

IN THE SUPREME COURT OF IOWA

No. 21-0454

IN RE THE MARRIAGE OF
JASON D. MILLS AND ERINN A. MILLS

Upon the Petition of)
JASON D. MILLS,)
) Wapello County No.: CDCV110589
Petitioner-Appellee)
)
And Concerning)
ERINN A. MILLS,)
n/k/a ERINN A. PIERCE,)
)
Respondent-Appellant.)

**APPEAL FROM THE IOWA DISTRICT COURT FOR WAPELLO
COUNTY HONORABLE SHAWN SHOWERS
OF THE EIGHTH JUDICIAL DISTRICT**

PETITIONER-APPELLEE'S FINAL BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. THE TRIAL COURT PROPERLY DETERMINED NO SPOUSAL SUPPORT SHOULD BE AWARDED IN THIS CASE.

In re Marriage of Becker 756 N.W.2d 822, 825 (Iowa 2008)

In re Marriage of Gust 858 N.W.2d 402, 407-408, 411, 416 (Iowa 2015)

In re Marriage of Kurtt 561 N.W.2d 385, 388 (Iowa 1997)

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In re Marriage of Olson 705 N.W.2d 312, 351 (Iowa 2005)

In re Marriage of Schenkelberg 824 N.W.2d 481, 484-487 (Iowa 2012)

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In re Marriage of Grady-Woods 577 N.W.2d 851, 853 (Iowa App. 1998)

In re Marriage of Gutcher 2018 WL 5292082 *1*3*4*5 (Iowa App. 2018)

In re Marriage of Jenn 2019 WL 5424938 *1*2 (Iowa App. 2019)

In re Marriage of McCreedy 2012 WL 3196033 *1*2*3 (Iowa App. 2012)

In re Marriage of Mann 2019 WL 5792673 (Iowa App. 2019)

In re Marriage of Walker 2014 WL 4937727 (Iowa App. 2014)

STATEMENT OF THE CASE

Nature of the Case

The Trial Court properly determined no spousal support should be awarded in this case. This not a case wherein spousal support should be awarded. Further, Erinn does not need spousal support and Jason cannot afford to pay it.

Course of Proceedings

Jason filed a Petition for Dissolution of Marriage on August 5, 2019. (App.7-15). The parties separated in August 2019. (App. 7-15). Erinn filed an Answer on August 30, 2019 wherein she requested spousal support. (App.16-18). A stipulation and agreement regarding temporary matters was filed on November 20, 2019. (App. 19-24). Trial was originally set for about six months later on May 27, 2020. (App. 25-26). As a result of Covid, trial was continued until February 4, 2021 - - much later than originally anticipated. (App. 27-29).

A partial Stipulation was filed on February 2, 2021 and approved by the court on the same date. (App. 30-40). The parties had joint physical care of their child on a temporary and permanent basis. (App. 19-24, 30-40). Trial on the remaining issues was held on February 4, 2021 and then had to be

finished on a second day, February 26, 2021. (App. 27-28, 155). The court issued its Findings of Fact, Conclusions of Law, Judgment and Decree on March 6, 2021. (App. 49-63). Erinn's request for spousal support was denied. (App. 49-63). Erinn filed her notice of appeal on April 2, 2021. (App. 67-68).

STATEMENT OF THE FACTS

When the parties separated in August 2019, Erinn and Jason had only been married thirteen (13) years. (App. 73, 181). Jason and Erinn got married on May 7, 2006. (App. 73). At the time of trial in February 2021 (and then divorce in March 2021), they had been married 14 years as a result of trial taking so long to get into because of Covid. (App. 49-63, 73). Jason is 46 years old. (App. 73). Erinn is 42 years old. (App. 139). Both of them are young. (App. 73, 139). Both graduated high school before marriage. (App. 166). Jason acquired his bachelor of arts college degree before marriage. (App. 107, 166). Erinn acquired her certificate in phlebotomy before marriage. (App. 140, 166).

