

IN THE COURT OF APPEALS OF IOWA

No. 0-035 / 09-0909

Filed July 28, 2010

**IN RE THE MARRIAGE OF HARBANS SINGH DEOL
AND KATHY MCCORMICK DEOL**

**Upon the Petition of
HARBANS SINGH DEOL,**
Petitioner-Appellee,

**And Concerning
KATHY MCCORMICK DEOL,**
Respondent-Appellant.

Appeal from the Iowa District Court for Jefferson County, Dan F. Morrison,
Judge.

Kathy Deol appeals from the economic provisions of a dissolution decree.

AFFIRMED AS MODIFIED.

Lori L. Klockau of Bray & Klockau, P.L.C., Iowa City, for appellant.

Randall B. Willman of Leff Law Firm, L.L.P., Iowa City, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

VAITHESWARAN, P.J.

Harbans and Kathy Deol married in 1986 and divorced in 2008. The district court awarded Kathy rehabilitative rather than traditional spousal support and held her exclusively responsible for her student loans. Kathy takes issue with these aspects of the dissolution decree.

I. Spousal Support

Our courts have recognized various types of spousal support, including traditional support for spouses who are incapable of self-support and rehabilitative support for spouses who need assistance in their efforts to achieve self-support. See *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008). The district court awarded Kathy rehabilitative spousal support of “\$1750 per month for 24 months, then \$1250 per month for 36 months and finally \$750 per month for 36 months.” Kathy maintains she should have received traditional support of \$5000 per month until she remarries, reaches age sixty-five, or either party dies.

Several statutory factors are relevant in assessing the amount of spousal support, including the age of the parties and their health, educational level, and work experience. Iowa Code § 598.21A(1)(b), (d), (e) (2007). While our review of this issue is de novo, we afford the district court wide latitude in prescribing the amount of spousal support. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

At the time of trial, Harbans was sixty-one years old. He was diagnosed with an anomaly in his right coronary artery that could either result in no ill-health or “cause sudden cardiac death.”

Harbans had extensive post-graduate education, including a degree in osteopathic medicine that he obtained during the marriage. He earned approximately \$185,000 in gross annual income at his full-time employment and held part-time positions that increased his gross annual income to approximately \$200,000.

Kathy was fifty-one years old at the time of trial and in good health. She had a significant work history, earning wages for approximately nineteen years of the twenty-two year marriage, and holding jobs as a private-duty nurse/doula,¹ a manager of medical staff operations at a hospital, and an interim administrator/CEO of another hospital. She obtained her licensed practical nursing degree in 2001 and a baccalaureate in nursing in 2003, and she worked as a registered nurse for several years. Although Kathy's license was temporarily suspended by the state nursing board for practicing outside the scope of her nursing degree, that suspension had expired by the time of trial.²

During the marriage, Kathy took online midwifery courses and eventually graduated with a master's degree in midwifery.³ She started a midwifery business, meeting with several patients every month but attending to only four who were ready to give birth in any given month. She worked thirty-eight to forty hours per week and expected to make about \$36,000 gross per year. While she

¹ A "doula" is a woman experienced in childbirth who provides advice, information, emotional support, and physical comfort to a mother before, during, and just after childbirth. Merriam-Webster's Collegiate Dictionary 375 (11th ed. 2004).

² The charge stemmed from her use of her husband's prescription pad to schedule an ultrasound for one of her patients.

³ Kathy began at one school but was essentially told to leave after the school was informed that she provided midwifery services without a license. Kathy completed her schooling at another school.

testified that medical malpractice premiums would consume most of the profit, she did not have that type of insurance at the time of trial.

Based on this record, we are not persuaded that the award of alimony amounts to a “failure to do equity.” *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005). Kathy possessed the education, skills, and work experience to obtain employment at a significantly higher annual salary than she was earning at the time of trial. While she testified the blemish on her nursing license limited her employment prospects, Harbans countered that he had hired professionals with a disciplinary record. Harbans also presented evidence that a professional with Kathy’s credentials could, at a minimum, earn a gross annual salary of \$76,000 per year. Even assuming this estimate is overstated, we agree with the district court that “Kathy is underemployed and could earn more with benefits working in a more traditional medical setting such as a hospital.”

Thus, we agree with the district court that she is entitled to rehabilitative support to assist her in becoming self-supporting at a standard of living comparable to that enjoyed in the marriage. *Becker*, 756 N.W.2d at 827. We also conclude the amount ordered by the district court was equitable, as the parties did not live a lavish lifestyle during the marriage, Harbans’s age and health potentially limited the number of years he could earn wages, and Kathy will be eligible to receive retirement benefits from the property disposition not long after the spousal support award is slated to end. See Iowa Code § 598.21A(1)(c); see also *In re Marriage of Janssen*, 348 N.W.2d 251, 255 (Iowa 1984) (modifying decree to provide for an award of spousal support for ten years where spouse was in the process of entering a profession that would allow her to

develop a substantial earning capacity); *In re Marriage of Mouw*, 561 N.W.2d 100, 102 (Iowa Ct. App. 1997) (reducing spousal support award to \$2000 per month for ten years where spouse receiving support left the marriage with an education that would enable her to generate above-average income).

