

**IN THE COURT OF APPEALS OF IOWA**

No. 3-979 / 13-0466  
Filed November 20, 2013

**IN RE THE MARRIAGE OF VIRGINIA L. FEDORCHAK  
AND BERNARD S. FEDORCHAK**

**Upon the Petition of  
VIRGINIA L. FEDORCHAK,**  
Petitioner-Appellee,

**And Concerning  
BERNARD S. FEDORCHAK,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Scott County, Marlita A. Greve,  
Judge.

Husband appeals the district court's failure to award him spousal support  
and attorney fees. **AFFIRMED.**

Lynne C. Jasper of Stafne, Lewis & Jasper, Bettendorf, for appellant.

Catherine Zamora Cartee of Cartee Law Firm, Davenport, for appellee.

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

**MULLINS, J.**

Bernard Fedorchak appeals from the decree dissolving his twenty-seven-year marriage to Virginia Fedorchak. Bernard asserts the district court erred in not awarding him spousal support based on Virginia's educational advances and increased income during the marriage. Bernard also asserts the district court erred by not ordering Virginia to pay Bernard's attorney fees. We affirm.

**I. Background Facts and Proceedings**

Bernard and Virginia married in 1985 in Pennsylvania. They have two adult children. When the parties married, Virginia had an associate's degree. Bernard had a high school diploma and was employed as a nuclear plant technician. For the first seventeen years of their marriage, Virginia worked part-time and raised the children while Bernard travelled for work, sometimes spending months at a time away from the family. In 1996, the family relocated to Iowa where Bernard worked for a train manufacturing company. In 1997, Virginia began a pharmacy degree at the University of Iowa. She graduated with honors in 2002, and began working full time as a pharmacist, eventually earning \$120,000 a year. Bernard testified he was primarily responsible for care of the children while Virginia was in school. Virginia testified that although there were times Bernard would transport the children to activities, she was the primary caregiver—she prepared the children's meals, paid for a babysitter with student loans and scholarships, and attended the children's activities. While she was in pharmacy school, Virginia was a Girl Scout leader and a church choir director;

she coached her son's soccer team and took the children to tae kwan do, piano, and violin lessons.

In 2003, Bernard was fired from the railroad job. In 2004, Bernard and Virginia decided to open a pizza franchise, which Bernard would run. The franchise failed<sup>1</sup> five years later and left a \$120,000 debt, which the parties paid by remortgaging their home, cashing out Bernard's retirement fund, and borrowing around \$40,000 against Virginia's retirement fund. After cashing out his retirement fund, Bernard purchased a car with the proceeds and used the remainder to pay down the debt, a contribution of around \$10,000. In the years following the failure of the business, Bernard worked a number of manufacturing jobs and repeatedly was fired from them. Virginia continued to work full time and repay the failed business loan from her salary. Virginia also paid the mortgage, car insurance for both her car and Bernard's car, health insurance for herself, Bernard, and their two children, and her daughter's student loan repayments. The parties had no savings account.

In its ruling following trial, the district court made explicit findings regarding the credibility of the parties' trial testimony. The district court found, "Overall . . . Bernard was not as credible as Virginia." It further found, "Bernard blamed Virginia for everything that has gone wrong . . . . His excuses did not make

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<sup>1</sup> The parties dispute who is more to blame for the demise of the pizza business. Virginia testified Bernard was the sole manager and the business failed because of Bernard's poor business management. Virginia also testified she was working full time as a pharmacist during the five years the pizza business was open and was not available to manage the business. Bernard testified Virginia was the manager and the business failed because of her. The district court found Bernard's testimony was not credible.

sense and his perceptions are questionable. . . . He was elusive, argumentative and simply unbelievable.” The court also found Bernard’s Affidavit of Financial Status differed from his testimony by overstating the value of the marital residence by \$20,000 and understating his income by half.

At the time of trial, Virginia was forty-nine years old and had an annual salary of around \$120,000. Bernard was sixty-two years old and was working as a quality specialist at an industrial rack-manufacturing plant, earning \$35,000 a year. The district court divided the parties’ property as follows: the parties would sell the marital home and split the proceeds after repayment of the failed business loan; the parties divided their credit card debt; the parties split the nearly \$300,000 net value of Virginia’s retirement fund; Virginia retained her own and her daughter’s student loan debt, totaling around \$44,000. The court also noted that Virginia had paid substantially more of the pizza business debt than Bernard. The court awarded no spousal support. Ultimately, Bernard left the marriage with half the proceeds of the home sale, half of Virginia’s retirement funds, a car, and only \$6500 of debt. Bernard appeals, arguing the court should have awarded him spousal support and attorney fees.

