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

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

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

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

APPELLANT/RESPONDENT'S RESISTANCE TO APPELLEE'S APPLICATION FOR FURTHER REVIEW OF THE COURT OF APPEALS' RULING, FILED JANUARY 21, 2021

JENNY L. WEISS, AT0009397
FUERSTE, CAREW
JUERGENS & SUDMEIER, P.C.
890 MAIN STREET
SUITE 200
DUBUQUE, IA 52001
TEL: (563) 556-4011
FAX: (563) 556-7134
EMAIL: jweiss@fuerstelaw.com

ATTORNEYS FOR
APPELLANT/RESPONDENT

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on February 19, 2021, I, the undersigned party or person acting in their behalf, did serve the within Appellant/Respondent's Resistance to Appellee's Application for Further Review on all other parties to this matter by mailing of one (1) copy thereof to the following counsel for said parties at their respective address, to wit: Mr. Darin S. Harmon and Jeremy N. Gallagher, Kintzinger Law Firm, PLC, 100 West 12th Street, Dubuque, IA 52004-0703; and Andrew Howie, Shindler, Anderson, Goplerud & Weese, P.C., 5015 Grand Ridge Drive, Suite 100, West Des Moines, Iowa 50265-5749.

FUERSTE, CAREW,
JUERGENS & SUDMEIER, P.C.
By: */s/ Jenny L. Weiss*
Jenny L. Weiss, AT0009397

I further certify that on February 19, 2021, I will file this document EDMS with the Clerk of the Supreme Court.

FUERSTE, CAREW,
JUERGENS & SUDMEIER, P.C.
By: */s/ Jenny L. Weiss*
Jenny L. Weiss, AT0009397

TABLE OF CONTENTS WITH PAGE REFERENCES

TABLE OF AUTHORITIES

CASES

STATUTES & RULES

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

This document complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g) and 6.1103(4) because this document contains 3,495 words, excluding the parts exempted by Iowa R. App. P. 6.1103(4).

This document complies with the typeface requirement of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this document has been prepared in a proportionally spaced typeface using Microsoft Office Word in Times New Roman style, size 14 font.

FUERSTE, CAREW,
JUERGENS & SUDMEIER, P.C.

By: */s/ Jenny L. Weiss*
Jenny L. Weiss, AT0009397

STATEMENT RESISTING FURTHER REVIEW

COMES NOW Resister/Respondent/Appellant Hancy Chennikkara Pazhoor n/k/a Hancy Chennikkara ("Hancy") and in support of her Resistance to Appellee's Application for Further Review, states:

1. The Applicant/Petitioner/Appellee Suraj George Pazhoor ("Suraj") has failed to show the decision of the Court of Appeals was a result of an error of law or that its decision conflicts with a prior holding of a published Court of Appeals decision or a decision of this Court.

2. Suraj's argument that this case presents an opportunity for the Supreme Court to formally recognize transitional alimony is a red-herring intended to catch the attention of Justice McDonald. Transitional alimony was not awarded in this case nor had either party argued for transitional alimony; it was never raised or argued in either the District Court nor the Court of Appeals.

3. The Court of Appeals' modified alimony award is equitable and consistent with Iowa Code 598.21A and the prior holdings of this Court.

WHEREFORE, Appellant Resister/Respondent/Appellant Hancy Chennikkara Pazhoor n/k/a Hancy Chennikkara respectfully requests the Honorable Supreme Court deny Applicant/Petitioner/Appellee Suraj George Pazhoor's Application for Further Review.

STATEMENT OF THE CASE

Hancy agrees with Suraj's Statement of the Case with the exception of the following:

- Suraj states the District Court made "certain credibility findings" in its October 18, 2019, Findings of Fact, Conclusions of Law, and Judgment and Decree [hereinafter "Decree']. This is false. There were no credibility findings.
- The District Court's Decree was not equitable.

STATEMENT OF THE FACTS

Suraj's Statement of the Facts focuses on Hancy's education prior to the parties' marriage and extrapolates presumptions arising out of that education that are simply not supported by the record.

