

IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 19-0969

**IN RE THE MARRIAGE OF MATTHEW TAIT MILLER AND
KARRI ANN MILLER**

**UPON THE PETITION OF
MATTHEW TAIT MILLER**
PETITIONER-APPELLANT,

**And Concerning
KARRI ANN MILLER,**
RESPONDENT-APPELLEE.

**APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR
BLACK HAWK COUNTY
THE HONORABLE GEORGE L. STIGLER, DISTRICT COURT JUDGE**

CASE NO. CDDM051902

APPLICATION FOR FURTHER REVIEW
(Date of filing of Court of Appeal's Decision: January 21, 2021)

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals' decision and the District Court improperly classified future disability payments under the Municipal Fire and Police Retirement System of Iowa as marital assets.
2. Whether an award of a share of Matt's future disability payments under the Municipal Fire and Police Retirement System of Iowa to Karri is inequitable.

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STATEMENT SUPPORTING FURTHER REVIEW

The decision rendered by the Court of Appeals in this matter conflicts with prior long-standing precedent and, therefore, provides grounds for further review in this matter under Iowa Rule of Appellate Procedure 6.1101(1)(b)(1). The ruling conflicts with prior precedent set by the Supreme Court in *In re Marriage of Schriener*, 695 N.W.2d 493 (Iowa 2005), which classifies payments received to replace future earnings as separate, not marital property. The Appellate Court classified the future disability payments of Matt Miller from the Municipal Fire and Police Retirement System of Iowa as marital property.

The Appellate Court decision further conflicts with prior precedent by analyzing whether the payments received to replace future earnings should be divided using property division guidelines rather than using the analysis for future spousal support utilized in identical circumstances in *In re Marriage of O'Connor*, 584 N.W.2d 575 (Iowa Ct. App. 1998). It's analysis also directly conflicts with *In re Marriage of Mann*, 943 N.W.2d 15 (Iowa 2020). Like the Court of Appeals' decision reversed by *Mann*, it sought to equalize disparity of income of the parties resulting from their life choices rather than marital contributions.

The case presents an important question of changing legal principles

requiring guidance from the Iowa Supreme Court pursuant to Iowa Rule of Appellate Procedure 6.1103(1)(b)(3). Determination of whether future payments under disability benefits replacing future earnings will be classified as separate property rather than marital property, and what criteria should be used in determining whether funds from those payments will be diverted to the other spouse, presents an issue of broad public importance to be determined by the Supreme Court. The issues are increasingly important in the context of an increasing number of National Guard veterans eligible for civil disability benefits as a result of service to their country. Currently their military benefits are treated as separate property; but this case treats the civilian benefits due to the same injury as marital property. This matter needs to be addressed by the Supreme Court in order to give disabled veterans and other disabled persons and their families clear guidance in resolving dissolutions where disability pensions are at issue.

STATEMENT OF THE CASE

This Application for Further Review requests the Supreme Court of Iowa review the decision of the Iowa Court of Appeals entered on January 21, 2021. The decision of the Court of Appeals affirmed as modified the District Court decision in Black Hawk County, Iowa. Appellant, Matthew Tait Miller, applies to the Iowa Supreme Court for further review pursuant to Iowa Rule of Appellate Procedure 6.1103.

This is an appeal challenging the District Court's decision to award Appellee, hereinafter referred to as "Karri," a marital share of Appellant's, hereinafter referred to as "Matt," disability pension from the Iowa Municipal Fire and Police Pension System governed under Chapter 411 of the Iowa Code.

Matt filed a Petition for Dissolution of Marriage on August 7, 2017 in Black Hawk County, Iowa. (App. P. 6). Karri filed an Answer to Petition for Dissolution of Marriage on August 10, 2017. (App. P. 10). By way of a Trial Scheduling Order, the District Court set trial for the matter on September 18, 2018. (App. P. 12). The matter proceeded to trial on September 18, 2018 and the Court entered its Dissolution Decree on October 9, 2018. (App. P. 33). Matt filed a Trial Brief on September 27, 2018 requesting that his premarital retirement account not be considered a marital

