

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

MACH V. MACH

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LYNN E. MACH, APPELLEE,  
V.  
JEFFREY J. MACH, APPELLANT.

Filed June 26, 2012. No. A-11-840.

Appeal from the District Court for Lancaster County: ROBERT R. OTTE, Judge. Affirmed as modified.

Peter C. Wegman, of Rembolt Ludtke, L.L.P., for appellant.

Terrance A. Poppe and Benjamin D. Kramer, of Morrow, Poppe, Watermeier & Lonowski, P.C., L.L.O., for appellee.

MOORE and PIRTLE, Judges, and CHEUVRONT, District Judge, Retired.

MOORE, Judge.

INTRODUCTION

The district court for Lancaster County entered a decree dissolving the marriage of Lynn E. Mach and Jeffrey J. Mach. On appeal, Jeffrey assigns error to the award of custody of the parties' minor children to Lynn, the parenting time schedule, and the length of the alimony award to Lynn. We find no abuse of discretion in the custody award or the parenting time schedule and affirm those decisions of the lower court. We do find an abuse of discretion in the alimony award, which we modify as discussed below. Accordingly, the decree is affirmed as modified.

BACKGROUND

The parties were married on May 30, 1997, in Lincoln, Nebraska. The parties had three children during the marriage: Hannah Mach, born in 1997; Emmett Mach, born in 2004; and

Charlie Mach, born in 2007. The parties separated several times during the marriage, as noted below, with their final separation occurring in July 2010.

After moving from Minden, Nebraska, to Lincoln, Lynn filed a complaint for dissolution of marriage in Lancaster County on July 20, 2010. Jeffrey filed a dissolution action in Kearney County on July 23. Jeffrey filed a special appearance in the Lancaster County action and motion to transfer venue to Kearney County on August 12. After some discussion between the district court judges, the case in Kearney County was dismissed.

On August 20, 2010, the Lancaster County District Court entered an order denying Jeffrey's motion for change of venue. In that order, the district court found that Lynn and the children had significant attachments to Lancaster County. The court stated that while it did not encourage "such 'move and file' actions," given Lynn's connections with family in Lincoln and her role primarily as a stay-at-home mother, the move to Lincoln was not unreasonable. The court also noted that Lynn filed first and that Jeffrey knew of the filing when he filed his action in Kearney County. Based on the "rather extensive affidavits" that had been provided by the parties, the court awarded Lynn temporary custody of the children for their placement in school until the next hearing on August 27.

On August 31, 2010, the district court entered an order granting Lynn temporary custody of the children. The court noted the personal animosity between the parties, but it found that the parties were both fit and proper parents to care for their children. The court expressed concern over the disruption caused by Lynn's move with the children to Lincoln but declined to repeat the allegations and statements in the affidavits submitted to the court. The court noted that Lynn had been the primary caregiver during the marriage, observed that the children appeared to have thrived and flourished under her care, and stated that allegations about Lynn's ability to live alone and raise the children were not supported by the record presented at the hearing on the motion for temporary custody. The court ordered Jeffrey to pay temporary child support of \$1,800 per month and temporary spousal support of \$1,000 per month and set forth a temporary parenting plan.

Jeffrey subsequently answered and filed a counterclaim, seeking custody of the children. The district court entered an order on February 4, 2011, appointing a guardian ad litem (GAL) for Hannah and reducing Jeffrey's temporary child support obligation to \$1,350 per month.

A trial was held before the district court on July 18 and 19, 2011. The court interviewed Hannah in chambers at the start of the trial, and although we do not recount Hannah's testimony here, we have reviewed and considered it in our de novo review.

Jeffrey was 40 years old at the time of trial and continued to reside in Minden, which is 132 miles from Lincoln. He grew up in Minden and graduated from college in 1993 with a degree in forestry, fisheries, and wildlife management and received a master's degree in natural resource sciences in 1998.

At the time of trial, Lynn was 40 years old and resided in Lincoln. Lynn grew up in Lincoln and graduated from college in 1994 with a degree in elementary education and a minor in early childhood education. At the time of trial, she was certified to teach in Nebraska and Colorado.

The parties lived in Lincoln after they were married in 1997. At the time of their marriage, Jeffrey was working in construction and attending school and Lynn was working at a

child development center. The parties moved to Fort Collins, Colorado, in December 1997 after Jeffrey's graduation and lived there until August 2003. The parties moved to Colorado in order for Jeffrey to continue employment with a company which helped pay for his graduate studies in return for a year of service after his graduation. Jeffrey was employed by that company during the entire time the parties lived in Colorado. While the parties lived in Colorado, Lynn taught at a childcare center and then for a local school district in various capacities.

