

**IN THE COURT OF APPEALS OF IOWA**

No. 2-465 / 11-1294  
Filed October 3, 2012

**IN RE THE MARRIAGE OF JUDY KAY JUHL  
AND JEFFREY JOHN JUHL**

**Upon the Petition of  
JUDY KAY JUHL,**  
Petitioner-Appellee/Cross-Appellant,

**And Concerning  
JEFFREY JOHN JUHL,**  
Respondent-Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Marshall County, Timothy J. Finn,  
Judge.

Appeal from the economic provisions of the dissolution of the parties'  
marriage. **AFFIRMED ON APPEAL AND CROSS-APPEAL.**

John K. Vernon of Dickinson, Mackaman, Tyler & Hagen, P.C., Des  
Moines, for appellant.

Brian D. Miller of Miller & Miller, P.C., Hampton, for appellee.

Heard by Eisenhauer, C.J., and Doyle and Tabor, JJ.

**EISENHAUER, C.J.**

Jeffrey Juhl appeals and Judy Juhl cross-appeals from the economic provisions of the decree dissolving their marriage and the court's rulings on their post-decree motions. Jeffrey contends the court miscalculated his income, did not divide the marital assets equitably, and ordered excessive alimony. Judy contends the court ordered inadequate alimony. We affirm on appeal and cross-appeal.

**I. Background**

Jeffrey (born in 1964) and Judy (born in 1959) met in the 1980s, married, and had a son in 1989. During their marriage, Judy earned a degree in horticulture. She worked at various jobs during the marriage, but stopped working in 2006 when the family moved to Marshalltown. Her highest income during the marriage was about \$28,000. Jeffrey also worked at various jobs and served in the National Guard. His highest income before attending medical school was about \$28,000. In 2001 Jeffrey earned his medical degree. After Jeffrey completed an internship in Des Moines and a residency in anesthesiology in Omaha, he accepted a position in Marshalltown, and the family moved there in 2006. They bought a 6700 square foot home. In 2006 Jeffrey earned about \$160,000.

In 2007 Jeffrey took a new anesthesiology position in Burlington. The parties purchased a small home there, but Judy and their son stayed in the home in Marshalltown so their son could finish high school. Working in Burlington and also substituting for anesthesiologists on vacation, Jeffrey earned about

\$400,000 in 2007, \$577,000 in 2008, \$527,000 in 2009, and \$435,000 in 2010 according to his social security statements.<sup>1</sup>

In 2010 Judy petitioned to dissolve the parties' marriage. A temporary order provided Jeffrey would pay spousal support of \$6000 monthly, \$4000 toward Judy's attorney fees, and certain monthly bills including the son's college expenses. After a trial, the court issued its decree in June 2011. The court found the parties had debts totaling over \$906,000, had little to no equity in their homes, and had "relatively little in the way of cash assets for the court to distribute while dealing with the overwhelming debts of the parties." For calculating spousal support, the court found Jeffrey's earning capacity to be \$480,000 and Judy's to be about \$25,000. The court ordered Jeffrey to pay permanent alimony of \$5000 per month until he reaches age sixty-five. Given the parties' financial situation and the great disparity between their earning capacities, the court assigned Jeffrey all the real estate and essentially all the debt. It divided the personal property, savings accounts, income tax refunds, and any net proceeds from the sale of the Marshalltown home equally between the parties. The portion of pensions accumulated during the marriage was divided evenly. The court divided court costs equally and ordered Jeffrey to pay an additional \$6000 of Judy's attorney fees.

Both Jeffrey and Judy filed post-decree motions to amend or enlarge. Jeffrey challenged the court's determination of his income, contending it was

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<sup>1</sup> The court considered the social security statements a more accurate summary of the parties' incomes than their income tax returns "in view of the manner in which they have handled their tax returns."

