IN THE SUPREME COURT OF IOWA

No. 21-0454

IN RE THE MARRIAGE OF
JASON D. MILLS AND ERINN A. MILLS

Upon the Petition of	)	
JASON D. MILLS,	)	
	)	Wapello County No.: CDCV110589
Applicant/Petitioner-Appellee	)	
	)	
And Concerning	)	
ERINN A. MILLS,	)	
n/k/a ERINN A. PIERCE,	)	
	)	
Resister/Respondent-Appellant.	)	

APPEAL FROM THE IOWA DISTRICT COURT FOR WAPELLO COUNTY THE HONORABLE SHAWN SHOWERS, JUDGE OF THE EIGHTH JUDICIAL DISTRICT

APPELLEE'S APPLICATION FOR FURTHER REVIEW OF THE COURT OF APPEALS' RULING FILED MARCH 30, 2022

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QUESTIONS PRESENTED FOR REVIEW

1. Was it error or inequitable for the court of appeals to award traditional spousal support until the death or remarriage of the Petitioner in a mid-length marriage, where the parties are young, no degree was earned during the marriage and instead before, life patterns were established before marriage, the standard of living was low during the marriage, and the property division favored Petitioner?

2. Was it error or inequitable for the court of appeals to award traditional spousal support of $1,000.00 per month until the Petitioner dies or remarries especially when that equates to almost one-fourth of what Respondent brings home in earnings?

Table of Contents

TABLE OF AUTHORITIES

CASES PAGE

STATUTES AND RULES PAGE

STATEMENT SUPPORTING FURTHER REVIEW

The Court of Appeals improperly applied the criteria in Iowa Code in determining Erinn should be awarded traditional spousal support of $400.00 per month until Jason's child support obligation of $613.25 per month ends and then $1,000.00 per month until Erinn dies or remarries. The District Court properly determined no spousal support should be awarded. The District Court was not given the considerable latitude it should have been by the Court of Appeals. The factors set forth in Iowa Code support a denial of spousal support. That is especially true given the duration and amount awarded to Erinn by the Court of Appeals. The spousal support awarded is extremely excessive in amount and duration and should not continue until Erinn's death or remarriage.

The life patterns were set for Jason and Erinn before they got married. Jason was already employed with the employer he is now before the marriage. He also had his college degree before marriage. Erinn had her certificate of phlebotomy before the marriage. Erinn was working part time and relying on her trust fund and her family for expenses before marriage as well. At the time of trial, they had only been married for 14 years (and separated when

they had only been married 13 years), Jason is 46 years old and Erinn is 42 years old, and they are sharing physical care of the only child either of them have. (App. 73, 139). The standard of living of the parties was not high. The assets the parties had were largely the same at the time of divorce as they were at the time of marriage. Further Erinn received more assets than Jason did in the divorce. Jason also cannot deduct the spousal support on his taxes. The district court determined Erinn would either qualify for disability in due course or seek employment.

The Court of Appeals improperly determined Erinn should be awarded spousal support especially in such a sizeable award and duration. Not only does the award create an inequitable result that is unjustified by the facts but it also conflicts with among other cases the Court of Appeals case of *In Re Marriage of Gutcher*. 924 N.W.2d 876, 2018 WL 529082 (Iowa App. 2018). Spousal support guidance and direction is an important matter for litigants. *In re Marriage of Gutcher* is from the same judicial district - - the 8th District - - as this one. It is hard to imagine a case that is closer in similarity than *In re Marriage of Gutcher* to this one. Except Erinn is in a much better financial position than the wife in *Gutcher*. The wife in *Gutcher* was denied spousal support by the Court of Appeals unlike the wife in this case. It does not make

sense why traditional spousal support was awarded in this case and not in *Gutcher*. Courts and litigants need guidance when it comes to spousal support and this ruling has set precedent which gives conflicting guidance. The Supreme Court should grant further review to resolve the conflicting cases.

Iowa Courts up until recently recognized three different forms of spousal support but none of those apply in this case. Traditional spousal support is for long term marriages with twenty years being the usual threshold that needs to be reached. This marriage was not near the threshold at all. Reimbursement spousal support is inapplicable because Jason had his degree before marriage. Rehabilitative spousal support is inapplicable because Erinn is not seeking further education or training. None of these categories of spousal support are applicable in this case. No spousal support should be awarded. If any spousal support is awarded it should be much lower and only in the new category recognized by this Court of transitional spousal support and for a much shorter time period.

The Court of Appeals awarded traditional spousal support. That award was in error and sets precedent that is unfair and inequitable. This is a case of broad public importance the Supreme Court should ultimately determine. The guiding factors for when to award traditional spousal support is a

substantial and important question that should be settled by this Court.

STATEMENT OF THE CASE

Applicant, Jason Mills, and Resister, Erinn Pierce-Mills, n/k/a/ Erinn Pierce, tried their dissolution of marriage action to the Honorable Shawn Showers on February 4, 2021 and February 26, 2021. The district court issued its Findings of Fact, Conclusions of Law, Judgment and Decree on March 6, 2021. (App. 49-63). The district court weighed the evidence, made credibility determinations, and filed a decree. Relevant to this application, Erinn's request for spousal support was denied by the district court. (App. 49-63). The parties agreed to shared physical care of their son and the district court determined the child support Jason was to pay Erinn. The district court also distributed the assets and debts between the parties.

