

**IN THE COURT OF APPEALS OF IOWA**

No. 2-783 / 12-0392  
Filed October 17, 2012

**IN RE THE MARRIAGE OF JEFFREY A. RICHTER  
AND LISA M. RICHTER**

**Upon the Petition of  
JEFFREY A. RICHTER,**  
Petitioner-Appellee,

**And Concerning  
LISA M. RICHTER,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Dickinson County, David A. Lester,  
Judge.

Jeffrey Richter appeals and Lisa Richter cross-appeals the decree issued  
by the district court dissolving their marriage. **AFFIRMED.**

David P. Jennett of David P. Jennett, P.C., Storm Lake, for appellant.

Joseph L. Fitzgibbons of Fitzgibbons Law Firm, L.L.C, Estherville, for  
appellee.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

**DOYLE, J.**

Jeffrey “Jeff” Richter appeals and Lisa Richter cross-appeals the decree issued by the district court dissolving their marriage. Upon our review, we affirm.

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

The parties’ twelve-year marriage was dissolved in December 2011. At the time of the decree, Jeff was forty-three years old and Lisa was forty-one. The parties’ children were eleven, eight, five, and three.

Jeff is senior vice president for a local bank. The district court found Jeff’s gross annual income was \$186,208.33. Lisa, who had earned both a college and a master’s degree, worked as a speech pathologist for a local Area Education Association (AEA). She had worked full-time with the AEA until the birth of the parties’ youngest child, when the parties’ agreed Lisa would take a one-year sabbatical to care for their four children. When Lisa sought to return to the AEA, a full-time position was no longer available due to budget cuts. She accepted a part-time position with the AEA in August 2007, and she has since continued to work there three days a week. In 2010, Lisa earned \$40,666.64, with \$1787.11 being deducted for contributions to IPERS.

The decree approved the parties’ partial stipulation, which provided for a division of their personal property; a \$10,000 lump sum cash payment from Jeff to Lisa at the time the proceeds from the sale of the marital residence were distributed; and forgiveness of Lisa’s \$7050 debt owed to Jeff for Jeff’s payments of the parties’ mortgage. This resulted in Lisa receiving net marital assets having a value of \$20,557 greater than Jeff.

Jeff was ordered to pay Lisa spousal support in the amount of \$2200 per month for twelve years, and the spousal support obligation was ordered not to automatically terminate upon Lisa's remarriage or cohabitation with an adult male. Jeff was also ordered to pay child support for the four minor children, and the court determined that, in calculating the amount, Jeff's monthly income should not be reduced by his monthly spousal support obligation.

As agreed by the parties, the court granted them joint legal custody of the children, with Lisa having primary physical care.<sup>1</sup> The court fashioned a visitation schedule that generally followed the parties' temporary visitation schedule, but it changed the children's weekly overnight visit in the summer months from Wednesday to Thursday, and it denied Jeff's request for an overnight visit during the week when he had overnight visitation on the weekend. The court denied both parties' request for attorney fees.

Both parties filed a motion to reconsider "and/or" amend or enlarge the decree. Pertinent to this appeal, Jeff asked the court to reconsider its visitation schedule. Jeff also asked the court to reconsider its spousal support award's amount and duration, as well as classification of the support and its termination. Jeff challenged Lisa's monthly expenses and argued the court failed to take into consideration Lisa's greater net assets in the property division award. Jeff argued the court erred in its child support award in failing to subtract the spousal support obligation from his income and in failing to add it to Lisa's income.

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<sup>1</sup> "Primary physical care" is not defined in Iowa Code chapter 598 (2011); nevertheless, we recognize the term is commonly used by parties, their counsel, and the courts.

In January 2012, the district court entered its ruling enlarging some of its facts, but affirming on the issues stated above. The court set forth detailed explanations for its visitation schedule, as well as its child and spousal support awards.

Jeff now appeals and Lisa cross-appeals.

## ***II. Scope and Standards of Review.***

We review dissolution of marriage cases de novo. Iowa R. App. P. 6.907; *In re Marriage of Veit*, 797 N.W.2d 562, 564 (Iowa 2011). We decide the issues raised anew, but give weight to the district court's factual findings, especially with respect to the credibility of the witnesses. *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). Because we base our decision on the unique facts of each case, precedent is of little value. *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009). Although our review is de novo, we give the district court considerable latitude in determining whether to award spousal support based upon the statutory factors and will disturb its finding only when the award is inequitable. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). To the extent that interpretation of the child support guidelines is a legal question, our review on that issue is for errors at law. *In re Marriage of McCurnin*, 681 N.W.2d 322, 327 (Iowa 2004).

