

IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 21-1918
POLK CO. CASE NO. CDCD098962

RACHAEL KAY SOKOL,
Petitioner-Appellee
v.

DAVID LANGDON SOKOL,
Respondent-Appellant

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
Honorable Jeanie Vaudt, Judge

FINAL BRIEF FOR RESPONDENT-APPELLANT

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PROOF OF SERVICE

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CERTIFICATE OF FILING

I certify that I did file this Final Brief with the Clerk of the Iowa Supreme Court by EDMS on April 19, 2022.

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IOWA APPELLATE COURT CASES:

Gaswint v. Robinson, 838 N.W.2d 870 (Iowa Ct. App. 2013).

In re Marriage of Barnhouse, 942 N.W.2d 2 (Iowa Ct. App. 2020).

In re Marriage of Whitehurst, 853 N.W.2d 301 (Iowa Ct. App. 2014).

In re Marriage of Seals, 884 N.W.2d 224 (Iowa Ct. App. 2016).

STATUTORY AND CONSTITUTIONAL PROVISIONS:

Iowa Code § 598.3

Iowa Code § 598.1

PERSUASIVE AUTHORITY:

In re Marriage of Voorst, No. 21-0228, 2021 Iowa App. LEXIS 917, at *17 (Ct. App. Nov. 3, 2021).

In re Marriage of Dieger, 584 N.W.2d 567, 570 (Iowa App. 1998).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. PRESERVATION OF ERROR

Case Law:

Meier v. Senecaut, 641 N.W.2d 532, 535 (Iowa 2002).

II. THE DISTRICT COURT ERRED IN AWARDING RACHAEL TIEBREAKING AUTHORITY AS IOWA LAW LEAVES DISAGREEMENTS FOR JOINT LEGAL CUSTODY TO THE COURTS TO DECIDE

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Harder v. Anderson, 764 N.W.2d 534, 538 (Iowa 2009).

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Code:

Iowa Code § 598.1

III. THE DISTRICT COURT ERRED IN DETERMINING THE EQUITABLE DIVISION OF PROPERTY TO EACH PARTY

Case Law:

In re Marriage of Barnhouse, 942 N.W.2d 2 (Iowa Ct. App. 2020). Code:

Iowa Code § 598.3

IV. THE DISTRICT COURT ERRED IN THE AWARD OF SPOUSAL SUPPORT TO DAVID IN BOTH AMOUNT AND DURATION BASED ON THE DISPARITIES IN THE PARTIES INCOMES AND THE LENGTH OF MARRIAGE

Case Law:

In re Marriage of Gust, 858 N.W.2d 402, 406 (Iowa 2015).

In re Marriage of Whitehurst, 853 N.W.2d 301 (Iowa Ct. App. 2014).

V. THE COURT ERRORED IN NOT AWARDING DAVID ATTORNEY FEES BASED ON THE DIFFERENCE IN THE PARTIES' INCOMES.

In re Marriage of Dieger, 584 N.W.2d 567, 570 (Iowa App. 1998).

In re Marriage of Voorst, No. 21-0228, 2021 Iowa App. LEXIS 917, at *17 (Ct. App. Nov. 3, 2021).

VI. CONCLUSION

Case Law:

In re Marriage of Okland, 699 N.W.2d 260, 270 (Iowa 2005).

In re Marriage of Seals, 884 N.W.2d 224 (Iowa Ct. App. 2016).

ROUTING STATEMENT

Transfer of this case to the Court of Appeals is appropriate pursuant to Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF CASE

This is an appeal from a ruling by Honorable Jeanie Vaudt filed August 23, 2021 and amended on November 29, 2021.

PROCEDURAL HISTORY

On July 1, 2019, Rachael Sokol (hereinafter referred to as “Rachael”) filed a Petition for Dissolution of Marriage in the District Court for Dallas County. (App 6). Rachael requested in her Petition that she be awarded primary physical care of the parties two (2) minor children, Ka.R.S. (born in 2006) and K.R.S. (born in 2014), and that the parties be granted joint legal custody. Rachael further requested an equitable division of the marital property.

