

**IN THE COURT OF APPEALS OF IOWA**

No. 3-065 / 12-0998  
Filed April 10, 2013

**IN RE THE MARRIAGE OF JOSEPH MICHAEL  
NURRE AND TARA TIFFANY NURRE**

**Upon the Petition of  
JOSEPH MICHAEL NURRE,**  
Petitioner-Appellant,

**And Concerning  
TARA TIFFANY NURRE,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Linn County, Fae Hoover-Grinde,  
Judge.

Mike Nurre appeals from the spousal support provisions of the decree  
dissolving his marriage to Tara Nurre. **AFFIRMED.**

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

Karen A. Volz of Ackely, Kopecky & Kingery, Cedar Rapids, for appellee.

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

**TABOR, J.**

Joseph Michael (Mike) Nurre appeals from the spousal support provisions of the decree dissolving his marriage to Tara Tiffany Nurre. He contends it was inequitable to award Tara \$500 per month in rehabilitative alimony for a period of four years. Tara requests an award of her appellate attorney fees.

Given Tara's physical restrictions and more limited earning ability, we find the court's award of alimony was equitable in its amount and duration. We award Tara \$2000 in appellate attorney fees.

**I. Background Facts and Proceedings**

Mike and Tara were married in June 2006, following three years of dating. This is the second marriage for both parties. Mike has two teen-aged daughters from his first marriage for whom he pays \$520 per month in child support. Tara has physical care of her son from her first marriage and receives seventy-five dollars in weekly child support payments from his father.

Mike was forty-two years old at the time of trial. He has an associate's degree in mechanical design from Kirkwood Community College that he earned in 1990. During the marriage, Mike was employed at Whirlpool Amana. He is also a musician and earns money playing approximately three performances per month. His gross earnings for 2011 were \$73,241. Mike estimated his gross earnings for 2012 would be \$74,049.

Tara's employment history has been much less consistent, in part due to her physical health. Tara suffers from degenerative disc disease, which causes her chronic neck pain and has, at times, limited her movement. Before the

marriage, Tara received medical recommendations that she undergo surgery to fuse the vertebra in her neck. Because her father had a similar procedure that Tara believes compromised his quality of life, she resisted having the surgery and explored other options. But having a change of heart, in December 2010 Tara underwent the vertebrae fusion. While the surgery helped, Tara still experiences pain.

Tara has a high school diploma and is certified as a medical transcriptionist, though she testified that due to technological advancements, work is not longer available in that field. She also has taken online classes for medical billing and coding but had to stop because the computer she was using broke down. At the time of the marriage, Tara was a proofreader for Yellow Book, earning approximately \$18,000 per year. When that job ended, she worked as a lunch director for an elementary school. Tara left that job after less than a year because it was too physically demanding.<sup>1</sup> She later worked part-time as a barista at Starbucks, but her hours were reduced due to the neck pain she experienced. After her surgery in December 2010, Tara asked for more hours, but none were available.

Tara went on to work at a number of temporary positions obtained through different placement agencies. She held one full-time position from July 2011 through December 2011, earning \$12.01 per hour. In January 2012, she began working full-time at Aegon, proofreading life insurance policies for \$10.51 per

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<sup>1</sup> Mike testified that Tara resigned her position after an argument with the school's principal and the lunchroom staff. Tara testified the argument stemmed from issues she had with the staff, which caused her job to be too physically demanding.

hour. That position was scheduled to last until April 2012. Tara also worked the door at a bar in Iowa City, every other Saturday night, earning fifty dollars per night.

In January of 2005, Mike purchased a lot on which to build a home. Tara helped pick out the lot. Mike made a \$5094.60 down payment and obtained a \$158,000 mortgage to build the home. At the time of dissolution, he owed \$141,030.54 on the mortgage. A second mortgage on the property had a balance of \$13,322.48. The parties did a good deal of the finishing work on the home, including staining the woodwork and painting the interiors.

Mike filed a petition for dissolution on March 14, 2011. The court heard testimony on March 22, 2012. In the joint pretrial statement, Tara requested an award of \$750 per month in rehabilitative alimony, payable for a period of forty-eight months. At trial, Tara acknowledged that she would be "okay" with \$750 per month for two years.

The district court entered its decree dissolving the marriage on May 10, 2012. The court awarded Mike the marital home, but ordered him to provide Tara with an equalization payment of \$10,276.50, which purportedly represents Tara's share of equity in the home. The court awarded Tara one-half of the marital portion of Mike's 401(k). The court also awarded each party a vehicle and their personal property, as well as the accounts listed in their names. The court ordered Mike to be responsible for debts totaling \$27,194.42, and Tara to be responsible for debts totaling \$14,331.40. Each party was also held responsible for the debts in their own names. Finally, the court ordered Mike to

pay Tara \$500 per month in rehabilitative alimony for a period of forty-eight months, and awarded Tara \$1000 in trial attorney's fees.

