

IN THE COURT OF APPEALS OF IOWA

No. 1-701 / 10-2077
Filed November 9, 2011

**IN RE THE MARRIAGE OF KRISTINE L. RAVELING
AND WILLIAM H. RAVELING**

**Upon the Petition of
KRISTINE L. RAVELING,**
Petitioner-Appellee,

**And Concerning
WILLIAM H. RAVELING,**
Respondent-Appellant.

Appeal from the Iowa District Court for O'Brien County, Nancy L.
Whittenburg, Judge.

Husband appeals the district court's alimony award. **AFFIRMED.**

Mary C. Hamilton of Hamilton Law Firm, P.C., Storm Lake, for appellant.

Dan Connell of Dan Connell, P.C., Storm Lake, for appellee.

Heard by Sackett, C.J., and Vogel and Eisenhauer, JJ.

EISENHAUER, J.

In 1971, Kristine (age sixteen) and William (age eighteen) were married. Kristine filed for divorce in June 2009. During the dissolution process, the parties lived in separate portions of their house, and William continued to pay the household bills. In September 2010, their thirty-nine-year marriage was dissolved.¹ William (fifty-eight years) was ordered to pay \$850 monthly alimony for ten years to Kristine (fifty-six years). The court awarded Kristine \$3000 in attorney fees.

In October 2010, William filed a motion to reconsider. In November 2010, the court reaffirmed its alimony award and reduced William's attorney fees to \$1500. The sole issue raised by William on appeal is whether the district court's alimony award is equitable. Kristine seeks appellate attorney fees. We affirm and award appellate attorney fees.

I. Scope of Review.

Even though our review is de novo, we grant the district court considerable latitude in determining alimony and "will disturb the ruling only when there has been a failure to do equity." *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005). "We examine the entire record and decide anew the issues properly presented." *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We accordingly need not separately consider assignments of error in the trial court's findings of fact and conclusions of law, but make such findings and conclusions from our de novo review as we deem appropriate. *In re Marriage of Wade*, 780 N.W.2d 563, 566 (Iowa Ct. App. 2010).

¹ The parties are the parents of two adult children.

II. Alimony.

William's principal challenge to the court's alimony award is its finding Kristine has physical and/or mental health issues preventing her from working full time. William contends Kristine's testimony on these issues is not credible, and he argues Kristine's earning capacity should be calculated based on full-time wages. William also argues if he is required to pay \$850 per month in alimony "he will be unable to live himself."

Spousal support or alimony "is an allowance to the spouse in lieu of the legal obligation for support." *In re Marriage of Sjulín*, 431 N.W.2d 773, 775 (Iowa 1998). Spousal support is not an absolute right; an award is discretionary and depends on the circumstances of each particular case. *In re Marriage of Becker*, 756 N.W.2d 822, 825 (2008). Our courts consider the factors identified in Iowa Code section 598.21A(1) (2009). The court must also balance a party's ability to pay against the relative needs of the other. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997).

Both parties have a high school education, and William's undisputed 2009 gross annual income from his tax return is \$49,253. Since 1992, William has been a supervisor in his long-term employment, and his benefits include the ability to participate in profit sharing, life insurance, and health care insurance.

After recognizing and discussing Kristine's residual and current health issues, the district court found "at a maximum of thirty hours per week, [Kristine] would earn . . . \$13,650.00 gross annually." The court noted Kristine, except for a portion of 2007, all of 2008, and most of 2009, "has been employed outside the home for thirty-five of the thirty-nine years of the parties' marriage."

Because “we consider an award of alimony in conjunction with the property award,” we briefly discuss the unchallenged property award. See *In re Marriage of Van Regenmorter*, 587 N.W.2d 493, 495 (Iowa Ct. App. 1998). Each party received approximately \$100,000 in assets. In making this division, the court valued William’s vested stock options in Tyson at \$1409 and awarded them to William. The court adopted the parties’ stipulation: (1) \$84,400 in William’s 401(k) plan (after reduction in value for the loan William utilized to replace monies he removed from Kristine’s savings account) and \$4465 cash to William; and (2) \$10,900 investments and \$8382 cash to Kristine. To equalize the property distribution, Kristine was awarded \$7754.

The district court recognized William “was awarded his 401(k) plan [and he] will continue to accrue benefits in his 401(k) plan through his employment. [Kristine] does not have this prospect.” Further, “[b]ecause [Kristine] was awarded the marital residence [\$75,200] in lieu of financial accounts and because her earnings are significantly less than [William’s], her cash flow position is much weaker than [William’s].” Additionally, Kristine “no longer will have available to her the health insurance coverage through [William’s] employment that she has enjoyed during the majority of the marriage. Her anticipated cost of health care insurance is \$254 per month.”