On August 16, 2021, David Sokol (hereinafter referred to as “David”) filed an Answer requesting primary physical custody of the children and joint

legal custody, child support pursuant to the guidelines, equitable disposition of the marital assets and debts, that he be awarded permanent alimony and that Rachael contribute to his attorney fees. (App 9).

On September 12, 2019, David filed a motion to preserve assets in response to Rachael withdrawing \$100,000.00 from the parties joint account and in response to Rachael denying David access to the marital home. Rachael resisted and the Court entered an order restraining either party from disposing of further marital property.

On October 17, 2021, the parties entered into a temporary stipulation whereby they were to have joint legal custody and shared physical custody of the minor children. (App 14). Rachael was ordered to pay the expenses of the children's nanny to be used by both parties, health insurance for the children, 100% of all uninsured medical expenses, spousal support to David in the amount of \$5,000.00 per month, the carrying costs of the marital property, and, in lieu of temporary child support, any costs related to the minor children. David was to be responsible for the costs of his business and his personal credit cards.

On April 14, 2021, Rachael filed a Motion to appoint an attorney for the minor children, which was approved and ordered that the Iowa Center for Children's Justice would be appointed, with costs to be determined at the time

of trial. (App 50).

On May 18, 2021, David filed a Motion to appoint a guardian ad litem or child and family reporter, which Rachael resisted and the motion was denied based on the children already being represented by the Iowa Center for Children's Justice. (App 50).

Trial was originally set for February 23, 2021. It was later continued to June 22-24, 2021.

On August 23, 2021, the Court entered the Decree for Dissolution of Marriage. (App 66). The Court ordered as follows:

- Joint legal custody of the minor children to the parties including “If there are decisions to be made about an issue, Rachael shall provide David with reasonable notice of any issue in writing. David shall then have 48 hours following the written notification to provide his input on the matter to Rachael in writing. If David provides input, Rachael shall consider David’s input and decide on the course of action. If David does not provide input, Rachael may unilaterally decide on the course of action.” The order further contradicts itself and states if the parties cannot decide or agree upon joint decision making related to the children, then they should participate in mediation.
- Joint physical care and custody of the minor children with David and

Ka.R.S. attending reunification therapy.

- Rachael was ordered to pay the children's activity expenses and school lunches, child support in the amount of \$2,000.00 per month, and 100% of uninsured medical expenses.
- Rachael was ordered to pay David \$3,000.00 per month in spousal support for forty-eight (48) months.
- Rachael was ordered to pay the balance of the outstanding fees due and owing to the children's attorney.
- Rachael was awarded the marital home, her vehicle, and all property allocated to her in Petitioner's Exhibit 35, which was Rachael's exhibit at trial.
- David was awarded his business, including the real estate associated therewith, his vehicles, the remaining property Rachael did not put in her column in Exhibit 35 and an equalization payment in the amount of \$123,424.50.
- Each party was ordered to pay their own attorney fees.

On September 7, 2021, both parties filed Motions to Amend, Enlarge and Reconsider. (App 92; 98). The Court granted Rachael's request to value the ATV at \$500.00 and increase the property offset from Rachael to Dave to \$123,942.50. The Court denied David's requests to modify physical care,

which was a request related to the Court's joint legal custody order with decision making to Rachael, the property division and values accepted by the Court in Rachael's exhibit and the award of spousal support.

David's notice of appeal was timely filed on December 12, 2021. (App 109).

STATEMENT OF FACTS

The parties were married on June 8, 2002. Trial Transcript pg. 13 ln. 4. The parties separated in October 2019. At the time of the parties' marriage, Rachael was in medical school. She graduated in 2005 and began her four (4) year residency in Michigan, which was completed in 2009, at which point the parties moved to Iowa. Trial Transcript pg. 15 ln 3:13.

At the time of trial Rachael was an emergency room doctor. The trial court concluded that she earned an annual salary of \$440,000.00 per year. Trial Transcript pg. 91 ln 8. Rachel testified that she was previously earning an additional \$46,000.00 per year as the medical director until she quit that position to be able to spend more time with the children. Trial Transcript pg. 120 ln 21. Rachel is 45 years old and did not testify regarding any health concerns.

