

IN THE SUPREME COURT OF IOWA

**SUPREME COURT NO. 21-0454**

Wapello County No. CDCV110589

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UPON THE PETITION OF  
JASON DALE MILLS,

Petitioner/Appellee,

AND CONCERNING  
ERINN ANN MILLS,  
n/k/a ERINN ANN PIERCE,

Respondent/Appellant.

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**APPEAL FROM THE IOWA DISTRICT COURT  
IN AND FOR WAPELLO COUNTY**

**HONORABLE SHAWN SHOWERS**

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**APPELLANT'S FINAL BRIEF AND ARGUMENT**

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CERTIFICATE OF FILING

I, Ryan J. Mitchell, hereby certify that this Appellant's Amended Proof Brief and Argument was served on the 27<sup>th</sup> day of December, 2021, upon the Clerk of the Supreme Court via electronic filing (EDMS).

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CERTIFICATE OF SERVICE

I, Ryan J. Mitchell, hereby certify that on the 27<sup>th</sup> day of December, 2021, I served the attached Appellant's Amended Proof Brief and Argument upon the following persons via electronic filing (EDMS) to:

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## STATEMENT OF ISSUES PRESENTED FOR REVIEW

### ROUTING STATEMENT

Appellant states that this case should be transferred to the Iowa Court of Appeals as it does not reach the criteria in Iowa R. App. P. 6.1101.

### ISSUE I

**DID THE TRIAL COURT PROPERLY DETERMINE AN AWARD OF NO ALIMONY WHEN THE RESPONDENT WAS MEDICALLY UNABLE TO CONTINUE TO WORK, THE PARTIES HAD A LARGE DISPARITY IN INCOME, THE APPELLANT LACKED COMPLETE UPWARD MOBILITY IN EMPLOYMENT, AND THE LENGTH OF THE MARRIAGE WAS APPROXIMATELY 14 YEARS?**

### AUTHORITIES

*In Re Marriage of Beecher*, 582 N.W.2d 510, 512-513 (Iowa 1998)

*In Re Marriage of Schenkelberg*, 824 N.W.2d 481, 486 (Iowa 2012)

*In Re Marriage of Gust*, 858 N.W.2d 402, 410 (Iowa 2015)

*In Re Marriage of Spiegel*, 553 N.W.2<sup>nd</sup> 309 (Iowa 1996)

*In Re Walker*, 856 N.W.2<sup>nd</sup> 382 (Iowa App. 2014)

*In Re Marriage of Frances*, 442 N.W.2d 59, 63-64 (Iowa 1989)

*In Re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008)

*In Re the Marriage of Andrea K. Mann and Steven Robert Mann*,  
(Iowa Ct. App. 18-1910)

## STATEMENT OF THE CASE

### Nature of the Case

The sole issue on appeal is the Court's denial of Appellant's (Erin's) request for alimony. Shortly after filing the Petition for Dissolution, the parties entered into a temporary agreement of joint physical custody of the minor child. Appellee (Jason) paid \$428.35 per month in child custody. Additionally, through temporary agreement, Jason agreed to pay the following monthly expenses: "The LP, electric, water, internet, car payment, and car insurance for Erin." (Stipulation and Agreement Re: Temporary Matters filed November 20, 2019; App. p. 19).

Prior to trial the parties reached a final agreement for joint physical custody of the child and agreements concerning much of the remaining issues. (Partial Stipulation filed February 2, 2021; App. p. 30).

Trial commenced on February 4, 2021 and February 26, 2021. The Honorable Judge Shawn Showers entered Findings of Fact, Conclusions of Law, Judgment and Decree on March 6, 2021. (Findings of Fact, Conclusions of Law, Judgment and Decree filed March 6, 2021; App. p. 49).

The Respondent timely filed her Notice of Appeal. (Notice of Appeal filed April 2, 2021; App. p. 67).

### Statement of the Facts

The parties began dating in early 2006 and later married May 7, 2006. (Trial Transcript; p. 10, l. 17, App. p. 73). Prior to marriage the parties signed an Antenuptial Agreement dated May 4, 2006. (Antenuptial Agreement of Erinn Ann Pierce and Jason Dale Mills dated May 4, 2006; App. p. 331). At the time of trial the parties stipulated and agreed to the validity of the agreement. At the time of trial the parties had been married just short of 15 years (14 years and 9 months). At the time of trial Erinn was approximately 42 years old and Jason was 46 years old.

