

IN THE COURT OF APPEALS OF IOWA

No. 1-465 / 10-1918
Filed August 10, 2011

**IN RE THE MARRIAGE OF HELENA A. BRUTON
AND BRIAN R. BRUTON**

Upon the Petition of

HELENA A. BRUTON,
Petitioner-Appellee,

And Concerning

BRIAN R. BRUTON,
Respondent-Appellant.

Appeal from the Iowa District Court for Floyd County, Bryan H. McKinley,
Judge.

The respondent appeals from the decree dissolving the parties' marriage.

AFFIRMED AS MODIFIED.

Roger L. Sutton of Sutton Law Office, Charles City, for appellant.

DeDra Schroeder of Schroeder & Larson Law Office, Osage, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Mullins, JJ.

MULLINS, J.

Brian Bruton appeals from decree dissolving his and Helena Angela Bruton's marriage. He challenges the spousal support provision. The district court awarded alimony in the amount of \$1500 per month for two years, followed by alimony in the amount of \$1000 per month until Helena reached the age of sixty-two. Given the facts of this case, including that the parties were married fifteen years and alimony was awarded for approximately twenty-six years, we find the alimony award inequitable. Therefore, we affirm the award of rehabilitative alimony of \$1500 per month for two years, but modify so that at the conclusion of rehabilitative alimony Brian shall pay alimony in the amount of \$1000 per month for five years.

I. Background Facts and Proceedings.

Brian and Helena are citizens of Ireland, where they were married in July 1995. At the time of the marriage, Helena had the equivalent of a high school education and had completed a retail sales course. Brian had a diploma in chemical technology,¹ and after the parties married he obtained a Bachelor of Science, attending classes at night while maintaining full-time employment. In February 2006, Brian obtained a job as a chemist with Cambrex Corporation and the parties moved to Iowa. Following the move, the parties' marriage deteriorated and Helena filed a petition for dissolution in December 2009.

In October 2010, a trial was held on the dissolution petition. The evidence demonstrated that Helena was thirty-six and Brian was thirty-nine years old, and

¹ This diploma earned in Ireland is apparently equivalent to a two-year degree.

both were in good health. Helena had returned to Ireland and was living with her parents, where she was receiving unemployment benefits. She testified that she planned to obtain a two-year degree in early childhood education, after which she estimated she would earn approximately ten dollars per hour. Brian remained employed as a chemist earning \$75,000 annually.

In November 2010, the district court entered a decree of dissolution. The district court divided the marital assets and debts, with each receiving approximately \$62,292 in net marital assets. Additionally, the district court found Helena was entitled to rehabilitative spousal support in the amount of \$1500 per month for a period of two years, which would allow her to complete her education and become employed. The district court further found that after Helena completed her education “the earning capacity between the parties will continue to be substantially inequitable, and [Helena] will continue to be at a disadvantage to maintain a standard of living and the ability to pay for her relative needs.” Therefore, the district court ordered spousal support to continue at the decreased rate of \$1000 per month until Helena reached the age of sixty-two. Brian appeals and challenges the spousal support award.

II. Standard of Review.

We review dissolution actions de novo. *In re Marriage of Hazen*, 778 N.W.2d 55, 59 (Iowa Ct. App. 2009).

However, we recognize that the district court was able to listen to and observe the parties and witnesses. Consequently, we give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them.

In re Marriage of Gensley, 777 N.W.2d 705, 713 (Iowa Ct. App. 2009) (citing *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984)).

II. Spousal Support.

Iowa Code section 598.21A (2009) provides for spousal support and the factors to consider in determining whether an award should be made. Those factors are,

- (a) The length of the marriage.
- (b) The age and physical and emotional health of the parties.
- (c) The distribution of property made pursuant to section 598.21.
- (d) The educational level of each party at the time of marriage and at the time the action is commenced.
- (e) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- (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 the length of time necessary to achieve this goal.
- (g) The tax consequences to each party.
- (h) Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.
- (i) The provisions of an antenuptial agreement.
- (j) Other factors the court may determine to be relevant in an individual case.

