

**IN THE COURT OF APPEALS OF IOWA**

No. 1-444 / 10-2111  
Filed July 13, 2011

**IN RE THE MARRIAGE OF  
DENISE E. WALTERS  
AND KEITH L. WALTERS**

**Upon the Petition of  
DENISE E. WALTERS,**  
Petitioner-Appellee,

**And Concerning  
KEITH L. WALTERS,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Boone County, Steven J. Oeth,  
Judge.

Keith Walters appeals the district court's award of alimony to Denise  
Walters. **AFFIRMED.**

Meredith C. Mahoney Nerem and Ryan J. Mahoney of Jordan & Mahoney  
Law Firm, P.C., Boone, for appellant.

Michael D. Tungesvik and Dorothy L. Dakin of Kruse & Dakin, L.L.P.,  
Boone, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ. Danilson,  
J., takes no part.

**POTTERFIELD, J.**

Keith Walters appeals from the district court's award of permanent alimony to Denise Walters upon the dissolution of their marriage.

Denise, age forty-nine, and Keith, age forty-six, had been married for twenty-six years at the time of the dissolution in December 2010. They have two adult children. Both Denise and Keith have high school educations and both work for Walters Sanitary Service, Inc. (Walters), which is a company owned primarily by Keith's family. Denise is the office manager and has worked for Walters for more than twenty-six years. She has less than \$500 in a retirement account. Denise's office skills appear not to be readily transferable. Denise's annual income is approximately \$32,200 per year, about \$24,000 less than Keith's salary. Keith drives trucks for Walters and owns a share of the company. He is also a beneficiary of a family trust which has an unknown value. In addition to his salary, Walters pays for Keith's vehicle (including all fuel, maintenance, and insurance), cellular phone, and other personal expenses (including heating fuel for the marital home). Both Denise and Keith receive health insurance through the business.

The parties agreed to the division of marital assets and stipulated the marital home would be sold, and the proceeds equally divided after first paying off the mortgage and other loans: each expected to receive a net of about \$50,000. To equalize the property distribution, Keith was to pay Denise \$7711.

Alimony, attorney fees, and court costs were disputed. Denise was seeking alimony in the amount of \$950 per month. Following trial, the district court wrote:

This is a long-term marriage. Keith clearly has a higher earning capacity. Even without considering the untaxed benefits, Keith nets \$1000 more per month than Denise. In addition, his truck, vehicle gas, insurance, license plates, repairs, and cell phone are provided by the company and have been for many years. It is reasonable to expect that the company will continue to provide these benefits to Keith. The Court believes this to be, at a minimum, a \$600 monthly benefit. In addition, his monthly expenses are significantly less than his income.

Denise appears to need spousal support. Her monthly expenses are greater than her monthly income. . . .

Neither party has any significant retirement funds saved. While it may be the case that Keith inherits a portion of the company, and while there is no guarantee that this will happen, it appears to the Court to be likely. It also appears that Denise will clearly have to rely on social security in retirement unless she begins a retirement savings plan.

Keith has a greater ability to pay, in that he has a higher earning capacity. For this reason, the Court will award Denise alimony and require Keith to pay a portion of Denise's attorney fees and the court costs.

The court ordered Keith to pay Denise alimony in the amount of \$600 per month until Keith retires and becomes eligible for social security benefits, at which time alimony would be reduced to \$250 per month.<sup>1</sup> The court ordered Keith to pay \$1500 of Denise's attorney fees and court costs.

On appeal, Keith contends the court erred in awarding Denise alimony and in considering he might receive an inheritance from his parents.

Our review of this equity action is de novo. Iowa R. App. P. 6.907.

"Alimony 'is a stipend to a spouse in lieu of the other spouse's legal obligation for support.'" Such an award is not an absolute right. And whether it is awarded depends on the circumstances of the particular case. When deciding to award alimony, the district court must consider the factors in Iowa Code section [598.21A(1) (2009)]. Although our review of the district court's award of alimony is de novo, we give that court considerable latitude in making this determination based on the criteria in section

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<sup>1</sup> Alimony is to terminate if Denise remarries or dies, and the obligation to pay alimony terminates upon Keith's death.

[598.21A(1)]. We 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) (citations omitted).

The factors in section 598.21A(1) pertinent to this case are found in subparagraphs: (a) the length of the marriage, (b) the age and physical and emotional health of the parties, (c) the property distribution, (d) the education level of each party, (e) the earning capacity of the party seeking maintenance, including educational background, training, employment skills, and work experience, (f) the feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and (j) other factors the court may determine to be relevant in an individual case.

Denise's post-dissolution monthly expenses exceed her income. We agree with the trial court that though she will have some funds available after the sale of the family house, those funds "will substantially be used to find replacement housing." Denise hopes to continue to work for Walters, which is owned by Keith's family. Her income is not likely to increase and her work skills are specific to Walters, for whom she has worked more than twenty-six years for. She has attempted additional education in the past, but was not successful. Her income from Walters is not alone sufficient to provide a standard of living reasonably comparable to that enjoyed during marriage.

Keith's income, on the other hand, without consideration of untaxed benefits, exceeds his expenses by more than \$1000 per month. He receives and will likely continue to receive untaxed benefits the court valued at least at \$600

per month. In discussing the parties' respective positions concerning retirement, the court noted Keith might possibly inherit a portion of the family business while Denise would have to rely on social security "unless she begins a retirement savings plan." We find this "other factor" relevant to Denise's request for support and not improper. See Iowa Code § 598.21A(1)(j); see also *id.* § 598.21(5)(i) (allowing consideration of "[o]ther economic circumstances of each party, including pension benefits" and "[f]uture interests" in dividing marital property).

We find no failure to do equity and therefore affirm the district court's award of alimony.

Denise has requested appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). Upon consideration of these factors, we award Denise \$1000 in appellate attorney fees. Costs are assessed to Keith.

**AFFIRMED.**