

IN THE COURT OF APPEALS OF IOWA

No. 7-548 / 06-1797
Filed October 12, 2007

**IN RE THE MARRIAGE OF JON N. DOOLEY
AND KIMBERLY A. DOOLEY**

**Upon the Petition of
JON N. DOOLEY,**
Petitioner-Appellant,

**And Concerning
KIMBERLY A. DOOLEY,**
Respondent-Appellee.

Appeal from the Iowa District Court for Webster County, Gary L. McMinimee, Judge.

Jon Dooley appeals the district court's ruling on his dissolution proceeding. **AFFIRMED.**

Jerry Schnurr III, Fort Dodge, for appellant.

Vicki Copeland of Wilcox, Polking, Gerken, Schwarzkopf & Copeland, P.C., Jefferson, for appellee.

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

MAHAN, P.J.

Jon Dooley (Jack) appeals the district court's ruling in his dissolution proceeding. He argues the district court erred in awarding Kimberly Dooley (Kim) permanent alimony and attorney fees. We affirm.

I. Background Facts and Proceedings

Jack and Kim were married in June 1992. The marriage was Jack's third and Kim's second. Jack filed a petition for dissolution on March 13, 2006. The parties have no children together. Their children from previous marriages are all adults and not affected by these dissolution proceedings.

Jack was sixty-eight years old at the time of the dissolution proceedings. He retired in October 1993 from his management position with National Gypsum Company after almost thirty-five years of service. His retirement took place sixteen months after he and Kim were married. He spent the next fourteen years of the marriage semi-retired. From 1994 to 1997 he managed an ATI truck terminal and was paid \$500 per week. He also worked at a used car dealership two days a week for six dollars per hour. Jack receives \$2346.62 per month from his defined benefit plan through National Gypsum. In addition, in 2001 he began collecting social security disability payments in the amount of \$1763.50 per month due to his chronic obstructive pulmonary disease (COPD). The pension and social security payments are currently his only income.

Jack brought substantial assets into the marriage. These assets include stocks and bonds currently worth over \$30,000; \$85,000 in cash derived from the sale of his home prior to the marriage; a \$2000 term life insurance policy provided free of charge by his bank; a \$14,000 term life insurance policy

provided free of charge by National Gypsum; and a boat, motor, and trailer valued at \$1200. Jack also brought property into the marriage that he made additional contributions to during the marriage. This property includes a whole life insurance policy currently valued at \$21,916.02, which he contributed \$1100 to during the marriage, and a 401(k) account currently valued at \$102,690.04, which he contributed about \$1600 to during the marriage. Jack's only debts are \$450 on a Sears credit card and \$10,682 secured by his 2003 Toyota pickup.

Jack currently lives in the parties' Fort Dodge home and reports little change in his financial status since the separation. He estimates his monthly living expenses, including his debt payments, to be \$3346, while his income from his pension and social security benefits is approximately \$4115.52 per month. This is an excess of \$769.52. He estimates he spends approximately \$240 per month on recreation, including \$66 per week on three rounds of golf. He eats out approximately two times per day. He also spends approximately \$600 per month in medical expenses, including prescription medicine and health insurance coverage. Because his health is declining, these expenses are expected to increase.

Kim was forty-nine years old at the time of the dissolution proceedings. She is mostly healthy, although she suffers from depression and high blood pressure. She met Jack in her hometown of Medicine Lodge, Kansas, where he worked for National Gypsum. Near the time of their marriage Jack was transferred to a managing position in Fort Dodge. Kim left her full-time office manager position at Dirks Copy Products in Medicine Lodge to live with Jack in Fort Dodge. She was making between \$8.00 and \$8.50 per hour. During the

marriage Kim worked only part-time. In 1994 she worked as Jack's secretary. From 1995 until 2002 she worked at Drug Town grossing \$46,061.45 over seven years of employment. Jack claims she quit working because Drug Town asked her to work on Saturdays. Kim claims Jack wanted her home more. In 2003 Kim began working at Beckers Florist approximately thirty-five hours per week April through June, and two or three days per week the rest of the year. Kim did not work during the winter months. From 2003 to 2005 she earned approximately \$12,300.34. In addition to working part-time, Kim did most of the inside house work. She and Jack shared the outdoor work. Kim claims Jack told her he would pay for her to go back to school after they were married and then later changed his mind. Jack claims he never discouraged Kim from going back to school. It now appears Kim feels this opportunity has passed her by. She shows little interest in pursuing an education at this time.