We recognize that Kathy's earnings and earning capacity were significantly less than Harbans's, Kathy delayed her career goals so that Harbans could advance his, and Kathy incurred a sizable student loan obligation of \$163,000 to obtain her midwifery degree. We believe this last point is more readily accommodated in the property disposition.

II. Property

The parties owned three pieces of real estate, one of which was sold before trial and was not a subject of the property distribution. Of the two remaining homes, one was ordered sold, with the proceeds to be divided equally, and the other had a negative net worth.⁴ The district court awarded \$33,544.50 of the remaining assets to Harbans and \$25,455.50 to Kathy, and \$36,940 of the remaining debts to Harbans and \$173,965 to Kathy. The debt allocation to Kathy included the entire amount of her student loan obligation.

Kathy argues the district court acted inequitably in failing to hold Harbans partially responsible for her student loan debt. She notes that (1) the loans were incurred during the marriage; (2) some of the loans were used for family expenses; and (3) she contributed to Harbans's education and earning capacity,

⁴ Harbans was ordered to pay the first \$10,000 of expenses, and amounts owing beyond that were divided equally.

“which in turn diminished her earning capacity and increased her debt obligations.”⁵

“Debts of the parties normally become debts of the marriage, for which either party may be required to assume the responsibility to pay.” *In re Marriage of Sullins*, 715 N.W.2d 242, 251 (Iowa 2006); *see also Rogers v. Rogers*, 12 So. 3d 288, 291 (Fla. Dist. Ct. App. 2009) (“As a general proposition, student loan debt incurred during the marriage is a marital liability.”). We agree with Kathy that the court’s allocation of the debts was inequitable.

Even though the majority of the debts assigned to Kathy were from her student loans, those loans were incurred during the marriage and were at least partially used for family expenses. *See In re Marriage of Speirs*, 956 P.2d 622, 624 (Colo. Ct. App. 1997). The education Kathy obtained enhanced her earning capacity, an outcome Harbans supported. As Kathy testified, Harbans “was unhappy with the fact that [she] wasn’t working full-time or contributing monetarily to the household income” and “[h]e felt that because [she] was an RN, [she] should be out there working full-time, bringing home a paycheck,” just as he had when he was in school.

Notably, Harbans left the marriage with a much greater earning capacity than Kathy, notwithstanding the education she obtained during the marriage. *See Iowa Code § 598.21(5)(f)*. He also left the marriage with no student loan

⁵ The district court denied Kathy’s request to reconsider the property disposition in light of her significant loan obligation, based on a finding that Kathy did not intend to repay the loan. On our de novo review, we cannot find evidence supporting this finding. Accordingly, we decline to consider it in our analysis.

debt.⁶ His improved earning capacity occurred with Kathy's financial assistance. See Iowa Code § 598.21(5)(e). Under these circumstances, equity demands that Harbans share in Kathy's student debt obligation.

We conclude Kathy is entitled to a cash equalization payment of \$76,785⁷ or equivalent liquid assets, to be paid within 180 days of the issuance of procedendo.

III. Appellate Attorney Fees

Kathy requests appellate attorney fees. Appellate attorney fees rest in this court's discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). Given our modification of the property distribution scheme and the substantial difference in the parties' earnings, we order Harbans to pay \$3000 towards Kathy's attorney fee obligation. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.

⁶ Harbans worked in a rural community as part of a federal program that forgives student loans in exchange for service in an underserved area. Harbans's loan amount was approximately \$35,000 but Harbans left his employment prematurely, leading to the imposition of a \$250,000 fine. In an effort to eliminate the fine, he repaid the \$35,000, returned to his original position, and reentered the loan forgiveness program. His fine was reduced to zero on the condition that he honor his service commitment. His commitment was slated to expire in July 2009.

⁷ Kathy included a chart summarizing the district court's division of property and debt. Harbans took issue with some of the items on the chart and added certain debts that he maintains were incurred by him but were not included on the chart. In response, Kathy conceded certain errors in her original chart and stated that other suggested changes were not supported by the record. She provided a revised chart which recommended a \$76,785 equalization payment. On our de novo review, we agree with Kathy that certain changes suggested by Harbans, including the addition of large debts to his family, are not supported by the record. We further agree with her proposed equalization payment of \$76,785.