IN THE COURT OF APPEALS OF IOWA

No. 3-591 / 12-2289
Filed August 7, 2013

IN RE THE MARRIAGE OF APRIL DENISE WHITE AND JAY DAVID WHITE

Upon the Petition of
APRIL DENISE WHITE,
Petitioner-Appellee,

And Concerning
JAY DAVID WHITE,
Respondent-Appellant.

Appeal from the Iowa District Court for Chickasaw County, Joel A. Dalrymple, Judge.

Jay David White appeals from the decree dissolving his marriage to April White, contending the district court's denial of his request for alimony was inequitable. **AFFIRMED AS MODIFIED.**

Ralph Smith of Noah, Smith & Schuknecht, Charles City, for appellant.

James P. Moriarty of James P. Moriarty, P.C., Cedar Rapids, for appellee.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DOYLE, P.J.

Jay David White (David) appeals from the decree dissolving his marriage to April White. He contends the district court's denial of his request for alimony was inequitable. We affirm as modified.

I. Scope and Standards of Review.

We review this equity action involving the dissolution of a marriage de novo. Iowa R. App. P. 6.907; *In re Marriage of McDermott*, 827 N.W.2d 671, 676 (Iowa 2013). Accordingly, we examine the entire record and decide anew the legal and factual issues properly presented and preserved for our review. *McDermott*, 827 N.W.2d at 676. We give weight to the findings of the district court, particularly concerning the credibility of witnesses; however, those findings are not binding upon us. *Id.*; *see also* Iowa R. App. P. 6.904(3)(g). Only when there has been a failure to do equity will we disturb the district court's ruling. *McDermott*, 827 N.W.2d at 676. Finally, we note that because we base our decision on the unique facts of each case, precedent is of little value. *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009).

II. Background Facts and Proceedings.

David and April married in 1986 and they moved to Indianapolis that year. Three children were born of the marriage. In January 2012, April filed her petition seeking dissolution of the parties' marriage.

Trial was held in October 2012. David and April were in agreement on several matters, including that they would have joint custody of their children with April having physical care. They were also in agreement as to the division of certain assets and liabilities, and they entered into a stipulated agreement which

was accepted and adopted by the court. Issues for trial included division of the parties' remaining assets and debts, child support, and David's request for rehabilitative and traditional spousal support.

David was forty-eight years of age at the time of trial. He held an associate's degree in biomedical electronics and was certified as a Certified Biomedical Equipment Technician (CBET). In 1998, he and outside partners formed a business ("business") that engaged in the sales and service of anesthesia machines. David's service territory was the Indianapolis metropolitan area. In 1998 and 1999, David earned an average of not quite $50,000 a year. His income from the business increased over the next five years, earning an average of about $90,000 per year. In 2005 and 2006, his income decreased to almost $60,000 per year, but it then improved greatly in 2007 and 2008, earning an average of $153,000 per year those two years. His earnings from 1998 to 2008 averaged out to $88,000 per year.

April was forty-nine years of age at the time of trial. Throughout the parties' marriage, she worked as a nurse, and she continually furthered her education. From 1998 to 2006, April's annual earnings average was $59,000. In 2006, she began school thereafter in Tennessee to obtain her degree as a Certified Registered Nurse Anesthetist (CRNA), and the family moved from Indiana to Tennessee. At that time, the parties owned two homes in Indianapolis. They purchased another in Nashville.

After the family moved to Tennessee, David was able to continue to work for his business, servicing customers in Tennessee and Kentucky. His closest account was now a two-hour drive from his home and as a consequence, he was

often not able to be at home at night and not able to address child care needs as he had been doing in Indianapolis. By May 2008, David found that the stress made it impossible for him to satisfy the demands of the job, and he decided to leave the business. His share was bought out by the remaining partners. He received a $40,000 lump–sum payment and a consulting contract paying $1500 per month for fifty-five months.

After leaving the business, David worked as a biomed technician for Baptist Hospital from September 2008 to June 2009, starting in a full-time position, then downsizing to a part-time position so that he could work on the parties' two Indianapolis homes in preparation for their sale. He then left the position altogether so he could work on their homes full-time. From that time forward, including at the time of trial, David was unemployed. At the time of trial, David was in the process of establishing a mattress business.

