

IN THE COURT OF APPEALS OF IOWA

No. 7-294 / 06-1778

Filed May 23, 2007

**IN RE THE MARRIAGE OF MARY JEANNE CLARK
AND LESTER EUGENE CLARK, JR.**

**Upon the Petition of
MARY JEANNE CLARK,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
LESTER EUGENE CLARK, JR.,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson, Judge.

Lester Clark, Jr. appeals the spousal support and attorney fee provisions of the supplemental decree of dissolution of marriage. Mary Jeanne Clark cross-appeals the spousal support provision of the supplemental decree. **AFFIRMED.**

David Richter, Council Bluffs, for appellant.

J.C. Salvo and Bryan Swain of Salvo, Deren, Schneck & Lauterbach, P.C., Harlan, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

Lester Clark, Jr. appeals the spousal support and attorney fee provisions of the supplemental decree of dissolution of marriage. Mary Jeanne Clark cross-appeals the spousal support provision of the decree. We affirm on all issues.

I. Background and Facts

Lester Clark, Jr. and Mary Jeanne Clark were married in September 1989. Two children were born of the marriage, Kyle in May 1991 and Steven in December 1993. In July 2005, the parties separated, and the marriage was dissolved by decree in September 2006.

During their marriage, Lester worked at various farming endeavors.¹ Mary Jeanne, a dental hygienist, stayed home with the children when they were young and returned to part-time employment when the youngest started preschool. During the marriage, she had primary responsibility for caring for the children and managing the family home. The farming operations were successful, and the family enjoyed a comfortable lifestyle, including vacations, new vehicles, a new home, and expensive hobbies. At the time they were married, the parties owned 103 acres. By the end of the marriage, through a combination of purchases and inheritances, they had increased their land ownership to more than 800 acres.

A September 2006 decree of dissolution of marriage set forth the terms which had been agreed to by the parties, including joint legal custody for both boys and joint physical care of Kyle, Mary Jeanne having physical care of

¹ For child support purposes, Lester's annual salary was calculated at \$116,000. For the purpose of determining the spousal support and attorney fee provisions, the trial court found Lester "should receive a minimum of \$100,000 per year from his various farming endeavors." The court found Mary Jeanne "can anticipate a yearly income of \$30,000 . . . as a dental hygienist," based on continued part-time employment.

Steven, and Lester paying \$1748 per month in child support. The stipulated property division included Mary Jeanne receiving the home free of indebtedness, Lester receiving all 800-plus acres of farmland and everything related to the farming operations, Lester paying Mary Jeanne a cash settlement of \$425,000 (\$75,000 payable at the time of the decree and the balance payable in monthly installments over the next seven years), and Lester assuming most of the family debts. The issues of spousal support and attorney fees were reserved for trial.

On October 2, 2006, the trial court entered a supplemental decree ordering Lester to pay Mary Jeanne monthly spousal support of \$1500 until she reaches age sixty-two and \$15,400 for Mary Jeanne's attorney fees. Lester appeals the spousal support and attorney fee provisions of the supplemental decree. Mary Jeanne cross-appeals the spousal support provision.

II. Merits

Our review in equity cases is de novo. Iowa R. App. P. 6.4. We are not bound by the trial court's findings of facts, but we give them deference, especially when considering the credibility of the witnesses. *In re Marriage of Probasco*, 676 N.W.2d 179, 183 (Iowa 2004); see also Iowa R. App. P. 6.14(6)(g). An award of alimony is not an absolute right, but depends on the particular circumstances of each case. *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996). Although we review the trial court's award of spousal support de novo, we give the court "considerable latitude in making this determination based on the criteria" specified in Iowa Code section 598.21A(1) (Supp. 2005). *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). We will disturb the trial

court's discretionary determination only when there has been a failure to do equity. *Id.*

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.

In re Marriage of Benson, 545 N.W.2d 252, 257 (Iowa 1996).

Spousal support "is a stipend to a spouse in lieu of the other spouse's legal obligation for support." *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). It "has traditionally taken the place of support that would have been provided had the marriage continued." *Probasco*, 676 N.W.2d at 185. Pursuant to Iowa Code sections 598.21(1)(h) and 598.21A(1)(c), the court may consider property division in connection with a request for spousal support.² *Id.*

Lester contends the trial court erred in granting spousal support in this case because Mary Jeanne, who earns thirty-two dollars per hour and has no mortgage or car payment, is capable of being self-supporting. He argues his monthly payment on the property settlement will allow Mary Jeanne to be self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Lester also contends his standard of living will be negatively impacted by the debt load imposed by the property settlement "even before imposing the additional burden of alimony." Mary Jeanne, on the other hand,

² In addition to the property division, a court may consider: (1) the length of the marriage, (2) the age and health of the parties, (3) the educational level of the parties, (4) the earning capacity of the party seeking support, (5) the feasibility of the party seeking support becoming self-supporting, (6) the tax consequences, (7) any mutual agreements made by the parties, (8) any antenuptial agreement, and (9) other factors the court deems relevant. Iowa Code § 598.21A(1).

contends an award of spousal support is appropriate because her earning capacity will not be enough to sustain the “very comfortable lifestyle” the parties enjoyed during the marriage but contends the trial court’s award was inadequate because Lester’s assets enable him to pay \$2500 per month in spousal support “while maintaining the lifestyle he enjoyed during the marriage.” Taking into account all factors, including the property distribution, we cannot say that the trial court failed to do equity in awarding \$1500 in monthly spousal support. We therefore refuse to disturb its decision on appeal. Lester’s desire to retain all of the farmland and other farming assets clearly motivated his willingness to agree to the cash property settlement. Any negative impact on his standard of living imposed by the property settlement does not convince us that an award of spousal support is inequitable. We are also not convinced that increasing the award to \$2500 is required. Mary Jeanne possesses the skills and education to earn substantial wages. Considering all of the economic provisions of the decrees, she should be able to be self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. See Iowa Code § 598.21A(1)(f).

Lester argues that the trial court erred in granting attorney fees. “An award of 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 no abuse of discretion in the trial court requiring Lester to pay \$15,400 toward Mary Jeanne’s attorney fees. In view of the award of spousal support and the property distribution, however, we reject her claim for attorney fees on appeal.

We conclude the trial court properly awarded spousal support and attorney fees to Mary Jeanne. We decline to award her appellate attorney fees.

AFFIRMED.