At trial, Erinn requested and Jason disputed her request for spousal support. (App. 49-63). The district court concluded spousal support is not appropriate in this case. (App. 55). The district court found Erinn did not qualify for traditional, rehabilitative, or reimbursement spousal support. (App. 55). The district court found that Erinn anticipates Erinn will either qualify for disability in due course or seek employment. (App. 54). The district court found that Erinn is able to support a standard of living reasonably

compared to what she enjoyed during the marriage without spousal support. (App. 54).

Erinn filed her notice of appeal on April 2, 2021. (App. 67-68). This Court transferred the case to the Iowa Court of Appeals on February 17, 2022. The court of appeals overturned the district court decision not to award any spousal support. The court of appeals awarded spousal support to Erinn. Not only did the court of appeals award spousal support it awarded traditional spousal support until Erinn dies or remarries. The court of appeals ordered Jason to pay traditional spousal support of $400.00 per month until his child support ends and then $1,000.00 per month to Erinn until she dies or remarries. Jason applies for further review.

STATEMENT OF THE FACTS

When the parties separated in August 2019, Erinn and Jason had only been married thirteen (13) years. (App. 73, 181). At the time of divorce in March 2021, they had been married 14 years. (App. 49-63, 73). Jason is 46 years old. (App. 73). Erinn is 42 years old. (App. 139). Both of them are young. (App. 73, 139). Jason acquired his bachelor of arts college degree before marriage. (App. 107, 166). Erinn acquired her certificate in phlebotomy before marriage. (App. 140, 166).

Jason and Erinn have one child together who is 14 and he is the only child for each of them. (App. 49-63, 74). Jason and Erinn agreed to joint physical care of that child. (App. 74). Erinn is getting $613.25 per month in child support from Jason. (App. 56).

Jason was employed at the same employer he has today before the marriage. (App. 93-94). Jason works at C&C Manufacturing. (App. 93-94). Up until 2014, Jason was making around $45,000.00 per year. (App. 94). It was not until 2014 that Jason started making over $60,000.00 per year. (App. 103). Jason only brings home after deductions $49,962.12 per year. (App. 179). Jason cannot afford to pay spousal support to Erinn. (App. 109-111, 180, 299, 329).

Erinn has a trust that she is in control of and is the beneficiary of the funds. (App. 82, 89-90, 227-271). At the time of the dissolution, Erinn had approximately $142,077.00 in that trust. (App. 157, 54). Erinn only takes the dividends from the trust currently. (App. 177). This is $200.00 to approximately $300.00 to $320.00 per month. (App. 147, 156, 219-219, 220-222, 223-225). Erinn does not want to go back to school. (App. 114, 161). Erinn does not want to work. (App. 161, 167). She believes she will be getting a disability payment. (App. 157-159).

Erinn never worked full-time before she was married to Jason except maybe as a bartender. (App. 81, 194). When she came into the marriage, she was just working part time. (App. 81). Her parents paid for everything that she needed. (App. 127, 171, 173-175, 185).

Erinn is capable of working but chooses not to do so. (App. 94, 119-121, 129, 172-173, 175, 194). Erinn was working after the birth of their child in 2006, where she sustained the injury, until 2014/2015 when she quit. (App. 81-83, 128-129, 131, 134-135). After she quit, Jason tried to get her to get a job or seek out disability. (App. 95-97, 193-194). There was only a 9 month period back when their child was born in 2006 that she was unable to work. (App. 142-143). The pain got better in 2007/2008. (App. 144-145). Erinn is still able to do the tasks a phlebotomist does during the day. (App. 138). She was also able to do multiple physical activities with horses and mowing through the years as well. (App. 78, 114-119, 160-161 183-184).

Jason and Erinn did not live a high standard of living. (App. 76-77, 112-113). Most of the assets that existed at the time of the divorce were assets acquired before marriage. (App. 76-77, 197, 198). The only items that were marital were the Subaru Outback and the tractor and attachments Erinn was awarded. (App. 98-100). Jason basically left the marriage with his premarital

property and the debt of the marriage (Subaru Outback and credit cards). (App. 49-63, 76-77, 91, 101, 198-203, 330). Erinn on the other hand left the marriage with her premarital property, no debt, the improvements to that property that Jason contributed to during the marriage, and more marital assets than Jason. (App. 49-63, 99-102, 198-203, 294, 330).

Erinn does not need spousal support and Jason cannot afford to pay it. (App. 112, 196). In part, Erinn does not need spousal support because she hardly has any expenses. (App. 91-92, 96, 108, 167). She said she doesn't go or drive anywhere so her gas/car expense is minimal. (App. 151). She does not have a mortgage payment for the 4 acre farm and house she lives in. (App. 91-92, 96, 108, 139). She does not have a cell phone bill because her mom pays it. (App. 127). Prior to Jason and Erinn getting together, even though Erinn was already an adult, her parents were helping her pay her bills and giving her whatever she wanted. (App. 75,171). She does not have a car payment because Jason was ordered to pay it off. (App. 96, 54). She does not have health insurance costs because she likely qualifies for Medicaid. (App. 54, 182, 196). It is unlikely she will have a property tax payment either because before Jason started paying it in 2011 her parents were paying it. (App. 106, 130, 132). Her mother helped pay it during separation. (App. 132,

185). Plus, Erinn would have had the property tax payment and farm expenses even if she had never been married to Jason because she had them before they were married. (App. 130). Jason should not have to pay for expenses she had premarital. (App. 130, 166-167).

