

**IN THE COURT OF APPEALS OF IOWA**

No. 1-772 / 11-0634  
Filed November 23, 2011

**IN RE THE MARRIAGE OF DEANNDRA TORRES  
AND DENNIS E.J. TORRES**

**Upon the Petition of  
DEANNDRA TORRES,**  
Petitioner-Appellant,

**And Concerning  
DENNIS E.J. TORRES,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,  
Judge.

A mother appeals the spousal support, tax exemption, visitation, and  
attorney fee provisions of the parties' dissolution decree. **AFFIRMED AS  
MODIFIED.**

Andrew B. Howie of Hudson, Mallaney, Shindler & Anderson, P.C., West  
Des Moines, for appellant.

Justin A. Teitle of Teitle Law Offices, Davenport, for appellee.

Considered by Eisenhauer, P.J., Doyle, J., and Zimmer, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**ZIMMER, S.J.**

Deandra Torres appeals the spousal support, tax exemption, visitation, and attorney fee provisions of the decree dissolving her marriage to Dennis Torres. Upon our review, we affirm the district court's decree with one minor exception—we modify the decree to incorporate the parties' agreement regarding how they were to claim the children for tax purposes.

**I. Background Facts & Proceedings.**

Dennis and Deandra were married in 1998. They have three children together. The children were eleven, ten, and two years old at the time of trial. Deandra also has a sixteen-year-old son from a previous relationship. Her son lived with the parties during their marriage.

The parties separated in July 2008. Deandra filed a petition for dissolution of marriage on December 2009. The matter proceeded to trial, and the district court entered a decree dissolving the marriage.

Dennis was thirty-six years old at the time of trial. He is a tech sergeant in the Air Force. He earns \$75,979 per year. Dennis is currently stationed at Elmendorf Air Force Base in Anchorage, Alaska. During the marriage, he had also been stationed at Spangdahlem, Germany, and Las Vegas, Nevada. Dennis has some college credits, but does not have a degree.

Deandra was also thirty-six years old at the time of trial. She was in the Air Force at the time of the parties' marriage. Deandra voluntarily discharged from active duty in 2000 with a rank of E4 after six and one-half years of military service. She did not work while the parties were in Germany. She obtained a bachelor's degree in elementary education during the marriage. Deandra

worked as a substitute teacher in 2006 and 2007 while the parties lived in Las Vegas. Deandra and Dennis moved from Las Vegas to Alaska under military orders in November 2007. After the parties relocated to Alaska, Deandra worked as a civilian contractor on an Air Force base in support services. Her annual salary was about \$45,000.

The parties separated in the summer of 2008 after an incident where Dennis scratched the parties' middle child, Q.T., who has autism, while spanking him. Deandra left with the children and moved to Iowa. Dennis remained in Alaska. The parties' youngest child was born following the separation. Deandra joined the Air Force Reserves in December 2010. She has the rank of E5 (Staff Sergeant) and is generally on duty one weekend per month and two weeks during the year with her unit, which is based in St. Louis, Missouri. Deandra testified she would like to return to active duty; however, she has not followed through with the steps necessary to pursue active duty enlistment. At the time of trial, she was taking classes to obtain a second bachelor's degree in nursing.

At the dissolution hearing, Deandra testified she had been subjected to verbal abuse from Dennis during the marriage. She also claimed Dennis was physically threatening and had restrained her on occasion. In addition to the incident involving Q.T., she testified the other children had been spanked. Deandra stated Dennis controlled all of the marital finances. Deandra expressed concern that Dennis had visited pornography websites on their computer. She asked that Dennis have only supervised visitation with the children.

Dennis testified the parties had financial problems during the marriage. He stated this caused quite a bit of stress and resulted in verbal arguments. Dennis testified the parties had agreed to exercise physical discipline with the children at times. He stated he spanked Q.T. because he had been fighting with his brother instead of going to bed and he accidentally scratched the child. Dennis voluntarily agreed to take anger management and parenting classes following this incident. He was subjected to military discipline and received counseling. He stated he had learned new parenting strategies. Dennis testified he was no longer viewing pornography on the computer.

The district court entered a dissolution decree for the parties on March 21, 2011. The court denied Deandra's request for spousal support, finding she was capable of being self-supporting based on her education and history in the military. The court noted the parties had agreed to joint legal custody of the children with Deandra having physical care. The court concluded there was not a history of domestic violence and denied Deandra's request for supervised visitation. Dennis was granted visitation during summer vacation, spring break, and winter break. The court imputed an annual income to Deandra of \$20,000. The court ordered Dennis to pay child support of \$1377.24 per month for the parties' three children. In addition, the court ordered Dennis to pay \$316.58 per month in cash medical support. The court awarded Dennis the tax dependency exemptions for the three children as long as he was current in his support obligations. The court determined each party would be responsible for his or her own trial attorney fees.