The parties' minor child was born in late 2006. (Trial Transcript; p. 11, l. 12, App. p. 74). During the birth of the child Erinn suffered a ruptured pelvis (pubic symphysis rupture). (*Id.*; p. 102, ll. 4-25, App. p. 141). Erinn testified that at the time of the birth she suffered an intense amount of pain and continued to suffer from the injuries suffered during child birth. (*Id.*; pp. 124-125, ll. 5-1, App. p. 148-149). Erinn testified that she is unable to work due to the pain caused during child birth and the pain she continues to endure on a daily basis. (*Id.*) The Trial Court found Erinn's testimony credible. (Findings of Fact, Conclusions of Law, Judgment and Decree; p. 6, App. p. 54).

Dr. Shawn Dawson testified as Erinn’s treating physician. Dr. Dawson testified that he believed Erinn’s condition would not allow her to continue to be gainfully employed. (*Id.*; p. 89, ll. 13-23, App. p. 135).

Prior to the birth of the child Erinn worked as a phlebotomist earning very minimal income and shortly after the child’s birth Erinn attempted work; however, was never able to be gainfully employed full-time during the marriage. (*Id.*; p. 125, ll. 6-23, App. p. 149). At the time of trial Erinn was unemployed. (*Id.*).

Throughout the life of the marriage Jason was gainfully employed. (*Id.*; p. 38, ll. 2-18, App. p. 94). Each year Jason earned approximately \$45,000 per year and at time of trial had worked his way up at C&C Manufacturing as a Product Manager earning approximately \$74,500.00 per year. (*Id.*; p. 37-38, ll. 23-14, App. p. 93-94). Evidence presented to the Court through tax returns and social security earning statements reflected the following annual incomes:

<b>YEAR</b>	<b>ERINN</b>	<b>JASON</b>
2006	\$7,024	\$40,899
2007	\$6,082	\$40,992
2008	\$9,472	\$50,763
2009	\$10,593	\$40,033
2010	\$10,717	\$41,895
2011	\$10,244	\$46,739
2012	\$10,502	\$47,953

2013	\$10,098	\$57,991
2014	\$9,399	\$62,991
2015	\$0.00	\$68,775
2016	\$0.00	\$69,964
2017	\$0.00	\$70,007
2018	\$0.00	\$63,779
2019	\$8,787	\$63,485
2020	\$0.00	\$75,423.17

(Petitioner Jason Mills’ Trial Exhibits 17 and 18, Social Security Statements of Erinn Mills and Jason Mills; Petitioner Jason Mills Exhibit 5, page 4, App. pp. 283-290; 226).

**Course of Proceedings**

Jason filed his Petition for Dissolution of Marriage on August 5, 2019, and Erinn’s Answer was filed on August 30, 2019. (Petition for Dissolution of Marriage filed August 5, 2019; App. p. 7. Answer to Petition for Dissolution of Marriage filed August 30, 2019; App. p. 16).

On November 20, 2019 the parties entered a Stipulation and Agreement Re: Temporary Matters wherein the parties were granted temporary joint legal and joint physical care of the minor child. (Stipulation and Agreement Re: Temporary Matters filed November 20, 2019; App. p. 19). Additionally, the following paragraph was ordered: “Expenses in Lieu of Temporary Spousal Support: Jason shall not pay temporary spousal support. Jason already paid the

property taxes he agreed to pay. Jason shall pay the chest x-ray bill. Jason shall pay the following monthly expenses: the LP, electric, water, internet, car payment, and car insurance for Erinn. Erinn shall provide the monthly statements to Jason.” (*Id.*; App. pp. 23-24). Jason was further ordered to pay child support in the amount of \$428.35 per month. (*Id.*; App. p. 21).

On February 2, 2021 the parties entered into a Partial Stipulation and Agreement for Dissolution of Marriage regarding the issues of legal custody and physical custody of the child. (Partial Stipulation and Agreement for Dissolution of Marriage filed February 2, 2021; App. p. 30).

The parties began their first day of trial on February 4, 2021 via Go To Meeting.

On February 26, 2021 the parties reached a Second Partial Stipulation for Decree of Dissolution of Marriage. (Partial Stipulation for Decree of Dissolution of Marriage filed February 26, 2021; App. p. 41). Said Second Stipulation resolved some of the personal property and other property issues.

On February 26, 2021 trial was concluded.

On March 6, 2021 the Court issued Findings of Fact, Conclusions of Law, Judgment and Decree. (Findings of Fact, Conclusions of Law, Judgment and Decree filed March 6, 2021; App. p. 49).

On March 22, 2021 Erinn filed a Motion Nunc Pro Tunc and the Court entered an Order Nunc Pro Tunc on the same date. (Motion Nunc Pro Tunc and Order Nunc Pro Tunc filed March 22, 2021; App. pp. 64-66). The Order Nunc Pro Tunc ordered Jason to pay Erinn's vehicle Subaru payments until said vehicle was paid in full. (Order Nunc Pro Tunc filed March 22, 2021; App. p. 65).