During the time the parties lived in Colorado, they separated on two occasions. In February 1998, Lynn left Colorado with Hannah and lived in Lincoln with her parents until February or March 1999. During this period, Hannah spent about 30 percent of the time in Colorado with Jeffrey. Lynn filed for divorce in February 1998, and this action was dismissed in 1999 upon the parties' reconciliation. The second separation occurred in 2002 and 2003. Lynn remained in the family home, and Jeffrey moved out. Jeffrey filed for divorce in June 2002, and the parties reconciled in April 2003. Hannah remained primarily with Lynn during this period, though Jeffrey would sometimes have her on the weekends.

After they reconciled in 2003, the parties moved to Wellington, Colorado, where the parties' two youngest children were born. In 2007, the parties began discussing Jeffrey's leaving his career in wildlife management and agreed to relocate the family to Minden in order for Jeffrey to become involved in a farm implement business. The parties moved to Minden in December 2007.

Since January 2008, Jeffrey has been employed by a business consisting of six farm implement dealerships in Nebraska and Kansas. Jeffrey works in sales for the business at a John Deere dealership in Minden. At the time of trial, he worked from 7:30 a.m. to 5:30 p.m. Monday through Friday and approximately every other Saturday from 8 a.m. to noon. Jeffrey works more weekends and longer hours during planting season (April 15 to May 15) and harvest (October 15 to November 15). Jeffrey's parents live about 3 miles from Jeffrey, and Jeffrey's father owns 14 percent of the business. At the time of trial, Jeffrey's salary was \$80,000 per year. Jeffrey also earns commissions. He earned approximately \$20,000 in commissions in 2010 and as of May 2011 had earned \$22,845.45 in commissions for 2011.

While the parties lived in Minden, Lynn was a stay-at-home mother. Lynn was responsible for getting the children up in the morning, preparing breakfast, and getting the children dressed and ready for school. Jeffrey would occasionally take Hannah to school on his way to work; other times, Lynn would arrange for a neighbor to take her to school. Lynn would stay home with Emmett and Charlie. In the evenings, Lynn would prepare dinner and perform some activity with the children before it was time to get them ready for bed. Lynn would read to the children almost every night with Jeffrey telling them a story on occasion.

Lynn visited with her attorney about potentially filing for divorce in December 2009. She testified that the decision to separate a third time was a hard decision for her to make. Lynn moved to her parents' home in Lincoln with the children in July 2010 while Jeffrey was away on a fishing trip. Lynn testified that she left in this manner because she knew Jeffrey would not let her leave with the children and because there was "no negotiating with him."

After some initial skirmishing between the parties and Jeffrey's parents, which we do not recount here, Hannah and Emmett were enrolled in school in Lincoln. Hannah and Emmett initially attended a Catholic school, but after about a month, Lynn enrolled them in the Lincoln

Public Schools system. Although the Catholic faith is important to the family, Hannah was not happy at the Catholic school. Lynn and the children belong to a Catholic church in Lincoln and attend regularly. The record shows that Hannah and Emmett have done well in school in Lincoln and are both involved in various extracurricular and church activities.

Since moving to Lincoln, Lynn has begun teaching again. Lynn lost her certification to teach in Nebraska when the parties moved to Colorado, and she did not work outside of the home while the parties lived in Minden because of the ages of the children. Lynn began the process of renewing her Nebraska teaching certification in the summer of 2009 and had completed all of the requirements for a teaching certificate in Nebraska by the time of trial. Lynn anticipated that her Nebraska certificate would be issued in August 2011. She had a substitute teaching certificate for Nebraska that was valid at the time of trial. After moving to Lincoln in 2010, Lynn worked for the Lincoln Public Schools as a paraeducator during the 2010-11 school year. She also tutored children in reading and math after school for which she was paid \$25 an hour. She was tutoring children privately about 2 hours a week at the time of trial. Lynn anticipated being able to substitute teach during the upcoming school year in the event that she did not receive one of the teaching jobs for which she had applied. According to Lynn, substitute teachers in Lincoln earn approximately \$144 per day. Lynn had applied for several part-time teaching jobs for the upcoming school year and testified that such a job would pay about \$19,000 a year. Lynn was applying for part-time positions in order to spend more time with Charlie, who was not yet in school.

