

IN THE COURT OF APPEALS OF IOWA

No. 0-508 / 09-1715
Filed August 25, 2010

**IN RE THE MARRIAGE OF DENISE LOUISE ANDERZHON
AND KRISTOFER BENJAMIN ANDERZHON**

**Upon the Petition of
DENISE LOUISE ANDERZHON,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
KRISTOFER BENJAMIN ANDERZHON,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Fremont County, James S. Heckerman, Judge.

Kristofer Anderzhon appeals, and Denise Anderzhon cross-appeals, from the economic provisions of their dissolution decree. **AFFIRMED AS MODIFIED.**

Frank E. Robak Sr. of Robak Law Office, Council Bluffs, for appellant.

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

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

DANILSON, J.

Kristofer Anderzhon appeals, and Denise Anderzhon cross-appeals, from the economic provisions of their dissolution decree. Kristofer contends (1) the alimony award should be eliminated or substantially reduced, (2) the provision ordering him to pay the marital home expenses pending its sale should be eliminated or modified, and (3) Denise should not have been awarded any attorney fees. Kristofer also requests reasonable appellate attorney fees and costs. Denise argues the decree should be modified to increase her award for trial attorney fees and also requests appellate attorney fees and costs. In light of Kristofer's financial obligations and the moderate disparity of the parties' incomes, we modify and reduce the alimony obligation. We also require Denise to contribute to repairs to the family home, if any, and afford Kristofer credit for payments towards the mortgage principal. We affirm the award of trial attorney fees and decline to award appellate attorney fees.

I. Background Facts and Proceedings.

Kristofer and Denise Anderzhon were married in May 1986. They have three children together, born in January 1988, July 1989, and June 1991. At the time of trial, Kristofer was forty-five years old, Denise was fifty-two years old, and one child was a minor. Neither Kristofer nor Denise has any physical or mental limitations.

In 1989, the parties purchased Kristofer's childhood home in the country near Shenandoah. During the early years of their marriage, Kristofer was a full-time farmer. Denise helped with the farming operation by combining, running errands, paying bills, and doing the "kind of thing that farm wives do." Denise

helped less with the farm after the couple had children, becoming the primary caretaker for their three children.

In the late 1990s, the farming operation began to fail. Their lending bank called in Kristofer and Denise's loan, and their farmland and equipment were sold. The liquidation resulted in a capital gain, leaving Kristofer and Denise with a large tax debt owed to the Internal Revenue Service (IRS). When the IRS began to send notices to their home, Kristofer told Denise that he was handling the situation, communicating with the IRS, and would take care of everything. It was not until the IRS began garnishing Denise's wages that she became concerned about the debt. Kristofer later hired an attorney to help with the taxes owed, but no compromise had been reached by the time of trial. As a result of the debt owed to the IRS, a \$240,000 tax lien exists on Kristofer and Denise's residence. The parties acknowledge that the IRS will hold them both liable for the entire amount. The parties agree their marital home contains approximately \$100,000 of equity, all of which the IRS would take upon its sale.

When their children became older, Denise began working outside the home. She worked for a year and half as a teacher's aide at the Shenandoah Community Schools. At the time of trial, Denise had been working for eight years at KMA Broadcasting in Shenandoah as a sales advertising representative for KMA's hometown cable channel. KMA paid Denise on commission, and she was making approximately \$32,000 per year at the time of trial. However, Denise testified that sales had been slowing since the end of 2008 due to the economy, but her income had not yet been significantly affected.

