IN THE COURT OF APPEALS OF IOWA

No. 2-025 / 11-0780
Filed March 28, 2012

IN RE THE MARRIAGE OF DAWN DIAN JONES AND GREG MICHAEL JONES

Upon the Petition of

DAWN DIAN JONES,
Petitioner-Appellee/Cross-Appellant,

And Concerning

GREG MICHAEL JONES,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady, Judge.

Greg Jones appeals, and Dawn Jones cross-appeals, the district court's decree dissolving their marriage. **AFFIRMED AS MODIFIED AND REMANDED.**

Jon J. Puk of Walentine, O'Toole, McQuillan & Gordon, Omaha, Nebraska, for appellant.

Joseph G. Basque and Shelley R. Whitcher of Iowa Legal Aid, Council Bluffs, for appellee.

Heard by Danilson, P.J., Bower, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

BOWER, J.

Greg Jones appeals, and Dawn Jones cross-appeals, the district court's March 3, 2011 decree dissolving their marriage. Greg contends the district court erred in awarding physical care of the parties' two children to Dawn, erred in calculating his child support obligation using his earning capacity rather than his actual earnings, erred in ordering him to pay $2500 of Dawn's attorney fees, and erred in denying his motion for a new trial. Dawn cross-appeals contending the district court erred in failing to award her spousal support. We affirm as modified and remand for recalculation of child support.

I. BACKGROUND AND PROCEEDINGS. Greg and Dawn were married on August 22, 1998, and have two children, M.J. and C.J., who, at the time of the dissolution decree, were twelve and eleven, respectively. Dawn was forty-three and in good health. She completed high school, but had no post-secondary education. She stayed at home in the early years of the marriage, though she returned to the job market before the dissolution petition was filed. Dawn held a number of jobs during the marriage working both part time and full time. From 2008 to 2009 she worked full time earning $11.75 per hour. She left that position due to what she describes as a hostile work environment and spent much of 2010 receiving unemployment. At the dissolution trial, she was earning $11 an hour working part time for the county juvenile detention facility. She hoped to be able to increase her hours to full time.

Greg was thirty-six and also in good health. He completed high school and attended a technical school to receive his commercial driver's license.

Throughout the marriage, he was the primary income earner for the household. He worked as an over-the-road truck driver from 2006 until the dissolution petition was filed in 2010. Greg testified he stopped driving over the road in order to spend more time with the children. Thereafter, he took a local driving job earning $19 an hour, but was terminated during his probationary period when the business was sold. At the time of the dissolution trial, he was working full time as a welder earning $11.19 per hour.

Dawn filed for dissolution on July 28, 2010. The court awarded the parties temporary joint legal custody of the children and gave Dawn temporary physical care. Greg was granted visitation every other weekend, and each Wednesday evening. The court further ordered Greg to pay $957 a month in child support. On September 24, 2010, Greg moved for the appointment of a guardian ad litem to assist the court with the custody determination. The court appointed Maura Goaley and ordered Greg to bear the cost.

Goaley filed her report with the court the day before the dissolution trial. She met with M.J. on three occasions, and C.J., twice. Goaley stated both parents admitted to putting the children, especially M.J., in the middle of the divorce, and exposing both children to conversations and arguments that were inappropriate. However, Goaley reported that in her determination, the parents had the ability to work together and communicate for the sake of their children. While raw emotions had gotten in the way of effective communication in the past, Goaley believed that as time passed, the parents would be more open to communicating for the children.

Goaley reported it was M.J.'s wish to live primarily with her father because she felt there was less turmoil and stress at her father's home. M.J. had experienced physical manifestations of stress including stomachaches and headaches, and sought medical care for her symptoms. M.J. saw Dr. Jones on January 10, 2011, and reported she had been experiencing symptoms when the time came for her to go from her dad's house to her mom's house. Dr. Jones recommended intensive counseling for M.J., and also stated that at her age, M.J. should be able to decide where she would prefer to live. M.J. told Dr. Jones she prefers to live with her father because he does not bring her into any of the issues surrounding the divorce. After reviewing Dr. Jones's letter and discussing the situation with M.J., Goaley agreed with Dr. Jones's assessment that M.J. should be able to decide where she lives based on her age, maturity, and reasoning.