Jason and Erinn have one child together and he is the only child for each of them. (App. 49-63, 74). Jason and Erinn's son was 14 years old at the time of trial. (App. 74). Jason and Erinn agreed to temporary and

permanent joint legal custody and joint physical care on a week to week basis of that child. (App. 74). Jason has always been just as involved with their son as Erinn. (App 194-195). Even with joint physical care, Erinn is getting \$613.25 per month in child support from Jason. (App. 56). The child support of \$613.25 per month to Erinn continues until their child reaches the age of nineteen, or the child reaches age eighteen and graduates from high school, or earlier dies or marries. (App. 56). During separation, Jason also paid child support to Erinn but in a lesser amount of \$428.00 per month and took care of the child's expenses. (App. 74, 97). Jason is also the one that contributes to their son's college education. (App. 101). On top of paying all of these things for the child, Jason is the one paying for health insurance for the child and required to pay 89% of the child's uncovered medical expenses. (App. 57).

Erinn lives at 12086 Keb Lane in Ottumwa, Iowa. (App. 139). She had this 4 acre farm prior to marriage. (App. 53, 168-169, 202) Erinn comes from a very wealthy family. (App. 74). Her mom lives in a very large expensive house in the Birchwood area. (App. 74-75, 92). Erinn's mom would never left Erinn go without anything. (App. 75). Her father was an investor and sold life insurance prior to his death. (App. 75). Prior to Jason and Erinn getting together, even though Erinn was already an adult, her

parents were helping her pay her bills and giving her whatever she wanted. (App. 75,171).

Jason lives at 133 Vogel Avenue in Ottumwa. (App. 102, App. 276-282). This is a house he purchased during separation for a place for him and the child to live. (App. 276-282). There is a mortgage on this house. (App. 276-282).

Jason was employed at the same employer he has today before the marriage. (App. 93-94). Jason works at C&C Manufacturing. (App. 93-94). Up until 2014, Jason was making around \$45,000.00 per year. (App. 94). It was not until 2014 that Jason started making over \$60,000.00 per year. (App. 103). Jason cannot afford to pay the \$2,000.00 per month in spousal support Erinn was requesting. (App. 132). Erinn will get a higher social security payment as a result of being married to Jason for longer than ten years and based off of his earnings. (App. 103).

Jason only brings home after deductions \$49,962.12 per year. (App. 179). If Erinn gets \$2,000.00 per month in spousal support, plus child support of \$613.25 per month, plus the benefit of having no car payment (\$460.00 per month), then Erinn is getting \$36,879.00 per year (\$3,073.25 per month). (App. 179-180, 329). That means Jason only has \$13,083.12 per year to

survive on if her request is granted. (App. 179-180). Jason cannot afford to pay spousal support to Erinn. (App. 109-111, 299, 329). The expenses he listed did not even include expenses for things like savings, retirement, buying clothes for himself and the child, extracurricular activities for the child, entertainment, or repairs for the house. (App. 180, 299, 329).

Jason and Erinn did not live a high standard of living. (App. 76-77, 112-113). Most of the assets that existed at the time of the divorce proceeding - - 14 years later- - were assets acquired before marriage. (App. 76-77, 197, 198). The only items that were marital were the Subaru Outback and the tractor and attachments Erinn was awarded. (App. 98-100). There was a premarital agreement that was entered into between the parties. (App. 79-80, 198-203). Jason basically left the marriage with his premarital property and the debt of the marriage (Subaru Outback and credit cards). (App. 49-63, 76-77, 91, 101, 198-203, 330). Erinn on the other hand left the marriage with her premarital property, no debt, the improvements to that property that Jason contributed to during the marriage, and more marital assets than Jason. (App. 49-63, 99-102, 198-203, 294, 330). Jason had to pay the debt of the marriage which was Erinn's car and a credit card. (App. 49-63, 330).

Erinn has a trust that she is in control of and the beneficiary of the funds.

(App. 89-90, 227-271). Erinn gets to decide how much or how little to pay herself. (App. 89-90, 227-271). She doesn't have to ask anyone if she wants to increase what she gets. (App. 169-170). At the time of the dissolution trial, Erinn had approximately \$142,077.00 in that trust. (App. 157, 54). Erinn only takes the dividends from the trust currently. (App. 177). This is \$200.00 to approximately \$300.00 to \$320.00 per month. (App. 147, 156, 219-219, 220-222, 223-225). She has been doing this for several years as shown on taxes. (App. 217-219, 220-222, 223-225).