asset, requesting that Karri not be entitled to any portion of his V.A. Disability or his Municipal Police disability pension and that Karri was not entitled to any portion of his military retirement. (App. P. 22). Following the Court's Decree in this matter, Matt filed a Motion to Enlarge or Amend on October 17, 2018. (App. P. 41). Karri filed a Motion to Enlarge or Amend Pursuant to Iowa Rules of Civil Procedure 1.904 on October 13, 2018. (App. P. 50). Karri filed a Resistance to Matt's Motion to Enlarge or Amend on October 29, 2018. (App. P. 59). Matt filed a Supplement to his Motion to Enlarge or Amend on December 5, 2018. (App. P. 62). Karri filed a Resistance to the Supplemental Motion to Enlarge or Amend on December 7, 2018. (App. P. 64). On May 10, 2019, the Honorable George L. Stigler entered an Order requiring Matt to pay Karri a portion of his military retirement and denying all other post-trial motions. (App. P. 66).

The Court's Decree of October 9, 2018 awarded Karri a "Benson" formula share of Matt's police disability pension and National Guard retirement pension. (App. P. 33). The Court in this matter was precluded from awarding Karri a direct payment from the Defense Finance Accounting System in this matter due to the short duration of the marriage. (App. P. 116-17). Karri was awarded the entirety of her IPERS retirement account, her two Voya accounts, \$20,000 of Matt's fully premarital TIAA-CREF

account, the premarital Roth IRA distribution and all Veridian financial accounts with the exception of an account numbered 5220. (App. P. 33).

Matt timely appealed. (App P. 70). Karri filed a Notice of Cross-Appeal on June 11, 2019. (App. P. 72). On January 21, 2021 the Court of Appeals issued its decision affirming the ruling of the District Court and modifying only one section of the Decree to clarify a mathematical error. (Court of Appeals Decision No. 19-0969, attached as Exhibit A). The Court of Appeals found the *O'Connor* case to be inapposite by stating that Matt's earnings were not similarly constrained as Mr. O'Connor's was. (Court of Appeals' Decision, P. 6). The Court of Appeals declined to award Karri survivor benefits on either the disability pension or Matt's National Guard pension, however, the Court of Appeals affirmed the District Court's division of Matt's National Guard retirement pension which will occur in the year 2034. (Court of Appeals Decision No. 19-0969).

STATEMENT OF THE FACTS

Matt and Karri Miller met in November of 2009 and married on April 24, 2010. (Dissolution Decree P. 1). Matt was 42 years of age at the time of trial, had been rendered permanently disabled from the military and his employment as a police officer, and was renting a condo in Iowa City. (App. P. 33; 76; 113). Karri was 37 years old at the time of trial and in good health. (App. P. 33). At the time of trial she was employed as a work based learning network program coordinator at Hawkeye Community College since February of 2017. (App. P. 160-161). Matt is employed at the University of Iowa as Program Director for Military and Veteran Student Services providing services and programs for military veterans and dependents of veterans who are attending the University of Iowa. (App. P. 77 Ll. 14-25). He was previously diagnosed with post-traumatic stress disorder in 2014. (App. P. 77 Ll. 23-25).

During his senior year of high school, he elected to join the Army in November of 1993 and went to basic and advanced training at Fort Benning, Georgia. (App. P. 78 Ll. 20-25). He achieved the rank of Command Sergeant Major in the Army National Guard and during his enlistment attended the University of Northern Iowa where he graduated with a Bachelor of Arts Degree in Communications and Public Relations in

December of 1999. (App. P. 79 Ll. 5-10, 21-23).

Matt was first deployed in the fall of 2000 to Saudi Arabia for approximately six months. (App. P. 80). While deployed to Saudi Arabia the attack on the U.S.S. Cole in Yemen occurred not far from where Matt was stationed. (App. P. 80).

Matt returned to the United States in early 2001 where he resumed his employment at Veridian Credit Union as a loan officer, and then ultimately received a promotion to a marketing specialist. (App. P. 81 Ll. 4-13). It was during his employment at Veridian Credit Union that he contributed to a retirement account which at trial was identified as Matt's TIAA-CREF account. (App. P. 81 Ll. 14-19). In 2003 Matt was again deployed to Egypt and that deployment lasted just under a year. (App. P. 82 Ll. 2-9). During his second deployment, the war in Iraq had commenced and Matt's obligations were to serve as a peacekeeping mission in the Sinai Peninsula upholding the Camp David Peace Accords between Egypt and Israel. (App. P. 82 Ll. 10-25).

