

IN THE COURT OF APPEALS OF IOWA

No. 9-291 / 08-1509

Filed May 29, 2009

**IN RE THE MARRIAGE OF RICHARD MASON QUAYLE
AND DEANNE SUE QUAYLE**

**Upon the Petition of
RICHARD MASON QUAYLE,**
Petitioner-Appellant,

**And Concerning
DEANNE SUE QUAYLE,**
Respondent-Appellee.

Appeal from the Iowa District Court for Hancock County, John S. Mackey,
Judge.

The petitioner appeals the spousal support provision of a dissolution
decree. **AFFIRMED AS MODIFIED.**

J. C. Salvo and Bryan D. Swain of Salvo, Deren, Schenck & Lauterbach,
P.C., Harlan, for appellant.

Julie A. Schumacher of Mundt, Franck & Schumacher, Denison, for
appellee.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

MANSFIELD, J.

This is an appeal from a dissolution decree. Petitioner Richard Quayle contends the district court erred in awarding spousal maintenance to respondent Deanne Quayle. We affirm the decree as modified herein.

I. FACTS AND PROCEEDINGS.

Richard and Deanne were married in 1981. At the time of trial, they were each fifty years old. During their marriage, they had five children. Three of them were still minors: Jesse, age sixteen, Levi, age fourteen, and Isaiah, age twelve.

Deanne has a nursing degree from Morningside College. Richard has an agricultural education degree from Iowa State University. For the first year of marriage, Deanne continued to work as a nurse, but she stopped when the couple's first child was born in 1982. Two years later, in 1984, the Quayles moved to Richard's hometown, Forest City. During the ensuing years, Richard worked out of the home, generally in farming and for Winnebago Industries, while Deanne stayed home and focused on raising the children. The children were homeschooled, primarily by Deanne but with some assistance from Richard.

Richard's total income from farming and from working at Winnebago is approximately \$58,000 to \$60,000 annually. However, he testified to some concerns about the future at Winnebago, where he works as a distribution analyst, given the economic downturn and the prospect of further lay-offs at the company.

In August 2006, Richard and Deanne separated. Richard asked Deanne to leave the home. Deanne took the three minor children with her, but less than two months later, she returned to drop them off. Richard arranged

homeschooling for a period of time, but then put the children in the Forest City public schools. Since October 2006, the children have been residing with Richard. Deanne has been living with her mother and sister in Danbury while caring for her mother, who has Alzheimer's. Richard presented proof, however, that Deanne could reactivate her registered nurse status fairly easily, and that there are well-paying nursing jobs available.¹

In March 2007, Richard petitioned for dissolution of marriage. The parties reached agreement on property distribution, but they went to trial in June 2008 over physical care of the children, child support, and alimony. Following the trial, the district court awarded Richard physical care of the children, ordered Deanne to pay between \$241 and \$385 child support (depending on the number of children remaining in Richard's care), and ordered Richard to pay \$1200 per month in alimony, the amount requested by Deanne.²

In awarding Deanne \$1200 per month in alimony, the district court reasoned that the parties had engaged in "what some might regard as an archaically traditional marriage in which Richard provided financially and Deanne kept the home and home-schooled the children." The court further reasoned that while "certainly Deanne can reactivate her nursing license," her age and prolonged absence from the job market "would make it difficult for her to find

¹ The evidence showed that Deanne could reactivate her license by paying \$225 and undergoing a modest amount of continuing education. Additionally, Richard introduced evidence that in Mason City, Deanne could earn between nineteen and twenty-nine dollars an hour working as a nurse. However, Deanne testified the closest hospital to Danbury is a small rural hospital thirty minutes away.

² The district court ordered that Richard could deduct the amount of Deanne's required child support payments from his alimony payments to her.

employment in the job market.” Finally, the court concluded that Richard’s net monthly income was \$3724.69 and his monthly expenses were \$2665.

Richard now appeals, arguing that the district court erred in awarding alimony.