## **II. Standard of Review**

We review dissolution proceedings de novo. Iowa R. App. P. 6.907; *In re Becker*, 756 N.W.2d 822, 824-25 (Iowa 2008). We give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g). “Prior cases are of little precedential value, except to provide a framework for analysis, and

we must ultimately tailor our decision to the unique facts and circumstances before us.” *In re Marriage of Kleist*, 538 N.W.2d 273, 276 (Iowa 1995).

### III. Analysis

#### A. Spousal Support

Iowa Code section 598.21A (2012) provides for spousal support and the factors to consider in determining whether an award should be made. Those factors are,

- (a) The length of the marriage.
- (b) The age and physical and emotional health of the parties.
- (c) The distribution of property.
- (d) The educational level of each party at the time of the 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, 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 § 598.21A(1).

In applying the statutory factors, there are three different types of spousal support the court may award—traditional, rehabilitative, and reimbursement. *Becker*, 756 N.W.2d at 826. Each type has a different purpose: (1) traditional spousal support is payable for life or until the spouse becomes self-supporting;

(2) rehabilitative spousal support is payable for a period of time to permit a spouse to obtain education or training; (3) 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.” *Id.* “Whether spousal support is justified is dependent on the facts of each case.” *In re Marriage of Hazen*, 778 N.W.2d 55, 61 (Iowa Ct. App. 2009). “Although our review of the trial court’s award is de novo, we accord the trial court considerable latitude in making this determination and will disturb the ruling only when there has been a failure to do equity.” *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

Because Bernard is currently employed and supporting himself on his salary, there is no need for traditional spousal support. Rehabilitative spousal support is “a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce.” *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 2005). Bernard has not left the job force since his marriage, does not claim he needs any re-education or retraining, and is currently supporting himself; therefore, the facts do not support an award of rehabilitative spousal support. Reimbursement spousal support is “predicated upon economic sacrifices made by one spouse during the marriage that directly enhanced the future earning capacity of the other.” *Francis*, 442 N.W.2d at 64. Although Bernard testified that he was primarily responsible for caring for the children during Virginia’s graduate education, the district court found this testimony was not credible. The district court found, “Bernard made absolutely

no contributions financially or in any other way during [Virginia's] education. There was no evidence Bernard did anything in any way that assisted Virginia in obtaining this advanced degree." The record shows Virginia was the primary caregiver, supporting herself through her education with student loans and scholarships, including paying for child care and household expenses. She is now paying those loans back herself. There is no evidence of any economic sacrifices Bernard made to enhance Virginia's future earning capacity through her advanced degree. Accordingly, Bernard is not entitled to reimbursement spousal support.

Bernard claims he is entitled to spousal support so he may enjoy a standard of living "reasonably comparable to that enjoyed during the marriage." See Iowa Code § 598.21A(1)(f). He argues the standard to which he is accustomed is the standard afforded by their joint salaries during marriage—approximately \$155,000, comprising Virginia's \$120,000 salary and his own \$35,000 salary. Even during the years when Virginia was working, the parties were not wealthy. Virginia testified the family always lived frugally. Yet, the parties had no savings account and considerable debt, particularly the large debt Bernard created through the failed pizza business. Virginia paid most of that debt during the marriage and took most of the remainder in the dissolution. She also is responsible for the children's post-secondary education expenses, to which Bernard contributes nothing. Although Bernard has reached retirement age, he is still working and earning around \$35,000 a year. He was awarded half the net proceeds from the sale of the home and nearly \$150,000 in retirement

accounts, but was given only \$6500 of the parties' substantial debt. After considering the length of the marriage, the age and health of the parties, the property and debt distribution, the educational level and employment history of each party, the standard of living shared by the parties and their respective current disposable incomes after expenses, and giving weight to the trial court's credibility determination on our de novo review, we find there has been no failure to do equity in this case and affirm the district court's denial of spousal support to Bernard.

### **B. Attorney Fees**

Bernard appeals the district court's denial of his request for attorney fees arguing Virginia is better able to pay due to her superior financial circumstances. "Ordinarily an award of attorney's fees rests in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion." *In re Marriage of Wessels*, 542 N.W.2d 486, 491 (Iowa 1995). An award of attorney fees depends on the ability of the parties to pay, depending on the financial circumstances and earnings of each. *Id.* Attorney fees are not awarded simply because one party makes more money. The district court found neither party had savings available for expenses. It also found both parties would receive the same amount after selling the house and splitting the retirement account. It further found Virginia earns more money but, after subtracting her debts and expenses, has approximately the same discretionary income each month as Bernard. As a result, it found each party should pay their own attorney fees. We find no abuse of discretion in the court's ruling.

**IV. Conclusion**

We find Bernard is not entitled to spousal support. We further find there was no abuse of discretion when the district court did not award attorney fees. Therefore, we affirm the district court's ruling.

**AFFIRMED.**