IN THE COURT OF APPEALS OF IOWA

No. 6-279 / 05-0995
Filed July 12, 2006

IN RE THE MARRIAGE OF CAROL ANN WALSH
AND DAVID MICHAEL WALSH

Upon the Petition of
CAROL ANN WALSH,
Petitioner-Appellee,

And Concerning
DAVID MICHAEL WALSH,
Respondent-Appellant.

Appeal from the Iowa District Court for Lee (South) County, Mary Ann Brown, Judge.

The respondent appeals from the district court's dissolution decree awarding permanent spousal support to the petitioner. **AFFIRMED.**

James F. Dennis, Keokuk, for appellant.

J. Bryan Schulte of Schulte, Hahn, Swanson, Engler & Gordon, Burlington, for appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VOGEL, P.J.

David Walsh appeals from the district court's dissolution decree that awarded traditional, permanent spousal support to Carol Walsh. As we find the district court's findings and conclusions supported by the record and effect substantial justice between the parties, we affirm.

I. Background Facts and Proceedings.

Carol was fifty-four years old and David was fifty-two years old at the time of trial. Both were in good health. The parties married in August 1973, when they both were attending Northwest Missouri State University in Maryville, Missouri. Carol had attended Iowa Western Community College for one year and Northwest Missouri State for about one and a half years before the marriage, pursuing a dental hygiene major. At that time the parties mutually agreed that Carol would quit school and work to support the couple while David finished his education. In the spring of 1975, David graduated with a bachelor's degree in both business and industrial technology. David was employed after graduation by Regal Textile Corporation in Maryville until 1977, when the couple moved to South Carolina due to Regal transferring David's job. Carol worked full time outside the home until the birth of their first child in 1979, when the parties agreed that Carol would be a stay-at-home mother. Two more children were born, one in 1982 and one in 1985. Again, David and Carol agreed Carol would continue to stay home and also that she would home school the children.[1]

[1] From 1990 until 1999, Carol home-schooled the older children from fourth and fifth grade through twelfth grade, and the youngest child from second through eighth grade.

The family remained in South Carolina until 1984, when David obtained a job with Kimberly Clark Corporation and the family moved to California. Two years later, David got another job with McCulloch Corporation and the family moved to Arizona. It was about 1988 when David again changed employment, this time moving to Illinois for a position with Methode Electronics, with the family residing in Keokuk, Iowa. David left Methode Electronics in the fall of 2000 for a position with Genie Overhead Door Company in Ohio. The family moved back to Keokuk in October 2001, and David was unemployed for approximately one year before starting his own business, All-American Lube in late 2002. When All-American Lube was destroyed by a tornado in May 2003, David rejoined Methode Electronics and worked there at the time of trial. The district court found his gross annual income was $66,300.

Carol's work history is significantly less due to the couple's decision she would be a stay-at-home mother. After home-schooling the children, Carol reentered the work force in 1999 after a near twenty-year absence. She worked part time during the school year in food service for the Keokuk School District. When the family moved back from Ohio in October 2001, Carol accepted an offer to work thirty to thirty-five hours a week at $5.00-5.25 per hour as a teacher's aide to a special education instructor. From 2002 until June 2004, Carol worked both in the teacher's aide position and at Kid's Zone, a grant program for students' before and after school care. She worked about eleven-twelve hours per day, five days a week and one Saturday a month during this time but discontinued at Kid's Zone due to the stress associated working those hours. In July 2004, Carol accepted a position as an associate for three teachers in the

special education department of the school district, working full time during the school year for $7.91 an hour, but not working during the summer. As of trial, she had not completed her college education, although Carol was attending Southeast Community College on target to be certified as a teacher's associate in May 2005. As a full-time teacher's associate, Carol's annual gross income was $10,437.

David and Carol stipulated to the values of many of their assets and liabilities and how they would be distributed, so the trial in January 2005 involved only a few contested issues, including spousal support. In its ruling, the district court found that Carol was entitled to traditional, permanent spousal support due to the sacrifice she made in her personal employability and career during the marriage that substantially reduced her current earning capacity. The district court ordered David to pay Carol $2000 per month following the sale of certain real property, until either party dies or Carol reaches age sixty-six, whichever occurs first. This was aimed at equalizing their disposable net monthly incomes, reflecting the length of the marriage and the limited number of years Carol has before reaching retirement age to accumulate retirement assets. David appeals the award of permanent spousal support, as well as the monthly amount.