Matt returned to the United States from his second deployment in 2004 and again returned to his public relations marketing role at Veridian Credit Union. (App. P. 83). In 2005 Matt was notified of a third deployment to Iraq to support Operation Iraqi Freedom and he arrived in Iraq in March

of 2006. (App. P. 83). During his initial deployment to Iraq, he was informed that he was to spend approximately a year but following his deployment he received orders that that was going to be extended at least six more months. (App. P. 83 Ll. 1-7). With training, his total deployment for the third time lasted just over two years. (App. P. 84 Ll. 5-7). During his deployment to Iraq in 2006, Matt was exposed to IED's, injuries to his soldiers, injuries to coalition partners, as well as death and injury to civilians. (App. P. 84 Ll. 8-24). Matt identifies the third deployment as one of the significant factors causing his PTSD. (App. P. 84 Ll. 21-24).

Upon his return to the United States, he applied for and received a position as a Waterloo police officer in March of 2008. (App. P. 85 Ll. 6-8). Matt testified it was then that he first started to identify symptoms of PTSD with anxiety at his previous position at Veridian. (App. P. 85 Ll. 11-24). Matt's employment with the Waterloo Police Department initiated as a patrol officer and transitioned to a crime scene investigator where he spent the last two and a half years as an investigator. (App. P. 86 Ll. 7-11).

He met Karri in November of 2009 and they were married on April 24, 2010. (App. P. 33; 86). During his courtship to Karri and prior to their marriage, he learned in the fall of 2009 that he was going to be deployed for a fourth time. (App. P. 87).

In October of 2010 Matt was deployed for a fourth time to Afghanistan where he stayed until August of 2011 when he returned to the United States. (App. P. 87). Matt's responsibilities during that deployment included providing security for the Bagram Air Base Defense Operations Center and the 30,000 soldiers and civilians that lived on that air base. (App. P. 88).

In June of 2014 Matt's physician suggested he be evaluated for PTSD and by November of 2014 the Veterans Administration diagnosed Matt with PTSD. (App. P. 92-93). Matt has had a service dog named "Nala" since spring of 2015, who provides him comfort during periods of anxiety and provides interruption of nightmares and other emotional and physical support. (App. P. 93-94; 95 Ll. 1-2).

Matt and Karri purchased the family home at 1553 Audubon Drive in Waterloo in September 2014,, and agreed at the time of trial that the home would be sold with proceeds split. (App. P. 33; 202; 98). Matt moved out of the marital residence in May of 2017 and from June of 2017 until the time of trial the parties shared the expenses of the marital residence with Matt contributing \$1,400 into a joint account. (App. P. 98-100). The District Court ordered Matt to be responsible for a joint credit card debt existing at the time of trial in the amount of \$11,353. (App. P. 103; 202; 205). At the

time of trial Matt had three savings accounts at Veridian Credit Union, one of which included a premarital Roth account that he had cashed out in order to pay for attorney's fees and expenses. (App. P. 106-109; 202; 205).

At the time of trial, Matt had three income sources. (App. P. 112-113; 205). Matt receives \$4,200 gross monthly from his employment at the University of Iowa, a VA Disability benefit of \$1,365 gross monthly, and a disability pension from his employment with the Waterloo Police Department of approximately \$2,600 gross per month. (App. P. 205; 213; 217). His disability pension from the Veterans Administration is compensation as a result of his 70% disabled diagnosis of PTSD. (App. P. 113). Due to Matt's disability status, he is not eligible to receive any retirement pay from his military service until December 28, 2034. (App. P. 113-115; 274). At that time in 2034, Matt will be eligible to receive approximately \$1,395 per month. (App. P. 115; 274).

Because Matt was not in active service for a full ten years of the marriage, the defense accounting service will not acknowledge an order dividing Matt's military retirement pay. (App. P. 116-117). Matt receives his disability pension from his employment as a Waterloo police officer due to the injuries he sustained while in the military and to replace income he would have received in his civilian employment as a police officer. (App. P.

117; 219).

