

**IN THE COURT OF APPEALS OF IOWA**

No. 2-898 / 12-0102  
Filed January 24, 2013

**IN RE THE MARRIAGE OF THOMAS FREDERICK  
AND KIMBERLY FREDERICK**

**Upon the Petition of  
THOMAS FREDERICK,**  
Petitioner-Appellant,

**And Concerning  
KIMBERLY FREDERICK,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Mills County, Kathleen Kilnoski  
Judge.

Thomas Frederick appeals from the decree dissolving his marriage to  
Kimberly Frederick. **AFFIRMED.**

Justin R. Wyatt of Woods & Wyatt, P.L.L.C., Glenwood, for appellant.

Mark D. Swanson of Swanson Law Firm, Red Oak, for appellee.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

**BOWER, J.**

Thomas Frederick appeals from the decree dissolving his marriage to Kimberly Frederick. He contends the district court erred in awarding Kimberly spousal support. Because the evidence supports the award, we affirm.

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

Thomas and Kimberly were married on February 25, 2010. This is the parties' second marriage to each other. They were married for approximately one year and had been divorced about six months before their remarriage. Both have children from previous relationships, one of whom—Kimberly's daughter—is still a minor.

At the time of trial, Thomas was sixty-one years old and in good health. He worked for the United States Postal Service, earning a net salary of approximately \$64,000 per year. In addition to his salary, Thomas receives a military pension of \$22,000 per year. He pays one-half of this pension to his first wife of thirty-one years in spousal support.

Thomas owns a home valued at \$345,000, debt free. He has a retirement plan valued at more than \$81,000. Thomas also owns a vehicle valued at approximately \$12,000, as well as \$20,000 in household furnishings. Thomas estimates his monthly expenses are approximately \$1500. His monthly net income is \$5000.

At the time of trial, Kimberly was forty-seven years old and in good physical health, but suffers from severe stress, mild depression and anxiety. She has completed some college coursework, but her credits are about twenty years

old. Kimberly worked on and off for the United States Postal Service since 1994. She was working part-time when she quit her job in January 2010. Kimberly re-entered the work force after Thomas initiated the divorce proceedings.

Kimberly has few assets. She has a vehicle with a net value of approximately \$1500. She has a retirement plan valued at approximately \$4109. Kimberly estimates her monthly expenses will be approximately \$2011. Her income for December 2011, coupled with her child support payments, was \$670.

Thomas filed a petition to dissolve the marriage in May 2011. Trial was held on December 23, 2011. On the same day, the district court entered its decree dissolving the marriage. The court awarded Kimberly rehabilitative spousal support in the amount of \$1200 per month for twelve months, followed by \$1000 per month for six months. The court also awarded Kimberly \$300 in trial attorney fees.

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

We review dissolution cases de novo. *In re Marriage of Okland*, 699 N.W.2d 260, 263 (Iowa 2005). We examine the entire record and adjudicate the rights of the parties anew on the issues that are properly preserved. *In re Marriage of Jones*, 653 N.W.2d 589, 592 (Iowa 2002). However, we accord the trial court considerable latitude in making an award and will disturb its ruling only where there has been a failure to do equity. *Okland*, 699 N.W.2d at 263. We give weight to the trial court's fact findings, especially when considering the credibility of witnesses, although we are not bound by them. *In re Marriage of Duggan*, 659 N.W.2d 556, 559 (Iowa 2003).

### ***III. Spousal Support.***

Thomas contends the district court erred in awarding Kimberly spousal support. He argues the award is unwarranted considering Kimberly's age, health, and education; the brief duration of the marriage; Kimberly's short absence from the workforce; the fact that both parties left the marriage with roughly the same assets and debts they entered with; and the fact that Kimberly received the benefit of being a stay-at-home mom during the marriage.

There is no absolute right to spousal support. *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996) (superseded by statute on other grounds as recognized by *In re Marriage of Shanks*, 758 N.W.2d 506, 510-11 (Iowa 2008)). Rather, whether it is awarded depends on the circumstances of each particular case. *Id.* Iowa Code section 598.21A(1) (2011) sets forth the criteria for determining spousal support. This includes the length of the marriage, the age and physical and emotional health of the parties, the property distribution, the earning capacity of each party, and any other factors the court may determine to be relevant. Iowa Code § 598.21A(1).

We consider the property distribution and spousal support provisions of a decree together to determine their sufficiency. *In re Marriage of Hazen*, 778 N.W.2d 55, 59 (Iowa Ct. App. 2009). Spousal support is justified when the distribution of the marital assets does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the support, and there is a need for support. *Id.* While the property distribution is designed to sort out

property interests acquired in the past, spousal support is made in contemplation of the parties' future earnings and is modifiable. *Id.* at 59-60.

#### Rehabilitative spousal support

“was conceived as a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting.

Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic independence of the ex-spouses.”

*In re Marriage of Anliker*, 694 N.W.2d 535, 540-41 (Iowa 2005) (quoting *In re Marriage of Francis*, 442, N.W.2d 59, 64 (Iowa 1989)).

The marriage at hand was one of short duration, with the parties married just short of two years. Thomas, at sixty-one, is significantly older than forty-seven-year-old Kimberly.

The parties' financial situations are vastly different. Thomas maintains steady full-time employment and receives a pension. Combined, his earnings far exceed his expenses. He owns a home worth approximately \$345,000, which has no indebtedness. While Thomas is older, he also has a retirement plan valued at over \$81,000. In comparison Kimberly has relatively little in her retirement plan (just over \$4100) and owns no significant assets. Her estimated monthly expenditures exceeded her income by more \$1300—twice the \$670 she netted in December 2011.

Although the parties' economic situations were unbalanced prior to the marriage, Kimberly's decision to leave her employment with the United States

Postal Service left her at an even greater disadvantage. Why she left was a point of contention at trial; Thomas testified it was Kimberly's idea to quit her job in order to fulfill her life-long dream of being a stay-at-home mother, while Kimberly testified Thomas asked her to leave her job and marry him so that he could take care of her and her daughter. The district court found:

While the parties disagreed as to whether Thomas encouraged Kimberly to leave the work force, the evidence was clear that he did not forbid her from doing so. Thomas testified that he controlled the household. He testified that he supported what he believed to be Kimberly's dream of being a stay-at-home mother with her teenage daughter.

It was this factor, in addition to the substantial difference in the parties' economic realities, which led the court to award Kimberly rehabilitative spousal support for a total duration of eighteen months. The court noted, "The short duration of the alimony award will encourage Kimberly to become self-sufficient and is in keeping with the parties' short marriage."

We find no failure to do equity in awarding Kimberly spousal support. See *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997) (finding that although our review is de novo, we accord the trial court considerable latitude in making determinations regarding spousal support and will disturb the ruling only when there has been a failure to do equity). We find the district court's award of spousal support in the amount of \$1200 per month for twelve months and \$1000 per month for six months to be adequate and find no reason to depart from the court's ruling on this issue. Accordingly, we affirm.

**AFFIRMED.**