Dennis filed a motion to amend and enlarge pursuant to Iowa Rule of Civil Procedure 1.904(2). In its ruling on the motion, the court recognized the parties had stipulated Dennis would maintain medical and dental insurance for the children and pay child support of \$1500 per month. The court eliminated the previous child support and medical support provisions and approved this stipulation.

Deandra appeals. She claims the district court erred in failing to award spousal support, by not incorporating the parties' agreement regarding the children's tax dependency deductions, and by failing to order Dennis to pay her trial attorney fees. She additionally claims the court should have granted Dennis only supervised visitation. Both Deandra and Dennis seek an award of appellate attorney fees.

## **II. Standard of Review.**

In this equity action our review is de novo. Iowa R. App. P. 6.907. In equity cases, we give weight to the fact findings of the district court, especially on credibility issues, but we are not bound by the court's findings. Iowa R. App. P. 6.904(3)(g). We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999).

## **III. Spousal Support.**

Deandra contends the district court should have granted her request for spousal support. She asked to receive \$500 each month for five years. She states the parties agreed she would primarily stay home and care for the children while Dennis advanced his career. Deandra points out she relocated several

times during the marriage based on Dennis's service in the Air Force. She asserts Dennis earns nearly \$76,000 per year and can afford to pay spousal support.

Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). Alimony is not an absolute right; an award depends upon the circumstances of the particular case. *Id.* In making an award of alimony, the court considers the factors set forth in Iowa Code section 598.21A(1) (2009).<sup>1</sup> *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005). We give the district court considerable discretion in awarding alimony; we will disturb the court's ruling only when there has been a failure to do equity. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998).

On this issue, the district court found:

[Deandra] also seeks an award of spousal support based on the discrepancy in the current incomes of the parties. As previously discussed, [Deandra's] current lack of income is voluntary. She has more education than [Dennis] and is capable of earning a self-supporting income. Had she elected to remain in the military, her income would be comparable to, if not higher than, [Dennis's] income. The Court finds that an award of spousal support is inappropriate.

We agree with the district court's conclusion Deandra is capable of supporting herself. She has a degree in elementary education and has worked as a substitute teacher in the past. When the decree was entered, Deandra

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<sup>1</sup> The factors a court considers are: (a) the length of the marriage; (b) the age and physical and emotional health of the parties; (c) the distribution of property; (d) the educational level of the parties; (e) the earning capacity of the party seeking maintenance; (f) the feasibility of the party seeking maintenance to become self-supporting; (g) the tax consequences to each party; (h) any mutual agreement made by the parties; (i) the provisions of an antenuptial agreement; and (j) other factors the court may determine to be relevant. Iowa Code § 598.21A(1).

was pursuing a second degree in nursing. Deandra has valuable experience from her time in the military. In Alaska, she obtained a civilian job in support services that paid an annual salary of about \$45,000. The record also suggests Deandra also has the option of returning to active duty in the military if she wishes to do so. We conclude Deandra has the ability to support herself through several different avenues.

It is worth mentioning that Deandra's request for spousal support is not aided by her behavior in connection with the foreclosure of the parties' Las Vegas home. As the district court noted, Dennis negotiated the acceptance of a short-sale offer on that residence in lieu of foreclosure. Deandra refused to sign off on the deal that resulted in the foreclosure of the property and a deficiency judgment of approximately \$65,000. This \$65,000 marital debt existed solely because of Deandra's failure to consent to the negotiated sale. We agree with the district court's conclusion that no rational basis existed for Deandra's rejection of that transaction. Dennis was ultimately assigned the entirety of the marital debt with the exception of one-half of the deficiency balance generated by the foreclosure of the parties' Las Vegas real estate. The property division is one factor the court may take into consideration when determining whether alimony should be awarded. See *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 854 (Iowa Ct. App. 1998).

We affirm the district court's decision that spousal support was inappropriate in this case.

#### **IV. Tax Exemptions.**

The district court awarded Dennis “the right to claim the income tax dependency exemptions for the minor children as long as he is current in his support obligation on January 31 of the year following the year for which the exemptions are sought to be claimed.” Deandra points out the parties had previously stipulated that in odd-numbered years Dennis would be entitled to take two children for tax purposes and Deandra would take one, then in even-numbered years Deandra would be able to take two of the children and Dennis would take one.

