

**IN THE COURT OF APPEALS OF IOWA**

No. 9-016 / 08-0059  
Filed March 26, 2009

**IN RE THE MARRIAGE OF MICHELLE ANNE KOELLING AND ROBERT HARLEN KOELLING**

**Upon the Petition of**  
**MICHELLE ANNE KOELLING,**  
Petitioner-Appellee/Cross-Appellant,

**And Concerning**  
**ROBERT HARLEN KOELLING,**  
Respondent-Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Linn County, Patrick R. Grady,  
Judge.

Robert Koelling appeals the child support and alimony provisions of the decree dissolving his marriage to Michelle Koelling. Michelle cross-appeals the alimony provisions of the decree. Both parties seek an award of appellate attorney fees. **AFFIRMED ON APPEAL AND CROSS-APPEAL.**

Joseph G. Bertroche of Bertroche Law Office and Ronald L. Ricklefs,  
Cedar Rapids, for appellant.

Stephen B. Jackson, Jr., Cedar Rapids, for appellee.

Considered by Mahan, P.J., and Miller and Doyle, JJ.

**MILLER, J.**

Robert Koelling appeals the child support and alimony provisions of the decree dissolving his marriage to Michelle Koelling. Michelle cross-appeals the alimony provisions of the decree. Both parties seek an award of appellate attorney fees. We affirm on both the appeal and cross-appeal.

**I. BACKGROUND FACTS AND PROCEEDINGS.**

The parties met and began dating while attending Iowa State University. Michelle graduated in the spring of 1987 with a degree in business administration, and Robert graduated in December 1987 with a degree in electrical engineering. In 1988 Michelle moved from Rochester, Minnesota, where she was working for Firstbank as an account officer, to St. Louis to become engaged to Robert. At that time Robert was working for McDonnell-Douglas in St. Louis. Michelle worked temporary jobs until she obtained full-time employment at Commerce Bank in St. Louis as a customer service representative.

Robert and Michelle were married in May 1990. Shortly thereafter Robert was transferred to Tulsa, Oklahoma. Michelle followed him to Tulsa and again began working through temporary agencies. Eventually she obtained a job at Bank of Oklahoma as a branch manager. After about six months, McDonnell-Douglas transferred Robert to California. Michelle stayed in Tulsa until 1992 when Robert was again transferred and the couple returned to St. Louis. Again in St. Louis Michelle initially worked temporary jobs until she was able to find employment there as a branch manager for Boatman's Bank.

The parties' first child was born in September 1994 and they purchased a home in St. Louis that same year. Michelle took three months maternity leave after giving birth and then returned to work, hiring a nanny to care for the child. They continued this arrangement until their second child was born in June 1997. After the birth of their second child, Michelle took six months off to care for the children. Toward the end of that year Robert obtained a job at Rockwell Collins in Cedar Rapids, Iowa. He preceded the rest of the family to Cedar Rapids until the St. Louis house was sold. They purchased a home in Cedar Rapids in March 1998.

By agreement of the parties Michelle became a full-time, stay-at-home parent upon her arrival in Cedar Rapids. She remained so until she obtained part-time employment as a teacher's aide at Jackson School in 2005. Once in Cedar Rapids, Robert enrolled in the MBA program at the University of Iowa. He attended evening classes and study groups throughout the week, often being gone five nights per week, for a period of two to three years until he obtained his MBA. Obtaining his MBA allowed Robert to move to a different position with higher pay at Rockwell Collins.

Michelle filed a petition for dissolution of marriage on March 21, 2006, and the case proceeded to trial in September 2007. At the time of trial both parties were forty-three years of age. Michelle was working as a media secretary at Hoover Elementary, earning \$11.62 per hour. Robert was employed as a principal marketing manager at Rockwell Collins. The current pay stubs he

submitted at trial showed he was earning an annual base salary of approximately \$100,466.

Prior to trial the parties had agreed to joint legal custody of their two children. Thus, the main issues for determination by the district court at trial were physical care, child support, property division, and spousal support. On October 23, 2007, the district court entered a written decree of dissolution. It placed physical care of the children with Michelle, determined Robert's monthly child support obligation to be \$1,441.88, divided the parties' assets and liabilities nearly equally, awarded Michelle rehabilitative alimony of \$2,000 per month for ten years, and ordered Robert to pay \$5,000 of Michelle's trial attorney fees.

Both parties appeal from the district court's amended ruling that did not materially change any of the challenged provisions of the original decree. Robert claims the court erred in determining his salary for purposes of calculating his child support obligation because it took into account proceeds from an isolated "cashing in" of stock options in addition to his regular salary and bonuses, and in awarding Michelle rehabilitative alimony that is inequitable and excessive in amount and duration. Michelle cross-appeals, claiming the court should have awarded her alimony of \$2,500 per month until she reaches age sixty-five. Both parties seek an award of appellate attorney fees.