Goaley reported C.J. wanted to maintain equal time with both parents. While Goaley believed C.J. was adjusting to the changes, she believed he was not expressing his emotions.

Goaley found both parents would raise their children to be healthy, intelligent, kind, and well-mannered individuals, but she did have concerns about the current turmoil to which the children were exposed. Goaley stated both parents needed to learn to communicate about the children without dredging up past events, and needed to learn to deescalate tense situations instead of pushing each other's buttons. Goaley ultimately recommended M.J. be placed in Greg's physical care with Dawn exercising visitation every other weekend and

every Wednesday evening. She recommended Greg and Dawn be granted joint physical care of C.J. Goaley stated she did not make it her practice to recommend splitting siblings, but she believed this situation called for different recommendations for each child.

At trial, Goaley testified she was aware there was a domestic abuse petition filed in this case, but it was later dismissed. Goaley stated she spoke with Dawn about the allegations, and Dawn had no concerns for the children's safety. Goaley was made aware in the course of her investigation of the mental health history of both parents.

Because the parents live near each other and because the children would be attending the same school soon, Goaley believed the children would be together a lot despite her separate physical care recommendations. Thus, she concluded it was in C.J.'s and M.J's best interest for Greg to have physical care of M.J. and the parties to have joint physical care of C.J.

At trial Dawn testified Greg was very controlling and abusive during their marriage. Greg would threaten suicide every time Dawn would tell him she wanted a divorce. When he was home off the road, Dawn testified Greg would yell and scream in her face, spit on her, and call her names in front of the children. Dawn complained Greg was physically abusive to her, twisting her arm and fingers, holding her down on the bed, and one time bit her chin.

Dawn had previously filed for divorce in 2006, and Dawn testified as a result Greg threatened to jump off a bridge. After his family was able to locate

him, Greg was admitted to the hospital. They began civil commitment proceedings, but the proceedings were later voluntarily dismissed.

After the current divorce proceeding was filed, the police were called to the family home on eight occasions; four times at the request of Dawn, and four times at the request of Greg. On two of these occasions, Dawn testified Greg kicked in the front door. She also admitted Greg called the police when she threw his belongings out of the house, and when she took the children's cell phones.

Dawn testified Greg had control over the family finances, and she had to ask for money. After the divorce was filed, Dawn became aware Greg had cashed out his 401K. Dawn did not receive any of these proceeds.

Dawn sought physical care of both children. She felt she was the better parent as she had been the one taking care of them since they were little. She attended the majority of the children's school functions alone as Greg was gone for work. Dawn was concerned about Greg's anger and testified he screamed at the children. She did acknowledge she yelled and screamed at the children as well. She proposed a visitation schedule for Greg. However, when asked whether she would feel comfortable with the same proposed visitation schedule if Greg was awarded physical care, she responded, "No," because she believed Greg already spends enough time with the kids. Dawn made clear in her testimony that the only visitation she would allow Greg to have with the children is what is ordered by the court, if "it's not there [she is] not going to do it."

Dawn also requested alimony and explained she needed the award because she has been with Greg for fifteen years, she had the kids, and she needed help raising them. She has historically not earned as much as Greg, and claims she does not have the ability to earn as much as he does.

Greg testified he quit his job driving over the road when Dawn filed for divorce so that he could be there for the children. The over-the-road job only allowed him to be home about six or seven times a month, though in the summer he did take the children with him for extended periods of time. He explained he originally took the job in 2006 because the family was having financial difficulties due to Dawn's spending. He did take control over the finances about that time because bills were not being paid.

He did acknowledge in 2006 he sought mental health treatment after Dawn filed for divorce and refused to allow him to see the children. He also acknowledged he and Dawn would argue, and this would occasionally occur in front of the children; however, he denied ever physically assaulting Dawn. While he admitted the communications had been strained, Greg did believe the two could communicate about issues involving the children.

Greg did not believe it was in M.J.'s best interests to live with Dawn due to the illness M.J. experiences and the fighting that occurs between Dawn and M.J. However, if the relationship were to improve, Greg would support joint physical care of M.J., as well as C.J.

