IN THE SUPREME COURT OF IOWA

NO. 21-1918

POLK CO. CASE NO. CDCD098962

RACHAEL KAY SOKOL,

Petitioner-Appellee,

v.

DAVID LANGDON SOKOL,

Respondent-Appellant.

On Appeal from the Iowa District Court for Polk County,

The Honorable Jeanie K. Vaudt, Judge

PETITIONER-APPELLEE'S FINAL BRIEF

Stacey N. Warren AT0008349
CashattWarren Family Law, P.C.
130 E. 3rd Street, Suite 203
Des Moines, Iowa 50309
Telephone: 515.421.9290
Facsimile: 515.414.8929
Email: stacey@cashattwarren.com
ATTORNEY FOR PETITIONER-APPELLEE

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ROUTING STATEMENT

Appellee agrees this case should be transferred to the Court of Appeals because no basis exists for the Supreme Court to retain the case. It involves questions of law that can be resolved by applying existing legal principles. Iowa R. App. P. 6.1101.

STATEMENT OF THE CASE

Course of Proceedings

Petitioner-Appellant Rachael K. Sokol (Rachael) filed her Petition for Dissolution of Marriage on July 1, 2019. (Petition, App. 6-8) Respondent-Appellant David L. Sokol (David) filed his Answer on August 16, 2019. (Answer, App. 9-11). An Order to Change Venue was entered August 16, 2019. (Order, App. 12-13). A Stipulation and Agreement Regarding Temporary Matters was filed October 14, 2019. (Stipulation, App. 14-24). The Order Approving the Stipulation was entered October 28, 2019. (Order, App. 25-27)

Due to the Covid-19 backlog of trials, the parties' Trial Scheduling Conference was continued until July 1, 2020. (Order, App. 37-38) Trial was set for February 23-24, 2021, by videoconference. (Order, App. 39-41) A Stipulation and Agreement Modifying Temporary Order was filed November 5, 2020. (Stipulation, App. 42). The Order modifying the temporary order was entered November 6, 2020. (Order, App. 43-44)

On February 15, 2021, Respondent filed a Motion to Continue Trial. (Motion, App. 45-46) After a hearing, the trial was continued to June 22 – 24, 2021, to be held by videoconference. (Order, App. 47-49). Rachael filed a Motion to Appoint Child's Attorney on April 14, 2021. (Motion, App. 50-51) The Court appointed Iowa Center for Children's Justice as the children's attorney. (Order, App. 52-54)

The matter proceeded to trial by videoconference on June 22 – 24, 2021. The Court entered its Findings of Fact, Conclusions of Law, and Decree on August 23, 2021. (Decree, App. 66-91) Petitioner filed a Motion to Reconsider. (Petitioner's Motion, App. 98-101) Respondent filed a Motion to Reconsider as well. (Respondent's Motion, App. 92-97) Hearing was held on the motions on October 7, 2021. The district court entered an Order Granting Motion I and Denying Motion II on November 29, 2021. (Order, App. 102-108) Respondent filed Notice of Appeal on December 12, 2021. (Notice, App. 109-111)

STATEMENT OF THE FACTS

The parties, Appellant David Langdon Sokol (David) and Appellee Rachael Kay Sokol (Rachael) married on June 8, 2002 in Clear Lake, Iowa. (Tr. Vol. I 13:4-6) They have two children, K.R.S. (born 2006) (referred to as Ka.R.S.) and K.R.S. (born 2014) (referred to as Ko.R.S.). At the time of trial the children attended school in the Johnston School District where Ka.R.S. was a rising ninth-grader and Ko.R.S. was a rising second-grader. (Tr. Vol. I 13:18-14:8)

Rachael resides in Johnston, Polk County, Iowa in the parties' family home. (Tr. Vol. I 12:16) She was 45 years old at the time of trial. Rachael is an emergency physician and was employed by UnityPoint in Des Moines since 2009. (Tr. Vol. I 14:20-24) She earned her bachelor's in biology, graduated from paramedic and medical school at Des Moines University in 2005, and completed her four-year emergency medicine residency in Warren, Michigan in 2009. (Tr. Vol. I 15:3-13)

David resides in Johnston, Polk County, Iowa. (Tr. Vol. II 63:3) He was 43 years old at the time of trial. David is single and lives alone (and with Ka.R.S. and Ko.R.S. during his parenting time) in a rented residence. (Tr. Vol. II 63:8-64:6) David operates his own business, Home Doctor, LLC, where he is a general contractor and does custom woodwork. Home Doctor has employees and operates out of a commercial building in Woodward, Iowa, owned by another company he owns, Pinnacle Harbor Investments. (Tr. Vol. II 64:13-65:13) David started his businesses in 2009 when the parties moved to Iowa.

Shortly after their move to Iowa, Rachael placed Ka.R.S. in daycare and hired a nanny to assist with the children's care when she worked night shifts. After the birth of Ko.R.S., the parties used a nanny daily until 2020 when the nanny moved.

