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_____/s/ **Webb L. Wassmer**_____
WEBB L. WASSMER

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER SUSAN HUTCHINSON'S PETITION WAS UNTIMELY, INCLUDING THE QUESTIONS OF WHETHER THE ALLEGED FAILURE TO DISCLOSE THE GE PENSION PLAN WAS INTRINSIC OR EXTRINSIC FRAUD AND WHETHER SUSAN HUTCHINSON FAILED TO USE REASONABLE DILIGENCE IN DISCOVERING AND MAKING HER CLAIM?

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City of Chariton v. J.C. Blunk Construction Co., 253 Iowa 805, 112 N.W.2d 829 (1962)

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In re: Marriage of Bacon, Iowa Ct. App. No. 1-717/11-0368 (Iowa Ct. App. 10/5/11)

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Iowa R. Civ. P. 1.1013(1)

Iowa R. App. P. 6.907

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II. WHETHER SUSAN HUTCHINSON PROVED THE ELEMENT OF JUSTIFIABLE RELIANCE WHEN SHE SIGNED THE GE CONSENT FORM WAIVING ANY CLAIM TO THE GE PENSION WITHOUT APPARENTLY KNOWING WHAT SHE WAS SIGNING AND WITHOUT HER OR HER ATTORNEY MAKING ANY INQUIRY AS TO WHAT THE GE CONSENT FORM RELATED TO?

Benson v. Richardson, 537 N.W.2d 748 (Iowa 1995)

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

Spreitzer v. Hawkeye State Bank, 779 N.W.2d 726 (Iowa 2009)

Iowa R. App. P. 6.907

Iowa Uniform Jury Instruction No. 810.2.

Iowa Uniform Jury Instruction No. 810.8

III. WHETHER GREG HUTCHINSON SHOULD BE AWARDED HIS ATTORNEYS' FEES RELATING TO THE DISMISSAL OF COUNT 2 OF THE PETITION SEEKING MODIFICATION OF ALIMONY?

De Stefano v. Apts. Downtown, Inc., 879 N.W.2d 155 (Iowa 2016)

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GreatAmerica Leasing Corp. v. Cool Comfort Air Conditioning & Refrigeration, Inc., 691 N.W.2d 730 (Iowa 2005)

Smith v. Iowa State Univ. of Sci. & Tech., 885 N.W.2d 620 (Iowa 2016)

Vaughan v. Must, Inc., 542 N.W.2d 533 (Iowa 1996)

Iowa Code § 598.21C

Iowa Code § 598.36

Iowa R. Civ. P. 1.904(2)

Iowa R. Civ. P. 1.1012

IV. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN AWARDING SUSAN HUTCHINSON SUBSTANTIALLY MORE IN ATTORNEYS' FEES THAN SHE ASKED FOR AS A DISCOVERY SANCTION AND THE RELATED QUESTION OF WHETHER THE DISTRICT COURT'S REFUSAL TO EXPLAIN HOW IT CALCULATED THE AMOUNT PRECLUDES MEANINGFUL APPELLATE REVIEW?

Boyle v. Alum-Line, Inc., 773 N.W.2d 829 (Iowa 2009)

De Stefano v. Apts. Downtown, Inc., 879 N.W.2d 155 (Iowa 2016)

Gabelmann v. NFO, Inc., 606 N.W.2d 339 (Iowa 2000)

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Sioux Pharm, Inc. v. Eagle Labs., Inc., 865 N.W.2d 528 (Iowa 2015)

Iowa R. Civ. P. 1.904(2)

V. WHETHER THE DISTRICT COURT'S AWARD OF A PARTIAL INTEREST TO SUSAN HUTCHINSON OF GREG HUTCHINSON'S INTEGRATED SALES 401(k) ACCOUNT, AN ASSET ACQUIRED POST-DISSOLUTION, MUST BE REVERSED FOR LACK OF ANY AUTHORITY TO MAKE SUCH AN AWARD?

In re M.A., 895 N.W.2d 477 (Iowa Ct. App. 2017)

In re Marriage of Engler , 532 N.W.2d 747 (Iowa 1995)

STATEMENT OF THE CASE

Appellant/Respondent Robert Gregory Hutchinson ("Greg Hutchinson") and Appellee/Petitioner Susan Gayle Hutchinson ("Susan Hutchinson") were divorced on November 2, 2010. (App. 124 - Petitioner's Exhibit 1 - Decree of Dissolution). Their assets were divided pursuant to the Decree of Dissolution and an incorporated Stipulation. (App. 127 - Petitioner's Exhibit 1 - Stipulation).

The parties went their separate ways until approximately five and a half years later. On April 20, 2016, that date, Susan Hutchinson filed a Petition to Correct, Vacate or Modify Decree of Dissolution of Marriage, alleging that Greg Hutchinson had failed to disclose a pension from his former employer General Electric ("GE Pension"). (App. 9 - Petition). In Count 1 of her Petition, she alleged a claim for fraud. *Id.* In Count 2, she alleged a claim for modification of alimony. *Id.*

Greg Hutchinson filed a Motion for Summary Judgment. (App. 18 - Respondent's Motion for Summary Judgment). The District Court denied the Motion as to Count 1, but granted the Motion as to Count 2. (App. 23 - Ruling on Motion for Summary Judgment).

The case proceeded. On August 21, 2019, Susan Hutchinson filed a Motion for Discovery Sanctions. (App. 43 - Motion). The District Court granted that Motion on September 4, 2019. (App. 45 - Order Assessing Sanctions). On September 17, 2019, Susan Hutchinson filed a Renewed Motion for Discovery Sanctions. (App. 50 - Renewed Motion). The District Court also granted that Motion on October 9, 2019. (App. 55 - Pretrial Conference Order and Ruling on Motions). Those Orders left the determination of the amount of sanctions to the trial judge.

The case was tried to the District Court on November 5-6, 2019. The District Court entered its Modified Decree on December 13, 2019. (App. 241 - modified Decree). The District Court found for Susan Hutchinson on almost all of her claims and arguments. Greg Hutchinson filed a Rule 1.904(2) Motion, which the District Court denied in part on December 30, 2019. (App. 252 - Motion; App. 255 - Ruling).

The rulings that are at issue in this appeal include:

1. Rejection of Greg Hutchinson's argument that Susan Hutchinson's claim is barred by the one-year limitations period set forth in Iowa Rule of Civil Procedure 1.1013(1);
2. The District Court's finding that Susan Hutchinson justifiably relied upon the alleged concealment;

3. The District Court's refusal to award Greg Hutchinson his attorneys' fees for successfully obtaining the dismissal of Count 2 of Susan Hutchinson's Petition, requesting modification of alimony; and
4. The District Court's award of \$7,056 in attorneys' fees against Greg Hutchinson as a discovery sanction.
5. The District Court's award of a portion of Greg Hutchinson's Integrated Sales 401(k), a post-dissolution asset, to Susan Hutchinson.

