IN THE SUPREME COURT OF IOWA

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

Upon the Petition of MATTHEW TAIT MILLER, Petitioner-Appellant/Cross-Appellee, and Concerning KARRI ANN MILLER n/k/a KARRI ANN, Respondent-Appellee/Cross-Appellant.	)	S.C. NO. 19-0969

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

APPELLEE/CROSS-APPELLANT'S BRIEF AND REQUEST FOR ORAL ARGUMENT

Andrew B. Howie
SHINDLER, ANDERSON, GOPLERUD & WEESE, P.C.
5015 Grand Ridge Drive, Suite 100
West Des Moines, Iowa 50265
515-223-4567; Fax: 515-223-8887
howie@sagwlaw.com
ATTORNEY FOR APPELLEE/ CROSS-APPELLANT

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Routing Statement

Appellee/cross-appellant agrees that this case should be transferred to the Court of Appeals because no basis exists for the Supreme Court to retain this case for appellate review. *See* Iowa R. App. P. 6.1101.

Statement of the Case

Nature of the case

This case is an appeal from the district court's "Dissolution Decree" (hereinafter "Decree"), and the court's order on the post-trial motions (hereinafter "Post-trial Ruling"), involving Petitioner/Appellant/Cross-appellee, Matthew Tait Miller (hereinafter "Matt"), and Respondent/Appellee/Cross-appellant, Karri Ann Miller n/k/a Karri Ann (hereinafter "Karri"). (App. at 33-40, 66-67.) The Decree and Post-trial Ruling are final orders giving rise to this appeal. *See* Iowa R. App. P. 6.103(1). Both parties appeal the district court's property division.

Course of proceedings and disposition in district court

Karri generally agrees with Matt's recitation of the course of proceedings and disposition in the district court. However, Karri offers this supplement.

The parties tried this case on September 18, 2018, to the honorable George L. Stigler. (App. at 75.) The court filed its Decree on October 9, 2018. (App. at 33-40.) Each party timely filed a motion to enlarge/amend per Iowa

Civil Procedure Rule 1.904(2), and each resisted the other's motion. (App. at 41-49, 50-58, 59-61, 62-63, 64-65.) In a ruling disposing of the post-trial motions, filed on May 10, 2019, the court denied each party's motion, except to amend the Decree so that Karri would remove Matt of any liability on the vehicle she received in the divorce and Matt's National Guard pension would be divided by Matt paying Karri her share directly rather than through a qualified domestic relations order. (App. at 66-67.) Matt then timely appealed. (App. at 70-71, 73-74.) Karri timely cross-appealed. (App. at 72.)

Statement of the Facts

In response to Matt's statement, several times Matt resorts to facts that imply Karri is at fault for the breakdown of their marriage. For example, Matt writes: "The marriage fell apart almost immediately after it had begun and at that time Matt did not want a divorce. (App. at 33, 88:17-25, 89:1-8)." (Appellant's Br. p14.) Matt mentions that he and Karri "stopped sharing a bed" and Karri wanting a divorce, as well as their lack of physical intimacy. (*See* Appellant's Br. 14-15.) These fault-based points are irrelevant except to confirm that, for all their alleged marital troubles, the parties remained married, resided together, and shared income and expenses. *See In re Marriage of Williams*, 199 N.W.2d 339, 343-45 (Iowa 1972). This court should reject Matt's fault-based points in its analysis of whether the property division was equitable. *Id.*

Karri and Matt met in November 2009. (App. at 86:12-14, 132:14-16, 165:5-10.) They began residing together for "probably two months, three months" prior to getting married. (App. at 132:23-24, 165:17-166:1.) They then married on April 24, 2010. (App. at 7¶2(A), 86:18-21.) Despite Matt's many deployments overseas because of his military service, the parties remained married. (App. at 87:21-89:8.) Matt wanted to stay married to Karri, as he testified: "I had tried so hard for the marriage to work and wanted so long for it to work." (App. at 96:19-97:8; *see* App. at 168:11-17.) Karri also tried to make their marriage work, as she testified:

> September 2014 to September 2015 was probably the most difficult year we could have endured, not just Matt personally, but both of us. September 2014 started with Monte Frana's suicide and to watch Matt struggle through that, to go to the funeral with him, watch him tremble, put my hand over his hand, so other people couldn't see the effect that that was having, followed up with the PTSD diagnosis, follow that up with retirement from the military, the only thing he ever knew as an adult, the only consistent thing, and it was gone. Follow that up with the loss of our dog Chaos. We didn't get to be there when she died. Follow right on the heels of that, the police department says, well, we don't think you can do this job anymore. So you need to go take this assessment, follow it up with this cute little yellow lab coming into our life less than two months after we lost our other yellow lab, Matt making tough decisions deciding to go back to school. He didn't go through that alone. I was right there with him through all of it. Whether he wants to acknowledge it or not. I watched him suffer and there is nothing worse than watching the person that you love suffer so much and there is nothing that you can do except support them, stand by them, hold their hand. There is nothing you can do. So, yeah, I think I maybe brought some value to this marriage. Maybe not the value he wanted. Maybe I didn't make $100,000 in real estate so he could buy a Corvette. I brought some value to this marriage. I watched

> our dogs every time he wanted to go do something that didn't include me. I – I took care of us and our household. I brought some value to this marriage. And I don't know how to put a dollar amount on that. Because I did it because I love him. I love my family. And as a wife, it's what you do. And I am sorry that our marriage has fallen apart, Matt. But I supported you and I loved you and I brought value to us.

