for the child's health-insurance premium was error because the premium was paid by Suraj's employer and is not an out-of-pocket expense for Suraj. She also argued the court erred in assigning her an imputed income of $40,000.00 and her award of spousal support and the denial of her request for attorney fees were inequitable. The court denied the motion on all issues relevant to this appeal.

Hancy appeals.

## II. Standard of Review

Appellate review of dissolution proceedings is de novo. Iowa R. App. 6.907; *In re Marriage of Larsen*, 912 N.W.2d 444, 448 (Iowa 2018). While we give weight to the factual findings of the district court, especially when considering the credibility of witnesses, we are not bound by them. Iowa R. App. P. 6.904(3)(g); *Fennelly*, 737 N.W.2d at 100. Because the court bases its decision on the unique

facts of each case, precedent is of little value. *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009). As to child custody, our principal consideration is the best interests of the children. Iowa R. App. P. 6.904(3)(o); *see In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

## III. Analysis

### A. Physical Care

Hancy challenges the district court's imposition of a shared-physical-care arrangement. Where, as here, "joint legal custody is awarded to both parents, the court may award joint physical care to both joint custodial parents upon the request of either parent." Iowa Code § 598.41(5)(a). "'Physical care' means the right and responsibility to maintain a home for the minor child[ren] and provide for the routine care of the child[ren]." *Id.* § 598.1(7). Under a joint-physical-care arrangement, "both parents have rights and responsibilities toward the child[ren] including but not limited to shared parenting time with the child[ren], maintaining homes for the child[ren], providing routine care for the child[ren] and under which neither parent has physical care rights superior to those of the other parent." *Id.* § 598.1(4). Physical-care determinations are based on the best interest of *children*, not "upon perceived fairness to the *spouses*." *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007). "The objective of a physical care determination is to place the children in the environment most likely to bring them to health, both physically and mentally, and to social maturity." *Id.*

We consider the following nonexclusive factors in determining whether a joint-physical-care arrangement is in the best interests of children:

> (1) "approximation"—what has been the historical care giving arrangement for the child[ren] 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) (quoting *Hansen*, 733 N.W.2d at 697–99).

On the issue of approximation, we agree with Hancy that she has been the primary care provider to the children and main facilitator in essentially every aspect of the children's development. But we disagree with Hancy's characterization of Suraj as an uninvolved parent. While Suraj has assumed a more traditional role in the family as the breadwinner, he has participated in the caregiving and upbringing of the children. While the pending dissolution has caused problems for the children, the district court was correct that the children "are bonded to each of their parents, both of whom have demonstrated an ability to attend to the children's needs." When either parent would be a suitable physical custodian, stability and continuity of caregiving are primary factors in considering whether joint physical care should be ordered. *Hansen*, 733 N.W.2d at 696. While Suraj's busy work schedule has necessarily placed more of the day-to-day and behind-the-scenes parenting responsibilities on Hancy, we find Suraj to be an engaged parent when he is able. While Hancy's historical status as the primary caregiver weighs in her favor on the issue of approximation, and we agree with the district court this "factor does not favor shared care," "our case law requires a multi-factored test where no one criterion is determinative." *See id.* at 697.

We turn to the remaining factors, the parties' ability to communicate and show mutual respect, the degree of conflict between them, and the extent they are in general agreement about their approach to daily matters. *Id.* at 698–99. On the issue of communication, Hancy faults Suraj for limiting his contact with her while he is at work to text messaging. But we find Suraj's explanation that he is largely unable to answer his phone at work as a hospital physician tending to patients reasonable to say the least. Hancy also highlights that she frequently made decisions about the children without communicating with Suraj. But that appears to have been the status quo, and Suraj was comfortable with allowing Hancy to make decisions because he trusts her as a parent. Hancy agrees "there is not a lot of conflict between the parties," but notes the parties do minimally disagree about extracurricular activities when the younger child's activities overlap, resulting in double-booking. Hancy also agrees "[t]here is little argument between [the parties] regarding child rearing." But she argues Suraj simply defers to her because she has done all the child rearing.

