

**IN THE COURT OF APPEALS OF IOWA**

No. 0-132 / 09-1285  
Filed March 24, 2010

**IN RE THE MARRIAGE OF NOEL J. CHLADEK  
AND KARINNE CHLADEK**

**Upon the Petition of  
NOEL J. CHLADEK,**  
Petitioner-Appellant,

**And Concerning  
KARINNE CHLADEK,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,  
Judge.

Noel Chladek appeals the alimony provisions of a decree of dissolution.

**AFFIRMED AS MODIFIED.**

Jeffrey A. Kelso of Howe, Cunningham, Lowe & Kelso, P.L.C., Urbandale,  
for appellant.

Pamela A. Vandell, Des Moines, for appellee.

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

**MANSFIELD, J.**

This is an appeal from an award of spousal maintenance in a dissolution of marriage case. The district court ordered Noel Chladek to pay Karinne Chladek traditional alimony of \$1500 per month until the death of either party or Karinne's remarriage.

**I. Facts and Procedural History.**

Noel (born 1966) and Karinne (born 1969) were married in 1988. They have four children—a grown son, and three daughters born in 1991, 1998, and 1999 respectively. The eldest daughter has cerebral palsy and receives special education services from the public schools. At the time of trial, it was anticipated she would move to a group home within one to two years. She receives Social Security disability benefits. The two younger girls attend a private school and were entering the sixth and fourth grades respectively at the time of trial.

Both Noel and Karinne served in the military upon graduation from high school. By attending school at night, Noel then became a certified orthotist. During the marriage, he successfully developed two orthotics-related businesses, one of which provides orthotic and prosthetic clinical services, while the other fabricates orthotic devices. Noel also acquired two commercial properties in downtown Des Moines, one of which is used for his businesses.

When she was in the military, Karinne worked as a medical laboratory specialist for three years. She was honorably discharged before her eldest daughter was born. At times, Karinne has helped Noel in his businesses. Primarily, however, she has been a stay-at-home parent. At trial, Karinne

testified that her intention was to continue to be a stay-at-home parent for her children unless her financial circumstances required otherwise.

Both Noel and Karinne are in generally good health. However, in 2007, Noel underwent quadruple bypass heart surgery.

The evidence shows that Noel's taxable income has varied substantially. In 2005, adjusted gross income was \$20,698; in 2006, it was \$186,965; in 2007, it was \$189,604.<sup>1</sup> The district court found Noel's net monthly income for child support purposes to be \$9425.05.

The district court's decree of dissolution provided that Noel and Karinne would have joint legal custody of the two younger girls (the oldest daughter was already subject to a guardianship); that Karinne would have physical care of the girls; and that Noel would have liberal visitation. Noel was ordered to pay child support of \$1550 per month.

In its division of property, the district court awarded Noel the two businesses and the commercial real estate, while awarding Karinne the marital home and certain other property. Because Karinne was receiving the marital home for property settlement purposes as if it were free and clear of all liens, Noel was ordered to make the monthly home mortgage payments of \$1930. Additionally, to complete the property settlement, an equalization payment of \$176,429.50 was needed from Noel to Karinne. Noel was ordered to pay this amount to Karinne, without interest, at the rate of \$1000 per month. None of the

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<sup>1</sup> Noel's sources of income include salary/distributions from each of the two businesses, as well as rent on the commercial real estate used by the businesses.

child custody, child support, or property settlement provisions of the decree have been appealed.<sup>2</sup>

This appeal concerns only the issue of alimony. Before trial, Karinne requested \$5000 per month in rehabilitative alimony for five years, and \$3000 in traditional alimony thereafter until the death of either party, remarriage of Karinne, or Noel's attainment of retirement age. Noel proposed rehabilitative alimony of \$500 per month for thirty-six months. In its decree, the district court ordered Noel to pay traditional alimony of \$1500 per month until either party dies or Karinne remarries. The district court explained:

The Court finds that traditional spousal support is appropriate. The spousal support should be payable for life or so long as Respondent is incapable of supporting herself. This is a long-term marriage. Life patterns have been set, and the earning potential of the spouses can be predicted with some reliability. The Court has considered the earnings of the parties and that Respondent may be capable of becoming self-supporting. However, she will need a period of education and retraining to get back in the market after 20 years of being out of the job market. Respondent's decision to stay at home was a joint decision of the parties and due in part to the special needs of [the eldest daughter].

Noel appeals.

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

We review dissolution proceedings de novo. Iowa R. App. P. 6.907 (2009); *In re Marriage of Becker*, 756 N.W.2d 822, 824-25 (Iowa 2008). We give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g); *Becker*, 756 N.W.2d at 825. We give the district court considerable latitude in

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<sup>2</sup> The district court did a very thorough job of narrowing the issues in dispute before trial.

making alimony determinations and “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).

### **III. Analysis.**

“Alimony is not an absolute right; an award depends upon the circumstances of each particular case.” *In re Marriage of Roberts*, 545 N.W.2d 340, 343 (Iowa Ct. App. 1996). Noel argues that the alimony award should be modified for several reasons. First, he contends the amount is excessively burdensome. Starting with his net monthly income of \$9425, Noel points out that he has to pay the \$1930 monthly mortgage on the former marital home that was awarded to Karinne, the property settlement equalization payment of \$1000 per month, child support of \$1550 per month, the private school tuition for the younger girls of approximately \$900 per month, life insurance and medical expenses, and alimony of \$1500 per month. This leaves him, he contends, with only net income of \$1450.93 per month to provide for his own living expenses. In other words, Noel maintains that according to his math, his court-ordered payments will leave him with substantially less to live on than his ex-spouse.