(App. at 194:1-195:12.)

In May 2017, Matt moved from their marital home in Waterloo to Iowa City because he started a new job at the University of Iowa. (App. at 76:20-25, 98:2-4, 143:3-17, 169:15-170:8.) At that time, they planned to have Karri move to be with Matt in Iowa City soon thereafter, but that plan ended in July 2017 when Matt told Karri he wanted a divorce. (App. at 143:18-144:9, 170:2-173:3.) Matt had met a woman that month with whom he started a romantic relationship. (App. at 144:5-18, 170:2-173:3.) Karri was "not happy" about his desire to end their marriage. (App. at 144:19-22, 170:2-173:3.) Regardless, Matt petitioned for divorce on August 7, 2017. (App. at 6-9.) At the time of trial, Matt was 42 years-old and resided in Iowa City, while Karri was 37 years-old and lived in Waterloo. (App. at 76:20-25, 158:12-15, 159:7-10.)

Matt had earned a Bachelor's degree in communications and public relations from the University of Northern Iowa in 1999. (App. at 79:11-23, 128:25-129:6.) During the marriage and with Karri's "absolute" support, Matt returned to the University of Northern Iowa and earned his Master's degree in

2017 in health promotion and fitness management. (App. at 138:25-140:1, 142:1-2, 169:10-14.)

Though suffering from PTSD and receiving disability pay due to that condition, Matt worked for the University of Iowa as the Program Director for Military and Veteran Student Services, starting in 2017, providing services and programs for military veterans and dependents of veterans who attend the school. (App. at 77:11-25, 143:3-5; *see* App. at 130:20-131:25 (Matt admitting that his PTSD did not affect his job performance), 132:3-5 (same).) During his diagnosis and treatment for PTSD, Karri supported and encouraged Matt to get help including obtaining a service dog. (App. at 133:17-134:17 (Matt admitting Karri supported him getting help with his PTSD), 135:17-136:10 (Matt admitting Karri's encouragement to get a service dog).) He had no physical conditions and considered himself "pretty athletic", riding RAGBRAI regularly and participating in triathlons and road running. (App. at 140:22-141:7.)

In 2014, which was Matt's last year he was fully employed with the police, he earned $72,889. (App. at 136:21-137:11, 293-298.) At the time of trial, Matt's gross income was $8,266.48 monthly ($99,197.76 annually), with his net monthly income of $6,419.87 ($77,038.44 annually). (App. at 112:9-113:5 (Matt discussing his Aff. of Fin. Status (App. at 207), 147:25-148:7.)

Karri earned a degree from Mount Mercy University in 1999, where she majored in psychology and criminal justice. (App. at 161:24-162:5.) Since

February 2017, Karri was employed as a "work-based learning network program coordinator at Hawkeye Community College." (App. at 160:21-25.) She was paid "just over $40,000" annually.[1] (App. at 161:5-7.) Describing what she does, Karri testified:

> I work with high school students with disabilities and I help them explore career opportunities, help them decide what they want to do with their future so when they leave high school they have a really good plan in place.

(App. at 161:12-17.) Achieving that position had been a long trek. (App. at 162:24-163:7.) At trial, Karri described her job changes:

> I left DHS in January of 2011 after consulting with Matt. It was a highly stressful job. Matt was on deployment. We just decided that I would be better served at home taking care of our dogs and taking care of the house and then when I left Department of Correctional Services, I was working third shift and again that was to benefit our dogs, Matt was working second shift. I wasn't able to get on first shift so we each worked a different shift so that the dogs always had somebody to take care of them. Third shift was really difficult for me. My sleep pattern was extremely disrupted. So I pursued a real estate license. And went into real estate. When Matt unfortunately lost his job at the police department, my insurance was no longer available, so I took another job that did provide insurance and then I got the job at Hawkeye which essentially was kind of a promotion for me from the previous job I had.

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[1] Matt's brief wrongly states Karri's annual income is $60,000. (*See* Appellant's Br. p18 (citing App. at 211-12).) To reach $60,000, Matt is including all of Karri's benefits in addition to her salary of $40,000, which is not an apples-to-apples comparison with Matt's income.

(App. at 163:10-164:3.)

All of other relevant facts will be discussed in the argument.

Argument

Both parties appeal the district court's property division because it is inequitable. To focus the appellate court's attention regarding the many specific items raised in the competing appeals, here is a list of the points appealed by each party.

Matt argues:

- Matt's Municipal Fire and Police Retirement System Disability Pension – Karri should receive none.
- Matt's Capital Group/American Funds Roth IRA and the Veridian Equity Savings 2860 Roth IRA – Matt claims these were wrongly duplicated, and these accounts should have been awarded to him, not Karri.[2]
- Matt's TIAA-CREF – Karri should receive none.
- Matt's National Guard Retirement Pension – Karri should receive none.

Karri argues that the court properly awarded her a marital share of Matt's pensions and the TIAA-CREF account, but raises these errors:

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[2] Karri agrees with Matt that Matt transferred the Capital Group account to the Veridian Account; therefore, to reflect an accurate property award, the court awarded to Karri only the Veridian Account worth $4,301.02, because the Capital Group account had no value. (App. at 52 ¶6.)