David is self-employed as a home remodeler and owns his own business,

Home Doctor LLC. David had difficulty drawing an income during the COVID-19 pandemic. Trial Transcript pg. 10 ln 7:14. The Court imputed David with income of \$50,000.00, which was substantially less than he was earning at the time of trial. The Court based this on his prior year's earnings with Home Doctor LLC and prior sales positions he held, earning commissions. David testified that he was required to leave his job to move to Iowa for Rachael's career. He stayed home with the children and then started working on Home Doctor. Trial Transcript pg. 6 ln 15:18. He testified "I did leave a good job there, but there's nothing like that in Des Moines." Trial Transcript pg. 170 ln 18. Evidence presented at trial demonstrated that David earned \$19,538.00 in 2018, which was put back into his business (App 806); Exhibit K. David social security statement shows that David did not draw an income since moving to Iowa in 2009. (App 789); Exhibit 24. He is 43 years old and did not testify regarding any health concerns.

The parties have two (2) minor children, namely Ka.R.S., born in 2006, and K.R.S., born in 2014. Although the parties had a nanny for the children for most of their lives, David was the more available and present parent during the parties' marriage. Upon the parties moving to Iowa in 2009, David primarily cared for Ka.R.S. while Rachael focused on her career and financially supported the family. Trial Transcript pg. 94 ln 22:25. The parties testified at

trial that they agreed to sharing physical custody of the children. Trial Transcript pg. 60 ln 11; pg. 111 ln. 18. While neither party requested sole legal custody, both parties testified to some communication issues. Rachael testified that when she is communicating with David about the children, she will often just hang up the phone or make unilateral decisions. Trial Transcript pg. 34 ln 3:10. On one instance, she called the police so that she would not have to come to the door to speak with David about the location of Ka.R.S. Trial Transcript pg. 132 ln 1:6. David testified that he would often reach out about issues regarding the children, but often did not receive a response, to which Rachael agreed. Trial Transcript pg. 140 ln 18:20. He stated that he would often find out weeks after a particular event or appointment for the children that it had taken place. Trial Transcript pg. 122 ln. 19:22. Both children have an Individualized Education Plan at school. Ka.R.S. struggles with ADHD and dyslexia and K.R.S. has ADHD. The parties testified that they disagreed on how the children should participate in school during the Covid-19 pandemic due to these struggles. David preferred that the children engage in online learning and Rachael preferred that the children participate in a hybrid learning program. Rachael testified that she unilaterally enrolled the children in the hybrid program when they could not agree. Trial Transcript pg. 150 ln 1:4.

Rachael has a significant other, Eric Lewis, who relocated to Iowa during

the pandemic and cohabitates with Rachael and the minor children when he is not living in Alaska. Rachael testified that Mr. Lewis only contributes to groceries and has taken the children out to do activities. Other than that, he does not contribute to any of the household expenses while living there. Trial Transcript p. 166 ln 7).

Both parties requested an equitable division of their property. They purchased their jointly titled marital home for \$465,000.00 in July of 2009 Trial Transcript pg. 12 ln 20). At the time of trial, the home had a mortgage balance of approximately \$265,000. Rachael claimed at trial that the home was only worth \$452,000.00; based on an appraisal completed in January of 2022. (App 638); Exhibit 2; Trial Transcript pg. 164 ln 23. David testified to the extensive work and improvements he did to the property in the 12 years the parties' owned it; including expanding the patio, redoing closets, extensive landscaping, etc. Trial Transcript pg. 98:100. The home was valued on the Iowa Assessor's page in 2019 at \$534,300.00. (App 681); Exhibit 3. David valued the home \$650,000 in his most recent Affidavit filed with the Court. (App 798); Exhibit A. The Court found the value of the property to be \$425,000, which was lower than either parties' stated values.

Rachael submitted a proposed Distribution of Property as Exhibit 35; (App 795). This document contained Rachael's opinion of value of all marital

assets, debts and allocated the assets between the parties. Despite the copious inaccuracies contained in Rachael's statement, the trial court adopted this exhibit and ordered a property disposition entirely consistent therewith. Rachael testified that there were various unknown amounts that she simply "awarded" to herself or to David. Trial Transcript pg. 97 ln 5:6. Rachael also includes in her exhibit 35 a debt that has not been incurred and was in pending litigation at the time of trial, related to her own employment and funds she received, in the amount of \$46,621.25. (App 795); Exhibit 35, Petitioner's Financial Affidavit. The Court also valued the home at \$425,000.00 even though Rachael valued the home at \$452,000.00 and David valued the home at \$650,000.00. (App 631; 798); Decree, Financial Affidavits. The Court denied David's request to value any of the property within the marital home awarded to Rachael, even though David valued the property at approximately \$86,000.00. (App 801); Respondent's Exhibit BB.