II. Scope of Review.

We review equitable proceedings, such as dissolutions of marriage, de novo. Iowa R. App. P. 6.4; *In re Marriage of Anliker*, 694 N.W.2d 535, 539 (Iowa 2005). In such proceedings, we give weight to the district court's findings of fact, especially when considering the credibility of the witnesses, but are not bound by those findings. Iowa R. App. P. 6.14(6)(*g*).

III. Spousal Support.

David argues the district court should have only awarded rehabilitative support rather than traditional spousal support, as he claims Carol is capable of self-support. Spousal support is not an absolute right, and an award thereof depends upon the circumstances of a particular case. *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996).

Traditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866-67 (Iowa Ct. App. 1996). Rehabilitative alimony is awarded for a limited period of time, to allow and provide incentive for an economically dependent spouse to become self-supporting. *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989). An award of spousal support is a balancing of the equities. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). It is used as a means of compensating the party who leaves the marriage at a financial disadvantage, particularly where there is a large disparity in earnings. *Id*. It is a discretionary award dependent upon each party's earning capacity and present standard of living, as well as the ability to pay and the relative need for support. *In re Marriage of Bell*, 576 N.W.2d 618, 622 (Iowa Ct. App. 1998). Courts are guided by Iowa Code section 598.21(3) (2003), which directs consideration of a number of factors, such as the length of the marriage, the age and health of the parties, the earning capacity of the spouse seeking support, and particulars surrounding that spouse's ability to become self-sufficient.

While we agree with David that Carol could complete the degree she began before they were married and perhaps obtain better paying employment,

that does not diminish the findings the district court made as to why the award of traditional spousal support was appropriate. It is clear from the record that Carol sacrificed educational and employment opportunities by the parties' mutual decision for her to be a stay-at-home mother and home school the children. The family was uprooted several times to allow David to advance his employment opportunities around the country. Carol rejoined the workforce in 1999 at a minimal salary to supplement the family income, not to work towards advancing a career of her own. As of the time of trial, Carol was employed during the school year at an annual salary just surpassing $10,000. This sum is greatly exceeded by David's annual gross income of over $66,000. While Carol could seek additional employment, there is little evidence on the record that at fifty-four years of age, Carol will be able to rehabilitate her education and employment history to compensate for many years out of the job market or support herself at the comfortable level achieved through the parties' mutual efforts during their lengthy marriage. Therefore, we affirm the grant of traditional, permanent spousal support in the manner set forth by the district court's order.

David also takes issue with the monthly amount of $2000 ordered by the district court. He claims this is not equitable, citing for persuasive authority several unpublished decisions. However, each case is decided and then reviewed on appeal within the context of its own unique facts and circumstances. Moreover, we give the district court wide latitude in setting the amount of support and will only modify the ruling when there has been a failure to do equity as between the parties. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

Using the financial affidavits submitted at trial, the district court determined that a $2000 per month spousal support award would yield Carol a net monthly income of $2383.86 and David a net monthly income of $2512.65. The court discussed at length the need for spousal support as well as the amount it set, including this language:

> Unless [Carol] has financial support to supplement her income, she will not be able to create or establish any type of savings or fund for retirement. . . . Such a payment approximately equalizes their disposable net monthly incomes. With this payment, Carol still will not have enough money to meet her anticipated monthly expenses. Given the length of this marriage and the sacrifices that Carol has made, the Court concludes that they should be allowed approximately equal incomes to live on.

While section 598.21(3) does not include as a consideration a goal of "equalizing income", the statute does allow for consideration of "other factors the court may determine to be relevant in an individual case." Iowa Code § 598.21(3)(j). We acknowledge this is a high amount of spousal support, but will not interfere with the district court's balancing of equities. Nor do we want a healthy spousal support award to be a disincentive for Carol to improve her earning capacity. Nonetheless, we cannot say the district court abused its discretion. The level of spousal support finds support in the record and does equity between the parties after a thirty-three year marriage.

Carol requests on appeal that we award her appellate attorney fees. An award of appellate attorney fees is within the discretion of the appellate court. *Spiker v. Spiker*, 708 N.W.2d 347, 360 (Iowa 2006). Whether such an award is warranted is determined by considering “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.* (quoting *In re Marriage of Ask*, 551 N.W.2d 643, 646 (Iowa 1996)). Considering the evidence presented regarding the financial situation of each party, income, and net assets, we decline to award appellate attorney fees but assess the costs of this appeal to David.

AFFIRMED.