

**IN THE COURT OF APPEALS OF IOWA**

No. 0-434 / 09-1667  
Filed July 14, 2010

**IN RE THE MARRIAGE OF DAVID M. HUFNAGEL  
AND DONNA L. HUFNAGEL**

**Upon the Petition of  
DAVID M. HUFNAGEL,**  
Petitioner-Appellee,

**And Concerning  
DONNA L. SPICER  
f/k/a DONNA L. HUFNAGEL,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Lee (North) County, Michael J. Schilling, Judge.

Donna Spicer appeals a district court decree terminating spousal support payments following her remarriage. **AFFIRMED.**

Robert J. Engler of Swanson, Engler, Gordon, Benne & Clark. L.L.L.P., Burlington, for appellant.

Jennifer E. Klever-Kirkman of Robberts & Kirkman, L.L.L.P., Burlington, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

**MANSFIELD, J.**

Donna Spicer appeals from a district court decree that terminated the spousal support her former husband, David Hufnagel, had been ordered to pay following the dissolution of the parties' marriage. Donna contends the district court erred in finding she failed to show extraordinary circumstances justifying the continuation of spousal support beyond her remarriage and in finding the original dissolution decree provided traditional spousal support and not reimbursement spousal support. We affirm.

**I. Background Facts and Prior Proceedings.**

David and Donna were married for over forty years, from February 1966 until March 2006. At the time of the dissolution of their marriage, David was sixty-two years old and Donna was sixty years old.

From June 1962 until his retirement in April 2003, David worked for Burlington Northern Santa Fe Railway. Based on this employment, David participated in the railroad employees' retirement system. This system consists of two components: Tier I, which is the railroad equivalent of Social Security, and Tier II, which is analogous to a private pension plan. When the parties' marriage was dissolved, David's Tier I (Social Security-type) benefits were \$1982 per month, and his Tier II (pension) benefits were \$1417 per month.

Donna, on the other hand, had only nineteen of the forty credits needed to receive any Social Security benefits. This situation apparently arose from how the parties handled the reporting of farm income during their marriage. When the parties were initially married, Donna worked as a bank teller and bookkeeper. But when their first child was born, the parties mutually agreed that Donna would

stop working outside the home and instead care for the children. Then in 1969, the parties purchased farmland and began a farming operation. Thereafter, according to the district court's findings in its decree, Donna was actively involved in the outdoor chores and frequently maintained the farm operation on her own. Nonetheless, to the extent there was taxable farm income, the parties did not attribute it for tax reporting purposes to Donna.

In the dissolution decree, the district court noted that Donna would lose the benefit of David's Tier I (Social Security-type) benefits upon entry of the decree. However, under federal law, when she turned sixty-two in approximately fifteen months, Donna would be eligible to receive \$697 per month of those Tier I benefits. The district court determined that David's Tier II (pension-type) benefits should be divided by means of a Qualified Domestic Relations Order with David receiving 54.6 percent and Donna receiving 45.4 percent.<sup>1</sup>

In addition, the district court equitably divided the parties' property holdings and awarded Donna spousal support. As to spousal support, the district court concluded:

Donna requests traditional alimony. That request is supported by the closely similar facts of such recent cases as *In re Marriage of Berndt*, No. 04-0622, 2005 WL 292182 (Iowa Ct. App. Feb. 9, 2005), and *In re Marriage of Olson*, 705 N.W.2d 312 (Iowa 2005).

Alimony shall be paid by David to Donna monthly on the first of each month. From April 1, 2006, through and including July 1, 2007, the amount shall be \$1,300.00. From August 1, 2007, through and including July 1, 2010, the amount shall be \$950.00. From August 1, 2010, until whichever of the parties dies first, the amount shall be \$650.00.

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<sup>1</sup> The slightly uneven distribution was due to David's contributions to the pension plan prior to his marriage to Donna.

It is not in the contemplation of the court that Donna will remarry or cohabit. If she does, that circumstance may constitute grounds for reducing or terminating the alimony award.

Both parties subsequently remarried. David married his present wife, Margaret, in October 2007. Donna married her present husband, Russell, in August 2008. On November 19, 2008, David filed a petition for termination or modification of spousal support based on Donna's remarriage. Donna answered, denying that modification or termination of the spousal support was warranted.