Greg Hutchinson worked at GE, starting in 2000. (Tr. Tr. 12, 278). GE had a defined benefit pension plan, the GE Pension Plan. (Tr. Tr. 12-13). That is the asset at issue in this case. Greg Hutchinson believed that he would not receive any benefits from the GE Pension Plan unless he retired with GE. (Tr. Tr. 63, 64, 287-89). Susan Hutchinson did not know if the GE Pension had any value in 2010 at the time of the dissolution. (Tr. Tr. 136-37). Greg Hutchinson also had a 401(k) Plan through GE and Fidelity. (Tr. Tr. 12-13).

In the divorce, Susan Hutchinson was represented by attorney Amy Reasner and Ms. Reasner's legal assistant, Michelle Barnes.¹ (Tr. Tr. 150,

¹The client is bound by the acts of the attorney within the scope of the attorney's employment.

290). Greg Hutchinson represented himself in the dissolution. (Tr. Tr. 289).

He did not have an attorney and did not consult with any attorneys' during the course of the dissolution. (Tr. Tr. 289-90).

First, the rule that a client must suffer the consequences or reap the benefits of his or her attorney's decisions is a well-established principle of agency law. *See State v. LaMar*, 224 N.W.2d 252, 254 (Iowa 1974) ("It is the general rule that a client is bound by the acts of his attorney within the scope of the latter's authority."); 7 Am. Jur. 2d Attorneys at Law § 147, at 196-97 (1997) ("Where the relation of attorney and client exists, the client is bound by the acts of his or her attorney within the scope of the latter's authority . . ."); *id.* § 157, at 202 (setting forth general rule "that the acts and omissions of an attorney acting within the scope of his or her authority are regarded as the acts of the person he or she represents"). *See generally Dillon v. City of Davenport*, 366 N.W.2d 918, 923 (Iowa 1985) (holding relationship of client and attorney is one of principal and agent). This rule has broad application, permeating all aspects of the attorney/client relationship, not just discovery matters. *See, e.g., State ex rel. Miller v. Rahmani*, 472 N.W.2d 254, 258 (Iowa 1991) ("Generally, when a lawyer drafts language on behalf of a client, the representations are attributed to the client."); *City of Des Moines v. Civil Serv. Comm'n*, 334 N.W.2d 133, 135 (Iowa 1983) ("Ordinarily, notice given by an attorney is the act of the client."); *Sims v. State*, 295 N.W.2d 420, 425 (Iowa 1980) ("Ordinarily, . . . the accused is bound by the tactical or strategic decisions made by counsel, even though rising to constitutional dimensions."); *State v. Howell*, 290 N.W.2d 355, 359 (Iowa 1980) ("As a

Although the Family Law Case Requirements Order provided for both parties to file a financial affidavit, only Susan did so. (Tr. Tr. 78-79; App. 138 - Petitioner's Exhibit 3 - Family Case Law Requirements Order; App. 144 - Petitioner's Exhibit 5 - Susan's Financial Affidavit). Greg did not file a financial affidavit, Ms. Reasner did not insist upon one, and the Court did not require one in entering the Decree and Stipulation. (Tr. Tr. 219-20, 295). Ms. Reasner considered the Stipulation to be Mr. Hutchinson's financial affidavit. (Tr. Tr. 220).

Susan Hutchinson, employed in the financial services industry, had possession of all of the parties' pre-dissolution financial records and kept those records after the divorce, including all records relating to the GE Pension. (Tr. Tr. 62, 120, 282, 284).

Ms. Reasner took the lead on preparing all documents in the dissolution. (Tr. Tr. 233-34). She prepared a draft division of assets and liabilities which she provided to Greg Hutchinson. (Tr. Tr. 154, 233-34;

general rule 'admissions of an attorney, whether written or oral, if relevant and material and within the scope of his employment, are admissible against his client.')

(quoting *Suntken v. Suntken*, 223 Iowa 347, 356, 272 N.W. 132, 137 (1937)).

Troendle v. Hanson, 570 N.W.2d 753, 756 (Iowa 1997).

App. 176 - Petitioner's Exhibit 20A). Ms. Reasner included the Fidelity 401(k) plan, but did not include the GE Pension Plan. (App. 176 - Petitioner's Exhibit 20A). Greg Hutchinson and Ms. Reasner negotiated on some issues, ultimately agreeing on the division of assets and liabilities attached to the Stipulation and incorporated by reference into the Decree.

The most significant document in this case is the GE Consent Form (App. 116, 120 - Respondent's Exhibits B and C),² in which Susan Hutchinson waived her rights to death benefits under the GE Pension Plan. Greg Hutchinson forwarded a blank GE Consent Form to Ms. Reasner. (Tr. Tr. 166). The form has check boxes for the GE Pension Plan and the GE Savings & Security Program account. (App. 116, 120 - Respondent's Exhibits B and C). Susan Hutchinson, at the direction of Ms. Reasner, signed the form, notarized by Michelle Barnes, without Susan Hutchinson, Ms. Reasner, or Ms. Barnes knowing or investigating whether Greg Hutchinson had one of those plans/accounts or both. Susan Hutchinson also signed a separate waiver of benefits form for the Fidelity 401(k) Plan. (Tr. Tr. 143). Ms. Reasner then filed the Decree and Stipulation with the Court

²The difference in Exhibits B and C is that Exhibit B is the version of this document contained in Greg Hutchinson's file, while Exhibit C is the version of this document contained in Amy Reasner's file.

on November 2, 2010, (Tr. Tr. 183; Petitioner's Exhibit 1), without obtaining any further clarification regarding the GE Consent Form from Greg Hutchinson.

At the time Susan Hutchinson signed the GE Consent Form, she "had some confusion about what box to check." (Tr. Tr. 139). Although confused about the GE Consent Form, Susan Hutchinson did not discuss it with her attorney, Amy Reasner, or ask for an opportunity to discuss the Form with Ms. Reasner, before signing it. (Tr. Tr. 140). She did discuss with Mr. Reasner's legal assistant, Michelle Barnes, that she "could not decipher what box I should check because it talked about a plan and a program and I was looking for a retirement account, a 401(k) or a defined contribution account, and neither one of those addressed either of them." (Tr. Tr. 140). There was nothing on the GE Consent Form that related to a 401(k) or a defined contribution plan. (Tr. Tr. 142). There was another form that Susan Hutchinson also signed that did relate to the 401(k). (Tr. Tr. at 142-143; App. 120 - Respondent's Exhibit C; App. 169 - Petitioner's Exhibit 18). Although Ms. Barnes informed Susan Hutchinson that she would discuss the GE Consent Form with Ms. Reasner, Ms. Reasner never discussed that Form with her before filing the Decree and Stipulation with the Court. (Tr. Tr.