Erinn does not need spousal support. (App. 112). Jason also cannot afford to pay it. (App. 196). She has already benefitted by there being a Covid delay that forced the trial to be a long time after the divorce was filed. (App. 19-24, 109-111). Jason would not have known when he entered into a temporary agreement in November 2019 that he would be forced to follow that agreement for as long as he did as a result of Covid. (App. 19-24, 25-26, 80).

On top of being from a wealthy family, Erinn does not need spousal support because she hardly has any expenses. (App. 91-92, 96, 108, 167). She said she doesn't go or drive anywhere. (App. 151). Therefore, her gas/car expense should be very minimal. (App. 151). She does not have a mortgage

payment. (App. 91-92, 96, 108). She does not have a cell phone bill because her mom pays it. (App. 127). She does not have a car payment because Jason was ordered to pay it off. (App. 96, 54). She does not have health insurance costs because she likely qualifies for Medicaid. (App. 54, 182, 196). It is unlikely she will have a property tax payment either because before Jason started paying it in 2011 her parents were paying it. (App. 106, 130, 132). Her mother helped pay it during separation. (App. 132, 185). Plus, Erinn would have had the property tax payment and farm expenses even if she had never been married to Jason because she had them before they were married. (App. 130). Jason should not have to pay for expenses she had premarital. (App. 130, 166-167).

Erinn never worked full-time before she was married to Jason except maybe as a bartender. (App. 81, 194). When she came into the marriage, she was just working part time. (App. 81). Her parents paid for everything that she needed. (App. 127, 171, 173-175, 185).

Conveniently, up until separation, Erinn was receiving income from boarding horses. (App. 84-85). Her father did not die until 2020 so that was not the reason she stopped receiving income in the year this divorce started. (App. 150, 192). Jason was not aware she was getting income from boarding

the horses until during the divorce case. (App. 84, 87-88). Jason and Erinn maintained separate accounts. (App. 122). Jason did not know what Erinn's financials were really until the divorce case. (App. 87-88). He just signed the taxes when Erinn's dad told him to do so. (App. 85). At the time they separated the horses were still there and Erinn was still working with the horses. (App. 85-86).

Not only was Erinn boarding horses after the time of her injury, she was doing multiple physical activities with the horses. (App. 114-118). These types of activities Jason knows were going on until at least separation. (App. 114). She was caring for 6 horses and a pony at the time of separation. (App. 78). Erinn is capable of feeding and watering the horses. (App. 114). Erinn was capable of checking on the horses at least once a day, twice mostly. (App. 114). Erin was capable of training the horses including lunging the horses. (App. 115-116). Erinn was capable of saddling and riding the horses too. (App. 116, 183-184). Erinn was also capable of teaching their son how to ride horses. (App. 119). Erinn was able to muck (clean) the horses stalls on a regular basis. (App. 117). Erinn was capable of grooming the horses. (App. 117). Erinn was able to mow the pastures and plans to continue to do so. (App. 118, 160-161).

Erinn is capable of working but chooses not to do so. (App. 94, 119-121, 129, 172-173, 194). Her dad even tried to get her into selling life insurance but she didn't. (App. 175). Erinn was capable of and was working after the birth of their child in 2006, where she sustained the injury, until 2014/2015. (App. 81-83, 128-129, 134-135). Erinn then quit her job in 2014/2015. (App. 131). After she quit, Jason tried to get her to get a job. (App. 95, 193-194). There was only a 9 month period back when their child was born in 2006 that she was unable to work. (App. 142-143). The pain got better in 2007/2008. (App. 144-145). Erinn's doctor said there is not a way to test for pain. (App. 138).

Jason also tried to get her to seek out disability if she was going to say she could not work. (App. 96-97). Jason did not have a choice but to pay for the expenses he did during the marriage as a result of her choosing not to work or seek disability. (App. 131).

Erinn's family medicine doctor knows what Erinn tells him. (App. 133, 137). He does not see her on a daily basis. (App. 137). Erinn's family doctor did testify that Erinn is able to sit and stand on a regular basis. (App. 138). She would also be able to do the tasks a phlebotomist does during the day. (App. 138). He said she is capable of drawing blood and interacting with

people. (App. 138).