There was significant testimony regarding the value of the business property which suffered damages from a derecho storm in 2020, flooding his inventory within the shop and requiring renovations to the shop. The shop had not been repaired at the time of trial and David holds \$218,213.00 in his checking account from the insurance proceeds he received from the damage. (App 818; 844); Exhibit N; Exhibit O. Rachael provided an affidavit by Keven

Crowley that stated the shop was worth \$205,092.00 without taking into consideration the damage from the derecho or without ever visiting the property. (App 62). David was awarded the insurance proceeds and the shop, with his business assets, in addition to a property equalization payment from Rachael's 401(k), and any property that Rachael did not want as placed in her Exhibit 35. Rachael was awarded all other assets. The parties' debt was divided in Exhibit 35, which included Rachael's outstanding medical school loans, thereby depreciating David's equalization amount and essentially requiring him to contribute to Rachael's outstanding loans.

Pursuant to Rachael's Affidavit of Financial Status, Rachael indicated a net monthly income of \$21,358.98, which included several discretionary deductions from her income. (App 631); Petitioner's Financial Affidavit. She listed expenses of \$15,265.55, which included several discretionary expenses and still resulted in a surplus of over \$6,000.00 per month. David's financial statement listed monthly expenses of over \$8,000 which included \$2,500 per month for attorney's fees and broker fees. (App 798); Respondent's Financial Affidavit.

The parties testified at trial that David was required to quit his previous employment in Michigan to allow Rachael to continue to grow as a doctor in Iowa. Trial Transcript pg. 95 ln 17:25. Prior to moving, David worked in

furniture sales as a manager. David testified that he would not have been able to find similar employment in Iowa. Trial Transcript pg. 170 ln 14:19. He began operating his own business, Home Doctor, LLC, renovating homes, which only started accruing an income in 2015. (App 793); Exhibit 26. He also had Pinnacle, LLC, which held a rental home. David has not been pulling an income from the business since he uses the funds to put back into his business to keep it going. Trial Transcript pg. 27 ln 12:16. David testified that the COVID-19 pandemic had a significant impact on his income. Trial Transcript pg. 11 ln 5:13. In spite of the parties' nearly 20-year marriage and the significant disparity in the parties' incomes – David earning only 10% of what Rachael's earns, the Court only awarded alimony in the amount of \$3,000 per month for 48 months.

ARGUMENT

I. PRESERVATION OF ERROR

The relevant issues presented on appeal were each raised and decided before the district court, thus error was preserved. See Meier v. Senecaut, 641 N.W.2d 532, 535 (Iowa 2002). Furthermore, David preserved error by timely filing his Notice of Appeal. See Notice of Appeal.

II. THE DISTRICT COURT ERRED IN AWARDING RACHAEL TIEBREAKING AUTHORITY AS IOWA LAW LEAVES

DISAGREEMENTS FOR JOINT LEGAL CUSTODY TO THE COURTS TO DECIDE

A. Standard of Review:

An appellate court reviews custody decisions *de novo*. Gaswint v. Robinson, 838 N.W.2d 870 (Iowa Ct. App. 2013). As legal custodians of a child, both parents are entitled to certain rights and responsibilities that include, but are not limited to, decision making affecting the child's legal status, medical care, education, extracurricular activities and religious instruction. Iowa Code 598.1(5). As joint legal custodians, each parent is entitled to equal participation in the decision. Iowa Code 598.1(3). Where the parties are unable to agree to fundamental decisions, the court may vest decision making in one parent by awarding sole custody. Gaswint v. Robinson, 838 N.W.2d 870 (Iowa Ct. App. 2013).