On April 2, 2021 Erinn filed a Notice of Appeal. (Notice of Appeal filed April 2, 2021; App. p. 67).

### **ISSUE I**

**DID THE TRIAL COURT PROPERLY DETERMINE AN AWARD OF NO ALIMONY WHEN THE RESPONDENT WAS MEDICALLY UNABLE TO CONTINUE TO WORK, THE PARTIES HAD A LARGE DISPARITY IN INCOME, THE APPELLANT LACKED COMPLETE UPWARD MOBILITY IN EMPLOYMENT, AND THE LENGTH OF THE MARRIAGE WAS APPROXIMATELY 14 YEARS?**

### **SCOPE OF REVIEW, ISSUE PRESERVATION**

This issue is preserved for appellate review by the Appellant filing a Notice of Appeal on the 2<sup>nd</sup> day of April, 2021.

This is an equity action and therefore, review is de novo. Iowa R. of App. P. 6.907.

The Court examines the entire record and adjudicates anew the issues raised on appeal. *In Re Marriage of Beecher*, 582 N.W.2d 510, 512-513 (Iowa 1998).

### ARGUMENT

Erinn contends that the court incorrectly determined an award of no alimony. The parties were married in 2006 and divorced in early 2021.

Erinn testified that since the birth of their child in 2006 she can no longer work. (Trial Transcript; p. 124, ll. 5-25, App. p. 148). Furthermore, Erinn’s treating physician testified that Erinn could not work due to the pain she endures every day. (*Id.*; p. 89, ll. 13-23, App. p. 135). During the birth of the parties’ minor child Erinn suffered a ruptured pelvis (pubic symphysis rupture). (*Id.*; p. 102, ll. 4-25, App. p. 141).

During the life of the parties’ marriage Jason was the breadwinner for the family. Social Security Statements for each party reflect the following yearly incomes:

<b>YEAR</b>	<b>ERINN</b>	<b>JASON</b>
2006	\$7,024	\$40,899
2007	\$6,082	\$40,992
2008	\$9,472	\$50,763
2009	\$10,593	\$40,033
2010	\$10,717	\$41,895
2011	\$10,244	\$46,739

2012	\$10,502	\$47,953
2013	\$10,098	\$57,991
2014	\$9,399	\$62,991
2015	\$0.00	\$68,775
2016	\$0.00	\$69,964
2017	\$0.00	\$70,007
2018	\$0.00	\$63,779
2019	\$8,787	\$63,485
2020	\$0.00	\$75,423.17

The above numbers indicate a large disparity in income between Erinn and Jason during the marriage. (Petitioner Jason Mills’ Trial Exhibits 17 and 18, Social Security Statements of Erinn Mills and Jason Mills; Petitioner Jason Mills Exhibit 5, page 4, App. pp. 283-290; 226).

Evidence shows that nearly each year during the marriage Jason’s income increased. (*Id.*). Erinn’s work history shows that she will not regain employment and her upward mobility in employment is non-existent. (*Id.*).

In its alimony analysis the Trial Court determined that Erinn did not “...qualify for traditional, rehabilitative or reimbursement alimony/spousal support.” (Findings of Fact, Conclusions of Law, Judgment and Decree filed March 6, 2021 at p. 7; App. p. 55). The Trial Court also seemed to lean heavily on the marriage lasting less than 15 years. (*Id.* at p. 7; App. p. 55).

The Trial Court's alimony award failed to do equity between the parties. "The Iowa Supreme Court has stated that alimony will be modified if the award 'fails to do equity between the parties.'" *In Re Marriage of Schenkelberg*, 824 N.W.2d 481, 486 (Iowa 2012). The "duration of the marriage is an important factor for an award of traditional spousal support." *In Re Marriage of Gust*, 858 N.W.2d 402, 410 (Iowa 2015). "Marriages lasting twenty or more years commonly cross the durational threshold and merit serious consideration for traditional spousal support." *Id.* at 410-11. The Supreme Court has approved an award of traditional spousal support in a marriage lasting sixteen years. *Schenkelberg*, 824 N.W.2d at 486-87. The length of the Mills marriage should not preclude an award of traditional spousal support. From the date of marriage to the date of dissolution trial Mills had been married nearly fifteen years.

