

**IN THE COURT OF APPEALS OF IOWA**

No. 2-068 / 11-1248  
Filed March 14, 2012

**IN RE THE MARRIAGE OF CANDACE RONFELDT  
AND KEVIN RONFELDT**

**Upon the Petition of**

**CANDACE RONFELDT,**  
Petitioner-Appellee,

**And Concerning**

**KEVIN RONFELDT,**  
Respondent-Appellant.

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

Kevin Ronfeldt appeals the district court's decree dissolving his marriage to Candace Ronfeldt. **AFFIRMED AS MODIFIED AND REMANDED.**

Thomas J. Anderson of Thomas J. Anderson, P.C., L.L.O., Omaha, Nebraska, for appellant.

Bryan D. Swain of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellee.

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

**MULLINS, J.**

Kevin Ronfeldt appeals the district court's July 15, 2011 decree dissolving his marriage to Candace Ronfeldt. Kevin asserts the district court erred in (1) awarding the physical care of their minor child to Candace and not providing him sufficient visitation; (2) awarding alimony to Candace; (3) calculating the child support due; (4) awarding all the equity in the marital home to Candace; and (5) granting Candace one-half of his military retirement pension. For the reasons stated below, we affirm as modified and remand.

**I. BACKGROUND AND PROCEEDINGS.** Kevin and Candace were married January 27, 1989, and had four children during the marriage; however, only one child, Chance, now three years old, is subject to this action. Kevin served in the U.S. Navy for twenty years, seventeen while married to Candace. He retired in 2007, and now draws a military retirement pension and disability pension. He also works part time for the City of Persia as a mechanic.

Candace married Kevin shortly after turning eighteen. She graduated from high school, but did not obtain any post-secondary education. She stayed at home with the children for most of the marriage, occasionally securing employment when the children went to school. At the time of the dissolution trial, she was employed at Menards thirty-two hours a week earning \$8.75 per hour.

The case proceeded to trial on May 5, 2011. The court was notified prior to the start of trial the parties had reached an agreement on a number of issues. Counsel read the stipulation into the record, which provided the parties would have joint legal custody of Chance with Candace having physical care, and Kevin

having twelve overnight visits per month to be determined by the parties. If the parties could not agree on the visitation dates, the stipulation provided a minimum amount of visitation for Kevin,<sup>1</sup> and for Kevin to receive the first level of the extraordinary visitation credit. Kevin was required to maintain health insurance on Chance.

Per the stipulation, the parties would each be responsible for the credit cards in each of their names. The marital residence and debt would be awarded to Candace, though the court would need to determine the amount of equity, and how it would be awarded. Each party would be awarded the vehicle in their possession, together with the respective debt, and Kevin would be awarded the four-wheelers and his tools. In addition, Candace agreed to allow the court to impute income to her in the amount of \$23,504 annually, which amounts to a full-time job earning \$11.30 per hour.

The court then heard testimony from each party and filed its decision July 15, 2011. The court awarded physical care and visitation consistent with the stipulation. It ordered Kevin to pay child support in the amount of \$390 per month. It awarded the house and all of the equity to Candace. One-half of Kevin's military retirement pension was to be paid to Candace, and Kevin was ordered to pay alimony in the amount of \$175 per month for three years. Kevin appeals this decree.

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<sup>1</sup> The minimum visitation schedule in the event the parties could not agree consisted of Kevin having visitation no less than every other weekend from Friday at 5:00 p.m. to Sunday at 5:00 p.m.; every Wednesday from 8:00 a.m. to 8:00 a.m. the following day; and every other Tuesday from 8:00 a.m. until 8:00 a.m. the following day on those weeks Kevin does not have weekend visitation.

**II. SCOPE OF REVIEW.** Our review of dissolution cases is de novo. *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009). We give weight to the trial court's factual finding, especially its determinations of credibility, but we decided the issues anew. *In re Marriage of Witten*, 672 N.W.2d 768, 773 (Iowa 2003). As we base our decision on the facts of each case, precedent is of little value. *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995).

**III. PHYSICAL CARE AND VISITATION.** Kevin agrees the parties stipulated to the custody and visitation arrangement at trial, but maintains it was error for the district court to award a minimum amount of visitation that only resulted in ten overnights, rather than twelve overnights per month. He also complains the district court failed to provide for holiday or summer visitation. If summertime and holiday visitation were added to the twelve overnights per month, Kevin asserts he should be entitled to a higher level of the extraordinary visitation credit on his child support obligation. He also appears to claim the district court erred in not considering awarding the parties joint physical care of Chance despite the parties' stipulation Candace would have physical care.

If Kevin wished to expand the minimum default visitation to have specified visitation on holidays and in the summer in excess of the amount in the stipulation, or if he wished the court to consider a joint physical care arrangement, he was obligated to bring those matters to the court's attention during the recitation of the stipulation, during trial, and/or by filing a post-trial motion asking the court to amend or modify its ruling under Iowa Rule of Civil Procedure 1.904. *In re Marriage of Maher*, 596 N.W.2d 561, 567 (Iowa 1999).