Russell, Donna's current husband, is a sixty-seven-year-old farmer. Russell owns a home free and clear in Sparland, Illinois, for which he pays all the expenses. Russell and Donna live most of the time in that home. However, they also spend some of their time at another home in Sparland that Donna inherited from her mother after her divorce from David. That home is owned by Donna free and clear.

Donna also has approximately \$200,000 in cash and other liquid assets. In 2008, she received about \$8900 in interest income from these assets, as well as \$2934 in wages for part-time work. Donna's 2008 income from all sources (including \$11,400 in spousal support from David) was approximately \$38,000.

The modification/termination of spousal support case went to trial on June 3, 2009. Donna argued that the sacrifices she made throughout her marriage to David justified continuation of the spousal support award. Donna also pointed out that when she remarried, she lost her ability to receive a monthly share of David's Tier I benefits, although she did gain Social Security benefits through her new husband, Russell. However, the net result was a \$233 per month reduction

in her Social Security-type benefits. Donna also argued she had an ongoing need for David's support to cover her expenses.

On October 27, 2009, the district court issued a detailed nineteen-page ruling that terminated David's spousal support obligation. The district court first determined that Donna's remarriage was a substantial and material change in circumstances. Thus, it shifted the burden to Donna to justify why spousal support should continue. The court further concluded that Donna's sacrifices during her previous marriage were not a sufficient justification, because Donna had received compensation for those efforts in the parties' property division. In the court's view, the spousal support award had been intended to support Donna in the future, not compensate her for the past. The court also found Donna had failed to show she still needed support from David in light of her marriage to Russell. As the court explained:

The Court fully recognizes that a reduction or elimination in the alimony award may require Donna to rent the home she inherited. She may also be required to invade the principal of the assets she received as a property settlement in the divorce. Yet, at the same time, these facts do not diminish in any way Russell's ability or duty to support Donna. There is no evidence Russell has health or financial issues that jeopardize his ability to support Donna. The fact that Donna has not yet had to ask him directly for support or the fact he has not yet been required to support Donna to the same extent he will be if she is not receiving spousal support, does not alter his present ability to do so.

The court also denied Donna's request for attorney fees because she was not the prevailing party. Donna now appeals.

## **II. Scope of Review.**

We review a proceeding to modify or terminate the spousal support award in a marriage dissolution decree de novo. *In re Marriage of Johnson*, 781

N.W.2d 553, 554 (Iowa 2010); *In re Marriage of Shima*, 360 N.W.2d 827, 828 (Iowa 1985). Though our review is de novo, “we accord the trial court considerable latitude in making this 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. Termination of Spousal Support.**

Donna concedes her remarriage constituted a substantial change of circumstances. See Iowa Code § 598.21C(1)(g) (2009); *Johnson*, 781 N.W.2d at 558 (“[W]e have held that a subsequent remarriage does not automatically end an alimony obligation; instead, it shifts the burden to the recipient spouse to show extraordinary circumstances justifying the continuation of the alimony payments.”). Accordingly, the burden of proof shifted to Donna to show the existence of “extraordinary circumstances” requiring the continuation of the spousal support award, see *Shima*, 360 N.W.2d at 828, or to establish the original spousal support award was not subject to modification or termination because it amounted to reimbursement or rehabilitative spousal support. See *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989).

#### **A. Extraordinary Circumstances.**

Donna argues the past sacrifices she made during her forty-year marriage to David constitute extraordinary circumstances justifying continuation of spousal support. However, our supreme court has not included this kind of event in the list of “recognized extraordinary circumstances.” *Johnson*, 781 N.W.2d at 558. The reasoning here is straightforward. In the typical case, each spouse’s contributions to a marriage are acknowledged by awarding that spouse an

equitable share of the property accumulated during the marriage. See *In re Marriage of Hazen*, 778 N.W.2d 55, 59-60 (Iowa Ct. App. 2009) (noting that the preferred practice is to achieve an equitable distribution through property division rather than spousal support). That is what happened here. Donna's contributions to the marriage, while substantial and undeniable, were recognized by the district court when it granted her essentially half the assets of that marriage at the time of dissolution.

