ELECTRONICALLY FILED SEP 06, 2022 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

IN RE THE MARRIAGE OF RACHAEL KAY SOKOL AND DAVID LANGDON SOKOL

Upon the Petition of	)	
	)	
RACHAEL KAY SOKOL,	)	
	)	
Applicant/Petitioner/Appellee,	)	**S.C. NO. 21-1918**
	)	
And Concerning	)	
	)	
DAVID LANGDON SOKOL,	)	
	)	
Resister/Respondent/Appellant.	)	

APPEAL FROM
THE IOWA DISTRICT COURT FOR POLK COUNTY
THE HONORABLE JEANIE K. VAUDT, JUDGE

APPELLEE'S APPLICATION FOR FURTHER REVIEW OF THE COURT OF APPEALS' RULING, FILED AUGUST 17, 2022

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Questions Presented

1. Was it err for the court of appeals to increase the trial court's spousal support award by $2,000 per month and increase the duration of the award when the support recipient does not need more than $5,000 per month in combined spousal support and child support to meet all of his monthly obligations?
2. Did the court of appeals err in comparing the support recipient's situation to that of the support recipient in *In re Marriage of Pazhoor, 971 N.W. 2d 530 (Iowa 2022)* when this recipient's position is indistinguishable from that of the support recipient in *In re Marriage of Mann, 943 N.W.2d 15 (Iowa 2020)?*

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Statement Supporting Further Review

The case is not about a higher-earning spouse's refusal to pay spousal support. The district court ordered the ex-wife to pay her ex-husband $3,000 monthly in spousal support for a period of 4 years which, when added with $2,000 per month in offset child support, covered all the ex-husband's monthly expenses. Only the ex-husband appealed. The court of appeals increased the award payable to $5,000 per month in spousal support and increased the duration of the support to 7 years. The court of appeals improperly applied the criteria of Iowa Code section 598.21A(1) to the facts of this case to determine spousal support. Though the spousal support recipient worked outside of the home for the duration of the parties' marriage, had an earning capacity of $50,000 with the ability to draw an income from his business, and was able to meet all expenses under the award of support from the district court, the court of appeals' decision improperly determined the recipient's need for an increased award (in amount and duration) which conflicts with *In re Marriage of Mann*, 943 N.W.2d 15 (Iowa 2020); *In re Marriage of Mauer*, 874 N.W.2d 103 (Iowa 2016); *In re Marriage of Gust*, 858 N.W.2d 402 (Iowa 2015); see Iowa Code § 598.21A(1) (2021) and mistakenly relies on *In re Marriage of Pazhoor, 971 N.W.2d 530 (Iowa 2022).* This Court should grant further review to correct the conflict in law created by the court of appeals' decision. *See Iowa R. App. P.* 6.1103(1)(b)(1). Considering *Mann* and *Pazhoor*, this Court should review this case

to distinguish this case from *Pazhoor*, vacate the spousal support provisions of the court of appeals' ruling, and affirm the district court's spousal support award. See Iowa R. App. P. 6.1103(1)(b)(4)

Statement of the Case

Applicant, Rachael Kay Sokol ("Rachael"), and Resistor, David Langdon Sokol ("David"), tried the dissolution of marriage action to the honorable Jeanie K. Vaudt on June 21 – 23, 2021. The district court filed its dissolution decree on August 23, 2021. (App. 66 - 91). The court weighed the evidence, made determinations about credibility, and entered an equitable decree. The court granted the parties shared physical care of their two minor children, divided their property, and ordered Rachael to pay David child support and spousal support. Each party requested the court reconsider certain decree terms, with David requesting the court award him more spousal support. Relevant to this application, Rachael did not appeal, but David appealed multiple decree provisions, including the district court's spousal support award.

At trial, the parties agreed that David should receive spousal support, but they disagreed on the amount and duration. At trial, in his testimony, David asked for spousal support for ten (10) years at $10,000 per month. (Tr. Vol. III 90:6-11) Rachael proposed that David receive $3,000 per month for four (4) years. The district court awarded David $3,000 per month for four (4) years. In his motion to

reconsider, David requested the district court award him spousal support of $5,000 per month for seven (7) years. (App. 98) The district court denied David's motion to reconsider the award and maintained the spousal support award of $3,000 per month for four (4) years. It did so by referring to the decree's detailed analysis of the parties' incomes, employment, monthly expenses, needs, current debts, child support, its division of assets and liabilities, assessment of the factors pertinent to spousal support, and assessment of the credibility of the witnesses. The district court determined David was entitled to a period of rehabilitative alimony (as opposed to reimbursement or traditional alimony) to allow him to transition through the post-divorce period, and the amount and duration of the support awarded were appropriate and equitable. Only David appealed the district court decision.

This Court transferred the case to the Iowa Court of Appeals. On appeal (and for the first time), David requested that he be awarded $11,625 per month for life. He was 43 years old at trial. On August 17, 2021, the court of appeals increased Rachael's support obligation to David to $5,000 per month. (Ct. App. Ruling p. 15). Rachael applies for further review.

