

**IN THE COURT OF APPEALS OF IOWA**

No. 6-848 / 06-0402  
Filed November 16, 2006

**IN RE THE MARRIAGE OF NANCY J. LUCKER AND DAVID W. LUCKER**

**Upon the Petition of  
NANCY J. LUCKER,**  
Petitioner-Appellee,

**And Concerning  
DAVID W. LUCKER,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Mitchell County, Bryan H. McKinley, Judge.

David Lucker appeals from the alimony provisions of the decree dissolving his marriage to Nancy Lucker. **AFFIRMED.**

Aaron R. Murphy of Walk & Murphy, P.L.C., Osage, for appellant.

DeDra Schroeder, Charles City, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**EISENHAUER, J.**

David Lucker appeals from the alimony provisions of the decree dissolving his marriage to Nancy Lucker. He does not dispute that Nancy is entitled to an award of traditional alimony, but argues that the award should be reduced from \$1000 per month to \$500 per month. Nancy requests an award of her appellate attorney fees. We review his claim de novo. *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001).

Alimony is not an absolute right. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). Instead, an award of alimony depends on the circumstances of each particular case. *Id.* When determining the appropriateness of alimony, the court must consider the length of marriage, the age and health of the parties, and the distribution of property. Iowa Code § 598.21A(1)(a) – (c) (2005). The court also considers “(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against the relative needs of the other.” *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997) (citation omitted).

We conclude the district court's alimony award is appropriate when considering the factors set forth in section 598.21A. The parties were married for over eighteen years. Nancy gave up her career to stay at home and raise their child. As a result, Nancy is now earning significantly less than she would have had she continued working. Nancy earns \$7.50 and \$10.00 per hour respectively at two part-time jobs. She does not work full-time by choice, but the district court imputed an income to her based on what she would earn if she worked forty hours per week. After so doing, the court found the discrepancy in the parties'

income exceeded \$55,000. David argues injuries suffered in 1976 may reduce his earning capacity in the future. The record indicates David's earning capacity is not curtailed by these injuries and his employer will accommodate him if they become problematic in the future. Furthermore, if David's income is substantially reduced in the future, he may petition the court to modify the alimony on that basis.

The division of the marital assets was nearly equal. David argues Nancy is better situated because she was awarded the parties' marital home, which only has a \$10,000 encumbrance. However, David was awarded substantial retirement funds and will continue to accrue retirement funds, while Nancy was awarded a modest amount for her retirement.

Nancy requests an award of appellate attorney fees. An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *See In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). We decline to award Nancy attorney fees on appeal. Costs of this appeal are taxed to David.

**AFFIRMED.**