On these factors, we adopt the district court's assessment:

> The relationship between the parties is strained under the weight of these proceedings, but they are able to communicate with one another with a sufficient level of respect, which leads [us] to conclude that they will be able to communicate with one another as adults going forward.
>
> Hurt aside, the level of conflict between the parties is relatively low. . . . The parties have argued, which is to be expected given the fact they are seeking a divorce, but the arguments have not been volatile or physical in any way. There is no evidence that either party has ever felt afraid for his or her safety or that of their children because of the conflict between the parties.
>
> Suraj and Hancy generally agree on child-rearing practices. They are both intelligent people who place a high value on education and academic achievement. They are both Catholic and intend for their children to follow in that faith. They agree the children should

> be involved in extra-curricular activities as well, although Suraj believes that this should be somewhat limited so that the children don't get "double-booked." This appears to be the biggest difference the parties have with regard to child-rearing; in the grand scheme of things, it is not a major difference.

While the approximation factor does not favor shared care, consideration of the remaining factors results in a conclusion that shared care would be workable. But the *Hansen* factors are non-exclusive, and the overarching inquiry is whether such an arrangement would be in the children's best interests. *See id.* at 699–700. A joint-care arrangement involving equal time with each of these suitable and devoted parents "will assure the child[ren] the opportunity for the maximum continuing physical and emotional contact with both parents" and "will encourage the parents to share the rights and responsibilities of raising the child[ren]," which is in the children's best interests. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa Ct. App. 1996); *accord* Iowa Code § 598.41(1)(a); *In re Marriage of Gensley*, 777 N.W.2d 705, 714 (Iowa Ct. App. 2009) ("The district court shall make an award that . . . assures the children the 'opportunity for the maximum continuing physical and emotional contact with both parents." (citation omitted)).

Upon our de novo review of the record and consideration of the *Hansen* factors and other relevant matters,[4] we find placement of these children in the

[4] "The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41(3)." *In re Marriage of Courtade*, 560 N.W.2d 36, 37 (Iowa Court App. 1996). "Although Iowa Code section 598.41(3) does not directly apply to *physical care* decisions, . . . the factors listed here as well as other facts and circumstances are relevant in determining" physical care. *Hansen*, 733 N.W.2d at 696. We note our consideration of whether each parent would be a suitable custodian, whether the children will suffer due to lack of active contact with and attention from both parents, whether the parents can effectively communicate about the children's needs, whether both parents have actively cared for the children, whether each parent can support the other's relationship with the

parties' shared physical care is in their best interests.[5] We affirm the district court's physical-care determination.

B. Income

We first address Hancy's claim, subsumed in her claim the court's spousal-support award is inadequate, that the court erred in assigning her an imputed annual income of $40,000.00. The court reached this figure based on Hancy's rent and business income and the court's assumption Hancy is "capable of working full time at an hourly rate of $12.00." The record discloses Hancy intends to pursue a master's degree in the coming years. Based on this intent, the court awarded her rehabilitative spousal support for five years. No evidence was presented concerning any full-time employment Hancy could obtain while sharing care of two young children and pursuing her master's degree. And, like the district court, we reject Suraj's position that Hancy could immediately enter the workforce after absence therefrom for several years and earn a six-figure salary.

The district court used $40,000.00 as Hancy's imputed income in determining both child and spousal support. The first step under the guidelines is to "compute the net monthly income of each parent," which is ascertained by first

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children, whether one or both parents agree to or oppose shared physical care, and the geographic proximity of the parents. *See* Iowa Code § 598.41(3)(a)–(e), (g), (h). We also note our consideration of the characteristics of the children and parents, the children's needs and the parents' capacity and interests in meeting the same, the relationships between the parents and children, the effect of continuing or disrupting an existing physical-care arrangement, the nature of each proposed environment, and any other relevant matter disclosed by the evidence. *See In re Marriage of Winter*, 223 N.W.2d 165, 166–67 (Iowa 1974).

[5] In order to find otherwise, we would be required to make "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). This we cannot do on the record in this case.

determining each parent's gross monthly income and then subtracting specified taxes and deductions. Iowa Ct. R. 9.14(1). Gross monthly income includes "reasonably expected income from all sources." Iowa Ct. R. 9.5(1). The court may not impute income except "[p]ursuant to agreement of the parties, or . . . [u]pon request of a party, and a written determination is made by the court under rule 9.11." Iowa Ct. R. 9.5(1)(d)(1).