April received her degree as a CRNA in late 2008, and she began working as a CRNA thereafter at a Nashville hospital. In 2009, she obtained employment in Iowa as a CRNA. Her 2011 contract provides for a salary of $328,500 a year. Another house was purchased in Iowa. David stayed behind to work on preparing the parties' Tennessee home for sale, and after it sold he moved to Indiana to continue working on parties' homes in Indiana. David did travel back and forth to Iowa on occasion to visit the family.

Following the trial, the court entered its decree finding that April should be responsible for all of the parties' remaining debts not already part of the stipulation, and it denied David's request for spousal support. The court ordered David to pay $285 per month in child support to April. David now appeals.

III. Discussion.

David contends the district court's denial of his request for alimony was inequitable. In denying the request, the district court found:

> The advanced degree obtained by [April] is analogous to the degrees referenced in [*In re Marriage of Francis*, 442 N.W.2d 59, (Iowa 1989)] and [*In re Marriage of Janssen*, 348 N.W.2d 251, (Iowa 1984)]; however the actions of [David] are significantly distinct from the spouses [in these] cases. During the career advancement of the holder of the degree, the spouses devoted their energies to the home and family. Here David's career and income advanced within a company he assisted in creating until he voluntarily quit. The court finds no evidence to suggest that he had sacrificed any educational or career advancement to address the needs of the family while April pursued the nursing career.

Alimony or spousal support is a payment of money to a spouse in lieu of the legal obligation of support. *Francis*, 442 N.W.2d at 62. Spousal support is not an absolute right—it depends upon the circumstances of a particular case. *In re Marriage of Schenkelberg*, 824 N.W.2d 481, 486 (Iowa 2012). "[P]rior cases are of little value in determining the appropriate alimony award." *In re Marriage of Becker*, 756 N.W.2d 822, 825 (Iowa 2008). The amount of spousal support is always calculated equitably based upon all the factors contained in Iowa Code section 598.21A(1) (2011). Iowa law recognizes three forms of alimony—traditional, rehabilitative, and reimbursement—and each has a different aim. *Becker*, 759 N.W.2d at 826. Rehabilitative spousal support is meant to support an economically-dependent spouse for a limited time in order to provide an opportunity for that spouse to become self-supporting through re-education or retraining. *Id.* Reimbursement spousal support provides the receiving spouse with a share of the other spouse's future earnings as repayment for the contributions made to the source of that income. *Id.* Finally, traditional spousal

support is "payable for life or so long as a spouse is incapable of self-support." *Francis*, 442 N.W.2d at 64.

David requested reimbursement or rehabilitative alimony of $5000 per month for three years, followed by traditional alimony of $3000 per month for seven years. The district court concluded David was not entitled to alimony "whether temporary, rehabilitative, compensatory or permanent." We find no error in the court's declination to award him traditional alimony. There is no question here that David is capable of supporting himself, and thus, a traditional spousal support award was not appropriate under the circumstances of this case.

We must therefore determine if the court erred in denying David's request for reimbursement or rehabilitative spousal support. There is sufficient evidence of David's economic sacrifices in the record to award him some financial support via reimbursement/rehabilitative alimony. The family's move to Tennessee for April's education to become a nurse anesthetist adversely affected David's employment and ownership in his business. His inability to juggle family demands and business responsibilities while April attended school resulted in his loss of employment and the sale of his interest in the business. While David may not have made good choices late in the marriage, he was contributing to the economic well-being of the marriage by remodeling the homes the parties owned in other states so that they could be sold for the benefit of the family. The fact that David was not motivated to seek full-time employment for a couple of years should not be at April's expense, but, at the same time, it does not diminish his past sacrifices. Moreover, April acknowledges that both parties equally contributed to the marriage before its demise began. She admitted, "I feel like

that we both worked very hard through the marriage and when he was down I stepped it up, when I was in school, he stepped it up." David now appears motivated to return to full employment as has taken steps to begin a new business. Although April is shouldering more of the parties' debt in the property division, a short period of alimony to aid David's return to the workforce is equitable. Considering all of the relevant factors set forth in Iowa Code section 598.21A and the facts and circumstances of this case, we find it appropriate to award David alimony in the amount of $1500 per month for two years. We need not characterize the support we are awarding as strictly reimbursement or rehabilitative. *See Becker*, 756 N.W.2d at 827. The first monthly payment shall be due fifteen days after issuance of procedendo.

We affirm, as modified herein, the district court's decree dissolving the parties' marriage. Costs on appeal are taxed to April.

AFFIRMED AS MODIFIED.