Statement of the Facts

The parties married in June 2002. When the district court entered the decree in August 2021, Rachael was 45 years old, David was 43 years old, and their

children were 14 years old and 7 years old. The children were entering ninth grade and second grade. Rachael was in good health and is an emergency room physician practicing in Des Moines. She had been in the same position since 2009 when the parties moved to Iowa. David was in good health and owned his own home repair/remodel business, which he also started in 2009 when the parties moved to Iowa.

Before moving to Iowa, David worked in sales and had an earnings history where he made over $70,000 per year before moving to Iowa and which shows he can earn at least $60,000 per year. David ran his home remodel/repair business and said he had no need to draw a salary. He has multiple employees, no business or personal debts, and runs a business without concern for details. He obtained multiple PPP loans and expected the second loan would be forgiven under the program guidelines.

The parties had maintained separate households since October 2019. Under the terms of a temporary stipulation, the parties had shared physical care of their children, and Rachael paid David $5,000 per month lump sum under a temporary order entered in October 2019. This monthly amount was a combination of child and spousal support but did not include a breakdown between the two forms of support. At the time of trial, the parties had maintained separate households for nearly two years. David lived in a three-bedroom apartment in Johnston.

Argument

1. Was it err for the court of appeals to increase the trial court's spousal support award by $2,000 per month and increase the duration of the award when the support recipient does not need more than $5,000 per month in combined spousal support and child support to meet all of his monthly obligations?

This Court routinely holds, "while our review is de novo, we have emphasized that we accord the trial court considerable latitude. We will disturb the trial court's order only when there has been a failure to do equity." *In re Marriage of Gust*, 858 N.W.2d 402, 406 (Iowa 2015) (citations and internal quotation marks omitted); *accord In re Marriage of Maurer*, 874 N.W.2d 103, 106 (Iowa 2016). Courts are instructed by the legislature to equitably award spousal support by considering each criterion of Iowa Code section 598.21A(1). *Maurer at 107* (citations omitted). A court must consider those factors listed in Iowa Code section 598.21A (2021) when determining what spousal support is justified if any. *Id.* at 106-07.

When the district court entered its ruling, there were three (3) recognized forms of spousal support in Iowa: rehabilitative, reimbursement, and traditional. In its ruling, the district court included a detailed analysis of each factor listed in Iowa Code section 598.21(A). It determined that this was not a case for traditional alimony. The court of appeals also determined this was not a case for traditional

alimony and rejected David's new argument on appeal that he should receive $11,625 per month in lifetime spousal support.

A considerable amount of the trial addressed David's monthly expenses (personal and business), the operation of his business, and his plans (or lack thereof) for a business model other than what he has been doing since 2009.

David's only breakdown of his monthly expenses (for his separate household) was shown on his affidavit of financial status (prepared and signed June 21, 2021), where he said he had $8,156 in monthly expenses. (App. 798 – 800; Tr. Vol. III 32- 38). However, after the deduction of $2,500 per month in attorney fees that he would not be paying following trial, his monthly expense went down to $5,656. David did not have any personal debts. (App. 798-800) He did not have a car payment. He did not have any business debts other than the building note, which was covered by the rental apartment income and the balance by his business. And at trial, he asked for $10,000 per month (for ten years) without providing the court with any basis for the request.

David had paid his expenses for nearly two years at the time of trial with what he had received under the temporary order. He had no personal debts he was paying for in January 2020 and had no credit card debts. (Ex. 29) And; in June 2021, David still had no personal debts and no credit card debts. (App. 798-800;

Vol. III 71:8-25) David had paid all his attorney fees, and nothing was owed to his attorneys. The court of appeals agreed. (Ct. App. Ruling p. 16)

David provided no testimony about any basis for an increase in his monthly expenses in the future. He agreed that his future house payment would be in the same range as his current rent payment, as shown on his Affidavit of Financial Status. (App. 798-800) He was awarded liquid assets that he could use to purchase a home. Rachael was ordered to pay the children's expenses, including activities and medical expenses. David had no obligation for the children's expenses outside his household expenses. Those expenses can also be removed from his listing of monthly expenses, as shown on his Affidavit of Financial Status.

Rachael did not pay for David's business expenses. His business paid for itself, and he could employ multiple people. David saw no need to draw a salary, but there is no evidence in the record to show he could not draw a salary. Just because David reinvested the money in his business did not mean he could not draw a salary. The only evidence of a reinvestment or loan to his business was in 2019, immediately after the start of the dissolution action. (Tr. Vol. II 83:24-25; 84:3-6). The court of appeals erred in using this unsubstantiated claim by David as support for increasing the monthly support award in amount and duration.

