Section F

Iowa Alimony: Taming Your Wild Card

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I. General comments and considerations

A. The terms alimony and spousal support are commonly used interchangeably. *See In re Marriage of Hare*, No. 19-1795, 2020 WL 3571876, at *2 n.2 (Iowa Ct. App. July 1, 2020) (Tabor, J.). Caveat: Some appear to prefer the term "spousal support." *See In re Marriage of Hallberg*, No. 19-1951, 2020 WL 4207404, at *1 n.1 (Iowa Ct. App. July 22, 2020) (Ahlers, J.) (observing the legislature replaced the term alimony with spousal support in the 1980's). Nonetheless, alimony is shorter, is still frequently used by courts in Iowa, and enhances clarity by reducing the risk of confusion that sometimes occurs when courts and practitioners abbreviate the term spousal support or child support and refer to either or both as simply support.

B. "Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support." *In re Marriage of Lingle*, No. 10-0247, 2010 WL 3894493, at *1 (Iowa Ct. App. Oct. 06, 2010)(*citing In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005)).

C. "No right to spousal support exists and the individual award depends on the circumstances of each particular case." *In re Marriage of Lee*, No. 10-0948, 2011 WL 227573, at *6 (Iowa Ct. App. Jan. 21, 2011)(*citing In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct.App.1998)).

D. "An alimony or spousal support award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the support and there also is a need for support." *In re Marriage of Elliot and Rude*, No. 10-1009, 2010 WL 444639, at *4 (Iowa Ct. App. 2011)(*citing In re Marriage of Weiss*, 496 N.W.2d 785, 787-88 (Iowa Ct.App.1992)).

E. "Prior cases are of little value in determining the appropriate spousal support award, and we must decide each case on its own particular facts." *In re Marriage of Meyer*, No. 09-1656, 2010 WL 1875757, at *6 (Iowa Ct. App. May 12, 2010)(*citing In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976)).

F. "[M]arriage does not come with a ledger." *In re Marriage of Schultz*, No. 19-1256, 2020 WL 4497118, at *2 (Iowa Ct. App. Aug. 5, 2020) (quoting *In re Marriage of Fennelly*, 737 N.W.2d 97, 103 (Iowa 2007)) (observing this when the financial dispute was minimal and messy to determine with precision, so not worth parsing). Entertaining an application for alimony "is not a computation of dollars and cents, but a balancing of the equities." *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998).

G. "An alimony award will differ in amount and duration according to the purpose it is designed to serve." *In re Marriage of Toney*, No. 10-0745, 2010 WL 5050651, at *2 (Iowa Ct. App. Dec. 8, 2010)(*citing In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct.App.1997))." .

H. Alimony is a balancing act. "As the spouse with the lesser earning capacity, Mary is entitled to be supported, for a reasonable time, in a manner as closely resembling the

standards existing during the marriage as possible, to the extent that is possible without destroying Mark's right to enjoy at least a comparable standard of living as well." *In re Marriage of Toney*, No. 10-0745, 2010 WL 5050651, at *2 (Iowa Ct. App. Dec. 8, 2010).

I. Even though alimony is intended to instill stability amidst change in accordance with the marital lifestyle to which the parties became accustomed, some change is inevitable in the wake of divorce.

    1. "[W]ith the dissolution of the marriage, it is not unrealistic to expect that previous goals and plans might require modification." *In re Marriage of Schultz*, No. 19-1256, 2020 WL 4497118, at *5 (Iowa Ct. App. Aug. 5, 2020) (acknowledging how plan that husband, or perhaps both parties, developed during the marriage to acquire a set level of retirement savings by age 70 may no longer be feasible).

    2. "It is obvious that once parties separate, life is never the same. Many corners need to be cut, and previous lifestyles need to be adjusted by both parties." *Petition of Heims*, No. 17-1799, 2019 WL 156580, at *3 (Iowa Ct. App. Jan. 9, 2019).

J. "We recognize the incomes supporting a marital couple often cannot support two households at the same standard of living as during the marriage." *In re Marriage of Frick*, No. No. 17-1334, 2019 WL 319837, at *3 (Iowa Ct. App. Jan. 23, 2019) (citing *In re Marriage of Stenzel*, 908 N.W.2d 524, 534 (Iowa Ct. App. 2018)).

K. Alimony "is to be based on post-dissolution expenses to arrive at an amount that permits the spouse to maintain the past lifestyle." *In re Marriage of Stenzel*, 908 N.W.2d 524 (Iowa Ct. App. 2018) (citing *In re Marriage of Mauer*, 874 N.W.2d 103, 111 (Iowa 2016)). "Although we consider the past standard of living, some future projections are necessary to determine needs. For example, a spouse may need to procure health insurance { "pageset": "S12 after the marriage is dissolved, and it will be necessary to determine the cost of health insurance post-dissolution." *Id*.

L. To receive awards of alimony, applicants must carry their burden to show (1) entitlement, (2) amount, and (3) duration. *See In re Marriage of Carter*, No. 18-2157, 2019 WL 3714935, at *3 (Iowa Ct. App. Aug. 7, 2019) ("[T]he person seeking spousal support has the burden to show . . . she [or he] is entitled to [spousal support] . . . and if she [or he] is entitled to spousal support, its amount and duration.").

M. Some inconsistency in alimony awards is expected in the context of "the traditional approach … embraced by our legislature" which requires consideration of the statutory factors in Code section 598.21A(1). *See In re Marriage of Mauer*, 874 N.W.2d 103, 107 (Iowa 2016) (contrasting with the consistency expected from guidelines used in other states, and explaining the inconsistency is expected in Iowa's traditional approach "because the financial decisions spouses make are highly personal and responsive to idiosyncratic facts and circumstances").

II. Factors considered in applications for alimony

A. "Whether to award alimony depends on the peculiar facts of each case. *In re Marriage of Mann*. 943 N.W.2d 15, 20 (Iowa 2020) (citing *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976)).

B. Iowa Code Section 598.21A(1) lists the following criteria for the court's consideration upon an application for alimony:

> 1. Criteria for determining support. Upon every judgment of annulment, dissolution, or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:
>
> a. The length of the marriage.
>
> b. The age and physical and emotional health of the parties.
>
> c. The distribution of property made pursuant to section 598.21.
>
> d. The educational level of each party at the time of marriage and at the time the action is commenced.
>
> e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
>
> f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.
>
> g. The tax consequences to each party.
>
> h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.
>
> i. The provisions of an antenuptial agreement.
>
> j. Other factors the court may determine to be relevant in an individual case.
>
> Iowa Code Ann. § 598.21A(1) (West 2020).

C. This is a "non-exhaustive list of factors." *See In re Marriage of McInnis*, No. 19-1120, 2020 WL 2488202, at *5 (Iowa Ct. App. May 13, 2020).

D. These factors are used to determine (1) eligibility for a recognized category of alimony, (2) amount, and (3) duration. *See In re Marriage of Drenter*, No. 17-1548, 2019 WL 478195, at *3 (Iowa Ct. App. Feb. 6, 2019) ("When deciding whether to award one of the traditionally recognized forms of spousal support and the amount and duration of any such award, our courts consider a host of factors.").

E. All factors must be considered, but fair and equitable consideration of the statutory criteria ordinarily places some decree of emphasis on the **duration** of the marriage and the parties' demonstrated comparative **earning capacities**. *See In re Marriage of Mauer*, 874 N.W.2d 103, 107 (Iowa 2016).

III. Types of Alimony

A. Traditional Alimony

1. **Length of marriage important factor.** "[O]ur caselaw demonstrates that duration of the marriage is an important factor for an award of traditional spousal support." *In re Marriage of Gust*, 585 N.W.2d 402, 410 (Iowa 2015). "While neither we nor the legislature have established a fixed formula, the shorter the marriage, the less likely a court is to award traditional spousal support. **Generally speaking, marriages lasting twenty or more years commonly cross the durational threshold and merit serious consideration for traditional spousal support.**" *Id*. at 410-11 (emphasis added) (citations omitted). *Contrast In re Marriage of McInnis*, No. 19-1120, 2020 WL 2488202, at *5 (Iowa Ct. App. May 13, 2020) ("Here, the marriage [of 12 years] did not last long enough to merit serious consideration for traditional alimony.").

2. Purpose. "The purpose of a traditional or permanent alimony award is to provide the receiving spouse with support comparable to what he or she would receive if the marriage continued." *In re Marriage of Schultz*, No. 19-1256, 2020 WL 4497118, at *5 (Iowa Ct. App. Aug. 5, 2020) (quoting *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997)).

3. **Application.** "Traditional spousal support is often used in long-term marriages where life patterns have been largely set and 'the earning potential of both spouses can be predicted with some reliability.'" *In re Marriage of Gust*, 858 N.W.2d 402, 410 (Iowa 2015) (quoting *In remarriage of Francis*, 442 N.W.2d 59, 62-63 (Iowa 1989)).

4. "In a marriage of long duration, an award of spousal support and a substantially equal property division may be appropriate, especially where there is a great disparity in earning capacity." *In re Marriage of Gonzalez*, No. 10-0101, 2010 WL 4105611, at *4 (Iowa Ct. App. Oct. 20, 2010) (*citing In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993)).

5. "In marriages of long duration, . . . our supreme court has emphasized "[t]he imposition and length of an award of traditional alimony is primarily

predicated on need and ability." *In re Marriage of Hare*, No. 19-1795, 2020 WL 3571876, at *2 (Iowa Ct. App. July 1, 2020) (quoting *In re Marriage of Gust*, 858 N.W.2d 402, 411 (Iowa 2015) (citation omitted)).

6. "Traditional support is appropriate for long-term marriages where the earning potential of the parties is predictable." *In re Marriage of Darrah*, No. 19-0285, 2020 WL 4200831, at *4 (Iowa Ct. App. July 22, 2020) (citing *In re Marriage of Gust*, 858 N.W.2d 402, 410 (Iowa 2015)). "It is justified in instances when one party manages the home at the expense of their own professional development or future prospects." *Id*. (citing *Gust*).

7. **Amount**.

    a. "[T]here is no magic formula for calculating spousal support . . .." *In re Marriage of Schultz*, No. 19-1256, 2020 WL 4497118, at *7 (Iowa Ct. App. Aug. 5, 2020)

    b. Alimony is a balancing act. In marriages of relatively long duration, "[t]he imposition and length of an award of traditional alimony is primarily predicated on **need** and **ability**." *In re Marriage of Gust*, 858 N.W.2d 402, 411 (Iowa 2015) (emphasis added) (quoting *In re Marriage of Wendell,* 581 N.W.2d 197, 201 (Iowa Ct.App.1998)). *See also In re Marriage of Toney*, No. 10-0745, 2010 WL 5050651, at *2 (Iowa Ct. App. Dec. 8, 2010) ("As the spouse with the lesser earning capacity, Mary is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible, to the extent that is possible without destroying Mark's right to enjoy at least a comparable standard of living as well.").

        1) As a practical matter, this dynamic eliminates a large number of cases involving children.
            a) The custodial spouse seeking alimony has less **need** for alimony because child support is designed to cover entirely those monthly expenses unique to the children (e.g., the best basketball shoes money can buy, and it is designed to cover some of other expenses not unique to the children (e.g., food and a mortgage payment on a larger dwelling with a suitable number of bedrooms). See *In re Marriage of Darrah*, No. 19-0285, 2020 WL 4200831, at *5 (Iowa Ct. App. July 22, 2020) (reciting, in the context of adding up alimony obligee's income, how she "receives child support to help with costs associated with the children.").
            b) Meanwhile, the noncustodial spouse is less **able** to pay alimony when disposable income is used to pay child

support, thereby reducing or eliminating excess disposable income.

2) Practice Tip: Consider the applicability of **placeholder alimony** when alimony is not feasible now, but may be feasible later.
    a) *See In re Marriage of Torres and Reyes-Peneda*, No. 19-0224, 2020 WL 820332 (Iowa Ct. App. Feb. 19, 2020) (wherein trial court awarded $1.00 in alimony, automatically increasing once the children graduated). "We find it inequitable to ask [Wife] to wait, file a petition to modify based on the termination of child support, and then face a probable denial because the court contemplated this exact circumstance in the decree. It is unlikely [wife's finances will substantially improve within 2 ½ yrs of trial, and Wife is a viable candidate for traditional alimony.] Under these circumstances, it is a better use of judicial resources, and more respectful of the parties' means, to order spousal support as part of this original proceeding. If a substantial change in circumstances does occur, . . . then [Husband] can seek modification." *Id*. at *3.

    b) *But see In re Marriage of Chipokas*, No. 09-1578, 2010 WL 2089629 (Iowa Ct. App. 2010)(denying request by Wife of 15-yr marriage for $1/mo alimony where her earning capacity did not justify alimony, notwithstanding her concern that the future of her job was uncertain.). "We do note section 598.21A(1)(e) refers to a party's 'earning capacity' and not their current earnings. Even if Rocky were terminated by her present employer, her capacity to earn would likely be relatively unchanged due to her education, experience, vocational skills, and demonstrated sales acumen."

c. In assessing the parties' respective needs and ability to pay, monthly expenses of short-term duration are often given less weight than those of long-term duration. *See, e.g., In re Marriage of Schultz*, No. 19-1256, 2020 WL 4497118, at *4 (Iowa Ct. App. Aug. 5, 2020) (observing how boat loan and furniture loan would both soon be satisfied).

d. "[T]he yardstick for determining need has been the ability of a spouse to become self-sufficient at 'a standard of living reasonably comparable to that enjoyed during the marriage.'" *In re Marriage of Gust*, 858 N.W.2d 402, 411 (Iowa 2015) (quoting Iowa Code § 598.21A(1)(f) and several case citations omitted here).

e. Need is objectively measured by the marital lifestyle experienced and the parties' decisions. "The standard for determining need is thus objectively and measurably based upon the predivorce experience and private decisions of the parties, not on some externally discovered and imposed approach to need, such as subsistence or adequate living standards or amorphous notions of self-sufficiency." *In re Marriage of Gust*, 858 N.W.2d 402, 411 (Iowa 2015).

f. "In determining need, we focus on the earning capability of the spouses, not necessarily on actual income." *In re Marriage of Gust*, 858 N.W.2d 402, 411 (Iowa 2015) (citing *In re Marriage of Wegner*, 434 N.W.2d 397, 398-99 (Iowa 1988)).

g. "[W]e suggested the AAML guidelines might 'provide a useful reality check with respect to an award of traditional spousal support.'" *In re Marriage of Mauer*, 874 N.W.2d 103, 108 (Iowa 2016) (citing *Gust*, 858 N.W.2d 402, 416 n.2 (Iowa 2015) (referring to the guidelines propounded by the American Academy of Matrimonial Lawyers, wherein marriages over twenty years qualify for support of unlimited duration, calculated by taking 30% of the payor's gross income and subtracting therefrom 20% of the payee's gross income)).

h. "However, . . . because [alimony guidelines] are not Iowa law, they can serve neither as the starting point for a trial court nor as the decisive factor for a reviewing court on appeal. *In re Mauer*, 874 N.W.2d at 108 (citing *Gust*, 858 N.W.2d 402, 410 (Iowa 2015)). Significantly, the *Gust* Court "did not use the AAML guidelines to determine the spousal support awarded was equitable," but rather considered the statutory factors in section 598.21A(1) and the "principles suggesting the comparative weight of those factors derived from our relevant caselaw." *In re Mauer*, 874 N.W.2d at 109 (citing *Gust*, 858 N.W.2d at 410-12, 414-16).

i. "When application of the factors contained in section 598.21A(1) results in a spousal support calculation that is inconsistent with a spousal support calculation under any guidelines-based approach, the court's application of the statutory factors must prevail over the guidelines-based determination." *In re Mauer*, 874 N.W.2d at 103.

j. Stated differently, in contrast to child support, "spousal support awards do not follow any set guidelines." *In re Marriage of Dirkx*, No. 18-0422, 2019 WL 3330625, at *2 (Iowa Ct. App. July 24, 2019) (citing *In re Marriage of Mauer*, 874 N.W.2d 103, 108 (Iowa 2016) (noting while the American Academy of Matrimonial Lawyers spousal support guidelines may provide a 'useful reality check,' they 'are not Iowa law and therefore clearly are not binding on Iowa courts.')). "Outside the guideline approach, courts should give weight to the earning capacity

of each spouse 'as demonstrated by the historical record' when deciding the appropriate level of alimony." *Id*. (citing *Mauer*, 874 N.W.2d at 108).

k. Even application of the AAML guidelines would not result in an award of the presumptive amount otherwise indicated by the formula in all cases. "The AAML formula … 'does not apply to cases in which the combined gross income of the parties exceeds $1,000,000 a year.'" *In re Mauer*, 874 N.W.2d at 109 (quoting Kisthardt, 21 J. Am. Acad. Matrim. Law at 80-81). "[T]he guidelines name several circumstances that may justify an adjustment to the presumptive amount or duration of spousal support . . .." *Id*. (discussing some of the circumstances there applicable).

l. Some other cases citing "the *Gust* formula" or AAML guidelines:

1) *In re Marriage of Olsen*, No. 18-1491, 2019 WL 3317336, at *3 n.2 (Iowa Ct. App. July 24, 2019) (observing that to be consistent with AAML guidelines, award would need to be $400.56/mo, but nonetheless affirming lesser award of alimony of $300/mo for 5 yrs before automatically stepping down to $250/mo for 5 yrs).

2) *In re Marriage of Dirkx*, No. 18-0422, 2019 WL 3330625, at *6 n.4 (Iowa Ct. App. July 24, 2019) (observing in context of modifying trial court's award from $1,400/mo for 10 yrs to $900/mo traditional alimony (i.e., indefinite) that the reduced sum is less than would be awarded under the AAML formula).