Matt's monthly receipt of his disability pension from the Municipal Fire and Police Pension System is governed by an earnings test which will reduce his monthly disability allowance if his earnings exceed the annual limit. (App. P. 263). Prior to Matt's disability diagnosis he also worked gaining extra income as a security guard for private and public events at Allen Hospital. (App. P. 118-120). As a result, Matt testified that his combined income as a Waterloo police officer and working private security would be \$80,000 per year but for his disability. (App. P. 119-120). If Karri were to receive any portion of Matt's current disability pension from the Municipal Fire and Police Pension System, Matt would not be able to meet his monthly financial obligations. (App. P. 205; 126-127).

At the time of trial in this matter Karri was 37 years old and considered her health good. (App. P. 158). She graduated from Mount Mercy College with two bachelor's degrees, one in psychology and a Bachelor of Arts in criminal justice. (App. P. 197). Commencing in 2003 she began her work as a social worker II for the State of Iowa Department of Human Services. (App. P. 162). She was employed as a work-based learning network program coordinator at Hawkeye Community College since February of 2017. (App. P. 160-161).

Karri's salary and total benefits was approximately \$60,000 through her employment at Hawkeye. (App. P. 211). She has health insurance through her employment at no cost. (App. P. 161). Karri testified she did not plan to maintain IPERS covered employment but agreed that the Court should divide her IPERS by awarding Matt his marital share. (App. P. 175-176). Karri offered no factual basis, need, or reason to support her claim to Matt's premarital retirement account other than she believed cases supported her claim. (App. P. 192-193). Karri's pleadings did not request spousal support and she stated at trial that she was making no claim for spousal support. (App. P. 195-196).

Karri is in good health with no mental diagnosis and no physical disabilities. (App. P. 196-197). Karri testified inexplicably that even if Matt stopped receiving his disability pension as a result of an increase in earnings, she should still receive a portion of his disability pension. (App. P. 195-196).

BRIEF IN SUPPORT OF APPLICATION FOR FURTHER REVIEW

ARGUMENT

The decision of the Court of Appeals in this matter affirmed the District Court's misclassification of Matt's Municipal Fire and Police Retirement disability pension as a marital asset and awarded Karri a share of Matt's future earnings. It was in essence an award of alimony. The Court of Appeals incorrectly found that Matt's earnings are not constrained despite his reduced income and serious health condition. Following an eight-year marriage, the decision awarded Karri \$9,941.28 per year. If Matt were to retire in 2034 per his military retirement eligibility date, that would be approximately an award of \$159,060.48 over the course of approximately 16 years. That deprives Matt of that same number for approximately 16 years to replace lost future earnings. The award is contrary to the classification of payments replacing of future earnings pursuant to *In re Marriage of Schriener*, 695 N.W.2d 493 (Iowa 2005), and the analysis of such an award as a spousal support award pursuant to *In re Marriage of O'Connor*, 584 N.W.2d 575 (Iowa Ct. App. 1998).

I. WHETHER THE COURT OF APPEALS' DECISION AND THE DISTRICT COURT IMPROPERLY CLASSIFIED FUTURE DISABILITY PAYMENTS UNDER THE MUNICIPAL FIRE AND POLICE RETIREMENT SYSTEM OF IOWA AS MARITAL ASSETS

A. THE DECISION CONFLICTS WITH PRECEDENT DIRECTLY ON POINT IN THIS MATTER NAMELY *IN RE MARRIAGE OF O'CONNOR* AND *IN RE MARRIAGE OF SCHRINER*.

Equitable does not always mean equal, nor does it mandate a division of property. In this case, Karri argued that she should receive a “Benson” formula of Matt’s disability pension from the Municipal Fire and Police Retirement System. Karri argued that because she was married to Matt she was entitled to receive a significant portion of his disability pension. Equity does not support that position and neither does long-standing Iowa case law or case law from surrounding jurisdictions.

Because equitable does not necessarily mean an equal division or percentage distribution of marital assets, the Court is vested with the requirement to seek what is “fair and equitable.” *Madsen v. Madsen*, 261 Iowa 476, 479, 154 N.W.2d 727 (1967). While pensions that have accumulated in value during the marriage are generally held to be marital assets subject to division in dissolution cases, it is important to note the difference between a disability pension and a pension which is deferred

compensation upon retirement. *In re Marriage of Branstetter*, 508 N.W.2d 637 (Iowa 1993). *In re O'Connor*, 584 N.W.2d 575 (Iowa Ct. App. 1998), previously held “A disability pension, unlike a pension paid on retirement, is not compensation for past services.” See *In re Marriage of Howell*, 434 N.W.2d 629, 632 (Iowa 1989). Rather, it is compensation to replace income that would have been earned had the employee not been injured. *Id.* Applying the reasoning of *Howell*, the *O'Connor* Court determined equity in the case supported an allocation of the disability portion of the pension solely to Michael. *In re Marriage of O'Connor*, 584 N.W.2d 575 (1998).

