

IN THE COURT OF APPEALS OF IOWA

No. 7-298 / 06-2003

Filed June 13, 2007

**IN RE THE MARRIAGE OF MICHAEL PETER MINNAERT AND ANNETTE
RACHEL MINNAERT**

**Upon the Petition of
MICHAEL PETER MINNAERT,**
Petitioner-Appellee,

**And Concerning
ANNETTE RACHEL MINNAERT,**
Respondent-Appellant.

Appeal from the Iowa District Court for Poweshiek County, Richard J. Vogel,
Judge.

Respondent-appellant appeals from the district court's order terminating
alimony. **REVERSED.**

Eric Borseth and Judy Johnson of Borseth Law Office, Altoona, for appellant
Nancy L. Burk, Toledo, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

SACKETT, C.J.

Annette Rachel Minnaert, now Annette Rachel Goodrich, appeals from the district court's decision terminating alimony that Michael Peter Minnaert was ordered to pay under a March 2005 decree dissolving her marriage. We reverse.

Background and Proceedings

Annette was born in 1948 and Michael in 1945. They had been married nearly thirty-two years at the time of their dissolution in March of 2005. For most of the marriage Michael worked full time for the United States Postal Service and was working for the service at the time of the dissolution. His annual salary was \$46,698 and he had excellent health insurance. Annette was a homemaker and worked part-time away from the home. At the time of the dissolution she worked full-time for Pamida and had an annual income of about \$16,000 but did not have health insurance benefits. The parties had a net worth of between \$9,000 and \$22,000. In addition they had unidentified pension rights and Michael had money in the Postal Service thrift plan he had through the Postal Service. The dissolution decree confirmed the parties' agreement as to the division of certain assets and liabilities and divided others. It appears the net result was that Annette received less than \$20,000 in assets.

The issue of alimony was litigated and Michael was ordered to pay Annette alimony of \$600 a month for a period of nine years. The district court did not define the type of alimony, nor did it provide for the termination of alimony at any time prior to the expiration of the nine-year period.

In September of 2005 Annette remarried. In April of 2006 Michael filed the application leading to this appeal, contending Annette's remarriage was a substantial change in circumstances warranting termination of alimony.

The evidence at trial was that Annette's current husband worked for a school district as a janitor and a school bus driver but his income was not revealed. Apparently he owned a home that was mortgaged. He had health insurance, but Annette testified it would cost her \$700 a month to be added to his policy.

At the time of the dissolution hearing Annette was scheduled for surgery. She had the surgery after the dissolution and as a result, lost her full-time job. At the time of the modification hearing she worked about twenty hours a week for Old Navy in retail sales. She had made \$9.00 an hour at Pamida and made \$7.75 an hour at Old Navy. She continues to have health problems and has monthly expenses for prescription drugs. She is still covered under the COBRA provisions of Michael's medical insurance. She testified that because of her health problems, obtaining health insurance would be difficult. She was not certain how much longer she could be covered under Michael's medical insurance. Her testimony indicated that she had problems paying her expenses.

At the time of modification, Michael continued to be employed by the Postal Service. His annual salary had increased to \$52,474. He too had remarried. His wife is employed at a temporary job.

The district court ordered the termination of the alimony, finding Annette had failed to show extraordinary circumstances to support it being continued.

On appeal Annette contends the alimony should not have been terminated because (1) it was rehabilitative or reimbursement alimony, and (2) if it was

traditional alimony it should not terminate because she established the extraordinary circumstances necessary to support its continuation. Michael contends it was traditional alimony and Annette failed to show extraordinary circumstances. Both parties request appellate attorney fees.

Scope of Review

Equity proceedings, such as modifications of dissolution decrees, are reviewed de novo on appeal. Iowa R. App. P. 6.4; *In re Marriage of McCurnin*, 681 N.W.2d 322, 327 (Iowa 2004). Trial courts have reasonable discretion in determining whether dissolution decree provisions are necessary or advisable. *In re Marriage of Wessels*, 542 N.W.2d 486, 490 (Iowa 1995). The trial court's decision will be disturbed only if it failed to do equity. *Id.* "We reach our conclusion, as to whether equity has been done, based on our de novo review." *In re Marriage of Wahlert*, 400 N.W.2d 557, 560 (Iowa 1987) (citing Iowa R. App. P. 6.4).

Analysis

Neither the dissolution court nor the modification court defined the type of alimony Annette received. The general rule in Iowa is that while the subsequent remarriage of a spouse does not result in automatic termination of an alimony obligation, it shifts the burden to the recipient to show that extraordinary circumstances exist that require the continuation of the alimony payments. *In re Marriage of Shima*, 360 N.W.2d 827, 828 (Iowa 1985); see also *In re Marriage of Woodward*, 229 N.W.2d 274, 280 (Iowa 1975); *Myers v. Myers*, 195 N.W.2d 113, 114 (Iowa 1972).

There is, however, one exception. Reimbursement alimony, which is predicated upon economic sacrifices made by one spouse during the marriage that

directly enhance the future earning capacity of the other, is not subject to modification or termination until full compensation is achieved or until the paying spouse's death, whichever occurs first. See *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989).

We reject Annette's argument the alimony is reimbursement. The dissolution court did not find it to be, nor did it make any factual findings indicating Annette made sacrifices that helped Michael earn a substantial increase in his income. Reimbursement alimony is predicated on economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other spouse. See *In re Marriage of Lalone*, 469 N.W.2d 695, 698 (Iowa 1991). Annette shared Michael's income while the couple was married and is sharing the assets and pension benefits the parties acquired during the marriage. See *id.*

We need not determine whether the alimony is rehabilitative or traditional. Rehabilitative alimony, awarded as a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, is subject to modification. See *In re Marriage of Probasco*, 676 N.W.2d 179, 187 (Iowa 2004); *Francis*, 442 N.W.2d at 63. After Annette's remarriage, she has the burden of showing extraordinary circumstances for continuance of either rehabilitative or traditional alimony. See *Shima*, 360 N.W.2d at 828.

We are bothered by the absence of any information about the financial circumstances of Annette's spouse. However, the record is clear that Annette suffers from health problems, has expensive medical insurance, has difficulty paying her bills, and is only employed part-time. While her income has decreased, Michael's has increased. These are extraordinary circumstances supporting her

need for alimony. However, her husband is able to assist her in part and her remarriage has decreased her need for the original monthly alimony payment of \$600. We therefore reverse the district court's order terminating alimony and order monthly alimony of \$300 for the remainder of the nine-year period set by the dissolution decree.

We award Annette \$1,500 in appellate attorney fees. Costs on appeal are taxed to Michael.

REVERSED.