

IN THE COURT OF APPEALS OF IOWA

No. 2-876 / 12-0595
Filed December 12, 2012

**IN RE THE MARRIAGE OF PERRIAN LOCKE
AND ROBERT LOCKE**

Upon the Petition of

PERRIAN LOCKE,
Petitioner-Appellee,

And Concerning

ROBERT LOCKE,
Respondent-Appellant.

Appeal from the Iowa District Court for Muscatine County, John D.
Telleen, Judge.

Robert Locke appeals from the economic provisions of the decree
dissolving his marriage to Perrian Locke. **AFFIRMED.**

Roger A. Huddle of Weaver & Huddle, Wapello, for appellant.

Robert DeKock of DeKock Law Office, P.C., Muscatine, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

BOWER, J.

Robert Locke appeals from the economic provisions of the decree dissolving his marriage to Perrian Locke. Robert contends the district court erred in (1) awarding spousal support of \$350 per month to Perrian, (2) requiring him to pay COBRA medical insurance premiums for Perrian for three years, and (3) requiring him to pay an additional \$1000 toward Perrian's attorney fees. Perrian seeks an award of her appellate attorney fees. Upon our review, we find the district court's award of spousal support and medical insurance premiums to be fair and equitable under the facts and circumstances of this case. We further conclude the district court did not abuse its discretion in ordering Robert to pay \$1000 toward Perrian's trial attorney fees. We decline to award Perrian attorney fees on appeal.

I. Background Facts and Proceedings.

Robert and Perrian were married in January 1978. They have four adult children. Robert was born in 1958 and is in good health. Perrian was born in 1960 and is in good health. Robert is a high school graduate. He has worked for HNI Corporation in Muscatine for thirty-four years. Robert earns \$16.58 per hour and works some overtime. He makes approximately \$50,000 annually. HNI Corporation also pays approximately seventy-five percent of his insurance premiums.

During their marriage, the parties jointly agreed Perrian would for the most part take herself out of the work force to act as a homemaker and the caregiver for the parties' four children. With Robert's support, Perrian earned a college

degree in 2007. In March 2010, Perrian began her current job as a dental office manager, where she works twenty-eight to thirty hours per week and earns fourteen dollars per hour, or \$21,840 annually.

Perrian filed a petition for dissolution of marriage in January 2011. Trial was held in December 2011. In February 2012, the district court entered a decree dissolving the parties' marriage. The decree set forth the property division stipulated by the parties, including dividing the household contents, the vehicles, the \$90,000 net equity in the marital home, and splitting the \$270,000 in Robert's 401(k) retirement account through a Qualified Domestic Relations Order. Perrian assumed sole obligation of her student loan debt, which totaled approximately \$22,000.

The primary issues for the district court to decide were in regard to Perrian's request for spousal support, medical insurance coverage, and attorney fees. In regard to these issues, the district court ordered Robert to pay: (1) spousal support in the amount of \$350 per month until he reaches the age of sixty-five or dies, Perrian dies, or Perrian remarries, whichever happens first; (2) monthly premiums for COBRA medical insurance for Perrian for a period of three years; and (3) an additional \$1000 toward Perrian's attorney fees.¹ Robert now appeals these economic provisions of the parties' decree.

II. Scope and Standard of Review.

We review dissolution cases de novo. *In re Marriage of Okland*, 699 N.W.2d 260, 263 (Iowa 2005). We examine the entire record and adjudicate the

¹ In a March 2011 order concerning temporary matters, the district court ordered Robert to pay \$500 toward Perrian's attorney fees.

rights of the parties anew on the issues that are properly preserved. *In re Marriage of Jones*, 653 N.W.2d 589, 592 (Iowa 2002). However, we accord the trial court considerable latitude in making an award and will disturb its ruling only where there has been a failure to do equity. *Okland*, 699 N.W.2d at 263. We give weight to the trial court's fact findings, especially when considering the credibility of witnesses, although we are not bound by them. *In re Marriage of Duggan*, 659 N.W.2d 556, 559 (Iowa 2003).

III. Discussion.

A. *Spousal Support*. The district court ordered Robert to pay Perrian spousal support of \$350 per month until Robert reaches the age of sixty-five or dies, Perrian dies, or Perrian remarries, whichever happens first. Robert argues this award should be eliminated. Robert contends Perrian “has voluntarily chosen to be employed at something less than her maximum earning capacity.” Robert alleges Perrian “acknowledged a failed drug test” in 2008 “that lost potential employment at HNI [which would have been] a full-time job at a wage of \$14.50 per hour that would have included insurance benefits.” Robert also notes Perrian is 51 years old and “has a significant period of time to supplement [her] retirement package through full-time employment.” Robert further contends Perrian leaves the marriage with “\$64,099 of readily available liquid cash assets with absolutely no tax consequences attached.”

There is no absolute right to spousal support. *In re Marriage of Schenkelberg*, ___ N.W.2d ___, ___ (Iowa 2012). Rather, whether it is awarded depends on the circumstances of each particular case. *Id.* Iowa Code section

598.21A(1) sets forth the criteria for determining spousal support. This includes the length of the marriage, the age and physical and emotional health of the parties, the property distribution, the earning capacity of each party, and any other factors the court may determine to be relevant. Iowa Code § 598.21A(1) (2011).