## **II. SCOPE AND STANDARDS OF REVIEW.**

In this equity case our review is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We

need not separately consider assignment 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. *Lessenger v. Lessenger*, 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (1968). We give weight to the fact-findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. 6.14(6)(g). This is because the trial court has a firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992).

### **III. MERITS.**

#### **A. Child Support.**

For purposes of calculating Robert's child support obligation the district court found Robert had an annual gross income of \$116,000 and, based on that and a dependency deduction, a monthly net income of \$6,524.21. Robert contends the court erred in determining this to be his annual gross income because it included \$33,814 in proceeds from the one-time cashing in of stock options in 2006 in its calculations. Robert does not challenge the use of his regular annual bonuses in calculating his annual gross income.

The evidence in the record before us shows that in 2005 Robert had gross earnings of \$114,671, including a bonus of \$22,840, and in 2006 had gross earnings of \$113,889, including a bonus of \$16,582. At the time of trial his base salary for 2007 was \$100,466. The trial was in September. Based on Robert's testimony that he traditionally did not receive his annual bonus until November or December, it appears clear he had not yet received his 2007 annual bonus at the

time of trial. However, based on the average of his bonuses from the previous two years (\$19,711) it is a reasonable assumption that his gross income for 2007, plus his bonus, was going to be approximately \$120,000. In addition, his gross income in 2004 was \$112,973, which we believe also must have included a bonus of some undisclosed amount as there is no indication why his base salary for 2005 would have been less than his base salary in 2004.

Accordingly, we conclude the trial court's finding of Robert's gross annual income as \$116,000 for purposes of calculating his child support obligation is fully supported by, and well within the range of, the record evidence. We do so without consideration of the \$33,814 in apparently one-time stock option proceeds he received in 2006. See *In re Marriage of Hagerla*, 698 N.W.2d 329, 332-33 (Iowa Ct. App. 2005) (citations omitted) (noting that income that is anomalous, uncertain, or speculative should not be included when determining a party's child support obligations).

**B. Alimony.**

Robert next contends the district court's award of rehabilitative alimony to Michelle of \$2,000 per month for ten years was inequitable and excessive both in amount and duration. More specifically, he argues that based on Michelle's education, employment history, health, the amount she received in the property settlement, lack of any stated rehabilitative needs or plan, and his post-decree inability to make all the payments ordered by the court, the alimony award is inequitable. He proposes the award be modified to provide Michelle rehabilitative alimony in the amount of \$500 per month for two years.

“Alimony is an allowance to the spouse in lieu of the legal obligation for support.” *In re Marriage of Sjulín*, 431 N.W.2d 773, 775 (Iowa 1988). Any form of spousal support is discretionary with the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). Spousal support is not an absolute right; an award depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). The discretionary award of spousal support is made after considering the factors listed in what is now Iowa Code section 598.21A(1) (2007). *Id.* We consider the length of the marriage, the age and health of the parties, the parties’ earning capacities, the levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). Property division and alimony should be considered together in evaluating their individual sufficiency. *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998).

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). Traditional alimony is “payable for life or so long as a spouse is incapable of self-support.” *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989). Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. *Francis*, 442 N.W.2d at 63; see also *In re*

*Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa Ct. App. 1996). Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic independence of the ex-spouses. *Francis*, 442 N.W.2d at 64. "Reimbursement" alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other spouse. *Id.* It "allows the spouse receiving the support to share in the other spouse's future earnings in exchange for the receiving spouse's contributions to the source of that income." *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008).

Here the parties had been married for over seventeen years, both were forty-three years of age, and both were apparently in good health. They jointly agreed that Michelle would exit the work force in approximately 1997 to become a stay-at-home mother. Their joint decision to have her abandon her work outside the home clearly hindered her ability to maximize her earning capacity during the marriage. Further, as detailed above, the multiple moves the parties had to make due to Robert's employment necessarily impacted Michelle's career and career opportunities, even before the parties agreed she should become a stay-at-home parent. Upon each move she had to find new employment, often starting out with only temporary jobs and then advancing to better, more permanent ones, only to then once again be relocated due to Robert's employment.

Throughout the marriage Michelle was the one primarily responsible for raising the children and taking care of the home. Robert's demanding work and travel schedule with Rockwell Collins made it difficult for Michelle to maintain even part-time work or to further her career or education. In addition, Robert informed Michelle he would not support the idea of her seeking even part-time employment or obtaining additional education. Michelle testified that Robert saw her role only as "a mother and being at home and not having any sort of outside life," and he wondered "what on earth would a mother need an MBA for?" Significantly, however, Robert was able to increase his earning capacity during the parties' marriage by obtaining his MBA through evening classes. This was in part made possible by Michelle staying home and caring for the children so Robert had the flexibility to work full-time and take evening classes. This meant that over the course of two to three years Robert was usually gone five days per week from early in the morning when he left for work until ten o'clock at night or later, after his classes and study groups were done.