In determining spousal support, the district court ruled:

[The exhibits] show the disparity in the parties’ Social Security earnings record during their marriage. Although [Kristine] has earned as much as \$19,000 annually in prior employment, she has never developed skilled employment like [William] and the prospect of doing so now at her present age is minimal. Further, even when [Kristine] was earning her highest income of \$19,000,

[William's] earnings were twice [those] of [Kristine's].² By agreement of the parties, [Kristine] left the workplace in 2007. The dissolution of the parties' marriage necessitated [Kristine's] return to the workforce and she is unable to now be self-supporting. She is entitled to an award of alimony [of \$850/month] for . . . ten (10) years or until she dies or remarries, whichever occurs sooner. . . . If [Kristine] works 30 hours per week at her present employment, this award will increase [her] gross annual income to \$23,850.00. It will reduce [William's] gross annual income to \$39,052.55. This is equitable in view of the fact that [Kristine] is awarded the parties' marital residence with no mortgage payment and [William] must now obtain housing and either incur monthly rent or monthly mortgage payments.

In its post-decree ruling reaffirming the alimony awarded, the court explained:

It is not necessary that [Kristine's] physical problems rise to the level of disability for the court to find that she has some limitations on her ability to work. Dr. Veit's records for patient visits [on four 2009 dates] and June 14, 2010, all discuss or reference [Kristine's] depression or use of [medication] for her depression. Additionally, the December 23, 2009 notes comment on [Kristine's] arms falling asleep since she returned to the workforce. [Kristine] is capable of employment; the issue is how does her absence from the workplace in the two years preceding this action, coupled with [Kristine's] age, skill sets and physical and emotional problems affect her earning capacity. The court concluded that, considering all the evidence on these factors, [Kristine] does not have the present ability to earn at the level she enjoyed in 2003 and 2004 [\$19,970/\$17,516]. The court calculated [Kristine's] present earning capacity on her present employment and the testimony and evidence offered on her physical limitations.

Therefore, the district court found Kristine's physical/mental limitations testimony credible and additionally found her limitations were supported by her medical records. We give weight to the court's credibility findings in our de novo review. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Sullins*, 715 N.W.2d 242,

² In 2001, William earned \$41,818 to Kristine's \$19,537. In 2003, William earned \$46,056 to Kristine's \$19,970.

247 (Iowa 2006). We agree with the district court's determination of Kristine's earning capacity.

Next, we conclude there is no merit to William's claim the alimony awarded is inequitable due to his living expenses. After detailing William's income and expenses, the district court found William "will be able to financially support himself following the parties' dissolution of marriage at a standard of living reasonably comparable to that which he enjoyed during the marriage." Specifically, the court found that *after* the \$850/monthly alimony payment, Kristine's gross annual income will increase to \$23,850 and William's gross annual income will be reduced from \$49,253³ to \$39,053. William does not dispute his 2009 income. We note William's July 2010 affidavit of financial status lists post-divorce monthly living expenses of \$2,508 or \$30,096 annually.⁴ William testified he created the financial affidavit by reviewing his past checking statements and by locating a place to rent for \$500. Therefore, approximately \$9000 in annual gross income remains *after* his expense and alimony payments (\$39,053 (post-alimony income) minus \$30,096 (expenses)).

In marriages of long duration where the earning disparity between the parties is great, both spousal support and nearly equal property division may be appropriate. *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa Ct. App. 1993). After considering the parties' specific facts and circumstances in conjunction with the relevant statutory factors and after recognizing the district

³ William's 2003 to 2008 taxed social security earnings are: \$46,056, \$45,359, \$45,113, \$45,116, \$51,359, \$50,651.

⁴ William's financial affidavit lists monthly expenses: \$500/housing; \$300/food; \$75/clothing; \$875/car expense, transportation; \$184/medical, dental; \$318/utilities; and \$256/other. Therefore, \$3072 annually is "other."

court's firsthand ability to hear the testimony and evaluate the credibility of the witnesses, we find no inequity in the district court's determination of spousal support.

III. Appellate Attorney Fees.

Kristine requests an award of appellate attorney fees. Appellate attorney fees are not a matter of right, but rather rest in this court's discretion. *Sullins*, 715 N.W.2d at 255. We consider the parties' needs, ability to pay, and the relative merits of the appeal. *Id.* Applying these factors to the circumstances in this case, we award Kristine \$1500 in appellate attorney fees.

Costs are taxed to William.

AFFIRMED.