Iowa Code § 598.21A(1).

In applying the statutory factors, the courts have set forth three different types of spousal support—traditional, rehabilitative, and reimbursement. *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008). Each type has a different purpose: (1) traditional is payable for life or until the spouse becomes self

supporting; (2) rehabilitative is payable for a period of time to permit a spouse to obtain education or training; (3) reimbursement spouse support “allows the spouse receiving the support to share in the other spouse’s future earnings in exchange for the receiving spouse’s contributions to the source of that income.” *Id.* An award of spousal support need not strictly fall into one of the defined categories, but can be a combination of types. *Id.* “Whether spousal support is justified is dependent on the facts of each case.” *Hazen*, 778 N.W.2d at 61. Although our review is de novo, we give the district court considerable latitude in determining whether to award spousal support based on the statutory factors. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). We disturb the district court’s determination “only when there has been a failure to do equity.” *Id.*

Brian does not challenge the award of rehabilitative spousal support in the amount of \$1500 per month for a period of two years. Rather, he argues that Helena is deliberately choosing a low-paying profession and should be required to pursue a “lucrative job to enable her to live at a substantially equivalent level comparable to her marital status.” Therefore, he claims spousal should terminate after two years.

In the present case, several factors support an additional award of spousal support for a period of years, namely the fifteen-year length of the marriage, the near equal division of property, and the significant disparity between the parties’ incomes. At the time of trial, Brian was earning \$75,000 annually and Helena was unemployed, receiving approximately \$266 per week in unemployment benefits that Helena expected to expire in February 2011. *See In re Marriage of*

Hansen, 733 N.W.2d 683, 704 (Iowa 2007) (considering the length of marriage, earning capacity, present standard of living balanced against relative need of other spouse). Helena explained that she wanted to obtain a two-year degree in early childhood education for special needs children. After she obtains her degree, she would earn ten dollars per hour, for an annual salary of \$20,800. As the district court pointed out, even after Helena obtains further education and obtains full-time employment, there initially remains a large disparity between the parties' incomes.

With respect to Helena's chosen career and future income, there is no evidence that she was deliberately underemployed. Helena began working in retail sales when she was seventeen-years old and never worked in any other area. Since that time, the maximum salary she earned was \$7.48 per hour. She was also unemployed for a period of time after the parties moved to Iowa. Although Brian complains of Helena's career choice, obtaining the education she desires will help her to become employed and earn a higher salary. Unlike cases where income is imputed to a party in determining alimony, there is no reduction in income, let alone a voluntary one. See, e.g., *In re Marriage of Rietz*, 585 N.W.2d 226, 230 (Iowa 1998) (explaining that a voluntary reduction in income or earning capacity may be considered in determining support obligations).

At the time of marriage, Brian had the equivalent of a two-year degree. He advanced his education during marriage and obtained a bachelor's degree taking night courses, while working full-time. Although the record is weak on this point, Brian testified Helena worked during that time as well. The extent of her

contributions to further Brian's education are not well documented, but the record supports a finding that she made some sacrifices in support of his education, even if only sacrifices in the time they could have spent together.

Nevertheless, the parties were married for fifteen years and the alimony award was considerably longer in duration. The trial court awarded two years of alimony at \$1500 per month, followed by approximately twenty-four years of alimony at \$1000 per month. While it is hard to predict Helena's long-term future income, the alimony obligation should be established to assist her for a reasonable period of time to allow her to establish her career and attain some level of financial independence. Given all the facts of this case, approximately twenty-six years of alimony does not seem reasonable or equitable. Therefore, we affirm the award of rehabilitative alimony of \$1500 per month for two years, but modify so that following the rehabilitative alimony Brian shall pay alimony in the amount of \$1000 per month for five years. We affirm as modified.

AFFIRMED AS MODIFIED.