Prior to closing the trial record, the district court admonished both parties to stop putting the children, particularly M.J., in the middle of the divorce. The

court also told the parties to be flexible with visitation and to not strictly adhere to the visitation order. The court reminded the parties under Iowa law the best interest of the child includes allowing for maximum continuous physical and emotional contact with both parents, and refusal by one parent to provide the opportunity without just cause is considered harmful to the best interests of the child.

The district court entered its decree March 3, 2011, finding the evidence showed both parties were suitable custodians for the children, but had a great deal of difficulty communicating regarding the children's needs and had a lack of respect for one another. The court also found the evidence did not show the parties would support the other's relationship with the children. The court concluded the credible evidence showed there was a history of domestic violence, some of which occurred in the presence of or with the knowledge of the children. As a result the court declined to follow the recommendations of the guardian ad litem, and instead granted Dawn physical care of both children, giving Greg visitation every other weekend and on Wednesday evenings.

The court calculated child support to be $953 per month based on the parties' 2009 earnings. The court found Greg voluntarily reduced his income and to use his current monthly earnings in calculating child support would cause a substantial injustice to the children and to Dawn. The court divided the assets and debts equally, and denied Dawn's request for spousal support finding she has the capacity to work and earn substantially more than she is currently earning. The court concluded it would be inequitable to Greg to award spousal

support given the property division, and the amount of child support ordered. Finally, the court ordered Greg to contribute $2500 to Dawn's attorney fees.

Both parties filed post-trial motions seeking the court to reconsider its ruling, and Greg also filed an application for an order to show cause seeking to hold Dawn in contempt for failing to following the visitation order. The court denied both parties' request to reconsider the issues, but did find Dawn in contempt for failing to abide by the visitation ordered with respect to C.J. Both parties appeal.

II. SCOPE OF REVIEW. We review dissolution cases de novo. *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009). While we decide the issues anew, we give weight to the district court's factual findings, particularly those pertaining to witness credibility. *In re Marriage of Anliker*, 694 N.W.2d 535, 539 (Iowa 2005). Because we base our decision on the unique facts of each case, precedent has little value. *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995).

We review the district court's decision on the award of attorney fees for abuse of discretion, *In re Marriage of Applegate*, 567 N.W.2d 671, 675 (Iowa Ct. App. 1997), and the same standard of review applies to our review of the district court's ruling on a motion for a new trial based on newly discovered evidence. *Benson v. Richardson*, 537 N.W.2d 748, 762 (Iowa 1995).

III. PHYSICAL CARE. Greg appeals the district court's decision on physical care claiming the district court erred in rejecting the guardian ad litem's recommendation to award joint physical care of C.J. and grant him physical care

of M.J. He contends the children's preferences should have been honored considering their age and maturity. In support of his position, he points to Dr. Jones's letter which stated, "for [M.J.'s] wellbeing, at her age she should be able to decide where she lives." Greg also maintains the district court placed too much emphasis on Dawn's allegations of abuse, which were unsupported by any other evidence.

In custody disputes, our primary consideration is the best interests of the children. *In re Marriage of Courtade*, 560 N.W.2d 36, 37 (Iowa Ct. App. 1996). We consider a number of factors including those listed in Iowa Code section 598.41(3) (2009),[1] and those contained in *In re Marriage of Winter,* 223 N.W.2d

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[1] Iowa Code section 598.41(3) provides:

> In considering what custody arrangement under subsection 2 is in the best interest of the minor child, the court shall consider the following factors:
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> a. Whether each parent would be a suitable custodian for the child.
>
> b. Whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents.
>
> c. Whether the parents can communicate with each other regarding the child's needs.
>
> d. Whether both parents have actively cared for the child before and since the separation.
>
> e. Whether each parent can support the other parent's relationship with the child.
>
> f. Whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity.
>
> g. Whether one or both the parents agree or are opposed to joint custody.
>
> h. The geographic proximity of the parents.
>
> i. Whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation.
>
> j. Whether a history of domestic abuse, as defined in section 236.2, exists. In determining whether a history of domestic abuse exists, the court's consideration shall include, but is not limited to,

165, 166–67 (Iowa 1974).[2] In considering all these factors, our one objective is to place the children "in the environment most likely to bring [them] to healthy physical, mental, and social maturity." *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). Gender of the parent is irrelevant to our consideration, and neither parent has a greater burden than the other. *Courtade*, 560 N.W.2d at 37–38.

