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

MATTHEW TAIT MILLER
Petitioner-Appellant/Cross-Appellee,

vs.

KARRI ANN MILLER
Respondent-Appellee/Cross-Appellant

APPEAL FROM THE DISTRICT COURT
FOR BLACK HAWK COUNTY,
Honorable George L. Stigler, Judge

PETITIONER-APPELLANT'S/CROSS-APPELLEE'S FINAL BRIEF and REQUEST FOR ORAL ARGUMENT

Heather A. Prendergast AT0006316
Roberts, Stevens & Prendergast, PLLC
321 E. 4th Street, P.O. Box 956
Waterloo, IA 50704-0956
Telephone: (319) 234-4600
Facsimile: (319) 234-7878
Email: heather@neialaw.com
ATTORNEY FOR PETITIONER-APPELLANT/CROSS-APPELLEE

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I e-filed the Petitioner-Appellant/Cross-Appellee's Final Brief with the Electronic Document Management System with the Appellate Court on the 18th day of December 2019.

The following counsel will be served by Electronic Document Management System:

Andrew B. Howie
5015 Grand Ridge Drive, Suite 100
West Des Moines, IA 50265-5749
Telephone: 515-223-4567
Email: howie@sagwlaw.com

D. Raymond Walton
620 Lafayette Street, Suite 300
Waterloo, IA 50704
Telephone: 319-234-1766
Email: rwalton@beecherlaw.com
ATTORNEYS FOR RESPONDENT-APPELLEE/CROSS-APPELLANT

I hereby certify that on the 18th day of December 2019, I did serve the Petitioner-Appellant/Cross-Appellee's Final Brief on Petitioner-Appellant/Cross-Appellee, listed below, by mailing one copy thereof to the following Petitioner-Appellant/Cross-Appellee:

Matthew Tait Miller
Petitioner-Appellant/Cross-Appellee

By: /s/ *Heather A. Prendergast*
Heather A. Prendergast AT0006316
Roberts, Stevens & Prendergast, PLLC
321 E. 4th Street, P.O. Box 956
Waterloo, IA 50704-09566
Telephone: (319) 234-4600
Facsimile: (319) 234-7878
Email: heather@neialaw.com
ATTORNEY FOR PETITIONER-APPELLANT/
CROSS-APPELLEE

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ROUTING STATEMENT

This case may be properly transferred to the Court of Appeals pursuant to Iowa R. of App. P. 6.1101(3)(a), as it requires the application of existing legal principles.

STATEMENT OF THE CASE

Nature of the Case: Petitioner-Appellant/Cross-Appellee, Matthew Tait Miller, (hereinafter "Matt") appeals from the Decree and other orders entered after trial in the District Court for Black Hawk County, by the Honorable George L. Stigler presiding (the "Decree").

Petitioner-Appellant/Cross-Appellee, Matthew Tait Miller, (hereinafter "Matt") filed a Petition for Dissolution of Marriage on August 7, 2017 in Black Hawk County, Iowa. (App. P. 6). Respondent-Appellee/Cross-Appellant, Karri Ann Miller, (hereinafter "Karri") filed an Answer to Petition for Dissolution of Marriage with No Minor Children or Dependent Adult Children 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). Matt filed his witness list and exhibit list for trial on September 11, 2018 and Karri filed her witness list and exhibit list on September 12, 2018. (App. P. 15-21). 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 Karri to remove Matt's name from the financing on her vehicle, 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). Karri was awarded the entirety of her IPERS retirement account, her two Voya accounts, $20,000 of Matt's premarital TIAA-CREF account, the premarital Roth IRA distribution and all Veridian financial accounts with the exception of account number 5220. (App. P. 33). The Court did not award Matt any marital share of Karri's IPERS accumulated during the marriage and awarded her $20,000 out of the TIAA-CREF account which had accumulated entirely prior to the marriage. (App. P. 37). The Court appeared to place a value on the IPERS account, however, the math is not consistent. (App. P. 37). Additionally, the Court included $8,843 awarded to Karri when said account only had a balance of $4,301. (App. P. 202). It appears in the Decree as though the Court then included the premarital Roth IRA again on Page 6 of the Decree and awarded it to Karri in the amount of $4,301 and a $2,800 savings account. (App. P. 202 and App. P. 38).