Lynn moved from her parents' house in September 2010, and at the time of trial, she was renting a three-bedroom house in Lincoln.

Lynn received two citations for driving under the influence of alcohol (DUI) during the marriage. The first DUI was in Lincoln in November 1997 after Lynn attended a wedding. Hannah was a month old at the time and was home with Jeffrey. Lynn successfully completed probation for the first DUI. She received a second DUI in Lincoln in January 2008 after attending her brother's birthday party. She was pulled over for not having her car lights on. The children were in Lincoln but not in the vehicle at the time; Jeffrey was home in Minden. Lynn successfully completed probation for this DUI as well.

One of the exhibits received at trial was a report from Hannah's GAL. The GAL did not testify at trial. We have reviewed the GAL's report and considered it in our de novo review, but we decline to set forth the specific details in our opinion. In general, the report shows that Hannah is a good student involved in many activities, has begun to adjust to living in Lincoln and has processed her thoughts and feelings about the move and the divorce proceedings in counseling, has consistently expressed a desire to remain with her brothers, has positive things to say about both her parents, has declined to pick one parent over the other, has vacillated in her preference for Lincoln or Minden as a place to live, and has felt some pressure from Jeffrey and his family to remain in Minden. The GAL felt that Lynn's move to Lincoln was in Lynn's best interests but not Hannah's. The GAL concluded that both Lincoln and Minden were good communities in which to raise children, that the parties both had appropriate housing, and that while the parties each had strengths and weaknesses and different parenting styles, neither party was unfit. The GAL recommended that Lynn be granted custody of Hannah as long as she resided within 35 miles of Minden and that Lynn be given the opportunity to relocate by the end

of the first quarter of the 2011-12 school year. The GAL recommended that, if Lynn did not relocate, custody of Hannah be awarded to Jeffrey.

The district court entered a decree dissolving the parties' marriage on August 11, 2011. The court awarded the parties joint legal custody of the children but awarded physical custody to Lynn subject to Jeffrey's rights of parenting time as set forth in the decree. The court ordered Jeffrey to pay child support of \$1,970 per month for three children, \$1,718 for two children, and \$1,197 for one child. The court ordered Jeffrey to pay alimony in the amount of \$1,750 per month for a period of 120 months. We have set forth other details of the decree as necessary to our resolution of this appeal in the analysis section below.

Jeffrey filed a timely motion for new trial, which was overruled by the district court on September 12, 2011. Jeffrey subsequently perfected his appeal to this court.

#### ASSIGNMENTS OF ERROR

Jeffrey asserts that the district court erred in (1) awarding custody of the minor children to Lynn, (2) awarding him less parenting time than that contemplated by the local rules for the Third Judicial District, and (3) awarding alimony for an unreasonable duration.

#### STANDARD OF REVIEW

In an action for the dissolution of marriage, an appellate court reviews de novo on the record the trial court's determinations of custody, child support, property division, alimony, and attorney fees; these determinations, however, are initially entrusted to the trial court's discretion and will normally be affirmed absent an abuse of that discretion. *Mamot v. Mamot*, 283 Neb. 659, \_\_\_ N.W.2d \_\_\_ (2012). In a review de novo on the record, an appellate court reappraises the evidence as presented by the record and reaches its own independent conclusions with respect to the matters at issue. *Id.*

A judicial abuse of discretion requires that the reasons or rulings of a trial judge be clearly untenable, unfairly depriving a litigant of a substantial right and a just result. *Zoubenko v. Zoubenko*, 19 Neb. App. 582, \_\_\_ N.W.2d \_\_\_ (2012).

When evidence is in conflict, an appellate court considers, and may give weight to, the fact that the trial judge heard and observed the witnesses and accepted one version of the facts rather than another. *Millatmal v. Millatmal*, 272 Neb. 452, 723 N.W.2d 79 (2006).

#### ANALYSIS

##### *Custody.*

Jeffrey asserts that the district court erred in awarding custody of the minor children to Lynn. In his reply brief, Jeffrey also argues that the district court improperly allowed Lynn to relocate to Lincoln in her initial temporary application and urges us to analyze this like an out-of-state removal case along the lines of *Jack v. Clinton*, 259 Neb. 198, 609 N.W.2d 328 (2000), which discourages trial courts from granting temporary permission to remove children to another jurisdiction prior to a ruling on permanent removal. However, Jeffrey did not assign this argument as error in his initial brief on appeal. The purpose of an appellant's reply brief is to respond to the arguments the appellee has advanced against the errors assigned in the appellant's initial brief. *Genetti v. Caterpillar, Inc.*, 261 Neb. 98, 621 N.W.2d 529 (2001). Errors not

assigned in an appellant's initial brief are waived and may not be asserted for the first time in a reply brief. *Id.* Secondly, we note that this was not a removal within the meaning of *Jack v. Clinton, supra*, as the move was within Nebraska, something that does not require prior court approval. Therefore, we do not address the removal argument further.