Hancy and Suraj were married in 2002 in India. Both completed medical school prior to marrying, Hancy in India and Suraj in Russia. (Tr. Vol. 1, p. 83, L16-19; Tr. Vol. 1, p. 84, L10-25). After approximately a year of marriage, they moved to Naperville, Illinois, where both began studying for the United States Medical Licensing Exam. (Tr. Vol. 1, p. 85, L4-12). This four-part test (commonly known as "the Boards"), which Suraj completed and is required to obtain a license to practice medicine in the United States. (Tr. Vol. 1, p. 91, L12 thru p. 92, L24). Hancy never completed the Boards and

was, therefore, never licensed to practice in the United States. (Tr. Vol. 1, p. 85, L19-21; p. 93, L9-18). However, she did assist Suraj in completing his exam. (Tr. Vol. 1, p. 99, L12 thru p. 100, L9).

After Suraj passed the Boards and finished his residency, the parties had to decide where he would apply for a position. Hancy actively participated in Suraj's job hunt by drafting, editing, and updating his resume; uploading the same onto online recruiter databases; and securing and scheduling his interviews. (Tr. Vol. 1, p. 147, L4-21). In a group discussion that included not only Hancy and Suraj, but also Hancy's mother and brother, the parties decided to accept a position in Wisconsin, requiring them to move from the Chicago area, where their only support system resided. (Tr. Vol. 1, p. 103, L24 thru p. 105, L4; Tr. Vol. 1, p. 104, L2-13). With their support system gone, a young daughter to raise, and financial limitations, the parties mutually agreed Hancy would put her educational and career pursuits aside to support the family, allowing Suraj to focus on his burgeoning career. (Tr. Vol. 1, p. 105, L8 thru p. 106, L5). Hancy never did return to medicine, nor did she return to the job market until after the dissolution was commenced.

At the time of the divorce, Hancy had 2 part-time jobs; as a barista at a local coffee shop and as a CCD teacher. (Tr. Vol. 1, p. 109, L14-18; p. 113, L2-8). Her teaching position required her to teach every Wednesday and

Sunday night (during the school year) and her hours at the coffee shop fluctuated. (Tr. Vol. 1, p. 111, L20-25; p. 113, L10-201). However, Hancy's work schedule at the coffee shop was limited to every other week for no more than 20 hours due to Suraj's ever-changing work schedule. (Tr. Vol. 1, p. 111, L20-25). The undisputed evidence at trial is that between 2008 – 2017, Hancy's earned income was $0.00. (App. 635-638).

Conversely, during the marriage, Suraj's career skyrocketed. As stated above, after completing his residency, Suraj obtained a job in Wisconsin. (Tr. Vol 1, p. 100, L15-20). In 2016, the parties moved to Dubuque so Suraj could accept an offer as an internist and Medical Director at the Grand River Medical Group (hereinafter "GRMG"). (Tr. Vol 1, p. 150, L9-18). Since 2012, Suraj's income increased exponentially, from $110,100 to $500,742.19, a **355% increase**. (App. 633-634; 639-644; 648-654).

While Suraj focused on his career, Hancy focused on home. In addition to almost exclusively caring for the parties' two children, she was responsible for the logistics of each move – from Chicago to Wisconsin (x2) to Dubuque, including packing, scheduling, finding rentals or potential homes for sale, negotiating contracts. (Tr. Vol. 1, p. 151, L6-11). She was responsible for paying bills, obtaining and keeping insurance, taxes, groceries, cleaning – "everything." (Tr. Vol. 1, p. 151, L18-20). She entertained Suraj's colleagues,

introducing some to authentic Indian cuisine. (Tr. Vol. 1, p. 148, L15-22). She hosted events "for the benefit of putting [Suraj] in the right light for the community". (Tr. Vol 1, p. 148, L24 thru p. 149, L11). She supported him wholeheartedly – "100 percent" - in his professional pursuits. (Tr. Vol. 1, p. 150, L7-18).