Erinn says that she is disabled. (App. 97). Erinn has not tried physical therapy for her injuries in ten years. (App. 185-186). During the trial was the first time Jason heard of Erinn applying for disability. (App. 96-97). If she gets disability then she will have health insurance as a result of the disability. (App. 97). Erinn does not want to go back to school. (App. 114, 161). Erinn does not want to work. (App. 161, 167). Erinn has her trust fund that she gets dividends off of. (App. 82).

Despite anticipating a divorce since 2018 and there being discussion about divorce for years, Erinn waited until a month before the divorce trial to file for disability. (App. 161-163, 192). She consulted a lawyer regarding a divorce back in 2018. (App. 162). She believes she will be getting a disability payment. (App. 157-159). She believed she was disabled when the divorce was filed too. (App. 161). That means she had over a year to file for disability but didn't. (App. 162-163). She also didn't check into any government programs like Title XIX or food stamps but she was planning on doing so. (App. 164-166).

ROUTING STATEMENT

This case should be transferred to the Iowa Court of Appeals because it

involves the application of established legal principles. Iowa R. App. P. 6.1101(3)(a).

ARGUMENT

Preservation of Error. Petitioner agrees error was preserved for review by this Court.

Scope and Standard of Appellate Review. This matter is in equity and therefore the scope of review is de novo. Iowa R. App. P. 6.907. The entire record is examined and the rights of the parties are adjudicated anew. *In re Marriage of McCreedy*, 2012 WL 3196033 *1, *2 (Iowa App. 2012). “In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them.” Iowa R. App. P. 6.904(3)(g).

I. THE TRIAL COURT PROPERLY DETERMINED NO SPOUSAL SUPPORT SHOULD BE AWARDED IN THIS CASE.

A trial court has considerable latitude and discretion when making an award of spousal support. *In re Marriage of Becker*, 756 N.W.2d 822, 825 (Iowa 2008); *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 853 (Iowa App. 1998). The trial court’s determination on spousal support will only be disturbed if the ruling has failed to do equity between the parties. *In re*

Marriage of Gust, 858 N.W.2d 402, 416 (Iowa 2015); *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005); *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa 1997). In making a determination regarding spousal support, courts are required to consider the factors listed in Iowa Code. *In re Marriage of Gust*, 858 N.W.2d 402, 407 (Iowa 2015). There are “three kinds of spousal support: traditional, rehabilitative, and reimbursement.” *Id.* at 408. “Spousal support is not an absolute right.” *In re Marriage of Gutcher*, 2018 WL 5292082 *1, *3 (Iowa Ct. App. 2018).

Traditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support. *In re Marriage of McCreedy*, 2012 WL 3196033 *1, *3 (Iowa App. 2012). “Twenty years is the generally accepted durational threshold for the award of traditional spousal support.” *In re Marriage of Gutcher*, 2018 WL 5292082 at * 3 (citing *In re Marriage of Gust*); see also *In re Marriage of Jenn*, 2019 WL 5424938 *1, *2 (Iowa Ct. App. 2019). In marriage of long duration, “[t]he imposition and length of an award of traditional alimony is primarily predicated on need and ability.” *In re Marriage of Gust*, 858 N.W.2d 402, 411 (Iowa 2015). The court considers the property distribution and spousal support provisions of a decree together to determine their sufficiency. *In re Marriage of McCreedy* 2012 WL

3196033 at *3.

The Trial Court found 1) Erinn “does not qualify for traditional, rehabilitative, or reimbursement alimony/spousal support”, 2) “[s]pousal support is not appropriate in this case”, and 3) an award of spousal support “would not be equitable to [Jason]”. (App. 55). The Trial Court found this was a marriage of less than 15 years. (App. 55). The Trial Court found Jason did not obtain an advanced degree while Erinn worked to support him during the marriage. (App. 55). The Trial Court found Erinn was not requesting to enter an educational or training program to increase her income. (App. 55). The Trial Court found Erinn possesses significantly more assets than Jason. (App. 55). The Trial Court also found “[b]oth Jason and Erinn were smart and capable people” and “articulate”. (App. 53). The Trial Court found “Erinn is able to support a standard of living reasonably comparable to that enjoyed during the marriage without alimony.” (App. 54).