B. Discussion:

David hereby incorporates the Statement of Facts section of this Brief as if fully set forth herein. The district court granted the parties joint legal and joint physical care of the parties' minor children. In awarding the parties joint legal custody and joint physical care, the Court also granted Rachael the decision-making ability in the event David disagreed. This is not consistent with Iowa law when the parties are granted joint legal custody. Moreover, Rachael did not request sole legal custody. In Gaswint, the court reviewed the Harder case,

stating “when joint legal custodians have a genuine disagreement concerning a course of treatment affecting a child’s medical care, the court must step in as an objective arbiter, and decide the dispute by considering what is in the best interest of the child.” Id.; Citing Harder v. Anderson, 764 N.W.2d 534, 538 (Iowa 2009). Even if one parent had primary physical care, that would not absolve the court of their arbiter responsibility, as that physical caretaker does not absolve the parties of their equal decision-making abilities. Id. The Court’s order in this present case, does not give David the “equal participation” as required in Gaswint and Harder. Id. The Court’s order states that Rachael must give David the ability to agree with her, but if he does not, then she can make the ultimate decision. Iowa law does not allow for a “tiebreaker” when the parties cannot disagree, as was done in this case. This Court should remand this issue to the District Court, order the parties have joint legal custody, with equal decision-making authority, as neither parent requested sole legal custody.

III. THE DISTRICT COURT ERRED IN DETERMINING THE EQUITABLE DIVISION OF PROPERTY TO EACH PARTY

A. Standard of Review:

Marriage dissolution proceedings are equitable proceedings. Iowa Code 598.3. Thus, the standard of review is *de novo*. Iowa R. App. P. 6.907. The appellate court will disturb the district court determination when there has been a failure to do equity. In re Marriage of Barnhouse, 942 N.W.2d 2 (Iowa Ct.

App. 2020).

B. Discussion:

- a. The District court failed to consider the insurance proceeds that should have been considered in valuing the shop, located at 101 S. Main Street.

David was awarded his shop for his business valued in Petitioner's exhibit 35 at \$205,092.00 in addition to the insurance proceeds for the damage done to the property in the amount of \$218,213.12. (App 795). The Court relied upon Rachael's exhibit 35 in coming to the values of each, however Rachael admitted that she did not have firsthand knowledge of how much damage occurred or whether it was exterior or interior (App 795); Trial Transcript pg. 7 In 6. The Court did not use the value of the assessor's page. (App 685); Exhibit 7. Rachael relied upon an affidavit that was filed by Kevin Crowley in coming to the value of the property. (App 62). Mr. Crowley admits that in coming to that value, he simply pulled the Dallas County Assessor's listing for 101 S. Main Street and reviewed comparable properties. Id. Mr. Crowley further states that he was aware of the impact of the August 2020 derecho on commercial buildings in general, if any. Id. The statement, "if any" in addition to Mr. Crowley never having visited the building himself in coming to that value, is alarming knowing the District Court used Mr. Crowley's valuation. He has clearly has not considered the damage that is shown in Respondent's exhibit N, of \$151,966.65 or the original insurance payment to David in the

amount of \$82,589.45. Id. Exhibit N; Exhibit O (App 818; 844). David originally had an inspection of the damage from the 2020 derecho completed and was paid \$82,589.45. After further inspection, the insurance carrier provided an additional \$151,966.65 upon review that there was more extensive damage. The total damage on the building \$234,556.10. The Court has not reduced the value of the property to take into consideration this damage. Respondent's Exhibit N includes damage to the roofing, flooring, insulation, windows, drywall, doors, paint, among other things. Id. At trial, David testified that none of these things had been rehabilitated. Thus, the value of the property should be reduced from \$205,092.00 to - \$29,464.10. The parties also do not dispute that there was a mortgage on the shop at the time of trial. David states that the shop mortgage in his affidavit of financial status was \$85,000.00. (App 798) Exhibit A. Rachael states in her affidavit of financial status the mortgage on the property was \$84,413.58. By including the mortgage, this Court should value the property as upside down from the amount of damage and monies owed on the mortgage for a total of negative \$114,464.10.

- b. The District Court should not have considered Rachael's student loan debt as marital debt.