When deciding custody issues, the court's paramount concern is the child's best interests. *Citta v. Facka*, 19 Neb. App. 736, 812 N.W.2d 917 (2012). With respect to best interests, Neb. Rev. Stat. § 43-2923(6) (Cum. Supp. 2010) states:

In determining custody and parenting arrangements, the court shall consider the best interests of the minor child, which shall include, but not be limited to, consideration of the foregoing factors and:

(a) The relationship of the minor child to each parent prior to the commencement of the action or any subsequent hearing;

(b) The desires and wishes of the minor child, if of an age of comprehension but regardless of chronological age, when such desires and wishes are based on sound reasoning;

(c) The general health, welfare, and social behavior of the minor child;

(d) Credible evidence of abuse inflicted on any family or household member. For purposes of this subdivision, abuse and family or household member shall have the meanings prescribed in section 42-903; and

(e) Credible evidence of child abuse or neglect or domestic intimate partner abuse. For purposes of this subdivision, the definitions in section 43-2922 shall be used.

In determining a child's best interests under § 43-2923, courts may consider factors such as general considerations of moral fitness of the child's parents, including the parents' sexual conduct; respective environments offered by each parent; the emotional relationship between child and parents; the age, sex, and health of the child and the parents; the effect on the child as the result of continuing or disrupting an existing relationship; the attitude and stability of each parent's character; parental capacity to provide physical care and satisfy educational needs of the child; and many other factors relevant to the general health, welfare, and well-being of the child. *Maska v. Maska*, 274 Neb. 629, 742 N.W.2d 492 (2007).

The district court discussed its decision with respect to custody at great length in the decree, and we find it useful to set forth certain details of the lower court's analysis as it is consistent with our own de novo review of this issue.

In awarding custody to Lynn, the district court considered the moral fitness of the parties, the strengths of ties to Minden and Lincoln, the connections with extended family, the living conditions and physical environment offered by each party, the effect of disrupting relationships, the parties' attitudes, the capacity to provide for the physical care and educational needs of the children, and the general health and well-being of the children. The court also considered the safety, emotional growth, and educational progress of the children, the historical and current parenting roles of the parties, the children's relationships to the parties, the children's particular ages, the character of the parties, and Hannah's preference.

The district court found:

Both parties are, outside of this action, good people and totally connected with the children and their respective extended families. Both appear to fiercely love their children. Both are involved parents. The children appeared to be happy, healthy and well-adjusted in Lincoln and they were similarly so happy, healthy and well-adjusted in Minden. The court finds that both parents are fit and proper parents to have custody of the children. The court finds Minden and Lincoln are excellent locations for rearing children and each of the parties have suitable housing.

The district court noted the disharmony between the parties that was exposed at trial, the prior dissolution actions filed by the parties, and Lynn's previous move to Lincoln with Hannah prior to reconciliation. The court was very reluctant to recount the "recent bad behavior" of each party as it was fully disclosed by the record, and discussion of that behavior would only serve to further polarize the parties. The court stated:

Each party detailed inappropriate behavior of the other. While that behavior is significant, and directly opposed to the best interests of the children, the court finds that each party can be rightly criticized. The court's custody determination . . . does not hang from one particular act or failure to act but upon consideration of all of the facts and circumstances presented to the court and after review of the evidence and having the opportunity to observe and evaluate the credibility of the parties and witnesses.

The district court generally adopted the GAL's report, and after hearing the testimony of parties and witnesses at trial and talking to Hannah in chambers, the court noted its belief that the GAL's report gave a true and accurate reflection of the facts, nature, and circumstances of the case. The court stated:

Hannah is an absolutely delightful young lady and, despite what she has had to go through with her parents, is excelling at school and in her personal life. Her reflections on school, social activities, her parents, grandparents and friends seemed to be sincere and honest. She does not want to be separated from her brothers (and that has not really been a consideration of the court). She was able to weigh relationships and circumstances pretty well. Without detailing her testimony the court was impressed with her ability to articulate her thoughts. The changes in her life and the discord between the parties in which she was directly involved has been very hard on Hannah. Yet, she absolutely has refused to express her preference for one parent or the other. Her conversation has always focused on a preference of a particular community (Minden or Lincoln) and the advantages and disadvantages of those communities. Hannah has expressed positives and negatives as to each community. Hannah has vacillated as to her preference of living in those communities.