ARGUMENT

I. Was it error or inequitable for the court of appeals to award traditional spousal support until the death or remarriage of the Petitioner in a mid length marriage, where the parties are young, no degree was earned during the marriage and instead before, life patterns were established before marriage, the standard of living was low during the marriage, and the property division favored Petitioner?

A trial court is supposed to have considerable latitude and discretion when making an award of spousal support. *In re Marriage of Becker*, 756 N.W.2d 822, 825 (Iowa 2008); *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 853 (Iowa App. 1998). The trial court's determination on spousal support is to only be disturbed if the ruling has failed to do equity between the parties. *In re Marriage of Gust*, 858 N.W.2d 402, 416 (Iowa 2015); *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005); *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa 1997). In making a determination regarding spousal support, courts are required to consider the factors listed in Iowa Code. *In re Marriage of Gust*, 858 N.W.2d 402, 407 (Iowa 2015). There are "three kinds of spousal support: traditional, rehabilitative, and

reimbursement." *Id*. at 408. "'Spousal support is not an absolute right." *In re Marriage of Gutcher*, 2018 WL 5292082 *1, *3 (Iowa Ct. App. 2018).

Traditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support. *In re Marriage of McCreedy*, 2012 WL 3196033 *1, *3 (Iowa App. 2012). "Twenty years is the generally accepted durational threshold for the award of traditional spousal support." *In re Marriage of Gutcher*, 2018 WL 5292082 at * 3 (citing *In re Marriage of Gust*); see also *In re Marriage of Jenn*, 2019 WL 5424938 *1, *2 (Iowa Ct. App. 2019). In marriage of long duration, "'[t]he imposition and length of an award of traditional alimony is primarily predicated on need and ability.'" *In re Marriage of Gust*, 858 N.W.2d 402, 411 (Iowa 2015). The court considers the property distribution and spousal support provisions of a decree together to determine their sufficiency. *In re Marriage of McCreedy* 2012 WL 3196033 at *3.

The Trial Court found 1) Erinn "does not qualify for traditional, rehabilitative, or reimbursement alimony/spousal support", 2) "[s]pousal support is not appropriate in this case", and 3) an award of spousal support "would not be equitable to [Jason]". (App. 55). This was a marriage of 14 years. (App. 55). Jason did not obtain an advanced degree while Erinn

worked to support him during the marriage. (App. 55). Erinn was not requesting to enter an educational or training program to increase her income. (App. 55). The Trial Court found Erinn possesses significantly more assets than Jason. (App. 55). The Trial Court also found "[b]oth Jason and Erinn were smart and capable people" and "articulate". (App. 53). The Trial Court found "Erinn is able to support a standard of living reasonably comparable to that enjoyed during the marriage without alimony." (App. 54).

A case that was just decided in 2018 that also came out of District 8A like the Mills case, but in Monroe County, *In re Marriage of Gutcher*, 2018 WL 5292082 (Iowa Ct. App. 2018), is in conflict with the decision by the Court of Appeals in this case. In *Gutcher*, spousal support was completely denied to the wife by the court of appeals even after the district court had awarded it to her. In this case the district court denied Erinn's request for spousal support and the Court of Appeals did the exact opposite for Erinn. Erinn's spousal support request should be completely denied. In fact, Erinn is far better off than the wife in *Gutcher* in part because of all of the assets she is leaving the marriage with. Erinn is also far younger than the wife in *Gutcher* and as found by the district court may be able to work (or if not obtain disability). This doesn't make sense because both cases involve marriages

that are not long-term marriages and are instead moderate length and involve women that developed medical problems during the marriage. *Id*. at *1.

The Court of Appeals in denying spousal support in *Gutcher* despite the health problems that existed for the wife determined that traditional spousal support was not applicable because the Gutcher marriage of 13 years "falls well short of the durational threshold, making a traditional support award inapplicable." *Id*. at 3. Similarly, the Mills marriage of 14 years (13 years at separation) falls well short of the durational threshold for traditional spousal support and so traditional spousal support should not have been awarded. The Court of Appeals in *Gutcher* determined rehabilitative support was also not applicable because the wife in *Gutcher* was not seeking further training or education. *Id*. at 3. Like the wife in *Gutcher*, Erinn is not seeking further training or education and therefore rehabilitative support is not applicable. The Court of Appeals in *Gutcher* determined reimbursement spousal support would also not be applicable because it is limited to "'situations where the marriage is devoted almost entirely to the educational advancement of one spouse' and 'there has not been enough time for the parties to receive the benefit from that educational advancement.'" *Id*. at 4. In the Mills case, reimbursement spousal support is also not applicable. Jason had his college

degree (and his job) before his marriage to Erinn. Erinn also had her certificate in phlebotomy before marriage. The Court of Appeals in *Gutcher* also determined transitional support was inapplicable because such an award should be extraordinary and limited to situations where the recipient spouse needs short-term assistance in transitioning from married status to single status due to economic dislocation caused by the divorce. *Id*. at 4-5.