144). Ms. Barnes testified that , after Susan Hutchinson expressed uncertainty and concern about the GE Consent Form, she discussed the GE Consent Form with Ms. Reasner, but could not recall what they discussed. (Tr. Tr. 182-83). Ms. Reasner did not recall discussing the GE Consent Form with Susan Hutchinson. (Tr. Tr. 226-27). There was no evidence that Ms. Reasner, Ms. Barnes or Susan Hutchinson discussed the GE Consent Form with Greg Hutchinson before Susan Hutchinson signed it and Amy Reasner filed the Decree and Stipulation with the Court.

On November 12, 2010, Ms. Barnes sent the GE Consent Form to Greg Hutchinson asking him to check the appropriate box and return a copy to her. (Tr. Tr. 174-75; App. 169 - Petitioner's Exhibit 18). Greg Hutchinson checked the GE Pension Plan box. (App. 116, 120 - Respondent's Exhibits B and C). The parties disputed whether Greg Hutchinson contemporaneously sent a copy of the form back to Ms. Barnes. (Tr. Tr. 177, 298-99). It was undisputed, however, that Ms. Barnes, Ms. Reasner and Susan Hutchinson made no follow-up communication on this issue until 2015. (Tr. Tr.145-46, 177-78, 188-89, 242-43).

In October of 2014, Greg Hutchinson and others were laid off by GE. (Tr. Tr. 12). GE was originally not going to provide Greg Hutchinson with

pension benefits. (Tr. Tr. 333). Greg Mandry, a higher-up at GE, went to bat for Greg and a few others who had been employed by GE for a long period of time and was able to change Greg's status to retiree, eligible for benefits under the GE Pension Plan. (Tr. Tr. 333-34).

In September of 2015, Greg Hutchinson asked Susan Hutchinson to sign a full Satisfaction of Judgment as alimony had terminated. (Tr. Tr. 57-58). During their meeting, Greg told Susan that he had retired from GE and was receiving a pension. (Tr. Tr. 58). Susan then filed this lawsuit on April 20, 2016, approximately five and a half years after the dissolution became final.

Other facts are discussed as relevant to each issue below.

ROUTING STATEMENT

This matter should be transferred to the Court of Appeals of Iowa as it primarily involves the application of settled law to the specific facts of this case. The issue on whether the alleged fraud is intrinsic or extrinsic may be an issue that warrants the attention of the Supreme Court of Iowa.

Additionally, the issue of whether the District Court had the authority to

award Susan Hutchinson a portion of Greg Hutchinson's Integrated Sales 401(k) account, an asset acquired post-dissolution, is one of first impression.

SUMMARY OF ARGUMENT

Greg and Susan Hutchinson were divorced in 2010. In 2016, Susan Hutchinson filed a Petition seeking modification of the property division of the Decree, alleging that Greg Hutchinson had committed fraud by failing to disclose the existence of a GE Pension Plan. Her Petition was filed several years after the expiration of the one year limit for filing such Petitions set forth in Iowa Rule of Civil Procedure 1.1013(1). The District Court incorrectly found in her favor.

There are three reasons why Susan Hutchinson should not prevail on her fraud claim. First, the fraud at issue was intrinsic, not extrinsic. A fraud claim must be based on extrinsic, not intrinsic fraud. Failing to disclose the existence of the GE Pension in the Stipulation regarding the parties' assets and other matters was the same type of conduct as providing false testimony, affidavits or exhibits, which have been found to be intrinsic.

Second, Susan Hutchinson did not act with reasonable diligence in pursuing her claim. Prior to the filing of the Decree and Stipulation, Greg

Hutchinson provided Susan Hutchinson and her attorney, Amy Reasner, with a GE Consent Form that waived Susan Hutchinson's interest in any death benefits pursuant to the GE Pension. Susan Hutchinson signed that Form, with portions of it incomplete, without any investigation as to what the Form related to. Reasonable investigation would have disclosed the existence of the GE Pension.

Third, Susan Hutchinson failed to prove the element of justifiable reliance for much the same reasons that she did not act with reasonable diligence in pursuing her claim. She had sufficient notice of the possibility of the existence of the GE Pension and failed to inquire further before filing the Decree and Stipulation with the Court.

There are two issues relating to attorneys' fees. First, the District Court failed to award Greg Hutchinson his attorneys' fees in successfully obtaining dismissal of Count 2 of Susan Hutchinson's Petition, which sought a modification of alimony.

Second, the District Court awarded Susan Hutchinson attorneys' fees as a discovery sanction that was well in excess of what Susan Hutchinson had requested. Further, the District Court refused to explain how it had

calculated that amount or consider Greg Hutchinson's arguments regarding the reasonableness of the claimed attorneys' fees.

Finally, the District Court, without any authority to do so, awarded Susan Hutchinson a portion of Greg Hutchinson's Integrated Sales 401(k), which was an asset acquired by Greg Hutchinson well after the dissolution was final.

ARGUMENT

I. SUSAN HUTCHINSON'S CLAIM IS UNTIMELY AND BARRED BY THE ONE-YEAR LIMITATIONS PERIOD SET FORTH IN IOWA RULE OF CIVIL PROCEDURE 1.1013(1)

A. Standard of Review and Preservation of Error

Susan Hutchinson's Petition to Correct, Vacate, or Modify a Decree of Dissolution of Marriage was filed in equity in the original dissolution action.³ Under Iowa Rule of Appellate Procedure 6.907, "Review in equity cases shall be *de novo*." This Court "give(s) weight to the factual

³A Petition under Rule 1.1012 filed within the one year statute of limitations period is filed at law. *See Krefth v. Fisher Aviation, Inc.*, 264 N.W.2d 297, 303 (Iowa 1978) . However, such a Petition filed more than one year after the challenged Judgment was filed is filed in equity as the petitioner is then asking the Court to use its equitable powers to excuse the untimely filing. *See Johnson v. Mitchell*, 489 N.W.2d 411, 415 (Iowa Ct. App. 1992)

determinations made by the district court; however, their findings are not binding upon [this Court]." *In re Marriage of Gust*, 858 N.W.2d 402, 406 (Iowa 2015).

The issues presented were raised before the District Court and were decided by the District Court in its Rulings. (App. 18 - Motion for Summary Judgment; App. 84 - Respondent's Trial Brief; App. 23 - Ruling on Motion for Summary Judgment: App. 241 - Modified Decree). Error was preserved.

B. The Alleged Fraud Was Intrinsic

i. Susan Hutchinson's Petition Was Filed Well Past the One-Year Limitation Set Forth in Iowa Rule of Civil Procedure 1.1013(1)

Iowa Rule of Civil Procedure 1.1012(2) permits a motion or petition to vacate a judgment based on a claim of fraud. However, such a motion or petition must be filed “within one year after the entry of the judgment or order involved.” Rule 1.1013(1). Susan Hutchinson's Petition was filed five and a half years after the Decree was entered and, thus, is untimely. Susan Hutchinson must prove an exception to the statute of limitations.