- Matt's Municipal Fire and Police Retirement System Disability Pension – Karri should be awarded survivor benefits.
- Matt's National Guard Retirement Pension – Karri should be awarded survivor benefits.
- TIAA-CREF. Karri should have been awarded one-half of the value that it appreciated during the course of the marriage.

1. Standard of review and preservation of error on the district court's error on all issues raised in this appeal and cross-appeal.

Dissolution of marriage actions are tried to the district court sitting in equity. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006); *see* Iowa R. App. P. 6.907. As such, appellate review of issues decided by the trial court de novo. *Id.* In a de novo review, the appellate court must "examine the complete trial record and determine the issues presented anew unimpeded by the finding of the trial court." *In re Marriage of Salmon*, 519 N.W.2d 94, 95 (Iowa Ct. App. 1994). The appellate court does not need to separately consider assignments of error in the trial court's findings of fact and conclusions of law; rather the court makes such appropriate findings and conclusions based on its de novo review. *Lessenger v. Lessenger*, 261 Iowa 1076, 156 N.W.2d 845, 846 (1968). The appellate court gives weight to the fact-findings of the district court, especially in determining the credibility of witnesses, but is not bound by the lower court's findings. Iowa R. App. P. 6.904(3)(g); *see In re Marriage of Fox*, 559 N.W.2d 26, 28 (Iowa 1997). Prior cases have little precedential value and the appellate court must base its decision primarily on the circumstances of the parties. *In re Marriage of Weidner*, 338

N.W.2d 351, 356 (Iowa 1983); *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa Ct. App. 1996).

The parties contested, presented evidence, and the court ruled upon the property division. (*See generally* Decree (App. at 33-40.)) So, error is preserved for review on the issues each party raises in this appeal. *See In re Marriage of Gensley*, 777 N.W.2d 705, 718-19 (Iowa Ct. App. 2009) (holding that an issue that was not presented to the trial court will not be considered for the first time on appeal).

2. Applicable legal principles regarding the property division in a dissolution of marriage.

Well-settled legal principles guide a court's division of marital property in an action dissolving a marriage. Karri and Matt are entitled to a just and equitable share of the property accumulated through their joint efforts. *See* Iowa Code § 598.21(5) (2019); *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005); *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). When distributing property, the court should take into account the criteria codified in Iowa Code section 598.21 (2019). Among the many factors to consider are: length of marriage; property brought to the marriage by each party; the contributions of each party to the marriage; giving appropriate economic value to each party's contribution in homemaking; the earning capacity of each party; and the provisions of an ante nuptial agreement. § 598.21(5); *Russell* at 246. The ultimate question is whether the distribution of property is equitable under the

facts of the particular case. *In re Marriage of Richards*, 439 N.W.2d 876, 880 (Iowa Ct. App. 1989).

While Iowa courts do not require an equal division or percentage distribution of marital assets, *Russell*, 473 N.W.2d at 246, "it should nevertheless be a general goal of trial courts to make the division of property approximately equal." *In re Marriage of Miller*, 552 N.W.2d 460, 464 (Iowa Ct. App. 1996) (citing *In re Marriage of Conley*, 284 N.W.2d 220, 223 (Iowa 1979) (finding equality of property division need not be achieved with "mathematical exactness.")). All economic aspects of the divorce decree must be viewed as an integrated whole when considering the equity of the distribution. *In re Marriage of McFarland*, 239 N.W.2d 175, 179 (Iowa 1976).

"It is the net worth of the parties at the time of the trial which is relevant in adjusting their property rights." *In re Marriage of Helmle*, 514 N.W.2d 461, 463 (Iowa Ct. App. 1994). To determine Matt and Karri's "net worth", the trial court should give each asset and debt its value as of the date of trial. *Locke v. Locke*, 246 N.W.2d 246, 252-53 (Iowa 1976); *In re Marriage of Hagerla*, 698 N.W.2d 329, 333 (Iowa Ct. App. 2005). "The purpose of determining the value is to assist the court in making equitable property awards and allowances." *In re Marriage of Moffatt*, 279 N.W.2d 15, 19 (Iowa 1979). Assets should be valued at fair market value, if this can be reasonably ascertained. *See In re Marriage of Dennis*, 467 N.W.2d 806, 808 (Iowa Ct. App. 1991). An owner may testify as to actual value

without a showing of general knowledge of market value due to an owner's peculiar knowledge of the quality, cost, and condition of the property. *In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa Ct. App. 1997). The appellate court will affirm the trial court's value when the valuations have supporting credibility findings or corroborating evidence and the value is within the permissible range of the evidence. *In re Marriage of Decker*, 666 N.W.2d 175, 180 (Iowa Ct. App. 2003); *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999).

3. The district court did not err in awarding Karri a portion of Matt's Municipal Fire and Police Retirement System Disability Pension per the *Benson* formula.