Upon our review of the record, we find he did none of the above. Therefore, we agree with Candace that Kevin has failed to preserve error on the issues of expanding the minimum default visitation, adding visitation on the holidays and in the summer, and awarding joint physical care. Because we are not enlarging the visitation ordered by the district court, we do not consider Kevin's claim he should be entitled to a higher extraordinary visitation credit. We therefore affirm the custody and visitation provisions of the district court's decree.

**IV. ALIMONY.** Next, Kevin asserts the district court erred in awarding Candace rehabilitative alimony in the amount of \$175 per month for three years. Kevin asserts the district court failed to consider the factors contained in Iowa Code section 598.21A (2009).<sup>2</sup> Kevin believes Candace is not entitled to

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<sup>2</sup> 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.

rehabilitative alimony as she was working close to full time at the time of the dissolution, liked her job, and did not express any need or desire to further her training or education in order to improve her earning potential. In addition, Kevin believed the property distribution “went in Candace’s favor,” and thus, no alimony should be awarded.

Alimony is not an absolute right, but depends on the circumstances of each case. *In re Marriage of Hazen*, 778 N.W.2d 55, 61 (Iowa Ct. App. 2009). The court can consider the property division in connection with the alimony award, *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004); and we will not disturb the district court’s determination unless we find there has been a failure to do equity. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005).

From our review of the evidence, we find the award of rehabilitative alimony appropriate. In reaching its conclusion, the district court noted the parties were married for twenty-two years. Candace was young when she got married, and did not work for the vast majority of the marriage as she was raising the parties’ four children. In addition, the family was required to move often due to Kevin’s military career making any long-term employment for Candace impossible. Candace had no education beyond high school, and until recently her only work experience was in fast food service, and some volunteer clerical work. Kevin has a higher earning capacity than Candace considering his twenty years experience in the Navy, and his training and skill as a mechanic. We have also considered the distribution of the military retirement pension as modified by

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j. Other factors the court may determine to be relevant in an individual case.

this opinion. With the modest amount of alimony ordered and its limited duration, Kevin will still be able to maintain his standard of living. We find the district court's award of rehabilitative alimony equitable.

**V. MILITARY RETIREMENT PENSION.** Kevin claims the district court erred in awarding Candace 50% of his military retirement pension. He asserts she should be awarded only 42.5% of the pension as they were only married for seventeen of the twenty years he spent in the service.<sup>3</sup>

In *In re Marriage of Howell*, 434 N.W.2d 629, 632 (Iowa 1989) the supreme court held a military pension is no different than a private pension, and is subject to equitable division. We must consider again the factors listed in Iowa Code section 598.21(5) in determining an equitable property division in this case. The district court acknowledged the parties were married for seventeen of the twenty years Kevin spent in the Navy, but still concluded Candace should be entitled to one-half of the pension.

Kevin advocates the use of the same formula the court used in *Howell* to determine the appropriate percentage of the retirement pension to award. *Howell*, 434 N.W.2d at 633. While the formula in *Howell* was found to be equitable, this does not mean that any other division of the pension benefit is inequitable. There are no hard and fast rules that govern property distribution, and we must decide each case on the unique facts presented. *In re Marriage of Urban*, 359 N.W.2d 420, 423 (Iowa 1984). On our de novo review in this case, we find it equitable to apply the formula used in *Howell*, and award Candace one-

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<sup>3</sup> Kevin calculates this percentage by multiplying one-half of his pension by seventeen-twentieths.

half of the retirement pension allocable to seventeen of Kevin's twenty years of service. See also *In re Marriage of Benson*, 545 N.W.2d 252, 255-57 (Iowa 1996). After considering the current employment of each party, the relative earning capacities of the parties, the other provisions of the property settlement, the alimony and the length of the marriage, we find the award of 50% of the retirement pension should be modified to an award of 42.5% in order to achieve equity in this case.

**VI. CHILD SUPPORT.** Kevin asserts the district court erred in calculating the amount of child support he is obligated to pay. Kevin believes the district court failed to compute each party's earnings accurately and failed to give him credit for the health and dental insurance premiums he is ordered to pay for Chance.

When establishing child support, the court must look to the amount specified in the guidelines, and there is a rebuttable presumption the guideline amount is correct. *Jones*, 653 N.W.2d at 593. From our review of the district court's written order and the oral findings it made before closing the trial record, we find the district court properly calculated the child support due in this case. Candace stipulated the court could impute to her income in the amount of \$23,504, and the court added to this amount 50% of Kevin's military retirement pension. Kevin's income was calculated based on his earnings from the City of Persia, his untaxed disability pension, and 50% of his military retirement pension. Kevin was given a credit for the insurance premiums he was required to pay, and Candace was given a credit for ninety-six hours worth of day care expense.



Finally, the court gave Kevin a 15% reduction in support based on his extraordinary visitation and calculated support based on alternating the tax deduction for Chance every other year.