3) *In re Marriage of Sterner*, No. 18-0409, 2019 WL 1057304 at *7 n.11 (Iowa Ct. App. Mar. 6, 2019) (citing *Gust*; observing district court's award of $3,500/mo alimony is 27% of the differential between the parties' incomes; and amending the award to $4,000/mo, which amounted to 30.7% of the differential).

4) *In re Marriage of Frick*, No. No. 17-1334, 2019 WL 319837, at *4 n.4 (Iowa Ct. App. Jan. 23, 2019) (stating in context of reducing trial court's alimony award, "We note the district court award was more than fifty percent greater than an award consistent with the American Academy of Matrimonial Lawyers guidelines.")

5) *In re Marriage of Lynch*, No. 17-2067, 2019 WL 319844 (Iowa Ct. App. Jan. 23, 2019). Among other things, both parties in this 13-year marriage challenged the trial court's award to wife of $2,000/mo traditional alimony with equal division of limited

assets. Court of Appeals stated it declined wife's invitation to apply the "Gust formula" or AAML guidelines, *id*. at *6 n.7, which would have resulted in $2,565/mo. Rather, it awarded $1,000/mo alimony, terminating when wife becomes eligible for social security. *Id*. at *6.

6) *In re Marriage of Goodrich*, 2017 WL 4570433 (Iowa Ct. App. Oct. 11, 2017). In this 31 year marriage, wife asked for traditional monthly alimony of $3,600/mo, and husband proposed $1,000. Trial court ordered monthly alimony of $2,600, automatically reduced to $1,000 once husband reached retirement age and received social security. On reconsideration, Trial court lowered monthly alimony levels to $2,000/$1,000. On appeal, wife sought $2,600/mo, and Husband asked court to lower the levels to $1,000/mo before retirement, consistent with AAML guidelines, and to 500/mo thereafter, explaining trial courts' award would leave wife with $2,250/mo in retirement ($1K alimony and ½ Husband's social security) and would leave husband with $1,301 after paying alimony. The Court of Appeals recited the parties arguments; imputed Husband's income slightly higher than he projected; and sided with husband by reducing his monthly alimony obligation to $1,000 (which was still within $10 of AAML guidelines) until he attained retirement age and began receiving social security, automatically reduced to $500 thereafter.

7) *In re Marriage of Geist*, No. 15-0578, 2016 WL 3003637, at *11 (Iowa Ct. App. May 25, 2016) (affirming trial court's award of alimony on basis it achieved equity consistent with statutory criteria, and after reciting how trial court determined application of AAML guidelines would amount to more than $1,900/mo, yet trial court ordered only $1,100/mo).

8) *In re Marriage of Johnson*, No. 14-1217, 2015 WL 1848657 (Iowa Ct. App. Apr. 22, 2015) (relying in part on application of AAML gudelines calculation of $873/mo to determine that trial court's award of $750/mo did not fail to do equity, notwithstanding payor's request to reduce same).

9) *In re Marriage of Witherly*, 867 N.W.2d 856, 860 (Iowa Ct. App. 2015) (observing this marriage of 17 yrs was "not long enough to trigger the unlimited spousal support duration recommended" by the AAML, "but by not means short," in context of declining payor's request to reduce the duration of the alimony awarded). The Court did reduce the sum, but did not reference AAML in relation to this.

m. Similarly, courts are not authorized to use fixed mathematical formulas to determine the amount of alimony awarded. *See In re Marriage of Parlee*, No. 18-1808, 2019 WL 3315889, at *1 n.3 (Iowa Ct. App. July 24, 2019) ("[C]ourts are not authorized to employ a fixed mathematical formula in determining spousal support.") (citing In re Marriage of Mauer, 874 N.W.2d 103, 107 (Iowa 2016)). Here, however, although the district court included a mathematical formula that equaled the amount awarded, and although the appellate court in *Parlee* recited the caution, above, it nonetheless affirmed the award, explaining it was unclear how the district court meant the formula to be used. *Id.*

n. Any impact of the *Gust* formula is likely to be tempered by the changes in federal tax law in relation to alimony effective Jan. 1, 2019. See *In re Marriage of Mann*. 943 N.W.2d 15 (Iowa 2020). *See also* discussion *infra* parts IV. G. (regarding impact of taxation as a factor).

1) Some cases happen to be producing alimony awards similar to what *Gust* might produce, less a reduction somewhat equivalent to income tax liability, albeit without reference to the formula. See, e.g., *In re Marriage of Hare*, No. 19-1795, 2020 WL 3571876 (Iowa Ct. App. July 1, 2020) (awarding $1,500/m). From the perspective of a spectator, it appears the *Gust* formula, reduced by adjustment for an estimated effective income tax rate of 38.65%, amounts to $1,388/m.

$100,607	Husband's income
(13,040)	Wife's income
87,567	
x 0.31	AAML formula
27,145	
/ 12 mo	divided by 12 mo
2,262	AAML outcome
x 0.6135	adjustment
$1,388	**(compared to similar $1,500/m awarded)**

8. **Duration**. (NOTE: *See also* Appendix A).

a. "The imposition and length of an award of traditional alimony is primarily predicated on need and ability." *In re Marriage of Wendell*, 581 N.W.2d 197, 201 (Iowa Ct. App. 1998) (Cady, CJ).

b. "Traditional spousal support is ordinarily unlimited in duration except upon the remarriage of the payee spouse, or death of either party." *In re Marriage of Gust*, 585 N.W.2d 402, 415 (Iowa 2015) (citations omitted). "Traditional alimony is "payable for life or so long as a spouse is incapable of self-support." *In re Marriage of Olson*, 705

N.W.2d 312, 316 (Iowa 2005)(contrasting traditional alimony with rehabilitative alimony)(*citing In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989)).

c. Exception: "[W]here the record showed that after a period of rehabilitation and retraining, the income of the payee spouse 'should allow her to become self-supporting at a standard of living reasonably comparable to the standard of living she enjoyed during the marriage.'" *In re Marriage of Gust*, 858 N.W.2d 402, 415 (Iowa 2015) (quoting *In re Marriage of Becker*, 756 N.W.2d 822, 827 (Iowa 2008) (involving 22-year marriage, where traditional alimony otherwise generally would be considered)).

9. In cases where the court awards traditional alimony even though the durational threshold (20 yrs) has not been met, **it may be inclined to limit the duration of alimony if it otherwise would extend longer than the duration of the marriage itself**. *See e.g., In re Marriage of Bruton*, No. 10-1918, 2011 WL 3480979 (Iowa Ct. App. Aug. 10, 2011) (where trial court awarded $1,500/mo rehabilitative alimony for two years, followed by $1,000 traditional alimony until Wife payee attained age of 62.5 yrs (in this case amounting to 26 yrs of alimony), the Court of Appeals affirmed the rehabilitative alimony, but reduced the duration of the traditional alimony to 5 yrs, reasoning that the marriage, itself, lasted only 15 yrs.).

10. **Treatment of future retirement.**

    a. Automatic reduction at retirement.

        1) *In re Marriage of Mauer*, 874 N.W.2d 103 (Iowa 2016) (automatically reducing traditional alimony from $12,583/mo to $6,500/mo when Wife attains 66.5 yrs, and further reducing automatically to $5K/mo when Husband attains 66.5 yrs or actually retires, whichever is first, whether before or after Wife attains 66.5 yrs). The case contains a good discussion of how, in retirement, Wife's need was reasonably anticipated to decrease with the receipt of social security retirement benefits and income from retirement assets she could not sooner access, whereas Husband's current income (>$1M/yr) would decrease substantially in retirement.

        2) *In re Marriage of Goodrich*, 2017 WL 4570433 (Iowa Ct. App. Oct. 11, 2017). In this 31 year marriage, wife asked for $3,600/mo traditional alimony, and husband proposed $1,000/mo. Husband testified he intended to work 10 more yrs to maximize social security benefits. Trial court ordered $2,600/mo traditional alimony, automatically reduced to $1,000/mo once he reached retirement age and received social

security benefits. On reconsideration, Trial court adjusted alimony to $2,000/mo with automatic reduction to $1,000/mo. On appeal, wife sought $2,600/mo and elimination of the automatic reduction, arguing there were too many speculative issues for an automatic reduction in the initial alimony award. Husband asked court to lower the levels from $2,000 to $1,000/mo before retirement age, consistent with AAML guidelines, and from $1,000 to 500/mo thereafter, explaining trial courts' award would leave wife with $2,250/mo in retirement ($1K alimony and ½ Husband's social security, while leaving husband with 1,301 after paying alimony. After reciting the parties arguments, the Court of Appeals sided with husband and reduced his monthly alimony obligation to $1,000 until he attained retirement age and began receiving social security, automatically reduced to $500 thereafter, reasoning the anticipated changes upon retirement were not too speculative to warrant an automatic reduction in the initial alimony order.

b. No automatic stepdown upon retirement.

    1) After observing how courts asked to modify a decree must consider the specific factors set forth in Iowa Code section 598.21C(1), and how "[s]ome of these factors cannot be properly considered at the time the initial spousal support award is determined (changes in resources, changes in medical expenses, changes in health, possible support of a party by another person)," the Court reasoned that "[t]he most consistent approach with the statutory scheme is that **unless all of the factors in Iowa Code section 598.21C(1) can be presently assessed, future retirement is a question that can be raised only in a modification action subsequent to the initial spousal support order**." *In re Marriage of Gust*, 858 N.W.2d 402, 418 (Iowa 2015) (emphasis added).

    2) *In re Marriage of Hare*, No. 19-1795, 2020 WL 3571876 (Iowa Ct. App. July 1, 2020). The court appeared tempted to automatically reduce the Husband's alimony obligation at age 65 in light of his physically demanding job and the realization he could not do it forever, but workaholic Husband only testified that he "can" retire at 65, and did not present evidence when he *would* retire. "Read as a whole, the record does not show an expected retirement date for Thomas." *See In re Marriage of Hare*, No. 19-1795, 2020 WL 3571876, at *3 (Iowa Ct. App. July 1, 2020). Once making this factual determination, the court went on to observe that "future retirement will ordinarily be considered to raise too many

speculative issues to be considered int eh initial spousal support award." *Id*. at *3 (quoting *Gust*, 858 N.W.2d at 416).

c. Trial Tip: Learning from *In re Marriage of Hare*, if seeking an automatic reduction in amount upon retirement, be sure to present *equivocal* evidence of specific retirement date, supported by evidence of such plan pre-dating the divorce.

B. Reimbursement Alimony

1. "Reimbursement alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other and is **not subject to modification or termination** until full compensation is achieved or until the paying spouse's death, whichever occurs first." *In re Marriage of Hudson*, No. 10-1128, 2011 WL 441391, *3 (Iowa Ct. App. Feb. 9, 2011) (emphasis added) (*citing In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989); *In re Marriage of Lalone*, 469 N.W.2d 695, 698 (Iowa 1991))."

2. "Reimbursement spousal support allows the spouse receiving the support to share in the other spouse's future earnings in exchange for the receiving spouse's contributions to the source of that income." *In re Marriage of Jenn*, No. 18-1458, 2019 WL 5424938, at *2 (Iowa Ct. App. Oct. 23, 2019) (citing *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008)).

3. "This form of support is awarded when the marriage dissolves shortly after one of the parties obtains a professional degree or licensure with the financial support from the other." *In re Marriage of Jenn*, No. 18-1458, 2019 WL 5424938, at *2 (Iowa Ct. App. Oct. 23, 2019) (citing *In re Marriage of Gutcher*, No. 17-0593, 2018 WL 5292082, at *3 (Iowa Ct. App. Nov. 7, 2018); *In re Marriage of Mueller*, No. 01-1742, 2002 WL 31425414, at *3 (Iowa Ct. App. Oct. 30, 2002)).

4. Reimbursement alimony "is not justified by one spouse's support of the other's business ventures." *In re Marriage of Jenn*, No. 18-1458, 2019 WL 5424938 (Iowa Ct. App. Oct. 23, 2019) (citing *In re Marriage of Probasco*, 676 N.W.2d 179, 185-86 (Iowa 2004); *In re Marriage of Gutcher*, 2018 WL 5292082, at *4; *In re Marriage of Erpelding*, No. 16-1419, 2017 WL 2670806, at *6 (Iowa Ct. App. June 21, 2017), *vacated on other grounds*, 917 N.W.2d 235, 247-48 (Iowa 2018)).

C. Rehabilitative Alimony

1. Rehabilitative alimony is "a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting." *In re Marriage of Olson*, 705 N.W.2d 312, 316 (Iowa 2005)(contrasting rehabilitative alimony with traditional alimony)(*citing In re*

Marriage of Francis, 442 N.W.2d 59, 63-64 (Iowa 1989)). *Accord In re Marriage of Serrano*, No. 19-0785, 2020 WL 3264380, at *6 (Iowa Ct. App. June 17, 2020).

2. "Rehabilitative spousal support is a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting.' "*In re Marriage of Meyer*, No. 09-1656, 2010 WL 1875757, at *6 (Iowa Ct. App. May 12, 2010)(*quoting In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008)). "The goal of rehabilitative spousal support is self-sufficiency and for that reason such an award may be limited or extended depending on the realistic needs of the economically dependent spouse." *Id.*

3. "Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic independence of the ex-spouses." *In re Marriage of Toney*, No. 10-0745, 2010 WL 5050651, at *2 (Iowa Ct. App. Dec. 8, 2010)(*citing Francis*, 442 N.W.2d at 64).

4. A pattern of overspending can cut against a party's request for rehabilitative alimony. *Cf. In re Marriage of Nibbelink*, No. 19-0766, 2020 WL 115783, at *4 n.8 (Iowa Ct. App. Jan. 9, 2020) (reciting the trial court's concern that an award of rehabilitative alimony could "encourage her unregulated spending and only serve to undermine her need to be self-sufficient both financially and personally").

5. Rehabilitative alimony may be employed where traditional alimony might otherwise be appropriate, but the court believes a shorter period will prompt the recipient to become self-sufficient, keeping in mind their educational background and earning capacity. *See In re Marriage of Toney*, No. 10-0745, 2010 WL 5050651 (Iowa Ct. App. Dec. 8, 2010). Rehabilitative alimony of $1,200/mo for 6 yrs was affirmed in 21 yr marriage where husband State Trooper (44 yrs old) earned $74,045/yr and recipient wife (43 yrs old) earned between $10,000 and $11,000/yr as a baker during past 8 yrs, but held an associates degree and had held various other jobs during the marriage. *Id.*

   "The district court noted that the duration of the alimony it fixed should provide an opportunity for Mary, who took time off outside employment for child care, to transition to a self-supporting person while parenting the parties' younger son." *Id.* at *2.

6. Rehabilitative Alimony Granted

   a. *In re Marriage of Deol*, No. 09-0909, 2010 WL 2925147 (Iowa Ct. App. July 28, 2010) (affirming rehabilitative alimony of $1750 for 24

months, $1250 for 36 mo, and $750 for 36 mo). [details discussed elsewhere, below]

b. *In re Marriage of Serrano*, No. 19-0785, 2020 WL 3264380, at *6 (Iowa Ct. App. June 17, 2020). After marrying, parties earned degrees at ISU, Wife in Spanish and sociology, and Husband in marketing and economics. Family moved so Husband could obtain master's degree in Lincoln, NE. Wife left market to raise several of the parties' 4 children. After separation, Wife (44) earned masters degree and began teaching in Des Moines for $46K/yr, whereas Husband (44) earned $128K/yr at John Deere. The 19-year marriage devolved into domestic abuse and culminated in contentious custody case, with Wife obtaining sole custody and child support of (initially) $1,810/mo. Court of Appeals affirmed $1,200/mo rehabilitative alimony to Wife for 10 yrs because of Husband's higher income and Wife's sacrifices raising the children.

7. Rehabilitative Alimony Denied or Terminated

a. *In re Marriage of McInnis*, No. 19-1120, 2020 WL 2488202 (Iowa Ct. App. May 13, 2020). In 12-year marriage, Husband (47) came to marriage with degree in art and design with an emphasis in computer animation and earned $170K base annual salary with a possible 20% bonus. Wife (49) came to marriage with HS diploma and some junior college credits and she admitted an earning capacity of $50-60K/yr. Her experience included daycare, working for an insurance company, as a realtor, and as a receptionist responsible for updating websites – a job she took when she the family moved from AZ to OH for Husband's job. Since the family moved to IA 7 yrs before trial, Wife did not work full-time, but pursued some entrepreneurial ventures and do-it-yourself projects. On appeal, the Court acknowledged the income disparity, but **did "not see evidence that [she] gave up career opportunities of her own to contribute to [husband's] advancements," choosing "to be out of the workforce in recent years."** In denying her request for alimony, the Court further noted she was under 50; had varied work experience and marketable skills "placing her in a good standing to become self-supporting"; no health issues; no minor children to support; received $40K equity in the home, plus $8,200 from Husband's retirement; and how **Husband had already supported her by paying mortgage and utilities for more than two years from the filing of the Petition until trial**.

b. Party seeking rehabilitative alimony should express a desire to receive additional education or training. See *In re Marriage of Jenn*, No. 18-1458, 2019 WL 5424938, at *2 (Iowa Ct. App. Oct. 23, 2019) (finding rehabilitative alimony inapplicable where "[Wife] expressed no desire to receive additional education or training. Instead she indicated she is

able to work. However, she testified she is unwilling to work for a wage less than she earned prior to leaving the workforce to help on the farm.").

c. If rehabilitative alimony is shown to be merely enabling the recipient to become dependent thereon, rather than serving as a temporary crutch on the road to self-reliance, the alimony is at risk of being terminated. *See Petition of Heims*, No. 17-1799, 2019 WL 156580 (Iowa Ct. App. Jan. 9, 2019). Illinois dissolution decree had granted wife 3 yrs of rehabilitative alimony "to equalize the parties' incomes while [Mother Payee] returned to the workforce." Pursuant to Illinois law, the decree allowed for periodic review without need of first showing a substantial change in circumstances. Short of 3 yrs later, Mother petitioned in Iowa for modification. The court considered the factors for modification in Iowa Code section 598.21C(1) and examined "whether the recipient spouse ha[d] a continuing need for support." *Id*. at *3 (quoting *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa 1999)). Post-decree, Mother had reactivated her nursing license, but only secured part-time work. The trial court observed, "It is obvious that once parties separate, life is never the same. Many corners need to be cut, and previous lifestyles need to be adjusted by both parties. . . . If the parties . . . work[ed] . . . together for the benefit of their children, a good deal of pressure could be relieved from [Mother's] day-to-day obligations, which would better enable her to place herself in a full-time position**. Because of the acrimony, she continues to assert that the children's needs require that she not work full-time. The Court finds this unreasonable in light of the obligations that this places on [Father] to pick up all of the financial slack that is present as a result of her decisions."** Court of Appeals and AFFIRMED trial court's termination of alimony.