Rachael testified that she took out student loans prior to the parties' marriage and that she continued to have student loans as of the date of trial. Rachael

testified that the student loans were taken out to pay for medical school. Trial Transcript pg. 16 ln 11. There was no testimony that the student loans were used for anything other than for Rachael's school. There was no evidence at trial that showed this debt benefited David in any way. In In re Marriage of Nuttig, the wife was ordered to pay her student loans in their entirety. She argued on appeal that her husband should be responsible for one half of the cost. Id. The Court looked at whether the student loans were used at all to increase the husband's earning power. Id. The Court found the opposite to be true, in that she had a reduced earning capacity during the marriage while in medical school, when her husband supported her, and that only her own earning capacity benefited from incurring debt. Id. The same is true here. David entered trial stating that he was not making an income at the time of trial. Rachael was making five times the amount David was. Dividing the debt, when that debt was not used to advance David's earning capability, is not equitable. The Court should award Rachael her student loan debt prior to dividing up the parties' marital assets and debts.

- c. The District Court awarded Rachael the guns, ammo, magazines, SWAT gear and generator, in the property division that neither party has in their possession.

At trial, Racheal testified that she had divided up personal property that she would like to have in per possession, but that she was missing some of that

property. It was assumed in her testimony that David had possession of these items. Rachael believed she was missing one helmet, one bulletproof vest, and items listed in her exhibit 35 (c) through (h). Trial Transcript pg. 84 ln 10 (App 795). She also valued a generator in her exhibit 35 worth \$800.00 that she attributes to herself. She further attributed the guns that are registered to, and in the possession of David, to herself. There was not supporting testimony that the “missing items” were in fact in David’s possession. Trial Transcript pg. 85 ln 13:15. There was conflicting testimony regarding the guns. Rachael’s exhibit 35 indicates she believes the guns are registered in her name. David’s testimony indicates that the guns were either purchased by him or were a gift from Rachael to him. Trial Transcript pg. 108 ln 3:12. David asks that the Court allow the guns to remain in his possession, as they are registered to him, and attributed the values in exhibit 35 to him. Any other property alleged to be in his possession, including the magazines, ammunition, and generator, should be awarded to Rachael, as there is no evidence to the contrary that these items left the marital home.

- d. The District Court failed to consider the difference in personal property awarded to each party or give weight to David’s claim for Rachael obtaining \$85,000 more in property.

Upon the parties’ separation, Rachael remained in the marital home and David found a rental property upon moving out. The parties do not dispute that

Rachael kept the majority of the marital property within the home. However, the Court relies on Petitioner's exhibit 35 in dividing up the property within the home, which states that Rachael will be awarded the property in her possession, and David will be awarded the property in his possession. Exhibit 35; (App 795). David filed Exhibit BB, listing the property of what remained in the marital home in Rachael's possession and the values attributed to each item. (App 801); Exhibit BB. The District Court determined that David's exhibit BB could not be given any weight over Rachael's exhibit 35 because he testified his values were replacement values, instead of fair market values. Trial Transcript pg. 58 ln 20:24. However, Rachael's exhibit 35 does not substantiate any of the values placed on her division of property. Thus, the Court is disregarding David's claim that Rachael is receiving \$83,515.87 more in personal property than David. The Court rejects David's values, even though he testified "a lot of these items are relatively brand-new, so some of them are going to be the price to go out and replace them at that time." Transcript 106 ln 17. David further testified that the parties were not done dividing their marital property within the home. Trial Transcript pg. 105 ln 13:25. As such, this Court should consider the property currently in Rachael's possession and reduce her marital portion by \$83,515.87.

- e. The District Court should have divided Rachael's retirement separately instead of including it in the property division, based on the tax

implications associated.

At the time of trial, Rachael's 401(k) retirement account was valued at \$687,679.76 and her IPERS was valued at \$3,533.11. Exhibit 14 (App 703). The Court awarded Rachael her retirement accounts in their entirety and only awarded David his retirement account in the amount of \$4,986.25 and an equalization payment in the amount of \$123,942.50. This is inequitable. The District Court should have divided the retirement account prior to dividing any of the other property. In not doing so, Rachael has benefited by increased appreciation from the parties' marital assets after trial. This is also inequitable based on the lack of evidence in valuing the other property divided between these parties. This Court should divide Rachael's 401(k) equally prior to deciding an equalization payment for the remaining property.

