

IN THE COURT OF APPEALS OF IOWA

No. 6-965 / 06-0601
Filed January 31, 2007

**IN RE THE MARRIAGE OF THERESE MARIE HOCKEY
AND RICHARD GEORGE HOCKEY, JR.**

**Upon the Petition of
THERESE MARIE HOCKEY,**
Petitioner-Appellee,

**And Concerning
RICHARD GEORGE HOCKEY, JR.,**
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, Thomas Koehler,
Judge.

Richard George Hockey, Jr. appeals the district court's ruling in his
dissolution proceeding. **AFFIRMED.**

Angela Railsback of Nazette, Marner, Wendt, Knoll & Usher, L.L.P., Cedar
Rapids, for appellant.

Martha Quint of Gloe & Quint, Cedar Rapids, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

Richard George Hockey, Jr. (Rich) appeals the district court's ruling in his dissolution proceeding. He argues the district court erred in awarding Therese Marie Hockey (Therese) permanent alimony and attorney fees, court costs, and deposition fees. We affirm.

I. Background Facts and Proceedings

Rich and Therese were married in January 1976. Therese filed a petition for dissolution on November 16, 2004. All of their children are adults and not affected by this dissolution proceeding.

Therese is forty-eight years old and has severe health problems. She currently works in an administrative assistant position at Edward Jones, where she earns \$12.36 per hour. She also works part-time at Hallmark where she earns \$7.00 per hour. Between her two jobs, she works anywhere from forty-nine to sixty hours per week. She has previously been terminated from two jobs because of absenteeism due to her health conditions. She has received a verbal warning from her supervisor at Edward Jones about the amount of work she has missed. Further, Therese's financial position is not good. She is behind on both rent and utilities and is in debt due to her move out of the marital home, medical bills, and car loan. As she ages, her doctors expect her health to continue to decline and her medical bills to increase.

Rich is forty-nine years old and is in relatively good health. He works at the Rockwell Collins plant on the production line. He earns \$13.37 per hour and, according to the decree, earned a three-percent raise in the early summer of 2006. He also has some expertise in union matters and goes on union-related

trips. He represented that his 2005 income was \$32,165 which included his veteran's disability payments. The district court, however, determined he earned \$5000 more based on overtime income. He testified that his overtime has been fairly consistent since his employment at Rockwell Collins and that he was, in fact, receiving overtime at the time of trial. In their partial stipulation, Rich agreed to take on the couple's joint \$7000 credit card debt. He also paid the couple's joint vehicle loan payment until they were able to refinance into two loans.

The only issues at trial were alimony, attorney fees, deposition fees, and court costs. The district court awarded Therese \$500 in alimony per month until she is eligible for Social Security Disability payments, reaches age sixty-six, remarries, or dies. The court also awarded Therese \$2000 for attorney fees. All court costs, including deposition fees, were taxed to Rich. Rich 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

A. Alimony

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).

Rich argues we should not take his overtime pay into account in determining his income. However, he testified his overtime has been consistent, and the record gives no indication he will not continue receiving it. See *In re Marriage of Schriener*, 695 N.W.2d 493, 501 (Iowa 2005). Given Therese's health problems and the likeliness of her achieving self-sufficiency; the parties' education, training, and work experience; the difference in their incomes; and the length of their marriage, we conclude the district court's award of alimony is equitable.

B. Attorney Fees, Deposition Fees, and Court Costs

Rich argues the district court abused its discretion in awarding Therese trial attorney and deposition fees, and in ordering him to pay court costs. We consider all three expenses to fall within the discretion of the district court to address. Rich cites no authority to indicate otherwise.

Attorney fees are not a matter of right but are within the court's discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). We review the district court's award of attorney fees for abuse of discretion. *Sullins*, 715 N.W.2d at 255. In the district court, the controlling factor in determining an award of attorney fees is the ability to pay the fees. *Id.* We conclude the district court did not abuse its discretion when it awarded Therese trial attorney fees. We also conclude the district court did not abuse its discretion in ordering that Rich pay deposition fees and court costs.

Therese also requests appellate attorney fees. An award of appellate attorney fees is also 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. *Sullins*, 715 N.W.2d at 255. Therese's request for appellate attorney fees are denied. Costs of appeal are taxed one-half to each party.

AFFIRMED.