Karri's mother, Marilyn Bruce, filed a Receipt and Satisfaction acknowledging receipt of $11,743 on June 3, 2019. (App. P. 68). Matt timely appealed. (App P. 70). Karri filed a Notice of Cross-Appeal on June 11, 2019. (App. P. 72).

STATEMENT OF THE FACTS

Matthew Miller was 42 years of age at the time of trial and was renting a condo in Iowa City. (App. P. 33; 76). Karri Miller was 37 years old at the time of trial and in good health. (App. P. 33). 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 while he was deployed. (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 believes 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). It was shortly after his fourth deployment, and in December of

2010 that Karri told Matt she wished to have a divorce, approximately eight months after they had married. (App. P. 33, 88). The marriage fell apart almost immediately after it had begun and at that time Matt did not want a divorce. (App. P. 33; 88 Ll. 17-25; 89 Ll. 1-8). When Matt was able to come home in April of 2011 for a two-week leave, the very first day back Karri informed him that she had wished he had not come back from Afghanistan and at that point the couple stopped sharing a bed. (App. P. 90). By fall of 2011 when Matt returned from his deployment to Afghanistan, the marriage lacked any physical intimacy and Karri and Matt were roommates rather than a married couple. (App. P. 91 Ll. 1-11). No children were born to this marriage. (App. P. 33).

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 currently has a service dog named Nala who provides him comfort during time periods of anxiety and provides interruption of nightmares and other emotional and physical support. (App. P. 94; 95 Ll. 1-2). Matt completed the service dog application online and met with a co-vice president of Retrieving Freedom as well as submitted documented disability paperwork. (App. P. 94). Matt felt that for the most

part he was on his own in the marriage and did not feel as though he had a partner in his marriage. (App. P. 96 Ll. 15-23). Following Matt's return from Afghanistan there was no intimacy in the marriage. (App. P. 97 Ll. 14-17).

Matt and Karri purchased the family home at 1553 Audubon Drive in Waterloo during the marriage 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 continued to contribute to the support of the marital household following his departure. (App. P. 98-100). From May of 2017 until Spring of 2018, all of Matt's income, after paying his own rent and expenses, went to the support of the Audubon house and Karri's expenses. (App. P. 99-100). From June of 2017 until the time of trial, Matt contributed $1,400 into a joint account for the purposes of the mortgage and household expenses on the Waterloo residence. (App. P. 100). At the time of trial, Karri possessed furniture of a higher value as well as fitness equipment and a safe. (App. P. 101-103; 202). Matt also had responsibility for joint credit card debt 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). As such, it was Matt's position at trial that there was approximately $2,843 in savings accounts which he considered marital assets available for division. (App. P. 202; 109). Notably, Matt testified at trial that the account which had approximately $1,500 in it was probably a zero-balance due to a mortgage payment being made shortly before trial. (App. P. 109). Prior to the marriage Matt started a 401(k) through Oppenheimer Funds while employed at Veridian. (App. P. 109-110). Upon his start of employment at the University of Iowa, he transferred the Oppenheimer Funds account into a TIAA-CREF account (App. P. 110-111; 228). Neither of the parties contributed to the Oppenheimer Funds or TIAA-CREF account prior to their separation or during the marriage. (App. P. 110-111). Matt considered the Oppenheimer Funds/TIAA-CREF account to be his retirement savings for when he is able to retire. (App. P. 111).