First, Greg asserts the district court erred in not following the guardian ad litem's report, which endorsed the wishes of the children with respect to physical care. We begin by noting the recommendations of a guardian ad litem or an

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> commencement of an action pursuant to section 236.3, the issuance of a protective order against the parent or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of a parent in contempt pursuant to section 664A.7, the response of a peace officer to the scene of alleged domestic abuse or the arrest of a parent following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

[2] The factors listed in *Winter*, 223 N.W.2d at 166–67, include:

> 1. The characteristics of each child, including age, maturity, mental and physical health.
> 2. The emotional, social, moral, material, and educational needs of the child.
> 3. The characteristics of each parent, including age, character, stability, mental and physical health.
> 4. The capacity and interest of each parent to provide for the emotional, social, moral, material, and educational needs of the child.
> 5. The interpersonal relationship between the child and each parent.
> 6. The interpersonal relationship between the child and its siblings.
> 7. The effect on the child of continuing or disrupting an existing custodial status.
> 8. The nature of each proposed environment, including its stability and wholesomeness.
> 9. The preference of the child, if the child is of sufficient age and maturity.
> 10. The report and recommendation of the attorney for the child or other independent investigator.
> 11. Available alternatives.
> 12. Any other relevant matter the evidence in a particular case may disclose.

independent custodial investigator may be considered in determining physical care, but the recommendation is not controlling on the district court. *In re Marriage of Riddle,* 500 N.W.2d 718, 720 (Iowa Ct. App. 1993). The district court declined to follow the guardian's recommendations here because it concluded Goaley did not give sufficient weight to the history of domestic violence, and the lack of respect and constructive communication between Dawn and Greg. The court also found no compelling reason to separate the children in the manner recommended by the guardian.

We agree with the district court's assessment of physical care. While Greg seeks joint physical care of C.J., the record is clear that the parties have had extreme difficulty communicating effectively. *See In re Marriage of Hynick*, 727 N.W.2d 575, 580 (Iowa 2007) ("The critical question in deciding whether joint physical care is . . . appropriate is whether the parties can communicate effectively on the myriad of issues that arise daily in the routine care of a child."). While the guardian was optimistic that as time passed, the parents would be more open to communicating, we are hesitant to test that theory on the children. The parties' difficulty communicating and lack of respect existed before the divorce was filed and will likely continue, though we certainly hope they will eventually be able to be civil to one another. Past performance is indicative of the quality and quantity of future care a parent is capable of providing. *In re Marriage of Winnike*, 497 N.W.2d 170, 174 (Iowa Ct. App. 1992).

There is also a preference to keep siblings together; in order to separate them, it must appear that separation will better promote the long-range interests

of the children. *Riddle*, 500 N.W.2d at 720; *see also In re Marriage of Quirk-Edwards*, 509 N.W.2d 475, 480 (Iowa 1993) ("Siblings in dissolution actions should be separated only for compelling reasons."). Under her recommendation, Goaley believed the children would still be able to spend the majority of their time together as they would soon be attending the same school, and if the visitation schedule was implemented correctly, they would spend every other week and every weekend together.[3] In a month's time, the child would spend approximately ten nights sleeping in separate homes. While this arrangement could be workable, we fail to see a compelling reason to keep these children separate for even ten nights a month. In addition, we consider children's wishes, but at age eleven and twelve, the children do not control selection of where they will live. "When a child is of sufficient age, intelligence, and discretion to exercise an enlightened judgment, his or her wishes, though not controlling may be considered by the court, with other relevant factors, in determining child custody rights." *In re Marriage of Thielges*, 623 N.W.2d 232, 239 (Iowa Ct. App. 2000). The district court did not believe the children here were capable at this time of making this decision, and neither do we.

We also consider the fact the district court found the evidence of domestic abuse to be credible. *See Anliker*, 694 N.W.2d at 539 (stating we give weight to the district court's factual findings, particularly those pertaining to witness

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[3] If C.J. spent every other week with each of his parents with the exchange taking place Friday evenings, and if M.J. spent every other weekend with her mother, the children would be together every weekend alternating at each parent's house, and would spend every other week together at Greg's home. The only time the children would be apart would be Monday through Friday on the weeks C.J. spent with Dawn.

credibility). Here, there is no evidence Greg ever harmed the children, but the children were exposed to or in a position to overhear the arguments. In addition, the police were called to the marital home eight times during the pendency of the divorce. We find the evidence sufficient to support the district court's decision awarding physical care of the children to Dawn, and decline to alter it at this point.