The court of appeals erred in finding that David "cannot presently support himself at a standard of living comparable to that he experienced pre-dissolution"

because there was no evidence regarding the parties' pre-dissolution standard of living (outside of an annual trip to Mexico). David did not take the time to answer any interrogatories regarding his need for alimony. (Ex. 40) David did not dispute the district court's determination that he could earn $50,000 annually. The court of appeals found he could draw this from his business or shift careers back into sales and make this amount. The district court balanced the parties needs against earnings and earning capacity, present standards of living, and ability to pay.

The district court's award of offset child support of $2,000 per month plus the spousal support of $3,000 per month allowed David to meet all his present and likely future monthly expenses. This $5,000 in combined child and spousal support is the same awarded to David under the terms of the temporary order, which was entered under the parties' temporary stipulation. The court of appeals failed to note that the district court's total amount payable to David post-decree was the same as the temporary order. The temporary order was not $5,000 in spousal support alone.

At 43 years old, David has many years ahead of him to earn income. He does not require any additional training or education. He was in good physical and mental health. He made no attempts to find any other employment and had no plans to sell his business. (Tr. III 151:23-25) David received substantial liquid assets in the division of the parties' assets. He could put a down payment on a home.

As shown throughout David's testimony at trial, he had no details other than what he put on his Affidavit of Financial Status. His lack of details and accurate information frustrated the district court. There is no piece of evidence or line of testimony to support any claim of need for monthly support – which includes support he receives for the children – in excess of $5,000 per month **combined.** (Tr. Vol. I, II, III) There was no inequity in the award of spousal support. There was no gap to fill. And, there is no basis for the court of appeals to ignore the $2,000 per month in offset child support that David will receive from Rachael. The $3,000 in monthly alimony combined with her other income permits David to maintain his standard of living and maintain his self-sufficiency. See Iowa Code § 598.21A(1)(f) (2021).

Rachael provided all the details regarding the parties' assets, liabilities, and monthly expenses related to the children. Her Affidavit of Financial Status was detailed, supported by her income records, her pay stubs, and the documentation regarding monthly debt obligations. (App. 631-636) Her testimony was consistent. Rachael provided credible evidence for the district court to rely upon in determining the parties' needs, her ability to pay support, the parties' standards of living, and valuations of assets. (Tr. Vol. III 50-55) She was the only party to provide the district court with a proposed division of assets and liabilities. (App. 795-797) The evidence presented to which Rachael testified showed she had a net

monthly income of $21,358.98, monthly household expenses of $14,292.95 (without any support), and monthly installment payment debts of $1,074, leaving her $6,093.43 per month from which to pay support obligations. This evidence was not disputed.

Further, the court of appeals upheld the district court's determination of Rachael's annual income. After payment of the district court's award of $2,000 per month in offset child support and $3,000 per month in spousal support, Rachael is left with $1,093. The court of appeals increased the amount of support to $5,000 per month (from $3,000 per month), leaving Rachael in the negative each month. The court of appeals did not refer to any contrary evidence as to Rachael's ability to pay.

The court of appeals also provided no basis for an increase in the duration of the spousal support award. Based on the lack of evidence in any form, the court of appeals increased an obligation another three years without consideration of any of the factors under Iowa Code section 598.21A.

Further, David received a break from the district court as it established his child support on an annual income of $50,000 per month. It did not include the monthly spousal support ($36,000 annual) as an additional monthly income for child support calculations. However, the court of appeals increased David's monthly spousal support to $60,000 per year and left his annual income for child

support as $50,000. Both child support and spousal support are tax-free to David. Rachael must pay both obligations with after-tax dollars. *Mann*, 943 N.W.2d at 21; see Iowa Code § 598.21A(1)(g) (2021) (the court must consider the tax consequences to each party).

The court of appeals erred in increasing the amount of monthly spousal support and the duration of the spousal support award without any support in the record. The district court's decision is replete with issues regarding David's lack of detail, illogical explanations, inappropriate valuations, and failure to disclose or provide information when requested during litigation. This goes to the credibility and candor of the witnesses. The district court was in the best position to assess the credibility of the witnesses and weigh the evidence each party presented about their requested relief. David provided three (3) different requests for spousal support – two to the district court and one to the court of appeals – should not be ignored. Further, the fact that there is no basis to support any of those three requests in the record presented should not be overlooked by this Court in assessing the merits of this application for further review.

2. Did the court of appeals err in comparing the support recipient's situation to that of the support recipient in *In re Marriage of Pazhoor*, 971 N.W. 2d 530 (Iowa 2022) when this recipient's position is indistinguishable from that of the support recipient in *In re Marriage of Mann*, 943 N.W.2d 15 (Iowa 2020)?

The court of appeals cited *Pazhoor* to introduce the concept of "transitional alimony" which is to be used to aid in the transition of the lesser earning spouse into single living. However, it appears that only the instructional portion of *Pazhoor* is applicable to this case. In *Pazhoor*, the spouses had an agreement that the husband would work while the wife stayed home with the children. This Court noted that the wife had not worked outside the home since the birth of the children and concluded that transitional alimony did not apply. This Court found appropriate and awarded reimbursement alimony to the wife for her sacrifices.

