

IN THE COURT OF APPEALS OF IOWA

No. 2-279 / 11-1847
Filed June 27, 2012

**IN RE THE MARRIAGE OF
KATHLEEN J. HAYES AND
MICHAEL L. HAYES**

**Upon the Petition of
KATHLEEN J. HAYES,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
MICHAEL L. HAYES,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Dallas County, Gregory A. Hulse,
Judge.

Michael Hayes appeals the spousal support and property division
provisions in his dissolution decree. **AFFIRMED AS MODIFIED.**

Kodi A. Brotherson and Leslie Babich of Babich Goldman, P.C., Des
Moines, for appellant/cross-appellee.

Christopher B. Coppola and Kathleen T. Sandre of Coppola, McConville,
Coppola, Hockenber & Scalise, P.C., West Des Moines, for appellee/cross-
appellant.

Heard by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

POTTERFIELD, J.

Michael Hayes challenges the spousal support awarded to his former wife, Kathleen Hayes, along with other provisions of the amended and substituted decree dissolving their marriage of thirty-one years. Michael asserts the alimony award is inequitable given Kathleen's significant annual earnings, and the award of attorney's fees was an abuse of discretion. He also contends the decree should provide for termination of spousal support upon Kathleen's remarriage. Kathleen cross-appeals, requesting increased spousal support, permanent spousal support, and appellate attorney fees.

Upon our de novo review, considering the length of the parties' marriage and the disparity in their respective incomes, we find the spousal support granted by the district court to be equitable. However, while the signing bonus was properly divided as a marital asset, the third-quarter bonus was included in the calculation of Michael's income in assessing alimony and should not be divided. We do not disturb the district court's refusal to include a provision providing for automatic termination of alimony in the event of Kathleen's remarriage. We find the ten-year term of alimony to be equitable. We decline to award appellate attorney fees.

I. Background Facts and Procedures

Kathleen and Michael were married in June of 1980. It is the only marriage for either party. At the time of trial in September of 2011, Kathleen was fifty-two years of age and Michael was fifty-three years of age. The parties have two adult children. Other than educational support, which is not an issue on appeal, neither child's welfare is affected by the dissolution.

Michael is a board-certified dermatologist practicing in Peoria, Illinois. At the time of trial, Michael's salary was \$200,000. On October 1, 2011, that salary was to increase to \$250,000. It is to increase again on October 1, 2014, to \$275,000 a year. In addition, Michael received a \$100,000 signing bonus, the first half of which was paid in November of 2010; the second half was to be paid in October of 2011. Michael also receives \$5000 per year for continuing medical education and up to \$7250 per year in matching funds to his 401(k). He also receives a substantial performance-based quarterly bonus and income from MedPro shares. In 2010, Michael's W-2 showed income of \$575,985 with an additional \$79,567 of MedPro investment income, for a total of \$655,552.

Kathleen is a vice president of human resources with an annual salary at the time of trial of \$124,200; she was scheduled to receive a three-percent raise in October of 2011. She also received a bonus of \$10,000 for the fiscal year ending January 31, 2011. In addition, she receives a matching contribution to her 401(k) of up to two percent (\$2484 in 2011) from her employer. At age sixty (approximately eight years from date of trial), Kathleen will receive a bonus of \$500,000. If she is terminated without cause before that date, she will receive a prorated bonus for the term of her contract. Kathleen has a Bachelor of Science degree in accounting and is a certified public accountant.

Kathleen made numerous sacrifices during the marriage which contributed to Michael's earning capacity. These included financially supporting the family, acting as primary caregiver, and managing the parties' finances throughout Michael's education and career advancement. Kathleen also assisted Michael professionally with his applications, medical malpractice claims, substantial

bookkeeping, voluminous board certification documentation, and eligibility to work for his current employer. These sacrifices were made with the expectation of reaping the benefits of his advancement later in their marriage.