IV. THE DISTRICT COURT ERRED IN THE AWARD OF SPOUSAL SUPPORT TO DAVID IN BOTH AMOUNT AND DURATION BASED ON THE DISPARITIES IN THE PARTIES INCOMES AND THE LENGTH OF MARRIAGE

A. Standard of Review:

Iowa R. App. P. 6.907 provides "review of equity cases shall be *de novo*." The appellate court is to "give weight to the factual determinations made by the district court; however, their findings are not binding upon [this Court]." In re Marriage of Gust, 858 N.W.2d 402, 406 (Iowa 2015). Spousal support is

awarded as a replacement for the other spouse's obligation for financial support. In re Marriage of Whitehurst, 853 N.W.2d 301 (Iowa Ct. App. 2014). The award must be considered along with the property distribution, as both impact the spouse's capacity for self-sufficiency. Id.

B. Discussion:

The District court awarded David rehabilitative spousal support in the amount of \$3,000.00 per month for forty-eight (48) months. Rehabilitative spousal support is a payment for a period of time so the spouse can re-educate or retrain and prepare to be self-sufficient. Id. However, the award was not substantial enough to do justice and equity between the parties. Substantial awards are approved where the parties were married for a significant period of time, one spouse was unskilled, and the other had significantly greater earning capacity. Id. The spouse receiving spousal support is expected to earn up to their capacity, and courts will allow for less spousal support where that capacity is not being realized. Id. This Court determined that David could reach an earning capacity of \$50,000.00 per year. This is fairly consistent with his business earnings prior to COVID-19. David testified that COVID-19, in addition to the 2020 derecho storm, had an impact on his earning capacity and that he placed himself at not having an income at the time of trial. Trial Transcript pg. 11 ln 5:13. Rachael testified that she was making \$440,000.00

at the time of trial, and that she had voluntarily reduced her income, deducting an additional \$46,000.00 per year and stepping down as the medical director of the hospital, to be able to spend more time with her children. Trial Transcript pg. 91 ln 7:8; pg. 120 ln 20:21. Exhibit 22, Rachael's W2s and Exhibit 23, Rachael's Social Security Statement, show that in 2019, Rachael made \$502,645.00 in gross income and in 2020, Rachael made \$497,701.00 in gross income. (App 780; 785); Exhibit 22; 23. Rachael placed herself at an income of \$440,000.00, which she has not made since completing her residency in 2009. Exhibit 22; (App 780). In Iowa, the courts in Gust and Mann have applied a 31% factor in the difference in the parties' incomes to determine the monthly spousal support award for long marriages of approximately 20 years, as is the case here. In re Marriage of Gust, 858 N.W.2d 402 (Iowa 2015). The Court must also consider the ability of a spouse to become self-sufficient at "a standard of living reasonably comparable to that enjoyed during the marriage." Id.; see Iowa Code 598.21A(1)(f). In this case, the Court should place Rachael at \$500,000, of which she has consistently been able to make over the past three (3) years, reduced by David's imputed income of \$50,000.00, and multiply \$450,000.00 by 31%. The outcome would equal \$139,500.00 in spousal support per year, divided by 12. Thus, David should receive \$11,625.00 per month in spousal support. This Court should also place the standard of a

traditional spousal support award, based on the length of marriage, instead of just a rehabilitative award. In Gust, an award of traditional 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. Id. The evidence at trial indicated that the standard of living the parties exercised during the marriage was very comfortable. Rachael was able to travel with the children on various occasions to visit her boyfriend and her parents in Alaska. Trial Transcript pg. 14 ln 1:10. The parties also owned time shares during their marriage, where they were able to travel at least once per year to Mexico with the minor children. Rachael testified that she was able to take the children twice to Mexico during the Christmas and Spring Break after the parties' separation. Trial Transcript pg. 17 ln 21:25. David testified that he had not been able to do that as much after the parties separated. Trial Transcript pg. 16 ln 15:19. Rachael placed on her financial affidavit that she intends to pay \$1,000.00 in continued travel per month, in addition to paying for a nanny (\$1,100), housekeeping (\$400.00), while remaining in the parties' marital home with the majority of the parties' marital property. (App 631); Exhibit 1. Rachael estimated her monthly expenses to continue to be \$14,191.95. (App 631); Exhibit 1. If this Court finds that Rachael's income is \$500,000.00, she would have a net monthly income