In its ruling, the court of appeals compares *Pazhoor* with David's situation, but instead cites to the portion of *Pazhoor* that explains the rationale behind transitional alimony – not the rationale that was used in the disposition of the case.

This case is akin to *In re Marriage of Mann* and the district court properly relied on *Mann* in awarding David $3,000 per month in spousal support for forty-eight months. Here, Rachael improved her earning capacity on her own and without sacrifices made by David. Additionally, after moving to Iowa, David was participating in running his own business, but was not well-versed in following a

business model for operations (and remained in a similar mindset at the time of trial). In *Mann,* the Court noted the problem was the issue of how the support recipient failed to bill his accounts properly, not that he lacked skills or training.

The *Pazhoor* decision was issued after the district court's decree in this case. The court of appeals reliance on *Pazhoor* in this case will cause confusion if the decision is allowed to stand. David does not need assistance in transitioning into single life – he has supported himself for nearly two years at the time of trial. He does not need re-education or training. David does not argue that spousal support is necessary to support a standard of living. He has liquid assets, income-generating property, and substantial cash in bank accounts. There is a basis for a short-term of spousal support and the rationale in this case is more like *Mann* than *Pazhoor*, with the greater income disparity providing the basis for the $3,000 per month in spousal support for 4 years.

This Court should grant further review to clarify that this case is akin to *Mann* and affirm the district court's spousal support award.

Conclusion

Based on the foregoing, this Court should grant further review, vacate the court of appeals decision regarding the spousal support provisions and vacate the appellate award of attorney fees based soley upon the court of appeals modification of alimony, and affirm the district court's alimony award and all other provisions.

Respectfully submitted,

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Certificate of Service

Under Iowa R. App. P. 6.701 and 6.901, the undersigned hereby certifies that on September 7, 2022, this Application for Further Review was filed with the Supreme Court via EDMS and electronically served on all parties of record.

/s/ Stacey N. Warren
Stacey N. Warren

Certificate Of Compliance With Type-Volume, Typeface, And Type-Style Requirements

1. This application for further review complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 3,197 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 September 7, 2022.

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

ELECTRONICALLY FILED AUG 17, 2022 CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 21-1918
Filed August 17, 2022

IN RE THE MARRIAGE OF RACHAEL KAY SOKOL AND DAVID LANGDON SOKOL

Upon the Petition of
RACHAEL KAY SOKOL,
Petitioner-Appellee,

And Concerning
DAVID LANGDON SOKOL,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Jeanie K. Vaudt, Judge.

A former spouse appeals a decree of dissolution of marriage, arguing the district court erred in awarding his ex-wife tie-breaking authority on decisions regarding the parties' children. He also claims the court erred in the property distribution, the amount and duration of his spousal support award, and in failing to award trial attorney fees. **AFFIRMED AS MODIFIED AND REMANDED.**

Kate Simon of Cordell Law, LLP, Des Moines, for appellant.

Stacey N. Warren of Cashatt Warren Family Law, P.C., Des Moines, for appellee.

Considered by Bower, C.J., and Schumacher and Ahlers, JJ.

SCHUMACHER, Judge.

David Sokol appeals the decree dissolving his marriage to Rachael Sokol. He contends the court erred in providing Rachael tie-breaking authority within an award of joint legal custody. He also claims the court erred in its property distribution, the amount and duration of his spousal support award, and in declining to award David trial attorney fees. On appeal, both parties request appellate attorney fees.

We determine the district court improperly awarded Rachael tie-breaking authority within a joint legal custody arrangement and the amount and duration of spousal support is inequitable. We affirm the court's property distribution and the court's declination to award David trial attorney fees. We remand for an award of appellate attorney fees for David.

I. Background Facts & Proceedings

Rachael and David married in 2002. At the time of the marriage, Rachael was in medical school. When Rachael graduated in 2005, the parties moved to Michigan for Rachael's four-year residency. The couple returned to Iowa in 2009 and remained in the Des Moines area for the rest of their marriage.

Rachael, age forty-five, works as an emergency room physician and earns about $440,000 annually. She worked a second position for a few years as a medical director at a facility in Fort Dodge, which raised her overall income to about $500,000 a year. She gave up the medical director position in 2020 to spend more time with her children. When the parties resided in Michigan, David, age forty-three, worked as a furniture salesperson, earning about $70,000 a year. Since the return to Iowa, he has worked as the owner-operator of Home Doctor LLC, which

does home renovations. He has invested personal funds in the business and has not drawn income from the business since its inception. He has elected instead to reinvest any profits back into the business. David testified that his business has seen a downturn since the Covid-19 pandemic but is hopeful for an increase. The district court imputed David an income of $50,000.