In 2001, Kristofer began working part-time as a driver for Arrow Stage Lines, a bus company in Omaha. At the time of trial, Kristofer had been promoted to full-time head of operations and transportation supervisor, and he was making approximately \$43,000 per year with a recent raise. Kristofer has earned an additional \$12,000 per year working for a local farmer, where he is allowed free use of a truck for transportation although his income from this source will likely be less in 2009. Kristofer has also rented farmland surrounding their property and some grain storage facilities in the past for some minimal additional income. His total yearly income at the time of trial was around \$55,000.¹

On March 20, 2008, Denise filed a petition for dissolution of marriage. On May 5, 2008, a temporary order was filed requiring Kristofer to pay the mortgage, propane bill, and health and automobile insurance during the pending dissolution action. The temporary order was modified on December 19, 2008, to require Denise to stay in the upper levels of the marital home and Kristofer to stay in the basement, which was their living situation through trial. The modified temporary order required Kristofer to pay various family expenses and required Kristofer and Denise to individually make minimum payments on other marital debt.

After Denise filed the petition for dissolution, Kristofer purchased three motorcycles. By the time of trial, Kristofer had traded in one motorcycle and listed another for sale. He was paying approximately \$1300 per month to finance

¹ Kristofer's income of \$55,000 was largely undisputed as both parties agreed that child support could be calculated based on this sum.

his two remaining motorcycles at the time of trial. Kristofer planned to retain one motorcycle (costing \$30,000), and reduce his monthly payment to \$700.

While this action was pending, Kristofer also purchased a big screen television and had taken trips to South Dakota and Missouri. Kristofer testified that he only paid for food and gas on the trips because he could pay for lodging through his company's trip reward program.

Trial was held on August 27, 2009. Denise testified that her monthly expenses totaled \$5400 and that she needed spousal support to assist her in the future. She requested alimony from Kristofer of \$1500 per month for fifteen years or until remarriage, but she conceded that the alimony payments should be suspended until she moved out of the residence. Denise also asked that Kristofer pay \$4500 toward the \$7212 in attorney fees she incurred during the dissolution action. Denise further requested that Kristofer continue paying the marital home expenses pending its sale. Kristofer contended alimony and attorney fees were inappropriate because he could not afford to pay either of them, regardless of his motorcycle payments. By the time of trial, Denise had paid all but one bill assigned to her by the December 19, 2008 modified temporary order, and Kristofer had been making payments, although late, on his assigned bills.

On October 9, 2009, the district court filed its decree dissolving Kristofer and Denise's twenty-three-year marriage. The district court found Denise's income totaled approximately \$30,000 per year and Kristofer's totaled approximately \$55,000 per year. The main issue concerned the \$240,000 tax lien on the marital home, but the district court divided Kristofer and Denise's

assets and debts irrespective of the tax obligation, finding “the IRS will likely look to both parties for payment, settlement, or compromise of the debt.” The district court also found that Kristofer and Denise agreed the marital home should be sold and the equity should be distributed between the two after payment of the primary mortgage and sale expenses, noting the IRS may capture the remaining equity and apply it to the tax debt.

The parties were awarded joint legal custody of the parties’ minor son, with physical care placed with Denise. Kristofer was ordered to pay child support in the sum of \$548 per month, but this sum was reduced to \$400 until Denise moved from the family home. Neither party could afford to remain in the home, so the district court ordered that it be sold, with Kristofer solely responsible for paying the “mortgage, taxes, insurance, deductibles, maintenance, and expenses involved with the occupancy of the home” pending its sale. Denise requested at least sixty days to vacate the home and was granted sixty days in the decree.

Denise was awarded her vehicle. Kristofer was awarded his vehicle, two motorcycles, and two four-wheelers. Each party retained his or her respective life insurance policies and bank accounts, and Denise was awarded all of her retirement account. The district court awarded Denise \$750 per month in alimony for fifteen years, with the alimony to be reduced by the amount of child support until Kristofer’s child support obligation terminated. Denise was also awarded \$500 in attorney fees.

Kristofer now appeals, contending the alimony award, the provision requiring him to pay the marital home expenses pending its sale, and the award

of attorney fees are inequitable and unsupported by legal authority. Denise cross-appeals, seeking an increase in trial attorney fees.