The decision of the Court of Appeals of Iowa in *Simon v. Simon*, No. 15-0814 (Iowa Ct. App. 4/27/16),⁴ is directly on point. *Simon* involved a similar claim that a party in a dissolution had committed fraud by misrepresenting the value of real estate. The Decree had been entered in 2010 and the “complaint for fraud” was filed in 2014. The Court of Appeals, applying 1.1013(1), affirmed dismissal of the Petition on the ground that the lawsuit was an improper and untimely collateral attack on the prior judgment. There is no meaningful distinction between *Simon* and Susan Hutchinson's Petition.

Susan Hutchinson asserted that she is excused from the one-year time limit set forth in Iowa Rule of Civil Procedure 1.1103(1) because Greg Hutchinson committed “extrinsic” fraud by failing to disclose the GE Pension Plan prior to the filing of the Stipulation and Decree. A party may institute a suit in equity seeking to vacate a judgment and obtain a new trial where, with reasonable diligence, he or she was not able to discover the fraud or other grounds for vacating the judgment within one year after the judgment. *See Johnson v. Mitchell*, 489 N.W.2d 411, 415 (Iowa Ct. App. 1992). *See also Shaw v. Addison*, 236 Iowa 720, 729, 18 N.W.2d 796, 801

⁴Per Iowa Courts Online, no application for further review was filed. Procedendo was issued on May 24, 2016.

(1945) (holding petitioner may invoke the court's equitable powers after the time fixed in the statute has passed). The District Court agreed with Susan Hutchinson's position. (App. 23 - Ruling on Motion for Summary Judgment; App. 241- Modified Decree).⁵

That argument fails for two independent reasons. First, the claimed fraud is not “extrinsic,” and thus the equitable exception does not apply. Second, as discussed in the next section, with reasonable diligence, Susan Hutchinson could have undisputedly discovered the existence of the GE Pension Plan within one year of entry of the Decree

ii. The Alleged Fraud Was Intrinsic, Not Extrinsic

The alleged fraud is “intrinsic,” not “extrinsic” and does not provide relief from the Decree. The appellate courts of Iowa have explained extrinsic versus intrinsic fraud as follows.

A party may institute a suit in equity seeking to vacate a judgment and obtain a new trial where, with reasonable diligence, he or she was not able to discover the fraud or other grounds for vacating the judgment within one year after the judgment. *City of Chariton v. J.C. Blunk Construction Co.*, 253 Iowa 805, 817, 112 N.W.2d 829, 835 (1962). While such a proceeding is in

⁵The District Court, after trial, largely adopted the summary judgment ruling on this issue, without engaging in significant independent analysis.

equity, the grounds alleged for relief must be found among those specified in the rules for vacating a judgment. *See Shaw v. Addison*, 236 Iowa 720, 729, 18 N.W.2d 796, 801 (1945). It is also essential that the fraud be extrinsic and collateral to the proceedings and issues in the original case. *Id.* at 730, 801, 18 N.W.2d 796. A party attempting to vacate a judgment in an equity suit has a heavy burden. *Id.* at 732, 802, 18 N.W.2d 796.

Extrinsic fraud is some act or conduct of the prevailing party which has prevented a fair submission of the controversy. *Miller v. AMF Harley-Davidson Motor Co., Inc.*, 328 N.W.2d 349, 353 (Iowa App.1982). It includes the lulling of a party into a false sense of security or preventing him from making a defense. *In re Marriage of Heneman*, 396 N.W.2d 797, 800 (Iowa App.1986). A finding of extrinsic fraud as a basis for vacating a judgment would be justified only by the most egregious misconduct; at the very least it would require a showing of fault, willfulness, or bad faith. *Id.* Such a finding must be supported by clear, unequivocal, and convincing evidence. *Miller*, 328 N.W.2d at 353.

Johnson v. Mitchell, 489 N.W.2d 411, 415 (Iowa Ct. App. 1992) (emphasis added).

“Intrinsic” fraud does not justify setting aside a judgment.

We have for many years followed in Iowa the definition of extrinsic and intrinsic frauds and the distinction between them as laid down in *United States v. Throckmorton*, 98 U.S. 61, 65, 66, 25 L.Ed. 93, 95. And, following that rule, we have held that a judgment may be attacked on the ground of fraud extrinsic to the proceedings in court. If the fraud is intrinsic, even though it be not discovered until after the year allowed by Rules 252, 253 supra, the judgment is a finality. . . .

If extrinsic fraud was present and influenced the granting of the original judgment, the action to set it aside will lie; but if the fraud was intrinsic only, the judgment must stand.

Chariton, 112 N.W.2d at 836, 838. (emphasis added).

[I]ntrinsic fraud is fraud that "inheres in the judgment itself; it includes, for example false testimony and fraudulent exhibits." *B.J.H.*, 564 N.W.2d at 391.

"Intrinsic fraud occurs within the framework of the actual conduct of the trial and pertains to and affects the determination of the issue presented therein." *Mauer*, 257 N.W.2d at 496 (internal citations omitted). A party cannot obtain relief from a judgment based on fraud which is based on matters or issues which actually were or could have been presented and adjudicated at trial. *Gigilos v. Stavropoulos*, 204 N.W.2d 619, 621 (Iowa 1973).

Assuming without deciding for the purposes of Gregg's argument that Kay's financial affidavit was fraudulent, this does not justify vacating the default decree. A fraudulent affidavit is essentially false testimony, and as such, is intrinsic fraud which inheres in the judgment.

In re: Marriage of Bacon, Iowa Ct. App. No. 1-717/11-0368, slip op. at 10 (Iowa Ct. App. 10/5/11) (emphasis added).⁶ See also *In re Marriage of Gance*, 36 P.3d 114, 117-18 (Colo. App. 2001) (husband's failure to disclose income and assets - perjury and failure to disclose are intrinsic fraud that do not justify setting aside judgment – collecting cases).

⁶Per Iowa Courts Online, no application for further review was filed. Procedendo was issued on November 1, 2011.