Unlike the wife in *Gutcher*, Erinn is far younger than the wife in *Gutcher* and may be able to work still. *Id*. at *1. The trial court in this case determined Erinn would either qualify for disability in due course or seek employment. (App. 54). That shows the district court was not completely convinced Erinn was incapable of working if she didn't get awarded disability. However, Erinn testified she had no intention of going back to school or working.

The factors that are examined for spousal support weigh against spousal support being awarded in this case. The life patterns were set for Jason and Erinn before they got married. Jason was already employed with the employer he is now before the marriage. He also had his college degree before marriage. Erinn had her certificate of phlebotomy before the marriage. Erinn was working part time and relying on her trust fund and her family for expenses

before marriage as well. At the time of trial, they had only been married for 14 years (and separated when they had only been married 13 years). They are both young. Jason is 46 years old and Erinn is 42 years old. They are sharing physical care of the only child either of them have. (App. 73, 139). The standard of living of the parties was not high. The assets the parties had were largely the same at the time of divorce as they were at the time of marriage. Further Erinn received more assets than Jason did in the divorce. Jason also cannot deduct the spousal support on his taxes. The district court determined Erinn would either qualify for disability in due course or seek employment.

Jason's income increased during the marriage but it was not related to anything Erinn did. He already had his degree before marriage. He was already employed by the company before marriage. (App. 93-94, 107, 140, 166). Erinn and Jason had much different incomes when they entered the marriage so nothing has changed. Erinn chose not to work despite being capable of doing so. That is shown by the fact Erinn did work after the birth of their child all the way until 2014/2015 (except for a 9 month time period). (App. 81-83, 95, 128-129, 131, 134-135, 142-143, 193-194). From boarding horses, Erinn also had gross receipts of $6,400.00 in 2016, $5,200.00 in 2017, and $3,600.00 in 2018. (App. 217-219, 220-222, 223-225).

Erinn should not have been awarded spousal support. Certainly Erinn should not have been awarded spousal support until her death or remarriage. The parties were only married 14 years. If Erinn lives until she is 80 that means Jason will be paying for spousal support for thirty-eight years! Far longer than Jason and Erinn were married. That is unjust, unfair, and inequitable. No spousal support should be awarded. At a minimum, the spousal support should end much earlier than Erinn's death or remarriage. At a minimum, the spousal support should be no more than transitional spousal support for a very short time period. A category of support recently recognized by this Court. *In re Marriage of Pazhoor*, No. 20-0090, 2022 WL 815293 (Iowa 2022).

2. Was it error or inequitable for the court of appeals to award traditional spousal support of $1,000.00 per month until the Petitioner dies or remarries especially when that equates to almost one-fourth of what Respondent brings home in earnings?

Not only did the Court of Appeals award traditional spousal support for life or remarriage to Erinn, they awarded spousal support in an extremely high and unfair amount. Erinn does not need spousal support but she certainly does not need spousal support of $1,000.00 per month. (She gets $400.00 per

month in spousal support and $613.25 per month in child support while child support is owed. Then $1,000.00 per month in spousal support after child support ends).

As previously discussed, Erinn has very little in expenses. (App. 54, 91-92, 96, 108, 151, 167). Erinn does not have debt or owe anyone money. (App. 167). Unlike Jason, Erinn already has a paid for house. Jason is paying the debt of the marriage including the debt for her vehicle. She gets help from her mom with expenses for the farm that she had before marriage (who is also on the real estate title). (App. 75, 106, 130, 132, 166-167, 185). Her family has helped her out with expenses before, during, and after separation. (App. 75, 106, 127, 130, 132, 171, 174-175). Not to mention that Erinn hasn't applied for assistance through food stamps but was planning on it. (App. 165). She would likely qualify for state insurance so she also would not have that expense if she would just apply. (App. 49-63, 97, 196). Further, Erinn gets to choose how little or how much to pay herself from her trust. She has chosen to only pay herself dividends from the trust but she doesn't have to limit herself to that amount. (App. 89-90, 169-170, 177, 227-271).

The amount awarded equates to $12,000 per year to Erinn. Jason only takes home after deductions $49,962.12 per year. (Day 2, Tr. 38). That

means Jason is paying Erinn around a ¼ of his income each year. That is not reasonable, fair, or equitable. Not to mention that if Jason has to pay until Erinn dies or remarries, the amount that equates to over the years is completely unreasonable unfair and inequitable. If Erinn lives until she is 80 years old that means Jason will have paid her $456,000.00 if the spousal support is at least not reduced ($1,000.00 per month times 38 years (80 years minus 42 years of age)). That is an extremely high amount for a fourteen year marriage.