II. Scope and Standard of Review.

An action for dissolution of marriage is an equitable proceeding, so our review is de novo. *In re Marriage of Geil*, 509 N.W.2d 738, 740 (Iowa 1993). “Although we decide the issues raised on appeal anew, we give weight to the trial court’s factual findings, especially with respect to the credibility of witnesses.” *In re Marriage of Witten*, 672 N.W.2d 768, 773 (Iowa 2003). Our determination depends on the facts of the particular case, so precedent is of little value. *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995). We review an award of attorney fees for abuse of discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997).

III. Discussion

A. *Alimony*. Alimony is not an absolute right, and an award of alimony depends upon the facts and circumstances of each particular case. *In re Marriage of Hansen*, 733 N.W.2d 683, 704 (Iowa 2007). When determining an alimony award, the district court must consider the factors listed in Iowa Code section 598.21A(1) (2009), including the length of the marriage, the age and health of the parties, the distribution of property, the relative earning capacities of the parties, their education levels, and the likelihood that the party seeking alimony will become self-supporting at a standard of living comparable to that enjoyed during the marriage. “Alimony is a stipend to a spouse in lieu of the other spouse’s legal obligation for support.” *Id.* at 702 (citation omitted).

Additionally, alimony may be used “to remedy inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage.” *Geil*, 509 N.W.2d at 742. Our supreme court has affirmed awards of alimony and approximately equal property division following marriages of long duration, especially where there is a great disparity in earning capacity. *Id.* Although alimony awards are reviewed de novo, considerable latitude is given to the district court in making such determinations based on the statutory criteria. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). We disturb the district court’s determination “only when there has been a failure to do equity.” *Id.*

At the time of trial, Kristofer was forty-five years old and Denise was fifty-two years old, meaning alimony would cease when Kristofer reaches the age of sixty and Denise reaches sixty-seven. Their marriage lasted for twenty-three years. During that time, Denise assisted Kristofer with farming duties. She was also a stay-at-home mother and primary caretaker for the couple’s three children in the early years of the marriage. As the children became older, Denise began working outside the home, first as a teacher’s aide and then as a sales advertising representative.

At the time of trial, Denise’s income had remained stable at approximately \$32,000 per year; although she testified that her commissioned sales may be slowing due to the economy. Her affidavit of financial status shows her net monthly income to be approximately \$2200 and her estimated monthly expenses to be around \$5400. However, Denise acknowledges that her monthly expenses include expenditures that Kristofer was paying each month. Her list of monthly expenses that Kristopher was actually paying includes the mortgage payment

(\$930), family health insurance (\$481), car expense (\$1500), utilities and phone (\$520), and propane (\$300). We anticipate Denise will have similar obligations after vacating the family home, but not nearly in the amounts reflected in her affidavit.

Kristofer's income was approximately \$55,000 at the time of trial. He had been promoted from a bus driver to head of operations and transportation supervisor at his current job, and he had recently received a raise. Both parties' financial affidavits calculate his net monthly income to be approximately \$3250. Kristofer testified that his monthly expenses were around \$2350, but this sum did not include the cost of the family health insurance premiums of \$481 per month or his \$1300 monthly motorcycle payments. Additionally, the district court ordered Kristofer to pay \$400 per month in child support, increasing to \$548 per month when Denise vacated the home.

Denise asked the district court to award her \$1500 per month in alimony for fifteen years or until her remarriage. Instead, the district court awarded Denise \$750 in alimony for fifteen years, reduced by the amount of child support (\$548 per month) to \$202 per month until Kristofer's obligation to pay child support ceased.

In light of the length of their marriage, Denise's contributions to their children and farm, and Kristofer's greater earning capacity, we conclude Denise is entitled to alimony. Denise needs the support to maintain a standard of living reasonably comparable to that enjoyed during the marriage, and Kristofer is able to pay the award at his current salary. Denise's income has remained stable for the past few years, and she has been employed as a sales advertising

representative for the past eight years. Kristofer has been promoted at his current place of employment and has recently received a pay raise, increasing his future earnings potential and ability to provide for Denise's needs. Furthermore, Kristofer has enjoyed vacations and has committed himself to \$1300 monthly payments to finance two motorcycles since Denise filed her petition for dissolution of their marriage, which supports a finding that it is not inequitable to require him to support his wife of twenty-three years.