Rachael took the lead in the children's medical, educational, and extracurricular activities during the marriage. Rachael was responsible for scheduling appointments with the children's pediatrician, Ka.R.S's specialist in

Iowa City, and Ko.R.S.'s occupational therapist. Tr. Vol. I 23:19-21; 52:6-19 Both children have IEPs/504 Plans and ADHD, and Ka.R.S. is dyslexic. (Tr. Vol. I 19:14-19; 47:19-47:8) Rachael continued to take primary responsibility for the children's medical and educational needs after filing this action. (Tr. Vol. I 25:3-6; 48:25-49:7)

The parties agreed to temporary joint physical and legal custody and followed a 2-2-5-5 schedule. (Stipulation, App. 14-24) Rachael agreed to pay $5,000.00 per month to David on a temporary basis. (Stipulation, App. 14-24)

At the time of trial in June 2021 the parties had shared physical and legal custody of the children for nearly twenty (20) months, most of it during the Covid-19 pandemic. Ka.R.S.'s emotional needs suffered and the district court recognized the need for an adjusted schedule of parenting time for David with Ka.R.S.

Each party maintained their own residence throughout the proceedings. David did not have any debts at the time of trial. (Exh. A, App. 798-800) He had substantial cash in his name and control. (Exh. A, App. 798-800) Although he claimed no income (Exh. A, App. 798-800), the district court determined he chose not to draw a salary from his business while he had the ability to do so and earn an income.

Additional facts will be discussed below as necessary.

ARGUMENT

Standard of review and preservation of error: Review of this equitable case is de novo. The trial court's findings are to be recognized and given weight,

"especially when considering the credibility of witnesses." *In re Marriage of Recker*, No. 09-0673, 2010 WL 3503522, at *2 (Iowa Ct. App. Sept. 9, 2010); *In re Marriage of Barry*, 588 N.W.2d 711, 712 (Iowa Ct. App. 1998); *In re Marriage of Brainard*, 523 N.W.2d 611, 614 (Iowa. Ct. App. 1994); Iowa R. App. P. 6.904(3)(g); Iowa R. App. P. 6.907. This Court should defer to the Court's "impressions of the parties gleaned from observing their testimony." *Weber v. Obrecht*, No. 10-0235, 2010 WL 4484375, at *3 (Iowa Ct. App. Nov. 10, 2010).

David failed to preserve error on numerous issues raised for the first time on appeal. A statement on error preservation is included under each issue below.

I. The District Court Did Not Err in its Terms of Joint Legal Custody.

David argues that the joint legal custody award with a tie-breaker provision is against Iowa law; however, the Iowa Supreme Court has yet to rule on the topic. Chapter 598 of the Iowa Code mentions "nothing about assigning sole-decision-making authority for some responsibilities and joint participation for others. Iowa's legal landscape is virtually barren of appellate cases in which the district court unbundled legal custody rights." *Armstrong v. Curtis*, No. 20-0632, 2021 WL 21965, at *3 (Iowa Ct. App. Jan. 21, 2021) (citations omitted).

David cites two authorities regarding this issue: *Harder v. Anderson*, 764 N.W.2d 534 (Iowa 2009) and *Gaswint v. Robinson*, 2013 WL 450879, at *5 (Iowa Ct. App.). This case can be distinguished from both *Harder* and *Gaswint*. In *Harder*,

domestic abuse resulted in a no-contact order between the joint legal custodian requesting access to records and one of the children. The court determined that it was in the best interests of the child to deny the mother access to the child's mental health records due to an objection raised by the care provider. *Id*. at 538. In its decision, the court stated, "when joint legal custodians have a genuine disagreement concerning a course of treatment affecting a child's medical care, the court must step in as an objective arbiter and decide the dispute by considering what is in the best interest of the child." *Id*. David did not present testimony at trial indicating that he objected to any of the decisions Rachael has made for the children. The issue here is not that decisions are being disputed; rather, the issue is that decisions will either be delayed or not be made at all under a status quo legal custody arrangement.

Additionally, there was no evidence suggesting that the children were harmed by those decisions. If David did object, he was at the liberty to file with the court to resist the decisions being made. He did not do so.

The singular legal custody issue in *Gaswint* was the question of where the child was to attend school. *2013 WL 4504879* at *5. In that case, the court struck down the notion that the primary custodial parent had a superior right to make legal custody decisions. *Id.* Instead, the court cited *Harder* and ruled that the final arbiter should be the court once parties have reached an impasse. *Id*. citing *Harder v. Anderson*, 764 N.W.2d at 538. Here, there is no evidence of issues on which the

parties have reached an impasse. Instead, the issue that must be addressed is the decision-making process itself.

