

**IN THE COURT OF APPEALS OF IOWA**

No. 3-372 / 12-1524

Filed May 30, 2013

**IN RE THE MARRIAGE OF DANIEL ROYCE BEATTIE  
AND CHARLENE FELICIA BEATTIE**

**Upon the Petition of  
DANIEL ROYCE BEATTIE,**  
Petitioner-Appellant,

**And Concerning  
CHARLENE FELICIA BEATTIE,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Warren County, Sherman W.  
Phipps, Judge.

Daniel Beattie appeals from the spousal support and property distribution provisions of the decree dissolving his marriage to Charlene Beattie.

**AFFIRMED.**

Robert L. Stuyvesant of Stuyvesant & Benton, Carlisle, for appellant.

Patricia M. Hulting, Des Moines, for appellee.

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

**POTTERFIELD, J.**

Daniel Beattie appeals from the alimony and property distribution provisions of the decree dissolving his marriage to Charlene Beattie. He argues the district court erred in its calculation of his income and resulting spousal support order, as well as in ordering him to pay for half of the monthly mortgage for the parties' marital home. Charlene requests appellate attorney fees. We affirm, finding the court's spousal support and property distribution provisions to be equitable.

**I. Facts and Proceedings.**

Daniel and Charlene Beattie were married in 1989. The parties had four children during the marriage: three children who still are minors and one adult child, who is disabled. Charlene is the legal guardian of the adult disabled child, who lives separately from the family.

Dan received a bachelor's degree in sociology and a master's degree in divinity during the marriage. He was ordained as a minister in 1996, and has worked in that occupation on and off during the marriage. Charlene has a bachelor's degree in broadcast communication which she received during the marriage. As agreed by Charlene and Daniel, Charlene stayed at home with the children, home-schooling them, for most of the marriage. At times Charlene worked part-time to supplement the household income. In the four years prior to the divorce, Daniel's annual income was around \$29,000 a year. The year of the divorce, however, Daniel worked for a landscaping company earning ten dollars an hour. After the parties separated, Charlene began working several part-time jobs which, in total, provided an annual income as calculated by the court of

\$35,328. During the marriage, the parties bought a home. The home is valued at \$240,000 with an outstanding mortgage of \$38,000. The monthly payment for this mortgage is approximately \$388.

Daniel filed a petition to dissolve the marriage in July of 2011. Both parties sought joint legal custody of the children. The parents struggled with communicating about the children's education and religious training.

Trial took place in the district court on March 29, 2012. The court heard testimony from both parties, and awarded sole legal custody of the children to Charlene. Daniel received liberal visitation. Daniel does not appeal this portion of the decree. The court ordered Daniel to pay \$300 a month for thirty-six months to Charlene as rehabilitative spousal support to be paid, according to Charlene's request, in ten years as a lump sum offset to the division of proceeds from the sale of the marital home. The parties were otherwise to divide the proceeds of the sale of the marital home equally. In the interim, Charlene and the minor children could live in the home. Daniel was ordered to pay half of the monthly mortgage payment. Daniel appeals from the spousal support and property division provisions of the decree.

## **II. Analysis.**

We review dissolution of marriage proceedings de novo, as they are equitable in nature. *In re Marriage of Kimbro*, 826 N.W.2d 696, 698 (Iowa 2013). We defer to the factual findings of the district court but are not bound by them. *Id.* We will disturb the district court's decision where it fails to do equity. *Id.* We give deference to the credibility findings of the district court as it had a firsthand

opportunity to view the witnesses and receive the evidence. See *In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007).

A. *Spousal Support.*

Daniel first appeals the district court's grant of spousal support to Charlene in the amount of \$300.00 per month for thirty-six months. He argues the court erred in calculating his income and in finding support for Charlene was warranted. The trial court has broad latitude in granting spousal support. *In re Marriage of Schenkelberg*, 824 N.W.2d 481, 486 (Iowa 2012). We disturb an award of spousal support only if it fails to do equity between the parties. *Id.*

Daniel contends the court erred in determining his yearly gross income to be \$29,000—the average of his last four years of employment—rather than his current wage as a landscaper of ten dollars an hour, or an annual gross income of approximately \$20,800. We disagree. Though Daniel states he has been unable to find more lucrative work, he admits to declining a job which would have provided more income due to his stated belief that the hours would interfere with spending time with the children. He has also been offered some substitute teaching hours, which he did not accept due to potential interference with his landscaping job. At trial, he testified he could return to his career as a pastor. The district court found his reduced income was voluntary, and that the average of four years of pre-divorce income more accurately reflected his annual salary.