A case that was just decided in 2018 that also came out of District 8A like the Mills case, but in Monroe County, *In re Marriage of Gutcher*, 2018 WL 5292082 (Iowa Ct. App. 2018), is very on point in this case. In that case, spousal support was completely denied to the wife. Similarly, Erinn’s spousal support request should be completely denied. In fact, Erinn is far better off

than the wife in *Gutcher* in part because of all of the assets she is leaving the marriage with. Erinn is also far younger than the wife in *Gutcher* and may be able to work (or if not obtain disability). Both cases involve marriages that are not long-term marriages and are instead moderate length. *Id.* at *1. The Court in *Gutcher* determined that traditional spousal support was not applicable because the *Gutcher* marriage of 13 years “falls well short of the durational threshold, making a traditional support award inapplicable.” *Id.* at 3. Similarly, the *Mills* marriage of 14 years (13 years at separation) falls well short of the durational threshold for traditional spousal support and so traditional spousal support should not be awarded. Both cases also involve women that developed medical problems during the marriage. *Id.* at *1. The Court in *Gutcher* determined rehabilitative support was also not applicable because the wife in *Gutcher* was not seeking further training or education. *Id.* at 3. Like the wife in *Gutcher*, Erinn is not seeking further training or education and therefore rehabilitative support is not applicable. The Court in *Gutcher* determined reimbursement spousal support would also not be applicable because it is limited to “‘situations where the marriage is devoted almost entirely to the educational advancement of one spouse’ and ‘there has not been enough time for the parties to receive the benefit from that

educational advancement.”” *Id.* at 4. In the Mills case, reimbursement spousal support is also not applicable. Jason had his college degree (and his job) before his marriage to Erinn. Erinn also had her certificate in phlebotomy before marriage. The Court in *Gutcher* also determined transitional support was inapplicable in that case because such an award should be extraordinary and limited to situations where the recipient spouse needs short-term assistance in transitioning from married status to single status due to economic dislocation caused by the divorce. *Id.* at 4-5. Erinn already has a paid for house and vehicle. Additionally, Erinn already had Jason paying for expenses for her during a temporary basis to assist her in the transition. He should not have to pay any longer. He already is paying the debt of the marriage including the debt for her vehicle. Unlike the wife in *Gutcher*, Erinn is far younger than the wife in *Gutcher* and may be able to work still. *Id.* at *1. The trial court in this case determined Erinn would either qualify for disability in due course or seek employment. (App. 54). That shows the trial court was not completely convinced Erinn was not capable of working if she didn’t get awarded disability. However, Erinn testified she had no intention of going back to school or working.

Unlike *Gutcher*, which is very on point in this matter, the cases cited

by Erinn in her Brief are easily distinguishable from this case. As a preliminary note, each of the cases cited by Erinn, other than *In re Marriage of Mann*, were decided before *Gust* in 2015. In the case of *In re Marriage of Mann*, spousal support was actually denied by the Supreme Court in that 16 year marriage. 943 N.W.2d 15, 18 (Iowa 2020).

Erinn cited *In Re Marriage of Schenkelberg*, 824 N.W.2d 481 (Iowa 2012) in support of her request for spousal support. One distinguishing factor is *Schenkelberg* was a marriage of 16 years and the Mills marriage is one of 14 years (13 years at separation). *Id.* at 486. Another distinguishing factor, is the husband in *Schenkelberg* earns far more than Jason. *Id.* at 484-485 (finding the evidence showed the husband's average income was more than \$400,000 per year). The standard of living the wife was used to in *Schenkelberg* is also far different from Mills because the Mills household was not of a high standard of living. *Id.* at 484-486. Additionally, another distinguishing factor is the husband in *Schenkelberg* received a substantial property award as a result of the premarital agreement. *Id.* at 486. In the Mills case, it is the exact opposite from the *Schenkelberg* dissolution. In this case, it is Erinn and not Jason who benefitted from the enforcement of the premarital agreement and Erinn as opposed to Jason who also received more

of the marital assets than Jason did. Further, unlike the wife in *Schenkelberg*, leaving this marriage Erinn has substantial assets including not only a paid for home but also income producing assets. *Id.* at 487.