At the time of trial, Matt possessed three income sources on a monthly basis. (App. P. 112-113; 205). Matt receives $4,200 gross monthly from his employment at the University of Iowa, a VA Disability benefit of approximately $1,365 per month and a disability pension from his

employment with the Waterloo Police Department of approximately $2,600 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 to supplement the fact that he can't make income as a police officer at the same rate he would have prior to his disability. (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 estimates his compensation as a

Waterloo police officer were, he to be employed in that capacity would be somewhere around $80,000 per year. (App. P. 119-120). At the time of trial, the parties had already paid Matt's mother-in-law back the full $11,000 in payments from money which was loaned to them for the purchase of the home. (App. P. 124-125; 299). 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). Matt will not receive social security at retirement. (App. P. 154).

At the time of trial in this matter Karri Ann Miller 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 that does not cost

her anything. (App. P. 161). From May of 2017 until May of 2018 Matt was contributing $2,500 towards expenses and Karri was contributing $1,800 a month towards expenses (App. P. 188-189). Therefore, during that time period that was approximately $700 per month that went towards extra expenses as well as payments on the loan to Karri's mother. (App. P. 189-190). Karri indicated that in April of 2011 she inquired if Matt wanted a divorce. (App. P. 167). Karri did not plan on maintaining an IPERS covered employment but agreed that the Court should divide her IPERS by awarding Matt his marital share. (App. P. 175-176). Karri believed that cases and appeal cases were the reason that she should enjoy a portion of Matt's premarital retirement account he accumulated. (App. P. 192-193). Karri waived any claim to alimony during trial. (App. P. 195-196). Karri has no mental health diagnosis and no physical disabilities. (App. P. 196-197). Karri requested to receive a portion of Matt's Municipal Fire and Police Disability Pension even if he stopped receiving the pension as a result of the earned income test. (App. P. 195-196).

ARGUMENT

I. THE DISTRICT COURT ERRED IN AWARDING ANY PORTION OF MATT'S MUNICIPAL FIRE AND POLICE RETIREMENT SYSTEM DISABILITY PENSION TO KARRI.

A. STANDARD OF REVIEW AND PRESERVATION OF ERROR.

Matt argued at trial that it was improper, and contrary to Iowa Law for Karri to receive any portion of his Municipal Fire and Police Retirement System Disability Pension. Matt submitted evidence of the monthly receipt of his disability pension and both parties testified that the marriage was over almost immediately after it began. Matt's position at trial was that the disability pension is compensation for injury received as a result of his disability, and to compensate him for his lack of ability to earn increased wages as a police officer. Matt relied on the *O'Connor* case at trial and the District Court awarded Karri the "Benson" formula marital portion of his municipal disability pension.

An appeal regarding the dissolution of marriage is an equitable proceeding. Iowa Code Section 598.3 (2001). A review by the Appellate Court is therefore de novo. Iowa R. App. P. 6.907; *In re Marriage of Schenkelberg,* 824 N.W.2d 481, 484 (Iowa 2012). The reviewing court must give wait to the factual determinations made by the District Court; however, their findings are not binding upon the court. Iowa R. App. P. 6.904(3)(g). "Precedent is of little value as the determination must depend upon the facts

of the particular case." *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). Appellant has preserved error regarding the division of the Municipal Disability Pension in this matter because an issue was raised and decided at the District Court level. *Meier v Senecaut*, 641 N.W.2d 532, 537 (Iowa 2012). Issues regarding the disposition of Matt's disability pension were argued before the District Court by the appellant and addressed in the Court's orders. For these reasons, the issue pertaining to the disability pension division is preserved for review.

B. THE DISTRICT COURT SHOULD NOT HAVE AWARDED ANY PORTION OF MATT'S MUNICIPAL FIRE AND POLICE RETIREMENT SYSTEM DISABILITY PENSION TO KARRI.

Equitable does not always mean equal, nor does it mandate a division of property. In this case Karri Miller argues that she should receive a "Benson" formula of Matt's disability retirement pension from the Municipal Fire and Police Retirement System. Karri argues that because she was married to Matt (although the marriage was effectively over months after the marriage began), she should be able to receive a significant portion of his disability pension. Equity does not support such a position and neither does Iowa case law.