The similarities of this case to the *O'Connor* case are striking and not inapposite as stated by the Court of Appeals. Michael O'Connor qualified for disability benefits under Iowa Code Chapter 411 just as Matt did in this case. Mr. O'Connor was employed as a Waterloo police officer just as Matt was employed as a Waterloo police officer. Mr. O'Connor found additional work as an adjunct professor at Hawkeye Community College just as Matt has found additional work at the The University of Iowa following his disability. The difference in length of marriages, *O'Connor* being a 19-year marriage and Miller being eight years, would tend to make it even less likely a long-term subsidy would be awarded to Karri.

Other jurisdictions have held disability pensions are not to be marital

assets subject to division because they are an award of future earnings.

“Thus, based on their substantially different eligibility requirement and related calculation methodology, SRS disability retirement benefits based on a service-related disability before 20 years of service more closely resemble a replacement or compensation for lost service income that the member otherwise would have earned in the future but for the disability, rather than form of previously earned but deferred service income like other SRS service and disability retirement benefits.” *In re Elder*, 399 Mont. 532, 462 P. 3d 209, (Mont. 2020).

The Supreme Court of Montana in this case went on to reverse the District Court award of a division of the husband’s disability benefit and held that the District Court erroneously characterized and divided the post-dissolution disability retirement as a marital asset incorrectly. *In re Elder*, 399 Mont. 547.

The State of Missouri has long held, “Disability benefits are not considered to be marital property if they serve as a substitute for earnings lost due to the recipient’s inability to work.” *Coffman v Coffman*, 215 S.W.3d 309 (Mo. App. 2007). The State of Missouri took a broader approach in classifying all disability pensions as non-marital property. It ordered the District Court to re-evaluate the division of assets consistent with an equitable distribution and ensuring only the marital portions were divided. See *Coffman*, 215 S.W.3d at 313.

Subsequent to the Court of Appeals’ ruling in the *O’Connor* matter,

the Iowa Supreme Court built on its characterizations of disability awards and their treatments in dissolution matters in *In re Marriage of Schriener*, 695 N.W.2d 493 (Iowa 2005). It furthermore built on the analysis contained in *In re Marriage of Howell*, 434 N.W.2d 629 (Iowa 1989) wherein it stated that a disability payment to a retired servicemember injured in the line of duty cannot be considered compensation for past services rendered. The *Schriener* Court in addressing future workers' compensation payments as a result of a disability stated:

“As with pensions, a future interest is properly considered as a marital asset subject to distribution at the time of the divorce to the extent the future interest accrues during the marriage. On the other hand, future earnings from future employment do not accrue during the marriage and are not property. Consequently, it follows that workers' compensation proceeds received after the divorce are separate property of the injured spouse.” *In re Marriage of Schriener*, 695 N.W.2d 493 (Iowa 2005).

The *Schriener* Court analyzed Mr. Schriener's workers' compensation injury benefits as future disability payments to compensate for income on future earnings that were not accrued during the marriage. This approach is consistent with the analysis in the *O'Connor* case. That Court applied the reasoning of *Howell*, and found the Municipal Fire and Police Retirement System disability pension was not for past services, but to replace future income Michael O'Connor could have earned had he not been injured.

O'Connor at 577. Although the *O'Connor* court characterized the disability

pension as marital property, it analyzed the factors for its division by looking at the relative future support needs of each party in the nature of a spousal support analysis. The logical extension of the language and reasoning of *Schriner* is to find that like workers' compensation, future disability payments are not marital property and should only be accessed like future income, for future support if required. Because this is property that has not yet accrued during the marriage, it should not be considered marital property subject to division.