A key asset the parties disputed at trial concerned Matt's Municipal Fire and Police Retirement System Disability Pension. (*See* App. at 180:15-182:6, 301-302.) As Matt testified, "my disability is … for life." (App. at 145:10-13.) Matt receives $2,651 monthly. (App. at 219-222, 117:11-16.) In its Decree, the court found:

> Respondent also seeks an award of the petitioner's VA disability payments based upon his P.T.S.D. and permanent disability ratings. This type of disability payment may be considered in the equitable granting of support. It is not to be considered a marital asset. *In Re Marriage of Howell*, 434 N.W.2d 632 (Iowa 1989).
>
> This was a very short-term marriage. Although on paper the parties have been married for eight-and-a-half years, in truth, the marriage has effectively been over for the last six years. The court will make no distribution of Matthew's disability payments to Karri Ann. Matthew bore the injuries which have resulted in this award.

> Given the short-term that the parties were constructively married, it would not be equitable to Matthew that he be required to split this distribution with Karri Ann.
>
> *The court reaches a difference result with regard to Matthew's police pension.* Pensions, including disability pensions, are not for the sole benefit of the disabled employee, but should be considered as available to benefit the spouse and children as well. *In Re Marriage of DeNuys*, 543 N.W.2d 894 (Iowa 1996). Matthew's police pension shall be divided per the *Benson* formula.

(App. at 36 (emphasis added).)

At trial and now again on appeal, Matt argues it "was improper and contrary to Iowa Law for Karri to receive any portion" of his Municipal Fire and Police disability pension. (Appellant's Br. p20; *see* App. at 120:17-20, 157:14-18, 202-204.) However, the legal principles Matt cites bear no effect on the court's decision to divide that asset. Particularly, throughout his brief, Matt reiterates his argument that "the marriage was effectively over months after the marriage began" as his basis to deny Karri her marital share. (*See* Appellant's Br. p21, 25.) That argument is wrong by violating two principles of Iowa law. First, Matt injects fault into the court's analysis. Second, Matt wants the pension set aside as if the marriage did not occur – value it as of the date of marriage. Both arguments are incorrect and do not support Matt's claimed error by the district court.

If the court accepted Matt's argument that the marriage was "effectively over" soon after it began, the court would have to accept that the parties were not spouses and divide the property when they fell out of love. Matt's argument

would force Iowa divorce courts to resort to recriminations of who was to blame for the marital breakdown or have to weigh the veracity of parties' claims of who fell out of love first – evidence that bears no weight on the court's decision regarding property division since Iowa adopted no-fault divorce in 1970. *In re Marriage of Williams*, 199 N.W.2d 339, 344 (Iowa 1972). In *Williams*, the Iowa Supreme Court interpreted the new no-fault based dissolution of marriage statute governing how court's approach divorce.

> [T]he overriding legislative purpose of the dissolution act is to remove fault-based standards for termination of marriages. *** In order to carry out this obvious legislative intent and give effect to the object sought to be accomplished, we hold not only the 'guilty party' concept must be eliminated but *evidence of the conduct of the parties insofar as it tends to place fault for the marriage breakdown on either spouse must also be rejected as a factor in awarding property settlement* or an allowance of alimony or support money. Usually both spouses contribute to the breakdown of the marital relations which makes necessary an adjustment to their rights and obligations

Id. at 343, 345 (emphasis added). Since *Williams*, Iowa courts have routinely rejected any litigant's attempt to reintroduce fault as a basis for the district court to divide property or award alimony. *See In re Marriage of Cooper*, 769 N.W.2d 582, 586-87 (Iowa 2009) (refusing to consider a postnuptial agreement introducing fault, specifically infidelity, that affected the property distribution); *In re Marriage of Olson*, 705 N.W.2d 312, 316-17 (Iowa 2005) (refusing to consider wife's gambling addiction to deny alimony); *In re Marriage of Goodwin*, 606 N.W.2d 315, 324 (Iowa 2000) (domestic abuse should not be considered in connection with

property distribution "because it would introduce the concept of fault into a dissolution-of-marriage action").

Unfortunately, Matt offered fault-based evidence and the district court wrongly accepted fault when dividing their property. Matt, at trial and now again on appeal, argues how the parties' "marriage lacked any physical intimacy and Karri and Matt were roommates rather than a married couple." (Appellant's Br. p14; *see* Tr. 71:1-10.) The district court wrongly latched onto that improper analysis when it wrote: "Although on paper the parties have been married for eight-and-a-half years, in truth, the marriage has effectively been over for the last six years." (App. at 36; *see* App. at 50 ¶2 (asking the court to amend its Decree regarding when the parties' marriage was "effectively … over").) Fault has no basis in the court's decision to divide the parties' property. *Williams*, 199 N.W.2d at 344. Even if they had a marriage "on paper", it was still a marriage. Iowa law does not permit the court to consider the reasons why the parties decided to remain married instead of divorcing sooner. *See id.* The objective fact is: the parties remained married. Therefore, any of Matt's arguments about what kind of marriage they had is an improper argument. In addition, the facts refute the lower court's conclusion that the "marriage fell apart almost immediately." (*See* App. at 33.) At trial, both parties testified how they wanted to make their marriage work, as well as how Karri supported Matt in treating his PTSD, going back to school, and changing jobs. (App. at 96:19-97:8, 133:17-134:17, 135:17-

136:10, 138:25-140:1, 142:1-2, 194:1-195:12.) The district court's fundamental error that this was not a real marriage undermined its division of the property which this court should modify.

