

IN THE COURT OF APPEALS OF IOWA

No. 16-1409
Filed November 22, 2017

**IN RE THE MARRIAGE OF CINDY KAY RAHN
AND CHAD ALLEN RAHN**

**Upon the Petition of
CINDY KAY RAHN,**
Petitioner-Appellee,

**And Concerning
CHAD ALLEN RAHN,**
Respondent-Appellant.

Appeal from the Iowa District Court for Woodbury County, Jeffrey L.
Poulson, Judge.

A husband appeals the award of spousal support to his former wife.

AFFIRMED.

John S. Moeller of John S. Moeller, P.C., Sioux City, for appellant.

John P. Beauvais Jr., Sioux City, for appellee.

Considered by Tabor, P.J., McDonald, J., and Goodhue, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2017).

GOODHUE, Senior Judge.

Cindy Kay Rahn filed an appeal from the decree dissolving her marriage with Chad Allen Rahn, and Chad filed a cross-appeal. Cindy failed to file a brief or a designation of appendix. On its own motion, the supreme court issued a default notice to Cindy, but there was no response, and Cindy's appeal was dismissed. Chad was designated to proceed as the appellant. In accordance with the order, Chad filed a brief and designation of appendix. The only issue raised by Chad on appeal is the amount of spousal support he is required to pay under the terms of the decree. We affirm.

I. FACTUAL BACKGROUND.

The parties were married May 28, 1992. Three children have been born to the marriage but only one, T.A.R., born in 2001, was a minor at the time of the dissolution proceeding. The parties were both in their early forties when the trial was held in July 2016.

The trial court dissolved the marriage and resolved the custody, child support, medical support, property and debt division, and spousal support issues. The trial court found Cindy's income to be \$25,111 per year and Chad's income to be \$58,900 per year. The trial court, after fixing values and making a division, found that Chad was awarded property worth \$3071 more than the property that was awarded to Cindy. The parties were awarded joint legal custody of T.A.R., and Chad was named as the physical custodian. A visitation schedule was duly set out. In addition, child support was set at \$376.96 per month. Chad was ordered to maintain the existing health insurance covering T.A.R., and provision for uncovered medical expense was made. Spousal support payable from Chad

to Cindy was set at \$600 per month to terminate on Cindy's remarriage or upon her death. Cindy had proceeded pro se at the time of trial.

Chad contended, and continues to contend in his appellate brief, that Cindy was not earning an income that reflected her full earning capacity. He contends the setting of spousal support on her current wage of \$10.85 per hour instead of being set at her full earning capacity is not equitable. Cindy currently works at a warehouse. She was employed continuously during the marriage. There is no evidence that she ever earned more than \$10.85 per hour for any significant period. She has received training and is certified as a medical coder. There was evidence that employment as a medical coder would justify income of \$19.00 per hour. Nevertheless, Cindy has never been able to obtain a position as a medical coder in spite of repeated attempts, applications, and interviews. She once had an offer of \$10 per hour to work as a medical coder, but she and Chad jointly decided the offer was not acceptable.

II. STANDARD OF REVIEW.

A dissolution is an equitable proceeding. Therefore, our standard of review is de novo. Iowa R. App. P. 6.907. Although the review is de novo, we give weight to the district court's factual determinations, but they are not binding on us. Iowa R. App. P. 6.904(3)(g). Even though our review is de novo, the trial court is given considerable latitude, and we will not disturb the trial court's order unless there has been a failure to do equity. *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005).

III. DISCUSSION.

The factors for determining spousal support are set out in Iowa Code section 598.21A (2015). Our supreme court has recently considered the factors to be applied in determining traditional spousal support in the case of *In re Marriage of Gust*, 858 N.W.2d 402 (Iowa 2015). Spousal support is based upon the particular circumstances of a given case, and precedent is frequently of limited value. *Gust*, 858 N.W.2d at 408. The duration of the marriage, need, and ability are important factors to consider in the determination of the proper amount of spousal support. *Id.* at 411. The need is determined by the amount necessary to become self-sufficient at a standard of living reasonably comparable to that enjoyed during the marriage. *Id.*

The earning capacity of the parties is an important factor in determining need and the ability to pay. *Id.* Earning capacity, and not current income, is the appropriate measurement. *Id.*

Chad rests his case on the trial court's failure to impute an income of \$19 per hour to Cindy on the basis of what she could expect to receive as a medical coder. The trial court, as are we, was faced with the fact that Cindy has never held such a position, regardless of her education and credentials. The trial court cited the applicable law and heard Cindy's testimony as to her relentless efforts to attain a position as a medical coder and decided it was equitable to use her present income as the indicator of her earning capacity. We cannot say the trial court's decision was not equitable under the facts of this case. If Cindy's effort to find a better paying job is ever rewarded, the spousal support set can be modified. See Iowa Code § 598.21C.

We affirm the decision of the district court.

AFFIRMED.