\$20,000 too high. He also challenged the court's determination of Judy's monthly expenses. Jeffrey asked the court to reduce the amount of alimony and terminate it when Judy reaches age sixty-five. He also asked the court to assign Judy's credit card debt to her and to correct the inequitable division of marital property. He asked the court to use the parties' 2010 income tax refund to pay certain debts before dividing the remainder and to require Judy to leave the Marshalltown home in "a showable condition" when she moves out. Judy asked the court to modify the division of certain investment accounts, to divide the 2010 income tax refund equally, to modify or correct the division of certain vehicles and debts, and to correct the division of household goods.

The court granted the requests to divide the investment accounts equally, to pay certain joint debts from the 2010 income tax refund, to correct the allocation of motor vehicles, and to direct Judy to leave the house in showable condition. Concerning the household goods, the court ordered the parties to submit a proposed division to the court. It denied all other requests. Following submission of the proposed division of personal property, the court divided the remaining property.

## **II. Scope and Standards of Review**

Dissolutions of marriage are equitable proceedings, and our review is de novo. Iowa R. App. P. 6.907; *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009). Although we decide the issues raised on appeal anew, we give weight to the trial court's findings, especially concerning credibility of the witnesses. *In re Marriage of Witten*, 672 N.W.2d 768, 773 (Iowa 2003). We defer to the district court's credibility determinations because of the trial judge's

superior ability to measure witness demeanor. *In re Marriage of Pundt*, 547 N.W.2d 243, 245 (Iowa Ct. App. 1996). “Precedent is of little value as our determination must depend on the facts of the particular case.” *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995). We need not separately consider assignments of error in the trial court’s findings of fact and conclusions of law, but make such findings and conclusions from our de novo review as we deem appropriate. *In re Marriage of Wade*, 780 N.W.2d 563, 566 (Iowa Ct. App. 2010).

### **III. Merits**

**A. Jeffrey’s Income.** Jeffrey contends the court’s determination his annual income was \$480,000 is \$20,000 too high. At the time of trial, Jeffrey’s employment agreement in Burlington set his base pay at \$430,000, plus medical director pay of \$50,000, plus eligibility for a bonus of \$20,000. The agreement ran through June 2011. Jeffrey points to a letter from his employer setting forth the terms of a proposed new employment agreement to begin in July 2011 with a base pay of \$420,000, plus medical director pay of \$40,000, and no bonus. Jeffrey also argues he no longer has his military pay because he retired in 2009, he no longer has income from working as a substitute, and he no longer has the forgivable loans from his Marshalltown job.

The district court discussed at length the difficulty in determining Jeffrey’s income. The court considered the parties’ income tax returns, the social security statements, the creative accounting used in preparing the income tax returns, the forgivable loans from Jeffrey’s employers, the contributions to retirement accounts, the parties’ exhibits and testimony. The court found Jeffrey was earning \$479,998 at his employer in Burlington at the time of the dissolution. The

court determined his annual income and his earning capacity for purposes of calculating alimony was \$480,000.

When Jeffrey challenged the court's determination in his post-decree motion, seeking a determination his income was \$460,000 and an accompanying reduction in alimony, the court declined, stating:

The court will not do this for the following reasons: (1) that the amount of alimony fixed here is not based on an exact formula but on all the facts in the case. A reduction in his income by \$20,000 is not significant enough to change the alimony; (2) that as evidenced by Jeffrey's history of "forgivable loans," creative tax strategies, including funding of retirement plans, as well as writing off college expenses for his son as "business expenses," this Court is confident there is ample basis in this record to find that Jeffrey is making \$480,000 per year in income.

We agree the evidence supports a finding Jeffrey was making \$480,000 at the time of the dissolution. We also agree his demonstrated earning capacity is at least \$480,000, which can be a factor in evaluating the property division. See Iowa Code § 598.21(5)(f) (2009).