The Mills dissolution is also distinguishable from Erinn's cited case of *In Re Marriage of Spiegel*. *In re Marriage of Spiegel*, 553 N.W.2d 309 (Iowa 1996)(superseded by statute as stated in *In re Marriage of Shanks*, 758 N.W.2d 506 (Iowa 2008). For one, contrary to what Erinn stated in her Brief, the *Spiegel* court did not award traditional spousal support. *Id.* at 319-320. It awarded spousal support but not traditional. *Id.* Secondly, the husband in *Spiegel* was the one that benefitted from the enforcement of the premarital agreement and left the marriage with substantial assets. *Id.* at 311-312, 319. In the Mills case, it is the opposite. Erinn not Jason left the marriage with far more in assets - - both premarital and marital. (App. 53). Jason is paying the balance of the debt of this marriage. (App. 54). Additionally, the husband in *Spiegel* made far more in earnings than Jason. *Id.* at 311-313.

The Mills dissolution is also distinguishable from Erinn's cited case of *In re Marriage of Walker*.¹ *In re Marriage of Walker*, 2014 WL 4937727

¹ In Appellant's brief, the case was cited as *In Re Walker*, 856 N.W.2d 382 (Iowa App. 2014). Upon a search, it is believed the correct referenced case and cite is *In Re Marriage of Walker*, 856 N.W.2d 383, 2014 WL 4937727 (Iowa Ct. App. 2014).

(Iowa Ct. App. 2014). For one, Erinn has far more in assets than the wife in *Walker*. (Findings of Fact, Conclusions of Law, Judgment & Dcree, page 6). As just one example, unlike the wife in *Walker*, Erinn does not have to acquire housing and has a completely paid for house already. *Id.* at 3, 8. Secondly, the husband in *Walker* was 59 years old and he only had to pay spousal support until he reached the age of 63. *Id.* at *1,9. Therefore the spousal support award in *Walker* was only 4 years in duration. *Id.*

Erinn also cited *In re Marriage of Mann* in support of her request for spousal support. 2019 WL 5792673 (Iowa Ct. App. 2019). However, the Court of Appeal's decision was reversed by the Supreme Court in *In re Marriage of Mann*, 943 N.W.2d 15 (Iowa 2020) as it related to spousal support. *In re Marriage of Mann* as decided by the Supreme Court actually supports the denial of spousal support in the Mills divorce. The Supreme Court in *Mann* reversed the three-year award of spousal support in a 16 year marriage from the wife to the husband that had been granted by the Court of Appeals. *Id.* at 18. The Supreme Court ordered that no spousal support should be awarded. *Id.* Similarly, no spousal support should be awarded in the Mills case.

Erinn's claim in her brief to have expenses of \$2,512.00 per month are definitely exaggerated. Erinn does not have much in the way of expenses. (App. 91-92, 96, 108, 167). She doesn't have much in vehicle expense because she said she doesn't go or drive anywhere so that expense would be minimal. (App. 151). She doesn't have a house payment or a car payment. (App. 54, 91-92, 96, 108). She doesn't owe any money to anyone. (App. 167). She gets help from her mom with expenses for the farm (who is also on the real estate title) and Erinn would have had those expenses regardless of whether or not Erinn and Jason ever got married. (App. 75, 106, 130, 132, 166-167, 185). Plus her family has helped her out with expenses before, during, and after separation. (App. 75, 106, 127, 130, 132, 171, 174-175). Erinn's mom also pays for her cell phone so she doesn't have that expense. (App. 127). If you add up what Erinn cited in her brief that Jason paid for when they are together, then you get expenses of approximately \$1,296.00 per month. Even that number is off given that the food costs cited by Erinn would have been the family food bill and Jason is no longer there and the minor child is only there half of the time. The utilities may not be as much either given the reduction in the amount of people living there full time. Not to mention that Erinn hasn't applied for assistance through food stamps but was planning

on it. (App. 165). She would likely qualify for state insurance so she also would not have that expense if she would just apply. (App. 49-63, 97, 196). Further, Erinn gets to choose how little or how much to pay herself from her trust. She has chosen to only pay herself dividends from the trust but she doesn't have to limit herself to that amount. (App. 89-90, 169-170, 177, 227-271).