## ***III. Discussion.***

On appeal, both parties challenge the district court's spousal support award. Jeff also contends the court erred in determining the amount of his child support obligation and in setting the visitation schedule. Lisa also asserts the

court erred in failing to award her trial attorney fees. Both request appellate attorney fees. We address their arguments in turn.

**A. Spousal Support.**

Spousal support “is an allowance to the spouse in lieu of the legal obligation for support.” *In re Marriage of Sjulín*, 431 N.W.2d 773, 775 (Iowa 1988). Spousal support is a discretionary award dependent upon each party’s earning capacity and present standards of living, as well as the ability to pay and the relative need for support. See *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa Ct. App. 1997). Spousal support “is not an absolute right; an award depends on the circumstances of each particular case.” *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). The discretionary award of spousal support is made after considering the factors listed in section 598.21A(1) (2009). See *id.* We consider the length of the marriage, the age and health of the parties, the parties’ earning capacities, the levels of education, and the likelihood the party seeking support will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). Property division and spousal support “should be considered together in evaluating their individual sufficiency.” *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998). We give the district court considerable discretion in awarding alimony, and we will only disturb the court’s ruling when there has been a failure to do equity. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998).

The district court found Jeff’s monthly adjusted net income to be \$10,525.61, and Lisa’s to be \$2847.94. The court found Jeff’s monthly expenses

were \$3518, and Lisa's, with the four minor children living with her, were \$6707.68. The court then ordered Jeffrey to pay Lisa traditional spousal support in the amount of \$2200 per month for twelve years, finding:

As noted . . . , the monthly living expenses for Lisa and the four children are far in excess of her monthly income, even if Jeff's child support obligation is included. Jeff's employment, however, provides him with sufficient net income to not only meet his child support obligation, his obligation to provide health insurance, and his monthly expenses, but also leaves him with excess monthly earnings topping \$4100. Therefore, the court concludes that this alimony award will allow Lisa support without compromising Jeff's ability to enjoy a comparable standard of living as he enjoyed prior to the parties' divorce.

In addition, Jeff's monthly payments will decrease in roughly six years, as well as thereafter, as each of the parties' children are no longer entitled to receive child support. Hopefully, during those years, Lisa will have an opportunity to increase her earnings by finding employment that is either full-time or with a higher level of compensation. Therefore, after considering the length of the parties' marriage, the parties' ages, the parties' levels of education, Lisa's earning capacity, Lisa's ability to become self-supporting at a standard of living comparable to the one enjoyed during the marriage, the division of property and allocations of debts, the fact that alimony is taxable [for] Lisa and deductible for Jeff, the court concludes that its award of alimony is equitable.

In answering Jeff's request to clarify how it factored Lisa's receiving greater net assets in the property division than Jeff in the court's determination of his spousal support obligation, the district court first explained it found,

based upon its observation of Lisa's demeanor during her testimony at trial, that her testimony concerning her monthly living expenses, her likelihood of being able to obtain additional employment that would provide her with additional income and benefits, and the changes in her lifestyle that she had been required to make since the parties' separated was both credible and reliable.

The court further explained:

[There is] a \$6407.33 difference between the parties' net income after payment of monthly living expenses.

Arguably, consideration of this factor alone would justify an alimony award to Lisa exceeding \$3000 per month to equalize the difference in the parties' monthly incomes after payment of expenses. However, the fact that Lisa received marital assets having a value of \$20,557 greater than those received by Jeff, along with the other factors considered by the court in its . . . decree, led the court to conclude that Lisa was entitled to \$2200 per month in traditional alimony for a period of [twelve] years . . . , rather than a greater amount for a much longer period of time as requested by Lisa . . . . The court believes it is also important to note that even after Jeff pays his monthly living expenses, child support obligation, and alimony obligation, his remaining net monthly income is still in excess of \$2400, while Lisa's is less than \$500.

On appeal, Jeff argues the spousal support award was too high and for too long; Lisa argues the exact opposite. Upon our de novo review of the record, we agree with the district court's award of \$2200 per month in spousal support to Lisa and its reasoning.

Here, a number of factors support an award of spousal support in this case. The parties were married for twelve years. Jeff had a higher earning capacity than Lisa. They had four children and at the time of trial, Lisa was working part-time after returning from the parties' agreed upon sabbatical in 2007. Her employer provided a letter stating there were no postings or anticipated openings concerning Lisa's area at the AEA, even into the 2011-2012 school year because of budget shortfalls. The duration of alimony gives Lisa time to become fully employed, as well as supplementing her income to continue caring for the parties' children as was done during the parties' marriage. The district court expressly found Lisa to be credible and reliable. After considering the factors listed in section 598.21A(1), we find the traditional spousal support award to be fair and equitable. We accordingly affirm on this issue.