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

We review dissolution of marriage cases de novo. *In re Marriage of McDermott*, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 2013). We review the entire record and adjudicate rights anew. *Id.* Although we credit the district court's findings—particularly concerning witness veracity—we are not bound by them. *Id.* Even though our review is de novo, we accord the trial court considerable latitude in determining spousal support awards. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). We will disturb the district court's ruling only where there has been a failure to do equity. *Id.*

## **III. Spousal Support**

Mike argues any award of spousal support would be inequitable, but, at a minimum, we should shorten his obligation to two years. Our consideration of his argument must start with familiar principles of family law.

Alimony is a stipend paid to a former spouse in the place of the other spouse's legal obligation to provide financial assistance. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). A spouse does not enjoy an absolute right to such support after the dissolution of the marriage. *Id.*

Whether the court should award alimony depends on the facts of each case when considering the factors in Iowa Code section 598.21A(1) (2011). The statutory factors include: (1) the length of the marriage; (2) the age and physical and emotional health of the parties; (3) the property distribution; (4) the parties'

education levels; (5) the earning capacity of the party seeking spousal support; and (6) the feasibility of the party seeking spousal support becoming self-supporting at a standard of living reasonably compared to that enjoyed during the marriage. Iowa Code § 598.21A(1).

Our supreme court has recognized three different categories of alimony. *Anliker*, 694 N.W.2d at 540. Traditional alimony is payable for life, or for as long as a spouse is incapable of self-support. *Id.* Reimbursement alimony is predicated upon the economic sacrifices made by one party during the marriage, which directly enhance the future earning capacity of the other. *Id.* at 541. And rehabilitative alimony was conceived as a way of supporting an economically-dependent spouse through a limited period or re-education or re-training following the divorce, with self-sufficiency as the goal. *Id.*

The district court decided Tara was entitled to a period of rehabilitative alimony. It noted: “[t]he evidence is undisputed that Mike has outearned Tara throughout the marriage,” and Tara would need approximately \$1700 to move out of the marital home. Tara anticipated paying \$715 per month in rent after relocating, as well as \$385 per month to obtain COBRA medical insurance through Mike’s employment.

Mike argues against the spousal support award, contending Tara has greater earning power now than when they married. He notes she earned \$18,000 per year in 2006. At the time of the dissolution, she was earning \$10.51 per hour at the time of dissolution, working forty hours per week. If she

continued full-time employment at that rate, she would earn \$21,860.80 per year in gross income. He also points out that since Tara had the fusion surgery, which relieved some of her neck pain, she is allowed to work without restrictions.<sup>2</sup>

We find it significant that Tara's employment at the time of dissolution was temporary. She testified her current employment would end in April 2012. Whether Tara would receive another position after that time, how much she would earn, and how many hours she would work was undetermined at the time of trial. The evidence shows Tara has faced periods of unemployment before resuming temporary jobs, earning between ten and twelve dollars per hour. Even if she was consistently employed full-time in that rate range, Tara would earn a gross annual salary of between \$20,800 and \$24,960. With anticipated gross earnings of \$74,049 for 2012, Mike earns approximately \$50,000 more per year than Tara is currently capable of earning.

We recognize this marriage was of relatively short duration. But Tara's inferior earning capacity and her physical limitations militate in favor of an award of rehabilitative spousal support. Tara's medical condition creates a necessity for the COBRA insurance coverage—at \$385 per month. The rehabilitative alimony awarded here reflects the disparity in the parties' relative needs and earning capacities upon dissolution of their marriage. See *In re Marriage of Smith*, 573 N.W.2d 924, 927 (Iowa 1998) (noting that compared to the husband's abilities and needs, the wife's limited educational background, lack of employment

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<sup>2</sup> Tara testified she has been given no written work restrictions. She testified she is able to work forty hours per week, though the effort is physically taxing and requires her to take pain medication and lie down upon finishing.

security, and responsibility in taking over the marital home were not sufficient for her subsistence without an alimony award). The district court's award of \$500 per month of spousal support for forty-eight months is equitable under the circumstances.

On appeal, Mike compares Tara's request in the joint pretrial statement for four years of spousal support with her testimony at trial that she could be self supporting in two years. Tara responds that her trial testimony was premised on receiving a larger amount of spousal support (\$750 per month rather than \$500 per month) and receiving a larger property equalization payment (\$33,000 as requested rather than the \$10,276.50 awarded). Given Tara's immediate expenses of moving, the monthly COBRA payments, Mike's superior earning capacity, and the tenuous nature of Tara's employment and her health concerns, we conclude the court did equity by ordering an award of \$500 per month in spousal support, payable for a period of forty-eight months.

#### **IV. Appellate Attorney Fees.**

Tara asks for appellate attorney fees. Such an award is not a matter of right, but rests within our discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). In determining whether to award appellate attorney fees, we consider the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id.*

According to her attorney's affidavit, Tara has incurred \$3200 in appellate attorney fees. Considering Tara's monthly expenses and her earning capacity,



Mike's superior earning capacity, and the fact that Tara successfully defended the decree on appeal, we award Tara \$2000 in appellate attorney fees.

**AFFIRMED.**