In contrast to the authority cited by David, there have been Iowa decisions granting the use of a tiebreaker to address and resolve future disputes proactively. *See Sloan v. Casey*, No. 15-0921, 2015 WL 9451093, at *7-8 (Iowa Ct. App. Dec. 23, 2015) (upholding modification of joint legal custody to make one parent solely responsible for scheduling medical appointments for the child); *In re Marriage of Bates*, No. 11-1293, 2012 WL 1440340, at *4 (Iowa Ct. App. Apr. 25, 2012) (affirming joint legal custody was unreasonable for decisions related to healthcare). The method described by the district court was not installed to absolve one parent of their responsibilities as a legal custodian or eliminate them from the decision-making process; instead, it is used to promote swift decision-making and meaningful communication between the parties. It is utilized when the district court predicts continued struggle between the parties in making decisions, but matters do not rise to the level that joint legal custody is inappropriate. See *In re Marriage of Gensley*, 777 N.W.2d 705, 715 (Iowa Ct. App. 2009) (quoting *In re Marriage of Bolin*, 336 N.W.2d 441, 446 (Iowa 1983))

At trial, Rachael and David presented testimony regarding their respective approaches to decision-making for the children. Rachael explained her logical, checklist approach to solving problems relating to the parties' children. (Tr. Vol. II

35:3-25; 36:1-15) In dealing with David, she testified that she attempts to reinitiate conversations and ask questions in different ways to continue discussions about the children. (Tr. Vol. II 37:1-3) Since the beginning of the proceedings, David has not initiated contact with her to present and discuss issues relating to the children. (Tr. Vol. II 37:10-25; 38:1-4) David's approach is that if it's Rachael's idea, it's the wrong idea, and he is unwilling to engage in discussion. (Tr. Vol. II 47:7-14) If issues are handled the way David would like, they will not be resolved.

It is David's testimony that in handling children's issues, Rachael tries to deal with problems immediately while he is irritated that she wants him to "drop everything and forget everything up and to that point and do what she wants right then and there …". (Tr. Vol. III. 102: 18-21) David does not view the children's issues as urgent matters; rather, he sees the decision-making process as an inconvenience.

While David asked the court for primary physical care, Rachael requested joint legal custody and joint physical care. She does not wish to restrict David's access to information regarding the children, nor does she want to take time away from the children and their father. (Tr. Vol. I 161:2-3) (Tr. Vol. I 162:5-16) David claims that shared care is not working when it comes to making joint decisions; however, he was unable to give testimony indicating exactly why the arrangement was hindering the process or harming the children. (Tr. Vol. III 137:4-11)

David demonstrated his lack of understanding regarding the difference between legal and physical custody. (Tr. Vol. III 97:1-23) He alleged that his main concern is to have a voice and make decisions for the children; however, this assertion conflicts with the evidence presented at trial of the parties' conversations about child issues. (Exh. 41) David does not offer suggestions for resolution. Instead, for example, on the issue of Ka.R.S.'s education, he proposes that the parties continue doing what they are doing. (Tr. Vol. III 105:13-16) (Exh. 41) David's testimony regarding Ka.R.S.'s school demonstrates his lack of knowledge and unwillingness to handle problems.

Rachael is the parent responsible for scheduling and handling educational matters for the children. (Tr. Vol. II 40:3-6) As noted above, Ka.R.S. is dyslexic, and both children have ADHD. These diagnoses present difficulties for the children in their education, and as a result, Ka.R.S. has a 504 plan, and Ko.R.S. has an IEP. These plans involve the children receiving extra assistance in the classroom. (Tr. Vol. I 46:18-25; 47:1-8) The plans also require meetings between parents and teachers to discuss the needs of the child to make necessary adjustments. (Tr. Vol. I 47:23-25; 48:1-25) Rachael testified that she was the parent in attendance at all the children's conferences. (Tr. Vol. I 48:15-25; 49:1-7)

Instead of working with Rachael to aid in their children's education, David either denies that issues exist or argues with Rachael about their cause. (Tr. Vol. III

134: 1-25; 135:1-6) For example, he contends that Rachael does homework for Ka.R.S. but that Ka.R.S. is "working on her homework constantly" while at his house. (Tr. Vol. III 106:15-19) According to David, he and Ka.R.S. don't have "any conflict at all" regarding her schoolwork. (Tr. Vol. III 131:1-8) He asserts that he discussed with Ka. R.S's teachers that the phone is not the problem, but rather Ka.R.S. is talking in class instead of working on her assignments. (Tr. Vol. III. 134:1-25)

The parties also gave conflicting testimony regarding the care of the children. Rachael was the parent responsible for scheduling and handling medical appointments for the children prior to the proceedings. (Tr. Vol. II 39:17-21) David's approach to scheduling medical appointments is to have Rachael act as his administrative assistant. (Tr. Vol. II 44:21) Rather than contacting the provider himself, David requested that Rachael contact him with the proposed time for an appointment and that he be allowed to get back to Rachael when it works for him. (Tr. Vol. II 44:2-11) This approach ultimately evolved into David's request that all the children's appointments be scheduled on Rachael's time. (Tr. Vol. II 43:15-25; 44:1)

