

IN THE COURT OF APPEALS OF IOWA

No. 3-584 / 12-1994

Filed June 26, 2013

**IN RE THE MARRIAGE OF BRUCE DANIEL REICH
AND KIMBERLY KAY REICH**

**Upon the Petition of
BRUCE DANIEL REICH,**
Petitioner-Appellant,

**And Concerning
KIMBERLY KAY REICH,**
Respondent-Appellee.

Appeal from the Iowa District Court for Montgomery County, J.C. Irvin,
Judge.

Bruce Reich appeals the spousal support provision of the decree
dissolving his marriage to Kimberly Reich. **AFFIRMED.**

Seth E. Baldwin, Shenandoah, for appellant.

DeShawne L. Bird-Sell, Glenwood, for appellee.

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

DOYLE, P.J.

Bruce Reich appeals the spousal support provision of the decree dissolving his marriage to Kimberly Reich. Bruce contends the district court's award of spousal support to Kim is inequitable under the facts and circumstances of this case. We affirm.

I. Background Facts and Proceedings

Bruce and Kim married in 2001 and divorced in 2012. No children were born during the marriage. At the time of trial, Bruce was forty-two years of age and Kim was forty-six.

Bruce runs a plumbing business and an airplane rental business. Although not completely clear from the record, according to Bruce, his average income from his plumbing business was approximately \$30,000 per year. It is also unclear how much income, if any, Bruce earned from his airplane rental business.¹

During the marriage, Kim provided support for Bruce's plumbing business, including assistance with the billing, invoices, and accounting. She also took

¹ The district court conspicuously had questions about the information Bruce provided concerning his income and assets:

[Bruce's] businesses are not corporations or LLC's with a distinct ownership and the majority of the expenses within the business have been passed through and commingled with the parties' personal funds. Bruce provided a statement showing that his income from the plumbing business had a net loss through the date of trial. On the list of items from the plumbing business were "alamoney" which represents his spousal support payments, and expenses for his groceries and dining.

. . . The court is not persuaded that the airplanes have a negative value. If Bruce's plumbing business produces the relatively small income which he claims, it becomes difficult for the Court to believe that Bruce can maintain two aircraft, one of which is clearly his hobby; the second is ostensibly utilized as a rental business which, at best, breaks even. The Court wonders how Bruce intends to finance the rebuilding of the plane's motors at a cost of \$25,000 each.

calls from home and dispatched Bruce to jobs. She was not paid for her work for the plumbing business and her income otherwise was “negligible.” After the parties’ separation, Kim began working as a bank teller, earning eleven dollars per hour. She also received \$500 per month in temporary spousal support from Bruce.

In October 2012, the district court entered a decree dissolving the parties’ marriage. The court found the parties’ net worth to be \$90,000.² This included the value of vehicles, business equipment, airplanes, furnishings, and the net value of real property consisting of the marital residence, a “shed” that housed Bruce’s business equipment, and a rental property where Bruce’s parents lived. The court found Kim was in possession of “a limited number of these assets,” and ordered Bruce to make an equalization payment to Kim in the total amount of \$42,000, to be paid in five equal annual installments.

The court determined an award of spousal support to Kim was appropriate, but found she did “not qualify” for traditional support given her “relatively young” age and ability “to increase her income.” Instead, the court concluded Kim should be awarded rehabilitative or reimbursement spousal support, in the amount of \$450 per month for five years.

Bruce now appeals.³

² In reaching this value, the court noted that in 2011, Bruce had provided a bank with a statement of his net worth as approximately \$200,000, in conjunction with a loan application. The court observed “the statement for the loan showed a vast disparity between his statement to the court and that which he provided to the bank.”

³ Kim did not file a brief on appeal. We note an all too frequently observed error: failure to place a witness’s name at the top of each appendix page where that witness’s testimony appears. See Iowa R. App. P. 6.905(7)(c).

II. Standard of Review

We review this equity action involving the dissolution of a marriage de novo. Iowa R. App. P. 6.907; *In re Marriage of McDermott*, 827 N.W.2d 671, 676 (Iowa 2013). Accordingly, we examine the entire record and decide anew the legal and factual issues properly presented and preserved for our review. *McDermott*, 827 N.W.2d at 676. We give weight to the findings of the district court, particularly concerning the credibility of witnesses; however, those findings are not binding upon us. *Id.*; see also Iowa R. App. P. 6.904(3)(g). Only when there has been a failure to do equity will we disturb the district court's ruling. *McDermott*, 827 N.W.2d at 676. We do not consider issues based on information outside the record. *Rasmussen v. Yentes*, 522 N.W.2d 844, 846 (Iowa Ct. App. 1994).