The Supreme Court in *Spiegel* awarded traditional alimony in a marriage that lasted approximately six years. *In Re Marriage of Spiegel*, 553 N.W.2d 309 (Iowa 1996). Perhaps most instructive is *In Re Walker*, 856 N.W.2d 382 (Iowa App. 2014). The Walkers were married for less than eleven years, however, the Court found that an award of alimony was appropriate. Additionally, the spouse receiving support was not disabled at the time of marriage, however, left the marriage disabled. *Id.* Here in Mills, Erinn was not disabled at the time of marriage, however, after nearly fifteen years left the marriage with a complete

inability to support herself and with little earning capacity. Traditional spousal support is awarded when the economically dependent spouse is incapable of self-support. *In Re Marriage of Frances*, 442 N.W.2d 59, 63-64 (Iowa 1989). In Mills, Erinn's pre-nup provided her with a home free and clear, and a trust valued at the time of trial at \$129,728.00. (Trial Transcript; p. 119, ll. 10-20, App. p. 146). The value of Erinn's home was approximately \$153,820.00. (See Trial Exhibit N, App. 337). The pre-nup provided Jason his 401k which was valued at approximately \$108,485.62 on August 30, 2019. (Petitioner's Trial Exhibit 19, p. 3, App. p. 293). Erinn testified that she was completely dependent on Jason and Jason was paying everything. (Trial Transcript; p. 124, ll. 6-8, App. p. 148). At trial Erinn's doctor agreed that within a reasonable degree of medical certainty that Erinn would not be able to work full-time again. (Trial Transcript; p. 90, ll. 20-22, App. p. 136).

When questioned at trial Jason stated as follows:

“Q. You pretty much - - you supported Erinn pretty much since day one in this marriage; right?

A. Up until she quit her job, you know, she had contributed some then, but after that it was all me, yes.

Q. She'd come to rely on you for that support; is that correct?

Ms. Simplot: Objection. Calls for speculation.

The Court: Overruled.

The Witness: Yes, I guess so.”

(Trial Transcript; p. 80, ll. 2-10, App. p. 128).

Jason testified that he paid the following costs: 1) The family’s yearly \$2,000 propane cost (Trial Transcript; p. 75, l. 13; 2, App. p. 123); 2) The family’s monthly water costs averaging \$78.00 per month. (Trial Transcript; p. 76, ll. 2-3, App. p. 124); 3) The family’s electric bill that averaged \$108.00 per month (Trial Transcript; p. 77, ll. 14-17, App. p. 125); 4) Erinn’s car insurance of \$53.50 per month (Trial Transcript; p. 77, ll. 12-13, App. p. 125); 5) Erinn’s health insurance costs; 6) Erinn’s internet costs of \$115.00 per month (Trial Transcript; p. 77, ll. 18-19, App. p. 125); 7) Erinn’s property taxes of \$2,170.00 per year and property insurance of \$2,362.00 per year (Trial Transcript; p. 78, ll. 17-23, App. p. 126); 8) The family’s food bills of \$400 per month (Trial Transcript; p. 78, ll. 5-16, App. p. 126).

Although Court’s have articulated three categories of spousal support, the Iowa Supreme Court has stated, “There is nothing in our case law that requires us, or any other Court in this state, to award only one type of support.” *In Re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008). “After considering the statutory factors, the Court may fashion an award that overlaps the lines drawn

for each category.” *In Re the Marriage of Andrea K. Mann and Steven Robert Mann*, (Iowa Ct. App. No. 18-1910 (2019); at p. 8).

Erinn Mills took part in two years of college and did not finish. Erinn took a semester course to get her certification in phlebotomy. (Trial Transcript; p. 98, ll. 5-10, App. p. 140).

### **CONCLUSION**

There is no question that throughout the life of the marriage Erinn and Jason had a large disparity in income. By the end of the marriage Jason was earning \$74,000 and Erinn’s income was under \$10,000. Said disparity in income existed through the life of the marriage.

Erinn was significantly injured during the birth of the parties’ only child and said injury occurred during the first year of the marriage. Erinn never fully recovered and evidence shows she was medically unable to go back to work.

During the life of the marriage Jason saw a steady increase in his income each year. In contrast Erinn had a complete inability of upward mobility in employment.

Finally, the parties’ marriage lasted nearly fifteen years. The length of this marriage should not be a complete barrier towards obtaining spousal support. Erinn’s significant monthly expenses will quickly dissipate any money she has in trust. Erinn’s affidavit listed total monthly expenses of \$2,512.00,

which is roughly \$30,144.00 per year. (See Petitioner's Exhibit 12, App. p. 272). Given Erinn's yearly expenses her only remaining source of funds is her trust and said trust will run out in less than five years and Erinn will be left completely destitute.

By contrast Jason agreed through testimony that Erinn had nearly \$20,000 per year in expenses. Using Jason's estimations Erinn will be destitute in just over six years.

The Court should fashion an award granting at minimum \$2,000 in alimony per month to Erinn for the rest of her life. Erinn will continue to bear the full brunt of pain and injury she suffered at the birth of the parties' minor child for the rest of her life. It is inequitable for Jason to not share in said burden once the minor child turns eighteen.

Respectfully submitted,

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