Throughout the trial, David stressed that he is not being heard and does not have a voice in parenting the children. (Tr. Vol. II 131:21-24) (Tr. Vol. II 160:14-23) (Tr. Vol. III 97:12-14) (Tr. Vol. III 99:25; 100:1-5) (Tr. Vol. III 101:10-12) He

claimed that he has not had any decisions he can make. (Tr. Vol. III 97:14-17) However, one of the only decisions David participated in was unilaterally enrolling Ko.R.S. in karate on Rachael's evenings. (Tr. Vol. II 20:2-14)

David blames his lack of knowledge concerning the children's affairs on Rachael. (Tr. Vol. II 115:10-22) He accuses her of ignoring him until she makes the decision. (Tr. Vol. II 116:3-10)

In the District Court's Order Granting Motion I and Partially Granting and Partially Denying Motion II, the court's analysis of physical care described each party's approach to problem-solving and laid out its proposal for a successful joint legal custody arrangement:

> *Rachael showed common sense and described rational processes for presenting issues to David for consideration regarding their children. Under this record, David has difficulty making decisions and often procrastinates about decisions related to the parties' children. David has not offered any information as to how he would be the better caregiver and problem solver. The mechanism established by the court ensures, to the greatest extent possible, that Rachael and David make decisions in the best interests of their children without undue delay.*

(Order, App. 102-108)

It is undisputed that David and Rachael struggle to communicate about the needs of the children (or anything else). David firmly believes that Rachael is the catalyst of the parties' problems and is quick to blame her for their poor communication. He does not have a sense of urgency when making decisions for the children. In response to Rachael making suggestions on how to handle an issue with

Ka.R.S. at school, David proposed to continue doing what they were doing. (Tr. Vol. III. 105:13-16; Exh. 41) If the decision-making guidelines for legal custody are left without a mechanism for moving it forward, David will continue to hinder the process with his indecisiveness and constant need to defy Rachael.

It is in the children's best short-term and long-term interests that the district court's legal custody terms vesting final decision-making in Rachael be affirmed. As discussed above, Rachael has been the parent who has taken the responsibility of scheduling the children's activities and appointments both before and after the parties' separation. Given her hands-on and practical involvement in the children's care, coupled with her training and knowledge as a physician, she is the parent who is best equipped to make final decisions to ensure swift, quality care for the children. The district court merely affirms the process that the parties used since they separated and began sharing physical custody. The record also reflects that without this mechanism to keep decision-making on a forward path, the parties will continue to argue without resolution and rely heavily on litigation to settle disputes. This is not only a burden on the courts but also a financial burden on the parties and is not in the best interest of the children.

II. The District Court's Property Division Was Equitable.

Iowa is an equitable division state. *In re Marriage of Robinson*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). An equitable division does not necessarily mean an equal

division of assets. *Id.* Rather, it is an issue of what is equitable under the circumstances. *In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1998). Parties are entitled to a just and equitable share of the property that was accumulated through their joint efforts during the marriage. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id*. The distribution of property should be made in consideration of the factors codified in Iowa Code section 598.21(5). *See In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983). While it is frequently considered fair to equally divide the assets accumulated during the marriage, it is not required. *In re Marriage of Keener*, 728 N.W.2d 188, 193 (Iowa 2007). Typically, Iowa courts "use the date of trial as the most appropriate date to value assets, while recognizing the need for equitable distributions based on the unique circumstances of each case." *In re Marriage of Campbell*, 623 N.W.2d 585, 588 (Iowa Ct. App. 2001). "The purpose of determining value is to assist the court in making equitable property awards and allowances." *In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa Ct. App. 1993) (citing *In re Marriage of Dennis*, 467 N.W.2d 806. 808 (Iowa Ct. App. 1991).

"Because of the difficulty surrounding valuations, appellate courts give much leeway to the trial court." *Keener*, 728 N.W.2d at 194. "Ordinarily, a trial court's valuation will not be disturbed when it is within the range of permissible evidence." *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007) (citing *In re Marriage*

of Wiedemann, 402 N.W.2d 744, 748 (Iowa 1987)). Appellate courts "ordinarily defer to the trial court when valuations are accompanied by supporting credibility findings or corroborating evidence." *Id*. (citing *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999)).

The district court did not err in adopting Rachael's values in her proposed distribution in this case, as her values were found to be more credible. Specifically, in section (iv) of the Order on November 29, 2021, the District Court found that "David repeatedly gave conflicting testimony about what he thought was personal property and what he thought was business property. …" and "[his] Exhibit BB was not credible." (Order pp. 3-4, App. 104-105)

A. The District Court's Valuation of the Commercial Property was Appropriate.

The Court relied upon Rachael's valuations of the 101 S. Main Street property and insurance proceeds for the damage from the derecho. (Exh. 35, App. 795-797) Rachael designated Kevin Crowley as her expert on the commercial property valuation. Due to the length of the trial, the Court accepted his testimony through the affidavit in lieu of oral testimony, with the agreement of both parties and counsel. In coming to the values, Rachael relied upon an affidavit filed by Kevin Crowley – an agent with Iowa Realty. Unbeknownst to Rachael, David had contacted Kevin Crowley in February 2021 to obtain a valuation of this property. (Tr. Vol. III 25:1-

9) David claims because Mr. Crowley developed his opinion by pulling the Dallas County Assessor's listing for the property with comparable properties, that his conclusion is incorrect.