“When a parent voluntarily reduces his or her income . . . it may be appropriate for the court to consider earning capacity rather than actual earnings” but first a court must determine that “if actual earnings were used, substantial injustice would occur or adjustments would be necessary to provide for the needs

of the children and to do justice between the parties.” *In re Marriage of Malloy*, 687 N.W.2d 110, 115 (Iowa Ct. App. 2004). We agree with the district court that the \$29,000 figure should be used. The court found that after the end of Daniel’s prior job, he received a \$7000 severance payment, none of which was shared with Charlene or the children. It also found overall that Daniel had not assisted the children at all since receiving the severance payment. Daniel began the landscaping job very shortly before trial. We agree with the finding of the district court that use of Daniel’s current reduced income in the calculations of support would result in an ongoing injustice between the parties and to the children.

The court must determine the parent’s current monthly income from the most reliable evidence presented. This often requires the court to carefully consider all of the circumstances relating to the parent’s income. Where the parent’s income is subject to substantial fluctuations, it may be necessary to average the income over a reasonable period when determining the current monthly income.

*In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991). Daniel has an advanced academic degree and a history of higher earnings than he claimed at the time of trial. We agree with the district court that the most reliable evidence presented is based on the recent average, indicating Daniel’s annual income for the calculation of support should be \$29,000. *See id.*

Daniel also argues Charlene was not a proper candidate for rehabilitative spousal support. Iowa Code section 598.12A (2011) lays forth the factors regarding whether spousal support is appropriate in a given case. These factors are:

- a. The length of the marriage.
- b. The age and physical and emotional health of the parties.
- c. The distribution of property made pursuant to section 598.21.

- d. The educational level of each party at the time of marriage and at the time the action is commenced.
- e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.
- g. The tax consequences to each party.
- h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.
- i. The provisions of an antenuptial agreement.
- j. Other factors the court may determine to be relevant in an individual case.

Iowa Code § 598.12A. Daniel and Charlene's marriage lasted for over twenty years; Charlene was forty-seven at the time of trial, Daniel was forty-four. The sole valuable asset of the parties is their home, which is currently occupied by Charlene and the children but will be sold and divided equally (after the lump payment of spousal support) once their youngest is nineteen. Charlene obtained several part-time jobs which allowed her to make approximately \$35,000 at the time of trial. She has a bachelor's degree but worked as a stay at home parent and teacher for almost all the over twenty-year marriage. Charlene has sole physical custody of three children, and is the guardian of the parties' disabled daughter. We find the district court's determination that Charlene should be provided spousal support did not fail to do equity. See *Schenkelberg*, 824 N.W.2d at 486.

B. *Mortgage Payment.*

Next, Daniel argues the district court erred in ordering him to pay for half of the ongoing mortgage payment of the parties, as Charlene and the children remain in the home. The balance of the mortgage at the time of trial was \$38,000. The mortgage on the home was a debt of both of the parties. Charlene observes that half of this debt—\$19,000—would be approximately the amount of the inheritance from her father which she contributed toward making improvements on the marital home. Three of the parties' four children continue to live in the house.

Iowa Code section 598.21(1) directs the district court to divide the property "equitably between the parties" after considering a number of factors. Such factors that are pertinent here include (1) the length of the marriage, (2) the property brought into the marriage by each party, (3) the age and physical and emotional health of each party, (4) the earning capacity of each party, (5) the amount of spousal support awarded, and (6) other economic circumstances of each party.

*In re Marriage of Anliker*, 694 N.W.2d 535, 542 (Iowa 2005) (describing Iowa Code § 598.21(1)). The parties were in a long-term marriage; Charlene receives some spousal support; because she did not work during the marriage, she does not have significant retirement savings; and Charlene put inherited income into the property. The district court's award allows Daniel to receive almost half the value of the property in ten years while allowing his children to reach adulthood while living in their home. Considering the property distribution factors, we find the court did not fail to do equity in requiring Daniel to make ongoing mortgage payments.

*C. Appellate Attorney Fees.*

Charlene requests appellate attorney fees. An award of fees is not a matter of right; it is discretionary and requires our consideration of the needs of the requesting party, the ability of the other party to pay, and whether the party was obligated to defend the trial court's decision on appeal. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa Ct. App. 1994). We award Charlene \$1000 in appellate attorney fees. Costs on appeal are assessed to Daniel.

**AFFIRMED.**