We consider the property distribution and spousal support provisions of a decree together to determine their sufficiency. *In re Marriage of Hazen*, 778 N.W.2d 55, 59 (Iowa Ct. App. 2009). Spousal support is justified when the distribution of the marital assets does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the support, and there is a need for support. *Id.* While the property distribution is designed to sort out property interests acquired in the past, spousal support is made in contemplation of the parties' future earnings and is modifiable. *Id.* at 59–60.

An award of traditional spousal support is payable for life or until the dependent is capable of self-support. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). The purpose of traditional spousal support is “to provide the receiving spouse with support comparable to what he or she would receive if the marriage continued.” *Id.* “Traditional alimony analysis may be used in long-term marriages where life patterns have largely been set and the earning potential of both spouses can be predicted with some reliability.” *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997).

We agree with the district court that a spousal support award is appropriate here. Although our review is de novo, the district court is given

considerable latitude in determining spousal support. See *Schenkelberg*, ___ N.W.2d at ___. We will disturb that determination only when there has been a failure to do equity. *Id.*

This is a long-term marriage of approximately thirty-three years. Robert is fifty-three years old; Perrian is fifty-one years old. Both parties are healthy and capable of full-time employment. During most of the parties' marriage, Perrian did not work in order to provide care for the parties' four children and home, while Robert was the sole or primary breadwinner. Perrian did earn a college degree in 2007. Robert is a high school graduate.

At the time of trial, Perrian worked twenty-eight to thirty hours per week as a dental office manager, earning fourteen dollars per hour, or \$21,840 annually. However, the district court attributed a full-time position making \$14.50 per hour, or \$29,000 per year plus benefits, to Perrian in calculating her earning capacity. The court found that was "a bare minimum" for Perrian's earning capacity given her skills and qualifications. Despite this, we acknowledge the district court's finding that "the parties jointly agreed that Perrian would for the most part take herself out of the work force to act as a homemaker during most of the parties' marriage and she would likely have been earning more in the work force presently had this not been the case." It is clear Perrian's ability to continue earning an income is less than Robert's. Robert has been employed by HNI Corporation for thirty-four years, where he makes approximately \$50,000 per year with benefits.

We agree with the district court that Perrian is entitled to some amount of traditional spousal support given the disparity of the parties' incomes, the length of the marriage, the distribution of the marital assets, and the standard of the parties' lifestyle during their marriage. See Iowa Code § 598.21A(1); *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008); *In re Marriage of Stark*, 542 N.W.2d 260, 262–63 (Iowa Ct. App. 1995) (balancing recipient's need with payor's ability to pay). We find the amount and duration of spousal support ordered by the trial court to be fair and equitable.

B. COBRA Insurance. The district court ordered Robert to pay the \$326 monthly premiums for COBRA medical insurance for Perrian for a period of three years. Robert argues he should not be required to support Perrian "when she is fully capable of doing so herself." Robert contends "Perrian had every opportunity to be comfortably employed enjoying full-time medical benefits." We consider all economic aspects of a decree as a whole. *In re Marriage of Schepple*, 524 N.W.2d 678, 679 (Iowa Ct. App. 1994). We determine what is equitable under the specific facts of the case. *In re Marriage of Byall*, 353 N.W.2d 103, 106 (Iowa Ct. App. 1984).

The amount of spousal support is reasonable considering the lengthy duration of the parties' marriage, the difference in the parties' earning capacities, Robert's work experience, and Perrian's comparably lesser ability to be self-supporting. The property division is nearly equal. The award of COBRA premiums is reasonably limited in time, continuing for three years, which will give Perrian enough time to gain work experience or find a job with benefits. We find

the district court's order that Robert pay Perrian's COBRA premiums for a limited period of time to be fair and equitable and affirm on this issue.

IV. Attorney Fees.

Robert contends the district court's order that he pay \$1000 toward Perrian's attorney fees "is excessive, an abuse of the court's discretion, and should be rescinded." We review the district court's award or denial of trial attorney fees for an abuse of discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Whether attorney fees should be awarded depends on the parties' respective abilities to pay. *Id.* at 255. In addition, the fees must be fair and reasonable. *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994). An award of trial attorney fees rests in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). We find Robert has failed to show the district court abused its discretion in awarding Perrian \$1000 in additional trial attorney fees.

Perrian requests an award of appellate attorney fees. Such an award rests within our discretion. *Okland*, 699 N.W.2d at 270. "Factors to be considered in determining whether to award attorney fees include: the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal." *Id.* (quotation marks omitted). In this case, we decline to award any appellate attorney fees to Perrian.

Costs of appeal are assessed equally to each party.

V. Conclusion.

We find the district court's award of spousal support and medical insurance premiums to be fair and equitable under the facts and circumstances of this case. We further conclude the district court did not abuse its discretion in ordering Robert to pay \$1000 toward Perrian's trial attorney fees. We decline to award Perrian attorney fees on appeal.

AFFIRMED.