Iowa Code §598.21(5) states the statutory factors the court must

consider in an equitable division of marital property in dissolution matters.

"The court shall divide all property, except inherited property or gifts received or expected by one party, equitably between the parties after considering all of the following:

a. The length of the marriage.
b. The property brought to the marriage by each party.
c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and childcare services.
d. The age and physical and emotional health of the parties.
e. The contribution by one party to the education, training, or increased earning power of the other.
f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.
g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.
h. The amount and duration of an order granting support payments to either party pursuant to section 598.21A and whether the property division should be in lieu of such payments.
i. Other economic circumstances of each party, including pension benefits, vested or unvested. Future interests may be considered, but expectancies or interests arising from inherited or gifted property created under a will or other instrument under which the trustee, trustor, trust protector, or owner has the power to remove the party in question as a beneficiary, shall not be considered.
j. The tax consequences to each party.
k. Any written agreement made by the parties concerning property distribution.

l. The provisions of an antenuptial agreement.
m. Other factors the court may determine to be relevant in an individual case.

Iowa Code Section 598.21(5); *In re Marriage of Olson,*705 N.W.2d 312, 315 (Iowa 2005).

As this Court is well aware, equitable does not necessarily mean equal division or percentage distribution of marital assets but does mean the Court should seek to provide what is "fair and equitable." *Madsen v Madsen*, 261 Iowa 476, 479, 154 N.W.2d 727 (1967).

Pensions that have accumulated in value during the marriage are generally held to be marital assets subject to division in dissolution cases. *In re Marriage of Branstetter,* 508 N.W.2d 637 (Iowa 1993). Important to note here is that the fact that a pension is considered marital property does not necessarily mean it must be divided. The Courts must do what is equitable. *In re Marriage of O'Connor,* 584 N.W.2d 575 (1998) (citing *In re Marriage of Benson*, 495 N.W.2d 777, (Iowa 1992). The *O'Connor* case is particularly illustrative for this appeal as it provides a factual background which is directly on point in this matter.

The *O'Connor* case involved the dissolution of a 19-year marriage following a Waterloo Police officer's receipt of a disability pension as a result of a back injury. Mr. O'Connor qualified for disability benefits under

Iowa Code Chapter 411 and continued to work as an adjunct professor at Hawkeye Community College at the time of trial, following his disability. Ms. O'Connor at the time of trial sought to receive a portion of Mr. O'Connor's disability pension as she and Mr. O'Connor had been married 13 of the 15 years he had worked for the police department. The District Court awarded her 13/15th of one-half of the pension. The Appellate Court reversed the District Court's decision and held that Ms. O'Connor was not entitled to receive any portion of Mr. O'Connor's disability pension until retirement. In this case, Matt was employed with the Waterloo Police Department for approximately eight years and was married for approximately six of those years. The *O'Connor* court found, "Applying the reasoning of Howell that the disability pension is not for past services but to replace income he could have earned had he not been injured, we determine equity in this case supports the allocation of the disability portion of the pension solely to Michael." *O'Connor* at 577. Not only is the *O'Connor* case directly on point factually in regard to its application of a municipal fire and police disability pension, the *O'Connor* case is also helpful to this Court in this appeal as the *O'Connor* marriage was a marriage of much longer duration and much more of a joint venture. Matt and Karri Miller were only

married for eight years and had no children. Matt and Karri Miller's marriage was effectively over right after it began, and as such, supports further finding that Karri is not entitled to receive any portion of Matt's police disability pension. Matt's police disability pension is limited and governed by an earnings test which limits the receipt of his pension if his earnings exceed an annual limit. As such, this further confirms that Matt's pension he receives is to supplement current income and is not the receipt of a typical pension and is, therefore, not one for past services.