Once both children were in school Michelle began volunteering at the children's school on a part-time basis so she could still be home with the children in the evenings and during the summer. Through her volunteer activities she was able to get a part-time paid position and eventually the job as a media secretary at the elementary school she had at the time of trial. She was earning approximately \$16,766 per year in this position at the time of trial, working seven hours per day, five days per week, during the nine-month school year, while

Robert was earning approximately \$100,466 plus a bonus each year. Robert's earnings are thus about six times Michelle's earnings.

About ten years ago Michelle did earn about \$35,000 per year as a bank branch manager. Over time she may be able to work her way back to such an income. It nevertheless appears that for years to come Robert will have an earning capacity approximately three times greater than Michelle's.

In addition, Michelle testified that in the year to year and a half prior to trial she looked for other employment that would pay more. She looked for employment that would be based on her education and work experience from over ten years ago. She stated she applied at numerous banks in the Cedar Rapids area, as well as other large employers in the area, but had been unsuccessful in obtaining employment. She estimated she sent out between eighty and one hundred applications and had a total of only three interviews, none of which resulted in an offer. Thus, it appears most likely that Michelle will need either additional education, training, or both in order to obtain a job that will pay her at a level to allow her to become self-sufficient. The employment her education made available to her ten years ago may not be available to her today. Beginning some time ago Michelle has contemplated going back to school for her MBA.

Applying the factors under section 598.21A(1), and for the reasons set forth above, we believe Michelle is entitled to an award of spousal support. Based on the parties' joint decision for Michelle to sacrifice her career to stay at home and raise their children, the repeated moves she has made to further

Robert's career without regard for her own career, the support and assistance Michelle gave Robert to allow him to obtain his MBA and thus increase his earning capacity during the parties' marriage, and Robert's significantly higher earnings and current earning capacity, we conclude the district court acted equitably and within its discretion in awarding the amount and duration of alimony it did.<sup>1,2</sup>

Our intent in affirming this award is to allow Michelle to use this support to return to school and obtain additional education or training, if she so chooses. Her current employment will allow her to take summer classes, if she so desires. We recognize that the ten-year duration of the award is longer than it may normally take a person to obtain such additional education or training, but believe the time provided will allow Michelle to develop an earning capacity beyond that of an entry-level position, thereby allowing her to realize the goal of rehabilitative alimony by becoming self-supporting. See *Becker*, 756 N.W.2d at 827 (awarding three years of alimony at \$8,000 per month to allow spouse to obtain her master's degree and resume the career she abandoned to raise the parties' children, and an additional seven years at \$5,000 per month to develop her earning capacity and become self-supporting).

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<sup>1</sup> We note that the alimony award might be considered to constitute not only rehabilitative alimony but to contain elements of reimbursement alimony as well, allowing Michelle to share in Robert's future earnings for a time in exchange for her contributions to his enhanced future earning capacity by assisting him in obtaining his MBA. "[T]here is nothing in our case law that requires us, or any other court in this state, to award only one type of support." *Becker*, 756 N.W.2d at 827.

<sup>2</sup> We also note that Robert's alimony payments will be includable in Michelle's gross income and deductible from Robert's gross income in calculating his income tax obligation. See I.R.C. §§ 61(a)(8), 71(a), 62(a)(10), and 215(a) (2007).

For these same reasons we deny Michelle's request for additional alimony for a longer duration. The district court's alimony award was not inadequate or inequitable in amount or duration.

**C. Appellate Attorney Fees.**

Each party seeks an award of appellate attorney fees. Appellate attorney fees are not a matter of right, but rather rest in the appellate court's discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). We consider the needs of a party seeking an award, the ability of the other party to pay, and the relative merits of the appeal. *Id.* Applying these factors to the circumstances in this case, we award Michelle \$3,000 in appellate attorney fees. Robert's request for such fees is denied.

**IV. CONCLUSION.**

Based on our de novo review, and for the reasons set forth above, we conclude the figure determined by the district court as Robert's gross annual income for purposes of calculating his child support obligation is fully supported by the record evidence. We further conclude the district court did not abuse its discretion in awarding Michelle alimony in the amount of \$2,000 per month for a period of ten years. The court's award is not excessive, inadequate, or inequitable in amount or duration. Michelle is awarded \$3,000 in appellate attorney fees. Robert's request for fees is denied. Costs on appeal are taxed one-third to Michelle and two-thirds to Robert.

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