Donna further objects to the \$233 monthly net reduction in her Social Security-type income resulting from her remarriage. She claims that this reduction, when added to the elimination of spousal support from David, will make her unable to meet her expenses. It is true that "the inability of the subsequent spouse to furnish support" is a recognized extraordinary circumstance that can support the continuation of spousal support. *Johnson*, 781 N.W.2d at 558; *Shima*, 360 N.W.2d at 829. But as the district court pointed out, Donna's line of argument here rests on a counterfactual assumption. The district court accurately observed, "[T]here is clear, unequivocal evidence that Russell will support Donna and fully recognizes the obligation to do so. . . . [T]he record here clearly reflects Russell's net worth, assets, and ability to support Donna." Donna and Russell live most of the time at Russell's house, for which Russell pays all the expenses. The testimony at the modification trial revealed that Donna incurs the cost of maintaining a second residence in the same town, and has not even considered the option of renting or selling that residence. Accordingly, we agree with the district court's finding that Donna failed to show

“extraordinary circumstances” justifying the continuation of her spousal support award.

**B. Purpose of the Original Spousal Support Award.**

Donna further argues the district court erred in determining her spousal support award from David was “traditional” in nature rather than “reimbursement.” Donna argues that these distinctions no longer matter, and even if they do, the purpose behind the award was to provide reimbursement to her.

We first note that in making a spousal support award, the court is not required to label the spousal support as a particular type, i.e., traditional, rehabilitative, or reimbursement. *In re Marriage of Becker*, 756 N.W.2d 822, 827 (Iowa 2008). Rather, an award may be based on more than one category as long as it reflects the statutory factors contained in Iowa Code section 598.21A(1). *Id.* Nonetheless, the differences among the categories remain significant. Traditional spousal support may be modified or terminated upon remarriage. *Francis*, 442 N.W.2d at 64. However, reimbursement spousal support “should not be subject to modification or termination until full compensation is achieved.” *Id.*<sup>2</sup>

Like the district court, we reject Donna’s argument that her spousal support was intended to be a form of reimbursement. The dissolution decree actually stated, “Donna requests *traditional* alimony.” (Emphasis added.)

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<sup>2</sup> Donna does not argue the spousal support she received was rehabilitative in nature (i.e., the third category of spousal support). Rehabilitative spousal support 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.” *In re Marriage of Olson*, 705 N.W.2d 312, 316 (Iowa 2005).



Moreover, the decree specifically provided if Donna remarried, the spousal support award would be subject to potential modification or termination.

In addition, the underlying facts do not support categorization of the award as a “reimbursement.” The marriage was not of short duration, and neither party obtained an advanced degree or contributed to the education of the other. See *In re Marriage of Probasco*, 676 N.W.2d 179, 186 (Iowa 2004) (reversing a reimbursement spousal support award after taking into consideration these factors). Spousal support was not needed to compensate Donna for shortcomings in the property division. To the contrary, the dissolution decree effectuated a substantially equal division of the marital property, including the Tier II pension benefits acquired during the marriage. See *In re Marriage of Lalone*, 469 N.W.2d 695, 697 (Iowa 1991). Accordingly, we affirm the district court’s determination that the original spousal support award was traditional spousal support subject to modification.

#### **IV. Attorney Fees.**

Courts may award reasonable attorney fees to the prevailing party in a proceeding seeking modification of an order or decree. Iowa Code § 598.36. Donna was not, and still is not, “the prevailing party.” Therefore, we affirm the district court’s decision denying her attorney fees and additionally decline her request for appellate attorney fees. See *In re Marriage of McCurnin*, 681 N.W.2d 322, 332 (Iowa 2004).

In our discretion, we grant David’s request for appellate attorney fees and award him the sum of \$2500. See *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999) (indicating that appellate courts have “discretion to award appellate

attorney fees under section 598.36” and identifying the factors to be considered). The record reveals that Donna has substantial assets and the ability to pay David’s fees. More importantly, in this case, the district court’s ruling was exceptionally thorough, well-reasoned, and well-written. Since Donna elected nevertheless to appeal, we believe this is an appropriate case for the appellant to pay the appellee’s attorney fees. Costs of this appeal are also assessed to Donna.

**AFFIRMED.**