IV. CHILD SUPPORT. Next, Greg asserts the district court erred in calculating his child support based on his earning capacity rather than his actual earnings. He contends the district court incorrectly concluded his reduced income was self-inflicted. He testified he felt he had no choice but to terminate his position as an over-the-road trucker so he could provide a home for his children after Dawn filed for divorce. He also maintains after he quit his job, he was able to find a local driving position with similar earnings, only to be involuntarily terminated as a result of a workforce reduction when the company was sold. He states he should not be penalized for trying to provide his children a home during the divorce. Greg claims at the time of trial his net monthly income was $1569, but the court ordered him to pay $953 a month in child support leaving him with only $616 to cover all of his other expenses. The district court found if the child support was calculated under the guidelines using both parties' actual earnings, the support amount would be $465 per month.

The district court is required to determine the amount of child support specified by the guidelines, and there is a rebuttable presumption the guideline amount is the correct amount of child support to be ordered. Iowa Ct. R. 9.4.

However, the court can vary the amount if it makes a written finding the guideline amount is unjust or inappropriate. Iowa Ct. R. 9.11. In order to use the earning capacity rather than the actual earnings of a party, the court must find the use of the actual earnings would result in substantial injustice or necessitate adjustments to provide for the needs of the child or do justice between the parties. Iowa Ct. R. 9.11(4). One of the factors to consider when determining whether to use earning capacity rather than actual earnings is whether the parent's inability to earn a greater income is self-inflicted or voluntary. *In re Marriage of McKenzie*, 709 N.W.2d 528, 533 (Iowa 2006). The court must also examine the employment history, current earnings, and reasons for failing to work when deciding whether to use the earning capacity of a parent. *In re Marriage of Nelson*, 570 N.W.2d 103, 106 (Iowa 1997).

While the district court in this case found Greg's reduced ability to pay child support was self-inflicted, we disagree. Greg's goal in quitting his position was to spend more time with his children and provide them a home during and after the divorce, something he could not do if he continued working as an over-the-road driver. He did not quit his job with the intention of reducing his child support. *See In re Marriage of Nielsen*, 759 N.W.2d 345, 348 (Iowa Ct. App. 2008) (finding no evidence to support using the earning capacity rather than actual earnings where the wife was actively looking for work and had not voluntarily reduced her income). In addition, Greg was able to find employment almost immediately with a local driving company only to be involuntarily terminated due to a work force reduction. We find it inequitable in this case to

impute income to Greg based on his 2009 earnings, and remand to the district court to calculate the child support obligation based on the parties' actual earnings.

V. TRIAL ATTORNEY FEES. Greg also asserts the district court's decision ordering him to pay $2500 of Dawn's trial attorney fees was unfair and unreasonable. He asserts he has no more ability to pay Dawn's attorney's fees than he has money to pay the child support ordered by the court.

An award of attorney fees rests in the discretion of the trial court, and we will not overturn such a decision absent an abuse of discretion. *Applegate*, 567 N.W.2d at 675. An award of attorney fees depends on the respective abilities of the parties to pay. *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994). The district court found an award of attorney fees was warranted here as Greg had a greater income than Dawn, was receiving his vehicle clear of any debt, and had cashed out his 401K using the money for his own purposes. We find the district court did not abuse its discretion in awarding attorney fees to Dawn.

VI. MOTION FOR NEW TRIAL. Finally, Greg asserts the district court erred in denying his motion for a new trial. In his motion, Greg asked the district court to reconsider its decision on physical care, child support, and attorney fees. As we have already reviewed these issues above under the de novo standard of review, we need not address them again here. *See In re Marriage of Leo*, 213 N.W.2d 495, 498 (Iowa 1973) (holding in reviewing equity cases, if we find error we can decide the case on the record before us without a remand).