Pinnacle Harbor Investments, a separate LLC formed during the marriage, owns real property in Woodward, Iowa. This property houses the showroom and backroom for Home Doctor LLC. The Woodward property also contains an apartment that is rented. The building and personal property inside the building was damaged by the 2020 derecho. David received insurance proceeds. David testified that he repaired some of the damage on his own, but has waited to repair the rest of the building until the finalization of the parties' dissolution. At the time of trial, David held insurance proceeds of $218,213 in a checking account.

Rachael and David have two children, Ka.S., born in 2006 and Ko.S., born in 2014. The family hired a nanny or used daycare for the children because of the parties' employment. Rachael testified that she is the parent that manages the children's appointments and monitors their school work. The parties' inability to communicate, particularly about the children, was a major point of contention at trial.

The parties separated in July 2019. After separation, Rachael retained the marital home and David moved to an apartment. Rachael testified that they had divided the personal property by trial, although David disputes that representation. Rachael and David shared temporary joint legal custody and temporary joint

physical care of the children. Rachael was ordered to pay David temporary support of $5000 a month.

Trial was held over a three-day period in June 2021, with the only witnesses being the parties, Rachael and David. By agreement of the parties, an affidavit from Kevin Crowley on the value of the Woodward property was submitted in lieu of live testimony.

Following trial, the court granted Rachael and David joint legal custody and joint physical care, but gave Rachael the ultimate authority to make decisions regarding the children. The court awarded David spousal support of $3000 a month for forty-eight months. The court, with a few minor differences, adopted Rachael's proposed property distribution set forth in Rachael's exhibit 35, resulting in each party receiving net assets of over $664,000.[1] David filed a motion for the district court to reconsider, enlarge, or amend. Except for the correction of a scrivener's error, the court denied David's motion.[2] David appeals.

II. Standard of Review

"Marriage dissolution proceedings are equitable proceedings. Thus, the standard of review is de novo. Although we give weight to the factual findings of the district court, we are not bound by them." *In re Marriage of Mauer*, 874 N.W.2d 103, 106 (Iowa 2016) (internal citations omitted). "[W]e will disturb a district court determination only when there has been a failure to do equity." *Id.*

[1] At the end of the trial, the court requested proposed findings of fact, conclusions of law, and orders. These proposed orders do not appear in our record.
[2] The ruling on the parties' post-trial motions increased the equalization payment to David to $123,924.50, to be paid through the entry of a Qualified Domestic Relations Order.

"We review a challenge to a district court's grant of attorney fees for an abuse of discretion." *NevadaCare, Inc. v. Dep't of Hum. Serv.*, 783 N.W.2d 459, 469 (Iowa 2010). "We will reverse a court's discretionary ruling only when the court rests its rulings on grounds that are clearly unreasonable or untenable." *Id.*

III. Discussion

David raises several issues on appeal. First, he contends the district court should not have provided Rachael tie-breaking authority when the parties were awarded joint legal custody. David also raises several points of error in the court's property division. He also claims the district court awarded an inadequate amount and duration of spousal support. Finally, David argues the court abused its discretion when the court declined to award him attorney fees. Both parties request appellate attorney fees.

A. Final Decision-Making Authority

David claims the district court wrongly granted Rachael tie-breaking authority in a joint custody arrangement. The district court granted the parties joint legal custody and joint physical care. However, the court also provided a blueprint for decision-making that requires Rachael to "consider David's input and decide on a course of action." If David does not provide input, "Rachael may unilaterally decide on the course of action." Rachael needs to consult David, but she has the final decision-making authority regarding the children.

Such a grant of authority is not contemplated by Iowa Code chapter 598 (2019). Instead, that chapter "appears to consider joint custody and sole custody as all-or-nothing propositions." *Armstrong v. Curtis*, No. 20-0632, 2021 WL 210965, at *3 (Iowa Ct. App. Jan. 21, 2021). Chapter 598 defines joint custody as:

> [A]n award of legal custody of a minor child to both parents jointly under which both parents have legal custodial rights and responsibilities toward the child and under which *neither parent has legal custodial rights superior to those of the other parent*. Rights and responsibilities of joint legal custody include but are not limited to *equal participation in decisions* affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

Iowa Code § 598.1(3) (emphasis added).

The legislature has instructed that, "If the court does not grant joint custody under this subsection, the court shall cite clear and convincing evidence . . . that joint custody is unreasonable and . . . the legal custodial relationship between the child and parent should be severed." Iowa Code § 598.41(2)(b). A district court can either grant joint legal custody, with the equal rights to parents that it entails, or sever the legal custodial relationship as to one parent.

The code does not permit an unequal distribution of decision-making authority, or an unbundling of decision-making authority, when both parents retain joint legal custodian powers. In *Harder v. Anderson, Arnold, Dickey, Jensen, Gullickson & Sanger, L.L.P.*, a noncustodial parent who had joint legal custody sought to obtain her children's mental-health records over the objection of the custodial parent. 764 N.W.2d 534, 535 (Iowa 2009). The Iowa Supreme Court ruled, "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.* at 538. We have found that "educational decisions fall within this category." *In re Marriage of Bakk*, No. 12-1936, 2013 WL 5962991, at *2 (Iowa Ct. App. Nov. 6, 2013) (considering whether a child should have to attend educational

activities in daycare); *see also In re Marriage of Laird*, No. 11-1434, 2012 WL 1449625, at *2 (Iowa Ct. App. Apr. 25, 2012) (stating the *Harder* analysis "applies equally to decisions concerning a child's education" and considering the child's best interests in selecting the school district for the parties' child to attend).