Furthermore, Iowa Code Chapter 598 is illustrative in providing the court guidance on why division of Matt's disability pension at this juncture would be inequitable. This marriage was of an incredibly short duration. While it may be eight years on paper, it was only eight months from the start of the marriage when Karri first told Matt she wished to have a divorce. Keeping in mind that statement was made while Matt was on active deployment in Afghanistan is significant. This is a marriage that involved no children and as such, Karri did not have any requirements to maintain children in the home. Karri's physical health is good, and she is gainfully employed in a fulltime capacity with two bachelor's degrees. 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 and it is not she who suffers from a 70% disability of post-traumatic stress disorder after four deployments on behalf of our country.

After taxes, Matt nets approximately $2,200 per month from his disability pension from the Municipal Fire and Police Retirement System of Iowa. (App. P. 219). This pension is to compensate him for a result of loss of income as a result of his disability and is not compensation for past services. For Karri to receive approximately $1,000 out of Matt's disability pension, is to pay Karri for Matt's injury and not as a division of an asset accumulated during the marriage. It would be contrary to the factors of Chapter 598, as well as the *O'Connor* case for Karri to receive a "Benson" formula calculation of Matt's disability pension prior to the time in which he was eligible to retire.

There's 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. Matt grosses, before taxes, approximately $51,000 at the University of Iowa whereas the income he would have made had he still be

employed in the Waterloo Police Department would have been well over $66,000. (App. P. 205; 219). Furthermore, when Matt was working for the Waterloo Police Department, he testified that he would have the ability to earn additional income from working security jobs at the hospitals, further supplementing his income which he is no longer able to do. Matt's disability renders it impossible for him to perform in his capacity as a police officer and limits his ability for long term employment as a result of anxiety, and his diagnosis with PTSD.

Karri, on the other hand, has no reduction in earning capacity. Karri has no injury and has the ability to work full time and testified of her plans to move to another state and commence a different employment. There was no intimacy in this marriage and as such, it effectively ended in December of 2010. It was error for the Court to award Karri any portion of Matt's disability pension and the decree is not supported by the evidence or applicable Iowa case law.

II. THE PROPERTY DIVISION ORDERED BY THE DISTRICT COURT FAILS TO ACHIEVE EQUITY BETWEEN THE PARTIES.

A. STANDARD OF REVIEW AND PRESERVATION OF ERROR.

Matt argued at the time of trial that the funds in his TIAA-CREF

account were premarital due to contributions all made prior to the marriage and should not be considered a marital asset in this matter. Matt's position at trial was that the loan to Karri's mother had been paid off in full and any requirement of further payment would be a windfall to his mother-in-law. Matt also submitted at trial, bank statements evidencing current values of the parties' checking and savings accounts and verifying that a premarital Roth IRA had been utilized for attorney's fees and as such, should not be considered a marital asset. The Court erroneously calculated values of checking and savings accounts in duplicate, as well as awarded Karri a portion of Matt's TIAA-CREF retirement account.

The Court's review of a property disposition in a divorce action is de novo. *In re Marriage of Martens*, 406 N.W.2d 819 (Iowa Ct. App. 1987). The District Court's property division in this matter in addition to being inequitable, was in error in its calculation and ultimately created a windfall for both Karri and her mother. These arguments were presented to the District Court and as such, have been preserved for appellate review.

B. THE DISTRICT COURT ERRED IN AWARDING THE PAYMENT TO KARRI'S MOTHER FROM THE SALE OF THE MARITAL HOME AND CREATED WINDFALL.

