

IN THE COURT OF APPEALS OF IOWA

No. 0-019 / 09-1214
Filed February 10, 2010

IN RE THE MARRIAGE OF JERRILYN K. RICHARDSON AND RANDALL E. RICHARDSON

Upon the Petition of

JERRILYN K. RICHARDSON,
Petitioner-Appellee,

And Concerning

RANDALL E. RICHARDSON,
Respondent-Appellant.

Appeal from the Iowa District Court for Madison County, Dale B. Hagen,
Judge.

Respondent appeals the spousal support provision of the decree
dissolving his marriage to petitioner. **AFFIRMED.**

Rod K. Maharry and Jami J. Hagemeyer of Williams, Blackburn & Maharry,
P.L.C., Des Moines, for appellant.

Thomas P. Lenihan, West Des Moines, for appellee.

Considered by Sackett, C.J., Doyle and Danilson, JJ.

SACKETT, C.J.

Randall E. Richardson appeals from the decree dissolving his marriage to Jerrilyn K. Richardson. He contends that Jerrilyn should not have been awarded spousal support, but if she is entitled to spousal support, the \$800 a month the district court awarded is excessive, and the award should be decreased. We affirm.

I. SCOPE OF REVIEW. We review dissolution cases de novo. *In re Marriage of Cooper*, 769 N.W.2d 582, 584-85 (Iowa 2009). Although our review is de novo, we give weight to the trial court's factual findings, especially with respect to the credibility of the witnesses. *In re Marriage of Witten*, 672 N.W.2d 768, 773 (Iowa 2003).

II. BACKGROUND AND PROCEEDINGS. Randy and Jerrilyn were married in 1985. Both are high school graduates and have additional education. The parties have two children who are not subject to support. During the parties' marriage they lived in several states. Randall was employed in a number of different jobs. Jerrilyn had employment at a number of minimum wage jobs but also stayed home for a period to care for the children and home.

At the time of the dissolution hearing both parties were employed. Jerrilyn was employed by the Earlham Public Schools. She is an associate in special education at the high school. Her income in 2008 was \$3710. She works nine months and is paid for nine months.

She does have an opportunity to increase her hourly income with additional education and she intends to obtain it. It would initially increase her

hourly pay by fifty cents an hour and also apparently she could do limited substitute teaching. It is not entirely clear how this might increase her annual income. She was treated for cervical cancer and though currently cancer free, she suffers residual problems from the treatment. Her medications cost about eighty dollars per month. She pays \$140 a month for health insurance purchased through the school district, for a policy that requires her to pay the first \$1250. In 2008 Randall, who works for People's Bank, earned \$44,910, in addition to receiving a VA pension of \$3019.

The parties had accumulated both property and debt which was divided by the district court. Neither party complains about this division. The district court determined that Jerrilyn received a net value of \$4000 and Randall \$15,512. Randall was then ordered to pay Jerrilyn \$5750, payable at \$300 a month with 2.55 % interest until paid.

The district court awarded Jerrilyn alimony of \$800 a month commencing on July 1, 2009, and continuing each month until Randall reaches the age of sixty-six, Jerrilyn remarries, or she or Randall die, whichever event occurs sooner. At the time Randall reaches sixty-six, the alimony is reduced to \$400 a month, which amount shall continue each month until Jerrilyn remarries or she or Randall die, whichever event occurs sooner.

III. DISCUSSION. Alimony or spousal support is a stipend to a spouse in lieu of the other spouse's legal obligation for support. *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004). There is no absolute right to alimony or spousal support; rather, whether it is awarded depends on the

circumstances of the particular case. See *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996) (superseded by statute on other grounds as recognized by *In re Marriage of Shanks*, 758 N.W.2d 506, 510-11 (Iowa 2008)). When deciding to award alimony or spousal support, the district court must consider the factors in Iowa Code section 598.21A(1) (2007). We will disturb that determination only when there has been a failure to do equity. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). The award here is equitable. Randall's earnings are substantially higher than Jerrilyn's. Jerrilyn was out of the job market for a period to care for the family and the home. While it appears she may have the ability with further education to increase her earning capacity, it does not appear it will be substantially increased. She still suffers some residuals from her cancer treatments and the condition of her health may also limit her earning additional sums. She, as does Randall, leaves the marriage with minimal assets.

Both parties request appellate attorney fees. Randall shall pay \$500 towards Jerrilyn's attorney fees.

AFFIRMED.