Without Matt's fault-based arguments, Matt has no argument. Matt's police pension is marital property subject to division. *In re Marriage of Denuys*, 543 N.W.2d 894, 898 (Iowa 1996) (Municipal Fire and Police Retirement System disability pension is property subject to division); *In re Marriage of Branstetter*, 508 N.W.2d 638, 640 (Iowa 1993). Therefore, Matt's second argument – the court should ignore this pension as a marital asset, valuing it as if the marriage did not occur – is wrong. Pensions are divided by the *Benson* formula – the percentage method. *In re Marriage of Sullins*, 715 N.W.2d 242, 248 (Iowa 2006) (citing *In re Marriage of Benson*, 545 N.W.2d 252, 255 (Iowa 1996)). "Under the percentage method, the non-pensioner spouse is awarded a percentage (frequently fifty percent) of a fraction of the pensioner's benefits (based on the duration of the marriage), by a qualified domestic relations order (QDRO), which is paid if and when the benefits mature." *Sullins* at 250 (citing *Benson* at 255). The *Benson* formula is a fraction, the "fraction represents the portion of the pension attributable to the parties' joint marital efforts." *Id.* "The numerator in the fraction is the number of years the pensioner accrued benefits under the plan during the marriage, and the denominator is the total number of years of benefit

accrual." *Id.* The district court properly ordered Matt's Municipal Fire and Police Pension divided per the *Benson* formula.

Matt's reliance on *In re Marriage of O'Connor*, 584 N.W.2d 575 (Iowa Ct. App. 1998) is misplaced. In *O'Connor*, the Iowa Court of Appeals affirmed the district court's refusal to divide the husband's police pension on equitable grounds. *Id.* at 576-77. Specifically, the court of appeals found that the husband's disability had "decreased his earnings" and there was no showing he would "be able to earn additional income." *Id.* at 577. In addition, the wife was about to complete her nursing degree which would "substantially increase her income." *Id.* Here, Matt was gainfully employed full-time earning $51,000 annually. (App. at 112:9-113:5 (Matt discussing his Aff. of Fin. Status (App. at 207), 146:10-12.) During the marriage and after receiving his disability pension, Matt returned to school, earned his Master's degree, and used that higher education to obtain better employment. (App. at 138:25-140:1, 142:1-2.) Matt confirmed in his trial testimony several times that his PTSD – the cause of his entitlement to the disability pension – had no effect on his ability to work or his current job performance. (App. at 130:20-131:25, 132:3-5.) In contrast to the wife in *O'Connor*, Karri had finished her education and, though gainfully employed full-time, earned $40,000 annually, which was significantly less than Matt. (App. at 161:5-7.) On those facts, it was equitable to divide Matt's police pension via the *Benson* formula.

As a final argument, Matt wrongly claims:

> 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).

(Appellant's Br. p18.) Other than his self-serving statement, the evidence does not support Matt's argument. Matt admitted his net monthly income at the time of trial was $6,419.87. (App. at 112:9-113:5 (Matt discussing his Aff. of Fin. Status (App. at 207).) The district court's division of Matt's police pension to award Karri a Benson share is justified and equitable and this court should affirm.

4. In Matt's appeal, Matt argues he should have received his entire TIAA-CREF retirement account; instead, for Karri's cross-appeal, the appellate court should award Karri more of that account than the $20,000 awarded by the district court.

Matt argues: "In this case, the Court's division of assets and debts in its Decree is difficult to understand at best." (Appellant's Br. p29.) Matt then raises several sub-arguments to support his ultimate claim that the district court should not have awarded Karri any portion of this TIAA-CREF account. To discuss his ultimate objective, Matt's minor arguments will be dispelled.

A. Matt's claimed errors in the district court's overall property distribution.

(1) The district court erroneously double-counted an asset.

Matt argues:

> The [district c]ourt'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.

(Appellant's Br. p 31.) Explaining how the district court erred, Matt claims:

> The [district c]ourt 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 [district c]ourt 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 [district c]ourt 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 [district c]ourt mentioned that in its findings, the [district c]ourt 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.

Id. at 29-30. For this appeal, Karri accepts two of Matt's points: 1) the "Capital Group/American" in Karri's column should have been listed as $0 because Matt transferred the remaining balance (after he withdrew funds to pay expenses)[3] to the Veridian equity savings account 2860; and 2) that the district court properly valued the Veridian equity savings account at $4,301.02, considered it to be marital property, and awarded the $4,301.02 to Karri. Notably, when making those adjustments to the property division, the inequity to Karri is more pronounced which then justifies this court to deny Matt's request on appeal and grant Karri's appellate request to increase the amount she receives from Matt's TIAA-CREF account.

(2) The district court did not err by considering the debt owed to Karri's mother.

In the Decree, the court stated: "Karri's mother loaned them money to buy the home and at various other times during the marriage. $11,743 remains due and owing on those debts to Karri Ann's mother." (App. at 34.) The court accepted the parties' stipulation that the house would be sold and, from the

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[3] Matt testified: "I had a premarital Roth IRA that I had to cash out to pay for divorce expenses and other related expenses during the divorce." (App. at 106:14-22 (referencing Ex. 1 line "Capital Group/American Funds Roth IRA" showing no value); *see* App. at 107:5-13, 156:1-25.)

proceeds, "the loans to the two financial institutions *and to Karri Ann's mother* should be paid from the proceeds of the sale and any remaining amount to be divided equally among petitioner and respondent." (App. at 34-35.)

