

IN THE COURT OF APPEALS OF IOWA

No. 2-293 / 11-0990
Filed May 9, 2012

**IN RE THE MARRIAGE OF
KIMBERLY J. HEITMAN AND
TROY K. HEITMAN**

**Upon the Petition of
KIMBERLY J. HEITMAN,**
Petitioner-Appellee,

**And Concerning
TROY K. HEITMAN,**
Respondent-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Mark J. Eveloff, Judge.

Troy Heitman appeals the alimony provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Michael J. Murphy of Murphy & Murphy Law Offices, Council Bluffs, and Jon Jacobmeier of Wilber & Jacobmeier, Council Bluffs, for appellant.

Stephen C. Ebke of Porter, Tauke & Ebke, Council Bluffs, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

POTTERFIELD, J.

After a trial, the district court entered a decree dissolving the sixteen-year marriage of Kimberly Heitman (Kim) and Troy Heitman. The parties were awarded joint legal custody of their fourteen-year-old son and were to share his care on alternating weeks. The court found Kim earned \$20,000 annually and Troy earned \$65,588. Troy was ordered to pay Kim child support in the amount of \$356.69 per month, and alimony in the amount of \$500 per month. However, “as long as [Kim] is residing in the marital home, there will be no spousal support paid to her.”

Troy filed a motion pursuant to Iowa Rule of Civil Procedure 1.904 complaining that the court “made no findings in regards to the alimony claim” and that “the court did not differentiate whether it was traditional, rehabilitative or reimbursement alimony” or “place any restrictions on [Kim’s] status for alimony if she remarries.” The court thereafter entered an order stating the “alimony is to be considered as traditional alimony and it would end upon [Kim’s] remarriage and also terminate at the death of either party.” Troy now appeals the alimony award.

We have reviewed the record de novo, see Iowa R. App. P. 6.907; and carefully considered the various complaints Troy raises as to the award of alimony. There is no doubt alimony was an issue at trial. Whether alimony is awarded depends on the circumstances of each particular case. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). In determining whether to award alimony, the district court is to consider the factors in Iowa Code section 598.21A(1) (2011). That section allows the court to consider (1) the length of the

marriage, (2) the age and physical and emotional health of the parties, (3) the property distribution, (4) the educational level of the parties at the time of the marriage and at the time the dissolution action is commenced, (5) the earning capacity of the party seeking alimony, and (6) other factors the court may determine to be relevant in an individual case. Iowa Code § 598.21A(1)(a)–(e), (j). We only disturb the district court’s decision if there is a failure to do equity. *Anliker*, 694 N.W.2d at 540.

Contrary to Troy’s contentions, from our review of the court’s findings and the decree, we are able to glean what factors the court considered in awarding alimony, all of which are appropriate statutory criteria. The court’s finding as to Kim’s earnings, which includes undeclared tips and cash payments, is reasonable. Troy makes more than three times what Kim does. In view of the economy, and Kim’s education and work skills and history, Troy’s contention that Kim’s earnings could be substantially higher is unrealistic. We conclude the spousal support award of \$500 per month in traditional alimony is equitable and should not be disturbed. See *id.* at 541. However, we modify the decree in one respect. Alimony shall continue until Kim attains the age of eligibility for full social security retirement benefits, remarries, or either party dies.

Costs are assessed to Troy.

AFFIRMED AS MODIFIED.