In his appeal brief, he continues to assert that Mr. Crowley's valuation of the business property is incorrect. David did not offer any evidence to refute the valuation by Mr. Crowley, and he agreed to accept his affidavit coming into evidence instead of testimony due to the length of the trial. (Tr. Vol. III 162:6-16) (Affidavit, App. 62-65) David also admitted that there is no evidence showing a market value of $150,000 for the property. (Tr. Vol. III 28:5-9) Instead of seeking a second opinion, David resorted to pulling numbers out of thin air and presenting them at trial. (Tr. Vol. III 28:5-9) David also admitted contacting Mr. Crowley ten days before the last trial date set in the matter and requested that he send a lower value for the property. (Tr. Vol. III 26:11-17; 27:16-19) Kevin Crowley included his values provided to David in his affidavit. David did not disclose this assessment of value in his discovery responses. (Tr. Vol. III 40:8-20)

David also claims that the property's value should be reduced by the value of the insurance proceeds to yield a negative value on the property. This is in direct conflict with the only expert valuation presented. Mr. Crowley stated in his affidavit that "[b]ased on the information for 101 S. Main Street, Woodward, Iowa, if the

building is damaged, it does not impact [his] opinion of the value of $205,092." (Affidavit of Kevin Crowley, ¶ 14, App. 62-65)

David further attempts to reduce the property's value by claiming that the mortgage should be included to produce a value of negative $114,464.10. There was nothing presented at trial evidencing that the balance on the mortgage is the amount David claims in his brief.

The trial court's analysis of the testimony and evidence regarding the commercial property valuation was clear. Its determination of the value of $205,092 was within the range of permissible evidence and thus, should not be disturbed on appeal. *Hansen*, 733 N.W.2d at 703 (citing *In re Marriage of Wiedemann*, 402 N.W.2d 744, 748 (Iowa 1987).

B. The District Court Did Not Err in Its Inclusion of Rachael's Student Loans in the Division of Property.

Preservation of Error. David failed to preserve error on this issue. He did not raise the issue at trial. He did not raise it in his Motion to Reconsider. (Respondent's Motion, App. 92-97) He presents this issue for the first time on appeal.

Rachael testified that she paid for medical school during the marriage by taking out student loans. (Trans. Vol. I 16:11-15) This debt was listed on Rachael's Affidavit of Financial Status as an installment payment debt assigned to her. (Exh. 1, App. 631-637) Rachael's column also listed the student loan in her proposed

property division. (Exh. 35, App. 795-797) David did not even acknowledge the debt in his Affidavit of Financial Status. (Exh. A, App. 798-800)

Student debt incurred prior to the marriage is a "non-marital obligation." *See In re Marriage of Campbell*, No. 13-1383, 2014 WL 1999231, at *5 (Iowa Ct. App. May 14, 2014). The parties were married during Rachael's second year of medical school in 2002. (Tr. Vol. II 23: 24-25) Rachael graduated from medical school in 2005. (Tr. Vol. II 24:4-6) The student loan debt was primarily incurred during the parties' marriage. *See In re Marriage of Deol*, No. 09-0909, 2019 WL 2925147, at *2-3 (Iowa Ct. App. 2010) (holding that student loan debt is a shared marital liability when accrued during the relationship, used for family expenses, and incurred with the approval of the non-borrowing spouse).

C. The District Court Properly Included the Guns, Ammunition, Magazines, SWAT Gear, and Generator in its Property Division.

Preservation of Error. David failed to preserve error on this issue.

David's testimony indicated that the guns were either purchased by him or were given to him as a gift by Rachael; however, he did not provide any documentation to confirm these statements. (Tr. Vol. I 13:16-23) (Tr. Vol. II 108:3-16) He also failed to provide any documentation proving that the guns in question are registered to him. The District Court's ruling was based on the evidence supplied by Rachael and her more credible testimony. (Exh. 1, App. 631-637) Rachael was

consistent and detailed in her description of items and her testimony about those items.

David argues in his brief that there was no evidence presented to support that the "missing" items are in his possession. However, he also states in his brief that these items should be allowed "to remain in his possession," and that the values of those items assigned to Rachael in Exhibit 35 should be reassigned to him. (Appellant's Proof Brief, 22) David's failure to disclose items and present evidence at trial should not result in a retroactive pick-of-the-litter.