**B. Child Support.**

Jeffrey contends the district court erred in not considering the spousal support award when calculating his income to determine his child support obligation. To calculate a noncustodial parent's child support obligation under the guidelines, the court must determine the net monthly income of both parents. See Iowa Ct. R. 9.5 (defining "net monthly income"). While the district court may consider the spousal support award when deciding whether to deviate from the guidelines, the court is not required to do so absent a finding the spousal support would render the child support award unjust or inappropriate under the criteria listed in rule 9.11. See *In re Marriage of Lalone*, 469 N.W.2d 695, 657 (Iowa 1991) (finding that while the child support guidelines do not provide a deduction from income for the amount of spousal support paid, it may be considered by the court in an attempt to do justice between the parties).

In response to Jeff's post-trial motion, the district court enlarged its findings concerning its child support award determination, stating:

[T]he court would first enlarge its supplemental decree to state that Jeff never proposed nor argued that the court should subtract any alimony he would be ordered to pay in determining his child support obligation . . . despite the fact that he agreed Lisa was entitled to alimony in some amount to "get back on her feet." Moreover, he neither proposed nor presented evidence in support of any request that the court deviate from the child support guidelines in determining his child support obligation.

Secondly, the court would further enlarge its . . . decree to incorporate by this reference the [court's analysis set forth in explaining its alimony award], which shows that Lisa and the parties' four minor children clearly have the need, and Jeff clearly has sufficient income to pay both the child support and alimony obligations as ordered . . . without the need to subtract Jeff's alimony obligation from his income in determining his child support obligation.



Finally, the court would enlarge . . . its decree to state that subtracting Jeff's alimony obligation from his income in determining his child support obligation would result in a child support amount payable to Lisa that would fall well short of the amount necessary to provide for the needs of the children.

Upon our de novo review, we find the district court did not abuse its discretion in not deducting Jeff's spousal support obligation from his income. The court explained it found Lisa needed the support to continue to care for the parties' children, and it found that not including the figure in his income was not unjust under the circumstances of the case. We accordingly affirm upon this issue.

**C. Visitation.**

Jeff also challenges the court's visitation schedule, arguing the court erred by failing to allow midweek overnight visitation for Jeff and the children. We disagree.

Our top priority when considering visitation issues is the best interests of the children. *In re Marriage of Stepp*, 485 N.W.2d 846, 849 (Iowa Ct. App. 1992). Generally, liberal visitation promotes the children's best interest. *Id.* In so far as is reasonable, courts should try to assure children "maximum continuing physical and emotional contact with both parents" after a divorce. Iowa Code § 598.41(1)(a).

In this case, the temporary visitation schedule in place during the pendency of the case awarded Jeff visitation every other weekend plus one mid-week overnight visitation preceding the weekend he does not exercise his visitation. The court essentially kept this schedule and explained its schedule incorporated "most of the routine the children have become used to during the

pendency of this proceeding . . . .” The court also found this schedule promoted maximum continuing contact between the children and both parents and would not be unduly disruptive to the children. In its post-trial ruling, the court enlarged its facts, finding weekly overnights every week would be unduly disruptive to the children and not in their best interests, explaining “disruption would be more prevalent for the Tuesday visitations which fall immediately following an extended holiday visitation.” Lisa points out that both parties testified this schedule was working well. We agree with the district court’s conclusion and affirm on this issue.

***D. Trial and Appellate Attorney Fees.***

Lisa contends the district court should have awarded her trial attorney fees, arguing Jeff earned significantly more and, though she received net marital assets greater than Jeff, those assets were not readily available to pay her attorney fees. Trial courts have considerable discretion in determining whether to award attorney fees. *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994). “Whether attorney fees should be awarded depends on the respective abilities of the parties to pay.” *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006) (quoting *Guyer*, 522 N.W.2d at 822). Additionally, an award must be fair and reasonable. *Guyer*, 522 N.W.2d at 822.

In denying Lisa’s request for attorney fees, the district court considered the parties’ respective financial circumstances, and we find no abuse of discretion. Considering the parties’ financial circumstances as they were at the conclusion of the proceedings, each party has the ability to pay their fees. Accordingly, we affirm the district court’s denial of trial attorney fees to Lisa.

Finally, both parties request an award of appellate attorney fees. An award of attorney fees on appeal is not a matter of right but rests within the discretion of the court. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997). We too consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *See In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). In the present case, each party appealed from the district court's decision, but neither appeal resulted in reversal of the issues asserted by each party. We decline to award appellate attorney fees. Costs on appeal are assessed equally between the parties.

**AFFIRMED.**