D. Transitional Alimony. Although most treatises and authorities refer to only three categories of alimony in Iowa, at least one additional category has evolved – Transitional Alimony.

1. Term "transitional alimony" first appeared in a reported Iowa case in 1991. *See In Re Marriage of Russell*, 473 N.W.2d 244, 247 (Iowa Ct. App. 1991). Alimony was not at issue on appeal, and it appears the court used the term loosely, *id*. at 247, in reference to the trial court's award of rehabilitative alimony in the amount of $400/mo for 48 months. *Id*. at 247.

2. On the only occasion that the Iowa Supreme Court employed the term before 2020, it viewed it as interchangeable with rehabilitative alimony. *See In re Marriage of Smith*, 573 N.W.2d 924, (Iowa 1998) ("Although the district court described its award as 'transitional' rather than 'rehabilitative,' the terms have been used interchangeably.") (citing *In re Marriage of Wertz*, 492 N.W.2d 711, 714 (Iowa App. 1992) and *In re Marriage of Russell*, 473

N.W.2d 244, 247 (Iowa Ct. App. 1991)). *Cf. In re Marriage of Dekeyser Pergiel*, No. 18-0631, 2019 WL 1294435 (Iowa Ct. App. Mar. 20, 2019) (Bower, J.) ("Rehabilitative, or transitional, spousal support reflects the disparity in the parties' earing capacities and provides limited financial assistance to allow the receiving spouse to improve his or her employment ability.") (citing *In re Smith*).

3. More recently, however, the Iowa Court of Appeals has recognized a fourth category. *See, e.g., In re Marriage of Jenn*, No. 18-1458, 2019 WL 5424938, at *2 (Iowa Ct. App. Oct. 23, 2019) (May, J.) ("Our cases recognize four categories of spousal support: traditional, rehabilitative, reimbursement, or transitional.") (citing *In re Marriage of Hansen*, No. 17-0889, 2018 WL 4922992, at *16 (Iowa Ct. App. Oct. 10, 2018) (McDonald, J., concurring specially)); *In re Marriage of Drenter*, No. 17-1548, 2019 WL 478195 (Iowa Ct. App. Feb. 6, 2019) (McDonald, J.) (citing *Hansen* (McDonald, J., concurring specially)) ("Our courts have also, in certain circumstances, recognized a fourth category of spousal support: transitional.").

4. "Transitional spousal support has been described to apply:

> **where the recipient spouse may already have the capacity for self-support at the time of dissolution but needs short-term assistance in transitioning from married status to single status due to the economic and situational consequences of dissolution. The critical consideration is whether the recipient party has sufficient income and/or liquid assets to transition from married life to single life without undue hardship."**

In re Marriage of Brown, No. 19-0705, 2020 WL 569344, at *6 n.7 (Iowa Ct. App. Feb. 5, 2020) (emphasis added) (quoting *In re Marriage of Hansen*, No. 17-0889, 2018 WL 4922992, at *17 (Iowa Ct. App. Oct. 10, 2018) (McDonald, J., concurring specially)). After reciting the statutory factors in Iowa Code section 598.21A(1), the court concluded:

> Abby will suffer financial hardship transitioning to single life and needs short-term assistance due to the economic and situational consequences of dissolution and an award of spousal support is appropriate. But we find the district court's award inadequate. We modify the decree to award Abby spousal support in the amount of $650.00/mo for 3 yrs from the time of the entry of the decree.

Id. at *6.

5. Most recently, the Iowa Supreme Court announced, "To the extent Iowa Code section 598A.21A(1)(e) directs us to consider time and expenses necessary to

acquire sufficient education or training to enable the party to find appropriate employment, **we note that such transitional alimony is usually appropriate in the context of a traditional marriage where a spouse has surrendered economic opportunities and needs a period of time to get retooled to enter the work force.**" *In re Marriage of Mann*, 943 N.W.2d 15, 23 (Iowa 2020).

6. Transitional Alimony Granted.
    a. *In re Marriage of Brown*, No. 19-0705, 2020 WL 569344 (Iowa Ct. App. Feb. 5, 2020). Equal property distribution to parties, both in good health. Husband (38) held degree in Business Management and worked as the area specialty manager in sales for a pharmaceutical company, earning $178,000/year. Wife (38) held her Master's degree and earned $73,542 as kindergarten teacher. Trial court thought Husband agreed to transitional alimony and awarded $1,000/mo for 5 yrs.[1] On Husband's motion to reconsider, trial court reduced to $350/mo for 30 months. Both appealed on alimony and other issues. After concluding Wife "will suffer financial hardship transitioning to single life and needs short-term assistance due to the economic and situational consequences of dissolution" and that alimony was equitable, Court of Appeals increased transitional alimony to $650/mo for 3 yrs. *Id*. at *6.

    b. *In re Marriage of Dekeyser Pergiel*, No. 18-0631, 2019 WL 1294435 (Iowa Ct. App. Mar. 20, 2019) (Bower, J.) ("Rehabilitative, or transitional, spousal support reflects the disparity in the parties' earing capacities and provides limited financial assistance to allow the receiving spouse to improve his or her employment ability.") (citing *In re Smith*). Court of Appeals affirmed $1,500/mo "rehabilitative, or transitional, alimony" for 24 months payable by Wife (60), a board-certified psychiatrist, to Husband, who held a BA in Bus. Admin. but was retired during most of the marriage and said he needed 2 yrs to get his credentials to an employable level, where parties enjoyed a "comfortable standard of living," had a "large disparity in their respective earning capacities," and despite separate finances and living in separate homes during more than half the marriage, Husband (for 6 of 9 yrs) lived in houses for which Wife paid the mortgage.

7. Transitional Alimony (and other categories) Denied.

    a. *In re Marriage of Mann*, 943 N.W.2d 15 (Iowa 2020). Despite 16-year marriage where Wife's income of more than $118K using her college decree was three times that of husband with high school diploma, and such that she could afford to pay it, the Court denied

[1] This is only one of several cases discussed in this outline where an admission or misunderstood statement by a party at trial was material. Although obvious, this underscores the need to prepare clients before depositions and trials to ensure not only clarity in position, but also in expression.

even transitional alimony where Husband had not surrendered economic opportunities to enhance Wife's earning capacity or to manage the family at home, but rather chose a "less strenuous and convenient work schedule." Husband had passed up opportunities to earn more income, and during slow period continued to take the children to daycare, rather than capitalizing on the opportunity to care for them at home.

b. *In re Marriage of Jenn*, No. 18-1458, 2019 WL 5424938 (Iowa Ct. App. Oct. 23, 2019) (finding in context of wife's unwillingness to work for less than she had been paid in the market before, "It would not be equitable to require Thomas to bankroll the establishment of Vermona's new life when she refuses to work.").

c. On occasions, and in closer cases, some courts appear prone to a formulaic analysis finding alimony is not warranted where none of the generally-recognized categories of alimony fit squarely.

    1) We should not be quick to recognize new categories of spousal support. Nor should we be too lax in applying the generally-recognized [sic] categories to the facts of a particular case. Among the galaxy of cases, the generally-recognized [sic] categories of support are constellations providing guidance in navigating the otherwise uncharted waters of spousal support. *In re Marriage of Monat*, No. 18-0884, 2019 WL 1057310, at *5-6 (Iowa Ct. App. Mar. 6, 2019) (**McDonald, J.**) (quoting *In re Marriage of Baccam*, No. 17-1252, 2018 WL 5850224, at *10 (Iowa Ct. App. Nov. 7, 2018) (**McDonald, J**., concurring in part and dissenting in part)).

    2) *In re Marriage of Moeller*, No. 18-0362, 2019 WL 1300318 (Iowa Ct. App. March 20, 2019). Trial Court found the facts didn't fit within any of the 3 generally recognized categories of alimony, wherefore it denied wife's request. Court of Appeals AFFIRMED.

d. Other courts suggest such a formulaic approach focusses too much on labels. "While the award may not fit neatly into one of the established spousal-support categories, the Iowa Supreme Court has not rested on labels." *In re Marriage of Monat*, No. 18-0884, 2019 WL 1057310, at *6 (Iowa Ct. App. Mar. 6, 2019) (Vaitheswaren, J., dissenting).

E. Alimony based on more than one category, and whether it matters

1. Sometimes the alimony awarded can be a combination of types. *See, e.g.*, *In re Marriage of Becker*, 756 N.W.2d 822, 827 (Iowa 2008) (awarding wife $3.3M in assets as well as alimony that could neither be described entirely as

traditional or rehabilitative in nature); *In re Marriage of Lee*, 201 WL 227573, at *7 (Iowa Ct. App. Jan. 21, 2011) (awarding $350 alimony/mo for 48 months in a 12-year marriage where applicant was in her 30's, in good health, and didn't need more education, but where there was a disparity of income, a 12-year marriage, and a mutual decision that she work less to care for the children, which enhanced husband's earning capacity). "The alimony awarded to [wife] doesn't fit precisely within either the rehabilitative or reimbursement categories." *Id.* *See also In re Marriage of Bruton*, No. 10-1918, 2011 WL 3480979 (Iowa Ct. App. Aug. 10, 2011) (affirming trial court's award of $1,500/mo rehabilitative alimony for two years, decreasing to $1K thereafter, albeit for a modified duration of 5 yrs, rather than 26 yrs as trial court had ordered, because the parties were only married for 15 yrs).

2. Are courts required to classify alimony as a particular type? No. *See In re Marriage of Hufnagel*, No. 09-1667, 2010 WL 2757373 (Iowa Ct. App. July 14, 2010) ("[T]he court is not required to label the spousal support as a particular type, i.e., traditional, rehabilitative, or reimbursement.")(*citing In re Marriage of Becker*, 756 N.W.2d 822, 827 (Iowa 2008)).

3. Does it really matter how the alimony is classified?

    a. For purposes of receiving payments, no.

    b. For purposes of child support, yes. Reimbursement alimony is not included within the payee's income for purposes of calculating child support. *See* Iowa R. Civ. P. 9.5(1)(a)(3). *See also In re Marriage of Dauterive*, No. 18-0381, 2019 WL 1056816, at *6 (Iowa Ct. App. Mar. 6, 2019) (remanding to trial court for recalculation of child support without including reimbursement alimony).

    c. For purposes of modification, yes. "Traditional spousal support may be modified or terminated upon remarriage," whereas "reimbursement spousal support 'should not be subject to modification or termination until full compensation is achieved.'" *In re Marriage of Hufnagel*, No. 09-1667, 2010 WL 2757373 (Iowa Ct. App. July 14, 2010) (*quoting In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989)). "Rehabilitative and reimbursement alimony . . . are often unaffected by remarriage." *In re Marriage of Wendell*, 581 N.W.2d 197, 200 (Iowa Ct. App. 1998) (citing *In re Marriage of Francis*, 442 N.W.2d 59, 67 (Iowa 1989) (reimbursement alimony not subject to modification or termination until full compensation upon recipient's death); *In re Marriage of Seidenfeld*, 241 N.W.2d 881, 884 (Iowa 1976) (alimony payments to wife for the purpose of further education should continue even if wife remarries); and *In re Marriage of Wilson*, 449 N.W.2d 890, 893 (Iowa Ct. App. 1989) (retirement benefits distributed in the form of alimony do not terminate on remarriage of recipient.)).

d. For purposes of insurability, yes. "Life insurance should be limited to the amount necessary to secure an obligation." *In re Marriage of Mouw*, 561 N.W.2d 100, 102 (Iowa Ct. App. 1997). Life Insurance should not be ordered to protect against the loss of traditional alimony, because such obligation ceases at death with the result there is no obligation to insure. *See In re Marriage of Lytle*, 475 N.W.2d 11 (Iowa Ct. App. 1991).

IV. Prominent factors applied in cases

Must consider all factors; weight varies. By statute, courts must consider each of the criterion in Iowa Code section 598.21A(1). *In re Marriage of Mauer*, 874 N.W.2d 103, 107 (Iowa 2016) (citing *Gust*, at 410). "[O]ur cases establish the *comparative* weight or importance of certain statutory criteria relative to others." *Id*.

A. Length of the marriage

1. Length of the marriage, not length of the relationship, is the relevant consideration. *See In re Marriage of Lynch*, No. 17-2067, 2019 WL 319844, at *3 n.4 (Iowa Ct. App. Jan. 23, 2019) (rejecting, on basis of statutory construction of references to "length of the *marriage*" in Iowa Code §§ 598.21A(1)(a) and 598.21(5)(a), payee's argument to consider the length of the parties' *relationship*, having lived together for 5 yrs, and later for and additional 4 yrs, before their marriage) (emphasis added). *See also In re Marriage of Stone*, No. 10-1061, 2011 WL 662645 (Iowa Ct. App. Feb. 23, 2011) (holding 11-year marriage, not 18-year relationship was the applicable time period).

2. Alimony granted

   a. 65 years. *In re Marriage of Schmidt*, No. 19-0495, 2020 WL 2985459 (Iowa Ct. App. June 3, 2020). Husband was retired mail carrier with good federal pension and health plan. Wife claimed certain family members attempted to usurp control over family assets, leaving her with only $527/mo social security. Husband filed, yet thought Wife had, whereas she was against it. The Court of Appeals affirmed the district court's decision to deny the dissolution, to grant separate maintenance, and to order Husband to keep Wife on his federal health plan and pay the premiums plus $1,000/mo in alimony until the death of either, reasoning the separate maintenance left both parties in a better financial position to provide for their needs in their final years. Husband had not resisted alimony conceptually, but urged an award of only $500/mo.

   b. 37 years. *In Re Marriage of Bruns*, 2011 WL 237969 (Iowa Ct. App. Jan. 20, 2011). "[G]iven the long duration of the marriage, the alimony award should be permanent." *Id*. at *5. Trial court's award of

$1,800 / month until age 66 was affirmed, except to extend alimony at a reduced rate of $500 / month until either party died or wife remarried. Husband dentist (age 58) earned $150,000/yr, and wife vocational teacher (57) earned $43,000/yr.

c. 35 years. *In re Marriage of Parlee*, No. 18-1808, 2019 WL 3315889 (Iowa Ct. App. July 24, 2019). Traditional alimony of $1,321.49/mo affirmed. Both parties in mid-50's, with fair health and no advanced education, had worked fulltime throughout the marriage until wife cut back in failed attempt to save the marriage. After selling home to pay mortgage and credit card debt, marital assets were divided equally ($80K each). Wife earned $33,782 / year, roughly $50K less than Husband's $83,887. Wife's expenses to income left her with monthly shortfall of $1,500, whereas Husband's greater monthly income "allow[ed] him, in his words, to be a generous person."). Although the indisputable facts on alimony were already against him, Husband didn't gain any credibility in relation to reporting and valuating assets, such as by failing to produce a list of smaller property items, and by listing a given firearm at $600, half of its value in "Blue Book of Gun Values," by S.P. Fjestad. *Id*. at 3.

d. 34 years. *In re Marriage of Drenter*, No. 17-1548, 2019 WL 478195 (Iowa Ct. App. Feb. 6, 2019). Mechanical engineer and farmer Husband earned $186,009/year, compared to "limited" income of Wife, a high school grad with several mental-health and physical conditions claimed to limit her ability to work, and who for past 16 yrs was stay-at-home mother and homemaker. Trial court awarded $1,500/mo until death, payee qualified for Medicare/Medicaid, or remarried. Court of Appeals increased to $3,000, particularly due to length of marriage, standard of living, Wife's limited earning capacity, and Husband's established earnings history. Wife also sought elimination of her eligibility for Medicare/Medicaid as a terminating event, and Court of Appeals agreed. "Traditional alimony is 'payable for life or so long as a spouse is incapable of self-support.'" *Id*. at *5 (citations omitted).

e. 33 years. *In re Marriage of Dorr*, No. 17-2023, 2019 WL 478502 (Iowa Ct. App. Feb. 6, 2019). Despite Wife/payee's appeal for $7,500/mo until 66, and $6K/mo thereafter, Court of Appeals affirmed trial court's award of $5,500/mo traditional alimony, automatically stepped down to $5,000/mo when she attains 66 yrs, and it refused automatic step-down when Husband retires, leaving that for modification. Wife's (64) income imputed at $25K/yr, compared to Husband (69) earning $213K/yr from law practice, inheritance, and social security. Wife was stay-at-home mom for 9 yrs, office ass't / mgr for 10, and retired at 58 with subsequent hobby losses in antique shop and teddy bear businesses. **Court found it inequitable for Wife**

(5 yrs younger and retired 6 yrs ago) to expect Husband to continue working while she made no effort to find gainful employment following date of separation, staying retired. Substantial property division, more or less equal, but $17K in Wife's favor. Wife's stage 2 breast cancer not discussed in context of alimony, but in context of property division was not considered a special need under the facts of case.

f. 31 years. *In re Marriage of Sterner*, No. 18-0409, 2019 WL 1057304 (Iowa Ct. App. Mar. 6, 2019). Each party received ½ of $4.4MM marital estate. Husband received additional $134,000 of inherited, nonmarital property. Husband (59) earned annual income of $201,225, compared to $45,000 by Wife (57). Wife worked as a nurse early in the marriage, but then cared for children at home and worked on the farm for the past 27 yrs. The court doubted Wife's injuries from 2 collisions precluded full-time work, yet determined that the life patterns were largely set, and she could not reasonably be expected to rejoin the workforce. Trial court awarded $3,500/mo, automatically reduced to $2,500 when Wife turns 65, and to $1,500 at 67. Court of Appeals found Wife's financial affidavit claiming $14,000 monthly expenses was inaccurate, implausible, included adult children's expenses (which it found unwarranted), and was not credible. This notwithstanding, given the income disparity and inability to live the marital lifestyle without an increase, the Court of Appeals increased the initial alimony to $4,000/mo, and affirmed the automatic reductions at ages 65 and 67.

g. 29 years. *In re Marriage of Darrah*, No. 19-0285, 2020 WL 4200831, at *5 (Iowa Ct. App. July 22, 2020). Parties graduated from Creighton with business degrees. After out-earning Husband, Wife left market to raise their 3 children, then worked as part-time para-educator. By trial, Husband earned $325K/yr. Larger asset division with Wife receiving more than $500K over 10 yrs, among other things. Court of Appeals AFFIRMED trial court's award to Wife of $3,085 child support and of $4K/mo traditional alimony until either party dies or Wife remarries. The Court of Appeals tallied Wife's monthly child support, alimony, and other sources of income, determined they would provide her with a comparable lifestyle, and reasoned, "[w]hile the spousal support award leaves both parties wanting, it was within the range of equity."

h. 28 years. *In re Marriage of Mauer*, 874 N.W.2d 103 (Iowa 2016). Two of the parties' 4 children remained in high school, and Wife was awarded primary physical care. Before marriage, Husband completed med school and internal medicine internship, and Wife earned MBA and double majors in German and biology. After marrying, Wife was breadwinner in computer sales while Husband completed 3-yr residency in ophthalmology. Thereafter, Wife (56) left market to raise

family and never again had regular employment income, but had an earning capacity of $25K. Husband (55) earned >$1M/yr through several businesses in ophthalmology, general vision, a medical spa, and as a commercial landlord. Husband encouraged Wife to continue managing family despite her offers to return to the market. Wife ultimately became licensed massage therapist at the medical spa 25-30 hrs/wk in exchange for contributions to her 401K, and she taught massage for $3K/yr.

