

IN THE COURT OF APPEALS OF IOWA

No. 6-971 / 06-0743
Filed December 13, 2006

IN RE THE MARRIAGE OF LINDA SUE ORTH AND RONALD R. ORTH

**Upon the Petition of
LINDA SUE ORTH,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
RONALD C. ORTH,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Des Moines County, William L
Dowell, Judge.

Ronald Orth appeals, and Linda Orth cross-appeals, from the alimony
provisions of the decree dissolving their marriage. **AFFIRMED.**

Robert J. Engler of Schulte, Hahn, Swanson, Engler & Gordon, Burlington,
for appellant.

Michael J. Schilling, Burlington, for appellee.

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

EISENHAUER, J.

Ronald Orth (Ron) appeals, and Linda Orth cross-appeals, from the alimony provisions of the decree dissolving their marriage. Ron wants to pay less; Susan wants more. Our review is 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 deciding to award alimony, the district court must consider the factors in Iowa Code section 598.21(3) (2005). Although our review of the district court's award of alimony is de novo, we give that court considerable latitude in making this determination based on the criteria in section 598.21(3). *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996). We will disturb that determination only when there has been a failure to do equity. *Id.* 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).

Ron and Linda were married for approximately thirty-two years and were fifty-six and fifty-three years of age respectively at the time of trial. Ron is in good health. Linda suffers from a myriad of health problems, including high blood pressure, Type II diabetes, high cholesterol, arthritic back pain due to degenerative disc disease, and an under-active thyroid. She requires medications that cost \$100 per month when obtained through insurance, and

\$425 per month without insurance. Insurance costs Linda approximately \$700 per month.

Ron is employed as a master repairman at Case New Holland, earning approximately twenty-one dollars per hour, plus overtime. He also has excellent fringe benefits and is guaranteed a \$3000 bonus each year through 2010. His income for 2005 was \$65,065.86, even though he did not work during January, February, and much of March.

Linda is employed by the Casebine Credit Union as a clerk. She works forty hours per week, earning \$8.93. Her income is approximately \$18,000 per year.

Prior to the entry of the dissolution decree, the parties agreed to the division of the marital property, resulting in each party receiving approximately fifty percent of the property. The parties also agreed to split Ron's pension from Case New Holland. Additionally, they agreed that Ron would pay Linda spousal support until she dies or remarries, Ron dies, or Ron retires from Case New Holland and each party receives his or her pension. The only issue left for trial and to be decided by the district court was the amount of alimony Ron would pay. In its decree, the court ordered Ron to pay \$950 in alimony per month to Linda.

Ron appeals, arguing the alimony amount is too high in light of the parties' ability to maintain a standard of living, the division of marital assets, and the fact that Linda is cohabitating. Linda argues the amount of alimony is too low when considering the length of the marriage, their respective incomes, and her health issues.

We conclude the district court's alimony award is equitable and therefore decline to disturb it on appeal. We agree with the district court that there is no evidence of a romantic relationship between Linda and the man with whom she lives or that he is supporting her. The evidence indicates this is a short-term arrangement designed to assist Linda until she is able to afford a place of her own.

We do not give any credence to Ron's complaint that the amount of alimony he pays to Linda may eventually exceed his share of the property division. This is not a factor set forth in section 598.21(3). The property division relates to assets owned by the parties and the alimony will come from future income.

The \$950 per month alimony payment will allow Linda to improve her standard of living without impairing Ron's standard of living. The award balances Ron's ability to pay with Linda's needs. Accordingly, we affirm.

Linda requests an award of her 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 award Linda \$1000 in appellate attorney fees. Costs of the appeal are assessed to Ron.

AFFIRMED.