As this Court is aware, equitable is not synonymous with equal. *In re*

Marriage of Anliker, 694 N.W.2d 535 (Iowa 2005). Once property is identified, both assets and debts should be given their value as of the date of trial. *Locke v Locke*, 246 N.W.2d 246 (Iowa 1976). It's important in cases that the District Court set forth its values and net property division so that the Appellate Court can assess whether an equitable division of property was attained, as well as to insure that the parties understand fully why the division of assets and debts occurred as it did. *In re Marriage of Bonnette*, 584 N.W.2d 713 (Iowa Ct. App. 1998). In this case, the Court's division of assets and debts in its Decree is difficult to understand at best. On page 5 of the Court's Decree it purports to place values on respective assets and debts of the parties. The Court allocated, "Capital Group/American" in Karri's column in the amount of $8,843 when there was no evidence that said value existed at the time of trial. To the contrary, Matt testified at trial that consistent with his Petitioner's Exhibit 1, $8,843 WAS the value of a premarital Roth IRA that he cashed out for attorney's fees but at the time of trial was only valued at $4,300. (App. P. 202; 247). His testimony was that the savings account had approximately $4,300 remaining in it and it was Matt's position at trial that should remain a premarital asset since it had been acquired entirely before the marriage. (App. P. 202; 108 Ll. 21-24). The

Court in its Decree appeared to award $8,843 to Karri of a premarital asset which no longer had a value of $8,843 and only had a value of approximately $4,300. Said asset was, therefore, duplicated in the Decree again as the Court referenced Veridian equity savings account 2860 in the amount of $4,301.02. Furthermore, Matt testified that at the time of trial the balance in the Veridian joint account 5220 was at approximately $0 because a mortgage payment had been removed from it. While the Court mentioned that in its findings, the Court did not take into a fact that the entirety of that account had been spent on the mortgage for the house and was, therefore, at a balance of $0 at the time of trial. Matt cannot comply with the Court's division of assets in this matter as the balance in the Capital Group American account of $8,843 is not accurate. Furthermore, Matt's position is that the Roth IRA accumulated exclusively and prior to the marriage should not be an asset subject to division. "The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts." *In re Marriage of Russell*, 473 N.W.2d 2444 (Iowa Ct. App. 1991). Iowa Courts do not require an equal division or percentage distribution and among the many factors to consider are the length of the marriage; property brought into the marriage by each party; the contribution of each party to the

marriage, giving appropriate economic value to each party's contribution and homemaking and their earning capacity. Iowa Code §598.21(1). "If a marriage lasts only a short time, the claim of either party to the property owned by the other prior to the marriage or acquired by gift or inheritance during the brief duration of the marriage is minimal at best." *In re Marriage of Wallace*, 315 N.W.2d 827 (Iowa Ct. App. 1981). As indicated in this case, the marriage was short in duration, not a joint venture, and not one in which Karri contributed in any significant fashion to its preservation or venture. The Court's award to Karri of the Capital Group American account in the amount $8,843 is in error because it was not valued that at the time of trial, was duplicated by referencing the Veridian equity savings premarital Roth IRA and was in error there as well. Matt requests this Court reverse the District Court's findings of awarding Karri the premarital Roth IRA due to the very short length of this marriage, the lack of contribution by Karri to the marriage, and its failure to attribute the proper number to the same.

The Court also appeared to value Karri's IPERS retirement by taking the lump sum value referenced in Petitioner's Exhibit 18 and subtracting an unknown amount. (App. P. 223; 33). Matt was not awarded any "Benson" formula share of Karri's IPERS by the Court. The preferred method of

handling a pension benefit such as an IPERS benefit is to divide the plan through a qualified domestic relations order which allows the Court to allocate equitably Matt's marital share. There was no testimony from an accountant or an actuarialist at trial in order to determine the present value of Karri's IPERS. As such, the acceptable "Benson" formula would have been the appropriate choice in this case.

Matt's approach at trial was to try and prevent additional qualified domestic relations orders from being entered and prevent further attorney's fees. As such, Matt's Exhibit 1 set forth the breakdown the parties' assets and liabilities while assuming that his two premarital assets would remain premarital. Additionally, Exhibit 1 did not factor in the debt to Karri's mother because that loan had already been paid in full at the time of trial. (App. P. 178; 179; 299). Karri kept detailed ledgers in regard to the payments made to her mother throughout the course of the marriage from both her account as well as a joint account. It was Karri's position at trial that even though her mother had been paid in full for the three debts that she believed were joint marital debts, that her mother should be paid by Matt again. Respondent's Exhibit O is particularly telling in this matter. Respondent's Exhibit O specifies the payments made to Karri's mother from