Also, in *Gaswint v. Robinson*, No. 12-2149, 2013 WL 4504879, at *5 (Iowa Ct. App. Aug. 21, 2013), joint legal custodians could not agree on where the children should attend school. This court cited *Harder* and concluded the district court properly made a determination based on the best interests of the children, as the parents, who had a right to "equal participation" in the issue, had reached an impasse. *Id.*

As a result, Rachael should not have been granted the ultimate decision-making authority within an award of joint legal custody. We modify the decree to eliminate this language.

B. Property Distribution

David challenges several portions of the district court's property division. Upon dissolution of a marriage, marital property is divided equitably based on the factors found in section 598.21(5). *In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007). Such division depends on the unique circumstances of each case. *Id.* "An equitable division is not necessarily an equal division." *Id.*

"Ordinarily, a trial court's valuation will not be disturbed when it is within the range of permissible evidence." *Id.* "Although our review is de novo, we ordinarily defer to the trial court when valuations are accompanied by supporting credibility findings or corroborating evidence." *Id.*

1. Woodward Property Value

David contests the valuation of his business property in Woodward. Specifically, he claims the district court should not have awarded him both the full value of the property and insurance proceeds related to damage the property sustained in the 2020 derecho. He contends the insurance proceeds are meant to restore the property's value and thus the property value as it currently stands is substantially lower than the court determined. He also claims the district court should have reduced the value of the property by $85,000, which he claims is the amount outstanding on the property's mortgage. By reducing the value of the property by the amount of the mortgage and insurance proceeds, David suggests the property has a negative value.

The court relied on an affidavit from Kevin Crowley, a realtor, to determine the value of the Woodward property. This affidavit is the only independent evidence of the property's value.[3] The value was given after the August 2020 derecho. Given the lack of other credible evidence, the court properly accepted the value Crowley suggested. Crowley noted, "I am also aware of the impact of the August 2020 derecho on commercial buildings and valuations, if any. Based on the current information for [the Woodward property], if the building is damaged, it does not impact my opinion of the value of $205,092." The insurance proceeds are not necessary to restore the building to the value Crowley identified. The district court's determination is supported by credible evidence.

[3] In his affidavit of financial status, David valued the property at $121,000, although he did not provide any documentation to support that value.

As for David's assertion that the district court should have reduced the mortgage of the property by $85,000, David did not offer any independent evidence that such figure represented the debt against the property. The district court reduced the value by $78,662.00 as representative of the mortgage debt.[4] This number is slightly greater than what David represented to be the mortgage on his financial affidavit. We find the value used by the district court to be supported by substantial evidence. We affirm the district court's valuation of the Woodward property.

2. **Medical School Debt**

David claims the district court wrongly treated Rachael's medical school debt as a marital asset in its division of property.[5] Rachael and David married in 2002. Rachael graduated from medical school in 2005.

"Debts of the parties normally become debts of the marriage." *In re Marriage of Sullins*, 715 N.W.2d 242, 251 (Iowa 2006). Most of the student debt was accrued during the marriage.[6] Furthermore, the education Rachael obtained through those loans enhanced her earning capacity. *See In re Marriage of Deol*, No. 09-0909, 2010 WL 2925147, at *3 (Iowa Ct. App. July 28, 2010). Markedly, the income Rachael obtained from her education was used to build up David's

[4] David's financial affidavit, signed on the morning of the first day of trial indicates the mortgage indebtedness is $76,063.31.
[5] The student debt was awarded solely to Rachael. David contests its inclusion as marital property to be divided by the dissolution because it permitted Rachael to take more assets while retaining equal net property.
[6] We note that whether property was acquired prior to marriage is not solely dispositive as to whether it should be distributed upon dissolution, although it is relevant. *See* Iowa Code § 598.21(5).

business. *See id.* Given these facts, we determine that equity requires Rachael's medical school student loan debt be included in the property division.

3. **Retirement Account**

David argues the district court should have divided Rachael's 401(k) retirement account separately from the rest of the property "based on the tax implications." However, in the single paragraph devoted to this argument, David cites no authority supporting the proposition that the court should divide the property separately from the rest of the dissolution property division.[7] "Failure to cite authority in support of an issue may be deemed waiver of that issue." Iowa R. App. P. 6.903(g)(3); *see also Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 240 (Iowa 1974) ("To reach the merits of this case would require us to assume a partisan role and undertake the appellant's research and advocacy. This role is one we refuse to assume."). Further, the record before this court is void of any evidence on the tax consequences of the division of Rachael's 401(k). We affirm that portion of the district court ruling.