After dividing virtually all of the marital property in accordance with the parties' pretrial stipulations, aside from certain bank debt, the district court ordered Michael to pay Kathleen \$385,636.50, as well as approximately thirty-eight percent of his post-tax \$100,000 signing bonus, and \$10,000 representing one half of the amount of marital funds spent by Michael on behalf of his girlfriend. In addition, Michael was ordered to pay spousal support of \$5000 a month in reimbursement alimony for the first sixty months, and an award of traditional alimony in the amount of \$5000 for the subsequent sixty months. Finally, Michael was ordered to pay attorney and expert fees in the amount of \$36,950. Kathleen was ordered to pay one-half of the portion of her bonus that accrued during the marriage when she receives the bonus at sixty years of age.

II. Scope and Standard of Review

We review dissolution of marriage cases de novo. *In re Marriage of Veit*, 797 N.W.2d 562, 564 (Iowa 2011). Weight is given to the district court's findings, especially where credibility determinations are made. *In re Marriage of Hansen*, 733 N.W.2d 683, 690 (Iowa 2007). Precedent is of limited value due to the fact-driven nature of each case. *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009). We afford the district court considerable latitude in its alimony determination and will disturb its finding only when the award is inequitable. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005).

III. Analysis

A. Appropriateness of spousal support

Michael contends that in light of the significant property settlement and Kathleen's income, the court erred in awarding alimony. Alimony is a stipend in lieu of a spouse's legal obligation for support. *Hansen*, 733 N.W.2d at 702.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. The discretionary award of alimony is made after considering those factors listed in Iowa Code section [598.21A(1)]. We consider property division and alimony together in evaluating their individual sufficiency.

Alimony is awarded to accomplish one or more of three general purposes. *Rehabilitative alimony* serves to support an economically dependent spouse through a limited period of education and retraining. Its objective is self-sufficiency. An award of *reimbursement alimony* is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *Traditional alimony* is payable for life or for so long as a dependent spouse is incapable of self-support. The amount of alimony awarded and its duration will differ according to the purpose it is designed to serve.

In re Marriage of O'Rourke, 547 N.W.2d 864, 866–67 (Iowa Ct. App. 1996) (internal citations omitted).

This was a long-term marriage; Kathleen and Michael were married for thirty-one years. Michael is fifty-four years old, and Kathleen is fifty-two years old. Kathleen made many sacrifices during the marriage to further Michael's career. In addition, while Kathleen received a property settlement of some \$385,000, Michael earns approximately six and a half times what Kathleen earns in a typical year. We find no inequity in the court's determination that Kathleen is entitled to reimbursement and traditional spousal support.

B. Amount of Spousal Support

Michael claims the district court improperly awarded \$5000 per month for spousal support. Kathleen estimates her reasonable living expenses are \$11,360. Both parties acknowledge Kathleen's actual monthly expenditures for the majority of the relationship were significantly lower than her estimated expenses. These expenses, however, increased with the couple's available income, which grew substantially when Michael began work at his current position in 2006. Michael argues Kathleen's monthly expenses should be calculated at a lower level reflecting the couple's income through the majority of the relationship. No authority is cited for this proposition, and we decline to adopt such an approach here.

In contrast, Kathleen asserts the amount of spousal support should be increased given her sacrifices and the parties' disparity in income. We find no reason to modify the monthly amount of reimbursement and traditional alimony given Kathleen's expenses and Michael's ability to pay.

C. Division of Bonuses

Michael contends his signing bonus and third-quarter production bonus were double-counted, citing our decision in *O'Rourke*. 547 N.W.2d at 864. In that case, we decided an annual bonus awarded to the former spouse post-dissolution but earned mostly pre-dissolution was properly treated as income, not marital property, and thus should not be subject to division. *Id.* at 866; *see also In re Marriage of Lalone*, 469 N.W.2d 695, 698 (Iowa 1991) ("We agree that the bonus is not marital property but is part of [respondent]'s income which has already been taken into consideration in setting the alimony and child support

amounts.”). We further noted, “[e]ven if [the bonus] were considered marital property, there is no evidence that [the former wife] contributed anything to its acquisition” as the parties had separated a year before. *O’Rourke*, 547 N.W.2d at 866. We consider the division of each of Michael’s bonuses in turn.

