

IN THE COURT OF APPEALS OF IOWA

No. 1-599 / 10-1620
Filed September 8, 2011

**IN RE THE MARRIAGE OF ROB ALLEN HILE
AND CHRISTOPHER SHANE HILE**

Upon the Petition of

ROB ALLEN HILE,
Petitioner-Appellant,

vs.

CHRISTOPHER SHANE HILE,
Respondent-Appellee.

Appeal from the Iowa District Court for Mills County, Richard H. Davidson,
Judge.

Rob Allen Hile appeals the spousal support provision of a decree
dissolving his marriage to Christopher Shane Hile. **AFFIRMED.**

C.R. Hannan of Chuck Hannan, Attorney, P.L.C., Council Bluffs, for
appellant.

DeShawne L. Bird-Sell of Sell Law, P.L.C., Glenwood, for appellee.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

MULLINS, J.

Rob Hile appeals the spousal support provision of a decree dissolving his marriage to Christopher Shane Hile (“Kristi”). Rob argues the district court’s award of rehabilitative spousal support in the amount of \$2200 per month for six years is excessive. Because we find the rehabilitative spousal support award to be equitable, we affirm.

I. Background Facts and Proceedings.

Rob and Kristi were married in Texas in June 1998. Rob and Kristi each have a child from prior relationships, but do not have any children together. Kristi’s daughter resided with Rob and Kristi in the parties’ home throughout the marriage. Although Rob never formally adopted Kristi’s daughter, the child carries his last name. At the time of the dissolution hearing, Kristi’s daughter was a junior in high school.

At the time of the marriage, Kristi had a Bachelor of Science degree in mathematics and was working for a family business in Texas earning approximately \$25,000 annually. Rob was also employed and earned approximately \$72,000 per year. Shortly after their marriage, Rob and Kristi mutually agreed that Kristi would not continue to maintain full-time employment. Instead, Kristi worked part-time at her daughter’s schools and used nearly all of her wages to offset the cost of tuition.

In 2005 Rob accepted a new job in Virginia, where their marriage showed its first signs of deterioration. In May 2006, Rob filed a formal separation

agreement. However, the agreement was never pursued and the parties were able to reconcile by the end of 2006.

In January 2007, Rob and Kristi moved to Glenwood, Iowa after Rob accepted a new position at Adesta, LLC in Omaha, Nebraska. At Adesta, Rob's earnings from wages, commissions, and bonuses were \$175,373 in 2007 and \$196,219 in 2008. When the parties moved to Iowa, Kristi initially worked for a department store, but in August 2007, she began working for Dial Enterprises, Inc. earning \$14.95 per hour. Kristi's income in 2008 was \$29,358.

In February 2009, Rob filed a petition for dissolution of marriage. In June 2009, Rob accepted new employment at Siemens Industry in Chicago, Illinois as the director and segment head of physical security integration, earning an annual salary of \$155,000. He relocated to the Chicago area in July 2009. Rob testified that he will undergo annual assessments and may be eligible for raises of up to four percent of this base salary. Rob further testified he accepted the decrease in pay with this position because it offers opportunities for career advancement not available at Adesta.

Rob received several one-time bonus payments in 2009. From Adesta, Rob received a bonus of \$23,000 and stock options payouts totaling \$19,830.97. From Siemens, Rob received a signing bonus of \$15,000 and relocation assistance payments totaling \$11,243.65. With these funds, Rob chose to pay off some of the debts in his personal name, but only made the minimum payments on any joint marital debts. Rob also went on a two-day wine tasting trip in California where he spent over \$8000 and stayed for a long weekend after

a business trip to Las Vegas where he spent almost \$1000 on a dinner. Both of these expenditures were made while the dissolution case was pending. Rob's total salary and related income in 2009 was \$261,512.

During 2009, Kristi continued to work for Dial Enterprises where her yearly earnings were \$28,551. Kristi had also reentered school and was working towards an MBA in finance. Kristi testified that she was scheduled to graduate in May 2011, after which she planned to seek employment as a comptroller. No evidence was presented showing Kristi's possible earning capacity following her graduation.

The dissolution petition came to a hearing in May 2010. By this time, Rob was forty-six years old and Kristi was thirty-five years old. Both parties were in good health. In addition to their earnings stated above, both parties have retirement accounts and securities. Rob has four accounts valued at \$77,418.28, while Kristi maintains three accounts totaling \$38,500. The parties also owned several items of personal property including furniture, guns, watches, and jewelry, but were able to reach an agreement concerning the division of these items prior to the hearing. The only item of personal property left to the district court was a four-wheeler with a snow plow attachment valued between \$3500 and \$5000 with an outstanding loan of \$1000.

The parties also had a significant amount of debt. The home the parties had built on ten acres of land near Glenwood had first and second mortgages totaling \$358,906, and due to difficulties in selling the property, both parties listed the house as having a negative equity of \$23,906. At the time of the hearing,

Kristi was living in the home, but was struggling to maintain it. She testified that it did not make financial sense for her to stay in the house and she would move immediately if needed. Rob testified that he would be solely responsible for any loss on the home, but wanted to have possession of it so he could keep it in showable condition. He also stated that he would consider renting the home to help absorb some of the mortgage payment and free up his cash flow.

In addition to the negative equity on the home, the parties had joint credit card debt of \$48,221.24, and an auto loan with Citizen's Bank on a car gifted to Kristi's daughter for \$12,967. Rob also listed individual debt from an auto loan on his vehicle for \$13,961, and four credit cards for \$19,437. Kristi listed individual debt from a student loan on deferment for \$7300.

