

IN THE SUPREME COURT OF IOWA

NO. 21-0454

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
IN AND FOR WAPELLO COUNTY

HONORABLE SHAWN SHOWERS

Wapello County No. CDCV110589

**RESPONDENT-APPELLANT'S RESISTANCE TO PETITIONER-
APPELLEE'S APPLICATION FOR FURTHER REVIEW
(Court of Appeals decision filed March 30, 2022)**

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STANDARD FOR GRANTING FURTHER REVIEW

“Further review by the Supreme Court is not a matter of right, but of judicial discretion. An application for further review will not be granted in normal circumstances.” Iowa R. App. P. 6.1103(1)(b).

Petitioner-Appellee Jason Mills (referred to hereinafter as “Jason”) has not put before this court appropriate issues for further review. At no point does Jason’s Application for Further Review reference the grounds as listed in Iowa Rule of Appellate Procedure 6.1103(1)(b). Jason’s Application sets out two questions for review that are facially inconsistent with Iowa Rules of Procedure.

Iowa Rule of Appellate Procedure 6.1103(1)(b) outlines the character of the reasons the Supreme Court considers in determining whether to grant further review. Jason fails to identify in his two questions presented for review which of the four grounds he relies upon in seeking further review – leaving Erinn Mills (referred to hereinafter as “Erinn”) to speculate as to whether Jason relies upon any of the bases in the rule at all.

It appears upon review of Jason’s brief that Jason must concede this case involves no questions of constitutional law. *See* Iowa R. App. P. 6.1103(1)(b)(2).

In reviewing Jason's Application for Further Review it appears that there is no allegation that this case involves questions of changing legal principles. *See Iowa R. App. P. 6.1103(1)(b)(3).*

Although Iowa Rule of Appellate Procedure 6.1103(1)(b)(4) is not cited in Jason's brief, it does appear that Jason might be making an argument that "the case presents an issue of broad public importance that the supreme Court should ultimately determine." This case impacts only the parties to the dissolution proceeding and does not involve issues of broad public importance. Jason's vague argument that his case is a case of broad public importance is incorrect. While the case may be important to him, it is however, not of broad public importance to all of Iowa's other citizens.

Finally, it appears that Jason may be making an argument that "the Court of Appeals has entered a decision in conflict with a decision of this court or the court of appeals on an important matter." *See Iowa R. App. P. 6.1103(1)(b)(1).*

Jason fails to identify any conflict between the Appellate Court decision and any of the Supreme Court cases that he cites. Instead, Jason complains of the application of the Supreme Court cases to the facts of this matter, which is equivalent to re-litigating factual issues that have already been decided. In the absence of a conflict between the Appellate Court decision and prior Supreme

Court holdings, Jason has not satisfied the requirement of Iowa Rule of Appellate Procedure 6.1103(1)(b)(1) and further review should be denied.

ARGUMENT

I. **THERE IS NO CONFLICT WITH A SUPREME COURT DECISION IN THE APPELLATE COURT’S RULING REGARDING THE APPELLATE COURT’S ALIMONY AWARD.**

Erinn and Jason were married in May 2006. The couple had one child that was born towards the end of 2006. During the child’s birth Erinn heard a “horrible pop” and then was in excruciating pain. 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. (Trial Transcript; pp. 124-125, l. 5-1, App. pp. 148-149). At some point Erinn learned that she suffered a ruptured pelvis during the birth of the child (pubic symphysis rupture). (Id.; p. 102, ll. 4-25, App. p. 141).

Dr. Shawn Dawson testified as Erinn’s treating physician. Dr. Dawson stated 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).

The District Court found Erinn was credible in testifying that she could not work after suffering the child birth injury in 2006.

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:

YEAR	ERINN	JASON
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).

Jason argues that *Gust* creates a brightline test regarding the relationship between traditional spousal support and length of marriage. *See In re Marriage*

of *Gust*, 858 N.W.2d 402 (Iowa 2015). The Mills Appellate Court decision correctly stated that the twenty year marriage referred to in *Gust* did not create a brightline test. The Appellate Court went on to state, “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. (App. Order, p. 8).

The Appellate Court properly considered all factors in their Mills decision. The Mills decision is not in conflict with any prior Supreme Court decision.

II. DECISIONS ALLEGED TO BE MADE IN ERROR OR INEQUITABLE ARE NOT GROUNDS FOR SUPREME COURT REVIEW AS SET FORTH IN IOWA RULE 6.1103(1)(b).

Jason argues that the Court of Appeals decision regarding spousal support was in error or inequitable. The Supreme Court does not review the Appellate Court’s decision in order to determine if it was fair or not. “Error or inequitable” are not found under the grounds as set forth in Iowa Rule 6.1103(1)(b). In Argument II Jason wishes to improperly re-litigate factual issues that were previously decided.

Issue II should be denied for failing to state any proper grounds for further review.

CONCLUSION

Jason has failed to establish the grounds for further review. The Court of Appeals examined the applicable appellate case law and applied it to the facts in this case. The Appellate Court's resulting ruling is consistent with prior Supreme Court rulings as cited in their decision. Jason's disagreement with the decision of the Court of Appeals does not create a new or conflicting issue of law that merits this Court's attention on further review. The arguments that Jason puts forth in his Application for Further Review are factual disputes, which do not constitute grounds for further review.

WHEREFORE, Respondent-Appellant respectfully requests this Court deny Jason's Application for Further Review.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND FILING

The undersigned hereby certifies that on April 29, 2022, Respondent-Appellant e-filed this document with the Clerk of the Iowa Supreme Court and served by Iowa EDMS upon the following:

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ATTORNEY'S COST CERTIFICATE

The undersigned certifies that the actual cost of printing the foregoing Respondent-Appellant's Resistance Brief was the total sum of \$0.00.

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

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 1,390 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements 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 brief has been prepared in a proportionally spaced typeface using Microsoft Word in font size 14 of Times New Roman type style.

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