

IN THE COURT OF APPEALS OF IOWA

No. 0-965 / 10-1128
Filed February 9, 2011

IN RE THE MARRIAGE OF ANNE C. HUDSON AND SCOTT A. HUDSON

Upon the Petition of

**ANNE CHRISTINE HUDSON, n/k/a
ANNE CHRISTINE WELTY-BOSTWICK,**
Petitioner-Appellee,

And Concerning

SCOTT ANDREW HUDSON,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,
Judge.

Scott Hudson appeals from the district court's denial of his petition to
modify the decree dissolving his marriage to Anne Welty-Bostwick. **REVERSED
AND REMANDED.**

Cheryl Weber and Laura Folkerts of Dutton, Braun, Staack & Hellman,
P.L.C., Waterloo, for appellant

John Walker Jr. and Kate Mitchell of Beecher, Field, Walker, Morris,
Hoffman & Johnson, P.C., Waterloo, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

SACKETT, C.J.

Scott Hudson appeals from the district court's denial of his petition to modify the April 2008 decree dissolving his marriage to Anne Welty-Bostwick. He contends the alimony should have been terminated or modified because Anne has remarried and she failed to show extraordinary circumstances such as would support the alimony payments continuing. Having failed to show such circumstances we reverse the district court and remand for entry of an order terminating alimony.

I. STANDARD OF REVIEW. Our review of a decision in a proceeding to modify the terms of a marriage dissolution decree is de novo. *In re Marriage of Barker*, 600 N.W.2d 321, 323 (Iowa 1999). No hard and fast rules govern the economic provisions in a dissolution action; rather each decision turns on its own uniquely relevant facts. *In re Marriage of Gaer*, 476 N.W.2d 324, 326 (Iowa 1991); *In re Marriage of Wiedemann*, 402 N.W.2d 744, 747 (Iowa 1987). We accord the trial court considerable latitude in resolving disputed claims and will disturb a ruling "only when there has been a failure to do equity." *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

II. BACKGROUND AND PROCEEDINGS. Anne, born in 1965, and Scott, born in 1963, were married in June of 1985. At the time Scott had completed a degree in mechanical engineering and Anne had completed two years of study towards a degree in business education. The parties have three children born in 1993, 1995, and 1997. Their marriage was dissolved in April of 2008. At that time Scott, who was employed outside the home during the course

of the marriage, had obtained a master's degree and was working for John Deere. His earnings, not including a bonus, had been \$124,308 in 2007. Anne had completed her undergraduate work in business and had earned an MBA in 1992 from the University of Northern Iowa. Other than various short-time or part-time jobs Anne was out of the job market for ten years but at the time of trial was working as a teller at a Credit Union earning nine dollars an hour for a twenty-five to thirty-two hour week. It was projected that her 2008 income would be about \$15,000.

The parties had a net worth in excess of one million dollars, which the district court divided about equally. The parties agreed to the placement of the children and physical care of the older child was placed with Scott and Anne received the physical care of the younger children. Anne's child support obligation was offset against what Scott owed her. This resulted in Scott being ordered to pay her child support of \$1011 a month and in addition to pay as child support 19.8% of his annual bonus after deductions and tax withholding.

Anne was awarded spousal support that the district court referred to as "temporary rehabilitative alimony" of \$1000 a month for two years and \$500 a month for a third year. The district court in making the award noted that:

After two years she should be able to have refreshed her MBA training to the point where she will be a marketable commodity. The \$500 a month alimony payment for a third year should tide her over until she is able to earn above-average wages.

Anne appealed, challenging the spousal support and property award of the original decree. See *In re Marriage of Hudson*, No. 09-0009, (Iowa Ct. App.

Oct. 7, 2009). We affirmed the property award and increased the spousal support to \$1500 for five years. *Id.* We also said:

We decline Anne's request for a specific provision that spousal support would continue "regardless of whether or not [she] remarries during this period." Rather, we affirm the dissolution decree to the extent it makes no mention of terminating the obligation on her remarriage. This means that if a remarriage occurs, what happens to the spousal support award will be determined in accordance with the applicable Iowa precedents.

Id.

Anne remarried and on November 5, 2009, within two months of her remarriage, Scott sought a modification of the alimony contending there had been a substantial change in circumstances since the entry of the decree and no extraordinary circumstances justified continuance of the alimony.

The matter came on for trial on June 1, 2010. At the time both parties had incomes similar to those they were earning at the time of the dissolution. Anne's new husband earned in excess of \$56,750 in 2009 and had support obligations for two children from a prior marriage. He also provided health insurance for Anne.

