

IN THE COURT OF APPEALS OF IOWA

No. 6-575 / 05-1942
Filed August 9, 2006

**IN RE THE MARRIAGE OF MATTHEW BLAKE JORGENSEN
AND JERRILU JORGENSEN**

**Upon the Petition of
MATTHEW BLAKE JORGENSEN,**
Petitioner-Appellee,

**And Concerning
JERRILU JORGENSEN,**
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bruce B. Zager, Judge.

Jerrilu Jorgensen appeals the district court's ruling in her dissolution decree. **AFFIRMED.**

Brian G. Sayer of Dunakey & Klatt, P.C., Waterloo, for appellant.

David H. Correll of Correll, Sheerer, Benson, Engels, Galles & Demro, P.L.C., Cedar Falls, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Jerrilu Jorgensen appeals the district court's ruling in her dissolution decree. She argues the district court erred in failing to award alimony. She also requests appellate attorney fees. We affirm.

I. Background Fact and Proceedings

Matthew and Jerrilu were married on July 15, 1999. Matthew filed for dissolution on August 27, 2004. At the time of trial, Matthew was thirty-seven years old and Jerrilu was forty-one years old. No children were born to the couple. Matthew is primarily employed managing rental properties for DeJong, Inc., a business owned by his father. He generally receives at least a \$20,000 bonus each year. The position also provides him with use of a 2005 Nissan pickup truck including insurance and gas; a lawn tractor; an ATV; and Harley-Davidson motorcycles, all at no cost. Matthew also owns Cedar Valley Records Management and is part-owner of College Hill Apartments. Neither Cedar Valley Records Management nor College Hill Apartments have provided him with an income. He suffers from Type 1 diabetes and has to be treated for retinopathy three times a year. He is currently residing in the family home.

Jerrilu's employment history has been minimal. She was injured in various accidents, and has been receiving social security benefits since 1990.¹ From 1995 through 1999, she worked as a receptionist six to ten hours per week. After her marriage to Matthew in 1999, she has only worked unpaid for Cedar

¹ Jerrilu was initially injured in February 1989, when some cattle gates fell on her and pinned her against a utility pole. The incident resulted in a herniated disc in the L4-L5 area. She has had four surgeries to correct that injury. In 1994, she was involved in a rollover automobile accident which further aggravated the injury.

Valley Records Management. Her net monthly income from social security is \$594.30. Jerrilu's health has deteriorated during the last few years. In addition to her disability, she was further injured in a car accident in 2000. She suffers from significant neck, back, and shoulder pain, and numbness in her legs and arms. She has debilitating migraines. She is also being treated for anxiety and depression. She cannot sit or stand for any significant period of time, has a general loss of balance, and suffers from incontinence. She claims her serious emotional and physical disabilities make the possibility of future education or employment remote.

The court awarded Jerrilu a lump sum property settlement of \$60,000. Though she requested \$1800 per month in alimony, none was awarded. Instead, the district court indicated it would provide for Jerrilu in the distribution of property. Jerrilu appeals.

II. Standard of Review

We review dissolution decrees de novo. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Though we are not bound by them, we give weight to the district court's factual findings and credibility determinations. *Id.*

III. Merits

Jerrilu requests \$1800 in alimony per month until she dies or remarries. Alimony is not an absolute right. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). In determining whether to award alimony, the district court is to consider the factors in Iowa Code section 598.21(3) (2005). That section allows the court to consider the property division in connection with the alimony award. *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004). We only disturb

the district court's determination if there is a failure to do equity. *Anliker*, 694 N.W.2d at 540; see Iowa Code § 598.21(3)(c).

After offset for debts, Jerrilu's net assets totaled \$62,998.50, and Matthew's net assets totaled \$178,085.50. However, to equal out the property distribution, Jerrilu was given a lump sum of \$60,000, payable in annual increments of \$10,000. In addition to the lump sum, she was well provided for in the property distribution. Matthew was ordered to pay \$19,613 of Jerrilu's credit card debt. He was also ordered to pay the remaining mortgage on Jerrilu's grandmother's house, which she received. Jerrilu was also awarded \$3000 in attorney fees. A temporary order entered before the final decree required Matthew to pay \$500 in temporary attorney fees and \$750 per month in temporary alimony from January 2005 through October 2005, for a total of \$6750. In short, Jerrilu is leaving the marriage in a better financial position than she was in when she entered it. Given the relatively short duration of the marriage, Jerrilu's serious health problems from before the marriage, the generous property settlement, and \$3000 in attorney fees, we conclude that alimony is unnecessary. See *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 854 (Iowa 1998).

Both Jerrilu and Matthew have requested appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We consider 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 district court's decision on appeal. *In re Marriage of Maher*, 596

N.W.2d 561, 568 (Iowa 1999). Both parties' requests for appellate attorney fees are denied. Costs of the appeal are taxed one-half to each party.

The district court's ruling is affirmed.

AFFIRMED.