As a result of Suraj's dedication to his job and Hancy's dedication to the home, the parties built a lavish, unbudgeted lifestyle. (Tr. Vol. 1, p. 152, L1-24). They lived in a 5,600 square foot house on the 4th hole of the Meadows Golf Course in Asbury, Iowa. (Tr. Vol. 1, p. 152, L4-8). Both had access to credit cards and enjoyed shopping. (Tr. Vol. 1, p. 152, L9-15). They visited Suraj's parents in India if not every year, then every other, costing $1,800 per ticket. (Tr. Vol. 1, p. 152, L18-24; p. 153, L17-23). In the winter, when "cabin fever" hit, they traveled somewhere warm, staying in nothing less than luxury accommodations. (Tr. Vol. 1, p.153, L1-8).

ARGUMENT

Suraj argues the Court of Appeals' decision was inequitable because "[Hancy] does not need $1,212,000 in total support paid over 12 years." In support of his argument, Suraj argues neither Hancy's educational needs nor her lifestyle require such an award. This argument is not factually or mathematically accurate.

Alimony may be awarded for a limited or indefinite length of time after considering those factors enumerated in section 598.21A(1), Code of Iowa. Section 598.21A(1). Those factors pertinent to this case include (1) the length of the marriage; (2) the property distribution; (3) the educational level of each party at the time of marriage *and* at the time the action is commenced; (4) the earning capacity of Hancy, including her educational background, training, employment skills, work experience, and length of absence from the job market; (5) the feasibility of the party seeking alimony 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; and (6) other factors the court may determine to be relevant in an individual case. Iowa Code §598.41A(1). The decision of the Court of Appeals considered each of these factors in making its decision.

"Alimony may be used to remedy inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage." *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993). It "is a stipend to a spouse in lieu of the other spouse's legal obligation for support." *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005).

The factors outlined in §598.21A are applied to the three types of spousal support recognized by Iowa courts: traditional, rehabilitative, and

reimbursement. *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008). The Court is not required to award one or another; it may award a combination, a hybrid, of types of spousal support if deemed appropriate. *Id.* at 827-828 ("[T]here is nothing in our case law that requires us, or any other court in 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 section [598.21A(3)] when considering a spousal support award. Therefore, even if we cannot characterize the support award as purely rehabilitative or traditional, under the facts of this case the spousal support award we make to [wife] best reflects the factors found in section [598.21A(3)].").

In this case, the Court of Appeals analyzed each factor outlined in section 598.21A(3) and held a hybrid award was warranted under the facts of the case. While Hancy argued she was entitled to a combination of support under all three forms of alimony, the Court of Appeals' award was a hybrid of traditional and rehabilitative, similar to what was awarded by this Court in *Becker*. In fact, the facts in *Becker* are strikingly similar to the facts in this case, and the Court of Appeals' rationale in this decision mirror this Court's findings and holdings in *Becker*. *Id.* at 826-827.

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

> First, our caselaw demonstrates that duration of the marriage is an important factor for an award of traditional spousal support. Traditional spousal support is often used in long-term marriages where life patterns have been largely set and "the earning potential of both spouses can be predicted with some reliability." Further, particularly in a traditional marriage, when the parties agree a spouse should stay home to raise children, the economic consequences of absence from the workplace can be substantial. While neither we nor the legislature have established a fixed formula, the shorter the marriage, the less likely a court is to award traditional spousal support. Generally speaking, marriages lasting twenty or more years commonly cross the durational threshold and merit serious consideration for traditional spousal support.
>
> Second, the cases emphasize that in marriages of relatively long duration, "[t]he imposition and length of an award of traditional alimony is primarily predicated on need and ability." For over forty years, by virtue of both judicial decision and legislative provision, the yardstick for determining need has been the ability of a spouse to become self-sufficient at "a standard of living reasonably comparable to that enjoyed during the marriage." The standard for determining need is thus objectively and measurably based upon the predivorce experience and private decisions of the parties, not on some externally discovered and imposed approach to need, such as subsistence or

adequate living standards or amorphous notions of self-sufficiency.

In determining need, we focus on the earning capability of the spouses, not necessarily on actual income. In marriages of long duration, the historical record ordinarily provides an objective starting point for determining earning capacity of persons with work experience. In order to establish earning capability for persons without work experience or who are arguably unemployed, the parties may use vocational and other experts to assist the court in making the determination.