Matt's property division in "Exhibit 1" did not include the debt owed to Karri's mother

> because that loan had already been paid in full at the time of trial. (App. P. 178; 179; 299). … 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.

(Appellant's Br. p32 (citing Resp't Ex. O).) As a remedy for the district court's error, Matt asks the appellate court to award him exclusively: 1) "his individual savings account numbered 2860"; 2) "and his savings account with the premarital Roth IRA." (Appellant's Br. p33.) In his remedy, Matt admits these two accounts were marital, but he should receive the accounts' entire values to equalize the property division – offset the debt to Karri's mom that had already been paid. (*Id.*) Matt's argument has no merit.

First, as reflected in the court's property division table, the court did not assign the debt to Karri Ann's mother to either party. (App. at 37.) Rather, the court had the debt being paid from the proceeds of the sale of the marital home. (App. at 39 ¶2.) Thus, if the remaining balance of the debt, whether it was any amount between $11,743 and $0, was divided equally between the parties. (*See* App. at 121:19-125:10 (Matt acknowledging the debt to Karri's mother and that

it may have been paid back).) Thus, there is no harm or inequity to Matt because the debt was extinguished through the house sale.

B. This court should deny Matt's appeal to award the entire TIAA-CREF account to him rather than the $20,000 of that account awarded to Karri.

Regarding Matt's TIAA-CREF account, the district court found:

> Matthew has a TIAA account of a value of $166,000. At the time of the marriage the account was approximately $80,000. During the marriage the parties made zero contributions to that asset. The growth in Matthew Tait's TIAA retirement account is due to market fluctuations and growth over the years since the April 2010 marriage. The $80,000 in the account at the time of the marriage is indisputably premarital property.

(App. at 35.) The court then acknowledged that Iowa law does not automatically set aside premarital property to the person who brought it into the marriage. (*Id.*) The court also noted that short marriages tend to support awarding the premarital property to the spouse who owned it prior to the marriage. (*Id.*) Considering the foregoing, the district court concluded:

> Because of the significant difference in assets awarded to each of these parties, the court will award $20,000 of the $86,000 increase in the TIAA account to Karri Ann. The balance will be awarded to Matthew.

(App. at 36.) In this appeal, Matt claims he should have received the entire TIAA-CREF account. (App. at 111:7-18, 120:21-121:7; *see* Appellant's Br. p34-35.) In support of his claim, Matt again raises fault to justify setting aside the entire account to him: "Karri's participation in this marriage was that of a roommate,

not a spouse." (Appellant's Br. p35.) As with the improper use of fault-based evidence in whether to divide Matt's Municipal Fire and Police Retirement System Disability Pension, the same applies here. (*See* Appellee's Br. part 3, supra.)

Initially, Karri did not ask the district court to award her one-half of the entire $166,237.20 account balance. (App. at 176:16-177:7; *see* App. at 153:11-154:1.) Rather, she requested she receive one-half of the amount the account appreciated during the marriage. (App. at 153:11-154:1, 155:2-14, 191:19-192:1.) Specifically, she testified that the account's balance at the time of their 2010 marriage, $74,152.30, should have been awarded to Matt, so she requested the court award her $46,042.45, which is one-half of the account's increase in value during their marriage ((166,237.20-74,152.30)÷2). (App. at 301-302, 176:16-177:7, 201:5-16; *see* App. at 230, 109:10-111:22, 155:2-14.) Instead, the court only awarded her $20,000. (App. at 36-37, 39.) The court should have awarded her the $46,042.45 she requested.

Without a fault-based reason, Matt's only argument as to whether the lower court should have set aside the entire value of the TIAA-CREF account, $166,237.20, to himself is because it was a premarital asset. (App. at 111:7-18, 120:21-121:7; *see* Appellant's Br. p34-35.) How Iowa court's divide premarital property is well established. "'[T]he property included in the divisible estate includes not only property acquired during the marriage by one or both of the

parties, but property owned prior to the marriage by a party.'" *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006) (quoting *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005)). Iowa law does not automatically set aside or give credit to a party for the assets each spouse brought into the marriage. *Id.*; *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996). However, "[p]remarital property does not merge with and become marital property simply by virtue of the marriage." *In re Marriage of Wendell*, 581 N.W.2d 197, 199 (Iowa Ct. App. 1998). "[P]roperty brought to the marriage by each party" is merely one factor among many to be considered under section 598.21(5). § 598.21(5)(b); *Schriner* at 496. When dividing appreciation of premarital property, it does not matter whether the property has appreciated fortuitously or through the parties' efforts. *In re Marriage of Fennelly*, 737 N.W.2d 97, 104 (Iowa 2007).

As the district court properly concluded, there is a "significant difference in assets awarded to each of these parties". (App. at 36.) Awarding the entire $166,237.20 balance of the TIAA-CREF account to Matt is inequitable. In fact, to make the division more equitable, Karri deserved to receive substantially more than $20,000 from the TIAA-CREF account. At the beginning of their marriage, the savings plan had a value of $74,152.30. (App. at 301-302, 176:16-177:7, 201:5-16.) At the end of their marriage, it had appreciated in value to $166,237.20. (App. at 229.) The district court awarded Karri $20,000, far less than half of the amount the account increased during the marriage. The net

increase in value is $92,084.90 (166,237.20-74,152.30), of which Karri is entitled to half, or $46,042.45. *See Sullins*, 715 N.W.2d at 247; *Schriner*, 695 N.W.2d at 496. This court should modify the lower court's Decree to order that Karri should receive a total of $46,042.45 of Matt's TIAA-CREF.