The alleged fraud here was clearly intrinsic, not extrinsic. The claim is that Greg Hutchinson failed to disclose the existence of the GE Pension in the Stipulation. Mr. Hutchinson signed the Stipulation affirming that the Stipulation accurately set forth the parties assets and other financial circumstances. (App. 127 - Stipulation). That is no different than the false affidavit at issue in *Bacon* which was found to be intrinsic. As noted in *Bacon*, false testimony and false exhibits constitute intrinsic fraud. In a dissolution, a Stipulation is presented to the District Court in lieu of testimony and exhibits regarding the parties' financial and other circumstances.⁷ See *Greene v. Greene*, 351 S.C. 329, 336 (S.C. App. 2002) ("The purpose of a stipulation is to "obviate need for proof or to narrow [the] range of litigable issues." Black's Law Dictionary 1415 (6th ed.1990)."); *Smith v. Smith*, 985 S.W.2d 836, 842 (Mo. App. 1998) ("The purpose of a stipulation is to eliminate the litigation of an issue so as to save delay, trouble and expense."); *Fiedler v. Fiedler*, 879 P.2d 675, 681 (Mont. 1994) ("The purpose of a stipulation is to relieve the parties from the necessity of introducing evidence about the ultimate fact covered by it.").

⁷A Stipulation also represents the parties' agreement on how the issues of the dissolution should be resolved.

As the claimed fraud was intrinsic, not extrinsic, Susan Hutchinson's Petition to Correct, Vacate or Modify, must be denied.

C. *Susan Hutchinson Did Not Act With Reasonable Diligence*

“A party may institute a suit in equity seeking to vacate a judgment and obtain a new trial where, with reasonable diligence, he or she was not able to discover the fraud or other grounds for vacating the judgment within one year after the judgment.” *See Johnson v. Mitchell*, 489 N.W.2d 411, 415 (Iowa App. 1992).

The burden of demonstrating “reasonable diligence” rests with Susan Hutchinson. *See McGrath v. Dougherty*, 275 N.W. 466, 471 (Iowa 1937); *Loughman v. Couchman*, 53 N.W.2d 286, 288 (Iowa 1952); *Berkley Int'l Co. v. Devine*, 423 N.W.2d 9, 12 (Iowa 1988).

This Court has explained the requirements for “diligence” as follows:

The showing of diligence required is that a reasonable effort was made. The applicant is not called upon to prove he sought evidence where he had no reason to apprehend any existed. He must exhaust the probable sources of information concerning his case; he must use that of which he knows, and he must follow all clues which would fairly advise a diligent man that something bearing on his litigation might be discovered or developed. But he is not placed under the burden of

interviewing persons or seeking in places where there is no indication of any helpful evidence.

State v. Farley, 226 N.W.2d 1, 4 (Iowa 1975) (citation omitted).

The GE Consent Form placed Susan Hutchinson, and her agents Amy Reasner and Michelle Barnes, on notice of the possibility of the existence of the GE Pension Plan. Susan Hutchinson signed that form, and Amy Reasner allowed her to sign that form, without conducting any investigation into what plan and/or account that Greg Hutchinson was participating in.

The discovery rule tolls the statute of limitations until the plaintiff has discovered " ` "the fact of the injury and its cause" ' " or by the exercise of reasonable diligence should have discovered these facts. *K & W Elec., Inc.*, 712 N.W.2d at 116 (citation omitted); *see also Nixon v. State*, 704 N.W.2d 643, 646 (Iowa 2005) (applying discovery rule to claim of fraudulent misrepresentation). Once a claimant learns information that would inform a reasonable person of the need to investigate, the claimant " `is on inquiry notice of all facts that would have been disclosed by a reasonably diligent investigation.' " *K & W Elec., Inc.*, 712 N.W.2d at 117 (citation omitted). A claimant can be on inquiry notice without knowing "the details of the evidence by which to prove the cause of action." *Vachon v. State*, 514 N.W.2d 442, 446 (Iowa 1994).

Hallett Const. Co. v. Meister, 713 N.W.2d 225, 231 (Iowa 2006).

Once Amy Reasner and Susan Hutchinson received the blank GE Consent Form and did not know which plan and/or account Greg

Hutchinson was participating in, a simple phone call to Greg Hutchinson to inquire would have been reasonable and resolved the issue. Susan Hutchinson, instead, blindly signed the GE Consent Form. She was on inquiry notice and did not conduct a reasonably diligent investigation. The one-year statute of limitations was not tolled as a result.

In fact, after Greg Hutchinson told Susan Hutchinson that he was receiving a pension in September of 2015, (Tr. Tr. 58), Amy Reasner or Michelle Barnes called Mr. Hutchinson and requested a copy of the GE consent form. (Tr. Tr. 58-59). Mr. Hutchinson promptly sent Amy Reasner a copy. (Tr. Tr. 59; App. 173 - Petitioner's Exhibit 19). Susan Hutchinson acknowledged that if she has learned about the GE Pension Plan prior to September 2015, she would have taken action. (Tr. Tr. 89).

Susan Hutchinson acknowledges that at the time she signed the GE Consent Form, it was blank. (Tr. Tr. at 138, 170-71, 197). Michelle Barnes, the legal assistant for Susan's attorney, Amy Reasner, forwarded the signed GE Consent Form to Greg Hutchinson and specifically stated "We would appreciate it if you would return a copy of the form (or scan and email) when Section 2 is completed." (App. 116, 120 - Respondent's Exhibits B and C). There was no evidence that Susan Hutchinson, Ms Barnes, or Ms.

Reasner took any action thereafter to follow-up to obtain a copy of the GE Consent Form as completed by Greg Hutchinson and as submitted to GE.

Further, Ms. Reasner admitted that the GE Consent Form can be used for more than one type of GE retirement benefit. (Tr. Tr. 229). Ms. Reasner did not know if the GE Consent Form "was referencing GE retirement fund or GE Savings and Security or GE pension." (Tr. Tr. 230). Ms. Reasner conducted no investigation as to what types of retirement plans GE has or what the GE Consent Form relates to. (Tr. Tr. 229). She did not contact Greg Hutchinson to ask him what the Form related to. (Tr. Tr. 229-30). Susan Hutchinson also knew that the GE Consent Form could relate to multiple plans. (Tr. Tr. 85). Respondent's Exhibit A, an email from Ms. Reasner to Greg Hutchinson states that "I think we had a question about which box to check on the form. Susan signed it but we were reviewing. My legal assistant may have decided to just send it to you and let you identify the relevant plan (check the box)." (App. 114). In other words, Ms. Reasner did not know if Greg Hutchinson had a "GE Pension Plan," a "GE Savings & Security Program," or both. Ms. Reasner knew that Greg Hutchinson had some type of retirement plan(s) with GE, but did not specifically know what plan(s) he had. Particularly since Ms. Reasner was

not sure what type of plan Greg Hutchinson had, it was incumbent upon Susan Hutchinson or her attorney to follow-up. A completed copy of the GE Consent Form, disclosing the GE Pension Plan, could readily have been obtained. Susan Hutchinson did not “exhaust the probable sources of information concerning [her] case; . . . use that of which [she] knows, [or] follow all clues which would fairly advise a diligent [person] that something bearing on [her] litigation might be discovered or developed.” *Farley*, 226 NW.2d at 4.