Kristofer contends the district court failed to do equity because it did not apply the required factors listed in Iowa Code section 598.21A(1) when it awarded Denise alimony. The record does not support his contention. According to section 598.21A(2), "orders made pursuant to [section 598.21A] need mention only those factors relevant to the particular case for which the orders are made" The district court did so in discussing the length of Kristofer and Denise's marriage, their respective ages, and their yearly earnings.

In light of the factors relevant in this action though we conclude a more equitable amount of alimony to award to Denise is \$500 per month for a period of twelve years. The sum of \$750 per month would be difficult for Kristofer to pay without any vehicle payment. The decree obligates Kristofer to pay the debts to MidAmerican Energy, Iowa Department of Revenue (taxes for 2009), Whitehills, and \$2000 of the Younkers credit card bill, as well as his own credit card bills, the home mortgage, real estate taxes, insurance deductibles, and home maintenance expenses. None of these obligations except the mortgage payment are reflected in Kristofer's financial affidavit as monthly expenses. We further

order that alimony shall terminate upon the death of either party, or in the event that Denise remarries.

B. Marital Home Expenses. Kristofer contends the district court's order requiring him to pay all of the marital home expenses pending its sale was inequitable. We conclude the provision was reasonable, with minor modifications, because Kristofer continued to reside in the residence and has a greater income than Denise. The district court ordered Denise to vacate the residence within sixty days and decreased Kristofer's child support obligation until Denise and their minor child moved out. It is reasonable to order Kristofer to pay the expenses when he will be living in the home until it is sold. See *In re Marriage of Zoellner*, 219 N.W.2d 517, 520, 526 (Iowa 1974) (finding the trial court's order requiring the wife to pay monthly mortgage payments was just and equitable under the circumstances, where the wife had possession of the residence pending its sale). We modify the decree to require Denise to share in the cost of any repairs to the family home in excess of \$250 and to provide that Kristofer be reimbursed or credited for one-half of any payments he pays towards the mortgage principal prior to the division of any equity at the sale closing.

C. Attorney Fees. Attorney fee awards are not a matter of right but rather rest within the discretion of the court. See *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). Consideration is given to the financial condition of the parties and their respective abilities to pay. See *In re Marriage of Willcoxson*, 250 N.W.2d 425, 427 (Iowa 1977). Any award of attorney fees must be fair and reasonable. *Id.* To overturn an award of attorney fees, the complaining party must show the trial court abused its discretion. See *Romanelli*, 570 N.W.2d at 765.

We conclude the trial court did not abuse its discretion by awarding Denise \$500 in trial attorney fees. The district court discussed attorney fees at the end of the trial on August 27, 2009, noting that it would award more, but there were no available funds for payment. Kristofer has a greater ability to pay attorney fees than Denise based on his income. Therefore, the award was fair and reasonable in light of both Kristofer's and Denise's financial positions, and the trial court did not abuse its discretion.

Both Kristofer and Denise further request awards of appellate attorney fees. When determining whether to award such fees, "we look to the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal." *Id.* Here, we decline to award any appellate attorney fees.

IV. Summary.

For the above reasons, we modify the district court's award of alimony to require Kristofer to pay \$500 a month for a period of twelve years subject to termination upon the death of either party or Denise's remarriage, modify the provision on marital home expenses to require the parties to share the cost of repairs in excess of \$250 and afford Kristofer credit for one-half of any payments he pays towards the mortgage principal consistent with this opinion. We affirm the award of trial attorney fees. We decline to award appellate attorney fees.

Costs on appeal are taxed to one-half to each party.

AFFIRMED AS MODIFIED.