The trial court's valuation was within the range of permissible evidence and thus, should not be disturbed on appeal. *Hansen*, 733 N.W.2d at 703 (citing *In re Marriage of Wiedemann*, 402 N.W.2d 744, 748 (Iowa 1987).

D. The District Court Did Not Err in Its Division of Personal Property.

Preservation of Error. David preserved error on this issue.

Before making an equitable distribution of assets, the court must determine "all assets held in the name of either or both parties as well as the debts owed by either or both." *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002). An equitable division does not necessarily mean an equal division of each asset. *In re Marriage of Robinson*, 524 N.W.2d 4, 5 (Iowa Ct. App 1995). The Court should strive for an equitable distribution of the marital assets and seek a fair allocation of

the property between the parties. *In re Marriage of Stickle*, 408 N.W.2d 778, 781 (Iowa Ct. App. 1987).

The Court found Rachael's Affidavit of Financial Status to be the most reliable and complete representation of the parties' assets and liabilities. (Exh. 1, App. 631-637) She also presented a clear and equitable division of property. (Exh. 35, App. 795-797) David presented no such evidence. He did not submit a statement of requested relief and did not submit a proposed distribution for the trial court's consideration.

Rachael testified that much of the marital property had been divided before trial. (Tr. Vol. II, 11:25-12:25) The parties had maintained separate households for over eighteen months by the time of trial. David claims that the parties still have marital property to be divided. (Tr. Vol. II, 107:9-22) Yet, the trial court noted in its ruling, "David provided no listing of any items that he wanted, nor did he provide realistic values for the same." (Decree at 8, App. 73) Just because David says something doesn't make it so. His failure to back up his claims with any documentation or other evidence led the district court to its initial order. David should not be rewarded for failing to do his research before trial, nor should Rachael's valuations be construed as false simply because he says so. In the ruling on post-trial motions, the court made it clear why David's testimony and his Exhibit BB were not credible. (Order, App. 102-108)

David failed to present the court with accurate valuations of his business, finances, and marital property. When asked if he had reviewed documentation regarding his assets in preparation for trial, David responded by saying he "was more worried about the kids than anything else." (Tr. Vol. III 29:14-15) The district court relied on evidence and testimony from the most credible, informed, and reliable sources.

The trial court's valuation and division of personal property was within the range of permissible evidence and, thus, should not be disturbed on appeal. *Hansen*, 733 N.W.2d at 703 (citing *In re Marriage of Wiedemann*, 402 N.W.2d 744, 748 (Iowa 1987).

E. The District Court's Division of Rachael's Retirement Account was Appropriate.

Preservation of Error. While David preserved error on the division of Rachael's 401k, he did not preserve error on its division based on tax implications at trial or in his post-trial motion.

David presented no evidence regarding any tax issues related to the division of Rachael's 401k. The entirety of David's discussion on the issue is contained in twelve (12) lines of testimony. (Tr. Vol. III: 6-13, 10-19) He requested the 401k be divided equally because he did not have social security benefits. This is inaccurate.

David has social security benefits but may elect to draw spousal social security benefits based upon Rachael's earnings. He is only 43 years old. David will have time to accrue additional retirement funds in his name before he is eligible to draw on social security.

David has a retirement account. (Tr. Vol. II 167:21-23) He could not tell the court the value of his retirement account and failed to present documentation evidencing the balance. (Tr. Vol. II 167:24-25; 168:1-4) However, Rachael presented evidence of David's Art Van 401k. (Exh. 16, App. 774-779) Given the substantial liquid assets awarded to David, the trial court's decision to equalize the property settlement using Rachael's 401k was appropriate.

There is no basis in the record to overturn or amend the district court's division of the parties' property.

III. The District Court's Spousal Support Award was Appropriate.

Preservation of Error. David preserved error on this issue.

The district court's analysis of the spousal support issue and its comparison of this case to *In re Marriage of Mann*, 943 N.W.2d 15 (Iowa 2020) was direct and on point.

"A trial court has considerable latitude when making an award of spousal support." *In re Marriage of Schenkelberg*, 824 N.W.2d 481 (Iowa 2012). "We only disturb the award if it fails to do equity between the parties." *Id.* Iowa law is clear

"that whether to award spousal support lies in the discretion of the court, that we must decide each case based upon its own particular circumstances, and that precedent may be of little value in deciding each case." *In re Marriage of Gust*, 858 N.W.2d 402, 408 (Iowa 2015). Spousal support aims to rectify the inequities of a marriage and compensate a spouse who leaves the marriage at a disadvantage. *In re Marriage of Earsa*, 480 N.W.2d 84, 86 (Iowa Ct. App. 1991).

"Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support." *In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007). "Whether alimony is awarded depends on the particular circumstances of each case." *Id.* at 702-03. Iowa Code Section 598.21A gives the court the authority to grant an order requiring support payments to be made to either party upon a judgment of dissolution. The payments can be for either a limited or an indefinite length of time. Iowa Code § 598.21A(1) (2020).