Trial court initially awarded $18K/mo, decreasing in retirement. In the final decree following post-trial motions, it amended monthly alimony to $9,100, decreasing to $7K when Wife reaches retirement age, and $5K when Husband reached retirement age or retires, whichever later. Wife offered no complaint at trial that the $11-12K/mo temporary alimony she received for more than a year caused "any economic depravation." The **Court of Appeals** relied on the AAML guidelines to award $25K/mo until Wife's remarriage or either party's death. The **Supreme Court** criticized the Court of Appeals' lack of statutory analysis, reliance on the AAML guidelines, and award in excess of Wife's needs and request, but found the trial court's award lacking.

Both were in relatively good health. Wife received a property distribution of $1.7M, of which $800K were investable preretirement assets that her expert testified could yield a 4% return, or $32K/yr. Adding this to her $25K earning capacity, she was capable of earning $57K/yr.

Wife's budget was an estimate of historical expense for the entire family, making it **inaccurate** prospectively. The Court adjusted it to eliminate inaccuracies, ***to remove child-specific expenses now covered by child support***, and to reduce other expenses to her personal needs, yielding a monthly need of $13K ($156K/yr) to live at the standard to which she became accustomed during the marriage. By determining the gross annual income necessary to yield this net amount ($208K)[2], and subtracting therefrom the $57K income anticipated from employment and investment income, the Court concluded Wife needed $12,583/mo traditional alimony, which it awarded, reduced automatically to $6,500/mo when Wife attains 66.5 yrs, and further reduced automatically to $5K/mo when Husband attains 66.5 yrs or actually retires, whichever is first, whether before or after Wife attains 66.5 yrs.

i. 27 years. *In re Marriage of Schultz*, No. 19-1256, 2020 WL 4497118 (Iowa Ct. App. Aug. 5, 2020) (Greer, J.). Husband (60) with Assoc.

[2] This step would no longer be required following the changes in tax law effective Jan. 1, 2019.

Degree had been breadwinner for 26 yrs doing manual labor in grocery store, then retail territory manager for food broker, before injuring shoulder and getting laid off 2 yrs before trial. At trial, Husband received $2,249/m SSD + $470/m disability insurance. Wife (51) earned MA in Social Work during marriage and $14K/m gross ($9,805/m net) income, resulting in $11,396/m disparity. Although Husband received $4K/m temp alimony for 7 months, trial court perceived (w/o expert testimony) Husband was physically able to work in sales and awarded no permanent alimony, but did award Husband 64% of net marital assets (including $469K retirement account). On basis of SSD determination, lack of contrary vocational expert testimony, and Husband's unemployment, Ct of Appeals disagreed with trial court; found Husband unable to earn as he had and in need of alimony; and found Wife able to pay, so awarded $2,500/m until Husband attained 70 years, then $1,500/m until death or husband's remarriage.

j. 25 years. *In re Marriage of Dirkx*, No. 18-0422, 2019 WL 3330625, at *3 (Iowa Ct. App. July 24, 2019). In this "very traditional marriage," the parties agreed wife, who held a BA in music education, would not work outside the home. As a result, she had works less than 1 year outside the home more than 23 yrs prior, and she earned annual rental income of only $5,000, compared to Husband's annual income of $56,000. The court noted this created a "considerable need for traditional alimony," whereupon it MODIFIED the trial court's award of $1,400/mo child support and alimony (combined) for 10 yrs by instead ordering traditional alimony of $900/mo. Note: the separation before trial lasted approximately 2 yrs.

k. 23 years. *In re Marriage of Wilson*, No. 18-2140, 2019 WL 6358438 (Iowa Ct. App. Nov. 27, 2019). College-educated parties with no children to the marriage were each awarded approximately $617,214 marital property. Additional, inherited property worth $1.2MM was awarded to Husband and, as nonmarital property, was not considered in determining alimony. The income therefrom, however, was properly considered when noting that Husband (age 62) was in good health and earned $55,380 annually, compared to $34,500 by Wife (whose declining health limited her to part-time work). Trial court's awarded wife $1,500/mo alimony until she turned 67 in 8 yrs, automatically reduced to $1,000/mo thereafter until death. Aside from a technical correction, Court of Appeals AFFIRMED.

l. 23 years. *In re Marriage of Frick*, No. 17-1334, 2019 WL 319837 (Iowa Ct. App. Jan. 23, 2019). Each of the parties were awarded $309,000 in marital property. They still cared for 2 adult children and

a grandchild, for whom they were guardians.[3] Husband (50) earned a Master's degree 4 yrs into the marriage, was Sr. VP at Heartland Financial earning salary of $150,000, benefits, restricted stock units, and possible bonuses. Wife (55), held an education degree and needed 6 credit hours to become recertified. She had substituted occasionally, but generally was a stay-at-home mother caring for their children, then ailing parents, and now a grandchild. By date of trial, she worked PT at Mercy Health Center, earning $11/hour. Trial court imputed Wife's income at $12,500 and awarded her alimony of $5,000/mo, automatically reduced to $2,500 when she reached 66 yrs, and automatically ceasing at 72. Husband argued trial court mistakenly based alimony on Wife's care of grandchild and that Wife's income capacity was higher. Court of Appeals noted trial court's award was more than recommended by AAML guidelines, agreed Wife could contribute at a higher level than the imputed income indicated, and accepted Husband's recommendation to reduce alimony to $4,000/mo retroactive to date of decree, automatically reduced to $2,000/mo at 66, and automatically ceasing at age 72.

m. 23 years. *In re Marriage of Anderzhon*, No. 09-1715, 2010 WL 3325618 (Iowa Ct. App. Aug. 25, 2010)("In light of the length of the marriage, Denise's contributions to their children and farm, and Kristofer's greater earning capacity, we conclude Denise is entitled to alimony."). Husband (age 45), earning $55K/yr, was ordered to pay wife (52), earning $32K/yr, alimony of $500/mo for 12 yrs, terminable upon death or remarriage.

n. 22 years. *In re Marriage of Riley*, No. 10-0674, (Iowa Ct. App. Oct. 6, 2010). Husband (48) earning $2,000/mo ordered to pay unemployed Wife (54), whose depression and other health problems precluded employment, alimony of $1/mo for so long as he remains obligated to pay child support, and $300/mo for 4 yrs thereafter.

o. 21 years. *In re Marriage of Friest*, No. 18-0337, 2019 WL 1300881 (Iowa Ct. App. Mar. 20, 2019). Both parties (44) received BS degrees from ISU. Husband worked on his parents farm, earning $94,578/year, plus free rent and utilities. Wife stayed home with parties' 4 children, 1 of whom had intellectual disabilities and serious health issues, with result she had no actual income. She was, however, attending massage school and was found to have an earning capacity of $31,707. In addition to $1,425/mo child support for 4 children, Trial Court awarded wife traditional monthly alimony of $500, automatically reduced to $650 when 3 children; $750 when 2; 900 when 1; and 1,000 when Husband no longer required to pay child support. On appeal, Wife sought $2,000/mo alimony until death, and

[3] See discussion in section on responsibilities for children, *infra*.

Husband sought reduction from traditional alimony to a term of years. "In order to limit or end traditional support, the evidence must establish that the payee spouse has the capacity to close the gap between income and need or show that it is fair to require him or her alone to bear the remaining gap between income and reasonable needs." Id. at *7. Amount and duration of alimony AFFIRMED.

p. 20 years. *In re Marriage of Palmer*, No. 18-2220, 2019 WL 4298034 (Iowa Ct. App. Sept. 11, 2019). Husband awarded 29.42% of Wife's IPERS plan. Healthy Wife (in late 50's) earned $55,200 annually, whereas Husband (age 65) received SSD of $14,880 annually due to his permanent disability caused by complex regional pain syndrome. Trial court awarded husband $1,000/mo until he began receiving IPERS (i.e., when wife retires), automatically reduced to $400/mo thereafter. Husband sought increased alimony on appeal. Observing appeals are expensive, and that the appellate court should not disturb the trial court's decision unless it failed to do equity, the Court of Appeals AFFIRMED.

q. 20 years. *In re Marriage of Gonzalez*, No. 10-0101, 2010 WL 4105611 (Iowa Ct. App. 2010)(expanding a 36-month award of rehabilitative alimony to traditional alimony of $700/mo until age 62, terminable on death or remarriage). The long marriage "weighs on the side of awarding [husband] traditional alimony." *Id.* at 5. Husband (52) with limited employment opportunities could earn an associate's degree in 2 yrs, but he was out of the market for 15 yrs caring for the child, allowing wife (42) to pursue a demanding career with result her social security benefits would be considerably greater. "The disadvantaged spouse should be awarded traditional alimony under such circumstances." *Id.* at 5.

r. 19 years. *In re Marriage of Hare*, No. 19-1795, 2020 WL 3571876 (Iowa Ct. App. July 1, 2020). Second marriage, each with 2 children from prior marriage, but none at issue here. Husband (62) with HS degree was self-employed commercial sandblaster and landlord earning $100,607/yr, whereas Wife (57) with HS degree had her own cleaning business earning $13,040/yr, and could never become self-sufficient because of serious back problems limiting her work. Disparity of $87,567/yr. Equal property division left Husband with $386K in business assets and Wife with $230K house she must sell and $54K cash equalization. Wife's monthly expenses required approx. $1,500 add'l to live the marital lifestyle. Trial court awarded Wife traditional alimony of $1,500/m x 7 yrs, then $750/m thereafter. Husband argued he couldn't continue working forever and wanted to retire at 65, not at age 70 when alimony would be reduced. Ct of Appeals affirmed, ruling Husband could seek modification upon retirement.

s. 19 years. *In re Marriage of Torres and Reyes-Peneda*, No. 19-0224, 2020 WL 820332 (Iowa Ct. App. Feb. 19, 2020). Both parties graduated from high school in Honduras. They spoke Spanish and only a little English. Trial court ordered Husband (age 40, earning $54,762/year) to pay Wife (age 49, earning $27,040/year) $1.00/mo placeholder alimony and $951.51/mo child support on behalf of sophomore twins.[4] Wife took medication for depression and anxiety for past 14 yrs, and her condition presented "obstacles in becoming self-sufficient." Husband, however, was unable to pay substantial alimony on top of child support. The Court of Appeals affirmed the $1.00/mo placeholder alimony, but modified it to automatically increase to $500 once the twins graduated and Husband was relieved of his child support obligation, all terminable upon death of a party, Wife's remarriage, or Wife's receipt of social security.

t. 19-year common law marriage. (Property in lieu of 2 yrs of alimony.) *In re Marriage of Barnhouse*, No. 18-1931, 2020 WL 105088 (Iowa Ct. App. Jan. 9, 2020). Both received $622K in marital property (with Husband's share, not Wife's, including income-producing assets), and with Wife receiving $60K additional marital property in lieu of alimony. Husband (67), a maintenance worker, was projected to earn $105,504/yr for next 2 yrs until retirement, then $53,046/yr thereafter, whereas Wife (57), employed by livestock management company, earned $31,607/yr. This resulted in income disparity of $73,897 for 2 yrs. Court awarded $60K more marital property to Wife in lieu of alimony, reasoning this "allowed [Wife] to maintain her married livestyle 'over the next year or so.'" (Perhaps the award can be penciled out as follows: $73,897 disparity / 2 yrs = $36,948.50 x 80% (more or less, net taxes) = $29,558.80. $30K x 2 yrs = $60K additional property awarded to wife).

u. 16 years. *In re Marriage of Mann*. 943 N.W.2d 15 (Iowa 2020) (all justices concurring, except McDermott, J., who took no part). District court vested Wife with custody of three children and ordered Husband to pay child support of $614/mo. Wife (41) earned a BA in Bus Mgmt before the marriage and earned $118K/yr plus full benefits and stock options as the materials mgr for factory, whereas Husband (49) had high school degree and earned $36K mowing and moving snow, creating a 3-1 disparity, with the result that Wife had the ability to pay, and it would be "a challenge" for Husband to maintain the lifestyle to which he became accustomed. Before the court of appeals awarded husband $2,395/mo x 3 yrs, the district court had held that the length

[4] As with some other cases cited herein, I have annualized the incomes for ease of comparison with other cases, and for ease of calculating how the ultimate award compared with what the AAML Guidelines, a/k/a the "*Gust* formula" might indicate as a reality check.

of the marriage and disparity in income did not form an appropriate basis for alimony.

On further review, the Supreme Court did "not entirely agree" with this, recounting how **a 16-yr marriage can support alimony awards under the right circumstances**, and how "marked disparity of income is a relevant factor." Husband's lack of college education and Wife's ability to pay alimony both further cut in favor of alimony, but were outweighed primarily by three countervailing factors:

(1) **Wife's promotions and increased earning capacity resulted solely from her efforts**, and Husband had not sacrificed his own earning capacity to enhance her's. (2) **Nor had Husband "materially sacrificed his economic opportunities to manage the household or provide domestic services."** "[C]ontrary to the traditional pattern that often emerges," Wife earned more income while managing the home. During slower periods, Husband still sent the children to daycare. "It appears [husband] was both economically underemployed and domestically underemployed." Husband repeatedly chose a "less strenuous and convenient work schedule" over "expanded … economic prospects or domestic contribution." (3) **Husband's equal share of the property division was greater due to Wifes disproportionate accrual of assets during the marriage.** Both received $359,315 in property, husband's portion largely in nonliquid assets, and the balance in retirement assets inaccessible w/o penalty. "Having received substantial benefit from [Wife's] industriousness in the property settlement, equity does not demand that [Wife] contribute more to [Husband's] postmarriage economic wellbeing through an award of alimony." **Similarly, Wife's higher income reduced Husband's child support obligation from what it otherwise would have been.**

v. 13 years. *In re Marriage of Kohorst*, No. 19-0147, 2020 WL 564934 (Iowa Ct. App. Feb. 5, 2020) (Greer, J). After dating for 12 yrs, parties executed premarital agreement before marrying, which resulted in Husband recovering premarital property valued at $15MM on date of trial, up from $4 or 5MM on date of marriage. Wife (60) recently returned to full-time work, earning $29/hour ($32,592/year), to access health insurance, because she had "several health issues." She estimated her monthly expenses at $13,691, but made no application for temporary alimony. Although retired, Husband (62) expected to continue earning $60,000/mo ($720,000/year). After providing an extensive list of cases in which Iowa courts had awarded traditional alimony, both in marriages lasting in excess of 20 yrs and even in cases "involving marriages comparable in length to [the parties'] thirteen-year marriage," the Iowa Court of Appeals AFFIRMED the trial court's award of $10,000/month traditional alimony. "Randy has

shown no compelling reasons to reverse the ruling of the district court." *Id*. at *5.

w. 12 years, described as "a marriage of average duration." *In re Marriage of Lingle*, No. 10-0247, 2010 WL 3894493, at *5 (Iowa Ct. App. Oct. 06, 2010)(affirming order that Husband (38) earning $39,000/yr pay wife (39) earning $9,000/yr traditional alimony of $400/mo for 48 months).

x. 11 years. *In re Marriage of Stone*, No. 10-1061, 2011 WL 662645 (Iowa Ct. App. Feb. 23, 2011) (affirming traditional alimony where marriage was "not so short as to require reversal" and where applicant was disabled).

y. 9 years. *In re Marriage of Thompson*, 2011 WL 441698 (Iowa Ct. App. Feb. 9, 2011) (affirming monthly award of $500 traditional where financially irresponsible husband (age 50) diminished the inheritance and premarital property of wife (age 65), but modifying it to terminate when wife received full social security benefits).

z. 9 years (including 25-month separation). *In re Marriage of Dekeyser Pergiel*, No. 18-0631, 2019 WL 1294435 (Iowa Ct. App. Mar. 20, 2019) (Bower, J.) (affirming $1,500/mo "rehabilitative, or transitional, alimony" for 24 months payable by Wife (60), a board-certified psychiatrist, to Husband, who held a BA in Bus. Admin. but was retired during most of the marriage and said he needed 2 yrs to get his credentials to an employable level, where parties enjoyed a "comfortable standard of living," had a "large disparity in their respective earning capacities," and despite separate finances and living in separate homes during more than half the marriage, Husband (for 6 of 9 yrs) lived in houses for which Wife paid the mortgage.) Husband/payee's chronic cardiac issues posed no functional limitations. "Rebabilitative, or transitional, spousal support reflects the disparity in the parties' earning capacities and provides limited financial assistance to allow the receiving spouse to improve his or her employment ability." *Id*. at *2 (citation omitted).

