

**IN THE COURT OF APPEALS OF IOWA**

No. 2-071 / 11-1373  
Filed March 28, 2012

**IN RE THE MARRIAGE OF  
PATRICIA R. BARTELS  
AND BRIAN J. BARTELS**

**Upon the Petition of  
PATRICIA R. BARTELS,**  
Petitioner-Appellant,

**And Concerning  
BRIAN J. BARTELS,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Hardin County, Timothy J. Finn,  
Judge.

Patricia Bartels appeals a district court order terminating a spousal  
support obligation. **AFFIRMED.**

Lynn J. Wiese of Barker, McNeal, Wiese & Holt, Iowa Falls, for appellant.

Lawrence B. Cutler of Craig, Smith & Cutler, L.L.P., Eldora, for appellee.

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

**VAITHESWARAN, P.J.**

Patricia Bartels appeals a district court order terminating her spousal support.

***I. Background Facts and Proceedings***

Patricia and Brian Bartels divorced in 2009. Under the dissolution decree, Brian was to pay Patricia \$1250 per month in “permanent” alimony, to be reduced to \$400 per month when Brian reached sixty-five and retired. The court later enlarged the decree to clarify that (1) the award was “traditional” alimony; (2) the award would cease upon either party’s death or Patricia’s remarriage; and, (3) if Patricia began cohabitating with another individual, the issue of alimony could be revisited by way of a modification action.

Following entry of the dissolution decree, Patricia became romantically involved with Douglas Huffaker, who lived in Nebraska. She quit her job in Iowa, moved to Nebraska, and began living with Huffaker.

Brian petitioned to modify the spousal support provision based on Patricia’s cohabitation. Patricia admitted she was living with someone but denied that this fact warranted a termination of spousal support. After an evidentiary hearing, the district court concluded that Brian’s spousal support payments to Patricia should end. Patricia appealed.

***II. Analysis***

A dissolution decree may be modified if there is a “substantial change in circumstances.” Iowa Code § 598.21C(1) (2009). “Like remarriage, cohabitation can affect the recipient spouse’s need for spousal support and is therefore a factor to consider in determining whether there has been a substantial change in

circumstances warranting modification.” *In re Marriage of Ales*, 592 N.W.2d 698, 703 (Iowa Ct. App. 1999). Once the payor has established cohabitation, “the burden will shift to the recipient to show why spousal support should continue in spite of the cohabitation because of an ongoing need, or because the original purpose for the support award makes it unmodifiable.” *Id.* This burden has been characterized as “heavy.” *In re Marriage of Wendell*, 581 N.W.2d 197, 200 (Iowa Ct. App. 1998). Additionally, the “ongoing need” that must be shown in a modification proceeding is different in kind from the type of need justifying the initial spousal support award. See *In re Marriage of Shima*, 360 N.W.2d 827, 829 (Iowa 1985) (discussing ongoing need in context of subsequent remarriage). The recipient of spousal support must demonstrate “extraordinary circumstances” warranting a continuation of that support. *Id.*; *Ales*, 592 N.W.2d at 702–03.

We are not convinced Patricia satisfied her heavy burden of demonstrating “extraordinary circumstances” to continue spousal support. The district court found that she had an ability to earn \$20,000 annually. Patricia does not take issue with this finding, although her actual earnings were far less than that. As for her expenses following the move, Patricia acknowledged she had unrestricted access to a joint checking account funded by Huffaker and acknowledged that she did not pay rent or utilities for the home she shared with Huffaker. While she claimed to have an obligation to make monthly installment payments on several debts, she conceded one of those debts was a sum she owed to Huffaker, who had not made any attempt to collect it; another would be paid off in five months; and a third was duplicative of a fourth itemized debt. Huffaker also confirmed that most of the couple’s bills were paid from the joint

checking account, which was entirely funded by automatic deposits of his employment-related paychecks. Based on this testimony, we agree with the district court that “Patricia does not need the alimony at the present time to maintain her lifestyle.”

In reaching this conclusion, we have considered Patricia’s invitation to examine Brian’s significantly greater financial resources. While Patricia is correct that “her income remains less than one-fourth of Brian’s,” we believe that fact matters little in determining whether she had a financial need for spousal support at the time of the modification action. See *Ales*, 592 N.W.2d at 703 (focusing on amount of support recipient of spousal support received from cohabitating individual). That fact is more germane to determining an amount of ongoing spousal support should a need be found, an issue that we need not decide.

### ***III. Appellate Attorney Fees***

Patricia asks that we order Brian to pay her appellate attorney fees. As she did not prevail, we decline her request. See *In re Marriage of Johnson*, 781 N.W.2d 553, 559–60 (Iowa 2010) (“The Code only allows our courts to award attorney fees to the prevailing party in a proceeding seeking modification of a decree.”).

We affirm the district court’s order granting Brian’s application to modify the spousal support provision of the dissolution decree.

**AFFIRMED.**