Whether or not the disability pension is classified as marital property, where the funds are a substitution for future earnings, the proper analysis is whether or not spousal support is justified. Application of both the property and support provisions of Iowa Code Chapter 598 demonstrate why a division of Matt's disability pension would be inequitable. The marriage was of an incredibly short duration and Karri's physical health is good. She is gainfully employed in a fulltime capacity with a bachelor's degree and two majors. Her earning capacity is only limited by her desire to work and she was only 37 years old at the time of trial. She could potentially have another 30 years in the work force to contribute to a retirement account with no disabilities. Matt, on the other hand, is working subject to a significant disability and in the event he loses his employment, he would be unable to

modify the division of his pension as currently ordered by the Court, in contrast to what he would be able to do in the event of an alimony award.

The comparison of the need of Karri for the funds and the impact on Matt for the loss of the funds further demonstrates the lower Court award was inequitable. There is no question that Matt's current income at his employment at the University of Iowa is far less than what he would have been making had he maintained his position as a police officer with the Waterloo Police Department.

The income he would have made had he still been employed at the Waterloo Police Department, collecting additional security work as well as National Guard pay, would have been well over \$80,000 per year. (App. P. 205; 219). As such, the disability payments Matt receives represent the difference between his anticipated actual future earnings and the reasonable expectation of his future earnings as a police officer. The income received from the disability pension supplements the income from the University of Iowa so that he is approximating what he might have been able to make were he still to be employed at the Waterloo Police Department and obtaining additional security jobs at the hospital.

As a result of the Court's division of Matt's disability pension, the income meant to supplement his lost earnings in fact becomes less and as a

result Karri earns a windfall. Karri at no time requested spousal support or presented any evidence that would support a spousal claim. She has a college education, solid work history, no time away from the work force due to the marriage, no disabilities, significant earnings with health insurance benefits, and no demonstrated need for future support. Yet under the Court's current order she will continue to receive a share of Matt's future earnings. Her receipt of earnings from Matt's income is only limited by Matt's lifespan. The lower Court award is inequitable and contrary to existing law.

Workers' compensation benefits for an injury and Municipal Fire and Police Retirement System disability pension payments are of the same character of benefit and should be considered to be the same classification of asset. Applying *Schriner* and *O'Connor*, they are an award of future earnings, a separate asset and not a marital asset subject to division. They should only be considered as a factor in an award of future child support or spousal support where requested.

B. THE DECISION AWARDS FUTURE EARNINGS TO A SPOUSE IN THIS MATTER CONTRARY TO *IN RE MARRIAGE OF MANN*.

Subsequent to the briefing of this case for the Court of Appeals, the Supreme Court of Iowa decided *Mann v. Mann*, 943 N.W.2d 15 (Iowa

2020). That case addressed the propriety of an award of spousal support where the income of the parties was disparate due to life choices rather than marital sacrifices or earning capacity. In *Mann*, 743 N.W. 2d at 22, this Court analyzed the factors contained in Iowa Code Section 598.21A(1) and noted there was no question that one spouse was much more successful than the other in generating income. *Mann*, 943 N.W.2d at 21 (Iowa 2020). But perhaps most importantly the Supreme Court noted a number of factors mitigating against an award of alimony in this case by citing:

"First, the record reveals that Steven did not enhance the earning capacities of Andrea by sacrificing his ability to earn income from his lawn mowing and snow removal business. Andrea received her bachelor's degree prior to the marriage. ... While her career has been highly successful, there is nothing in the record to suggest that Andrea's rise in the ranks of the company was attributable to the contributions of Steven." *Id.* At 22.

Furthermore, the Court stated that, "the substantial difference in income between Andrea and Steven was in large part a product of the individual choices each spouse made rather than mutual sacrifices or contributions made to the family." *Mann*, 943 N.W.2d 22.

Even if this this Court determines that a disability pension is a marital asset subject to division, equity still requires an analysis under Iowa Code Chapter 598.21A and caselaw concerning spousal support in determining whether an award of a share of future disability payments is proper. An

award of future earnings is a de facto award of spousal support and as such, the factors enumerated in Iowa Code Chapter 598.21A are the appropriate considerations. The Court of Appeals' decision at issue in this case effectively awards long term spousal support to Karri in this matter. The time period in which she will collect a portion of Matt's disability far exceeds the length of the marriage. Matt is not eligible for his retirement benefit from the military until 2034, therefore, Karri could end up collecting a long-term benefit in excess of 20 years. It grants her a share of the future payments granted to replace Matt's future earnings lost as a result of injuries incurred in his military service which impacted his civilian employment. Where Karri failed to demonstrate a need or sacrifice to justify spousal support, it is clear the Court of Appeals' opinion in this matter awards Karri a share of the disability pension solely due to the disparity in incomes as a result of life choices contrary to *Mann*.

