

IN THE COURT OF APPEALS OF IOWA

No. 7-787 / 07-0721
Filed January 16, 2008

**IN RE THE MARRIAGE OF NICOLE ANN SCURR
AND STEVEN TODD SCURR**

**Upon the Petition of
NICOLE ANN SCURR,**
Petitioner-Appellant,

**And Concerning
STEVEN TODD SCURR,**
Respondent-Appellee.

Appeal from the Iowa District Court for Marshall County, Michael J. Moon,
Judge.

Nicole Scurr appeals from the economic provisions of the decree
dissolving her marriage to Steven Scurr. **AFFIRMED AS MODIFIED.**

Reyne L. See of Johnson, Sudenga, Latham, Peglow & O'Hare, P.L.C.,
Marshalltown, for appellant.

Barry Kaplan and Melissa Nine of Kaplan & Frese, L.L.P., Marshalltown,
for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

VAITHESWARAN, J.

Nicole and Steven Scurr married in 1991 and divorced in 2007. The parents agreed to exercise joint physical care of their three daughters, leaving only financial issues to be decided at trial.

The key issue was spousal support. Nicole requested alimony of at least \$2500 per month. The district court found an award was “not justified in this case.” Also at issue was the appropriate allocation of the federal and state tax exemptions for the three children. The district court allocated all of them to Steven. A third issue was an appropriate property distribution. Nicole agreed Steven could retain a life insurance policy in his name but asked him to pay some of her credit card debt in return. The district court allocated the life insurance policy to Steven and ordered each party to be “solely responsible for the payment of any debt incurred subsequent to the filing of the Petition.” Nicole appealed.

I. Spousal Support.

Nicole asked the district court to award traditional or rehabilitative alimony. On our de novo review, we agree she should receive rehabilitative alimony. The parties were married for more than fifteen years. See Iowa Code § 598.21(3)(a) (2005). Although Nicole had a nursing degree and had worked as a surgical nurse early in the marriage, she agreed to give up her employment before the birth of their first child. In the ensuing thirteen years, Nicole earned negligible wages. See *id.* at (3)(e). For less than a year, she worked “very, very part-time at a salon as a receptionist.” In 2006, she took a two-month seasonal job at a local farm center, earning \$8.50 per hour.

At the time of trial, Nicole was undergoing training to be a part-time “independent marketing consultant,” which she described as a “customer service telephone operator.” That position paid between \$6.50 and \$8 per hour. Nicole also updated her education to ready herself for re-licensure as a nurse. Nicole agreed the court could impute income to her at the rate of \$8.50 per hour.

Even with the imputed income, Nicole’s earning capacity was far less than Steven’s. See *In re Marriage of Hansen*, 733 N.W.2d 683, 704 (Iowa 2007). He was employed as a family practice physician and, in that capacity, earned \$202,000 per year. He also held several yearly contract positions that afforded him additional earnings. The district court found, and Steven does not dispute, that his total salary was \$255,312 per year. Although Steven urges that the disparity in earnings would not be as large if Nicole re-entered the workforce as a full-time nurse, even his estimate of her annual earning capacity was only \$35,000.

We recognize that Nicole was thirty-eight years old at the time of trial and relatively healthy. See *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). While these factors suggest she was capable of full-time employment for many years to come, they do not alter the fact that she left the marriage at a significant financial disadvantage. See *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997) (citation omitted). In addition to relinquishing more than a decade of Social Security earnings, she received neither a home nor any income-generating property as part of the property distribution. *Id.* (“We consider alimony and property distribution together in assessing their individual sufficiency.”) While she was awarded half of Steven’s

retirement benefits, she cogently testified that she could not use her \$40,000 portion without incurring significant penalties and dissipating necessary retirement income. Based on these factors, we conclude Nicole is entitled to rehabilitative spousal support while she seeks, obtains, and settles into employment.

As for the amount of spousal support, Nicole seeks \$2500 a month. This request is premised on part-time work outside the nursing field. At trial, Steven questioned Nicole's reluctance to work as a nurse and presented evidence that a nursing career would allow her to enhance her earning capacity and still exercise joint physical care. We find this evidence persuasive. Based on Nicole's needs, her degree and experience in a practical field, and Steven's heavy debt load, we conclude \$2500 a month is excessive. We conclude Steven should pay Nicole \$1000 per month.

Turning to the duration of the spousal support award, we believe an award for three years will allow Nicole sufficient time to obtain and settle into suitable employment. Accordingly, we conclude Steven should pay Nicole \$1000 per month for a period of three years.

II. Tax Exemptions.

The district court allowed Steven to claim all three dependent exemptions on his federal and state tax returns. Nicole contends this was inequitable. We disagree.

Exemptions may be allocated to the parent who would receive maximum benefit from them. *In re Marriage of Rolek*, 555 N.W.2d 675, 679 (Iowa 1996). On his 2005 tax return, Steven was able to subtract \$3200 for each of the three

children, thereby reducing his taxable income. At the time of trial, Nicole was still in training for her telephone solicitation job and had yet to earn significant wages. Under these circumstances, we conclude the court acted equitably in allocating all three exemptions to Steven.

III. Property Division.

When the parties separated, they had two credit cards with debt totaling approximately \$11,000. Steven agreed to assume \$7000 of this debt and Nicole agreed to assume \$4000, which was on a credit card in her name. At the time of trial, Nicole had eight credit cards in her name, with debt totaling \$17,486. She argued that, because she allowed Steven to retain the cash value of a life insurance policy in his name, he should be allocated a portion of the \$13,486 in credit card debt she accumulated after the separation. The district court was not persuaded by this argument and neither are we.¹

The factors relevant to a property distribution scheme are set forth in Iowa Code section 598.21(1). Examining the property distribution scheme in its entirety, Steven was awarded significant assets, including a home that the parties began constructing before they separated. While the home was valued at \$823,000, the debt on the home exceeded its value. Steven agreed to assume all the house debt. As noted, he also agreed to assume \$7000 of the parties' pre-separation credit card debt. In addition, he had \$30,000 in student loan debt and a \$37,000 encumbrance on his vehicle. Before the parties separated, he

¹ Steven argues that the district court did not address this argument and, accordingly, Nicole has failed to preserve error. We disagree. The district court specifically apportioned the debt and addressed debt acquired after the petition was filed.

also borrowed \$10,000 against his life insurance policy to fund cosmetic surgery for Nicole. The net cash value of the policy was \$9557.66.²

Given Steven's large debt load, we conclude the district court acted equitably in declining to also assign him a portion of Nicole's post-separation credit card debt. We reach this conclusion notwithstanding Nicole's testimony that much of her credit card debt was accumulated to fund necessary expenses of daily living such as the purchase of a refrigerator and school supplies. We believe this problem will be ameliorated by Steven's agreement to assist with the children's expenses.

IV. Appellate Attorney Fees.

Nicole requests an award of appellate attorney fees in the amount of \$5070.95. An award 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). Given the substantial disparity in earnings and the fact that Nicole prevailed on her appeal of the district court's spousal support ruling, we order Steven to pay \$2500 towards her appellate attorney fee obligation.

Costs of the appeal are taxed to Steven.

AFFIRMED AS MODIFIED.

² These figures are gleaned from documentary evidence introduced at trial. Steven testified to different figures, stating the cash value minus the debt was about \$6700.