[7]This court has noted:

> Pension rights are not easily valued. Consequently, the preferred method of valuation of these benefits is, as here, to divide a plan through a qualified domestic relations order which, in essence, separates the pension rights into two separate accounts. This makes valuation of the pension unnecessary, allows the court to allocate other assets equitably, and assures similar retirement security for both spouses. However, such a division of pension benefits is not an absolute requirement. The allocation of a pension, like the allocation of all other property interests, comes only after the pension has been considered in the overall scheme of an equitable division.

In re Marriage of Fall, 593 N.W.2d 164, 167 (Iowa Ct. App. 1999) (internal citations omitted).

4. Guns and Tactical Gear

David contests the district court awarding Rachael guns, ammo, magazines, tactical gear, and a generator.[8] Rachael claimed that David had those items in his possession because they were missing from the familial home after they separated. David responds by noting there was no evidence that the missing items were in his possession. He asks this court to allow the guns—which he claims are registered in his name—to remain in his possession, and that "[a]ny other property alleged to be in his possession . . . should be awarded to Rachael, as there is no evidence to the contrary that these items left the marital home."

David acknowledges in his appellate brief that "[t]here was conflicting testimony regarding the guns." The district court noted that Rachael credibly testified "about what items she wanted, how they were registered, and if these items were in her possession or in David's possession." We give weight to the court's credibility determinations. *See Hansen*, 733 N.W.2d at 690. As such, we affirm the court's property division as it relates to this property.

5. Miscellaneous Personal Property

David claims the district court disregarded the difference in personal property awarded to each party, resulting in Rachael obtaining $85,000 more in property. The district court expressly found "Rachael provided credible supporting documentation and/or testimony supporting the values included in her Affidavit of Financial Status." This tracks with the district court consistently finding Rachael to

[8] The contested items include three guns, a gun case, several gun magazines, gun ammunition, and a tactical helmet and vest.

be the more credible witness.[9] Conversely, "David provided no listing of any items that he wanted, nor did he provide realistic values for the same."[10] Given the district court's well-supported credibility determinations, we decline to alter its property division as to the miscellaneous personal property.

C. Spousal Support

The district court ordered Rachael to pay David $3000 a month for forty-eight months in spousal support. In doing so, the court emphasized the significant award David received in the property distribution, the lack of sacrifices he made to further Rachael's earning capacity, and his capacity to earn a salary similar to his standard of living pre-dissolution. The court found the award "will assist David in transitioning from his current lack of a business model to a concrete, realistic business model. The transition once complete should improve his earning capacity. . . ."

On appeal, David requests an award of permanent spousal support at a rate of $11,625 a month.[11] To justify the award, he points to the nineteen-year length of the marriage, the large disparity in earning capacity, and his need for the award to maintain the lifestyle he grew accustomed to during the marriage.

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[9] The court found Rachael to be more credible in determining the value of the Woodward property and the marital home. In contrast, David "could not accurately recall or provide credible documentary evidence establishing [his] business's assets."

[10] In the court's ruling on David's motion to reconsider, it noted, "David's testimony on the household contents lacked credibility, was incoherent . . . [and included] conflicting testimony about what he thought was personal property and what he thought was business property. His [exhibit delineating what property remained in the home and its value] was not credible."

[11] At trial, David requested a permanent award of $10,000 per month. In his rule 1.904 motion, he requested $5000.00 for seven years.

"Our cases repeatedly state 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). We must "closely examine all the statutory factors [(in Iowa Code section 598.21(3))] and the entire record in each case." *Id.*

Spousal support is generally broken down into four distinct categories—traditional, rehabilitative, reimbursement, and transitional—but our supreme court has also recognized that hybrid awards may be appropriate. *See In re Marriage of Pazhoor*, 971 N.W.2d 530, 546-47 (Iowa 2022) *as amended* (Apr. 6, 2022), *reh'g denied* (Apr. 6, 2022) (finding a hybrid traditional-rehabilitative award for a seven-year period was appropriate).

> We conclude that formal recognition of transitional alimony will assist the bench and bar. There are inequities in dissolution beyond a spouse's "economic sacrifices" that "directly enhance[d] the future earning capacity of the other," a spouse's need for education or retraining to become self-sufficient, or a spouse's responsibility to support the other "so long as a dependent spouse is incapable of self-support." There may be a need for short-term support in some cases to help "transition from married life to single life." Transitional alimony can ameliorate inequity unaddressed by the other recognized categories of support. Divorcing spouses must adjust to single life. If one is better equipped for that adjustment and the other will face hardship, then transitional alimony can be awarded to address that inequity and bridge the gap. We now formally recognize transitional alimony as another tool to do equity.

Id. at 541–42 (internal citations omitted).

