

IN THE COURT OF APPEALS OF IOWA

No. 9-392 / 08-1682

Filed July 22, 2009

**IN RE THE MARRIAGE OF KATHLEEN T. MATA
AND ROBERT L. MATA**

**Upon the Petition of
KATHLEEN T. MATA,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
ROBERT L. MATA,**
Respondent-Appellant/Cross-Appellant.

Appeal from the Iowa District Court for Scott County, Mark J. Smith,
Judge.

Robert L. Mata appeals from the district court's modification of the alimony provisions of the decree dissolving his marriage to Kathleen T. Mata.

AFFIRMED AS MODIFIED.

Richard A. Davidson of Lane & Waterman, Davenport, for appellant.

Harold J. Delange, II, Davenport, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

Robert L. Mata appeals from the district court's modification of the alimony provisions of the decree dissolving his marriage to Kathleen T. Mata. We affirm the district court's order as modified.

I. Background Facts and Proceedings.

After twenty-six years of marriage, an uncontested decree of dissolution was entered by the district court on June 13, 2006, dissolving Robert and Kathleen Mata's marriage. At that time, the parties had one minor child. The decree awarded Kathleen child support in the amount of \$838.84 per month and one dollar of alimony per year so long as the minor child continued to qualify for child support. The decree provided that when the minor child no longer qualified for child support, the parties could review the alimony issue without any additional change in circumstances.

On May 13, 2008, Robert filed a motion to terminate his child support obligation based on the child reaching age eighteen and graduating from high school. In response, Kathleen requested the court enter a post-secondary education subsidy for the child and modify the dissolution decree to increase her alimony award. On June 5, 2008, the court entered its order terminating Robert's child support obligation, entering a post-secondary education subsidy, and setting Kathleen's alimony modification application for hearing.¹

¹ The court's order requires the parties to each pay a post-secondary educational subsidy to the parties' child not to exceed 33 1/3% of the total cost of post-secondary education expenses in accordance with Iowa Code section 598.21F (2007). Kathleen testified that her share of the post-secondary education subsidy was \$302 a month. Although Robert's financial affidavit states he pays \$466 a month for the child's college expenses, he does not dispute her figure. We note that the subsidy is limited in duration

Following a hearing, the court entered its order on September 23, 2008, modifying Kathleen's alimony award. The court found, at the time of the modification hearing, Kathleen's income was \$57,921 a year and her expenses equaled \$4300 per month. The court found that Kathleen's income would have been \$60,651 but for the parties moving during the marriage to enhance Robert's career. The court found Robert's income at the time of the modification hearing was \$118,000 per year plus a stipend of \$1200 per year for use of his personal car for school business. In considering the parties' incomes and expenses and the wording in the parties' dissolution decree, the court found Kathleen's alimony award should be increased to \$850 per month until Kathleen is sixty-five years of age. The court found that if Robert retires prior to that date, then the alimony award is to be offset by the amount of IPERS Kathleen receives under Robert's plan as indicated by the Qualified Domestic Relations Order filed herein.

Robert now appeals.

II. Scope and Standards of Review.

We review the modification of a dissolution decree de novo. See Iowa R. App. P. 6.4; *In re Marriage of McCurnin*, 681 N.W.2d 322, 327 (Iowa 2004). Although not bound by the district court's factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.14(6)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

as it is applicable to the pursuit of an undergraduate degree only. See Iowa Code § 598.21F(2)(a).

III. Discussion.

On appeal, Robert contends the district court's alimony award is unjust or inequitable. He contends the court erred in not considering Kathleen's additional earning capacity and her projected future earnings increase, in awarding Kathleen alimony in excess of her needs, and in considering her share of the post-secondary educational subsidy in her monthly expenses. Kathleen argues the alimony award is equitable, given the parties' lengthy marriage, her lesser earning capacity, and the parties' moves during the marriage that enhanced Robert's career to the detriment of her income potential.

Alimony is "a stipend to a spouse in lieu of the other spouse's legal obligation for support." *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004) (quoting *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989)). It is not an absolute right; an award of alimony depends on the circumstances of the particular case. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). Although we review the district court's award of alimony de novo, "we give that court considerable latitude in making this determination" *Id.* We will disturb the district court's alimony determination "only when there has been a failure to do equity." *Id.*

The district court may grant alimony at its discretion after considering the particular facts of the case and the factors listed in Iowa Code section 598.21A. *In re Marriage of Hansen*, 733 N.W.2d 683, 704 (Iowa 2007). These factors include: (1) the length of the marriage, (2) the age of and physical and emotional health of the parties, (3) the property distribution, (4) the educational level of the

parties at the time of the marriage and at the time the dissolution action is commenced, (5) the earning capacity of the party seeking alimony, and (6) the feasibility of the party seeking alimony becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Iowa Code § 598.21A(1)(a)-(f).