Erinn's request to have \$2,000.00 per month in spousal support is completely unreasonable as well. That means Erinn is asking that Jason pay \$2,000.00 per month in spousal, \$613.25 per month in child support, and have the benefit of no car payment at the rate of \$460.00 per month. That is \$3,073.25 per month. That means Erinn is asking for more than what she even claims she has in expenses per month (and that claimed amount is very disputed). Jason only brings home after deductions \$49,962.12 per year. (App. 179). Erinn is asking that he pay \$36,879.00 per year to her from that amount. That means Jason would only have \$13,083.12 per year to live off of. That means Erinn is asking that she not be required to contribute anything towards her expenses, that Jason pay all of her monthly expenses and then some, that she not be required to touch any principal of her trust fund so that it continues to grow (even though Jason wouldn't be able to afford to

contribute to his retirement or live really), and that Jason assist in paying for Erinn's premarital assets and expenses. Not to mention Jason already took on more of the debt of the marriage than Erinn. Erinn left the marriage with no debt and the assets of the marriage.

Jason's income increased during the marriage but it was not related to anything Erinn did. He already had his degree before marriage. He was already employed by the company before marriage. (App. 93-94, 107, 140, 166). Erinn and Jason had much different incomes when they entered the marriage so nothing has changed. Erinn chose not to work despite being capable of doing so. That is shown by the fact Erinn did work after the birth of their child all the way until 2014/2015 (except for a 9 month time period). (App. 81-83, 95, 128-129, 131, 134-135, 142-143, 193-194). Not to mention all the other things she is and was capable of doing physically. (App. 78, 94, 114-121, 160-161, 172-173, 194).

Erinn's chart reflecting incomes doesn't list out the dividends Erinn has been receiving from her trust fund throughout the years. (App. 217-225). It also does not reflect the income she was receiving for boarding horses. An income that she received until the year the divorce was filed. (App. 217-225). From boarding horses, she had gross receipts of \$6,400.00 in 2016, \$5,200.00

in 2017, and \$3,600.00 in 2018. (App. 217-219, 220-222, 223-225).

Erinn is not dependent on Jason as she claims in her brief. Erinn is definitely not and will not be destitute as is claimed in her brief either. (App. 85-86, 89-92, 94, 96, 99-102, 106, 108, 119-121, 127, 130, 132, 151, 157, 167, 171, 173-175, 177, 185, 330, 198-203, 49-63). Erinn refused or neglected to seek out disability until a month before the trial in this matter. (App. 161-163, 192). This is despite the fact she has been anticipating divorce since 2018. (App. 161-163, 192). If she gets disability then she will have that source of income. If she doesn't get disability, it is believed she will work. Erinn has a paid for house, a vehicle with no car payment, no debt, a trust fund that she can easily access, and a wealthy family that has helped her before, during and since separation. She is also getting \$613.25 per month (\$7,359.00 per year) in child support from Jason. (App. 56). Further, the Trial Court found that Erinn would either qualify for disability or become employed so that is another source of income. (App. 49-63). That doesn't even take into account that Erinn has minimal expenses and if she applied for food stamps would probably have even less in expenses. (App. 164-166). Jason didn't have a choice but to pay for the expenses they had when they were together because Erinn quit her job and instead of trying to find a new one refused.

(App. 95-97, 131, 193-194).

Contrary to Erinn's assertion, the court relied on multiple factors in deciding spousal support was not equitable or appropriate in this case. (App. 49-63). The marriage not being a long term marriage is just one of those factors. Among other factors the court clearly considered is the fact Jason already had his college degree before marriage, Erinn was not requesting to enter an educational or training program, Erinn has significantly more assets than Jason, the property division entered in this case, and that Erinn would either get employment or disability, and they were both smart, capable, articulate people. (App. 49-63).

CONCLUSION

The trial court properly denied Erinn's request for spousal support. The trial court did not fail to do equity between the parties. It would actually be inequitable to require Jason to pay spousal support to Erinn. The decision by the trial court not to award spousal support to Erinn should be upheld. No spousal support should be awarded in this case.

REQUEST FOR ORAL ARGUMENT

If the Court believes oral argument would be beneficial in the submission of this matter, then Appellee requests to be heard in oral argument. However, it is not

believed oral argument is necessary in this case and would add significant cost to this appeal.

_____/s/Heather M. Simplot_____
Heather M. Simplot

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The undersigned hereby certifies that she electronically filed this brief with the Iowa Supreme Court using EDMS, on December 23, 2021 which will serve the brief on the following counsel of record:

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