No spousal support should be awarded. At a minimum, the spousal support should end much earlier than Erinn's death or remarriage. At a minimum, the spousal support should be in a much lower amount than that ordered by the Court of Appeals. At a minimum, the spousal support should be no more than transitional spousal support for a very short time period. A category of support recently recognized by this Court.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. because:

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Date Heather M. Simplot

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she electronically filed this brief with the Iowa Supreme Court using EDMS, on April 18, 2022 which will serve the brief on the following counsel of record:

Ryan Mitchell

___/s/Heather M. Simplot_____
Heather M. Simplot

CERTIFICATE OF FILING

The undersigned hereby certifies that she electronically filed this brief with the Iowa Supreme Court using EDMS, on April 18, 2022.

___/s/Heather M. Simplot_____
Heather M. Simplot

IN THE COURT OF APPEALS OF IOWA

No. 21-0454
Filed March 30, 2022

IN RE THE MARRIAGE OF JASON DALE MILLS AND ERINN ANN MILLS

Upon the Petition of
JASON DALE MILLS,
Petitioner-Appellee,

And Concerning
ERINN ANN MILLS, n/k/a ERINN ANN PIERCE,
Respondent-Appellant.

Appeal from the Iowa District Court for Wapello County, Shawn Showers, Judge.

A former wife appeals the denial of spousal support in a dissolution decree.

AFFIRMED AS MODIFIED AND REMANDED.

Ryan J. Mitchell of Orsborn, Mitchell, Goedken & Larson, P.C., Ottumwa, for appellant.

Heather M. Simplot of Harrison, Moreland, Webber & Simplot, P.C., Ottumwa, for appellee

Considered by May, P.J., and Schumacher and Badding, JJ.

BADDING, Judge.

This case is a study in contradictions. In assessing Erinn Mills's request for spousal support in this fourteen-year marriage, the district court found she was credible in testifying that she could not work after an injury suffered while giving birth to the parties' only child in 2006. Yet the court determined spousal support was "not appropriate," in part because the court anticipated that Erinn would "either qualify for disability in due course or seek employment." Erinn appeals, claiming the court's refusal to award her spousal support was inequitable. We agree.

I. Background Facts and Proceedings

Erinn and Jason Mills married in May 2006. Just a few days before their marriage, the parties signed a prenuptial agreement that generally provided their present and future property would remain their separate property. In an attachment to the agreement, Erinn disclosed a number of assets, the most significant of which was anticipated proceeds from her grandfather's trust—the J.O. Sheets Trust. Erinn's share of that trust was valued "at about $208,348," with half of that amount to be distributed to her when she turned thirty and the balance at age thirty-five. Erinn also jointly owned a $140,000 four-acre farm with her mother, which included a house, Morton building, and small barn, against which a mortgage of $98,000 was owed.[1]

[1] Other assets included nine Arabian horses (valued together at $100,000) that Erinn owned jointly with her father, approximately $20,000 in horse-related gear, $25,000 in jewelry Erinn inherited from her grandmother, trophies from horse competitions, a $63,000 whole life insurance policy, and a $2000 painting Erinn owned with her brother.

Jason's premarital assets were more modest, the largest being a 2002 Harley Davidson he valued at $15,000, a $30,000 401(k) retirement account, and a house valued at $38,500, against which $32,000 was owed. Jason also listed several antiques, multiple collectible items, musical instruments, and many miscellaneous items of smaller value, like "[p]osters of various music icons" including Bob Dylan and Jimi Hendrix, and a Cheech & Chong album.

When the parties married, Jason had a bachelor's degree and was grossing $40,899 per year. Erinn did not complete college, but she obtained a phlebotomy certificate in 2005, which provided her with part-time employment at a lab where she grossed $7024 the following year. The couple lived in the house Erinn owned with her mother, who paid the taxes and insurance for the property until 2011 when Jason took over the payments.

Erinn and Jason's only child was born at the end of 2006. During his birth, Erinn heard a "horrible" pop, immediately following which she was in "excruciating pain." After the birth, she wasn't able to get dressed, go to the bathroom, or walk without assistance. She went undiagnosed for several weeks until a trip to a specialist in Iowa City determined that she had a "rupture of the pubic symphysis," or in layperson's terms, a rupture between two of her pelvic bones. Because the pain was unrelenting, Erinn sought further treatment at the Mayo Clinic. It was there she learned more details about her injury, specifically that while she was giving birth, "the left side of [her] pelvis broke away from the right in the front, and in doing so, it rotated, and it ripped [the] muscles and tendons." This rupture causes muscle spasms that irritate and inflame the sciatic nerve. Erinn received some short-term relief from treatments at the Mayo Clinic in the year after the birth,

but surgical repair was apparently not an option, so she has learned to live with the pain.

In an attempt to return to normal life, Erinn went back to work part-time as a phlebotomist about nine months after the injury. She generally worked from 5:00 a.m. until 8:30 a.m., although she was chronically late. Erinn explained that she "never knew from day to day getting up what [she] would feel like. So it just—it was very hard." Some days, according to Erinn, she "will wake up, and . . . literally have to roll onto the ground before [she] can stand up." Erinn eventually quit working in 2014, a decision she said Jason encouraged, though he denied that. The most that Erinn earned as a phlebotomist was $10,717. During this same time, while Erinn's employment was stagnant, Jason's income was on the rise. By the time of the trial in February 2021, he was earning $74,500 gross per year as a product manager for a manufacturing company.