April of 2017 until the time of trial. Those payments total $11,649.65. However, after Matt moved out of the residence, Karri obtained loans from her mother for attorney's fees totaling $7,010. While Matt was out of the marital residence and paying into a joint account for Karri's benefit, Karri was making payments to her mother on these loans. Per Karri at trial, Matt was to be responsible for one-half of the closing costs, earnest money and taxes from the purchase of the Audubon home. One-half of that is $5,871.50. Karri testified that she identified with asterisks on Exhibit O which ones Matt should be responsible for. (App. P. 178 Ll. 4-10). Karri's mother was more than paid for the closing costs, earnest money and taxes while the parties were sharing expenses post-separation. It was inequitable and in essence a windfall to Karri's mother for her to receive payment on the loans twice and furthermore, there is no documentary proof that said loans were legitimate or enforced by Karri's mother.

Matt, therefore, requests this Court modify the District Court's Decree to reflect the true funds available at the time of trial namely, his individual savings account numbered 2860 and his savings account with the premarital Roth IRA be awarded to Matt exclusively. Matt further requests the Court modify the District Court's Decree to reflect that Karri's mother had been

paid in full at the time of trial and that any overpayment to her now be reimbursed to the parties.

C. THE COURT'S ALLOCATION OF ASSETS AND LIABILITIES IS INEQUITABLE AND KARRI SHOULD NOT HAVE RECEIVED ANY PORTION OF MATT'S PREMARITAL TIAA-CREF ASSETS.

The subject and debate over premarital property continues to unfold and unwind in Iowa law. While Iowa law does not automatically set aside or give credit for a party for assets which are brought into the marriage, a premarital asset is a factor for the Court to consider in its division of property. Iowa Code Chapter 598.21(5). Karri's position at trial was that she was entitled to an equal division of the TIAA-CREF account that Matt accumulated prior to the start of the marriage. Both parties testified that there were no contributions made to this account during the marriage and that the only accumulation and value happened as a result of market changes. "In a short-term marriage, the Court typically awards the premarital property to the party that brought it to the marriage. If a marriage lasts only a short time, the claim of either party to the property owned by the other prior to the marriage is minimal at best." *In re Marriage of Hass*, 538 N.W.2d 889 (Iowa Ct. App. 1995). This Court has on more than one occasion determined that a marriage of eight years is in fact a short-term

marriage. *In re Marriage of Verdoorn* (Iowa Ct. App., 2019, No. 18-0969). This Court has found that when there is a short marriage and the other party's contribution to the asset is solely attributed to the individual who owned the asset prior to the marriage that should be set off to that individual as their premarital property. *Id.*

Not only was this marriage short in duration, it was over shortly after it began. Both parties testified that Karri raised the issue of divorce while Matt was deployed to Afghanistan in December of 2010 and then again in April 2011 while Matt was on leave from his deployment. There was no testimony regarding significant contributions to the marriage made by Karri and in fact Matt testified that he felt as though they were "roommates." There is no question that the analysis on this premarital asset of Matt's would be entirely different for a marriage that was of lengthy duration, one were there was children involved, one where an individual made significant contributions to the upkeep of a joint marital asset, but such is not the case here. Karri's participation in this marriage was that of a roommate, not a spouse. It would be inequitable for her to receive any portion of Matt's premarital retirement account and Matt requests the Court reverse the District Court's decision in regard to an award of any portion of Matt's

premarital account to Karri.

It is worth noting that Karri will not depart from this marriage penniless. She received one-half of the proceeds from the sale of the house regarding the equity that had accumulated during the marriage and is walking away free and clear of the credit card debt jointly accumulated by the parties in the amount of $11,353. Upon review of Petitioner's Exhibit 1 which sets forth the division of assets proposed by Matt, Karri would in fact owe Matt in order to completely equalize the property distribution. Matt was not asking at the time of trial that Karri make any such payment to him. Matt's division of assets and liabilities in Petitioner's Exhibit 1 awards Matt his premarital Roth IRA and his premarital TIAA-CREF. It also awards Karri the entirety of her IPERS account. This approach at trial provided for a simple division of assets that required no further orders or tax consequences involved in segregation of funds from the TIAA-CREF account.

