

IN THE COURT OF APPEALS OF IOWA

No. 2-777 / 12-0281
Filed November 15, 2012

**IN RE THE MARRIAGE OF TERRI L. ANDERSON AND
LEE A. ANDERSON**

Upon the Petition of

TERRI L. ANDERSON,
Petitioner,

And Concerning

LEE A. ANDERSON,
Respondent.

Appeal from the Iowa District Court for Black Hawk County, Andrea Dryer,
Judge.

Wife appeals the spousal support provision of the district court's decree of
dissolution of marriage. **AFFIRMED.**

David H. Correll and Emily C. Chase of Correll, Sheerer, Benson, Engels,
Galles & Demro, P.L.C., Cedar Falls, for appellant.

Teresa A. Rastede of Dunakey & Klatt, P.C., Waterloo, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

Terri Anderson appeals the spousal support provision of the district court's decree of dissolution of marriage which awarded her rehabilitative alimony in the amount of \$850 per month for five years. She is also requesting appellate attorney fees. For the reasons stated below, we find the spousal support award is equitable and affirm the district court's decision. Terri's request for appellate attorney fees is denied.

I. BACKGROUND AND PROCEEDINGS.

Terri and Lee Anderson were married September 12, 1987. It was the first marriage for both. The parties were married for twenty-four years before filing for divorce. At the time of trial Terri was forty-eight years old and Lee was fifty-three. Both are high school graduates and in relatively good health, although Lee takes medication for high blood pressure. They have two children who were born during the marriage and are now adults.

Terri is employed at Covenant Medical Center where she works thirty-two hours per week in the hospital insurance billing office and is paid \$15.89 per hour. During the years 2009 and 2010 she earned \$25,834 and \$25,810, respectively. Lee is a toolmaker at John Deere and works forty hours per week for approximately twenty-six dollars per hour. In order to help pay bills while their daughters were in college, Lee worked a substantial amount of overtime, and in 2009 and 2010 earned \$77,185 and \$86,037. He has since returned to a normal forty-hour work week.

Throughout the course of their marriage the parties accumulated a number of properties, assets, and debts, but little net worth. The district court made a division of property allocating to each party various properties, vehicles, accounts, and liabilities and ordered Lee to pay Terri \$23,300 to further effect a fair and equitable distribution of their property. The district court also ordered Lee to pay Terri rehabilitative spousal support in the amount of \$850 per month for five years. The spousal support obligation will terminate if Terri dies or remarries before the end of the five-year term. Terri is now appealing the amount and duration of the spousal support award and is requesting appellate attorney fees.

II. SCOPE AND STANDARD OF REVIEW.

Dissolution cases are reviewed de novo. *In re Marriage of Becker*, 756 N.W.2d 822, 824 (Iowa 2008). We give weight to the district court's findings of fact but are not bound by them. *Id.* at 825. Although our review is de novo we give the trial court considerable latitude in making its determinations of alimony awards and will disturb its ruling only when there has been a failure to do equity. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). "This deference to the trial court's determination is decidedly in the public interest. When appellate courts unduly refine these important, but often conjectural, judgment calls, they thereby foster appeals in hosts of cases, at staggering expense to the parties wholly disproportionate to any benefit they might hope to realize." *Id.*

III. SPOUSAL SUPPORT.

Alimony “is a stipend to a spouse in lieu of the other spouse’s legal obligation for support.” *In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007). “Whether alimony is awarded depends on the particular circumstances of each case.” *Id.* at 702–03. Iowa Code section 598.21A (2011) gives the court the authority to grant an order requiring support payments to be made to either party upon a judgment of dissolution. The payments can be for either a limited or an indefinite length of time. Iowa Code § 598.21A(1). Before awarding support payments, the court is to consider the following factors:

- a. The length of the marriage.
- b. The age and physical and mental health of the parties.
- c. The distribution of property made pursuant to section 598.21.
- d. The educational level of each party at the time of the marriage and at the time the action is commenced.
- e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.
- g. The tax consequences to each party.
- h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.
- i. The provisions of an antenuptial agreement.
- j. Other factors the court may determine to be relevant in an individual case.

Id. The court must balance each party’s relative needs against their earning capacity, present standards of living, and ability to pay. *In re Marriage of*

Williams, 449 N.W.2d 878, 883 (Iowa Ct. App. 1989). “[T]he spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible.” *In re Marriage of Hayne*, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). The amount of spousal support awarded should not destroy the right of the party providing the support to also enjoy a comparable standard of living. *Id.*

Iowa courts recognize three different types of alimony that may be awarded to the spouse with the lesser earning capacity: traditional, rehabilitative, and reimbursement. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). “Traditional alimony is payable for life or so long as a spouse is incapable of self-support.” *Id.* Rehabilitative alimony provides support for “an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting.” *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989). Reimbursement alimony is awarded based on “economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other.” *Anliker*, 694 N.W.2d at 541. In this case, the district court awarded Terri rehabilitative alimony in the amount of \$850 a month for five years.

Terri asserts the trial court erred in failing to award her traditional spousal support in the amount of \$1200 per month until she reaches the age of sixty-six. We have considered the facts and circumstances of this case, including, but not limited to, the length of the marriage (twenty-four years), age and health of the parties (Terri was forty-eight and in good health at the time of the dissolution; Lee

was fifty-three and taking medication for high blood pressure) and distribution of marital property (including a lump sum of \$23,300 payable by Lee to Terri). As part of the property distribution, the parties will be sharing the net proceeds of two properties required to be sold pursuant to the decree—providing some liquidity to both. We have also considered the earning capacity of the parties, Terri’s ability to become self-supporting, and Lee’s ability to pay.¹

“The goal of rehabilitative support is self-sufficiency and for that reason such an award may be limited or extended depending on the realistic needs of the economically dependent spouse.” *Becker*, 756 N.W.2d at 826. Although Terri asserts that rehabilitative support was inappropriate because further education or training would not be beneficial to her, an award of spousal support need not be characterized as strictly rehabilitative or traditional. *Id.* at 827. What the legislature requires the court to do is to consider the factors mandated by Iowa Code section 598.21A and make an award that best reflects those factors. *Id.* at 827–28. We believe the trial court’s decision properly balanced the appropriate factors and granted Terri a spousal support award that was fair and equitable in both amount and duration.

¹ Terri argues that because Lee was expected to inherit a significant sum of money and amount of land he has a greater ability to pay. At the time of trial, Lee had received one certificate of deposit or account worth \$7500 as part of his inheritance. Inheritance may be considered as it relates to a party’s ability to pay. *In re Marriage of Thomas*, 319 N.W.2d 209, 212 (Iowa 1982). However, neither party had benefitted from the inheritance during the marriage nor had any inheritance contributed to their lifestyle or standard of living. It would be inequitable to increase Terri’s spousal support award based on Lee’s future inheritance.

IV. ATTORNEY FEES.

Terri also requests an award of appellate attorney fees. An award of attorney fees rests within the court's discretion. *Benson*, 545 N.W.2d at 258. When determining whether to award appellate attorney fees "[t]he court considers the financial positions of the parties and whether the party making the request was obligated to defend the trial court's decision on appeal." *Id.* Lee's Hyatt legal insurance provided through his employment does not cover appellate attorney fees or costs related to an appeal. Because the dissolution decree's terms left Lee and Terri in substantially similar financial situations, each party is ordered to pay their own appellate attorney fees.

V. CONCLUSION.

The district court's spousal support provision granting Terri \$850 per month for five years is equitable. Terri's request for appellate attorney fees is denied.

AFFIRMED.