

**IN THE COURT OF APPEALS OF IOWA**

No. 0-037 / 09-1104  
Filed March 10, 2010

**IN RE THE MARRIAGE OF DAVID W. FRANZEN AND ROCHELLE R. FRANZEN**

**Upon the Petition of**

**DAVID FRANZEN,**  
Petitioner-Appellant,

**And Concerning**

**ROCHELLE FRANZEN,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Bremer County, Chris Foy, Judge.

Husband appeals the district court's alimony award. **AFFIRMED.**

Gregory F. Greiner of Heronimus, Schmidt & Allen, Grundy Center, for appellant.

Steven G. Norby of Iowa Legal Aid, Waterloo, for appellee.

Considered by Vogel, P.J., Eisenhauer, J., and Zimmer, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**EISENHAUER, P.J.**

Rochelle and David Franzen divorced in April 2009. The parties agreed to joint legal custody of their sixteen-year-old son and physical care to Rochelle. The sole issue on appeal is David's claim the alimony award is excessive. We affirm.

**I. Background Facts and Proceedings.**

The parties were married nearly seventeen years. At the time of the trial, David was forty years old and in good health. The district court found he had a net income of \$3675 per month. David does not challenge this finding.

Rochelle was forty-five years old at trial. She did not graduate from high school and does not have a GED. Because Rochelle generally was responsible for the childcare of their son and two children (now adults) she brought into the marriage, she did not work full-time outside the home.

The parties' son has health and behavioral issues that present challenges. David and Rachel project their son will graduate from high school in May 2012. The district court found: "In the past, the special time demands associated with raising [their son] have affected the ability of Rochelle to find and keep employment outside the home." The highest yearly income Rochelle earned during the marriage is \$9000. Additionally, Rochelle has rheumatoid arthritis, recently had surgery to replace one hip joint, and will soon need replacement of her other hip joint. Based on her health and on the special time demands she expends as custodial parent, the court imputed \$7540 gross annual income to Rochelle "based on what she would earn working twenty hours per week for

minimum wage.” Accordingly, the court ordered David to pay monthly child support of \$768. Child support continues until their son turns eighteen, or until age twenty if he is still in high school.

Rochelle proposed the parties sell the marital home and split the proceeds. David proposed to keep the home and pay Rochelle between \$10,000 and \$15,000. The court adopted David’s proposal and ordered him to pay Rochelle \$15,000 within sixty days of the decree. David is responsible for the mortgage loan and for the loan on the vehicle he received. Additionally, David was ordered to pay the outstanding medical bills (\$800-\$1500) and repay \$1000 in veteran’s disability benefits he received in error.

The court awarded Rochelle one-half of the retirement accounts accumulated during the marriage and determined she is entitled to rehabilitative alimony, stating:

Traditional alimony is not warranted. However, the parties agreed early on that Rochelle would be primarily responsible to care for [their son] and his half-siblings and to maintain the family home. As a result, Rochelle presently does not have the experience and training necessary to obtain a job that would pay more than minimum wage and allow her to be self-supporting. It is likely that until [their son] graduates from high school, the employment available to Rochelle will be limited and it will be difficult for her to return to school or seek job training.

The court ordered David to pay \$1000 per month alimony during the time he is paying child support and then \$1500 for thirty months “so Rochelle can go back to school, seek job training, or gain the experience she needs to obtain a job that pays a living wage.”

In June 2009, the court granted David's motion to amend and enlarge. The court reduced the amount David pays Rochelle for marital-residence equity from \$15,000 to \$12,500 and increased David's time to make this payment from sixty days to seven months. Additionally, the court decreased the amount of alimony paid when David's child support obligation ceases from \$1500 per month to \$1250 per month. This appeal followed.

## **II. Standard of Review.**

"We review dissolution cases de novo." *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). Although not bound by the district court's factual findings, we give them weight, especially when assessing the credibility of witnesses. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

## **III. Alimony.**

David argues the alimony award is excessive when considered in conjunction with the child support award and his obligation to pay the marital debts. David also contends Rochelle is capable of holding a full-time job immediately and the length of the court's alimony award exceeds the time necessary for retraining. Finally, David asserts he is unable to pay the amount ordered due to monthly expenses of \$4708.

Spousal support is not an absolute right; an award depends on the circumstances of each particular case. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). The discretionary award of spousal support is made after "considering the factors listed in Iowa Code section 598.21(3)." *Id.* Even though our review is de novo, we accord the district court considerable discretion in

making spousal support determinations and will disturb its ruling only where there has been a failure to do equity. *Id.*

Based on our de novo review of the record, we find the trial court's spousal support award is equitable in both amount and duration. We agree with the trial court's assessment Rochelle will need additional training to become employable and agree she will only be in a position to obtain the additional training when their son graduates from high school. David's obligation to pay increased spousal support does not occur until his child support obligation terminates. In addition to superior earning capacity, David has less projected medical expense. We also conclude there is no merit to David's claim he is unable to pay the spousal support. His \$4708 submitted monthly expenses are inflated by \$1058 excess monthly mortgage expense and \$241 excess monthly car insurance/gas/oil on cars awarded to Rochelle. Additionally, David's claim of \$500 monthly expense for past-due medical bills is not a monthly expense. Rather, David is required to make a one-time \$800-\$1500 medical expense payment and Rochelle is responsible for "the payment of all medical expenses she incurs that are not covered by insurance." We affirm the alimony award. Costs are taxed to David.

**AFFIRMED.**