> The court may impute income in appropriate cases subject to the requirements of rule 9.5. If the court finds that a parent is voluntarily unemployed or underemployed without just cause, child support may be calculated based on a determination of earning capacity. A determination of earning capacity may be made by determining employment potential and probable earnings level based on work history, occupational qualifications, prevailing job opportunities, earnings levels in the community, and other relevant factors. The court shall not use earning capacity rather than actual earnings or otherwise impute income unless a written determination is made that, if actual earnings were used, substantial injustice would occur or adjustments would be necessary to provide for the needs of the child(ren) or to do justice between the parties.

Iowa Ct. R. 9.11(4).

Upon our de novo review of the record evidence, we are unable to conclude Hancy is voluntarily underemployed or substantial injustice would occur or adjustments would be necessary to provide for the needs of the children or to do justice between the parties. *See id*. And the assumption that she could immediately obtain full-time employment making $12.00 per hour is uncertain and speculative. *See Markey v. Carney*, 705 N.W.2d 13, 19 (Iowa 2005). Relying on "the most reliable evidence presented," *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991), we calculate Hancy's income as follows. Her gross employment income as a barista and teacher amounts to $9238.00. The three-year average income she obtained from her passive business interests in two limited liability

companies amounts to $13,387.00 per year. And the gross income Hancy receives from renting the condo is $490.00 per year.[6] Thus we calculate Hancy's gross income to be $23,115.00.

C. Spousal Support

Hancy argues the district court's award of $7500.00 in monthly rehabilitative spousal support for five years is inadequate. "[W]e accord the trial court considerable latitude in making th[e] determination [of spousal support] and will disturb the ruling only when there has been a failure to do equity." *In re Marriage of Stenzel*, 908 N.W.2d 524, 531 (Iowa Ct. App. 2018) (first and third alterations in original) (quoting *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005)).

Courts may grant an award of spousal support in a dissolution proceeding for a limited or indefinite length of time after considering all of the following relevant factors:

> (a) The length of the marriage.
> (b) The age and physical and emotional health of the parties.
> (c) The distribution of property made pursuant to section 598.21.
> (d) The educational level of each party at the time of marriage and at the time the action is commenced.
> (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.
> (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.
> (g) The tax consequences to each party.

[6] Hancy, invites us to use $425.00 as her annual income from the condo. We choose to use the income listed for the condo on the parties' 2017 tax return, $490.00.

> . . . .
> (j) Other factors the court may determine to be relevant in an individual case.

Iowa Code § 598.21A(1).

Hancy "does not challenge the court's award of rehabilitative alimony." Instead, she claims it should be supplemented with other forms of support. "We begin by noting that types of spousal support—whether categorized as traditional, rehabilitative or reimbursement—are not mutually exclusive." *Stenzel*, 908 N.W.2d at 531. We are not limited to awarding only one type of support or characterize the award as one form or another. *Id.* We are simply required to consider the statutory factors and ensure equity is achieved between the parties. *See id.* Iowa law is clear "that whether to award spousal support lies in the discretion of the court, that we must decide each case based upon its own particulars, and that precedent may be of little value in deciding each case." *In re Marriage of Gust*, 858 N.W.2d 402, 408 (Iowa 2015).

We proceed to the statutory factors. The length of the marriage, seventeen years, is near the twenty-year durational threshold warranting an award of traditional support. *See* Iowa Code § 598.21A(1)(a); *Gust*, 858 N.W.2d at 410–11. And this was a traditional marriage, with the parties agreeing Hancy would stay at home and raise the children. We find this factor to weigh in favor of an award of traditional support.

Both parties are in their early forties and, while Hancy has some physical health issues and the proceedings have caused some emotional trauma, the parties are both in relatively good physical and emotional health. *See* Iowa Code § 598.21A(1)(b). Given the parties' age and health, both have many years left of

employability. However, in those ensuing years, Suraj will unquestionably continue to have a much higher income. We find this factor weighs in favor of a spousal-support award in some form.

Both parties left the marriage with substantial assets, both netting roughly $337,754.50 from marital property,[7] and Hancy also retaining her premarital business interests, in addition to other premarital assets totaling $136,565.12. *See id.* § 598.21A(1)(c). While Hancy left the marriage with more assets, this is only one factor under consideration.