**B. Alimony.** Jeffrey contends the district court's award of alimony is excessive in amount and duration and is inequitable. He argues the amount is excessive because Judy's monthly expenses were inflated and could be reduced without affecting her standard of living. He also argues the amount is excessive because the court gave him over \$873,000 of the parties' \$906,000 in debts. He argues the duration is excessive because Judy is more than four years older, so requiring him to pay alimony until he reaches sixty-five means she will receive alimony until she is sixty-nine and already receiving retirement and pension benefits. Jeffrey asserts the court did not take the pension and retirement benefits into account when setting his alimony obligation. He also argues the

alimony award should either terminate or be reduced if Judy remarries. He raised these same arguments in his post-decree challenge to the alimony award.

On cross-appeal, Judy contends the alimony is inadequate given the “extremely disparate incomes of the parties” and requests an increase to \$11,000 per month. She argues the court failed to consider the contribution she made to Jeffrey’s medical degree and that she now is unable to enjoy the benefits. See *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989) (“Moreover, the spouse who sacrificed so the other could attain a degree is precluded from enjoying the anticipated dividends the degree will ordinarily provide.” (citation omitted)).

Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *In re Marriage of O’Rourke*, 547 N.W.2d 864, 866 (Iowa Ct. App. 1996). Alimony is designed to accomplish one or more of three general purposes. Rehabilitative alimony serves to support an economically-dependent spouse through a limited period of education or retraining with an objective of self-sufficiency. *Francis*, 442 N.W.2d at 63-64. An award of reimbursement alimony is based on the economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *Id.* Traditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support. *Id.*

Alimony is not an absolute right. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). An award of alimony depends on the particular circumstances of each case. *In re Marriage of Roberts*, 545 N.W.2d 340, 343 (Iowa Ct. App. 1996). In analyzing an award of alimony, we look not only at the parties’ earnings, but also at their individual earning capacity, as directed by

section 598.21A. See *In re Marriage of Wegner*, 434 N.W.2d 397, 399 (Iowa 1988). We also may consider the property division in connection with an alimony award. Iowa Code § 598.21A(1)(c); *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004). We will not disturb the district court's determination unless there is a failure to do equity. *Anliker*, 694 N.W.2d at 540.

This was a twenty-two year marriage. See Iowa Code § 598.21A(1)(a). Both parties are in good physical health. See *id.* § 598.21A(1)(b). The court divided the marital property giving Jeffrey most of the major assets, but also nearly all the parties' debts. See *id.* § 598.21A(1)(c). Both parties earned college degrees during the marriage. Jeffrey earned a medical degree in 2001. See *id.* § 598.21A(1)(d). Judy never earned more than about \$25,000 during the marriage and did not work after Jeffrey began working as an anesthesiologist. An expert testified given Judy's age, education, and experience, she probably would not be employable at a level above her past earning experience. See *id.* § 598.21A(1)(e). The parties' standard of living during the last quarter of their marriage was vastly greater than during the first three-quarters of the marriage and also exceeded their earnings. Judy's earning capacity would not allow her to be self-supporting at any standard of living reasonably comparable to what the parties enjoyed later in the marriage. See *id.* § 598.21A(1)(f). Even with the debt assigned to Jeffrey in the property division, he is able to pay some alimony without any significant diminution in his standard of living. At the time of the dissolution Jeffrey was earning about nineteen times as much as Judy had ever earned. We believe Judy's monthly expenses listed in her financial affidavit are inflated and do not justify the amount she seeks. See *id.* § 598.21A(1)(j).



However, after considering the specific facts and circumstances in conjunction with the relevant statutory factors and after recognizing the district court's ability to hear the testimony firsthand and evaluate the credibility of the witnesses, we find no inequity in the district court's determination of the proper amount of spousal support. We next consider the duration of the award and any future adjustments.