The court must balance each party's relative needs against their earning capacity, present standards of living, and ability to pay. *In re Marriage of Williams*, 449 N.W.2d 878, 883 (Iowa Ct. App. 1989). "[T]he spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible." *In re Marriage of Hayne*, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). The amount of spousal

support awarded should not destroy the right of the party providing the support to also enjoy a comparable standard of living. *Id.*

The district court found rehabilitative alimony appropriate based on the factors laid out in Iowa Code § 598.21A(1). The terms "transitional alimony" and "rehabilitative alimony" are used interchangeably by courts. *In re Marriage of Smith*, 573 N.W.2d 924, 926-27 (Iowa 1996); *In re Marriage of Russell*, 473 N.W.2d 244, 247 (Iowa Ct. App. 1991). Rehabilitative alimony is ordered to make an economically dependent spouse economically independent through a limited period of re-education or training, thereby incentivizing the spouse to become self-supporting. Iowa Code § 598.21(3)(f); *In re Marriage of Francis*, 422 N.W.2d 59 (Iowa 1989); *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008); *In re Marriage of Robbins*, 801 N.W.2d 627 (Iowa Ct. App. 2011). A large disparity in income and one party's extended absence from the workforce are reasons to award rehabilitative alimony. *In re Marriage of Rothfus*, 853 N.W.2d 302 (Iowa Ct. App. 2014).

David has remained in the workforce throughout the parties' marriage, and he claims that he does not need any re-education or retraining. He can support himself by taking a salary through HomeDoctor, LLC. *See In re Marriage of Fedorchak*, 842 N.W. 2d 387, *1 (Iowa Ct. App. 2013) (denying a husband's request for alimony

because he had not left the workforce since the marriage, did not claim to need re-education or retraining, and was currently supporting himself).

David did not argue that alimony is necessary to support a standard of living developed during the marriage; rather, he was asking for $10,000 per month so that he would be able to take vacations with the children and buy a home, and that amount would be "…[i]t'd be enough for me to build a business until – I guess, until it's ready and done." (Tr. Vol. III, 21:8-14) The only evidence presented at trial regarding the marital standard of living included testimony that the family took one vacation per year. David's attempt to describe Rachael's travel after separation as the standard during the marriage was not appropriate. (Tr. Vol. III 12:19-25; 13:1-8).

In his post-trial motion, David requested that he be awarded $5,000.00 per month for seven (7) years. (Order, App. 102-108). On appeal, David argues that he should receive $11,625.00 per month indefinitely. However, at trial, David testified that his monthly expenses are around $5,700.00. (Tr. Vol. III 33:16-25; 34:6-9) His knowledge of his expenses and what he included in his Affidavit of Financial Status was incoherent and unreliable. He failed to present evidence of his expenses, but he also admitted conflating his personal and business expenses on his affidavit of financial status. (Tr. Vol. III 34:11-19) His alimony request in an amount almost

double that of his monthly expenses is unreasonable – especially when it is unknown which expenses are attributable to the business.

In support of his argument, he claims that he helped Rachael grow her earning capacity by caring for the children while Rachael was in school, relocating, and quitting his job to move back to Iowa. (Tr. Vol. II 96:11-25; 97:1-5) These claims directly conflict with Rachael's testimony that the children attended daycare or had a nanny when she was unavailable to care for them. (Tr. Vol. II 51:12-14) (Tr. Vol. II 52:22-25; 53:1-7) Instead, David went to work early and returned home late. (Tr. Vol. II 52:8-21) There is no evidence of sacrifices to enhance Rachael's earning capacity through her advanced degree. There is evidence supporting the claim that Rachael made economic sacrifices to support David in his business from 2009 through May 2021, from which David continues to claim he is unable to draw a salary.

The trial court opined that traditional alimony is not appropriate in this case:

> *The property division in this case awards David a substantial amount of liquid assets, cash in bank accounts, and commercial real estate generating income… He is left with no debt outside of the loan on the commercial property, which is paid by the rent received for that property. David will receive assets in excess of $600,000.00. This is a significant amount of money. Equity does not require Rachael to contribute indefinitely to David's post-dissolution economic lifestyle.*

(Decree, App. 66-91)

David's position is that he cannot do anything until the court makes a final decision and that it would be "prudent" for him to wait until he knows how much money he can get from Rachael. (Tr. Vol. III, 153:11-15) He listed his total monthly expenses as $8,156.00 on his affidavit of financial status. (Tr. Vol. III, 33:17-20) This included $2,500 per month for attorney's fees and broker fees. (Tr. Vol. III, 33:21-34:1) David also listed a car payment but failed to inquire into the balance on his vehicle before trial. Tr. Vol. III 36:5-6 When asked if he realized that the vehicle had been paid off, he responded that he was unsure if he would even want to keep the vehicle. (Tr. Vol. III, 38:14-17)

David expects that Rachael will continue funding his lifestyle and business. This is unreasonable. David can increase his earnings and has an earning capacity at present. He can become self-supporting by drawing a salary through his business, leasing his building out, or returning to sales. *See In re Marriage of Fedorchak*, 842 N.W.2d 387, *1 (Iowa Ct. App. 2013) (denying a husband's request for alimony because he had not left the workforce since the marriage, did not claim to need re-education or retraining, and was currently supporting himself). The period of rehabilitative alimony as prescribed by the District Court is sufficient to assist David in transitioning from his current business model to a realistic one.