After Erinn stopped working in late 2014, Jason's income paid for most, if not all, of the marital expenses, though it does not appear the parties lived extravagantly. Erinn described herself as "basically completely dependent on Jason" from that point on. She did, however, receive $200 to $300 per month in dividends from investments she made with the two distributions from her grandfather's trust. Erinn testified that she received the first distribution of $108,969.94 in 2008, and the second distribution of $122,754.33 in 2013. She used some of the proceeds from the first distribution to pay off the mortgage owed on the house. The rest was invested in various mutual funds, stocks, and securities, which were then transferred to her revocable trust, of which she was

the sole beneficiary and trustee. Erinn left most of the investments up to her father, who was a financial advisor.

Erinn also received some income from boarding horses, although she explained all of the horses that she boarded belonged to her father. Her receipts for boarding horses totaled $6400 in 2016; $5200 in 2017; and $3600 in 2018. Erinn stopped boarding in 2019 because her father's horses had gotten old, and he couldn't afford to pay her to board them any longer. By the time of the trial, Erinn only had two horses at her farm—a mare owned by her mother and a gelding owned by a friend.

Much of Jason's evidence at trial focused on his assertion that Erinn's family was "very wealthy" and would never let her want for anything. Erinn agreed that her parents had paid for some things, like the property taxes and insurance for the house she owned jointly with her mother and her cell phone bill. But she did not agree her family was wealthy. Erinn's father passed away in 2020, and Jason offered the report and inventory from his estate as an exhibit at trial. The total listed for the Iowa gross estate was $249,520.07, most of which came from Erinn's father's one-half share in joint tenancy property owned with her mother. Jason intimated Erinn was set to receive something from her father's estate even though Erinn's mother was its sole beneficiary. Jason also pointed out that Erinn is a remainder beneficiary of her mother's share of the J.O. Sheets Trust. But Erinn testified her brother also has a remainder interest, and there is no guarantee they'll receive any money from that trust. As Erinn explained, her mother is in her early seventies, and if she needs to go "to a nursing home, that trust fund is going to fund that. . . . That is there for her and her care."

The parties separated in August 2019, and Jason petitioned for dissolution that same month. Shortly after the separation, Jason withdrew $83,782.36 from his IRA, $30,000 of which he used as a down payment on a home. He took out a loan for the rest of the purchase price. In November, the parties stipulated to temporary joint physical care of their child, with Jason paying temporary child support of $428.35 per month along with various expenses in lieu of temporary spousal support.[2] Before trial, the parties entered into a partial stipulation agreeing to continue their joint-physical-care arrangement. They later agreed to a division of most of their assets and debts consistent with their prenuptial agreement,[3] which neither contested, leaving the main issue for trial Erinn's request for spousal support.

Trial was held over two days in February 2021. Jason testified that if he did not have to pay spousal support for Erinn, he would assume responsibility for the $10,643.58 debt on Erinn's vehicle. Erinn testified that, absent an award of spousal support, she would have to live off of her trust, which would be quickly

[2] The temporary stipulation noted Jason had already paid for property taxes for Erinn's home; would pay for an outstanding medical bill; and would cover ongoing monthly expenses for Erinn's vehicle, vehicle insurance, propane, electricity, water, and internet. Those ongoing monthly expenses totaled $889.50.

[3] Pursuant to the prenuptial agreement, Erinn was awarded the premarital four-acre farm along with her trust and its assets, while Jason was awarded the Harley Davidson motorcycle and a $50,070.89 IRA he owned before the marriage. For joint assets accumulated after the marriage, the parties agreed that Erinn would receive a tractor mower Jason valued at $7500 and her 2015 Subaru Outback, although they disagreed about the responsibility for the debt owed on it. Jason was to receive his 2012 Dodge Ram, against which no debt was owed, and all personal property set forth on a list admitted at trial as Exhibit 20. Jason also agreed to pay a credit card in his name in the amount of $7643.73. And he received the home he purchased after the parties' separation, along with its debt.

depleted. Erinn asked for $2000 in monthly spousal support, in addition to Jason continuing to make her monthly vehicle payment of $460 for her.

In the dissolution decree that followed the trial, the district court found Erinn's evidence that she could no longer work credible. But then the court denied her request for spousal support, reasoning "that Erinn will either qualify for disability in due course or seek employment. If Erinn is eligible for disability, then she is also eligible for Medicaid." Because Jason was "paying the balance of" the marital debt, and Erinn "possesses significantly more assets" than Jason with no mortgage or car payments, the court found she would be "able to support a standard of living reasonably comparable to that enjoyed during the marriage without [spousal support]."

II. Analysis

In arguing the district court's denial of her request for spousal support was inequitable, Erinn highlights her inability to work, the disparity in the parties' incomes, and the length of the marriage. She argues that, based on these factors, she was entitled to a traditional spousal support award of $2000 per month for life.

We start with the premise that spousal support

> is a stipend to a spouse in lieu of the other spouse's legal obligation for support. [Spousal support] is not an absolute right, and an award thereof depends upon the circumstances of a particular case. When making or denying an . . . award, the trial court considers the factors set forth in Iowa Code section [598.21A(1) (2019)]. Although our review of the trial court's award is de novo, we accord the trial court considerable latitude in making this determination and will disturb the ruling only when there has been a failure to do equity.