“An alimony award will differ in amount and duration according to the purpose it is designed to serve.” *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). There are three different types of alimony: traditional, rehabilitative, and reimbursement. See *Probasco*, 676 N.W.2d at 184.

Traditional alimony is “payable for life or so long as a spouse is incapable of self-support.”

Rehabilitative alimony is “a way of supporting an economically dependant spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting.”

Id. (citation omitted). The goal of rehabilitative alimony is self-sufficiency, and its duration may be limited or extended “depending on the realistic needs of the economically dependant spouse, tempered by the goal of facilitating the economic independence of the ex-spouses.” *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989). “In a marriage of long duration, alimony can be used to compensate a spouse who leaves the marriage at a financial disadvantage, especially where the disparity in earning capacity is great.” *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998).

[T]he spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible, to the extent that that is possible without destroying the right of the

party providing the income to enjoy at least a comparable standard of living as well.

In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). The district court did not specify the type of alimony awarded, but a court does not have to designate which type of alimony it awards and may award a combination of different types of alimony. See *In re Marriage of Becker*, 756 N.W.2d 822, 827 (Iowa 2008).

Based on our de novo review of the record, we conclude the foregoing factors weigh in favor of an award of alimony. We agree with the district court's conclusion that Kathleen's income would have been higher but for the parties moving during the marriage to enhance Robert's career.² Furthermore, it is clear Kathleen's ability to maintain her pre-dissolution standard of living is limited by her lower earning capacity. Without the child support payments from Robert, Kathleen testified she was not able to pay her bills and was \$400 short in her monthly obligations. The record indicates monthly obligations do not appear to cover anything beyond Kathleen's bare necessities. Certainly the standard of living enjoyed by the parties during their marriage was one of more than just meeting bare necessities. Although Kathleen is self-supporting, she "is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible without destroying the right of"

² Kathleen has a master's degree in education plus fifteen hours of postgraduate studies, which places her in the M.A. +15 category of the Davenport teacher's salary schedule. She testified she would have been at the highest pay level in the M.A. +15 category but for the fact that she lost some years of tenure by moving to follow Robert's career early in the marriage. Kathleen testified that every time a teacher moves, the teacher is docked a half year experience, so the maximum credit the Davenport school district would give Kathleen when she started was ten years experience even though she actually had twenty years of teaching experience.

Robert “to enjoy at least a comparable standard of living as well.” See *Hayne*, 334 N.W.2d at 351. Once Kathleen’s standard of living is assured, there is no reason for Robert to provide further alimony, even if he is financially capable. See *id.* (“[O]nce the dependent spouse’s standard of living is assured, there is no reason, in equity, for the supporting spouse to provide still more.”).

Kathleen testified her expenses equaled \$4322 per month, and further testified that at the time of hearing she was short \$400 a month in paying those expenses.³ Kathleen also testified she would receive future income increases in 2009 and 2012.

Robert suggests the alimony award should either be vacated or reduced to Kathleen’s monthly unmet expenses. Under all the circumstances, this would be unfair. On the other hand, we find the court’s award of \$850 per month to be excessive and inequitable, even though Robert has the financial capability to pay it. Taking all applicable factors into account, we conclude Kathleen’s alimony award should be reduced to \$550 per month effective October 1, 2008.⁴ We affirm the district court’s order of modification in all other respects.

³ Kathleen’s claimed monthly expenses also include a \$724 payment for the 2004 Toyota Sienna van awarded to her in the divorce. It is not clear from the record if this is the actual required monthly payment as Kathleen testified “I had paid far ahead on the van. I had been trying to make payments as much as I could on the van, . . . so I don’t have to pay [on] the van again until October [2008].” This monthly payment does not appear to be consistent with a car payment for a vehicle of this vintage and type. On appeal, Robert suggests the payments are “double payments.”

⁴ The decision of this appellate court is effective as of the date of the district court’s entry of the order of modification. See *In re Marriage of Schradle*, 462 N.W.2d 705, 708 (Iowa App. Ct. 1990).

IV. Conclusion.

Because we find the district court's alimony award was inequitable, we affirm the district court's order as modified. Robert shall pay the costs of this appeal.

AFFIRMED AS MODIFIED.