Each party's education was relatively equal at the time of the marriage, but only Suraj was able to further his medical education during the marriage by proceeding to residency and practicing medicine for several years. *See id.* § 598.21A(1)(d). While Hancy possesses the equivalent of a medical degree, she had not put that degree to use at the time the dissolution proceeding commenced, and Suraj's ability to practice medicine over several years has unquestionably been a continuing educational journey. We find this factor weighs in favor of a spousal-support award in some form.

The imposition of a spousal-support obligation is predicated on the need of the receiving spouse and the paying spouse's ability to pay. *See Gust*, 858 N.W.2d at 411; *see also* Iowa Code § 598.21A(1)(e), (f). "[T]he yardstick for determining need [is] the ability of a spouse to become self-sufficient at 'a standard of living reasonably comparable to that enjoyed during the marriage.'" *Gust*, 858 N.W.2d at 411 (quoting Iowa Code § 598.21A(1)(f)). As to need, we focus on earning

[7] The parties also stipulated to distribution of a 401(k) account by way of a qualified domestic relations order.

capability of the party seeking maintenance, not necessarily actual income. *Id.*; *see* Iowa Code § 598.21A(1)(e). While Hancy has an impressive educational background, determining her earning capacity is somewhat of a nebulous task given her length of absence from the job market and resulting lack of training, employment skills, and work experience. *See id.* § 598.21A(1)(e). What is clear is that Hancy's earning capacity will undoubtedly continue to be dwarfed by Suraj's, even if she successfully pursues her master's degree and finds employment in the six-figure range as Suraj believes she can. The disparity between the parties' income will continue to be significant. *See Gust*, 858 N.W.2d at 411 (indicating such a disparity weighs in favor of an award of spousal support).

The record affirmatively establishes that Hancy will no longer be able to support a standard of living reasonably comparable to that which she enjoyed during the marriage. *See* Iowa Code § 598.21A(1)(f). Absent an award of spousal support, her life will no longer be subsidized by Suraj's contributions, and the lifestyle she enjoyed during the marriage would be unattainable. Spousal support is appropriate for the purpose of allowing Hancy to live in a manner approaching her lifestyle during the marriage.

Upon our consideration of the factors contained in section 598.21A(1), we find an award of hybrid spousal support in favor of Hancy is appropriate.[8] We are mindful that if she pursues further education or other professional career options, any such pursuit is likely to take a number of years and considerable expense. It

[8] We decline Hancy's request that we calculate her award based on the guidelines of the American Academy of Matrimonial lawyers. *See Gust*, 858 N.W.2d at 412 ("[W]e do not employ a mathematical formula to determine the amount of spousal support.").

is also likely she would not be able to accomplish such goals if she were working full time. We have also considered the likelihood that any such new career will require some period of employment before she is able to earn income commensurate with sustaining a lifestyle approaching her current one. She has asked for spousal support in the amount of $12,000.00 for twelve years. In balancing the interests of the parties, we recognize recent changes in federal income tax laws will result in spousal support payments by Suraj will not be tax deductible and the payments received by Hancy will not be taxable. *See In re Marriage of Mann*, 943 N.W.2d 15, 21 (Iowa 2020).

Based on the foregoing and our de novo review of the record, we determine Suraj shall pay to Hancy spousal support in the amount of $9000.00 per month for a period of seven years, which amount will then be reduced to $8000.00 per month for a period of three years, then reduced to $7000.00 per month for two years, at which time the spousal support obligation will terminate at the expiration of the twelve-year term. In the event Hancy remarries after the first seven-year period, but before expiration or satisfaction of the twelve-year spousal-support obligation, the support obligation shall terminate so long as Suraj is current on his obligations for support. In the event of the death of either party, the spousal support obligation shall terminate.[9]

[9] In oral argument, Suraj cited *Mann*, 943 N.W.2d 15 in support of his request that we affirm the district court's spousal-support award. We find *Mann* distinguishable because the husband seeking support in that case "did not materially sacrifice his economic opportunities to manage the household or provide domestic services for the family." *Mann*, 943 N.W.2d at 22. The higher-earning wife prepared the meals, tended to the two children, and managed the household. *Id.*