III. THE DISTRICT COURT ERRED IN AWARDING KARRI ANY PORTION OF MATT'S NATIONAL GUARD RETIREMENT PENSION.

A. STANDARD OF REVIEW AND PRESERVATION OF ERROR.

The Court's review of the property division in this matter is de novo

because dissolution actions are equitable proceedings tried in equity. Iowa R. App. P. 6.907, *In re Marriage of Vrban*, 359 N.W.2d 420 (Iowa 1984). At the time of trial in this matter, Karri requested that she receive a marital share of Matt's military retirement pension and Matt resisted said request. As such, the issue regarding Matt's military retirement is preserved for appeal.

Matt's enlistment with the National Guard began in 1993, approximately sixteen years before he was married. He was deployed three times prior to being married and deployed on his fourth occasion shortly after the marriage and returning in August of 2011. Because Matt was not engaged in active service for a full ten years of the marriage, the Defense Financing Accounting Service cannot honor an application for the direct payment of any court-ordered division of retired military pay as property. The District Court was aware of this provision and in its orders following the motions to enlarge or amend ordered Matt to pay a portion of his National Guard retirement pension per the "Benson" formula. The Court also ordered that that be done voluntarily by Matt at the time of retirement. (App. P. 66).

As this Court has indicated before, when the marriage is brief and one or both of the parties has a retirement account, equity does not require an

equal division of pension assets accumulated during the marriage. *In re Marriage of Knust*, 477 N.W.2d 687 (Iowa Ct. App. 1991). It's also important to note that Matt's participation in his military service occurred significantly prior to the onset of the marriage. There were 16 years of military service which occurred prior to the start of the marriage and the parties were only married during Matt's last deployment. Matt's benefits which he will receive upon his retirement in 2034 are retirement benefits to compensate him for his service in the military. This was not a marriage of a lengthy duration and not one where there were equal participants in the joint venture of a marriage.

CONCLUSION

For all of the reasons stated above, Matt requests this Court reverse the District Court's order in regard to his Municipal Police and Fire Disability Pension. Matt requests this Court reverse the District Court's order pertaining to Karri's receipt of any premarital funds specifically his TIAA-CREF account, and his premarital Roth IRA erroneously duplicated in the Court's findings. Matt requests this Court reverse the District Court's decision pertaining to the windfall created for Karri's mother and reverse the District Court's order as it pertains to Matt's military pension available to

him in 2034. Karri received one-half of the equity in the marital asset in which she participated. She received one-half of the equity in the marital home. That is equitable in this case as she presumably contributed in some fashion to its maintenance by otherwise preserving the home. "The underlying premise of a Court's analysis is that an equitable property division of any appreciated value of property should be a function of the tangible contributions of each party and not the mere existence of a marital relationship." *In re Marriage of Lattig*, 318 N.W.2d 811 (Iowa Ct. App. 1982). The mere fact that two individuals are married does not automatically mandate that a party receive a share of the other's pension or work. Marriage is a joint venture and our caselaw supports that when it occurs. The Miller marriage was not a joint venture.

REQUEST FOR ORAL ARGUMENT

Petitioner-Appellant/Cross-Appellee hereby does request an oral argument in this matter upon submission of the foregoing brief and argument.

/s/ *Heather A. Prendergast*
Heather A. Prendergast AT0006316
Attorney for Petitioner-Appellant/Cross-Appellee

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

This final brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1), because this brief contains 8,509 words, excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates.

This final brief complies with the typeface requirements of Iowa R. of 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 font size 14, Times New Roman.

/s/ *Heather A. Prendergast* Dated: December 18, 2019
Heather A. Prendergast