Greg also sought a new trial based on what he called "newly discovered evidence." In support of his motion, Greg filed an affidavit recounting Dawn's violations of the district court's decree regarding his visitation with the children.[4] He attached text messages Dawn sent him refusing to compel C.J. to attend visitation, and also text messages from M.J., which detailed the fights she was having with Dawn. The district court denied Greg's motion finding the evidence of the parties' behavior since the decree was entered further supports the original determination that joint physical care is unworkable. Greg contends the district court's denial of his motion amounts to an abuse of the court's discretion that should be corrected on appeal.

We review a motion for a new trial based on newly discovered evidence under Iowa Rule of Civil Procedure 1.1004(7) for abuse of discretion. *In re Marriage of Wagner*, 604 N.W.2d 605, 608 (Iowa 2000). The trial court has broad but not unlimited discretion. *Benson*, 537 N.W.2d at 762. In order for newly discovered evidence to warrant a new trial the evidence must have existed at the time of trial, but was not produced at trial due to the excusable neglect of a party. *Id*. at 762–63. In this case, the evidence Greg asserts supports his motion did not exist at the time of trial, but occurred following the court's dissolution decree. It is thus not "newly discovered evidence" which would justify a new trial. Therefore, the court did not abuse its discretion in denying Greg's motion.

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[4] Greg also filed a motion to show cause arising out of Dawn's refusal to enforce his visitation with C.J. At the hearing on the motion to show cause, Dawn was found in contempt and sentenced to seven days in jail. She was allowed to purge her sentence by complying without excuse with the visitation order through August 31, 2011.

VII. SPOUSAL SUPPORT. In her cross-appeal, Dawn contends the district court erred in failing to award her spousal support. She believes she is entitled to traditional alimony as she sacrificed earnings over time by staying at home and raising the children, while Greg was able to get his commercial driver's license during the marriage, thereby greatly increasing his earning capacity. She contends she does not have the educational background or skills to increase her income, and Greg benefited greatly by the district court's property division.

A party is not entitled to alimony as a matter of right, but its award depends on the circumstances of each case. *Anliker*, 694 N.W.2d at 540. We consider the factors in Iowa Code section 598.21A[5] when determining whether

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[5] Iowa Code section 598.21A provides:

> 1. Criteria for determining support. Upon every judgment of annulment, dissolution, or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:
>
> 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.

equity requires an award of alimony. The property distribution is considered in conjunction with alimony, and alimony is justified "when the distribution of assets of the marriage does not equalize the inequities and economic disadvantages suffered in the marriage by the party seeking the alimony who also has a need for support." *In re Marriage of Weiss*, 496 N.W.2d 785, 787–88 (Iowa Ct. App. 1992).

In this case we agree with the district court no alimony award is warranted. Both parties are in good health and capable of earning more than they were earning at the time of trial. The parties need to earn up to their capacities to pay their own bills and not lean unduly on the other party for support. *In re Marriage of Hazen*, 778 N.W.2d 55, 61 (Iowa Ct. App. 2009). At the time of trial, the parties' hourly wages were substantially the same, though Greg was working full time and Dawn was working part time. While Dawn did care for the children during the marriage, she was also able to maintain a number of both part-time and full-time jobs throughout the marriage. Therefore, we find Dawn was not absent from the labor market for a substantial period of time in order to raise the children. *See In re Marriage of Miller*, 475 N.W.2d 675, 677 (Iowa Ct. App. 1991) (finding an award of alimony justified where the wife had been removed from the job market a considerable period of time to assume substantial responsibility for the parties' children). The property division allocated the debts and assets equally. We find equity does not require an award of alimony in this case.

VIII. CONCLUSION. To summarize we find physical care of M.J. and C.J. was properly placed with Dawn. The parties made it abundantly clear

throughout the trial that they are unable to communicate without subjecting their children to substantial conflict, which makes joint physical care impossible and not in the best interest of the children. We find the district court should have used the parties' actual earnings to calculate child support, and accordingly, we remand the case for a recalculation of child support. We find the district court did not abuse its discretion in awarding trial attorney fees or in denying Greg's motion for a new trial. Finally, we reject Dawn's cross-appeal requesting alimony as we find such an award not equitable considering the property distribution, and earning capacity of both parties. Costs on appeal shall be assessed one-half to each party.

AFFIRMED AS MODIFIED AND REMANDED.