With respect to ability to pay, we have noted that "[f]ollowing a marriage of long duration, we have affirmed awards both of alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great." Where there is a substantial disparity, we do not employ a mathematical formula to determine the amount of spousal support. We have, however, approved spousal support where it amounts to approximately thirty-one percent of the difference in annual income between spouses. Where a spouse does not have the ability to pay traditional spousal support, however, none will be awarded.

With respect to duration, we have observed that an award of traditional spousal support is normally payable until the death of either party, the payee's remarriage, or until the dependent is capable of self-support at the lifestyle to which the party was accustomed during the marriage. In order to limit or end traditional support, the evidence must establish that the payee spouse has the capacity to close the gap between income and need or show that it is fair to require him or her alone to bear the remaining gap between income and reasonable needs. Spousal support may end, however, where the record shows

> that a payee spouse has or will at some point reach a position where self-support at a standard of living comparable to that enjoyed in the marriage is attainable.

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

Suraj's argument that $7,500 a month for 60 months in rehabilitative alimony is sufficient to support Hancy in her re-education goals while also allowing her to live in a lifestyle to which she has become accustomed is simply not supported by the record. The record reflects that Hancy's basic and static monthly expenses, with tuition, total $10,244.61. (App. 92-95). These expenses do not include variable purchases for the children, including clothing, club membership dues, incidentals, personal grooming, laundry, allowances, life insurance, babysitting, church donations, gifts, or the ability to save for herself, (App. 92-95). Remove tuition and the alimony award by the District Court's award of $7,500 would still just cover her basic expenses. (App. 92-95). The District Court's award put Hancy in the red each month, unless she were to deplete liquid assets. (App. 65-81).

Simply put, Suraj's argument that the District Court's award of "$7,500 in monthly alimony combined with her other income permits Hancy to maintain her standard of living while working towards self-sufficiency" is (1) not mathematically accurate, and (2) undercuts his argument that the award was sufficient to cover her expenses while also paying and going to school.

He argues her monthly support, with the District Court's alimony order and child support, equals $9,953.47. First, this is his estimated gross income, of which $2,253.47 is taxable; and, second, he recognizes her total monthly expenses total $10,244.61. Elementary math shows $9,953.47 in monthly income does not cover $10,244.61 in monthly expenses.

The irony of Suraj's argument that Hancy is not in need of alimony in the amount or duration awarded by the Court of Appeals is on full display when his own estimated monthly expenses exceed $15,000 per month; an amount that allows him to continue to reside in a 5,600 sq ft home on a golf-course and drive a Tesla. (Tr. Vol. 1, p. 152, L4-8; App. 92-95). In the year prior to the divorce, Suraj paid over $100,000 to E*Trade in an attempt at "amateur" investing. (App. 728-825; 826-885; 886-952; Tr. Vol. 2, p. 115, L12 thru p. 117, L. 24).

The record reflects Suraj's gross annual income is $500,000 annually, which equals a net monthly income of approximately $26,000 (calculation). The Court of Appeals' decision award of $9,000 for the first 7 years reduces his net income to $15,000, which not only allows him to maintain his current lifestyle but this difference will continue to increase as his annual income continues to increase - a fact conceded by Suraj. (Application, pg. 15 "The

Court of appeals correctly concluded, 'Suraj will unquestionably continue to have a much higher income…'").

Suraj also argues there "was evidence Hancy could immediately return to the medical field in a non-clinical role." Again, not accurate. Suraj "was of the opinion" Hancy could earn $100,000 to $200,000 in annual income. He had no credible evidence to support this opinion. Further, the credible evidence demonstrated that Hancy could not just re-enter the medical field, to wit: Hancy interviewed for a position at Mercy as a patient's advocate but was denied because her foreign medical degree did not satisfy the pre-requisite of having a nursing degree. (Tr. Vol. 1, p. 131, L4-12).

Suraj supports his opinion that Hancy could earn $100,000 annually by repeatedly making reference to Hancy's foreign medical degree, which she had "at the time of the marriage," citing Iowa Code §598.21A(1)(d). However, he ignores the second clause of 598.21A(1)(d) which requires the Court to consider the education level of the parties "at the time the action is commenced." In this case, Hancy's education level between marriage and divorce arguably went backwards; while she still has a foreign medical degree, any successful steps she took to obtain her license to practice in America have expired. (Tr. Vol. 1, p. 85, L19-21; p. 93, L12-17; p. 108, L19-23).