Further, the GE Consent Form that Susan Hutchinson signed on November 1, 2010, clearly sets forth the possibility of there being a “GE Pension Plan,” otherwise the form would not have a box to potentially check relating to waiver of rights in a GE Pension Plan. “A party is placed on inquiry notice when a person gains sufficient knowledge of facts that would put that person on notice of the existence of a problem or potential problem.” *Vossoughi v. Polaschek*, 859 N.W.2d 643, 652 n. 4 (Iowa 2015). If Susan Hutchinson or her counsel had followed up to obtain a copy of the GE Consent as submitted to GE, the box would have been checked and Susan Hutchinson would have been on direct notice of the existence of Greg Hutchinson's GE Pension Plan.

By failing to perform the simple task of obtaining a copy of the GE Consent Form as submitted to GE, which unambiguously discloses the GE Pension Plan, Susan Hutchinson did not act with reasonable diligence. Her Petition was not timely filed within one year of the entry of the Decree.

II. SUSAN HUTCHINSON DID NOT PROVE THE JUSTIFIABLE RELIANCE ELEMENT OF HER FRAUD CLAIM

A. Standard of Review and Preservation of Error

Susan Hutchinson's Petition to Correct, Vacate, or Modify a Decree of Dissolution of Marriage was filed in equity in the original dissolution action. Under Iowa Rule of Appellate Procedure 6.907, "[r]eview in equity cases shall be *de novo*." This Court "give(s) weight to the factual determinations made by the district court; however, their findings are not binding upon [this Court]." *In re Marriage of Gust*, 858 N.W.2d 402, 406 (Iowa 2015).

The issues presented in this appeal were raised before the District Court and were decided by the District Court in its Ruling. (App. 84 - Respondent's Trial Brief; App. 241- Modified Decree). Error was preserved.

B. The Justifiable Reliance Element of a Fraud Claim

A party alleging fraud must establish its existence by clear and convincing evidence. *See Benson v. Richardson*, 537 N.W.2d 748, 756 (Iowa 1995). The elements of a fraud claim for nondisclosure are:

1. Special circumstances existed which gave rise to a duty of disclosure between the plaintiff and the defendant. (Describe the relationship found to give rise to a duty of disclosure.)
2. While such relationship existed, the defendant [was aware of the following facts] [intended the following course of action] (state the facts or intent alleged to have been withheld).
3. While such relationship existed, the defendant concealed or failed to disclose [the knowledge or intent alleged to have been withheld].
4. The undisclosed information was material to the transaction.
5. The defendant knowingly failed to make the disclosure.
6. The defendant intended to deceive the plaintiff by withholding such information.
7. The plaintiff acted in reliance upon the defendant's failure to disclose and was justified in such reliance.
8. The failure to disclose was a cause of the plaintiff's damage.
9. The nature and extent of the plaintiff's damage.

Iowa Uniform Jury Instruction No. 810.2.

While several elements of Susan Hutchinson's fraud claim were at issue at trial, for the purposes of this appeal, Greg Hutchinson focuses on the seventh element: justifiable reliance.

The plaintiff must rely on the representation and the reliance must be justified.

It is not necessary that the representation be the only reason for the plaintiff's action. It is enough if the representation was a substantial factor in bringing about the action.

Whether reliance is justified depends on what the plaintiff can reasonably be expected to do in light of their own information and intelligence. Reliance is not justified if the representation is of an unimportant fact or is obviously false.

Iowa Uniform Jury Instruction No. 810.8 (emphasis added).

"Justifiable reliance is an essential element of a claim for fraud."

Spreitzer v. Hawkeye State Bank, 779 N.W.2d 726, 736 (Iowa 2009). "[T]he justified standard . . . means the reliance . . . depends on the qualities and characteristics of the particular plaintiff and the specific surrounding circumstances." *Id.* at 737. Further:

The justifiable-reliance standard does not mean a plaintiff can blindly rely on a representation. Instead, the standard requires plaintiffs to utilize their abilities to observe the obvious, and the entire context of the transaction is considered to determine if the justifiable-reliance element has been met.

Id. at 737 (citations omitted).

C. Susan Hutchinson Failed to Prove Justifiable Reliance

Some of the discussion regarding reasonable diligence above applies to justifiable reliance as well. The difference is that reasonable diligence focuses on the one-year period after the Decree and Stipulation were filed, while justifiable reliance focuses on what Susan Hutchinson and her attorney knew at the time the Decree and Stipulation were filed.

It is undisputed that Greg Hutchinson provided the GE Consent Form to Amy Reasner before the Decree and Stipulation were filed. Susan Hutchinson signed the GE Consent Form without either her or Ms. Reasner ever inquiring as to whether Greg Hutchinson had a GE Pension Plan. At the time she signed it, Susan Hutchinson knew that, based on the GE Consent Form, "there might be one account, maybe two, or maybe none," including either a "GE Pension Plan, a "GE Savings and Security Program" plan, or both. (Tr. Tr. 85). The GE Consent Form clearly provided for that possibility. (App. 116, 120 - Respondent's Exhibits B and C). Most telling is the letter that Michelle Barnes sent to Greg Hutchinson on November 12, 2010 (App. 120 - Respondent's Exhibit C) which states:

"Please confirm in Section 2 which plan you are participating in (GE Pension Plan or GE Savings & Security Program) and check the appropriate box. I have reviewed this with Susan and you have permission to do so."

In other words, Susan Hutchinson was comfortable with either box being checked. She did not care at the time whether Greg Hutchinson had a GE Pension Plan or a GE Savings & Security Program account, or both.

Additionally, Greg Hutchinson testified that Susan Hutchinson had actual knowledge of the existence of the GE Pension at the time the Stipulation was signed. (Tr. Tr. 64, 66).

Because Susan Hutchinson had notice, from the GE Consent Form, that Greg Hutchinson might have a GE Pension, she did not justifiably rely on the Stipulation. When the entirety of the circumstances are considered, Susan Hutchinson and her attorney had an obligation to investigate further before simply filing the Decree and Stipulation with the unanswered question of whether Greg Hutchinson had a GE Pension being considered.

III. ATTORNEYS' FEES ISSUES

A. *Standard of Review and Preservation of Error*

This Court "review[s] the district court's award of attorneys' fees for abuse of discretion. *GreatAmerica Leasing Corp. v. Cool Comfort Air Conditioning & Refrigeration, Inc.*, 691 N.W.2d 730, 732 (Iowa 2005)." *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155, 164 (Iowa 2016). ""Reversal is warranted only when the court rests its discretionary ruling on grounds that are clearly unreasonable or untenable." *Gabelmann v. NFO, Inc.*, 606 N.W.2d 339, 342 (Iowa 2000)." *GreatAmerica*, 691 N.W.2d at 732).