The district court refused to modify the decree finding that the recession had limited Anne's employment opportunities, she had incurred substantial legal cost as a result of the dissolution, and that she has a "continuing need" for rehabilitative alimony.

III. MODIFICATION OF ALIMONY. Scott contends Anne has failed to meet her burden of proving extraordinary circumstances existed that justify continuing her spousal support. Anne contends the spousal support was

rehabilitative and not subject to modification and that she had demonstrated extraordinary circumstances warranting continuation of the spousal support.

It has long been the rule that a subsequent remarriage does not automatically terminate alimony but does shift the burden to the recipient to show extraordinary circumstances justifying its continuation. *In re Marriage of Shima*, 360 N.W.2d 827, 828 (Iowa 1985); *In re Marriage of Cooper*, 451 N.W.2d 507, 509 (Iowa Ct. App. 1989). This is the rule that we found applied to this case in the initial appeal.

Anne failed to meet her burden to show that extraordinary circumstances existed that require the continuation of the alimony payments. See *In re Marriage of Woodward*, 229 N.W.2d 274, 280 (Iowa 1975); *Myers v. Myers*, 195 N.W.2d 113, 114 (Iowa 1972). Recognized extraordinary circumstances include: (1) the annulment or invalidity of the second marriage, (2) the inability of the subsequent spouse to furnish support, (3) the death of the subsequent spouse, or (4) the dissolution of the subsequent marriage. *Shima*, 360 N.W.2d at 829. These circumstances conform to the underlying rationale that it is illogical and unreasonable for a person to receive equivalent obligations of support from two persons at the same time. *In re Marriage of Johnson*, 781 N.W.2d 553, 558 (Iowa 2010); *In re Marriage of Wendell*, 581 N.W.2d 197, 200 (Iowa Ct. App. 1998).

In *Shima*, 360 N.W.2d at 828, the court rejected a contention that extraordinary circumstances existed where a wife claimed that for eighteen years she had devoted her life to her husband, their child, and their home. The court,

while noting that while these factors may well have entered into the trial court's decisions on property settlement and alimony, said they are not the sort of extraordinary circumstances envisioned by the rule—making it clear that such circumstances warranting a continuation of the alimony from the prior marriage are those that exist at the time of the petition for modification, not at the time of the original decree.

Anne's second marriage has not been dissolved or annulled. Her husband has an adequate income. As her spouse he is liable for the reasonable and necessary expenses of his wife. See Iowa Code § 597.14 (2009). While Anne's current husband's income is less than Scott's, she has not shown that her current husband is unable to provide her with support, and he currently provides her with health insurance.

We also in the first appeal rejected any claim the alimony was not modifiable. See *Hudson*, No. 09-009 (Iowa Ct. App. Oct. 7, 2009). We note here that the fact the alimony is or could be rehabilitative does not mean it cannot be modified. We do recognize reimbursement alimony, which this is not, is not subject to modification. Reimbursement alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other and is not subject to modification or termination until full compensation is achieved or until the paying spouse's death, whichever occurs first. See *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989), see also *In re Marriage of Lalone*, 469 N.W.2d 695, 698 (Iowa 1991). Anne's alimony is not reimbursement alimony. Neither this court nor the district

court found it to be, nor were there any factual findings indicating Anne made sacrifices that helped Scott earn a substantial increase in his income. Anne shared Scott's income while the couple was married and is sharing the assets the parties acquired during the marriage. While Scott obtained an additional degree during the marriage, Anne obtained two degrees. Rehabilitative alimony, awarded as a way of supporting an economically-dependent spouse through a limited period of re-education or retraining following divorce, is subject to modification. *In re Marriage of Probasco*, 676 N.W.2d 179, 187 (Iowa 2004); *Francis*, 442 N.W.2d at 63. We reverse the district court, find the alimony should terminate, and remand for an order consistent with this opinion.

IV. REQUEST TO TAX COSTS OF PRODUCING APPENDIX TO ANNE.

Scott contends Anne has unnecessarily included items in the appendix and she should be responsible for costs of producing the unnecessary items. Anne has not been successful in this appeal and all appellate costs will be taxed to her; consequently, we need not address this issue.

V. ATTORNEY FEES AND COSTS. Anne has requested appellate attorney fees. We award no appellate attorney fees. Costs on appeal are taxed to Anne.

REVERSED AND REMANDED.