Put directly, the division of Matt's disability pension awards \$828.00 per month to Karri simply because she was married to him. It also reduces the amount of intended future compensation to offset the impact of his disability to Matt's detriment simply because he was married to her. The totality of circumstances may warrant use of future disability payments toward the support of another spouse due to need or previous sacrifice which would

similarly require payments from future earnings as spousal support, but it was not warranted here.

II. WHETHER AN AWARD OF A SHARE OF MATT'S FUTURE DISABILITY PAYMENTS UNDER THE MUNICIPAL FIRE AND POLICE RETIREMENT SYSTEM OF IOWA TO KARRI IS INEQUITABLE.

Whether the Court classifies Matt's future disability pension payments as a marital asset or not, the proper framework for analysis on an apportionment of such an award is whether or not the facts support requiring the award to Karri from Matt's future income under Iowa Code. Iowa Code Section 598.21A(1) defines the factors that must be analyzed by the Court in an award of future income. Those factors for the Court to consider include the length of the marriage, the age and physical and emotional health of the parties, the distribution of property made, the educational level of each party, earning capacity... among other factors. See Iowa Code Section 598.21A.

There was no such analysis by the District Court or the Court of Appeals in this matter other than an apparent nod to a perception of a difference in income between the parties. (Court of Appeals' Decision P. 6). The Court of Appeals has recently affirmed a denial of spousal support in a marriage of short duration even with disparity of incomes between the parties.

“The marriage here lasted only nine years. Both parties are in good emotional and physical health and leave the marriage with the same level of education they had attained before the marriage. In the dissolution decree, the District Court recognized the definite disparity in Jessie and Jared’s incomes and earning capacities. However, Jessie provided no testify that she made any economic sacrifices during the marriage that directly enhanced Jared’s future earning capacity. Jessie and Jared both obtained their educations before their marriage. Jessie also did not testify that she is not capable of self-support, or that she intends to pursue any additional education or training to increase her earning capacity. The only basis Jessie gave for an alimony award was to make it easier for her to pay off credit cards and refinance the marital home.” *In re Marriage of Carter*, 939 N.W.2d 116 (Iowa App. 2019).

Karri and Matt Miller were only married for eight years, there was no children born of the marriage, and both of them completed their educations prior to the marriage. In the Court’s dissolution decree, Karri was awarded not only the entirety of her retirement assets through her IPERS account, but also, \$20,000 of Matt’s premarital TIFF-CREF account as well as a share of his military pension commencing in 2034. (Decree P. 7).

In contrast, Matt has received a PTSD diagnosis with a significant disability. He has no guarantee of his future ability to maintain fulltime work with significant disability. The award to Karri granted by the District Court and affirmed by the Court of Appeals in this matter requires a qualified domestic relations order to be entered and is non-modifiable, as it is a property distribution.

In the event Matt were to lose his job at the Veterans Administration

either as a result of his disability, downsizing or any other circumstance, Karri would continue to receive \$828.00 a month out of Matt's disability pension without any recourse for Matt because of a substantial change in circumstances. The award duration, and unmodifiable nature of a share of Matt's future disability payments to Karri is patently inequitable.

CONCLUSION

For the foregoing reasons, Petitioner-Appellant respectfully requests the Supreme Court grant his Application for Further Review and reverse the ruling of the Court of Appeals on the matter of the division of Matt's disability pension. Whether future disability payments under the Municipal Police and Fireman's Pension System in Iowa should be considered a definitive marital asset is a case of first impression. The holding by the Court of Appeals in this matter is inconsistent with the classification of similar payments under a workers' compensation system in *Schriner* as well as the exact same nature of payments in the *O'Connor* matter. This is an issue of broad public concern and consequence as in the State of Iowa has an active National Guard wherein service-related injuries are continuing to accrue and the issue of disability pensions in dissolution law will increase with continued exposure. Guidance to parties and practitioners in this matter is necessary and it is as well a matter of broad public importance for all our veterans.

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on February 9th, 2021, I electronically filed the foregoing document with the Clerk of the Iowa Supreme Court by using the Iowa Judicial Branch electronic filing system, which will serve notice of said electronic filing to the following:

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