3. Alimony denied

a. 12 years. *In re Marriage of McInnis*, No. 19-1120, 2020 WL 2488202 (Iowa Ct. App. May 13, 2020). "Here, the marriage did not last long enough to merit serious consideration for traditional alimony." Id. at *5 (citing *In re Marriage of Gust*, 858 N.W.2d 402, 410-11 (Iowa 2015) (discussing 20 or more years as the common "durational threshold" for traditional spousal support)). The Court of Appeals then noted "no other factors weight in favor of permanent support," whereupon it turned to Wife's request for rehabilitative alimony. *Id.*

b. 12 years. *In re Marriage of Jenn*, No. 18-1458, 2019 WL 5424938 (Iowa Ct. App. Oct. 23, 2019). In 3rd marriage for Husband (60) and 6th marriage for Wife (62), with property governed by premarital agreement, trial court awarded wife $500/mo alimony, automatically reduced to $250/mo when Husband reached 66 yrs, and terminable upon death of either (but preserving Wife's ability to continue receiving alimony if she married a 7th time). Both appealed alimony provisions. After observing the trial court classified the alimony as "traditional" or "permanent," the Court of Appeals noted, "This marriage fell well short of the durational threshold," to conclude that traditional support did not apply. The Court of Appeals then methodically explored 3 other "traditional categories of support" -- rehabilitative alimony, reimbursement alimony, and transitional alimony -- to conclude that none applied. Wherefor it MODIFED to remove the alimony award.

c. 10 years. *In re Marriage of Monat*, No. 18-0884, 2019 WL 1057310 (Iowa Ct. App. Mar. 6, 2019) (McDonald, J.). Equal property division. During marriage, Husband obtained BA and MA degrees at employer's expense, and Wife obtained grad degree in speech pathology. Trial court awarded Wife $1,000/mo (uncategorized) alimony beginning when home sold and continuing for up to approx. 1 ½ yrs "so that she may continue to work part-time until both children are in school as the parties contemplated" before they separated. *Id*. at *2. Court of Appeals struck the alimony provision after engaging in a formulaic analysis of alimony: No traditional, b/c marriage too short; no rehabilitative b/c Wife already held grad degree and could reenter the market; no reimbursement b/c employer paid for Husband's education during marriage; and no transitional b/c the alimony "was not intended to assist [Wife] in overcoming the economic dislocations associated with dissolution of the marriage. Instead, the district court awarded support to allow [Wife] to continue with the parties' historical care-giving practices until the younger child started school." *Id*. at 5. "[I]f one spouse has a financial need, the next question should not be whether the other spouse has the ability to pay. . . . Only if one or more of the generally-recognized categories is applicable, i.e., only if it would be equitable to require spousal support, should we ask the question of whether the other spouse has the ability to satisfy the recipient spouse's need." *Id*. at 6 (quoting *In re Marriage of Baccam*, No. 17-1252, 2018 WL 5850224, at *10 (Iowa Ct. App. Nov. 7, 2018) (McDonald, J., concurring in part and dissenting in part)). "It does not matter that the parties' (sic) mutually agreed upon Heather's intentional withdrawal from the workforce while the parties were married. The marital relationship has now been dissolved, and the parties are required to adjust accordingly." *Id*. The dissent seemed less concerned about specific classifications and would have affirmed the alimony b/c of earnings disparities, the parties' agreement for Wife to

spend less time in the market until the children were school-aged, and Wife's need for time to reestablish her earning capacity. Id. at *6 (Vaitheswaran, J., dissenting).

d. 9 years. *In re Marriage of Carter*, No. 18-2157, 2019 WL 3714935 (Iowa Ct. App. Aug. 7, 2019). In marriage that "lasted only nine years," Husband was general manager at a supply company earning $78,000 annually, while wife earned $27,000 from her cosmetology salon in the home. Both were in good health. Wife sought alimony to assist in paying credit card debt she blamed on Husband's non-support and to refinance the marital home. Court of Appeals AFFIRMED trial court's methodical or formulaic analysis, wherein it held these "are not contemplated by the three general purposes alimony is intended to accomplish." *Id*. at *4.

e. 5 years. *In re Marriage of Nefzger*, No. 09-1713, 2010 WL 3325093 (Iowa Ct. App. Aug. 25, 2010)(denying alimony in short marriage despite wife's health issues where she was able to work 36 hrs/wk despite health issues). "While Jeff does earn more, a marriage of five years is not of such great duration that an award of spousal support is warranted." *Id.* at *2.

f. Less than 5 years. *In re Marriage of Meek-Duncomb*, 2011 WL 968831, at *3 (Iowa Ct. App. Mar. 7, 2011) (finding also that other factors considered didn't weigh in favor of alimony).

g. Less than 5 years. *In re Marriage of Schear*, 2011 WL 444588 (Iowa Ct. App. Feb. 9, 2011) (finding also that other factors considered didn't weigh in favor of alimony, recalling "the parties did not live an extravagant lifestyle" and that alimony was unnecessary to ensure a standard of living comparable to during the marriage).

h. 3 years. *In re Marriage of Moeller*, No. 18-0362, 2019 WL 1300318 (Iowa Ct. App. March 20, 2019). Husband's premarital property increased in value during short marriage. Per antenuptial agreement, Husband received property valued at $524,000, compared to $73,000 awarded to wife. Wife (29), left job earning $42,000 annually for a $30,000 job in Des Moines, then sought $1,000/mo alimony for 10 yrs, claiming she was unable to live at the standard to which she had become accustomed. Trial court acknowledged that Husband (54) had higher income, but countered that wife was younger and in good health, whereas "the physical demands of farming would likely limit the number of years [husband] could continue his self-employed farming operation." Trial Court found the facts didn't fit within any of the 3 generally recognized categories of alimony, wherefore it denied wife's request. Court of Appeals AFFIRMED.

B. Age and health of the parties

1. Need expert testimony to establish party is physically unable to earn income consistent with past earnings, or to show other party's income should be imputed more than current earnings, notwithstanding earlier SSD determination. *See In re Marriage of Schultz*, No. 19-1256, 2020 WL 4497118, at *3 (Iowa Ct. App. Aug. 5, 2020). Here, district court observed injured spouse on SSD and improperly made findings he had mobility when he demonstrated his movement to the court. Ct of Appeals contrasted trial court's proper role of assessing credibility of witness on the stand by observing conduct and appearance with trial court improperly becoming a witness by making factual findings of physical ability based on the trial judge's own observations and not on the basis of expert testimony. *Id.* (citing *Ruden v. Peach*, 94 N.W.2d 410, 413 (Iowa Ct. App. 2017) (finding trial court improperly "became a witness" by relying on matters outside the trial record)). "The line between factfinder and witness can be crossed where observations by the judge are the basis for a finding on a disputed fact that must be proved and corroborated." *Id*. (citing with approval *Dworkis v. Dworkis*, 111 So. 2d 70, 74 (Fla. Dist. Ct. App. 1959) ("The effect of a trial judge's observation of a party's manner and demeanor in the court room should be limited to its bearing on the credibility to be accorded to the party's testimony given under oath; and such observations by the judge should not be the basis for findings by the court on disputed facts, to the contrary of that party's position, because in so doing a judge may be said to have made himself a witness, unsworn and not cross-examined.")).

2. Alimony granted

    a. Traditional alimony in 27-yr marriage where Husband (60) with injured shoulder received SSD and disability insurance of $2,719/mo compared to Wife (51) earning $14K/mo as mental-health therapist, creating $11,396/m disparity. Absent expert testimony disputing SSD finding or suggesting husband had vocational options, Court of Appeals modified to award disabled Husband $2,500/m alimony, automatically reduced to $1,500/m when he turned 70, terminable upon death of either. *In re Marriage of Schultz*, No. 19-1256, 2020 WL 4497118 (Iowa Ct. App. Aug. 5, 2020).

    b. Wife (57) with HS degree and self-employed cleaning business earned $13K/yr and was limited in her ability to become self-supporting commensurate with marital lifestyle and had serious back issues limiting her work. In contrast, Husband (62) with HS degree and self-employed commercial sandblasting and rental homes earned $110,607/yr and was in good health. Court awarded $1,500/m traditional alimony for 7 yrs. when Husband turned 70, automatically reduced to $750/m. *See In re Marriage of Hare*, No. 19-1795, 2020 WL 3571876 (Iowa Ct. App. July 1, 2020).

c. Traditional alimony in 20-year marriage where husband (65) was permanently disabled by complex regional pain syndrome and wife (in 50's) was healthy. $1,000/mo,, automatically stepping down to $400/mo when husband begins receiving IPERS. *In re Marriage of Palmer*, No. 18-2220, 2019 WL 4298034 (Iowa Ct. App. Sept. 11, 2019) (affirming trial court's award, notwithstanding husband's request for an increased amount).

d. As an observation, and not as a rule, if the poor health of a party is both permanent and significant enough to justify an award of alimony, then it likely will be traditional alimony rather than rehabilitative, at least unless the recipient requests further education or training. *See In re Marriage of Felsing*, No. 09-1060, 2010 WL 1577265, at *2 (Iowa Ct. App. Apr. 21, 2010)("First, we find rehabilitative alimony is not appropriate in this case. Windy's health problems are permanent, and the record does not suggest that after a limited time, she would be capable of self-support. Further, the record does not suggest that Windy plans to seek re-education or retraining.").

e. Traditional alimony where unemployable due to foot injury and narcolepsy. *In re Marriage of Stone*, No. 10-1061, 2011 WL 662645 (Iowa Ct. App. Feb. 23, 2011).

f. Traditional alimony where wife unemployable due to mental health. *In re Marriage of Grosvenor*, No. 09-0674, 2010 WL 1875755 (Iowa Ct. App. May 12, 2010)(affirming $2,200/mo alimony to unemployable wife (43) following 21-yr marriage to husband (49) earning $105,648/yr.)

3. Alimony denied, or health determined not critical factor

a. Payor's heart attack 7 yrs before modification discussed in the context of his earning capacity. "We also reject Daniel's [i.e., Payor's] suggestion that his health impedes this earning capacity. The record shows he recovered from his 2011 heart attack and now has a 'clean bill of health.'" *In re Marriage of Dirkx*, No. 18-0422, 2019 WL 3330625, at *3 (Iowa Ct. App. July 24, 2019).

b. Affirming denial of Wife's request for temporary alimony ($1,000/mo for 10 mo) in 3-year marriage, notwithstanding property award of $524,000 to husband (age 54) and $73,000 to wife (age 29) per prenuptial agreement. "Galyn might have a greater earning capacity than Tamra, but she was younger than him and was in good health." *In re Marriage of Moeller*, No. 18-0362, 2019 WL 1300318, at *4 (Iowa Ct. App. Mar. 20, 2019) (expounding, "The [trial] court found the physical demands of farming would likely limit the number of years Galyn could continue his self-employed farming operation.").

[CFM NOTE: Leave this here in outline, but consider using it as an example of AGE being a factor.]

c. Application for rehabilitative alimony denied where "[a]ll . . . health issues preceded the parties' marriage." *In re Marriage of Schear*, No. 10-1129, 2011 WL 444588 (Iowa Ct. App. Feb. 9, 2011). This was also a short marriage with no real need for alimony to continue lifestyle comparable to that during the marriage.

4. Alimony limited

a. *In Re Marriage of Bloemendaal*, No. 09-1666, 2010 WL 2925692 (Iowa Ct. App. July 28, 2010)(finding Wife's young age and health justified limiting alimony to rehabilitative, rather than traditional). Court affirmed ruling in 13-yr marriage that Husband, earning approximately $40,000/yr, pay Wife, a "healthy 33-year-old retail clerk" earning $16,000/yr rehabilitative alimony of $500/mo for 5 yrs.

C. Property distribution

1. "An alimony or spousal support award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the support and there is also a need for support." *In re Marriage of Frick*, No. No. 17-1334, 2019 WL 319837 (Iowa Ct. App. Jan. 23, 2019) (quoting *In re Marriage of Hazen*, 778 N.W.2d 55, 59 (Iowa Ct. App. 2009)).

2. We have said when division of property is impractical, a higher spousal support award may provide an opportunity to balance equities where the parties have few assets and yet one partner, through joint efforts, leaves the marriage with a substantially higher income than the other. *In re Marriage of Jondle*, 807 N.W.2d 296 (Iowa Ct. App. 2011).

3. Property may be awarded in lieu of alimony. *See In re Marriage of Barnhouse*, No. 18-1931, 2020 WL 105088 (Iowa Ct. App. Jan. 9, 2020). In this 19-year common law marriage, both parties received $622K in marital property (with Husband's share, not Wife's, including income-producing property), and with Wife receiving $60K additional marital property in lieu of alimony. Husband (67), a maintenance worker, was projected to earn $105,504/yr for next 2 yrs until retirement, then $53,046/yr thereafter, whereas Wife (57), employed by livestock management company, earned $31,607/yr. This resulted in income disparity of $73,897 for 2 yrs. Court awarded $60K more marital property to Wife in lieu of alimony, reasoning this would allow her to live at level commensurate with the marital lifestyle during the following 2 yrs. (Perhaps the reasoning can be penciled out as follows: $73,897 disparity / 2 = $36,948.50 x 80% (i.e., more or less, net

taxes) = $29,558.80. $30K x 2 yrs = $60K additional property awarded to wife).

4. In acrimonious situations, awarding a larger share of property in lieu of alimony may be preferable to accomplish a clean break. *See In re Marriage of Goodwin*, 606 N.W.2d 315, 322-23 (Iowa 2000).

5. Gifted and inherited property is considered on the issue of alimony. *See In re Marriage of Hardy*, 539 N.W.2d 729, 732 (Iowa Ct. App.) ("We agree with the trial court that we consider Marvin's inherited and gifted property on the issue of alimony.").

6. Moreover, in determining a party's need for alimony, courts consider all of the party's property and income, including income derived from assets received by gift or inheritance. *See In re Marriage of Goodwin*, 606 N.W.2d 315, 323-24 (Iowa 2000) (citing *In re Marriage of Hardy*, 539 N.W.2d 729, 732 (Iowa Ct. App. 1995)); *In re Marriage of Voss*, 396 N.W.2d 801, 804 (Iowa Ct. App. 1986). *See also In re Marriage of Dorr*, No.17-2023, 2019 WL 478502, at *4 (Iowa Ct. App. Feb. 6, 2019) (noting that Husband/Obligor's income derivative of his inheritance was included in the alimony calculations).

7. Veteran's disability paid to a retired servicemember injured in the line of duty are not divisible or assignable, but "may be considered in the equitable granting of alimony or support." *In re Marriage of Howell*, 434 N.W.2d 629, 632-33 (Iowa 1989).

8. Alimony awarded (notwithstanding larger award of property)

    a. Under the right circumstances, a party can receive both a larger share of the property and an award of alimony. *See In re Marriage of Schultz*, No. 19-1256, 2020 WL 4497118, at *6 (Iowa Ct. App. Aug. 5, 2020) (awarding traditional alimony where payor improved her ability to live the marital lifestyle notwithstanding that payee also was awarded 64% of net marital assets, including, among other things, retirement savings of $468.920).

    b. "Laura's property settlement may allow her to live comfortably; however, we must consider that during the twenty-two years of this marriage, Fred was able to develop an after tax earning capacity in excess of $500,000 while Laura's gross earning capacity is $30,000 at best. Fred and Laura's decision to have Laura abandon her work outside the home hindered her ability to maximize her earning capacity during the marriage." *In re Marriage of Becker*, 756 N.W.2d 822, 827 (Iowa 2008) (awarding wife $3.3M in assets as well as alimony that could neither be described entirely as traditional or rehabilitative in nature).

9. Alimony denied

a. A large enough property settlement trumps the need for alimony, particularly when the assets are income-producing. *See In re Marriage of Antoine*, No. 09-1653, 2010 WL 5023072, at *5 (Iowa Ct. App. 2010)("Although Cheryl was in need of temporary support because she had no source of income, the court denied her request for permanent alimony" [g]iven the magnitude of the property settlement." (As part of the property distribution, Cheryl received income-producing assets by the award of nearly 500 acres of farmland.)"). Because Cheryl was awarded income-producing assets-nearly 500 acres of farmland, an award of permanent alimony was not required. *Id.* at *9.

b. *In re Marriage of Jondle*, 2011 WL 4579192 (Iowa Ct. App. Oct. 5, 2011) (striking award of alimony to party in 21-yr marriage who was awarded $100K more property when an equal property division was otherwise warranted, and distinguishing from *In re Marriage of Mouw*, 561 N.W.2d 100, 102 (Iowa Ct. App. 1997), a low-property divorce where alimony was awarded in response to Husband's larger earning potential derived from education received during marriage).

