

IN THE COURT OF APPEALS OF IOWA

No. 0-125 / 09-1060
Filed April 21, 2010

**IN RE THE MARRIAGE OF GARY D. FELSING
AND WINDY L. FELSING**

**Upon the Petition of
GARY D. FELSING,**
Petitioner-Appellant,

**And Concerning
WINDY L. FELSING,**
Respondent-Appellee.

Appeal from the Iowa District Court for Jackson County, David H. Sivright
Jr., Judge.

Gary Felsing appeals from the district court's award of alimony and
distribution of property. **AFFIRMED.**

David M. Pillers of Pillers & Richmond, DeWitt, for appellant.

Maria K. Pauly, Davenport, for appellee.

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

POTTERFIELD, J.**I. Background Facts and Proceedings**

Gary and Windy Felsing were married March 19, 1994. They separated in March 2008, and their marriage was dissolved June 15, 2009. At the time of the divorce, Gary was thirty-eight, and Windy was forty-one.

Gary is a high school graduate and is in good health. He works as a full-time street supervisor for the City of DeWitt, where he earned \$47,746 in 2008. He also works an average of thirty-two hours per week at Home Depot, where he earned \$18,668 in 2008. He has worked with the City of DeWitt and Home Depot since 2005.

Windy has her GED and worked a variety of jobs throughout the course of the marriage. Her most recent employment was with Quiznos and lasted about two weeks. Prior to working for Quiznos, Windy worked at Home Depot from October 2007 to March 2008. She earned \$9.00 per hour and, though her hours varied, she generally worked more than twenty-five hours per week.

In September 2003, Windy began having health problems. In 2004 she was diagnosed with interstitial lung disease and drug-induced lupus. Windy testified that she also suffers from diabetes, pulmonary fibrosis, colitis, and fibromyalgia. Windy has received a social security disability payment of \$620 per month since November 2004. Because of Windy's medical condition, she cannot sit or stand for long periods of time. Windy testified that her doctor advised her not to work more than twelve hours per week. She further testified that if she works more than fourteen hours per week, her disability payment will be reduced.

She stated she felt she was physically capable of working twelve to fifteen hours per week.

Gary asserts that Windy's health is improving and that her doses of medication are being lowered. The record confirms that doctors are tapering one of Windy's medications. Gary also asserts that Windy's participation in a local roller derby club suggests that Windy is healthy and physically capable of working. Windy testified that, though she participated in roller derby, her participation was primarily behind the scenes. She testified that her health prevented her from participating in roller derby bouts and that she did not complete full practices with the team.

The district court awarded Windy \$500 per month in traditional alimony until her remarriage, death, or ability to withdraw retirement benefits from her Social Security account. The district court also ordered, as part of the property settlement, that Gary pay a \$6810 debt incurred during the marriage for Windy's medical treatment. Gary appeals, arguing the district court erred in awarding spousal support to Windy and in assigning Gary the liability for the medical debt.

II. Standard of Review

Our standard of review in this equitable proceeding is *de novo*. Iowa R. App. P. 6.907 (2009). We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999). We give weight to the district court's findings of fact, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g). "Even though our review is *de novo*, we accord the trial court considerable latitude in making [an alimony] determination and will

disturb the ruling only when there has been a failure to do equity.” *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

III. Alimony

Alimony “is an allowance to the spouse in lieu of the legal obligation for support.” *In re Marriage of Sjulín*, 431 N.W.2d 773, 775 (Iowa 1988). Alimony is not an absolute right; any form of alimony is within the discretion of the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21A(1) (2007). *Id.* “In a marriage of long duration, alimony can be used to compensate a spouse who leaves the marriage at a financial disadvantage, especially where the disparity in earning capacity is great.” *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998).

The district court awarded Windy \$500 per month in traditional alimony. Traditional alimony is “payable for life or so long as a spouse is incapable of self-support.” *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004). Gary argues the district court should not require him to pay spousal support or, in the alternative, that the district court should have awarded rehabilitative alimony for a shorter duration. 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.” *Id.* (internal quotations omitted).

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.

Next, after considering the factors in section 598.21A(1), we find the district court's award of alimony is equitable. The parties were married for fifteen years. Because of her health, Windy's earning capacity is significantly lower than Gary's. Windy's doctor advised her not to work more than twelve hours per week, and if she works more than fourteen hours per week, Windy's disability check is reduced. Windy's earning capacity is greatly limited by her health issues, and therefore she leaves the marriage at a financial disadvantage. Windy will not be able to become self-supporting at a standard of living that is reasonably comparable to that which she enjoyed during the marriage. Gary's earning history demonstrates he can afford to provide spousal support. Accordingly, we affirm the district court's alimony award.

IV. Division of Property

Gary also argues the district court erred in assigning him debt related to Windy's medical treatment. The court is not required to divide property equally but should divide property so as to create a fair and equitable result. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). In determining what is equitable, we take into consideration the factors codified in Iowa Code section 598.21(5). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983).

Gary asserts that the district court's decision leaves him with a net worth significantly lower than that of Windy. The district court's distribution results in a disparity in the parties' net worths of less than \$5000. The property division must be equitable, but it need not be equal. *Sullins*, 715 N.W.2d at 247. The medical

debt at issue was incurred during the marriage. Windy's lowered earning capacity resulting from her health problems limits her ability to pay this debt. We find the district court's property distribution was equitable.

Costs on appeal are assessed equally between the parties.

AFFIRMED.