

IN THE COURT OF APPEALS OF IOWA

No. 2-442 / 11-1854

Filed June 27, 2012

**IN RE THE MARRIAGE OF MICHELLE L. MENNING
AND DAVID ALLEN MENNING**

Upon the Petition of

MICHELLE L. MENNING,
Petitioner-Appellee,

And Concerning

DAVID ALLEN MENNING,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,
Judge.

David Menning appeals the district court decree dissolving his marriage to
Michelle Menning. **AFFIRMED.**

Brandon J. Gray of Redfern, Mason, Larson & Moore, P.L.C., Cedar Falls,
for appellant.

Kevin D. Engels of Correll, Sheerer, Benson, Engels, Galles & Demro,
P.L.C., Cedar Falls, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

MULLINS, J.

David Menning appeals the denial of his request for spousal support in the decree dissolving his marriage to Michelle Menning. David argues he should have been awarded short-term rehabilitative spousal support. Because we find it was equitable to deny spousal support in this case, we affirm.

I. Background Facts and Proceedings.

David and Michelle were married on April 6, 2002. They had no children together. Michelle has two children from a prior relationship; a sixteen-year-old daughter and a thirteen-year-old son. The father of the children does not pay child support, but the children do receive social security benefits from him totaling \$312 per month.

Michelle is forty-five years old, has no major health issues, and is a high school graduate. Throughout their marriage, Michelle worked for Tyson Fresh Meats as a utility covering shifts when other workers were gone. Michelle worked approximately forty-eight to fifty hours a week and earned \$13.65 per hour. She earned \$34,244 in 2009 and \$32,932 in 2010. In April 2011, Michelle started a new job with John Deere as a material picker earning \$16.97 per hour. Michelle works forty-eight to fifty-eight hours per week on the overnight shift. For the first seven months of her employment, Michelle is on a probationary status at John Deere. When the probationary period is over, Michelle expects to receive medical insurance coverage, a two dollar per hour raise, and a position on the line. Michele will receive vision, dental, life, and disability benefits after a year of employment.

David is fifty-five years old and has no major health issues. David completed the eighth grade, but required special education classes. David does not read or write very well, but is able to verbally communicate well. During the marriage, Michelle handled the parties' finances, and when asked, would help David read his mail. Throughout their marriage, David worked as a butcher for Steege's Meat Market dressing cattle and hog carcasses. David is paid by the head earning twenty dollars per head of cattle and eighteen dollars per hog. David estimated it takes him about an hour and twenty minutes to dress a head of cattle, and thirty minutes to dress a hog. David's work is largely based on supply from farmers, and his hours can vary. David typically works from around six to eight in the morning until four to six at night. David earned \$8443 in 2009 and \$11,526 in 2010.

On August 6, 2010, Michelle filed a petition for dissolution of marriage. The parties were able to resolve all issues except spousal support prior to trial. Under their agreement, Michelle kept the marital home and became solely responsible for the \$961 monthly mortgage payment. Both parties also kept their personal vehicles. David's vehicle is a 2008 Ford Escape. David was making \$600 monthly payments on the vehicle, but that is more than required by the loan because David was hoping to have the vehicle paid off early, or in the next two years. The parties also maintained the bank accounts and retirement accounts in their respective names. As for the spousal support issue, David requested \$1000 per month until death, remarriage, or he becomes sixty-six years old. Michelle resisted requesting no spousal support for either party. This single

issue came to a hearing on September 7, 2011. On September 12, 2011, the district court determined that no spousal support should be ordered. David subsequently filed a motion to enlarge, which the district court also denied. David appeals.

II. Standard of Review.

We review dissolution cases de novo. *In re Marriage of Veit*, 797 N.W.2d 562, 564 (Iowa 2011). Although we decide the issues raised anew, we give weight to the trial court's factual findings, especially with respect to the credibility of the witnesses. *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009).

III. Spousal Support.

Spousal support is not an absolute right, but depends upon the particular facts and circumstances of each case. *In re Marriage of Hansen*, 733 N.W.2d 683, 704 (Iowa 2007). The factors to be considered by a court when determining whether a spousal support award should be made are set forth under Iowa Code section 598.21A(1) (2009). These factors are:

- (a) The length of the marriage.
- (b) The age and physical and emotional health of the parties.
- (c) The distribution of property made pursuant to section 598.21.
- (d) The educational level of each party at the time of marriage and at the time the action is commenced.
- (e) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- (f) The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.
- (g) The tax consequences to each party.

- (h) Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.
- (i) The provisions of an antenuptial agreement.
- (j) Other factors the court may determine to be relevant in an individual case.

Iowa Code § 598.21A(1). Although our review is de novo, we give the district court considerable latitude in determining whether to award spousal support based upon the statutory factors. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). “We will disturb that determination only when there has been a failure to do equity.” *Id.*

The parties were only married for nine years. They are both in good physical and emotional health, and both leave the marriage with the same level of education they had when they entered the marriage. Although Michelle has a higher earning capacity than David, both parties are capable of becoming self-supporting. David has considerable work experience as a butcher. In addition, due to the parties’ division of assets and debt, both parties appear to be in a position where they will struggle to make their own ends meet in the foreseeable future. *See In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997) (stating we must consider the party’s ability to pay balanced against the relative needs of the other in determining the appropriateness of spousal support). For these reasons, we do not believe there has been a failure to do equity in this case. Therefore, we affirm the district court’s decision to not award David spousal support.

AFFIRMED.