10. Alimony reduced

a. If the court increases a property award to one party on appeal, it may reduce the amount of alimony payable to such party. *See In re Marriage of Hager*, No. 09-1902, 2010 WL 4807559 (Iowa Ct. App. Nov. 24, 2010) (reducing monthly rehabilitative alimony award from $2,000 for 5 yrs to $2,000 for 2 yrs and $1,000 for 3 yrs where appellate court found property awarded husband was worth more than trial court had determined, resulting in appellate court ordering husband to pay $24,228 more to wife to equalize the property division, thereby decreasing wife's need for support).

b. Conversely, the court will consider the alimony award when assessing the equity of the property division. *See In re Marriage of Vidal*, No. 09-1608, 2010 WL 3324939, at *10 (Iowa Ct. App. Aug. 25, 2010)(affirming alimony award, but considering it while assessing the equity of the property division).

11. Classification as alimony or property?

a. Does it matter? Yes, recalling property awards cannot be modified, whereas alimony can.

b. Does an award of alimony premised on an uneven property distribution transform the alimony into a property settlement that cannot be modified, even after the recipient remarries? No. *See In re*

Marriage of Johnson, 781 N.W.2d 553, (Iowa 2010)("The court's consideration of a disparate property settlement when awarding additional support to a spouse does not change the fact that the additional support awarded is a spousal support award.").

D. Education on date of marriage and date action filed

1. "[F]or marriages of short duration which are devoted almost entirely to the educational advancement of one spouse and yield the accumulation of few tangible assets, alimony—rehabilitative, reimbursement, or a combination of the two—rather than an award of property, furnishes a fairer and more logical means of achieving" equity. *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989).

2. *In re Marriage of Mouw*, 561 N.W.2d 100 (Iowa Ct. App. 1997) (granting wife alimony of $2,000/mo for ten yrs in this 15-year marriage, where both parties obtained education during marriage, husband as neurosurgeon and wife almost completing her masters degree in computer science, and where property was insufficient to otherwise offset the inequities in disparate earning capacities).

3. Education received by one spouse during marriage can help protect the other spouse against a larger alimony award. *See In re Marriage of Roth*, No. 10-0249, 2010 WL 3157755 (Iowa Ct. App. Aug. 11, 2010). Trial court ordered husband to pay wife $300/mo for 5 yrs. Wife argued she should receive $7,500 until retirement. The wife "received education during the marriage including a two-year degree, a commodity training certification, and a commercial driver's license." On appeal, the court refused to increase the alimony due to the education she received during the marriage, her employment with benefits, and her younger age.

4. *In re Marriage of Deol*, No. 09-0909, 2010 WL 2925147 (Iowa Ct. App. July 28, 2010) (affirming rehabilitative alimony of $1750 for 24 months, $1250 for 36 mo, and $750 for 36 mo). Both parties obtained education during this 22-year marriage. Husband (61) obtained a degree in osteopathic medicine, earning $200,000/yr. Wife (51) obtained LPN, BA in nursing, and master's degree in midwifery, earning $36,000/yr. Considering her education, the court found the wife "underemployed" and could earn more, perhaps $76,000. Wife's underemployment as a result of her education, the parties' modest standard of living, the husband's older age and health, and the wife's eligibility to receive retirement benefits soon after the combined 8-year period of alimony ended justified rehabilitative alimony, rather than the traditional alimony urged by Wife. Husband also was required to share wife's student debt obligations, whereas his student debts had been forgiven in exchange for service in an underserved area.

E. Earning capacities (education, training, skills, experience, absence from job market, responsibilities for children, and time and expense necessary to retool to find appropriate employment)

1. We look not only at the parties' earnings but also at their earning capacity, as directed by section 598.21A(1). *See In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005).

2. "The historical income of the parties provides a starting point for determining earning capacity." *In re Marriage of Drenter*, No. 17-1548, 2019 WL 478195, at *4 (Iowa Ct. App. Feb. 6, 2019).
3. Courts calculate parties' income based on "the most reliable evidence presented." *In re Marriage of Teia and Khalil*, 2020 WL 4197753, at *4 (Iowa Ct. App. July 22, 2020) (quoting *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991)).

4. If current earnings do not reflect a parties' true earning capacity, the court may impute income. "In determining need, we focus on the earning capability of the spouses, not necessarily on actual income." *In re Marriage of Gust*, 858 N.W.2d 402, 411 (Iowa 2015) (citing *In re Marriage of Wegner*, 434 N.W.2d 397, 398-99 (Iowa 1988)).

    a. Income imputed

        1) "[I]f both parties are in reasonable health, as here, they need to earn up to their capacities in order to pay their own present bills and not lean unduly on the other party for support. *See In re Marriage of Wegner*, 434 N.W.2d 397, 399 (Iowa 1988)." *Accord In re Marriage of Martin*, No. 09-1450, 2010 WL2088197, at *5 (May 26, 2010).

        2) **Depreciation.** "Our supreme court has decided section 179 deductions should be added back to income for support purposes; however, 'the amount of depreciation, if any, to be considered in determining the availability of net income for the purposes of alimony and support awards is best left to the court's discretion.' Previous decisions have deducted from gross income an amount equal to straight-line depreciation rather than section 179 deduction. *In re Marriage of Leff*, No. 19-0038, 2020 WL 564901, at *4 (Iowa Ct. App. Feb. 5, 2020) (citations omitted) (Ahlers, J., joined by Tabor, P.J., and Greer, J).

        3) **Where party admits could earn more.** *See In re Marriage of Dirkx*, No. 18-0422, 2019 WL 3330625, at *4 (Iowa Ct. App. July 24, 2019) (modifying trial court's calculation of payor's income from $50,000 per year to $56,000 on basis of payor's

testimony "acknowledging he had the ability to earn around $56,000.").

4) **Where payor voluntarily reduced income** without credible justification, court may impute income. *See In re Marriage of Pontier*, No. 18-1027, 2019 WL 5790868, at *1-2 (Iowa Ct. App. 2019) (averaging payor husband's income over 5 yrs, exclusive of peak earning year, and adopting imputed annual income of $114,202 in lieu of actual income of $75,000 where his actual income decreased $100,000 in 5 yrs despite working for family, and where he testified he had not discussed issue with his boss (father), nor was he aware what his co-employee (brother) earned).

b. Income not imputed

1) **Where party chooses to make less for purpose of spending more time with children**, court may refuse to impute income. *See In re Marriage of Dirkx*, No. 18-0422, 2019 WL 3330625, at *3 (Iowa Ct. App. July 24, 2019) (deferring to trial court's acceptance of payor's "rationale for taking a lower paying job . . . to spend more time with his children.").

2) **Where parties discuss and agree to one party cutting back on hours so the parties can spend more time together to work on their marriage**, this may protect against imputation of income if the fulltime position is subsequently eliminated. *See In re Marriage of Parlee*, No. 18-1808, 2019 WL 3315889, at *1 (Iowa Ct. App. July 24, 2019) (affirming trial court's finding Wife/payee "`should not be financially penalized for her unsuccessful attempt to preserve the marriage' by reducing her work schedule"). Parties agreed to Wife reducing hours to spend 1 day/week with husband on his day off to work on relationship. *Id.* Wife/payee sought reinstatement of fulltime hours once it became clear the marriage was over, but the full-time position had already been filled, and she reasonably decided against losing her "higher earning capacity simply to have full-time hours at lower pay somewhere else." *Id.*

3) **Where party diligently searches for work.** "Courts will ordinarily not impute a higher earning capacity to a party unless it is shown that the party 'voluntarily reduces his or her incomes or decides not to work.'" *In re Marriage of Fiedler*, 2011 WL 227647, at *6 (Iowa Ct. App. Jan. 20, 2011)(*quoting In re Marriage of Nelson*, 570 N.W.2d 103, 106 (Iowa 1997)). The court characterized husband's search for work as "diligent," making numerous applications and working several

part-time or temporary jobs. *Id.* at *6. Accordingly, it accepted the trial court's finding husband earned $32,500 / year and refused to impute income at $92,000 / year, which was what he earned before being laid off. *Id.* at *6.

5. **Interest/growth within retirement assets is not included in income until drawn.** See *In re Marriage of Dorr*, No. 17-2023, 2019 WL 478502, at *3 (Iowa Ct. App. Feb. 6, 2019) ("As to the interest accruing in Fred's retirement account, Linda will benefit from that accrual upon Fred's retirement if a modification occurs Linda does not get to benefit from the interest accrual both before and after Fred begins to draw from the account, and we determine the appropriate time for inclusion in this case is after Fred is drawing from the account.")

6. **Expert witnesses.** "In order to establish earning capability for persons without work experience or who are arguably unemployed, the parties may use vocational and other experts to assist the court in making the determination." *In re Marriage of Gust*, 858 N.W.2d 402, 411 (Iowa 2015) (citations omitted).

7. **When the record lacks clarity, the appellate court defers to the trial court's gut feeling** about a party's net business proceeds for purposes of determining income. *See In re Marriage of Teia and Khalil*, 2020 WL 4197753, at *4 (Iowa Ct. App. July 22, 2020) (citing *McKee v. Dicus*, 785 N.W.2d 733, 738 (Iowa Ct. App. 2010) (noting trial judges often develop a 'gut feeling' about the result) and *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984) (emphasizing that '[t]here is good reason for [appellate courts] to pay very close attention to the trial court's assessment of the credibility of witnesses.")).

8. **Responsibilities for children can affect the determination of a party's income and eligibility for alimony.**

    a. When the parties agree during the marriage that one of them should leave the job market to care for their children, the stay-at-home parent's exit from the job market can cause them to miss out on promotions, miss out on raises, and adversely impact their experience level. This can impact their earning capacity and eligibility for alimony.

        1) Stay-at-home payee parent affected positively:

            a) In re Marriage of Dirkx, No. 18-0422, 2019 WL 3330625, at *4 (Iowa Ct. App. July 24, 2019) (reversing trial court and refusing to impute wife's income at higher level in 23-year marriage, relying instead on lower actual income, notwithstanding that

she kept her teaching certificate active, where parties during marriage agreed mother would quit teaching to work in the home and to home school their children, and where she had continued to care for their 7 children).

b) *In re Marriage of Bonnette*, 492 N.W.2d 717, 722 (Iowa Ct. App. 1992) (respecting payee's decision to remain at home with her children) (cited in *In re Marriage of Dirkx*, No. 18-0422, 2019 WL 3330625, at *4 (Iowa Ct. App. July 24, 2019)).

2) Stay-at-home parent not affected positively:

a) Historical care-giving practices alone are not enough to warrant alimony when case otherwise fails to meet alimony criteria. *See In re Marriage of Monat*, No. 18-0884, 2019 WL 1057310 (Iowa Ct. App. Mar. 6, 2019) (striking trial court's award of alimony until child attends elementary school, notwithstanding parties' agreement in 10-year marriage that wife stay at home with child until child attends elementary, where wife obtained advanced degree at employer's expense, and could freely reenter market, with result that none of the generally-recognized categories of alimony applied).

b) *In re Marriage of Fiedler*, 2011 WL 227647 (Iowa Ct. App. Jan. 20, 2011) (denying request for $700/mo alimony until age 62 by 48-year-old unemployed mother of 5 minor children with special needs, despite the parties' mutual decision that she care for them at home during the marriage).

c) *Moore v. Kriegel,* 551 N.W.2d 887, 889 (Iowa Ct. App. 1996) (declining to look at parent's wish to remain at home with the children in isolation when determining earning capacity).

b. Query: Does "responsibilities for children under either an award of custody or physical care" extend to grandchildren or guardians? In the case of *In re Marriage of Frick*, No. 17-1334, 2019 WL 319837 (Iowa Ct. App. Jan. 23, 2019), the husband argued the trial court mistakenly based its award of alimony to wife in part on her desire to continue caring for the parties' grandchild, for whom they were the guardians. *Id*. at *3. Wife claimed trial court did not base alimony on this, but argued that even if it did, her decision to care for grandchild at home was in discharge of the parties' marital obligation. *Id*. The Court of

Appeals noted these opposing arguments, and reduced wife's award of alimony, but it did so without directly stating that "responsibilities for children" are restricted to the parties' own children. Rather, it reduced alimony on the basis that wife's earning capacity exceeded the $12,500 imputed by the trial court. One could argue the ruling demonstrates the court did not buy the wife's argument that "responsibilities to the children" extends to grandchildren for whom they were guardians, because if it did buy that argument, it would not have reduced her earning capacity, which presupposed working outside of the home. Yet, the court did not eliminate the brunt of the alimony award, and it recognized the difficulty faced by divorcing parties attempting to support separate households. Perhaps the decision was based more on economic realities and the court's requirement to consider "other relevant factors" per section 598.21A(1)(j), notwithstanding that absence of such reference in the opinion.

9. Alimony granted

    a. *In re Marriage of Dekeyser Pergiel*, No. 18-0631, 2019 WL 1294435 (Iowa Ct. App. Mar. 20, 2019) (Bower, J.) Court of Appeals affirmed $1,500/mo "rehabilitative, or transitional, alimony" for 24 months payable by Wife (60), a board-certified psychiatrist, to Husband, who held a BA in Bus. Admin. but was retired during most of the marriage and said he needed 2 yrs to get his credentials to an employable level, where parties enjoyed a "comfortable standard of living," had a "large disparity in their respective earning capacities," and despite separate finances and living in separate homes during more than half the marriage, Husband (for 6 of 9 yrs) lived in houses for which Wife paid the mortgage.

    b. Traditional alimony awarded where doctor "opined that he did 'not see any type of job she would be able to perform'" due to foot that prevented her from standing long and narcolepsy that caused her to fall asleep after sitting for long periods. *In re Marriage of Stone*, No. 10-1061, 2011 WL 662645 (Iowa Ct. App. Feb. 23, 2011).

    c. Traditional alimony awarded husband in 20-year marriage. *In re Marriage of Gonzalez*, No. 10-0101, 2010 WL 4105611 (Iowa Ct. App. 2010)(expanding 36-month award of rehabilitative alimony to traditional alimony of $700/mo until age 62, terminable on death or remarriage). Husband (52) with limited employment opportunities could earn an associate's degree in 2 yrs, but he was out of the market for 15 yrs caring for the child, allowing wife (42) to pursue a demanding career with result her social security benefits would be considerably greater. "The disadvantaged spouse should be awarded traditional alimony under such circumstances." *Id.* at 5.

10. Alimony denied

    a. *In re Marriage of Fiedler*, 2011 WL 227647 (Iowa Ct. App. Jan. 20, 2011) (refusing application for $700 permanent alimony until age 62 by 48-year-old unemployed mother of 5 minor children with special needs, despite the parties' mutual decision that she care for them at home during the marriage). The court also refused to impute income for husband at the much higher level of income he earned before he being laid off.

        > We acknowledge and appreciate Mary's selfless acts in providing care for 5 children, 4 of whom are special needs children. Mary's devotion to the children is clear, and the time and energy associated with that commitment is no small feat. Unfortunately, the fact remains that "[w]hen a marriage is dissolved, neither party usually has as much money available for self support as was true before the breakup." *In re Marriage of Wegner*, 434 N.W.2d 397, 399 (Iowa 1988). As a result, "both parties, if they are in reasonable health, need to earn up to their capacities in order to pay their own present bills and not lean unduly on the other party for permanent support." *Id.* We therefore agree with the district court's determination that "[t]here is no doubt that Mary will need to be a wage earner in some capacity for these children." *Id.* at *6.

    b. *In re Marriage of Wollenberg*, No. 10-0451, 2010 WL 4484378 (Iowa Ct. App. Nov. 10, 2010) (affirming denial of rehabilitative alimony for noncustodial wife actually earning $13,895 from ROTC but with imputed income of $40,000 due to her education, training, and experience).

    c. *In re Marriage of Palmer*, No. 09-1733, 2010 WL 3894578 (Iowa Ct. App. Oct. 6, 2010) (giving required deference to district court and denying request by wife (37) for alimony from husband (41) where wife was out of the job market for several yrs caring for children, but without evidence that it adversely affected her employment opportunities, and where the parties' earnings were essentially equal).

    d. *In re Marriage of Chipokas*, No. 09-1578, 2010 WL 2089629 (Iowa Ct. App. 2010)(denying request by Wife of 15-yr marriage for $1/mo alimony where her earning capacity did not justify alimony, notwithstanding her concern that the future of her job was uncertain.). "We do note section 598.21A(1)(e) refers to a party's 'earning capacity' and not their current earnings. Even if Rocky were terminated by her present employer, her capacity to earn would likely be relatively unchanged due to her education, experience, vocational skills, and demonstrated sales acumen."

11. Alimony limited

    a. Whereas alimony otherwise might have continued for a longer time, the district court limited it to 4 yrs where wife applicant "elected to pursue a career which will not bring her great financial reward," observing that the husband "should not be held financially liable for [wife] for a longer period of time given that [wife] made a knowing career choice." *In re Marriage of Johnson*, 2011 WL 444122, at *4 (Iowa Ct. App. Feb. 9, 2011).

F. Feasibility of applicant becoming self-supporting at standard comparable to the marital lifestyle, and time necessary to achieve this

1. The inquiry in relation to the lifestyle to which the parties became accustomed during the marriage generally does not include unemployment or underemployment, regardless of whether the parties agreed to such during the marriage. See *In re Marriage of Monat*, No. 18-0884, 2019 WL 1057310, at *5-6 (Iowa Ct. App. Mar. 6, 2019) (McDonald, J.) ("It does not matter that the parties' mutually agreed upon Heather's intentional withdrawal from the workforce while the parties were married. The marital relationship has now been dissolved, and the parties are required to adjust accordingly.").