C. Regarding Karri's cross-appeal, the overall property split is inequitable which this court should correct by ordering Karri to receive more than $20,000 from Matt's TIAA-CREF account.

Matt argues: "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." (Appellant's Br. p36.) That is wrong. His exhibit 1 shows that Matt would owe $3,001.96 to equalize the property distribution. (App. at 204.)

On pages 5-6 of the Decree, the court utilized Matt's "Exhibit 1" to show the property division. (App. at 37-38.) The district court's table purports to show a foundational basis for the overall property distribution, but several errors appear, which establishes an overall inequitable property division.

First, as argued above, the "Capital Group/American" which the court valued at $8,843.00, in fact had no value. Second, valuing Karri's IPERS at $7,110.00, is in error because, had the court divided it, Matt would have received his share via the *Benson* formula; therefore, the Table has no value regarding Karri's IPERS. (*See* App. at 120:5-13 (Matt testifying that he knows the IPERS

has no current cash value, but would be divided per *Benson*); Appellant's Br. p32 (admitting the district court's error of ascribing any value to Karri's IPERS).)

Third, the district court erred by failing to include Matt's 2007 Harley Davidson motorcycle in the property division. (*See* App. at 37, 104:14-21, 174:25-175:7.) Matt bought the motorcycle prior to the marriage but, after the marriage, he titled it as his and Karri's joint property. (App. at 104:14-21, 174:25-175:7.) Premarital property is not separate property and, therefore, is subject to division. *Sullins*, 715 N.W.2d at 247. So, the corrected Table reflects the motorcycle as a $5,865 asset awarded to Matt. (*See* App. at 202-204, 104:14-21.)

Fourth, both parties admitted that the vehicle Karri received in the divorce – 2012 GMC Yukon – had a loan against it of $7,110.61, which Karri was ordered to pay. (App. at 39 ¶4; *see* App. at 105:9-25.)

Fifth, Matt admitted that some of the personal property each party received in the divorce had significant value, yet the district court did not include those items in the property table. (*Compare* App. at 149:11-152:5 & App. at 202-204 *with* App. at 37-38.) Karri disputed Matt's values, but accepting Matt's values for the sake of this appeal, Matt's overall net property distribution far outweighed Karri's.

Assets and Liabilities			
***highlighted rows are changes from the Decree p4-5**			
Item	**Value**	**Distribution**	
		Husband	**Wife**
Real Estate: SOLD			
Vehicles			
2012 GMC Sierra Pickup	$ 18,350.00	$ 18,350.00	
2012 GMC Yukon	$ 17,675.00		$ 17,675.00
DEBT	$ (7,110.61)		$ (7,110.61)
2007 Harley Davidson ($5,865) (premarital)		$ 5,865.00	
Securities			
Karri's IPERS (37,719.59) (5,208.36/mo benefit age 65)			
Voya Iowa RIC 457(b)	$ 2,175.91		$ 2,175.91
Voya Iowa RIC 401(a)	$ 1,005.12		$ 1,005.12
TIAA $166,237.20 (Premarital)(Matt) Date of Marriage 4-24-10 12-31-11 value was $78,708.15, do not have any for 2010 (Difference of $87,529.05)	$ 166,237.20	$ 144,000.00	$ 20,000.00
Capital Group/American Funds Roth IRA Distribution 10-27-17 (premarital) $8,843.10 from Veridian Bank Account 2860	$ -		$ -
Bank Accounts			
Veridian Savings (5220) (J)	$ 1,525.05	$ 1,525.05	
Veridian Share Draft (5220) (J)	$ 57.72		$ 57.72
Veridian Share Draft Acct 2 (2860) (H)	$ -	$ -	
Veridian Equity Savings Acct. 1 (2860)(H)	$ 2,843.74		$ 2,843.74
Veridian Equity Savings Acct. 4 (2860)(H)	$ 5.00		$ 5.00
Veridian Equity Savings 2860 (Premarital Roth IRA $4,301.02)	$ 4,301.02		$ 4,301.02
Veridian Checking (2790) (W)	$ 68.50		$ 68.50
Veridian Savings (2790) (W)	$ 117.81		$ 117.81
Furniture	$ 5,000.00	$ 1,200.00	$ 3,800.00
Firearms	$ 400.00	$ 400.00	
Fitness Equipment	$ 2,000.00		$ 2,000.00
Matt's Safe	$ 1,500.00	$ 1,500.00	
Karri's Safe	$ 800.00		$ 800.00
Debts			
Credit Card Debt	$ (11,353.70)	$ (11,353.70)	
Lowe's Advantage Card (Synchrony)	$ -		$ -
Total:	$ 205,597.76	$ 161,486.35	$ 47,739.21
Offset		$ (56,873.57)	$ 56,873.57
		$ 104,612.78	$ 104,612.78

After correcting the district court's errors, the overall property division is inequitable to Karri. In the net assets each party received, Matt received $161,486.35 and Karri received $47,739.21. Even with a short marriage, that substantial difference is unjustified. At trial, Karri asked that she receive one-half of the appreciated value of Matt's TIAA-CREF account – $46,042.45. Though Karri is justified in seeking more in order to fully equalize the property division, that is all she wants on appeal. *In re Marriage of Miller*, 552 N.W.2d 460, 464 (Iowa Ct. App. 1996) ("it should nevertheless be a general goal of trial courts to make the division of property approximately equal.").