The district court noted the details of several changes in Hannah's preference over the course of the case and stated, "It does appear as if [Jeffrey] and/or his parents have attempted to influence Hannah in a number of different ways which may be part of . . . Hannah's inconsistency." The court noted the GAL's report that Hannah felt pressure from Jeffrey to live in Minden. The court observed that neither it nor the GAL could assess with certainty the causes

of the fluctuation in Hannah's preference and determined that her vacillation and the reports of influence by Jeffrey limited the weight of any expressed preference.

The district court then discussed other concerns and factors weighing in its decision about custody. The court noted that both parties had acted in ways contrary to the children's best interests and that they had issues with one another and held significant anger and resentment. The court rejected an award of joint physical custody. The court noted Lynn's role as the primary caregiver during the marriage and Jeffrey's active role as a father. The court expressed its concern over Lynn's two DUI convictions and the personal attacks made by Jeffrey and his family on Lynn. The court found that those attitudes of Jeffrey and his family about Lynn "did not, in the view of the court, hold up and caused the court much concern about how [Jeffrey] and his family would act if [Jeffrey] were the custodial parent." The court observed that although Jeffrey was actively involved in the children's lives, his busy work schedule would require him to depend significantly on the support of others to help care for the children. The court noted that Lynn's anticipated employment environment would allow her more time with the children and that Lynn was committed to having the children "maintain a great relationship" with Jeffrey and to keeping them from the center of the conflict. The court expressed its confidence that Lynn would be responsible as a custodial parent and cooperative and flexible when considering inevitable scheduling conflicts and issues. The court was not so comfortable that Jeffrey would maintain that same posture of cooperation and flexibility, given the recent history of the parties' relationship.

With regard to the GAL's recommendation that Lynn return to the Minden area in order to retain custody of Hannah, the district court found:

The report of the GAL highlights the extreme difficulty in this case and the difficulty of having to ultimately fashion a decision. After listening to the evidence the court takes some exception to the final recommendation of the GAL. Specifically, the final recommendation suggests that [Lynn] be required to move with the children to a location within 35 miles of Minden, Nebraska within a short period of time. That report was issued prior to the testimony of the parties at trial and the court must consider that report in light of the testimony. The court cannot conclude that it is in the best interest of the minor children to move again to a new school system as suggested by the GAL. It is apparent through the testimony at trial that [Lynn] will not move back to Minden, Nebraska. The court understands her reasons and believes that [Jeffrey] and his family have made her return to Minden very difficult, if not impossible. Additionally, the GAL does not consider the ability of [Jeffrey] to move . . . closer to Lincoln. There are several communities that would allow [Jeffrey] to be closer to his children and within a relatively easy commute to his business. Such a move comes with its own issues but no more than would be faced by [Lynn] and the children if they were to move to a new community as suggested by the GAL.

The district court's observations about the record relating to custody are consistent with this court's observations upon our de novo review. As did the district court, we decline to set forth the details of the parties' inappropriate behavior and complaints about one another, except to note that both parties have engaged in actions contrary to the best interests of the children.

And, as did the district court, we find it difficult to assign any great weight to Hannah's living preferences, given her vacillation on this matter and the apparent influence of Jeffrey on Hannah's choice.

Upon our de novo review, we find that the district court did not abuse its discretion in awarding physical custody of the children to Lynn. The record shows that both parties love the children and are fit and proper parents. Lynn has been the primary caregiver for the children during the marriage and will foster a positive relationship between the children and their father. Hannah and Emmett have done well in school in Lincoln and are involved in many activities, albeit different activities than those in which they were involved in Minden. The district court did not err in discounting the GAL's recommendation that Lynn only be given custody of Hannah if Lynn moves closer to Minden, especially in light of the subsequent trial testimony and the negative attitude Jeffrey and his parents have toward Lynn. Further, although Lynn may have not shown the best judgment in uprooting the children from their home in Minden as she did, a second move as proposed by the GAL would only cause additional and unnecessary disruption in the lives of the children. Jeffrey's arguments are without merit.