D. Medical Support

Hancy argues the court erred in calculating Suraj's out-of-pocket medical support. She claims his insurance premium attributable to the children is paid by his employer and is not paid out of pocket. Suraj responds that Hancy has waived the issue for failure to cite legal authority. *See* Iowa R. App. P. 6.903(2)(g)(3). We decline to deem the issue waived, and we proceed to the merits. *See id.* Suraj acknowledged his paycheck does not show the deduction for insurance, but testified it comes out of his income in another manner. Suraj's employment agreement provides, "In addition to each Employee's compensation . . . , each Employee shall . . . also be entitled to participate in . . . a health and dental insurance plan (including family coverage) . . . ." The evidence also includes a listing of "Monthly Employee Health Insurance Cost," which showed the family plan to cost $519.00 per month and the single plan to cost $156.00.

Even if Suraj is correct the premium is reduced prior to the final calculation of his monthly gross income, he is already seeing that benefit when his gross income is factored in to the child-support calculation. So subtracting it again later following the net monthly income computation does amount to, as Hancy coins it, "double dipping." So we agree with Hancy that Suraj is not entitled to a deduction for the health-insurance premium attributable to the children, as it is already deducted to reach Suraj's gross income. Having recalculated Hancy's income, above, we find it necessary to recalculate Suraj's child-support obligation, below, and will exclude the deduction for health insurance in our recalculation.

E. Child Support

Based upon our disposition on the above issues, we recalculate Suraj's child-support obligation to be $527.22 for two children and $377.95 when only one child is eligible.[10] This calculation is retroactive to the time of the entry of the decree.

F. Attorney Fees

Finally, Hancy argues the court erred in declining to award her trial attorney fees. We review the denial for an abuse of discretion. *See In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). This is our most deferential standard of review. *See State v. Roby*, 897 N.W.2d 127, 137 (Iowa 2017). "Trial courts have considerable discretion in awarding attorney fees." *In re Marriage of Witten*, 672 N.W.2d 768, 784 (Iowa 2003) (quoting *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994)). "An award of attorney fees is based on the parties, respective needs and ability to pay." *In re Marriage of O'Rourke*, 547 N.W.2d 864, 867 (Iowa Ct. App. 1996).

In her motion to reconsider, enlarge, or amend, Hancy acknowledged "[b]oth parties paid their attorney fees using marital funds during the pendency of the divorce," but complained "both parties had outstanding fees following trial," and equity required Suraj cover her outstanding fees. The court ruled, "The award to

[10] This shared-care calculation is based on wage income for Suraj in the amount of $500,742.18. Hancy's wage income is $9238.00 as a teacher and barista, and her income not subject to FICA from her passive-business and rent income is $13,877.00. Suraj's $9000.00 spousal-support obligation is factored into each party's income. Neither party challenges the district court's order that each party file as head of household and claim one child, so we apply those variables as well. We factor in that health insurance is provided at no cost.

each party is sufficient for each party to be responsible for his or her own remaining attorney fees." Given the significant assets each party left the marriage with, we are unable to characterize the court's decision as "a manifest abuse of discretion," and we affirm the denial. *See id.*

Hancy also requests an award of appellate attorney fees. An award of appellate attorney fees is not a matter of right but rests within this court's discretion. *Berning*, 745 N.W.2d at 94. In determining whether to award 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 district court's decision on appeal. *Id*. We also consider the relative merits of the appeal. *In re Marriage of McDermott*, 827 N.W.2d 687 (Iowa 2013). In consideration of these factors, we award Hancy appellate attorney fees in the amount of $3000.00. Costs on appeal are assessed to Suraj.

## IV. Conclusion

We affirm the court's award of shared physical care. We modify the district court's spousal-support award as set out above. We agree with Hancy that Suraj is not entitled to a deduction for the health-insurance premium attributable to the children, as it is already deducted to reach Suraj's gross income. We modify Suraj's child-support obligation based on our calculation of Hancy's income, modification of spousal support, and conclusion Suraj is not entitled to a deduction for the health-insurance premium attributable to the children. We affirm the denial of Hancy's request for trial attorney fees, but we award Hancy appellate attorney fees in the amount of $3000.00. Costs on appeal are assessed to Suraj.

**AFFIRMED AS MODIFIED.**


IOWA APPELLATE COURTS

State of Iowa Courts

| **Case Number** | **Case Title** |
| --- | --- |
| 20-0090 | In re Marriage of Pazhoor |

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