5. The district court did not err by awarding Karri a portion of Matt's National Guard retirement pension.

The district court ordered Matt's National Guard pension be divided per the *Benson* formula. (App. at 36.) The district court concluded:

> The majority of Matthew Tait's military pension came from active duty training, IDT, annual 15-day yearly training cycles, and deployment points for overseas service. Only those points earned by Matthew after the April 2010 wedding until his retirement in 2015 shall be considered in the *Benson* formula distribution.
>
> Since April 2010, the date of the marriage, Matthew has accumulated 929 points for retirement pay. He has a total of 3,522 retirement points. Fifty percent of 929/3522 is 13.1%, which is Karri Ann's share of Matthew's military pension.

(App. at 36.)

Like Matt's police pension, Matt argues that he should not have to share it with Karri because the marriage was so short. (Appellant's Br. p37-38.) In

summary, Matt claims that because "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", Karri deserves none of his military retirement pay. (Appellant's Br. p38.) That is not a basis to deny Karri her *Benson* share of his National Guard retirement pension. *See Benson*, 545 N.W.2d at 255. She was married to him when he was deployed with the military. She stood by him, supported him, and remained married to him when he returned from his deployment, lost his job with the police, went back to school to earn his Master's, and embarked on a new career with the University of Iowa. . (*See* App. at 183:2-15.) It is inequitable to deny her a share of his National Guard retirement pension. *See In re Marriage of Miller*, 552 N.W.2d 460, 464 (Iowa Ct. App. 1996) ("it should nevertheless be a general goal of trial courts to make the division of property approximately equal.").

6. In Karri's cross-appeal, the district court erred by failing to grant Karri a right to survivor benefits of both Matt's Municipal Fire and Police Retirement System Disability Pension and Matt's National Guard retirement pension.

Survivor benefits in a pension plan are property subject to division. *In re Marriage of Klein*, 522 N.W.2d 625, 628 (Iowa Ct. App. 1994) (awarding non-participating spouse a right to one-half of a percentage of the pension); *see In re Marriage of Davis*, 608 N.W.2d 766, 770-71 (Iowa 2000); *see generally In re Marriage of Morris*, 810 N.W.2d 880 (Iowa 2012) (discussing the importance for the divorce

court to set forth survivorship rights in a pension divided by the court). In this case, the court awarded Karri a share of Matt's police pension and National Guard retirement pension calculated by the *Benson* formula. (App. at 39 ¶6.) Unfortunately, the Decree is silent as to survivor benefits.

As the Supreme Court warned, divorce decrees awarding each party their share of the marital property should also address "survivor rights when dividing retirement benefits." *Morris*, 810 N.W.2d at 881. Despite Karri requesting at trial and her post-trial motion that she receive survivor benefits of Matt's pension, (App. at 183:19-186:21, 187:8-16, 274-292, 50-51 ¶3), the court refused even though the court awarded her a share of each pension via *Benson*, (*see* App. at 39 ¶6, 66 ¶3). Notably, the district court specifically discussed the survivor benefits and Karri's marital share on the record. (App. at 183:19-186:21, 198:9-200:18, 274-292.) For the same reasons it is equitable to award Karri a share of Matt's police and National Guard pensions as calculated by the *Benson* formula, the district court should have ordered that the qualified domestic relations order require Karri to be listed as a survivor in the same fraction-amount she is entitled prior to Matt's death. *See Klein*, 522 N.W.2d at 628.

Conclusion

Based on the foregoing, the appellate court should:

1. Affirm on all issues raised by Matt in his appeal;

2. Modify the Decree to provide that Matt designate Karri as a survivor in any benefits he receives on both his Municipal Fire and Police Retirement System Disability Pension and his National Guard retirement pension;

3. Increase the amount Karri receives from the TIAA-CREF to $ 46,042.45 of Matt's TIAA-CREF;

4. Since the October 2018 Decree, Matt has received periodic payments from his Municipal Fire and Police Retirement System Disability Pension. Karri is entitled to her *Benson* share as of October 2018, and Matt should be ordered to pay her share of the pension retroactive to the date of the divorce. *In re Marriage of Duggan*, 659 N.W.2d 556, 561 (Iowa 2003); and

5. order Matt to pay the court costs in this matter.

Request for Oral Argument

Counsel for Appellant respectfully requests to be heard in oral argument upon submission of this case.

Respectfully submitted,

/s/ Andrew B. Howie

Andrew B. Howie, AT0003716
SHINDLER, ANDERSON, GOPLERUD & WEESE, P.C.
5015 Grand Ridge Drive, Suite 100
West Des Moines, Iowa 50265
515-223-4567; Fax: 515-223-8887
howie@sagwlaw.com

Certificate of Service

Pursuant to Iowa Appellate Procedure 6.701 and 6.901, the undersigned hereby certifies that on the 19th day of December 2019, the Brief was filed with the Supreme Court via EDMS and electronically served on all parties of record.

/s/ Andrew B. Howie
Andrew B. Howie

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December 19, 2019
Date