1. The Signing Bonus

Michael’s signing bonus constituted two payments of \$50,000 made in exchange for the act of signing an agreement to continue employment until 2016. This agreement was signed a full nine months before the decree was issued. This bonus was the result of a single event, unlike the regular bonus payments the courts in *Lalone* and *O’Rourke* considered to be “current income” and therefore used for payment of alimony. *Lalone*, 469 N.W.2d at 698; *O’Rourke*, 547 N.W.2d at 866. While the second payment was made post-dissolution, earning the bonus took place entirely during the marriage. We disagree with Michael that the signing bonus will not be fully earned until he completes the full term of his contract.

Because the signing bonus is marital property, we must decide whether its division is equitable. Though the parties had been living separately for a number of years, evidence was presented at trial that Kathleen directly and substantially contributed to Michael’s ability to be employed at his current workplace. *Cf. O’Rourke*, 547 N.W.2d at 866 (separation for one year prior to bonus did not indicate whether spouse in fact contributed to acquisition of funds). As the crux

of our inquiry is equitability, we determine the division of the signing bonus is fair and equitable.¹ *Id.*

2. *The Quarterly Production Bonus*

Much like *Lalone* and *O'Rourke*, Michael's quarterly production-based bonus is received regularly and constitutes a significant part of his income. *Lalone*, 469 N.W.2d at 698; *O'Rourke*, 547 N.W.2d at 867. On June 30, 2011, Michael received approximately \$80,000 for his quarterly bonus. Regular receipt at this rate would give Michael \$320,000 a year in bonuses, significantly more than his salary of \$200,000. Because this bonus was relied upon as income by Michael for his living expenses and included in the calculation of alimony, it was inequitable for the court to divide these earnings as part of the marital estate. We therefore modify the district court's decree to exclude the award of one-quarter of Michael's third-quarter 2011 earnings to Kathleen.

D. Spousal Support on Remarriage

Michael contends the district court erred in failing to include in its decree that Kathleen's right to spousal support terminate should she remarry. The district court expressly declined to include this provision after Michael's request.

The general rule is that remarriage does not necessarily trigger termination of spousal support. See *In re Marriage of Wendell*, 581 N.W.2d 197, 200 (Iowa Ct. App. 1998). In *Wendell* we noted that the purpose behind the award of alimony will typically be determinative of whether remarriage terminates alimony. *Id.* (noting reimbursement and rehabilitative alimony are typically

¹ Similarly, we find Kathleen's retirement bonus is marital property for the same reasons and do not disturb the district court's division of that asset to the extent it was earned during the marriage and not included in the income calculation for spousal support.

unaffected by remarriage). Further, Michael may seek to modify the decree should Kathleen remarry. See, e.g., *id.* at 199–200. Therefore, the district court did not err in its failure to include a provision for automatic termination of alimony upon remarriage.

E. Payment of Attorney and Expert Fees

Trial courts have broad discretion to award attorney fees, and we will disturb such an award on appeal only where an abuse of discretion occurs. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). In light of the parties' ability to pay, their need, and the difference in their income, we find no abuse of discretion and therefore affirm the district court in assessing attorney and expert fees to Michael.

F. Extension of Traditional Alimony

On cross-appeal, Kathleen seeks an award of permanent alimony. Currently, the alimony is payable for ten years. "Traditional or permanent alimony is usually payable for life, or for so long as the dependent spouse is incapable of self-support." *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997) (citing *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989)). Kathleen will be sixty-two when the alimony ends. At that time, she will be two years beyond the potential \$500,000 bonus from her employer and at an age when she can begin receiving social security retirement benefits, though full benefits will become available four years later. Further, at that point, her 401(k) will be eligible for payout without penalty. These circumstances do not show Kathleen "incapable of self-support." See *id.* We find no inequity.

G. Appellate Attorney Fees

This court has broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). An award of appellate attorney fees is based upon the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). Because we find the parties are both able to pay their counsel, we decline to award appellate attorney fees.

IV. Conclusion

Accordingly, we affirm the district court's award of alimony and attorney fees. We eliminate the award to Kathleen of Michael's third-quarter bonus.

Costs on appeal are assessed to Michael.

AFFIRMED AS MODIFIED.