#### *Parenting Time.*

Jeffrey asserts that the district court erred in awarding him less parenting time than that contemplated by the local rules for the Third Judicial District, which provide that the standard parenting time schedule is to be used "in the absence of unusual circumstances." Rules of Dist. Ct. of Third Jud. Dist. 3-9(F)(a) (rev. 2011). The standard parenting time schedule provides for "10 day/4 day parenting," which means that the noncustodial parent is granted parenting time "every other week beginning on Thursday at 4:30 p.m. (or the conclusion of school or school activities, whichever is later) until the following Monday at 8:00 a.m. (or the commencement of the school day, whichever is earlier)." Rules of Dist. Ct. of Third Jud. Dist., appendix form 3 (rev. 2010).

In this case, the district court awarded Jeffrey parenting time "every other week beginning on Friday at 5:00 p.m. (or the conclusion of school or school activities, whichever is later) until the following Sunday at 8:00 p.m." Although Jeffrey argues that the distance between Minden and Lincoln is no obstacle and that he would ensure the children get to and from school on the extra days required by his proposal, it is unreasonable to expect the children to commute from Minden to Lincoln to attend school every other Friday. Jeffrey's proposal would require the children to make two round trips between Minden and Lincoln on a biweekly basis and would require them to leave Minden very early on those Fridays in order to return to Lincoln in time for school. The court did not abuse its discretion in its award of parenting time.

#### *Alimony.*

The district court ordered Jeffrey to pay alimony in the amount of \$1,750 per month for a period of 120 months. Jeffrey asserts that the district court erred in awarding alimony for an unreasonable duration. We agree.

In reviewing an alimony award, an appellate court does not determine whether it would have awarded the same amount of alimony as did the trial court, but whether the trial court's award is untenable such as to deprive a party of a substantial right or just result. *Sitz v. Sitz*, 275 Neb. 832, 749 N.W.2d 470 (2008). In determining whether alimony should be awarded, in what

amount, and over what period of time, the ultimate criterion is one of reasonableness. *Id.* The purpose of alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances make it appropriate. *Millatmal v. Millatmal*, 272 Neb. 452, 723 N.W.2d 79 (2006). In dividing property and considering alimony upon a dissolution of marriage, a court should consider four factors: (1) the circumstances of the parties, (2) the duration of the marriage, (3) the history of contributions to the marriage, and (4) the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of each party. *Id.* In addition to the specific criteria listed in Neb. Rev. Stat. § 42-365 (Reissue 2008), in dividing property and considering alimony upon a dissolution of marriage, a court is to consider the income and earning capacity of each party, as well as the general equities of each situation. *Millatmal v. Millatmal, supra.*

The parties were married for over 14 years and were both 40 years old and in good health at the time of trial. Lynn has a college education, and while the parties lived in Colorado, she was employed using her teaching credentials in various capacities. After the parties moved to Minden in December 2007, Lynn stayed at home with the children and has been the children's primary caregiver during the marriage. Lynn began the process of renewing her Nebraska teaching certificate in 2009, and after she moved to Lincoln in 2010, she has again been employed as a teacher. Although she was not employed at the time of trial, Lynn was tutoring children privately and actively interviewing for part-time teaching jobs. She anticipated receiving such a job or being able to substitute teach in the upcoming school year. We note that the district court calculated Lynn's total monthly income for child support purposes as \$1,500 per month and Jeffrey's as \$10,303.33. The parties do not challenge these figures. Lynn submitted an exhibit at trial stating that her monthly living expenses were \$4,068. At the time of trial, the children were ages 13, 7, and 4.

Clearly an award of alimony is appropriate, and Jeffrey does not dispute that fact, but given the length of the marriage, the parties' relative contributions to the marriage, and Lynn's degree of education and ability to engage in gainful employment, an award lasting for 10 years is unreasonable and an abuse of discretion. While Lynn did take a break from gainful employment for a couple of years after the parties moved to Minden, she has taken the necessary steps to be able to secure gainful employment in the near future. Of further significance to our decision is the fact that at trial, Lynn asked for an award of alimony for only 5 years, albeit at the rate of \$2,000 per month. We find this request to be reasonable and appropriate under the circumstances of this case, and accordingly, we modify the award of alimony to \$2,000 per month for 60 months or until the death of either party or Lynn's remarriage, whichever occurs first.

#### CONCLUSION

The district court did not abuse its discretion in the awards of custody and parenting time. The court did abuse its discretion in the alimony award, and we modify the alimony award as set forth above. The decree is affirmed in all other respects.

AFFIRMED AS MODIFIED.