

IN THE COURT OF APPEALS OF IOWA

No. 2-643 / 12-0090
Filed August 22, 2012

**IN RE THE MARRIAGE OF KAREN ANN PELLETIER
AND PAUL JEFFRY PELLETIER**

Upon the Petition of

KAREN ANN PELLETIER,
Petitioner-Appellee,

And Concerning

PAUL JEFFRY PELLETIER,
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, Ian K. Thornhill,
Judge.

Paul Pelletier appeals the support provisions of a temporary order in a
dissolution action. **AFFIRMED.**

Mark D. Fisher of Nidey, Erdahl, Tindal & Fisher, Cedar Rapids, for
appellant.

Steven E. Howes and Michael J. Harris of Howes Law Firm, P.C., Cedar
Rapids, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

BOWER, J.

Respondent Paul Pelletier appeals the support provisions of a temporary order in a dissolution action. Upon our review, we find the temporary order entered by the district court is equitable. Accordingly, we affirm.

Discussion.

This appeal was initiated following a temporary order entered by the district court during the pendency of Paul and Karen Pelletier's dissolution action.

Paul and Karen were married in 1999. They have one child, born in October 2005. On June 1, 2011, Karen filed a petition to dissolve the marriage. On June 2, 2011, Karen filed a petition for relief from domestic abuse in Linn County, Case No. DADA009688, and on June 16, 2011, the court entered a temporary order providing that Karen was to have physical care of the parties' child and exclusive use of the parties' home.

On December 13, 2011, an unreported hearing on temporary matters in the dissolution action was held.¹ Following the hearing, the court entered a temporary custody and support order. The court ordered Karen to have physical care of the parties' child and Paul to have reasonable visitation. As the court observed:

Based upon the limited information before it, the Court finds shared care is not in the best interest of the parties' child. Shared care is not in the child's best interest at this time because of the Chapter 236 Protective Order entered by the Court today in Linn County Case No. DADA009688. The Court finds the child's best interest is to maintain the status quo, with modifications, pending final resolution of this matter. The Court entered a temporary

¹ A hearing on Case No. DADA009688 was also held on that day.

custody and visitation schedule on June 16, 2011, in Case No. DADA009688.

The court further set Paul's child support obligation. Sometime prior to the hearing on temporary matters, Paul became unemployed. However, the court took notice of Paul's work history between 2006 and 2011, which included employment with the United States Naval Reserve, Finley Hospital, Kirkwood Community College, and Novis Group. Paul's salary in these positions ranged from \$65,000 to \$80,000 per year. Pursuant to the temporary order, the court ordered Paul to pay \$145 per month for child support. As the court observed:

For the purposes of calculating temporary child support, the Court finds Petitioner's annual income is \$59,508. The Court also finds that Respondent's annual income has not been established to a reliable degree. Therefore, the Court finds Respondent, who is fully capable of working, should be imputed with an annual income equal to the full-time minimum wage salary of \$15,080. The Court finds that, during the pendency of this litigation or until further order of this Court, the Respondent shall pay, as temporary child support for [the child], now residing with Petitioner, the sum of \$145 per month, plus \$25 per month in cash medical support.

The court also denied Paul's request for temporary spousal support and attorney fees. On appeal, Paul Pelletier argues the district court erred in (1) ordering him to pay \$145 per month in child support based on imputed income, (2) refusing to award him spousal support, and (3) denying his request for attorney fees.

Upon our de novo review, see Iowa R. App. P. 6.907, we find the result reached by the trial court is equitable. The district court's imputed income to Paul of \$15,080 was within the permissible range of the evidence presented. See *In re Marriage of McKenzie*, 709 N.W.2d 528, 533 (Iowa 2006) (observing

the best indication of father's earning capacity is the salary he received in his prior position); *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991) (finding father's unemployment to be temporary and endorsing necessity of averaging income when determining currently monthly income).

We conclude the court's decision not to award temporary spousal support to be equitable under these circumstances. See *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005) (noting that spousal support is not an absolute right, an award depends upon the circumstances of the particular case, and the district court is given considerable latitude in determining whether an award is equitable). Specifically, we do not find Paul is incapable of self-support that would allow him to maintain the same standard of living he enjoyed during the marriage. See *In re Marriage of Becker*, 756 N.W.2d 822, 826–27 (Iowa 2008).

We further conclude the district court did not abuse its discretion in denying Paul's request for attorney fees. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996) (observing that attorney fee awards are not a matter of right but rather rest within the discretion of the court). We decline to award Paul any appellate attorney fees. See *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005) (noting our discretion to award attorney fees on appeal upon consideration of the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal). We affirm the temporary order entered by the district court.

AFFIRMED.