The court ordered Jeffrey to pay Judy the alimony until he reaches age sixty-five, at which time Judy will be sixty-nine. The court did not provide for any automatic reduction or termination of alimony if Judy remarried. Jeffrey argues the alimony should decrease as Judy becomes eligible for social security, retirement, and pension benefits. He also argues alimony should terminate or reduce by half if Judy remarries instead of his having to go back to court to seek a modification. The court considered and rejected these requests in its ruling on post-decree motions, noting "this is not an exact science and is not subject to [an] exact formula. However, based on the length of this marriage, the contribution of each party, and the health and welfare of each, the Court is not inclined to make the changes requested by Jeffrey."

It has long been the rule that a subsequent remarriage does not automatically terminate alimony but shifts the burden to the recipient to show extraordinary circumstances justifying its continuation. *In re Marriage of Shima*, 360 N.W.2d 827, 828 (Iowa 1985); *In re Marriage of Cooper*, 451 N.W.2d 507, 509 (Iowa Ct. App. 1989). In many cases, the heavy burden to show extraordinary circumstances effectively eliminates alimony following remarriage. *In re Marriage of Wendell*, 581 N.W.2d 197, 199-200 (Iowa Ct. App. 1998).

Given the circumstances we, like the district court, decline Jeffrey's request to make the reduction or elimination of alimony automatic if Judy remarries.

Concerning the duration of the alimony as Judy reaches retirement age and is eligible for social security, pension, and retirement benefits, we conclude the statutory factors discussed above, the amounts of retirement benefits Judy is eligible to receive, and the great disparity in their incomes all militate against removing or reducing Jeffrey's alimony obligation before he reaches age sixty-five. We affirm the duration of the alimony ordered.

In our analysis of the amount and duration of the alimony awarded, we also considered Judy's cross-appeal request for alimony of \$11,000 per month. For the reasons set forth above, we affirm the district court.

**C. Property Division.** Jeffrey contends the court did not divide the parties' property equitably. He argues the court erred in ordering him to pay Judy's debts, not just their joint debts. Jeffrey also argues the net result of the property division is inequitable because it results in Judy having a net worth of over \$102,000, while his net worth is about *minus* \$270,000. Judy argues the property division was equitable when the statutory factors are considered. She contends Jeffrey is seeking an equal division of assets and debts, without regard to the statutory factors or what is equitable.

Partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002). An equitable division does not necessarily mean an equal division of each asset. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). The property should be divided based on

what is equitable under the circumstances and with attention to the criteria listed in section 598.21(5). *Id.* The determining factor is what is fair and equitable in each particular circumstance. *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa Ct. App. 1996). We look to all the provisions of the decree in determining what is equitable. *Dean*, 642 N.W.2d at 325. We value the property and debts as of the date of trial. *In re Marriage of Driscoll*, 563 N.W.2d 640, 642 (Iowa 1997). We afford the district court wide latitude, and we will not disturb the property distribution unless there is a failure to do equity. *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005).

The district court carefully evaluated the statutory criteria set forth in section 598.21(5), including the interplay of alimony and property division, in determining an equitable distribution. The parties' real and personal property, excluding bank accounts, balanced with the debt on that property, left a negative net value to be divided at the time of the dissolution decree. The court evenly divided the bank and retirement accounts, including correcting a mistake in the total amount in the accounts. The court encouraged the parties to agree on the division of household goods and other personal property such as vehicles and trailers. It divided the few assets the parties could not agree on. Jeffrey received all the real property. In large part because of Jeffrey's ability and Judy's inability to service the debt accumulated by the parties, the court assigned the debt (except for Judy's student loans and her car loan) to Jeffrey.

There are several credit cards in Judy's name only that had a total balance of just over \$20,000 at the time of the dissolution. Jeffrey seeks to have those debts assigned to Judy. From our de novo review of the evidence and

consideration of the district court's stated reasons for its decision, we cannot say the court's allocation of assets and debts failed to do equity. We decline Jeffrey's request to modify the property division and affirm on this issue.

Costs on appeal are taxed to Jeffrey.

**AFFIRMED ON APPEAL AND CROSS-APPEAL.**