II. ANALYSIS.

Dissolution actions are tried in equity; thus, our review is de novo. Iowa R. App. P. 6.4; *In re Marriage of Becker*, 756 N.W.2d 822, 824-25 (Iowa 2008). We give weight to the district court’s factual findings, especially when concerning the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g); *In re Marriage of Anliker*, 694 N.W.2d 535, 539 (Iowa 2005).

In making a spousal support award, the district court must consider the factors set forth in Iowa Code section 598.21A(1) (2007). *Anliker*, 694 N.W.2d at 540. “Although our review of the trial court’s award is de novo, we accord the trial court considerable latitude in making this determination and will only disturb the ruling when there has been failure to do equity.” *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005); *see also In re Marriage of Hansen*, 733 N.W.2d 683, 704 (Iowa 2007) (upholding court of appeals’ modification of district court’s alimony award where necessary to do equity).

Richard argues that he should not pay any spousal maintenance. Deanne insists the district court’s award of \$1200, the full amount she had requested, was correct and should be affirmed. Upon our de novo review, we conclude spousal maintenance is warranted in this case, but that the district court’s award should be modified to do equity.

The district court concluded, and we agree, that for many years Deanne gave up her nursing career for the benefit of the children. This was a joint decision. She has been out of the job market for approximately twenty-five years while her efforts at home enabled Richard's career to progress. This consideration clearly supports an award of alimony in this case. See Iowa Code § 598.21A(1)(a), (b), and (e) (requiring the district court to consider the length of the marriage, the age and health of the parties, and earning capacity, which includes a length of absence from the job market, in making a spousal support award); see, e.g., *Becker*, 756 N.W.2d at 826 (discussing that where the parties were married twenty-two years, their decision to have the wife abandon her work outside of the home hindered her ability to maximize her earning capacity during the marriage).

However, we do not agree with the district court's finding that it would be "difficult for [Deanne] to find employment in the job market." There was unrebutted evidence that Deanne could readily reactivate her nursing credentials and that there is an ongoing demand for nurses. Furthermore, Deanne's own testimony reveals that she could go back to nursing, but instead has chosen to care for her mother:

Q. Now is there any reason [when you separated] why you didn't go back to become a nurse? A. At this point—this point in time—I believed I was to care—help care for my parents.³

...

Q. You're contributing your life, if you will, for free to your mother because that's what you choose to do? A. It's—it's needed, yes.

...

³ Deanne's father was in a nursing home at the time of separation, but had passed away before trial.

Q. It's your choice? A. Yes.

Deanne testified further:

Q. Do you at any time in the foreseeable future see yourself reactivating or going back to school for your nursing license?

A. Possibly.

No one would suggest that Deanne's desire to care for her elderly mother is less than laudable. However, in reviewing an award of spousal maintenance, we are required to look at Deanne's earning *capacity*. See Iowa Code § 598.21A(1)(e) (requiring that the earning capacity of the party seeking maintenance be considered in making a spousal support award). The record shows Deanne has the qualifications and the ability to make money as a nurse. Instead she has made her own decision to live with her mother and sister and to care for her mother and her mother's property. We do not believe it is Richard's obligation post-dissolution to enable Deanne to pursue her "choice" not to have paid employment.

In addition, the district court's own calculations show that when Richard's net monthly income is compared to his monthly expenses, the difference is approximately \$1060, which is less than the spousal support award. To us, this suggests further that the existing monthly alimony is too high.

For the foregoing reasons, therefore, we modify the district court's award of spousal maintenance from \$1200 to \$700 per month. In all other respects, we affirm the district court's decree of dissolution.

On appeal, each party requests appellate attorney fees. Appellate attorney fees are discretionary and are determined by assessing the needs of the requesting party, the opposing party's ability to pay, and whether the requesting

party was forced to defend the appeal. *In re Marriage of Gaer*, 476 N.W.2d 324, 330 (Iowa 1991). Having considered the appropriate factors, we deny each party's request for appellate attorney fees. Costs of appeal are divided equally between the parties.

AFFIRMED AS MODIFIED.