In July 2010, the district court entered a formal decree of dissolution. The court awarded both parties their separate retirement accounts and securities. The district court also awarded Rob the marital home, his vehicle, and the four-wheeler, but made him solely responsible for all debts and encumbrances thereon. Kristi was awarded her vehicle, and given the right to remain in the marital home during its sale. The district court also determined that Rob should be solely responsible the parties' joint credit card debt and his individual debt. Rob was also made solely responsible for the encumbrance on Kristi's daughter's vehicle. Kristi was made solely responsible for her student loans. The district court further determined that given the parties' disparity in income and Kristi's late entrance into the workforce due to their mutual decision for her to work part-time during the marriage, Kristi should be awarded rehabilitative

spousal support at a rate of \$2200 per month for six years commencing a month after the sale of the home or March 1, 2011, whichever occurs first.

Following the decree, Rob filed an Iowa Rule of Civil Procedure 1.904(2) motion to enlarge requesting the decree be amended to allow him to otherwise obtain possession of the home at least thirty days prior to March 1, 2011 (if the home has not sold) in order to give him an opportunity to rent the home to assist in the payment of the court-ordered debt obligations. Rob also argued the spousal support award was excessive when taking into account Rob's court-ordered debt obligations.

In September 2010, the district court entered a supplemental decree stating that Kristi shall vacate the marital home on thirty days written notice from Rob that he has entered into a renter's agreement for the home, and that spousal support shall commence thirty days after the notice. The court further stated that Kristi could vacate the home at any time, but support would not begin until the home was rented, sold, or March 1, 2011, whichever occurred first. The court further stated that Kristi shall vacate the property thirty days prior to March 1, 2011 whether or not she has received written notice from Rob. The district court refused to amend the amount or duration of the spousal support award. Rob appeals.

II. Standard of Review.

We review dissolution proceedings de novo. *In re Marriage of Becker*, 756 N.W.2d 822, 824-25 (Iowa 2008). Although we give weight to the district court's factual findings, we are not bound by them. *Id.* at 825.

III. Spousal Support.

Rob contends the district court's award of rehabilitative spousal support is excessive in both amount and duration. Spousal support is "a stipend to a spouse in lieu of the other spouse's legal obligation for support." *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004). It is not an absolute right, but depends upon the particular circumstances of each case. *In re Marriage of Hansen*, 733 N.W.2d 683, 704 (Iowa 2007). In determining whether a spousal support award should be made, courts consider the factors set forth in Iowa Code section 598.21A(1) (2009). These factors include:

- 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). Although our review is de novo, we give the district court considerable latitude in determining whether to award spousal support based upon the statutory factors. *In re Marriage of Anliker*, 694 N.W.2d 535, 540

(Iowa 2005). “We will disturb that determination only when there has been a failure to do equity.” *Id.*

Rob argues the spousal support award is unfair because he was ordered to pay the parties’ significant debt. Upon our review of the statutory factors, we find the spousal support award in this particular case is equitable. The parties were married for twelve years. During their marriage, Rob has progressively increased his salary and now earns at least \$155,000. On the other hand, by the parties’ mutual agreement, Kristi put her career on hold and worked at her daughter’s school for minimal earnings. She is now employed and earns approximately \$30,000 or less than twenty percent of Rob’s base salary. Kristi has also reentered school and is seeking an MBA degree with the goal of becoming a comptroller. Six years is a reasonable time during which Kristi can complete her schooling, find employment, settle into a new career, and become economically self-sufficient. See *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989) (stating the purpose of rehabilitative spousal support is to support “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”).

While we recognize that Rob has been ordered to pay the parties’ debt, when taking into account the district court’s overall property distribution scheme, we still do not find the spousal support award to be inequitable. First, many items of debt that Rob was ordered to pay have corresponding assets that he was also awarded, including the house, his car, and the four-wheeler. In

addition, under the supplemental decree, the payment of spousal support was not ordered until after the house was sold or made available to be rented. As a possible income producing asset, this provided Rob flexibility in dealing with the largest portion of the parties' debt before the initiation of spousal support. Rob was also allowed to maintain the full amount of his retirement accounts and securities as well as the significant bonus payments and stock options paid in 2009. Further, it is important to note that Rob used the significant 2009 bonuses to pay down debts in his name alone while only making minimum payments on any joint debt. He also spent a significant amount on two vacations during the dissolution proceedings. See *In re Marriage of Bell*, 576 N.W.2d 618, 624 (Iowa Ct. App. 1998) (holding the conduct of a spouse which results in loss or disposal of property otherwise subject to division at the time of divorce as well as the dissipation or waste of marital assets by a spouse prior to dissolution may generally be considered in making an equitable property distribution), *abrogated on other grounds by In re Marriage of Wendell*, 581 N.W.2d 197, 200 (Iowa Ct. App. 1998). Accordingly, in light of the particular circumstances of this case and the statutory factors, we find the district court's spousal support award does equity between the parties, and therefore affirm.

IV. Appellate Attorneys Fee.

Kristi requests an award of appellate attorney fees of \$6825. Appellate attorney fees are not a matter of right, but rather rest in this court's sole discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). In determining whether to award attorney fees, we consider the needs of the party

seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id.* Given the substantial disparity in earnings between the parties and the fact that Kristi prevailed in defending the appeal, we award Kristi appellate attorney fees of \$1500. Costs of the appeal are taxed to Rob.

AFFIRMED.