In re Marriage of Olson, 705 N.W.2d 312, 315 (Iowa 2005) (citation omitted). In this case, after considering the applicable factors, we find there has been a failure to do equity.

Jason initially relies upon the length of the marriage in arguing the district court correctly found traditional spousal support is not appropriate. *See In re Marriage of Gust*, 858 N.W.2d 402, 411 (Iowa 2015) (noting marriages lasting twenty years or more "merit serious consideration for traditional spousal support"). "While *Gust* referred to twenty years as the 'durational threshold' for 'serious consideration for traditional'" spousal support—a threshold this fourteen-year marriage falls short of—"we do not understand that statement as creating a bright-line test." *In re Marriage of Arevalo*, No. 16-1326, 2017 WL 4050076, at *3 (Iowa Ct. App. Sept. 17, 2017); *accord In re Marriage of Pazhoor*, ___ N.W.2d ___, ___, 2022 WL 815293, at *9 (Iowa 2022) ("Marriages lasting twenty years or more are generally considered long-term; however, that is not required." (internal citations omitted)); *In re Marriage of Ware*, No. 17-1397, 2018 WL 4360922, at *4 (Iowa Ct. App. Sept. 12, 2018); *In re Marriage of Nelson*, No. 15-0492, 2016 WL 3269573, at *3 (Iowa Ct. App. June 15, 2016). "We have affirmed awards of traditional spousal support in marriages shorter than twenty years . . . ." *Arevalo*, 2017 WL 4050076, at *3; *see also In re Marriage of Kohorst*, No. 19-0147, 2020 WL 564934, at *5 (Iowa Ct. App. Feb. 5, 2020) (collecting cases). This is because the length of the marriage is but one factor among many "to consider in the multifactor statutory framework." *Nelson*, 2016 WL 3269573, at *3.

Other relevant factors include: (1) the age and health of the parties, (2) the property distribution, (3) the educational level of each party, (4) the parties' earning

capacities, (5) the feasibility of the spouse seeking maintenance to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage; and (6) the tax consequences. Iowa Code § 598.21A(1). The focus in assessing a request for traditional spousal support, which is "payable for life or so long as a spouse is incapable of self-support," *Olson*, 705 N.W.2d at 316 (citation omitted), is "primarily predicated on need and ability." *Gust*, 858 N.W.2d at 411 (citation omitted). The "yardstick" for measuring need mirrors one of the statutory factors for an award of spousal support, that is "the ability of a spouse to become self-sufficient at 'a standard of living reasonably comparable to that enjoyed during the marriage.'" *Id.* (quoting Iowa Code § 598.21A(1)(f)). We look at the "earning capability of the spouses, not necessarily on actual income" in determining need. *Id.*

By the time of the trial, Erinn was forty-two years old and had not worked in any capacity for seven years. Before then, she worked only three-and-a-half hours per day and even that was tough for her. Erinn testified that she did not believe she could ever go back to work, explaining:

> [M]y pain is—it's too hard for me to be in one position too much. It hurts to sit too long. It hurts to stand too long. It hurts to walk too much. It's just completely different than normal. . . . I never know how I'm going to feel day to day. I was not a reliable employee.

Her primary care physician agreed that Erinn's chronic daily pain prohibited her from working "a standard 40-hour-per-week job or attend[ing] work regularly part-time." He said there was a "[z]ero" likelihood her injury would improve. This reality led to Erinn's decision to apply for social security disability, although she was still in the early stages of the application process at the time of trial.

The district court credited this evidence in finding Erinn is "currently unable to work because of the pain" and, for child support purposes, limited her income to the annual distributions she received from her trust. *See In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007) (giving "considerable deference to the district court's credibility determinations"). In 2019, that gross amount was $8787.[4] But the court found that same trust asset, as well as Erinn's remainder interest in her grandfather's trust and other unspecified "significant assets pursuant to the prenuptial agreement," meant she did not need spousal support. We do not agree based on our de novo review of the record, which shows little likelihood that Erinn's disability will allow her to become self-supporting at a standard of living comparable to the one enjoyed during the marriage even with those other assets.

Aside from Erinn's trust and the four-acre farm, there was little evidence presented about any other premarital assets still in Erinn's possession.[5] What we do know is that at the time of trial, Erinn had $142,077 in her trust, which was comprised of mutual funds, securities, and stocks. While the trust agreement allowed Erinn to invade the principal of the trust as its sole beneficiary and trustee, there was no evidence about the tax consequences of doing so. *See* Iowa Code § 598.21A(1)(g); Samuel D. Brunson, *Mutual Funds, Fairness, and the Income Gap*, 65 Ala. L. Rev. 139, 141–42 (2013) (discussing the taxation of mutual funds).

[4] With an agreed upon gross annual income of $74,468.16 for Jason, this resulted in Jason owing Erinn $613.25 per month in child support for the parties' now fifteen-year-old child.

[5] The parties did discuss the Arabian horses Erinn had owned with her father, but Erinn testified none of those were in existence any longer. There was no testimony about what horse-related equipment, trophies, inherited jewelry, or art Erinn still had in her possession, although Erinn said she no longer had the $63,000 whole life insurance policy.