of \$26,040.00, after deducting her medical insurance and taxes. This leaves Rachael with the ability to maintain her standard of living, while also having the ability to pay spousal support of at least \$11,848.05 (\$26,040.00 - \$14,191.95). David filed his financial affidavit as Exhibit A, which lists his monthly expenses of \$8,156.00. (App 798). His expenses are much more conservative than Rachael's noting his inability to travel at \$1,000.00 per month based on his income, he doesn't have a housekeeper, he doesn't utilize a nanny, and has significantly less of a monthly rental payment. With David making \$50,000.00 per year, he would have a net income of \$3,113.88 per month. The Court's spousal support award of \$3,000.00 to give David a total of \$6,113.88 per month does not do equity between these parties. This Court should remand this matter to the District Court and David should be entitled to \$11,625.00 per month in spousal support.

This Court must also consider what length of time for which spousal support should be ordered. Iowa Code 598.21A considers factors (a) – (j) in determining whether payments should be for a limited or indefinite length of time. In Gust, the Court observed that a traditional spousal support award 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. Gust, 858 N.W.2d 402 (Iowa 2015). These

parties were married for 20 years. David helped Rachael grow her earning capacity, by caring for the children while Rachael was in school, relocating for Rachael's residency, again for Rachael's current position, and by quitting his own jobs to be able to allow Rachael to further her chosen career. David testified that he has been growing his business since the relocation to Iowa, but that business has struggled due to the COVID 19 pandemic and the 2020 Derecho. Trial Transcript pg. 10 ln 15:21. David was imputed at \$50,000.00 of income. Decree (App 66). There was no testimony that David plans to go back to school nor was there any expert evaluations completed that would show David's company will be able to be as profitable as Rachael doctorate degree. As such, lifetime alimony is appropriate in this case.

V. THE COURT ERRORED IN NOT AWARDING DAVID ATTORNEY FEES BASED ON THE DIFFERENCE IN THE PARTIES' INCOMES.

A. Standard of Review:

Attorney fees are not allowable as a matter of right in a marital dissolution action but depend upon the financial condition of the parties and their relative abilities to pay. In re Marriage of Dieger, 584 N.W.2d 567, 570 (Iowa App. 1998).

B. Discussion:

Rachael is in a far superior position to pay attorney fees. Factors to be

considered in determining whether to award attorney fees include: “the need of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal.” In re Marriage of Voorst, No. 21-0228, 2021 Iowa App. LEXIS 917, at *17 (Ct. App. Nov. 3, 2021). In assessing these factors, David has a need for an award of attorney fees and Rachael has the ability to pay. Rachael was not affected at all by the derecho or COVID-19 in her ability to earn income. Both of David’s misfortunes occurred during the dissolution of marriage proceedings. Furthermore, the parties had already separated and divided their bank accounts, so attorney fees were not distributed in any way prior to trial. The difference in the parties’ incomes alone is a significant factor as well in an award to David for attorney fees. Rachael should be responsible for David’s attorney fees in the amount of \$20,000.00.

CONCLUSION

First, David respectfully requests, that based on the foregoing authorities and arguments, the Order entered on August 21, 2021 by the District Court of Polk County, be amended as it pertains to spousal support, property division, and legal custody. If the District Court ruling is amended in whole or in part, David requests that this Court award him appellate attorney fees for that reason. He is aware that appellate attorney fees are not a matter of right but are determined at the discretion of this Court. In re Marriage of Okland, 699

N.W.2d 260, 270 (Iowa 2005); In re Marriage of Seals, 884 N.W.2d 224 (Iowa Ct. App. 2016).

WHEREFORE, the Appellant, David Sokol, by and through the undersigned counsel, respectfully requests that this Court, on its *de novo* review of the record, amend the ruling of the district court, amending the joint legal custody provision to coincide with Iowa law, divide the marital property equitably, and award David a spousal support award for a duration that compensates him in conjunction with a twenty (20) year marriage.

Respectfully submitted,

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ATTORNEY COST CERTIFICATE

I certify that the true and actual cost of printing and binding this Final Brief is -\$0- as it is being filed and served electronically.

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