

IN THE COURT OF APPEALS OF IOWA

No. 3-909 / 13-0156
Filed October 23, 2013

**IN RE THE MARRIAGE OF RICHARD ALLEN FONDELL
AND RHONDA R. FONDELL**

**Upon the Petition of
RICHARD ALLEN FONDELL,**
Petitioner-Appellant,

**And Concerning
RHONDA A. FONDELL,**
Respondent-Appellee.

Appeal from the Iowa District Court for Marshall County, James C. Ellefson, Judge.

Richard Fondell appeals from the spousal support provision of the decree dissolving his marriage to Rhonda Fondell. **AFFIRMED.**

Barry S. Kaplan and Melissa A. Nine of Kaplan, Frese & Nine, L.L.P., Marshalltown, for appellant.

Jeffrey P. Hazen of Grimes, Buck, Schoell, Beach & Hitchins, Marshalltown, for appellee.

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

POTTERFIELD, P.J.

Richard Fondell appeals from the spousal support provisions of the decree dissolving his marriage to Rhonda Fondell. He argues the district court erred in awarding spousal support to Rhonda. We affirm, finding the award of spousal support is equitable.

I. Facts and Proceedings.

Richard and Rhonda married in 2001; Richard filed a petition for dissolution of marriage in 2011. The parties have no children together, though both have children from prior marriages. Trial on the petition was held October 23, 2012, and a decree of dissolution issued the following December.

The court found Richard's annual income was \$95,000 a year, and Rhonda's annual income was \$9750. The parties have a negative net worth. Richard received most of the marital property and debts, as Rhonda had moved to Florida and taken limited property with her. The court ordered Richard to pay an equalization settlement of \$1250, consistent with his agreement to do so, and spousal support of \$500 per month for five years. The court found the following background supporting its award of spousal support:

The final issue relates to [Rhonda's] request for "traditional alimony (spousal support) in the amount of \$1,000.00 per month." (Paragraph 5 of her Pre-Trial Statement). Although the marriage date was more than eleven (11) years ago, the actual marriage lasted a little less than nine (9) years. During those nine (9) years, the parties made several moves, each of which improved [Richard's] earnings. [Rhonda] worked while the parties lived in Dubuque, in Utah, and in Nebraska. Her lowest pay rate was \$8.00 per hour and her highest was \$14.75. When they moved to Marshalltown in 2009, [Rhonda] gave up work outside of the home because [Richard] suggested it was no longer necessary. The parties agreed it would be more helpful for [Rhonda] to remain in the home to care for [Richard's] child from his previous marriage.

During the time they lived in Marshalltown, they enjoyed a good standard of living. Since moving, [Rhonda] has been unable to find full-time work.

The court then considered Richard's substantially higher earnings and his ability to pay given his monthly expenses. The court found of particular importance Rhonda's contributions to the marriage and the parties' relative employment stability and earnings, and concluded spousal support should be awarded. The court found a fixed period was appropriate given the length of the marriage. Finally, the court weighed the award in the context of the property division. It found that though both parties had a negative net worth, Richard received and had use of the home and two vehicles. The court concluded an award of \$500 per month for five years was appropriate. Richard appeals from this provision of the decree.

II. Analysis.

Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support. Such an award is not an absolute right. And whether it is awarded depends on the circumstances of the particular case. When deciding to award alimony, the district court must consider the factors in Iowa Code section [598.21A(1) (2011)]. Although our review of the district court's award of alimony is de novo, we give that court considerable latitude in making this determination based on the criteria in section [598.21A(1)]. We will disturb that determination only when there has been a failure to do equity.

In re Marriage of Anliker, 694 N.W.2d 535, 540 (Iowa 2005) (internal citations and quotation marks omitted). Given the income disparity, the contributions by Rhonda to the marriage, her earning capacity, and the distribution of property, we find the court's award of limited spousal support was equitable. See Iowa Code

§ 598.21A(1); *Anliker*, 694 N.W.2d at 540. We therefore affirm without further opinion. Iowa R. App. P. 6.1203(a), (d).

Rhonda requests an award of appellate attorney fees. An award of appellate attorney fees rests in the appellate court's discretion. *In re Marriage of McDermott*, 827 N.W.2d 671, 687 (Iowa 2013). We consider Rhonda's needs, Richard's ability to pay, and the merits of Richard's appeal. *See id.* We have carefully considered each of these factors and conclude the parties should pay their own attorney fees, as both have the ability to pay. *See id.* Costs on appeal are taxed to Richard.

AFFIRMED.