2. As an arguable exception to the foregoing, however, where parties discuss and agree to one party cutting back on hours so the parties can spend more time together to work on their marriage, this may protect against imputation of income if the fulltime position is subsequently eliminated. *See In re Marriage of Parlee*, No. 18-1808, 2019 WL 3315889, at *1 (Iowa Ct. App. July 24, 2019) (affirming trial court's finding Wife/payee "`should not be financially penalized for her unsuccessful attempt to preserve the marriage' by reducing her work schedule"). Parties agreed to Wife reducing hours to spend 1 day/week with husband on his day off to work on relationship. Id. Wife/payee sought reinstatement of fulltime hours once it became clear the marriage was over, but the full-time position had already been filled, and she reasonably decided against losing her "higher earning capacity simply to have full-time hours at lower pay somewhere else." *Id*. Unlike *Monat*, however, where the party seeking alimony sought to justify her unemployment on the basis of the marital lifestyle to which she had become accustomed, the focus in *Parlee* was on preservation of the marriage and whether it was equitable to impute additional income to the party seeking alimony when she attempted diligently, but unsuccessfully, to regain her fulltime position, and then to attain part-time employment that would bring her up, collectively, to full-time hours.

3. Alimony denied

    a. *In re Marriage of Martin*, No. 09-1450, 2010 WL2088197 (May 26, 2010). In this 48-yr marriage, Husband (66) who worked part-time was ordered to pay Wife (66) traditional alimony of $2,000/mo for 2

yrs, and $1,000/mo thereafter. The alimony following the first 2 yrs was stricken on appeal. The court reasoned that Wife was awarded ½ of the husband's pensions and other marital wealth, and, accordingly, "will leave the marriage with assets and income in excess of what she contends are necessary to meet her individual needs and that will allow her to maintain a standard of living similar to that which she enjoyed during the marriage." *Id.* at *5.

b. *In re Marriage of Chipokas*, No. 09-1578, 2010 WL 2089629 (Iowa Ct. App. 2010). In this 15-yr marriage, Wife (40) earned $118,000/yr while Husband averaged $140,000/yr. Although the court noted the disparity in income, it found alimony unwarranted because both parties earned "significant income." *Id*. at *5.

"While leaving the alimony issue open by awarding some modest sum sounds equitable at first glance, why is this situation any different than a plethora of other dissolutions where alimony was denied in any sum? The vocational future of all domestic litigants is subject to a garden variety of unknowns, including the economy, the employer's trade, one's health, etc. Assorted good and bad scenarios can be envisioned in this and every divorce. Alimony can only be gauged by the facts before us. We perceive little to justify singling out this situation as one meriting a modifying option." *Id.* at *5 n.3.

G. Tax consequences

1. Alimony *used* to be uniformly taxable to payees and deductible by payors. *See* 26 USCA § 61(a)(8) (West 2016) (defining gross income to include income from whatever source derived, including but not limited to "Alimony and separate maintenance payments").

2. This remains true in relation to alimony payable under a divorce decree or separate maintenance agreement filed *on or before Dec. 31, 2018*, as those decrees were grandfathered.

3. In fact, this even remains true if such grandfathered decree is modified, unless the order modifying the grandfathered decree expressly provides that the amendments made by the Tax Credit and Jobs Act repealing the alimony deduction and the including alimony in gross income apply to the modification. *See* Tax Cuts and Jobs Act, Pub. L. 115-97, § 11051(c)(2) (2017).

4. However, alimony payable under divorce decrees or separate maintenance agreements filed *after Dec. 31, 2018*, is **no longer deductible by the payor, nor included in the payee's gross income**. *See* Tax Cuts and Jobs Act, Pub. L. No. 115-97, § 11051(b)(1)(A) (2017) (striking out par. (8), which

previously included "[a]limony and separate maintenance payments" in the definition of gross income).

5. *In re Marriage of Farrell*, 481 N.W.2d 528 (Iowa Ct. App. 1991) (modifying decree to spread reimbursement alimony payable to wife over 3 yrs, rather than front-loading it in the first year following divorce, which would have triggered a federal recapture rule and resulted in tax consequences adverse to husband.) NOTE: This was decided under tax law applicable Dec. 31, 2018, or before.

6. *In re Marriage of Mann*. 943 N.W.2d 15 (Iowa 2020). Because of changes in tax law at end of 2018, "the economic impact of alimony on the paying spouse is greater today than it has been in the past. Prior caselaw allocating percentaages of income for alimony thus have less economic impact on the payor than the allocation of a similar percentage of income to alimony would have today under current tax law. . . . [I]n Gust, we awarded alimony that amounted to 31% of the difference in income between the spouses. 858 N.W.2d at 412. **If the case were before us today on the same facts, a 31% award would have a larger impact on the payor spouse than in Gust because of the tax change.**" Id. at 21 (emphasis added). This appears to signal that awards of alimony may be fewer and smaller than in past cases, at least where the payee is in a low income tax bracket and the payor is in a substantially higher income tax bracket – a common dynamic in many past alimony cases.

7. Because the payor is using after-tax dollars to pay alimony, the payor is effectively straddled with paying both the alimony, itself, and the income tax due on the gross income earned to pay the alimony. "The payor pays the support amount and cannot deduct the payment on the tax return, so the payor is effectively taxed on the amount. *In re Marriage of Schultz*, No. 19-1256, 2020 WL 4497118, at *4 (Iowa Ct. App. Aug. 5, 2020)

H. Parties' mutual agreement for reciprocal contributions

1. *In re Marriage of Cooper*, 769 N.W.2d 582 (Iowa 2009). After husband engaged in extramarital affair, parties signed postnuptial agreement that imposed consequences for future indiscretions resulting divorce, including husband's promise to pay $2,600/mo with further adjustments per a formula. Id. at 584. Husband argued the agreement was "unenforceable as it violates Iowa's public policy by considering fault in dissolution proceedings." Id. at 585. The court found the agreement unenforceable, concluding that the statutory provisions authorizing the court to consider agreements "do not extend to agreements between the parties that are void . . . because they intrude on the intimacies of the marital relationship and inject fault back into dissolution proceedings." *Id.* at 586.

I. Antenuptial agreement

1. The number of reported cases pertaining to both alimony and premarital agreements is somewhat limited.

2. Premarital agreements are governed by the provisions of The Iowa Uniform Premarital Agreement Act (IUPAA), codified in Iowa Code chapter 596.

3. A premarital agreement is not enforceable if the person against whom enforcement is sought proves any of the following:

    a. The person did not execute the agreement voluntarily.

    b. The agreement was unconscionable when it was executed.

    c. Before the execution of the agreement the person was not provided a fair and reasonable disclosure of the property or financial obligations of the other spouse; and the property or financial obligations of the other spouse.

    If a provision of the agreement or the application of the provision to a party is found by the court to be unenforceable, the provision shall be severed from the remainder of the agreement and shall not affect the provisions, or application, of the agreement which can be given effect without the unenforceable provision.

    Iowa Code § 596.8 (2011).

4. "The right of a spouse or child to support shall not be adversely affected by a premarital agreement." Iowa Code § 596.5(2) (2011).

5. Similarly, because "a premarital-agreement provision waiving an award of attorney fees related to issues of child or spousal support adversely affects the right to support[,] . . . such provisions are categorically prohibited by section 596.5(2)." *In re Marriage of Erpelding*, 917 N.W.2d 235, 246 (Iowa 2018) (vacating Court of Appeals' affirmance of district court's finding that the waiver provision in the premarital agreement was enforceable).

6. *In re Marriage of Shanks*, 758 N.W.2d 506 (Iowa 2008) (severing provision in premarital agreement purporting to waive alimony, but otherwise enforcing agreement after finding it was executed voluntarily, was not unconscionable, and was executed after reasonable disclosure of husband's assets).

7. *In re Marriage of Rank*, No. 02-1760, 2003 WL 22016888 (Iowa Ct. App. Aug. 27, 2003)(affirming rehabilitative alimony to wife of $600/mo for 2 yrs and $300/mo for 1 yr). Husband sought to enforce antenuptial agreement providing "the parties would 'hold and control' their assets 'as if unmarried.'" Id. at *1. Because they split household expenses between them throughout the marriage, husband reasoned wife was able to continue her lifestyle without

support. The court, however, disagreed, observing wife lived "rent-free in [husband's] house for eighteen years." *Id.*

8. Antenuptial agreements executed before Jan. 1, 1992 are not subject to the IUPAA. For this reason, the court considers such agreements per Section 598.21A(1)(i) along with other factors, but is not bound by them. *See In re Marriage of Van Regenmorter*, 587 N.W.2d 493 (Iowa Ct. App. 1998)(eliminating alimony award after considering various factors, including waiver in antenuptial agreement).

J. Other relevant factors

1. Premarital property and debt.

    a. Recall that in the context of dividing property, "[i]f there were wide disparities between the assets of the parties at the time of the marriage, or if one of the parties [was] the recipient of a substantial gift or inheritance, the length of the marriage is a major factor in determining what the respective rights of the parties with respect to such property are at the time of its dissolution." In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa Ct. App. 1981).

    b. *In re Marriage of Thompson*, No. 10-0056, 2011 WL 441698, at *3 (Iowa Ct. App. Feb. 9, 2011)(agreeing with the trial court that the fact wife brought $10,000 into this 9-year marriage, while husband brought only debt was "a fair consideration").

    c. *In re Marriage of Kersey*, No. 10-0135, 2010 WL 2090825 (Iowa Ct. App. May 26, 2010)(affirming, in this 10-yr marriage, traditional alimony of $1,000/mo for 10 yrs payable to wife who brought $130,000 into marriage and received gifts of $65,000, yet left 10-year marriage at age 50 with a negative net worth and an earning capacity of $19,000, whereas husband brought nothing to marriage and left marriage with a negative net worth, but an earning capacity of $65,000).

2. Disparity in anticipated social security benefits. *See In re Marriage of Gonzalez*, No. 10-0101, 2010 WL 4105611 (Iowa Ct. App. 2010). Husband (52) with limited employment opportunities could earn an associate's degree in 2 yrs, but he was out of the market for 15 yrs caring for the child, allowing wife (42) to pursue a demanding career with result her social security benefits would be considerably greater. "The disadvantaged spouse should be awarded traditional alimony under such circumstances." *Id.* at 5. *But see In re Marriage of Gust*, 858 N.W.2d 402, 420 n.5 (Iowa 2015) ("A divorced spouse whose marriage lasted ten years or longer can receive benefits based upon their ex-spouse's earning record.") (citing 42 U.S.C. §§ 402(b), 416(d)(1) (2012)).

V. Other matters of interest

A. Alimony considered in calculating child support

The amount of alimony awarded (not actually paid) was considered. *In re Marriage of Stone*, No. 10-1061, 2011 WL 662645, at *4 (Iowa Ct. App. Feb. 23, 2011)(stating "the decree should strive for equitable treatment of the parties from its inception," and holding the alimony awarded should be deducted from obligor's income in calculating child support, notwithstanding obligor's failure to actually pay alimony while appeal pending).

B. **Domestic abuse is not considered in relation to alimony.** "Under our caselaw, . . . spousal abuse is not relevant on the question of alimony." *In re Marriage of Mann*. 943 N.W.2d 15, 20 (Iowa 2020) (citations omitted) (observing how the Iowa legislature "rejected the issue of fault in its domestic abuse statue enacted in 1970" and deferring to the legislature in relation to any change in such policy). "Currently, Iowa courts are not permitted to consider domestic abuse when deciding spousal support." *In re Marriage of Mann*, No. 18-1910, 2019 WL 5792673, at *8 (Iowa Ct. App. Nov. 6, 2019) (May, J., concurring in part and dissenting in part) (reasoning it would introduce the concept of fault into divorce, something the General Assembly proscribed in 1970) (*rev'd in part on other grounds In re Marriage of Mann*. 943 N.W.2d 15 (Iowa 2020)). *Cf. In re Marriage of Goodwin*, 606 N.W.2d 315, 323-24 (Iowa 2000) (holding domestic abuse could not be considered when dividing marital property) (cited in *Mann*). Justice May clarified in his dissent that he believed the majority agreed with him on this issue, but that he wanted to address it, as he believed the issue "seems likely to arise again in the future." Id. at *5 n.1.

C. **Trial court given "considerable latitude"** (i.e., better win at the trial level)

1. "When appellate courts unduly refine these important, but often conjectural, judgment calls, they thereby foster appeals in hosts of cases, at staggering expense to the parties wholly disproportionate to any benefit they might hope to realize." *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

2. "Dissolution proceedings are in equity; the standard of review is de novo. In determining spousal support, the district court is best positioned to evaluate the needs of the parties, accordingly, 'we should intervene on appeal only where there is a failure to do equity.'" *In re Marriage of Dirkx*, No. 18-0422, 2019 WL 3330625, at *2 (Iowa Ct. App. July 24, 2019) (citations omitted). *See also In re Marriage of Meek-Duncomb*, 2011 WL 968831, at *3 (Iowa Ct. App. Mar. 7, 2011) ("Even though our review is de novo, we accord the trial court considerable latitude in determining alimony and will disturb the ruling only when there has been a failure to do equity.").

3. Even if appellate court agrees the trial court miscalculated a party's income, it may choose not to modify the decree in terms of alimony. *See In re Marriage of Nelson*, No. 09-1650, 2010 WL 3325620 (Iowa Ct. App. Aug. 25, 2010).

Although the court determined husband's income was $97,965, rather than $150,000 as trial court found, and remanded for recalculation of child support, it refused to modify the trial court's alimony award of $1,800/mo for 4 yrs and $1,000/mo for another 4 yrs.

4. As in other cases, credibility is key, and appellate court generally defers to trial court in relation to findings involving credibility. *See In re Marriage of Curtis*, No. 18-0525, 2019 WL 719025, at *2-3 (Iowa Ct. App. Feb. 20, 2019) (deferring to trial court's credibility determination and refusal to modify where district court was "skeptical of [payor's] claim he was unable to find more lucrative, full-time employment" following cross-examination showing he failed to explore leads and wherein payor offered implausible explanation re transportation, with result the "examination weighed heavily with the Court as it demonstrated [payor's] unwillingness to seek out other employment."). *See also In re Marriage of Parlee*, No. 18-1808, 2019 WL 3315889, at *1 (Iowa Ct. App. July 24, 2019).

D. Appellate Review

1. "Our review of the district court's interpretation of a statute in an equitable proceeding is for correction of errors of law." *Thatcher*, 864 N.W.2d at 537 (citation omitted).

2. "An action for dissolution of marriage is an equitable proceeding and, consequently, this court's review is de novo." *In re Marriage of Thatcher*, 864 N.W.2d 533, 537 (Iowa 2015) (citations omitted). The same is true in appeals from modification proceedings. *See In re Marriage of Hallberg*, No. 19-1951, 2020 WL 4207404, at *1 (Iowa Ct. App. July 22, 2020).

3. "The court's review of dissolution proceedings is de novo. . . . We consider 'the entire record and decide anew the factual and legal issues preserved and presented for review.' . . . 'Prior cases are of little precedential value, except to provide a framework for analysis, and we must ultimately tailor our decision to the unique facts and circumstances before us.' . . . 'Although our review is de novo, we afford deference to the district court for institutional and pragmatic reasons.' . . . As a general rule, this court will not modify a dissolution decree unless the district court failed to do equity." *In re Marriage of Drenter*, No. 17-1548, 2019 WL 478195, at *1 (Iowa Ct. App. Feb. 6, 2019) (citations omitted).

4. "When we grant further review, we may exercise our discretion in determining which issues to consider. *In re Marriage of Mann*, 943 N.W.2d 15, 18 (Iowa 2020).

5. In select cases, the Iowa Supreme Court exercises its discretion to accept further review. Out of nearly 46 appellate cases in Iowa since January 1, 2019, that involve alimony, only one was issued by the Iowa Supreme Court.

See In re Marriage of Mann. 943 N.W.2d 15, 20 (Iowa 2020). Going back further still, since January 1, 2015, the Supreme Court has issued four cases wherein alimony was at issue.

6. For most cases on appeal involving alimony, the Court of Appeals is the last stop.

7. Law of the Case Doctrine. "Under the law of the case doctrine, 'an appellate decision become the law of the case and is controlling on both the trial court and on any further appeals in the same case.'" *In re Marriage of Drenter*, No. 17-1548, 2019 WL 478195, at *1 (Iowa Ct. App. Feb. 6, 2019) (quoting *Bahl v. City of Asbury*, 725 N.W.2d 317, 321 (Iowa 2006) (quoting *United Fire & Cas. Co. v. Iowa Dist. Ct.*, 612 N.W.2d 101, 103 (Iowa 2000))).

E. **Court lacks power to rewrite stipulation.** "The law is clear that 'a court has no authority to rewrite the terms of the settlement agreement based on its perception of the merits of the settlement terms, and cannot modify the terms of the settlement agreement; the court must approve or disapprove of the proposed settlement as a whole.'" *In re Marriage of Curtis*, No. 19-0776, 2020 WL 4814116, at *1 (Iowa Ct. App. Aug. 19, 2020) (quoting *City of Dubuque v. Iowa Tr.*, 587 N.W.2d 216, 223 (Iowa 1998)). But see, 2 IA Prac., Methods of Practice § 31.:15 Property settlements and financial statements (stating that "provisions in [property and support agreements to settle issue about property rights, alimony, and support] do not bind the court, nor prevent the court from making modifications.") (citing Whittier v. Whittier, 23 N.W.2d 435 (Iowa 1946).

F. Life Insurance to protect against loss of alimony

1. "Life insurance should be limited to the amount necessary to secure an obligation." *In re Marriage of Mouw*, 561 N.W.2d 100, 102 (Iowa Ct. App. 1997) (modifying trial court's requirement of carrying life insurance for payee's benefit to provide that the minimum level of coverage be reduced annually to track automatic reductions in alimony) (citing *In re Marriage of Lytle,* 475 N.W.2d 11, 12 (Iowa App.1991)).