Further, as Erinn testified, her trust will not last long if she has to "live off of" it. Once Erinn's trust is depleted, she has no guaranteed source of income. We do not consider Erinn's remainder interest in her grandfather's trust as a source of support because her mother is currently the sole beneficiary of that trust. *See In re Marriage of Rhinehart*, 704 N.W.2d 677, 681 (Iowa 2005) ("[I]t would not be appropriate to treat the *undistributed* income from the trust as a current source of financial support that would alleviate [a former spouse's] need for alimony."). And Erinn's mother is under no obligation to support her.

While Erinn may be eligible for social security disability, Medicaid, and food stamps, as Jason argues in asserting she has no need for spousal support, the record contained little evidence about the likelihood of Erinn securing those benefits or their amount. *See In re Marriage of Sisson*, 843 N.W.2d 866, 874 (Iowa 2014) (declining to "fully consider the potential availability of future social security benefits because the record contained no evidence as to the availability or amount of such benefits"). Although Erinn will not have a house or car payment, she does have other necessary expenses, like food, health insurance, car insurance, water, propane, electric, and internet. By Jason's own estimate, the last five items alone will cost Erinn just shy of $430 per month. Erinn estimates that if she does not qualify for Medicaid, private health insurance will cost her $718.63 per month plus increased out-of-pocket costs.

In contrast to Erinn, whose future monetary prospects are limited, forty-six year old Jason has moved into the peak of his career with many years of earning ahead of him. *See In re Marriage of Schenkelberg*, 824 N.W.2d 481, 486 (Iowa 2012) ("The comparative income of the spouses is another factor for the court to

consider when evaluating an award of spousal support."); *accord* Iowa Code § 598.21A(1)(e); *Gust*, 858 N.W.2d at 411–12. Although he's taking on more marital debt, Jason is not leaving the marriage a pauper. He has a premarital IRA valued at $50,070.89, a Harley Davidson motorcycle, a 2012 Dodge Ram valued at $12,000 against which no debt is owed, and a house with $25,484.97 in equity.

Jason nevertheless argues he cannot afford to pay Erinn spousal support, pointing to a 2021 budget he prepared listing his monthly expenses. Those expenses included the bills he was temporarily paying for Erinn while the divorce was pending. According to this exhibit, Jason argues he only has $32.33 left over at the end of each month from his net income, which he testified does not account for any emergency expenses, savings, clothes, or entertainment. But the exhibit did allocate money for some of those expenses, and others will decrease after the divorce.[6] We accordingly find that Jason does have an ability to pay Erinn spousal support—though in an amount much less than she is requesting.

We acknowledge certain factors weigh against an award of spousal support in this case, like the parties' younger ages, the shared care of their son, and the tax consequences of spousal support payments to Jason. *See In re Marriage of Mann*, 943 N.W.2d 15, 21 (Iowa 2020) (noting recent changes in federal income tax laws will result in spousal support payments not being tax deductible and

[6] For instance, at the end of budget week four, Jason set aside $100 for miscellaneous medical expenses plus $110 for miscellaneous house and truck expenses. He also budgeted $400 per month in groceries for himself and his child, who will be there just part-time. And he allocated $200 per month at Wal-Mart, which in his financial affidavit he indicated was for clothes for himself and the parties' child. Finally, once Erinn rolls off his health insurance, that expense will decrease from over $700.00 per month to $455.37.

payments received not taxable). In the end, however, this case falls within those marriages of shorter duration where traditional spousal support is appropriate because of the recipient spouse's disability and lack of earning capacity, which result in an inability to become self-supporting at a standard of living reasonably comparable to the one enjoyed during the marriage. *See, e.g.*, *Ware*, 2018 WL 4360922, at *4 (twenty-five year marriage but with a fourteen-year separation); *In re Marriage of Richards*, No. 14-1698, 2015 WL 4935847, at *3 (Iowa Ct. App. Aug. 19, 2015) (sixteen-year marriage but modifying the award to terminate at the age of retirement); *In re Marriage of Walker*, No. 13-1310, 2014 WL 4937727, at *7–9 (Iowa Ct. App. Oct. 1, 2014) (eleven years); *In re Marriage of Stone*, No. 10-1061, 2011 WL 662645, at *5 (Iowa Ct. App. Feb. 23, 2011) (eleven years). *But see In re Marriage of Gutcher*, No. 17-0593, 2018 WL 5292082, at *5 (Iowa Ct. App. Nov. 7, 2018).

Considering that Jason is already responsible for Erinn's vehicle payments of $460 per month, we find that his spousal support obligation should be set at $400 per month from the entry of the dissolution decree. When Jason's child support obligation ends, his spousal support payments shall increase to $1000 per month. *See Gust*, 858 N.W.2d at 404 (affirming award of spousal support increasing from $1400 to $2000 per month upon termination of child support). These spousal support payments shall terminate upon Erinn's remarriage or the death of either party. We remand for a recalculation of Jason's past and future child support obligation so that spousal support can be taken into account pursuant

to Iowa Court Rule 9.5. *See Pazhoor*, ___ N.W.2d at ___, 2022 WL 815293, at *11. Costs on appeal are assessed to Jason.

AFFIRMED AS MODIFIED AND REMANDED.

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
21-0454	In re Marriage of Mills

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