We note several points, however. The monthly mortgage payment of \$1930 and the equalization payment of \$1000 are, in effect, part of the property settlement. They are Karinne’s compensation for Noel’s retention of the two businesses and the two parcels of commercial real estate. Moreover, as was discussed at trial, and specifically provided in the decree of dissolution, there is

no requirement for either party to provide private school tuition for the children. Rather, this was Noel's choice.<sup>3</sup>

In addition to objecting to the amount of the monthly alimony payments, Noel also argues that any alimony for Karinne should be rehabilitative rather than traditional. Karinne was thirty-nine years old at the time of trial, in good health, and by her admission capable of full-time employment. Her youngest children were eleven and nine respectively and in school during the day. At trial, Karinne admitted that she would work if financial circumstances compelled her to do so. Karinne had worked recently as a respite care worker and in the more distant past as a medical lab technician. Noel also notes that Karinne pays \$240 monthly for child care for the three girls despite having no regular employment.

Finally, Noel argues that even if traditional alimony is awarded, it should terminate upon his retirement.

A number of factors support an award of alimony in this case. This was a lengthy marriage. See Iowa Code § 598.21(3)(a) (1999). Karinne does not have formal education beyond high school; meanwhile, her support of the marriage enabled Noel to obtain his orthotics certification at night. See *id.* § 598.21(3)(d). Karinne's earning capacity at this point is somewhat limited, and she has responsibilities for children, although those responsibilities will not last forever.

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<sup>3</sup> The district court explained:

Petitioner has offered to pay the children's tuition for that school. The parties are free to agree if they wish to have their children attend private school; however, the Court is not requiring this as part of this Decree. Further, the Court recognizes that Petitioner may not be able to afford such tuition in light of the property settlement and spousal support obligations set forth in this Decree. As such, if Respondent decides not to pay such tuition, his decision will not be a change of circumstances which would affect child support or spousal support calculations.

See *id.* § 598.21(3)(e). On the other hand, Karinne is still relatively young and in good physical and emotional health. Her ex-spouse, by contrast, recently underwent quadruple bypass heart surgery. See *id.* § 598.21(3)(b). And, the dissolution decree assures that Karinne will continue to live in the former marital home, which Noel is paying for (in addition to paying Karinne \$1000 a month for the foreseeable future in equalization payments). See *id.* § 598.21(3)(c) & (f).

Upon our review, we believe that some modification of the \$1500 per month lifetime alimony award is necessary to do equity. We recognize that Karinne may need education or retraining before she re-enters the workforce. However, she is still young, and her trial testimony suggested that she could and would work if she needed to do so. In the relatively near future, Karinne will no longer be responsible for caring for her disabled daughter. Her youngest children are getting older, and over time their need for after-school care will diminish. In addition, for Karinne to depend on Noel as her sole source of income, in light of his recent health history, may not be in the best interests of Karinne or her daughters. Moreover, although we do not accept all of Noel's arithmetic, one can make the case that with the alimony award, Karinne—who gets to stay in the marital home—will enjoy a better standard of living than Noel. See *In re Marriage of Stark*, 542 N.W.2d 260, 262 (Iowa Ct. App. 1995) (noting that in granting alimony, a court should not destroy “the right of the party providing the income to enjoy at least a comparable standard of living as well”).

We do not believe equity requires an immediate reduction in the alimony ordered by the district court. As shorter-term rehabilitative alimony, an award of \$1500 per month can be justified, although it will be somewhat of a burden on

Noel. However, to do equity in this case, we conclude that the \$1500 amount cannot be sustained as lifetime traditional alimony. Karinne has many years ahead of her before she reaches retirement age. We believe she can be expected to reenter the workforce and become self-supporting. See *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989) (“Rehabilitative alimony was conceived as 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.”). Indeed, the district court’s ruling seems to anticipate this possibility. The court pointed out that Karinne “may be capable of becoming self-supporting” but “will need a period of education and retraining to get back in the job market.”

Accordingly, we modify the district court’s decree to provide that the \$1500 per month spousal support award will continue for five years from the entry of the dissolution decree (i.e., for five years from August 2009). Thereafter, we can uphold a lesser monthly amount as traditional alimony, especially given our belief that life patterns have become somewhat established during this long-term marriage, and our uncertainty as to whether Karinne will ultimately be able to sustain the premarital lifestyle on her own without assistance from her ex-spouse. See *id.* at 62-63 (explaining traditional alimony). Thus, we order that after the period of rehabilitative alimony ends, Noel will continue to pay traditional alimony of \$750 per month. Any obligation to pay alimony shall terminate on the death of either party, on Noel’s reaching retirement age of sixty-five, or on Karinne’s remarriage. See *In re Marriage of Olson*, 705 N.W.2d 312, 318 (Iowa



2005) (ordering the end of alimony obligations upon the occurrence of the same listed events).

Karinne has requested an award of appellate attorney fees. Such an award rests within our sound discretion. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). In light of our conclusion that Noel's appeal has merit to a certain extent, we decline to award appellate attorney fees.

We affirm the dissolution decree as modified herein. Costs of appeal shall be divided evenly between the parties.

**AFFIRMED AS MODIFIED.**