2. Life Insurance should *not* be ordered to protect against the loss of traditional alimony, because such obligation ceases at death with the result there is no obligation to insure. *See In re Marriage of Lytle*, 475 N.W.2d 11 (Iowa Ct. App. 1991) (emphasis added) (affirming district court's dismissal of action for contempt premised on husband's willful failure to procure life insurance coverage originally ordered to protect against the loss of alimony for a period of years, when, on earlier appeal, the nature of the alimony was modified to one of traditional alimony, which obligation would cease at death). *See also In re Marriage of Sterner*, No. 18-0409, 2019 WL 1057304, at * (Iowa Ct. App. Mar. 6, 2019) ("We decline to order Robert to maintain a life insurance policy to secure his spousal support payments, as Mary did not make such a

request at trial and because there is no need for insurance to pay after Robert's death since his support obligation ceases at that time.") (citing *Lytle*).

3. Stated succinctly, "When the award of alimony ceases at the death of either party, there is no need for insurance to pay the award after the obligor's death." *In re Marriage of Dorr*, No. 17-2023, 2019 WL 478502, at *3 (Iowa Ct. App. Feb. 6, 2019) (citing *In re Marriage of Lytle,* 475 N.W.2d 11, 13 (Iowa App.1991)).

4. *But see In re Marriage of Friest*, No. 18-0337, 2019 WL 1300881 (Iowa Ct. App. Mar. 20, 2019) (considering life insurance in context of traditional alimony awarded and stating, without addressing distinction between traditional and other alimony, that such a life insurance "provision is enforceable.") (citing *In re Marriage of Debler*, 459 N.W.2d 267, 270 (Iowa 1990) (construing statute to allow traditional alimony to extend beyond death, as trial court ordered, but striking such provision under facts of case, and affirming amount of traditional alimony until death, and affirming payor's obligation to name payee as beneficiary on life insurance policy for so long as obligated to pay alimony)).

G. Security to enforce alimony obligation

1. "Upon entry of an order for support or upon the failure of a person to make payments pursuant to an order for support, the court may require the person to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the person's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited." Iowa Code Ann. § 598.22(6) (West 2020).

2. "[O]ur court has decided that code section [I.C. § 598.22(6)] provides 'authority to secure performance of future alimony payments by requiring adequate security or imposing appropriate liens on the obligor's property.'" *In re Marriage of Serrano*, No. 19-0785, 2020 WL 3264380, at *7 (Iowa Ct. App. June 17, 2020) (citations omitted). "But Trisha cites no case law, and we have found none, that requires an obligor to purchase an **annuity** as the only appropriate guarantee of support payments. In our de novo review, **we find the better mechanism to secure [Husband's] future performance is to impose a judicial or equitable lien on his real property**." *Id.* (emphasis added) (citation omitted).

VI. Modification of alimony

A. Grounds for modification

1. **Criteria for modification**. Subject to 28 U.S.C. § 1738B, the court may subsequently modify child, spousal, or medical support orders when there is a substantial change in circumstances. In determining whether there is a substantial change in circumstances, the court shall consider the following:

a. Changes in the employment, earning capacity, income, or resources of a party.

b. Receipt by a party of an inheritance, pension, or other gift.

c. Changes in the medical expenses of a party.

d. Changes in the number or needs of dependents of a party.

e. Changes in the physical, mental, or emotional health of a party.

f. Changes in the residence of a party.

g. Remarriage of a party.

h. Possible support of a party by another person.

i. Changes in the physical, emotional, or educational needs of a child whose support is governed by the order.

j. Contempt by a party of existing orders of court.

k. Entry of a dispositional or permanency order in juvenile court pursuant to chapter 232 placing custody or physical care of a child with a party who is obligated to pay support for a child. Any filing fees or court costs for a modification filed or ordered pursuant to this paragraph are waived.

l. Other factors the court determines to be relevant in an individual case.

Iowa Code Ann. § 598.21C(1) (West 2020)

2. "All relevant factors are considered in determining a substantial change in the circumstances . . .." *Petition of Heims*, No. 17-1799, 2019 WL 156580, at *2 (Iowa Ct. App. Jan. 9, 2019).

B. **Material and substantial.**

1. **"[T]he changed circumstances must be material and substantial, essentially permanent, and not within the contemplation of the court at the time of the decree."** *In re Marriage of Sisson*, 843 N.W.2d 866, 870–71 (Iowa 2014) (citing *Mears v. Mears*, 213 N.W.2d 511, 515 (Iowa 1973)). "The requirement that the changes not be within the contemplation of the court includes not being in the contemplation of the parties when the original decree adopts a stipulation of the parties . . .." *In re Marriage of Hallberg*, No. 19-1951, 2020 WL 4207404, at *1 (Iowa Ct. App. July 22, 2020) (citation omitted).

2. "[W]e presume the decree is entered with a 'view to reasonable and ordinary changes that may be likely to occur.'" *In re Marriage of Michael*, 839 N.W.2d 630, 636 (Iowa 2013) (quoting *In re Marriage of Wessels*, 542 N.W.2d 486, 90 (Iowa 1995)). *Compare In re Marriage of Hallberg*, No. 19-1951, 2020 WL 4207404, at *2-3 (Iowa Ct. App. July 22, 2020), (observing the parties knew when 58-year-old Husband ER doc stipulated to paying alimony for 10 years that "the ten-year payment period would take [him] past an age when many people retire," and that this and other reasons precluded finding a substantial change in circumstances when he later wanted to slow down within the 10-year period).

3. Practice tip: In drafting stipulations and proposed decrees, think beyond the present and anticipate the future arguments about what was/not contemplated at the time the court entered its decree. Include language that demonstrates what was/not anticipated. This is perhaps more obvious as a matter of defense (i.e., protecting against the court finding a change of circumstances in the future) by including language spelling out that the parties / court anticipate such change. It can also, however, be used as a matter of offense. For example, if you can read the writing on the wall, and opposing party will successfully show their income is less than you argued, solidify same with a specific finding of fact. Also consider appropriate usage of motions per Rule 1.904 to establish the status quo in concrete terms that are sufficiently defined that your job in the future will be made easier to show the change in circumstances.

4. So long as <u>one</u> changed circumstance grants the court jurisdiction to entertain a modification, the court consider <u>all</u> circumstances existing at the time of the modification, including those changed circumstances that the court anticipated when it entered its original dissolution decree. *Cf. In re Marriage of Ramundo*, No. 18-0911, 2019 WL 2150808, at *3 (Iowa Ct. App. May 15, 2019) (approving the trial court's consideration of not only wife's increase in salary since the decree was entered, on which change the trial court granted the modification, but also the husband's decrease in earnings, which reduction in salary was already anticipated at the time of the decree, so did not constitute a change in circumstances beyond the court's knowledge when it entered the decree).

5. Practice Tip: If a substantial change is anticipated post-decree, then attempt to prove such change is forthcoming and seek a specific finding thereof, so that the trial court considers the anticipated change when setting the amount of alimony within the original dissolution decree. Alternatively, seek a stipulation and/or ruling that the anticipated change is not sufficiently certain to be considered, so as to preserve your client's ability to base a modification on such change when it later occurs. *Cf. In re Marriage of Ramundo*, No. 18-0911, 2019 WL 2150808, at *3 n.2 (Iowa Ct. App. May 15, 2019) (affirming that husband's decrease in earnings from being laid off post-decree did not constitute a change in circumstances when such layoff was impending at the

time of trial and where "neither the court nor [Wife] agreed a modification could rest on [Husband's] job loss").

6. Wife's unexpected receipt of Medicaid at no cost to her post-decree, along with her increased work load to full time, constituted material and significant changes in circumstances warranting a reduction of alimony in *In re Marriage of Baker*, No. 17-2102, 2019 WL 156590, at *3 (Iowa Ct. App. Jan. 9, 0219). In the original decree, the trial court had estimated her monthly healthcare expenses would match the cost of her coverage under husband's Deere & Company health insurance plan. *Id*. at *1.

C. **Burden of proof.** "The party seeking modification . . . bears the burden of establishing by a preponderance of the evidence the substantial change in circumstances." *In re Marriage of Michael*, 839 N.W.2d 630, 636 (Iowa 2013) (citing In re Marriage of Wessels, 542 N.W.2d 486, 489-90 (Iowa 1995)).

D. **The change should not be voluntary or self-inflicted.**

1. "Where a person's inability to pay spousal support 'is self-inflicted or voluntary, it will not constitute a ground for reduction of future payments.'" *In Re Marriage of Curtis*, No. 18-0525, 2019 WL 719025, at *3 (Iowa Ct. App. Feb. 20, 2019) (quoting *Ellis v. Ellis*, 262 N.W.2d 265, 267-68 (Iowa 1978)).

2. "[V]oluntary changes in employment that reduce income do not normally justify a change in circumstance to support a modification of spousal support." *In re Marriage of Sisson*, 843 N.W.2d 866, 872 (Iowa 2014) (citing *Ellis v. Ellis,* 262 N.W.2d 265, 267–68 (Iowa 1978) (holding former husband's planned voluntary retirement to move to a warmer climate was insufficient grounds for a modification of spousal support)).

3. *See also In re Marriage of Hallberg*, No. 19-1951, 2020 WL 4207404, at *2-3 (Iowa Ct. App. July 22, 2020) (affirming no substantial change in circumstances despite Husband ER doctor (payor) making less money than on the date of decree because (1) the change was voluntary; (2) he failed to demonstrate diminished earning *capacity*, as opposed to diminished *income*; and (3) his voluntary reduction of income was within the contemplation of the parties when he earlier entered into the stipulation).

E. Modification of duration from finite to indefinite. "The authority of courts to modify spousal support also includes the power to change the duration of the support from a finite period to an indefinite period. *In re Marriage of Sisson*, 843 N.W.2d 866, 871 (Iowa 2014) (citing *In re Marriage of Wessels,* 542 N.W.2d 486, 489 (Iowa 1995)). However, the circumstances to support a modification of spousal support from a finite period to an indefinite period must be "extraordinary" and render the original award grossly unfair." *Id.* Examples include the post-decree diagnosis of terminal cancer, *see Sisson*, the post-decree onset of cancer, *see In re Marriage of*

Marshall, 394 N.W.2d 392 (Iowa 1986), and a permanent deterioration in psychiatric condition preventing the alimony payee from attaining self-sufficiency. *See Wessels*.

F. Terminable upon remarriage.

1. "It has long been the rule that a subsequent remarriage does not automatically terminate alimony but does shift the burden to the recipient to show extraordinary circumstances justifying its continuation." *In re Marriage of Hudson*, No. 10-1128, 2011 WL 441391, *2 (Iowa Ct. App. Feb. 9, 2011) (*citing In re Marriage of Shima*, 360 N.W.2d 827, 828 (Iowa 1985); *In re Marriage of Cooper*, 451 N.W.2d 507, 509 (Iowa Ct.App.1989)).

2. The reason alimony is terminable upon remarriage is because "it is contrary to public policy to allow a party to receive support from both a prior and current spouse." *In re Marriage of Egbers*, No. 10-0238, 2010 WL 2757378, at *2 (Iowa Ct. App. July 14, 2010).

3. "Recognized extraordinary circumstances include: (1) the annulment or invalidity of the second marriage, (2) the inability of the subsequent spouse to furnish support, (3) the death of the subsequent spouse, or (4) the dissolution of the subsequent marriage." *In re Marriage of Hudson*, No. 10-1128, 2011 WL 441391, *2 (Iowa Ct. App. Feb. 9, 2011) (citation omitted).

4. "Extraordinary circumstances may be present where a party's new spouse is unable to support the party," or in the cases of rehabilitative alimony (to obtain education) or reimbursement alimony. *In re Marriage of Egbers*, No. 10-0238, 2010 WL 2757378, at *2 (Iowa Ct. App. July 14, 2010)(citations omitted). "[T]he ultimate issue in a modification action should be whether the recipient spouse has a continuing need for support despite the changed circumstances." *Id.* (*quoting In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct.App.1999)).

5. In deciding whether extraordinary circumstances warrant a continuation of alimony, the court's focus should be on those circumstances "exist[ing] at the time of the petition for modification, not at the time of the original decree." *In re Marriage of Egbers*, No. 10-0238, 2010 WL 2757378, at *2 (Iowa Ct. App. July 14, 2010) (*quoting In re Marriage of Shima*, 360 N.W.2d 827, 829 (Iowa 1985)).

6. Contributions to the marriage are reflected in an equitable division of the property in the original decree, and are not "extraordinary circumstances" justifying continuation of alimony following remarriage. *See In re Marriage of Hufnagel*, No. 09-1667, 2010 WL 2757373 (Iowa Ct. App. July 14, 2010)(noting that the preferred practice is to achieve an equitable distribution through property division rather than alimony) (*citing In re Marriage of Hazen*, 778 N.W.2d 55, 59-60 (Iowa Ct. App. 2009)).

7. "In many instances, a party's heavy burden to show extraordinary circumstances effectively eliminates alimony following remarriage." *In re Marriage of Egbers*, No. 10-0238, 2010 WL 2757378, at *2 (Iowa Ct. App. July 14, 2010)(*citing In re Marriage of Wendell*, 581 N.W.2d 197, 199-200 (Iowa Ct.App.1998)).

8. Courts may focus on the level of support that the new spouse *could* provide, rather than level of support *actually* provided. *See Egbers* at 3 ("We decline the invitation to delve into such a conundrum as sorting out the level of actual support provided by a new spouse as it would be difficult at best and subject to change based upon a myriad of personal or family circumstances.").

G. **Modification of finite awards of alimony**.

1. Where court awards alimony for a finite period of time, and neither party files a petition to modify the alimony until after the alimony ceases to be payable, the court nonetheless retains subject matter jurisdiction to entertain a petition to modify. *See In Re Marriage of Marshall*, 394 N.W.2d 392 (Iowa 1986) (overruling district court's dismissal of petition to modify on the grounds it lacked subject matter jurisdiction and remanding to district court for a determination of whether a modification was justified by a substantial change in circumstances and for further proceedings). "[W]e conclude the court retains the power to modify even a finite alimony award *at any time* when such an award was included in the initial decree." *Id.* at 397 (emphasis added). This is so even in the absence of the decree including any language specifically retaining jurisdiction, because "reservation of power to modify can be found in the decree itself or in a statute" granting the court the power to modify an alimony award. *See id*. at 394. Moreover, the Court ruled that, "[i]f the court finds that a modification is in order, the modification will be effective from the filing of Diane's petition to modify." *Id.* at 397 (citing *Pucci v. Pucci*, 143 N.W.2d 353, 356 (1966)).

2. "Parties can contract and dissolution courts can provide alimony is not modifiable, does not terminate on remarriage, or is payable in a lesser sum on remarriage. (citation omitted). When the decree provides alimony should not terminate on remarriage, or provides for a reduced amount of alimony to be paid on remarriage, then the remarriage of the party receiving alimony is not a change of circumstances. In such cases, remarriage alone is not sufficient to justify modification or elimination of the alimony provision." *In re Marriage of Aronow*, 480 N.W.2d 87, 89 (Iowa Ct. App. 1991). *But see In re Marriage of Marshall*, 394 N.W.2d 392, 397 (Iowa 1986) ("the court retains the power to modify even a finite alimony award at any time when such an award was included in the final decree . . ..").

3. *In re Marriage of Keck*, No. 10-0138, 2010 WL 3894242, at *3 (Iowa Ct. App. Oct. 6, 2010)(holding ex-wife failed to prove "the sort of rare and unique change that demands the extraordinary relief" sought when requesting

modification of a finite award of alimony). The original stipulated decree provided "`that neither the amount nor the term of the alimony shall be modified . . ..'" *Id.* at *1. When ex-husband's income increased relative to ex-wife, she sought to increase and extend the rehabilitative alimony. The court held the ex-wife "failed to meet the extraordinary burden she carrie[d] to modify a finite award of alimony." *Id.* The court described husband as a "hard worker" and found it was "reasonable to assume the parties would have recognized his earning and net worth would not remain stagnant." *Id.* at *3.

Appendix A: Events triggering termination or modification of alimony

Event		Traditional	Reimbursement	Rehabilitative
Death	Can Decree automatically terminate upon death of either?	Yes	Yes	Yes
	If Decree does not address, then:	Presumed to terminate upon death of **either**.	Presumed to terminate upon death of **recipient**.	Presumed to terminate upon death of **recipient**.
	General norm:	Terminates upon death of **either**	Terminates upon death of **recipient**	Terminates upon death of **recipient**
Remarriage of recipient	Can Decree automatically terminate or modify upon remarriage of recipient?	Yes	Yes	Yes
	If Decree does not address, then:	Burden shifts to recipient to show "extraordinary circumstances" to justify its continuation. This heavy burden often effectively eliminates alimony following remarriage.		Burden shifts to recipient to show "extraordinary circumstances" to justify its continuation. This heavy burden often effectively eliminates alimony following remarriage.
	General norm:	often terminated	"Often unaffected." Not subject to modification/termination until full compensation except upon recipient's death	"often unaffected"
Cohabitation of recipient	Can court use cohabitation as event automatically terminating alimony?	No (absent stipulation)	No (absent stipulation)	No (absent stipulation)
	Effect:	Burden shifts to recipient to show "extraordinary circumstances" to justify its continuation. This heavy burden often effectively eliminates alimony following remarriage.	Unaffected	Burden shifts to recipient to show "extraordinary circumstances" to justify its continuation. This heavy burden often effectively eliminates alimony following remarriage.
Expiration of scheduled period of time (e.g., months, yrs)	Does court automatically terminate/modify alimony after set period of time?	Not generally, but it can.	No	Yes
Self-sufficiency	Effect:	Alimony subject to termination or modificatoin if obligor shows recipient is self-sufficient	Unaffected	Alimony subject to termination or modificatoin if obligor shows recipient is self-sufficient