

**IN THE COURT OF APPEALS OF IOWA**

No. 7-139 / 06-0642

Filed April 11, 2007

**IN RE THE MARRIAGE OF RUSSELL JAY KEENEY  
AND JANET CHARLENE KEENEY**

**Upon the Petition of  
RUSSELL JAY KEENEY,**  
Petitioner-Appellant,

**And Concerning  
JANET CHARLENE KEENEY,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Linn County, Patrick R. Grady,  
Judge.

Russell Keeney appeals from the spousal support provisions of the decree  
dissolving his marriage to Janet Keeney. **AFFIRMED.**

Karen A. Volz of Ackley, Kopecky & Kingery, Cedar Rapids, for appellant.

Janet Charlene Keeney, Cedar Rapids, pro se.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**VAITHESWARAN, J.**

Russell and Janet Keeney married in 1974. They divorced almost thirty-two years later. The district court ordered Russell to pay Janet \$250 per month in alimony until she remarries or dies. Russell appeals that portion of the dissolution decree. He concedes this was a long-term marriage but contends that “neither party has sacrificed more than the other or leaves the marriage at an unequal disadvantage.” On our de novo review of the record, we disagree with this contention.

We begin with the parties’ relative earning capacities. See Iowa Code § 598.21(1)(f) (2005). Janet is a high school graduate. She earned wages during much of the marriage but generally worked only twenty hours per week. All her positions were secretarial. In her last job outside the home, she earned seven dollars an hour.

In the early 1990s, Janet began serving as a foster parent. This was her sole source of income for three or four years. The parties then started a franchise operation involving the sale of prefabricated homes. Russell sold the prefabricated homes and scheduled subcontractors to construct the homes. Prior to the dissolution proceedings, he withdrew more than \$3000 per month for his efforts. Janet performed the bookkeeping and secretarial functions. She withdrew \$1000 per month for her efforts.

By the time of trial, Russell was receiving no more than \$1000 per month from the operation, as was Janet. However, Russell had a fifteen-year earnings history with a manufacturing company, had experience working in sales and housing, and played in a band several times a month. The district court found he

understated his income from the band and undervalued his equipment. The court ultimately found that Russell's "earning potential . . . is certainly greater than Janet's." This finding is supported by the record.

We turn to the parties' health. See Iowa Code § 598.21(3)(d). In the early 1990s, Janet was diagnosed with bipolar disorder. Janet characterized the illness as emotional intensity disorder. She concedes that, whatever the name of the illness, it resulted in several hospitalizations, most recently in December of 2005.

Janet was prescribed Lithium but, according to Russell, did not adhere to her treatment plan. He opined that, but for her noncompliance, she would have been capable of working full-time. Janet responded that she spent less than a year in full-time employment outside the home and she did not feel she would be able to return to full-time work. We agree with the district court that Janet's illness limited her earning capacity.

We recognize Russell also had health problems. In the mid-1980's, he sustained an on-the-job injury that affected his lower back, SI joint, and his right hip. At the time of the injury, Russell was given a lifting restriction and was limited to work that gave him "the flexibility to sit or stand" as he felt necessary. However, in the intervening two decades, he received no regular treatment for the injuries and took no prescribed medication. While he stated that the parties' lack of health insurance limited his treatment options, the fact remained that his injury did not preclude him from working in the housing industry and as a musician. We conclude this factor did not prevent Russell from earning more than Janet.

Another factor for consideration is the district court's property distribution. See Iowa Code § 598.21(1)(b). The district court ordered the sale of the parties' unencumbered home for no less than \$250,000 and ordered the parties to divide the net proceeds equally. The court also ordered Russell to make a \$13,934 equalization payment to Janet. Finally, the court awarded each party retirement funds in excess of \$60,000.

This property distribution scheme does not countenance against an alimony award. The district court expressed concerns "about the veracity of some of the testimony Russell presented with regard to the parties' financial picture." The court also noted that the sale of the parties' home was necessary if Janet's retirement investments were to be preserved. The effect of the sale, however, was to foreclose Janet's ability to pursue a home healing business she had opened, as well as her ability to again serve as a foster parent. We conclude an award of traditional alimony was essential under these circumstances.

These factors, together with the length of the marriage, see Iowa Code § 598.21(1)(a), support the district court's decision to award spousal support as well as the court's decision concerning the amount and duration of the award.<sup>1</sup>

**AFFIRMED.**

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<sup>1</sup> Janet asserts "she should be entitled to more traditional spousal support than the negligible \$250 award or a larger property settlement." Janet dismissed her cross-appeal. Accordingly, we decline to consider these issues. See *Bartels v. Hennessey Bros, Inc.*, 164 N.W.2d 87, 92 (Iowa 1969) ("The record also discloses defendant-appellee neither appealed nor cross-appealed, and resultantly can have no greater relief or redress here than was accorded it by trial court.").