The issues presented in this appeal were raised before the District Court and were decided by the District Court in its Rulings. (App. 217 - Respondent's Post-Trial Brief Regarding Requested Relief; App. 252 - Respondent's Rule 1.904(2) Motion; App. 250 - Modified Decree; App. 255 - Ruling on Rule 1.904(2) Motion). Error was preserved.

B. Greg Hutchinson Should Recover His Attorneys' Fees Incurred in Obtaining Dismissal of Count 2 Seeking Modification of Alimony

Susan Hutchinson's Petition also included a request to modify the alimony award in the Decree. (App. 14 - Petition at Count II). That Count was dismissed by the District Court's summary judgment ruling filed January 6, 2017. (App. 34). Susan Hutchinson did not reassert her claim for alimony at trial. (App. 82 - Joint Pretrial Statement at 4 ("Alimony")). Attorneys' fees are allowed to the prevailing party in an action to modify the alimony provisions of a dissolution decree. *See* Iowa Code § 598.36.

Accordingly, Greg Hutchinson requested an award of his attorneys' fees for defending Count II of the Petition seeking to modify alimony through the date summary judgment on that claim was granted. (App. 221-22 - Respondent's Post-Trial Brief Regarding Requested Relief). In assessing attorneys' fees to a partially prevailing party, the District Court should make an equitable award based on the issues and the results obtained. *See, e.g., Smith v. Iowa State Univ. of Sci. & Tech.*, 885 N.W.2d 620, 625-27 (Iowa 2016); *Vaughan v. Must, Inc.*, 542 N.W.2d 533, 541 (Iowa 1996).

Greg Hutchinson calculated his requested attorneys' fees as follows. He incurred attorneys' fees of \$924.00 for attorney Webb Wassmer relating

to the Motion for Summary Judgment and resisting a prior Motion to Compel. (App. 224 - Declaration of Webb Wassmer). Mr. Hutchinson sought \$231.00 of those fees as relating to Count II or jointly related to Counts I and II. *Id.*

Greg Hutchinson also incurred attorneys' fees of \$3,000.00 for attorney Leslie Stokke for defense of this case through the grant of summary judgment on Count II. (App. 228 - Attorney Fee Affidavit of Leslie Stokke). Mr. Hutchinson sought \$2,700 of those fees as relating to Count II or jointly related to Counts I and II. *Id.*

The District Court's Ruling after trial merely provided that "each party shall be responsible for the payment of their own attorney fees incurred in this proceeding." (App. 250 - Ruling, filed December 13, 2019, at 10). Mr. Hutchinson filed a Motion pursuant to Rule 1.904(2) requesting a more specific ruling on his request for attorneys' fees incurred in defending Count 2 of the Petition requesting a modification of alimony. (App. 252 - Respondent's Rule 1.904(2) Motion). The District Court denied that request, stating:

The Respondent requested an award of attorney fees attributable to obtaining the dismissal of Count 2. As found by the Court, attorney fees are not awardable in an action filed pursuant to Rule 1.1012 of the Iowa Rules

of Civil Procedure. As such, whether the Respondent prevailed or lost is not relevant. Further, to the extent that attorney fees would have been recoverable, the Petitioner completely prevailed in this proceeding. The Respondent's innuendo to the contrary is disingenuous. The Respondent's motion pursuant to Rule 1.904(2) is overruled and denied as to this particular.

App. 255 - Ruling, filed December 30, 2019, at 1.

The District Court's analysis is incorrect in two respects. First, the request for attorneys' fees relating to the dismissal of Count 2 of the Petition was not made pursuant to Rule 1.1012. It was made pursuant to Iowa Code § 598.36. (App. 221 - Respondent's Post-Trial Brief Regarding Relief). Count 2 of the Petition was not based on Rule 1.1012, it was a request for modification of the alimony award of the Decree made pursuant to Iowa Code § 598.21C. (App. 14 - Petition at ¶ 29). Although the District Court was correct that Rule 1.1012 does not permit an award of attorneys' fees to either party, Rule 1.1012 has nothing to do with Count 2 of the Petition. Iowa law is clear that attorneys' fees may be awarded to the prevailing party with respect to claims under Iowa Code Chapter 598. Thus, the District Court erred in essentially finding no authority for awarding the requested fees.

Second, the District Court was incorrect in stating that Petitioner Susan Hutchinson "completely prevailed in this proceeding." While Susan Hutchinson prevailed on Count 1, Count 2 was dismissed. (App. 23 - Ruling on Motion for Summary Judgment). Greg Hutchinson was the prevailing party with respect to Count 2. Counts 1 and 2 are readily separable.

Accordingly, the District Court abused its discretion in not awarding Greg Hutchinson his attorneys' fees with respect to the dismissal of Count 2. This matter must be remanded for an award of the requested attorneys' fees.

C. The District Court Abused Its Discretion In Awarding Susan Hutchinson \$7,056 in Attorneys' Fees as A Discovery Sanction

The District Court awarded Susan Hutchinson \$7,056 in attorneys' fees as a discovery sanction in relating to the District Court's October 9, 2019, Order, in part granting Petitioner's Renewed Motion for Sanctions. (App. 55 - Pretrial Order and Ruling on Motions; App. 250 - Modified Decree). The District Court's Ruling did not expressly explain how it calculated that amount. Susan Hutchinson had only requested \$2,568 in attorneys' fees. (App. 59 - Petitioner's Attorney Fee Affidavit, filed October 14, 2019.) The District Court also did not expressly rule on the issues

raised in Greg Hutchinson's Resistance to the Renewed Motion for Sanctions, filed October 22, 2019. (App. 75 - Resistance).

Consequently, Greg Hutchinson filed a timely Motion pursuant to Iowa Rule of Civil Procedure 1.904(2) requesting that the District Court reconsider this issue, including expressly ruling on the matters raised in Mr. Hutchinson's Resistance and explaining how it had calculated the \$7,056 amount. (App. 252 - Respondent's Rule 1.904(2) Motion). In denying that Motion, the District Court stated:

As a sanction for the Respondent's failure to provide any information referable to the GE pension plan, the Court ordered him to pay \$7,056 as a sanction. The Court would note that when the order was actually issued on October 9, 2019, ordering the Respondent to pay, as a sanction, a portion of the Petitioner's fees, it was contemplated that the Respondent would, in fact, provide the requested documentation. He has not. As a result, significant relevant information was never provided to the Petitioner. Potentially, this information would have shown, conclusively, that the Respondent knew of the pension at the time of the original Decree of Dissolution and that he intentionally and in bad faith failed to divulge that information. It would have substantially shortened the trial. The award of attorney fees was issued as a sanction, not a matter of right. The Court declines the Respondent's request to specify exactly how the Court arrived at the \$7,056 attorney fee sanction amount.

App. 256 - Ruling, filed December 30, 2019, at 2.

