

**IN THE COURT OF APPEALS OF IOWA**

No. 6-1075 / 06-0666  
Filed February 28, 2007

**IN RE THE MARRIAGE OF MARIANA LAURIA FREIN AND RANDALL JON  
FREIN**

**Upon the Petition of  
MARIANA LAURIA FREIN,**  
Petitioner-Appellee,

**And Concerning  
RANDALL JON FREIN,**  
Respondent-Appellant.

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

Randall Jon Frien appeals challenging certain economic provisions in the  
decree dissolving his marriage to Mariana Lauria Frien. **AFFIRMED AS MODIFIED.**

Steven Udelhofen of Udelhofen Law Firm, Ankeny, and Robert Laden, Des  
Moines, for appellant.

Jeanne Johnson, Des Moines, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

**SACKETT, C.J.**

Randall Jon Frien appeals, challenging certain economic provisions in the decree dissolving his marriage to Mariana Lauria Frien. We affirm as modified.

Randall and Mariana were married in 1984. They have three children, who were twenty, eighteen, and twelve at the time the dissolution was tried. Mariana, a high school graduate, was forty-one and in good health. She had voluntarily left the job market twenty years earlier and only reentered in the past seven years. At the time of the hearing she was employed with National Records Management in Des Moines as a receptionist with an annual salary of about \$23,500.

Randall was forty-four and had worked for Quiktrip Corporation since the parties married. He has an annual income of about \$54,000.

Mariana filed a petition seeking dissolution in May of 2005. In June of 2005 a temporary order issued providing for joint legal custody and naming Mariana as the primary custodian. The order establishing custody provided that (1) Randall was responsible for maintaining medical insurance for Mariana and the children and paying any medical expenses not covered by insurance, (2) Mariana was given the exclusive use of the family home and was ordered to pay telephone and water bills, the children's tuition at parochial schools, food for the children, her life insurance, car payment, and car insurance, and (3) Randall was ordered to assume the house payment, the line of credit, the MasterCard, MidAmerican Energy for the family home, his car insurance, any property taxes due and owing, Dish network, True Green, and AOL.

In dissolving the marriage the district court awarded the parties joint legal custody and ordered Randall to pay child support of \$672.26 a month until each

child reaches the age of eighteen and graduates from high school. In addition Randall was ordered to carry medical insurance for the children as long as he has a support obligation. Mariana was responsible for the first twenty dollars of uncovered medical expenses and then they were divided with Randall paying sixty-eight percent and Mariana the balance. The district court divided property and debts and ordered Randall to pay alimony of \$550 a month until the death of either party or the remarriage of Mariana. Randall was ordered to pay \$2000 of Mariana's attorney fees.

Randall first contends he should not have been required to pay alimony. He contends Mariana has the education and ability to work and provide for her own needs.

An award of alimony is not an absolute right, but depends on the particular circumstances of each case. *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996). Although we review the district court's award of alimony de novo, we give the court "considerable latitude in making this determination" based on the criteria in Iowa Code section 598.21(3) (2005). *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). We will disturb the district court's discretionary determination only when there has been a failure to do equity. *See Spiegel*, 553 N.W.2d at 319. Following a marriage of long duration, we have affirmed awards of both alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997). The district court did not abuse its discretion in the award of alimony. We affirm on this issue.

Randall next contends he was ordered to pay retroactive child support and this was error. The dissolution decree entered on March 28, 2006, provided that Randall commence paying child support of \$672.26 from and after September 15, 2005. Randall contends this put him eleven months behind in child support on the date of the decree, absent any temporary orders for support and did not give consideration to the fact that, despite having vacated the home, he assumed the vast majority of the daily living expenses of the parties and their children in the amount of \$1500 a month.

Mariana contends she asked for temporary support in her dissolution petition and the district court's order properly gave her temporary support for the six months prior to entry of the decree.

The June 2005 order, though not specifically ordering a support amount, allocated family expenses between the parties. While the exact amount Randall paid for family expenses is not readily evident, interest and taxes paid on the parties' home in 2004 totalled over \$14,000 or in excess of \$1000 a month. In addition to interest and taxes Randy paid for heat and lights for the home and on the parties' debts. He was making substantial contribution to his spouse's and children's financial needs. There is no claim he did not pay as ordered.

Under these circumstances, retroactive support was not called for. *Cf. In re Marriage of Thede*, 568 N.W.2d 59, 63 (Iowa Ct. App. 1997) (affirming retroactive support where obligor had not made any payments or provided any financial support for the children during the pendency of the dissolution action). We modify the decree to provide that child support commence on the date of the decree.

Randall contends Mariana should not have been awarded trial attorney fees as she has adequate income and assets to pay them.

An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Miller*, 532 N.W.2d 160, 163 (Iowa Ct. App. 1995). The court should make an attorney fee award that is fair and reasonable in light of the parties' financial positions. *Id.* To overturn an award, the complaining party must show the district court abused its discretion. *Gonzalez*, 561 N.W.2d at 99. Considering the parties' financial positions, the district court did not abuse its discretion in ordering trial attorney fees for Mariana.

Randall's last contention is that he should be awarded appellate attorney fees. We deny his request. We award no appellate attorney fees. Costs on appeal are taxed one half to each party.

**AFFIRMED AS MODIFIED.**