III. Spousal Support

Bruce challenges the district court's award of spousal support to Kim, claiming it is "not supported by the evidence, law, or matters of general equity." Essentially, Bruce alleges he does not have an ability to pay support and, in any event, Kim's earning capacity is not significantly less than his.

Bruce states his income is \$30,000, plus he assists his elderly parents and cares for his teenage daughter. He acknowledges "it may be true that Kimberly will need some time to build her earning capacity to what it would have been had she not sacrificed her time working for the 'family' business," but claims "she has shown that she can earn at least \$23,000 per year, right now, since that is what she was making at the time of trial." Bruce also points out Kim received "approximately half the court's net valuation of the marital estate."

Spousal support is not an absolute right—it depends upon the circumstances of a particular case. *In re Marriage of Schenkelberg*, 824 N.W.2d 481, 486 (Iowa 2012). “[P]rior cases are of little value in determining the appropriate alimony award.” *In re Marriage of Becker*, 756 N.W.2d 822, 825 (Iowa 2008). The amount of spousal support is always calculated equitably based upon all the factors contained in Iowa Code section 598.21A(1) (2011).

A district court has considerable latitude when making an award of spousal support. *Schenkelberg*, 824 N.W.2d at 486. We will disturb the court’s ruling only when there has been a failure to do equity. *Id.* Such deference is decidedly in the public interest. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). “When appellate courts unduly refine these important, but often conjectural, judgment calls, they thereby foster appeals in hosts of cases, at staggering expense to the parties wholly disproportionate to any benefit they might hope to realize.” *Id.*

Under the facts and circumstances of this case, the district court determined “[r]ehabilitative spousal support or reimbursement support would be appropriate.”

Rehabilitative spousal support is 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. The goal of rehabilitative spousal support is self-sufficiency and for that reason such an award may be limited or extended depending on the realistic needs of the economically dependent spouse. Reimbursement spousal support allows the spouse receiving the support to share in the other spouse’s future earnings in exchange for the receiving spouse’s contributions to the source of that income.

Becker, 756 N.W.2d at 826.

As the district court observed:

In this case, Kim has devoted almost a decade of service to the plumbing business in one capacity or another. She is not a plumber and will not be able to take her skills and provide the same services to another plumber as she was able to answer the phones from her home and provide services 24 hours per day.

Additionally, Kim's "employment" with the plumbing business did not provide social security payments further limiting her income subsequent to her retirement. Her education is limited and she is not likely to at this time in her life go back to school to obtain further skills. She is currently living on a wage of \$11.00 per hour as a bank teller and supplementing her income with the \$500.00 in spousal support.

Kim's rehabilitative plans include utilizing the monies to maintain her housing while finding employment in the banking industry in Omaha where she has relocated. She feels that with the assistance, she will be able to maintain her current employment and advance within five years to a level that is commensurate with the level of support Bruce will provide in the interim.

The court ordered Bruce to pay Kim spousal support in the amount of \$450 per month for five years.

Upon our review, we find the district court's award of spousal support is appropriate and equitable considering the facts and circumstances of this case. It is clear neither party has an abundance of assets or income, but the court's award recognizes the support Kim provided to Bruce's business during the parties' eleven-year marriage and, at the same time, helps Kim provide for herself while she establishes and advances her career. We acknowledge Bruce cares for his elderly parents and his daughter; however, we do not believe these obligations are as onerous as Bruce makes them out to be. His testimony indicates his parents are not a "cash drain"—they are on disability and Bruce does not assist them "in any other ways" aside from providing their housing. And

he receives child support for his sixteen-year-old daughter. We find Bruce is able to provide the spousal support ordered by the court.

In sum, we do not conclude the award by the district court failed to do equity, and accordingly, it should be affirmed.

IV. Appellate Attorney Fees

Bruce seeks an award of appellate attorney fees. Such an award is discretionary. *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). Because Bruce has not prevailed, we decline to order Kim to pay a portion of his appellate attorney fees.

AFFIRMED.