While we must examine the facts of each case closely, we find *Pazhoor* instructive. In that case, one spouse, a physician, earned roughly $500,000 a year. *Id.* at 535. The other spouse, who predominately stayed at home with the children

but had a medical degree, had income of roughly $23,000 a year. *Id.* Despite the seventeen-year marriage and difference in earning capacity, the court determined the economically dependent spouse could earn enough to maintain a standard of living similar to the pre-dissolution standard after a brief period of reschooling. *Id.* at 543 (finding a lifetime award was inappropriate given the spouses "age, health, potential earnings, and the seventeen-year duration of their marriage"). The supreme court awarded the spouse transitional alimony of $8500.00 monthly for a period of seven years. *Id.* at 546.

Here, the district court found Rachael earned roughly $440,000 per year.[12] In contrast, David has not drawn income from his business since 2010, reinvesting it in his business instead. Because David does not dispute the district court imputing him an earning capacity of $50,000, we utilize that figure. We agree with David that the difference in earning capacity and length of marriage warrants an increase in the spousal support award. *See id.* at 542–43. And while David was awarded a substantial sum in the property division, that "award does not overshadow [Rachael's] comparatively large earning capacity." *See id.* at 542.

Despite some factors supporting an increase in the award, other statutory factors suggest a permanent award is unnecessary. David has reinvested the profits into his business. And while he cannot presently support himself at a standard of living comparable to that he experienced pre-dissolution, he could

[12] We recognize David's argument that Rachael's earning capacity is closer to $500,000, since she voluntarily reduced her income by giving up her job as a medical director to spend more time with the children. *See Gust*, 858 N.W.2d at 411 ("[W]e focus on the earning capability of the spouses, not necessarily the actual income"). However, that would require Rachael to work more than one full-time job, which we will not require.

draw income from his business or shift careers back into sales. Further, the amount he requests is unnecessary to support the standard of living he was accustomed to during the marriage. And the spouse in *Pazhoor* had not worked outside the home since the birth of the children. *Id.* at 535. David has not left the workforce.

> Transitional alimony is not needed when the recipient has sufficient income or liquid assets to facilitate the change to single life. We decline to require a showing of undue hardship and instead rely on district courts to do equity when awarding transitional alimony to "bridge the gap" from married to single life.

Id. at 545.

Given the factors outlined above, we determine a transitional award is appropriate. We find an award of $5000 a month for seven years is appropriate to address the inequity and bridge the gap, assisting David with the transition from married to single life. That award will provide David time to build his business and draw sufficient income to maintain a comparable standard of living to what he enjoyed during the marriage. He expressed no intent to return to school or the need for additional education. He is living in an apartment and looking to purchase a home. This transitional support will also provide time for him to rejoin the workforce in a sales position similar to what he worked in before the family's return to Iowa. Rachael can pay such an award, and even after increasing David's income, the disparity in earning capacity will remain great. *See id.* at 546. Accordingly, after review of the factors in Iowa Code section 598.21A(1) and consideration of the goal of spousal support, we determine that an award of $5000 per month for seven years does equity between the parties.

D. Attorney Fees

David contends the district court abused its discretion when it declined to award trial attorney fees.[13] He claims the court should have awarded him $20,000. "Whether attorney fees should be awarded depends on the respective abilities of the parties to pay." *Sullins*, 715 N.W.2d at 255. The district court found, "David presented no evidence of his attorney fees at trial. His Affidavit of Financial Status shows no outstanding attorney fees. Rachael and David should each pay their own attorney fees if any remain unpaid, as both are capable of doing so." We find neither party showed they were entitled to trial attorney fees. We affirm the trial court in this regard.

Both parties request appellate attorney fees. This court lacks the information necessary to determine an appropriate award of appellate attorney fees. Such awards "are not a matter of right," but depend on "the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal." *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005) (citation omitted). Neither party submitted evidence of the attorney fees they incurred on this appeal. Both parties prevailed to some extent on appeal. However, given the disparity in income, we determine David is entitled to an award of appellate attorney fees. We conclude Rachael is not entitled to appellate attorney fees. While we would prefer to set those fees rather than require the

[13] Rachael suggests this issue is not preserved for our review. However, she acknowledges that it was an issue listed for trial and that the district court ruled on the matter. Because the matter was raised before the district court and ruled upon, the issue is preserved for our review. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

district court to do so, given the lack of an attorney fee affidavit or other supporting documentation from David, we are left with a remand as an option. We remand to the district court to determine an appropriate award of appellate attorney fees for David and enter judgment in his favor in that amount.

E. Conclusion

We affirm the court's award of joint legal custody as modified by eliminating the language that granted Rachael tie-breaking authority. We affirm the district court's determinations as to the property distribution between the parties. We modify the court's award of spousal support to David to increase the award of spousal support to $5000 a month for seven years. Finally, we affirm the denial of David's request for attorney fees and remand for the district court to set a reasonable award of appellate attorney fees for David.

AFFIRMED AS MODIFIED AND REMANDED.

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
21-1918	In re Marriage of Sokol

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