In granting the Renewed Motion for Sanctions, the District Court (a different judge) had stated:

Respondent is ordered to pay the cost of Petitioner's attorney fees incurred for having to pursue the discovery ordered herein, which cost shall include but not necessarily be limited to attorney fees for all time expended in relation to the preparation of Petitioner's Renewed Motion for Sanctions, defending Respondent's Resistance, making her Reply, and hearing. Petitioner is granted ten (10) days from the date of entry of this Order to file a second Affidavit of Attorney Fees reflecting her fees so incurred. Any objection to the reasonableness of Petitioner's statement of fees for the original Motion for Sanctions and the Renewed Motion for Sanctions shall be heard by the trial judge, and accordingly, the judgment and payment terms shall also be established by the trial judge.

App. 55 - Order, filed October 9, 2019, at ¶ 1(b).

Susan Hutchinson filed her Attorney Fee Affidavit on October 14, 2019. (App. 59). She claimed \$2,568.00 in attorneys' fees. *Id.* Greg Hutchinson filed his Resistance on October 22, 2019. (App. 75). Mr. Hutchinson objected to portions of the requested fees for: (1) including time spent on matters outside the scope of the Court's Order of October 9, 2019; (2) claiming excessive time for the tasks performed; and (3) possibly an excessive hourly fee of \$240 per hour being claimed. *Id.*

"An applicant for attorney fees has the burden to prove that the services were reasonably necessary and that the charges were reasonable in amount." *Schaffer v. Frank Moyer Constr., Inc.*, 628 N.W.2d 11, 23 (Iowa 2001). The district court should consider a number of factors, including

the time necessarily spent, the nature and extent of the service, the amount involved, the difficulty of handling and importance of the issues, the responsibility assumed and results obtained, the standing and experience of the attorney in the profession, and the customary charges for similar service.

Id. at 23-24 (citation omitted).

The District Court, after trial, awarded \$7,056 in attorneys' fees as a sanction. (App. 250 - Modified Decree). That amount was well in excess of the \$2,568 Susan Hutchinson claimed. The District Court refused to provide any explanation for how it calculated that amount. (App. 256 - Ruling on Rule 1.904(2) Motion). Further, the District Court made no analysis of the *Schaffer* factors in relation to the award of \$7,056. The District Court also refused to address the challenges to the \$2,568 amount presented by Greg Hutchinson. As the District Court has refused to explain how it calculated its fee, it also failed to explain why the \$7,056 is a reasonable amount.

The District Court's refusal to provide any explanation makes it impossible for this Court to engage in meaningful appellate review. *See*,

e.g., Sioux Pharm, Inc. v. Eagle Labs., Inc., 865 N.W.2d 528, 544 (Iowa 2015) ("The lack of a more detailed order makes it difficult for this court to engage in meaningful appellate review."). This Court cannot determine if that amount is reasonable without knowing how the District Court made the calculation. At a minimum, this matter should be remanded for an explanation. *See Boyle v. Alum-Line, Inc.*, 773 N.W.2d 829 (Iowa 2009) (remanding for detailed factual findings on how District Court had calculated attorney fee award so that appellate Court can meaningfully review). Further, this issue should be remanded for a ruling by the District Court, in the first instance, of the matters raised in Greg Hutchinson's Resistance to the Attorney Fee Affidavit. *Id.*

Also, the District Court apparently awarded additional fees for Greg Hutchinson's alleged continuing refusal to provide the requested documents. Susan Hutchinson made no such request. (App. 231 - Petitioner's Post-Trial Statement of Requested Relief). She requested: (1) common law attorneys' fees for the entire case; (2) discovery sanction attorneys' fees of \$720 relating to the September 4, 2019, Order for Sanctions; and (3) discovery sanction attorneys' fees of \$2,568 relating to the October 9, 2019, Order for Sanctions. *Id.* at 5. The District Court denied the first request for common

law attorneys' fees. (App. 250 - Modification Order). The District Court did not rule on the request relating to the September 4, 2019, Order, and Petitioner did not file any Rule 1.904(2) Motion requesting a ruling or an notice of cross-appeal relating to that issue, so that claim has been waived or forfeited. The District Court awarded \$7,056, on the third request, well in excess of the request made.

Accordingly, the award of \$7,056 as a discovery sanction must be vacated.

IV. THERE IS NO AUTHORITY FOR THE DISTRICT COURT AWARDING SUSAN HUTCHINSON A PORTION OF GREG HUTCHINSON'S INTEGRATED SALES 401(k), A POST-DISSOLUTION ASSET

A. Standard of Review and Preservation of Error

As this is an issue of first impression, Appellant is unsure what the appropriate standard of review would be. Appellant, however, believes that this is fundamentally a question of the District Court's authority to create the novel relief that it granted Petitioner/Appellee, which should be reviewed for correction of errors at law. "Questions of jurisdiction, authority, and venue are reviewed for correction of errors at law. *In re Marriage of Engler* , 532

N.W.2d 747, 748 (Iowa 1995)." *In re M.A.*, 895 N.W.2d 477, 479 (Iowa Ct. App. 2017).

The issues presented was raised before the District Court and were decided by the District Court in its Ruling. (App. 217 - Respondent's Post-Trial Brief Regarding Requested Relief; App. 249-250 - Modified Decree). Error was preserved.

B. There is No Authority

The District Court's Modified Decree awarded Susan Hutchinson an interest in Greg Hutchinson's Integrated Sales 401(k) account to adjust for past GE Pension benefits. (App. 249-50 - Modified Decree at 9-10). Mr. Hutchinson had requested that any award for past GE Pension Benefits be set forth as a money judgment and he be allowed to select how it was to be paid. (App. 219-20 - Respondent's Post-Trial Brief Regarding Requested Relief at 3-4). Neither the District Court nor Petitioner Susan Hutchinson cited any authority for awarding Susan Hutchinson a portion of Mr. Hutchinson's Integrated Sales 401(k), which is an asset that was created post-dissolution. Counsel has found no authority addressing this issue, including no case where any Court has made a similar award.

Without a showing that the District Court has the authority to enter such relief, this award must be reversed.

Accordingly, this portion of the Modified Decree must be reversed.

CONCLUSION AND RELIEF SOUGHT

For the above stated reasons, Appellant Robert Gregory Hutchinson respectfully requests the Court to: (1) reverse the District Court's judgment against him and Vacate the Modification of the Decree and remand for dismissal of Count 1 of the Petition; (2) award Greg Hutchinson his attorneys' fees incurred in obtaining dismissal of Count 2 of the Petition; (3) vacate the award of \$7,056 against him as a discovery sanction; and (4) reverse the provision of the Modified Decree awarding Susan Hutchinson a portion of Greg Hutchinson's Integrated Sales 401(k).

REQUEST FOR ORAL ARGUMENT

Appellant/ Robert Gregory Hutchinson requests 10 minutes of oral argument.

Respectfully Submitted,

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