IV. The District Court Correctly Determined that An Award of Attorney Fees Was Not Appropriate.

Preservation of Error. David did not preserve this issue for appeal. Although the issue was listed as an issue for trial, David did not present any evidence of his attorney fees at trial. He did not raise the issue in his post-trial motion. An issue cannot be raised for the first time on appeal.

Trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Geil*, 509 N.W.2d 738 (Iowa 1993); Iowa Code § 598.5(1)(i) (Supp. 2005). Whether attorney fees should be awarded depends on the respective abilities of the parties to pay. *Id*. In addition, the fees must be fair and reasonable. *In re Marriage of Willcoxson*, 250 N.W.2d 425, 427 (Iowa 1977). "Attorney fees are not awarded simply because one party makes more money." *In re Marriage of Fedorchak*, 842 N.W.2d 387, *1 (Iowa Ct. App. 2013). "The entire financial picture of the parties was before the court, including their respective earnings, living expenses, and liabilities. Trial courts are familiar with the value of services in dissolution matters." *In re Marriage of Willcoxson*, 250 N.W.2d at 427 (Iowa 1977).

David failed to present evidence or testimony of attorney fees at trial, nor does his affidavit of financial status reflect any outstanding attorney fees. (Exh. A, App. 798-800). He did not testify about anything owed and did state he would not have any fees in the future. (Tr. Vol. III 19:3-6) Each party will have significant cash to pay their attorney fees, and each should be responsible for their own if any remain unpaid. David did not raise the issue in his post-trial motion.

The district court correctly determined that there was no need for attorney fees. There was no evidence presented on the issue.

V. Rachael Should Receive Appellate Attorney Fees.

Rachael requests this Court order David to pay for the attorney fees she has incurred in this appeal. An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa App. 1996). The appellate court should "consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal." *In re Marriage of Ales*, 592 N.W.2d 698, 704 (Iowa App. 1999) (citations omitted).

David forced Rachael to defend the district court's decision to this court despite his failure to preserve error on numerous issues presented in his appeal brief. This should be a factor that weighs in favor of a fee award. If Rachael does that successfully, this appeal will have been without merit. Rachael requests that David pay her reasonable appellate attorney fees in an amount to be shown by a statement of fees filed on submission of this case to the Court. *In re Marriage of Winegard*, 257 N.W.2d 609, 618 (Iowa 1977). The Court should order David to pay Rachael's appellate attorney fees based on the facts.

CONCLUSION

For the reasons set forth herein, Rachael requests the Court: (1) affirm the district court's decision regarding joint legal custody; (2) uphold the district court's property division in its entirety; (3) affirm the district court's spousal support award in amount and duration; (4) affirm the district court's denial of attorney fees to David; and (5) award Rachael appellate attorney fees for having to defend the district court's decision.

CONDITIONAL REQUEST FOR ORAL ARGUMENT

Counsel for Appellee respectfully requests to be heard in oral argument only if the appellate court grants appellant oral argument.

Stacey N. Warren
CashattWarren Family Law, P.C.
130 E. 3rd Street, Suite 203
Des Moines, Iowa 50309
Telephone: 515.421.9290
Facsimile: 515.414.8929
Email: stacey@cashattwarren.com
ATTORNEY FOR APPELLEE

CERTIFICATE OF UNPUBLISHED OPINION

Concerning the unpublished opinions cited herein, the undersigned counsel certifies that she has conducted a diligent search for and found no subsequent disposition of the unpublished opinion. Iowa R. App. P. 6.14(5).

Dated May 3, 2022.

/s/ Stacey N. Warren
Stacey N. Warren
ATTORNEY FOR APPELLEE

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

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 6,918 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14.

Dated May 3, 2022.

/s/ Stacey N. Warren
Stacey N. Warren
ATTORNEY FOR APPELLEE

PROOF OF SERVICE AND CERTIFICATE OF FILING

Under Iowa R. App. P. 6.701 and 6.901, the undersigned hereby certifies that on May 3, 2022, this Final Brief was filed with the Supreme Court via EDMS and electronically served on all parties of record.

/s/ Stacey N. Warren
Stacey N. Warren
ATTORNEY FOR APPELLEE

ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost of printing the foregoing Appellee's Final Brief was the sum of $ 0.00 .

/s/ Stacey N. Warren
Stacey N. Warren
ATTORNEY FOR APPELLEE