Suraj further argues it will only take 2-3 years for Hancy to earn a degree in public health. This argument, repeated throughout his brief, is a perversion of Hancy's testimony. Hancy testified it would take 2-3 years of full-time study for her to complete a degree after she (1) transferred her credits from India – "not easy at all", (2) confirmed those credits would be accepted; and (3) satisfied any additional pre-requisites. (Tr. Vol. 1, p. 134, L9-125). Only then would Hancy be able to begin her studies, which at a minimum would take 2-3 years to complete as a full-time student, while also raising her two children 50% of the time and working full-time to supplement the alimony. (Tr. Vol. 1, p. 134, L9-17).

Finally, Suraj argues the Court of Appeals' modification of spousal support was inequitable considering the fact that neither are close to retirement, citing *In re Marriage of Mauer*, 847 N.W.2d 103, 112 (Iowa 2016). In *Mauer*, the wife was awarded lifetime alimony that decreased upon attaining the age of 66.6 years. *Id.* In the *Mauer* decision, the Supreme Court explained its decision to reduce alimony at the time of full retirement age by focusing on two facts not present in this case: (1) the wife in *Mauer* was awarded over $850,000 in retirement assets which would continue to grow, tax free, and (2) she would be able to draw upon her own social security based on her own prior income. *Id.* Conversely, Hancy was awarded $42,278.07 in

non-marital investment/retirement accounts plus one-half of Suraj's GRMG 401k of approximately $84,500. (App. 23). Further, Hancy currently has little to no social security based on her own income. (App. 635-638). The Appellate Court's alimony award will not only allow Hancy to continue to live the lifestyle to which she is accustomed while allowing a period of re-education/training, but it also allows her to save for her own future retirement. *See In re Marriage of Stenzel*, 908 N.W.2d 524, 535-536 (Iowa App. 2018).

The records and credible evidence clearly demonstrate Hancy does not and never will have an earning capacity sufficient to allow her to enjoy a lifestyle similar to what she enjoyed during the marriage, and the Court of Appeals' decision was equitable and in conformance with those factors outlined in §598.21A.

Suraj further argues the Supreme Court should use this case as an opportunity to formally recognize transitional alimony. First, neither Suraj nor Hancy sought transitional alimony at either the District Court or on appeal. Hancy sought a combination of traditional, rehabilitative, and reimbursement support while Suraj only argued for rehabilitative alimony. Neither the District Court nor the Court of Appeals considered transitional alimony, as defined by Justice McDonald in his dissenting opinion in *In re Marriage of Baccam*, No. 17-1252, 2018 WL 5850224 (Iowa App. 2018).

If the Court were to entertain Suraj's argument and review the facts of this case under those considerations outlined by Justice McDonald in his dissent in *Baccam*, the Court of Appeals' award of a hybrid alimony, whether it be combination of traditional and rehabilitative or traditional and transitional, was correct. As noted by Justice McDonald, "the critical consideration [in transitional alimony] is whether the recipient spouse has sufficient income and/or liquid assets to transition from married life to single life without undue hardship." *Id.* (McDonald, dissenting). In this case, Hancy has neither the income nor the liquid assets to transition from married life to single life without undue hardship. She received approximately $350,000 in liquid assets, of which approximately $43,000 were her pre-marital assets accumulated since she was a child. It is understood she would need to use these funds to purchase a new home, further depleting her liquid assets. As for income, Hancy's wage income at the time of trial was $8,320 as a barista and $918 as a CCD teacher. In addition, she received $13,838 in passive income from real estate investments gifted by her mother, plus $490 in net rental income from an Illinois condo. (App. 27-32, 138, 161-162, 208, 232, 685-88, 689; Tr. Vol 2, p. 7, L4 thru p. 8, L17). She does not have the income or assets to assist her in the transition, nor does she have the income or assets to support a standard of living reasonably comparable to that enjoyed during the

marriage. Hancy requests if the Court does take up this issue, it allows for additional briefing.