

**IN THE COURT OF APPEALS OF IOWA**

No. 6-1083 / 06-0875  
Filed February 28, 2007

**IN RE THE MARRIAGE OF STAN C. KAISER  
AND CYNTHIA K. KAISER**

**Upon the Petition of  
STAN C. KAISER,**  
Petitioner-Appellant,

**And Concerning  
CYNTHIA K. KAISER,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Benton County, David L. Baker,  
Judge.

The petitioner appeals from the district court's order dissolving his  
marriage. **AFFIRMED IN PART, VACATED IN PART, MODIFIED IN PART,  
AND REMANDED WITH DIRECTIONS.**

Carolyn J. Beyer of White & Johnson, P.C., Cedar Rapids, for appellant.

Jennifer L. Zahradnick of Kollmorgen & Schlue, Belle Plaine, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ. Baker,  
J., takes no part.

**VOGEL, P.J.**

Stan Kaiser appeals from multiple provisions of the district court's decree dissolving his marriage to Cynthia Kaiser. Following our de novo review, we affirm in part, modify in part, and remand to the district court with directions.

Stan and Cynthia were married in October 1984 and have two children, Kyle and Jillian. At the time of trial, Stan was forty-four years old, a high-school graduate with some college credits, and in good health. Stan received training and an apprenticeship during the marriage that allowed him to become an experienced sprinkler fitter with an annual gross income of \$63,000 from his employment at Iowa Fire Protection. Cynthia was forty-nine years old and a high school graduate also with some college credits. She was earning a gross annual income of \$17,901 at the time of trial, working full-time for the school district and part-time at a convenience store. Cynthia has some health issues, including high cholesterol and hypothyroidism, but they do not interfere with her ability to work full-time.

Following a March 2006 trial, the district court entered a decree granting Cynthia traditional spousal support in the amount of \$1000 per month "until [Cynthia] begins receiving [Stan's] pension, remarries, or dies." The decree also made other provisions for coverage of Kyle's health insurance, child support payments for Kyle, division of the pension and retirement accounts, and postsecondary education subsidies for the children. Stan appeals from these provisions of the decree.

**Scope of Review.** We review the provisions of a dissolution decree de novo. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

**Spousal Support Award.** Stan appeals the award of \$1000 per month of traditional spousal support to Cynthia. He contends the court should not have awarded traditional support and/or that the award is excessive. Spousal support is a stipend to a spouse in lieu of the other spouse's legal obligation for support, is not an absolute right, and an award thereof depends upon the circumstances of a particular case. *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996). Traditional support is payable for life or for so long as a dependent spouse is incapable of self-support. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866-67 (Iowa Ct. App. 1996). On the other hand, 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." *In re Marriage of Olson*, 705 N.W.2d 312, 316 (Iowa 2005) (quoting *In re Marriage of Francis*, 442 N.W.2d 59, 63-64 (Iowa 1989)). When reviewing a spousal support award, we are guided by Iowa Code section 598.21(3) (2005), which mandates consideration of a number of factors, such as the length of the marriage, the age and health of the parties, the earning capacity of the spouse seeking support, and particulars surrounding that spouse's ability to become self-sufficient.

The record reflects that Cynthia is currently underemployed due to the couple's joint decision that she be more available for the children when they were young. However, at the time of trial, Jillian was in college and Kyle was a junior in high school. Cynthia also has some college credits and had employment during the mid-1980s in benefits administration where she earned \$36,000. She testified that she would like to have some retraining or additional education to

improve her skills and marketability in the corporate world. Although she has some health concerns, they are controlled by medication, and Cynthia anticipates having many productive years of employment before retirement. We therefore conclude that rehabilitative support is a more appropriate award given Cynthia's circumstances. We modify the spousal support award to rehabilitative, rather than traditional support, reduce the duration to five years from the date of the decree, but affirm the monthly amount of \$1000.<sup>1</sup>

***Issues Conceded and Modified.*** The parties are in agreement on appeal that several other provisions of the decree are erroneous or not conforming to chapter 598. We accordingly modify the decree by addition or correction of the following provisions:

1. Section 4, paragraph one: Strike the last full sentence and insert the following—"Child support for Kyle shall terminate when he reaches age eighteen, dies, marries or becomes emancipated, whichever occurs first. The obligation shall continue if Kyle is between the ages of eighteen and nineteen years, if he is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to Kyle reaching nineteen years of age."
2. Section 4, paragraph four: Strike "Child support is to be paid to the Linn County Clerk of the District Court, Linn County Courthouse, Cedar Rapids, Iowa," and insert, "Child support is to be paid to the Benton County Clerk of the District Court, Benton County Courthouse, Vinton, Iowa,".
3. Section 5: In addition to the provisions provided in this section, insert, "As the custodial parent of Kyle, Cynthia shall be

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<sup>1</sup> Stan contends that not deducting the spousal support award from his net income before setting the child support award results in a substantial injustice to him. We disagree and decline to recalculate his net income or the child support award.

responsible for the first \$250 per year of medical expenses not otherwise covered by insurance, up to a maximum of \$500.”<sup>2</sup>

4. Section 8: The numerator used in calculation of the pension benefits representing the duration of accrual of benefits during the marriage should be twenty-one (21) years, not twenty-five (25) years.
5. Section 12: In addition to the provisions of this section, insert “A postsecondary education subsidy includes the educational expenses of a child who is between the ages of eighteen and twenty-two years, including up to the age of twenty-three years old, if the child is regularly attending a course of vocational-technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs; or is, in good faith, a full-time student in a college, university, or community college; or has been accepted for admission to a college, university, or community college and the next regular term has not yet begun. A postsecondary education subsidy shall not be awarded if the child has repudiated the parent by publicly disowning the parent, refusing to acknowledge the parent, or by acting in a similar manner.”

***Pension and Retirement Account Division.*** Stan contends that the district court erred when it used a setoff method instead of a Qualified Domestic Relations Order (QDRO) to divide the parties’ pension and retirement benefits. The parties have four pension/retirement accounts between them: Stan’s defined benefit plan through the National Automatic Sprinkler Industry and a Sprinkler Industry Supplemental Pension Fund, and Cynthia’s IPERS account and IRA. It appears from the record that the evidence presented at trial was somewhat vague and not current as to the values of both Stan’s and Cynthia’s pension or retirement accounts, including the possible inclusion of premarital contributions. No actuarial evidence was presented as to Stan’s NASI defined

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<sup>2</sup> Stan’s request that we modify the decree to require him to provide health insurance coverage only for so long as it is available to him at a “reasonable cost” is denied. Such can be the subject of a petition for modification if the situation should arise in the future.

benefit plan, only his supplemental fund was valued at \$380,617.53 and not current at the time of trial. Cynthia's IPERS account was valued at \$4946.84 based on an "Account Withdrawal Value" which did not reflect the true value of her IPERS plan, for a combined value with her IRA of \$95,931. The district court ordered division of Stan's NASI defined benefit plan by the formula enumerated in *In re Marriage of Benson*, 545 N.W.2d 252, 255-56 (Iowa 1996). The court then used the value of Stan's supplemental pension at \$380,617.53, reduced by a setoff of \$95,931 for Cynthia's combined retirement accounts, and awarded Cynthia one-half of the remaining funds at \$142,343.

Use of and calculation by a QDRO is the preferred method of division of pensions in dissolution cases, *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We conclude the setoff method used by the district court to divide the IPERS account was not appropriate. A setoff of Stan's pension fund against Cynthia's IRA was appropriate, as both are suitable for such division. We therefore vacate the division of Cynthia's IPERS account and remand with directions that a QDRO be prepared for that account and an adjustment be made in the setoff to reflect the severing of the IPERS from the IRA combined total.

**Conclusion.** We modify the district court's award of traditional spousal support to Cynthia to award her rehabilitative support in the amount of \$1000 per month for five years from the date of the decree. We also modify other provisions involving child support payments for Kyle, Kyle's health insurance, calculation of the pension and retirement accounts with the proper numerator, and postsecondary education subsidies for the children, as detailed in the above numbered paragraphs. We vacate the district court's division of the IPERS

retirement account and remand for adjustment of the offset amount. We affirm all other portions of the decree and remand to the district court with directions for entry of an order consistent with this opinion. Costs on appeal are divided equally between Cynthia and Stan.

**AFFIRMED IN PART, VACATED IN PART, MODIFIED IN PART, AND  
REMANDED WITH DIRECTIONS.**