A court has authority to award the tax exemption in order to achieve an equitable resolution of the economic issues in a case. *In re Marriage of Okland*, 699 N.W.2d 260, 269 (Iowa 2005). The court was not obligated to adopt the parties’ stipulation on this matter. In his appellate brief, however, Dennis states that he remains willing to honor the parties’ stipulation on this issue. In addition, there is nothing in the record that suggests endorsing the parties’ agreement either deviates from the child support guidelines or is not in the children’s best interests.

We therefore modify the dissolution decree to provide that in odd-number years Dennis is entitled to the tax dependency exemption for the two younger children, while Deandra is entitled to the tax dependency exemption for the oldest child. In even-number years Dennis may declare the youngest child as a tax dependency exemption, and Deandra may declare the two oldest children. When only two children are eligible for support, Dennis is entitled to the exemption for the younger child, and Deandra is entitled to the exemption for



their middle child. When only one child is eligible for support, Dennis is entitled to the tax dependency exemption for this child in odd-number years and Deandra in even-number years.

#### **V. Visitation.**

Deandra claims Dennis should only have supervised visitation with the children. She asserts Dennis has a history of domestic violence. She states that Dennis was an angry person and there was much yelling in the home. She contends Dennis physically abused Q.T. and her child from a previous relationship. Deandra claims Dennis's behavior caused the children anxiety and required them to attend counseling.

Generally, liberal visitation rights are in the best interests of children. *In re Marriage of Riddle*, 500 N.W.2d 718, 720 (Iowa Ct. App. 1993). Under Iowa Code section 598.41(1)(a), a parent should be awarded "liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents." Liberal visitation should be granted "unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent." Iowa Code § 598.41(1)(a). We do not place restrictions or conditions on a parent's visitation unless the visitation is likely to cause physical or emotional harm. *In re Marriage of Rykhoek*, 525 N.W.2d 1, 4 (Iowa Ct. App. 1994).

A history of domestic abuse is an important consideration in custody and visitation decisions. See *In re Marriage of Forbes*, 570 N.W.2d 757, 759 (Iowa 1997). A "history" is not established by one or two incidents of domestic violence. *Id.* at 760. "It is for the court to weigh the evidence of domestic abuse,

its nature, severity, repetition, and to whom directed, not just to be a counter of numbers.” *Id.* Another consideration is whether the abuse was inflicted by both parties. *Id.* “[W]e give considerable weight to the judgment of the district court, which has had the benefit of hearing and observing the parties first-hand.” *In re Marriage of Ford*, 563 N.W.2d 629, 631 (Iowa 1997).

In this case, the district court determined there was not a history of domestic violence. The court found:

Certainly, the marital relationship of the parties has a history of conflict, but the conflict only relatively rarely has developed into physical confrontation. Further, the Court is convinced based on its view of the demeanor of the parties during the course of the trial that [Deandra] initiated some of the physical confrontations.

We agree with the district court’s ultimate conclusion that this case does not present a history of domestic violence. According to Deandra’s own testimony, there were very rare occasions of physical aggression. We also note that Dennis has completed anger management and parenting classes, and he testified he had learned new ways to deal with stress.

We conclude Deandra has not shown the children would be subjected to direct physical harm or significant emotional harm if Dennis is permitted unsupervised visitation. We determine the district court properly rejected her request that Dennis only have supervised visitation.

Deandra also asked that the decree specifically prohibit Dennis from looking at pornography when the children were present. The district court found there was no evidence Dennis would expose the children to pornographic material. We agree, and conclude such a prohibition is unnecessary. See *Rykhoek*, 521 N.W.2d at 4 (noting that generally we do not impose conditions on

a parent's visitation). We affirm the provisions regarding visitation in the parties' dissolution decree.

**VI. Attorney Fees.**

**A.** Deandra claims the district court should have ordered Dennis to pay her trial attorney fees. She points out that she was not working at the time of trial and states Dennis had a substantially higher earning capacity than she did. She asks that Dennis pay \$3000 of her trial attorney fees.

An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). We have found that Deandra has the capability to be self-supporting. We find the district court did not abuse its discretion by requiring her to pay her own trial attorney fees.

**B.** Both Deandra and Dennis have requested an award of appellate attorney fees. On a request for appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party was required to defend the district court's decision on appeal. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). We determine each party should be required to pay his or her own appellate attorney fees.

We affirm the parties' dissolution decree, except the provision regarding tax exemptions, which we have modified. Costs of this appeal are assessed three-fourths to Deandra and one-fourth to Dennis.

**AFFIRMED AS MODIFIED.**