

**IN THE COURT OF APPEALS OF IOWA**

No. 6-870 / 06-0002  
Filed January 18, 2007

**IN RE THE MARRIAGE OF DON N. ALLISON  
AND KANDI K. ALLISON**

**Upon the Petition of  
DON N. ALLISON,**  
Petitioner-Appellant,

**And Concerning  
KANDI K. ALLISON,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Linn County, Denver D. Dillard,  
Judge.

The petitioner appeals from the district court's spousal support order in the  
decree dissolving his marriage to the respondent. **AFFIRMED.**

Sherry L. Schulte of Crawford, Sullivan, Read & Roemerman, P.C., Cedar  
Rapids, for appellant.

Brenda K. Wallrichs of Moyer & Bergman, P.L.C., Cedar Rapids, for  
appellee.

Considered by Huitink, P.J., and Vogel, J., and Brown, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

**VOGEL, J.**

Don Allison appeals from the district court's spousal support order in the decree dissolving his marriage to Kandi Allison. Don asserts that the spousal support award to Kandi was inequitable, in light of Kandi's earning capacity and property settlement. Upon our de novo review, *In re Marriage of Anliker*, 694 N.W.2d 535, 539 (Iowa 2005), we agree with the district court's award of \$800 per month to Kandi and affirm.

Don and Kandi were married for over twenty-three years and have two sons: one emancipated and the younger a full-time college student. At the time of trial, Don was forty-five years old and held an associate's degree from Kirkwood Community College and a bachelor's degree in radiation protection from Thomas Edison State College. Kandi was forty-four years of age and a high school graduate. Don has worked for Nuclear Management Company (f/n/a Iowa Electric Light and Power Company) during the entire marriage, currently working as a RAD waste shipping coordinator for nuclear waste and earning \$74,349.60 a year. At the time of trial, Kandi had worked for six months at Aegon (f/n/a Life Investors Insurance Company of America) as an entry-level policy analyst. She earns \$30,000.00 per year and may have the opportunity for future promotion. Kandi's salary at trial, however, does not reflect her work history during the marriage. Though Kandi was working for Life Investors Insurance when they were married, Kandi and Don jointly decided that Kandi would stay at home to raise their children. Kandi ended her employment when their first child was born in 1985. When the youngest child started kindergarten in 1994, Kandi returned to work part-time as a teaching assistant for \$6000-\$7000 annually. Kandi

staying home for many years, and then only returning to part-time employment, allowed Don to advance his career by working long and varying hours, traveling for work, and attending school part-time to earn his degrees.

As part of his employment and result of his career advancement, Don enjoys substantial benefits, including health, dental, and life insurance, a 401k plan with a balance of \$168,308, and a company pension plan valued at approximately \$90,000 as of trial. Kandi has little or no retirement savings of her own, due to her absence from the full-time workforce. In addition, Kandi was diagnosed with breast cancer during the marriage and has some other lingering health issues. The parties had little or no joint debt at the time the dissolution was entered in mid-October 2005. The district court divided the joint marital property, including the home, vehicles, retirement, and other financial accounts, distributing \$224,324.41 worth of property to Don and \$201,152.95 worth to Kandi. The three most substantial assets were Don's 401k plan, the marital home (\$125,000), and Don's Alliant pension: Don received the entire 401k and one-half the value of the pension, while Kandi received the house and the remaining one-half value of the pension. The district court also determined that Don should pay Kandi \$800 per month in traditional spousal support. The support is to continue until Don reaches age sixty-six, Kandi remarries, or one of them dies, whichever occurs first. The parties each filed motions pursuant to Iowa Rule of Civil Procedure 1.904(2), which were denied with the exception of correcting Kandi's birth date. Don now appeals the spousal support award by the district court.

Don argues the district court should not have awarded traditional spousal support in the amount of \$800 per month, as he claims Kandi is capable of self-support. Spousal 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). 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.

Traditional alimony 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). An award of spousal support is a balancing of the equities. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). It is used as a means of compensating the party who leaves the marriage at a financial disadvantage, particularly where there is a large disparity in earnings. *Id.* It is a discretionary award dependent upon each party's earning capacity and present standard of living, as well as the ability to pay and the relative need for support. *In re Marriage of Bell*, 576 N.W.2d 618, 622 (Iowa Ct. App. 1998). We give the district court wide latitude in setting the amount of support and will only modify the ruling when there has been a failure to do equity as between the parties. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

Based upon the enumerated considerations above, we conclude that the award of traditional support of \$800 per month to Kandi is equitable. The record reflects that the parties had a marriage of long duration and Don's earnings far

outweigh Kandi's earnings, as the parties' joint decision for Kandi to stay home with the children when they were young has reduced her current earning capacity. While Kandi has a decent present income, and some potential for substantial increases in the future, her income at the time of trial was modest compared to Don's income and benefits. One of the purposes of traditional spousal support is to compensate the party who leaves the marriage at a financial disadvantage, which Kandi clearly does in this case. In addition, the property division was not equal in this case, with Don receiving over \$23,000 more than Kandi received. Even with Kandi receiving a substantial property award, such a distribution does not preclude an award of spousal support. See *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993) (noting that, in a marriage of long duration, an award of both spousal support and a substantially equal property distribution may be appropriate, especially where there is a great disparity in earning capacity). To the credit of both parties, there were no outstanding marital debts at the time of trial, which means that Kandi's income will not have to be used to service a mortgage or car payment. However, she still has reasonable monthly expenses which exceed her current income. In addition, part of her income will be directed to support the parties' youngest son in his college education as both parties were ordered to comply with Iowa code section 598.21(5A).

Having considered all the factors and the district court's analysis and balancing of the equities, we find no reason to disturb the spousal support order by the district court and affirm.

Kandi seeks attorney fees on appeal. Such an award is discretionary and is determined by assessing the needs of the requesting party, the opposing party's ability to pay, and whether the requesting party was forced to defend the appeal. *In re Marriage of Gaer*, 476 N.W.2d 324, 330 (Iowa 1991). We decline to award attorney fees on appeal and assess costs to Don.

**AFFIRMED.**