The district court correctly did not include, as income to Candace or as a reduction in income to Kevin, the rehabilitative alimony order as under Iowa Court Rule 9.5(8) only prior spousal support obligations are deductible from net monthly income, not support ordered in the present decree. *In re Marriage of Lalone*, 469 N.W.2d 695, 697 (Iowa 1991). While the district court does have the ability to include the current alimony amount in the child support calculations if failure to do so would result in substantial injustice to either party or the child, we do not find such substantial injustice would occur in this case. *Id.*

It is necessary, however, to recalculate child support in light of our modification in distribution of the military retirement pension. Accordingly, we affirm the methodology used by the district court in its order establishing the child support at \$390 per month, but remand for recalculation consistent with this opinion.

**VII. PROPERTY DISTRIBUTION.** Kevin claims the district court erred in failing to determine the amount of equity in the marital home and in awarding that equity to Candace. While the pre-trial stipulation provided Candace would be awarded the home, Kevin claims the parties did not stipulate Candace would receive all of the equity in the home. Considering Candace had been awarded 50% of his military retirement pension, her vehicle free of any debt, and spousal support for three years, Kevin claims it is inequitable to permit her to have all of

the equity in the home as well. We will consider his argument in light of our modification of the distribution of the military retirement pension.

When dividing property pursuant to a dissolution decree, the court should consider the factors in Iowa Code section 598.21(5).<sup>4</sup> The basic condition on the division of property is that the division must be equitable to both parties, though

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<sup>4</sup> Iowa Code section 598.21(5) provides:

The court shall divide all property, except inherited property or gifts received or expected by one party, equitably between the parties after considering all of the following:

- a. The length of the marriage.
- b. The property brought to the marriage by each party.
- c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
- d. The age and physical and emotional health of the parties.
- e. The contribution by one party to the education, training, or increased earning power of the other.
- f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.
- g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.
- h. The amount and duration of an order granting support payments to either party pursuant to section 598.21A and whether the property division should be in lieu of such payments.
- i. Other economic circumstances of each party, including pension benefits, vested or unvested. Future interests may be considered, but expectancies or interests arising from inherited or gifted property created under a will or other instrument under which the trustee, trustor, trust protector, or owner has the power to remove the party in question as a beneficiary, shall not be considered.
- j. The tax consequences to each party.
- k. Any written agreement made by the parties concerning property distribution.
- l. The provisions of an antenuptial agreement.
- m. Other factors the court may determine to be relevant in an individual case.

Iowa courts do not require an equal division or percentage distribution. *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa Ct. App. 1996).

In this case contrary to Kevin's claim, the court did determine the equity in the marital home. One of the issues the court had to resolve at trial was the value of the home. Candace submitted an appraisal establishing the value at \$43,000, while Kevin testified the house should be valued at the current tax assessment of \$53,048. At the conclusion of the hearing, the district court ruled it would value the home at \$43,000 based on the appraisal, which it believed was a more accurate picture of what the house was worth. We find this conclusion valid considering the appraisal was done just a few weeks before trial, the tax assessment had not changed since 2007, and the parties purchased the home in 2007 for \$48,000, which was less than the assessed value at the time. With the value of the home at \$43,000, and the undisputed amount left outstanding on the mortgage, the equity in the home was slightly less than \$11,000.

While we acknowledge the property distribution is not equal, after considering all of the economic provisions of the decree, we cannot say awarding Candace all of the equity in the home was inequitable. Both parties have a negative net worth due to the credit card debt incurred during the marriage. Kevin is leaving the marriage with slightly more debt, but also has a higher earning capacity and higher monthly income. We affirm the district court's award of the marital home and its equity to Candace.

**VIII. APPELLATE ATTORNEY FEES.** Candace requests we award her appellate attorney fees. An award of appellate attorney fees is not a matter of

right, but rests with our discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). “We consider the needs of the party making the request, the ability of the other party to pay, and whether the party was required to defend the district court’s decision on appeal.” *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). After considering all these factors, we award Candace \$500 in appellate attorney fees.

**IX. CONCLUSION.** In conclusion, we find Kevin has failed to preserve error on the issue of additional visitation and joint physical care as he did not bring either issue to the district court’s attention at trial or in any post-trial motion. We find the award of three years of rehabilitative alimony, and the equity in the marital home to Candace equitable in this case. However, we find Candace should be awarded 42.5% of Kevin’s military pension instead of 50%. We therefore affirm the dissolution as modified, and remand to the district court for recalculation of the child support in light of the change in the parties’ net monthly income.

**AFFIRMED AS MODIFIED AND REMANDED.**

**VAITHESWARAN, P.J.** (concur in part and dissents in part)

I concur in part and dissent in part. I would divide the military pension equally, as the district court did, given that Kevin's income was significantly more than Candace's, the marriage was long, and Candace received a fairly minimal rehabilitative alimony award. For these reasons, I would affirm the district court decree in its entirety.