Kim brought few assets into the marriage. She had only a 1983 Toronado, house furniture, and other personal effects. Kim has two sons from a prior marriage. At the time of the marriage her youngest son was approximately twelve years old. She received little child support from the child's father. Jack supported the youngest son and financially helped out the older son on occasion.

In the late 1990s Jack and Kim started spending about twelve weeks each winter in Medicine Lodge, Kim's hometown. Eventually the couple bought a house to stay in while they visited. During their stays Kim found employment painting and wallpapering.

Kim has struggled to support herself since the separation. She is again working at Dirks Copy Products earning nine dollars per hour. She was unable

to secure the management position she had before the marriage because it has not become available. The management position pays eleven dollars per hour. Kim has two credit cards with a combined balance of approximately \$7500. Kim also pays the mortgage on the Medicine Lodge property and has about \$350 out-of-pocket expenses for medications. After the divorce she will no longer have medical and prescription drug coverage through Jack's insurance policy, although it appears she receives some coverage through her employment. Kim's estimated total monthly expenses are \$2433.34, while her monthly income is \$1222.56. This is a deficit of \$1210.78 per month.

Although Kim is currently struggling to make ends meet, it is important to note that in 1993 Jack made an irrevocable election to receive a reduced monthly pension so that upon his death Kim will receive one hundred percent of the payments for her life. The payments cannot be changed. Jack has a life expectancy of 13.99 years, while Kim's life expectancy is 33.60 years.

Shortly after their marriage, the couple purchased their first home together in Fort Dodge for \$130,000. The down payment of \$85,000 was derived from the sale of Jack's home in Medicine Lodge owned prior to the marriage. The parties took out a \$55,000 mortgage. Jack and Kim dispute whose income contributed to the mortgage payments. Kim represents that she painted and wallpapered the inside of the home and she and Jack landscaped and made other improvements. In 2002 they sold the home for \$180,500. The mortgage balance at the time was \$24,645.13 and the purchase price of their current home was \$132,000. The parties do not know what happened to the net proceeds. Their second home was appraised at \$148,000 with no encumbrances. In addition to their house in

Fort Dodge, the parties bought a home in Medicine Lodge in 1998 for \$17,000. They made a \$3000 down payment and took out a mortgage for the rest of the purchase price. The loan balance is currently \$9278.54 requiring monthly payments of \$235.57. The home is appraised at \$33,000. Kim painted the outside of the home before the separation and appraisal. She is currently living there and making the mortgage payments.

The district court granted Kim the Medicine Lodge home, subject to the mortgage, the 2000 Toyota Camry, a lawnmower valued at \$750, seventeen \$200 U.S. Savings Bonds issued during the marriage, the life insurance policy on her life, and other personal property. Kim is also held responsible for the \$7500 credit card debt. Jack received all other property and debt. The district court also ordered Jack to pay Kim permanent alimony of \$750 per month and attorney's fees of \$3000. Jack appeals the award of alimony and attorney's fees.

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.* The district court's award of attorney fees will be reviewed for an abuse of discretion. *Id.* at 255.

III. Alimony

Alimony is not an absolute right. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). It is an allowance to the former spouse in lieu of a legal obligation to support that person. *In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981). An award of alimony depends upon the circumstances of each

situation. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). The district court's ruling should only be disturbed for a failure to do equity. *Anliker*, 694 N.W.2d at 540.

In determining whether an alimony award is appropriate we are to consider the factors listed in Iowa Code section 598.21A (Supp. 2005). This includes considering the earning capacity of each party, as well as the present standards of living and ability to pay of one balanced against the relative needs of the other. Iowa Code § 598.21A(1)(e)-(f); *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa Ct. App. 1983). In addition, we consider the length of marriage, the age and physical and emotional health of the parties, as well as the property distributed to each party upon divorce. Iowa Code § 598.21A. All relevant factors under the circumstances should be considered. *Id.* § 598.21A(1)(j).

Jack and Kim entered into their marriage with two very different property situations. Jack, very close to retirement, had accumulated a substantial amount of assets over the years, while Kim brought little into the marriage. There was little property added to the couple's portfolio during marriage since Jack retired one year into the marriage and began collecting his pension while Kim worked only part-time. Thus, the district court divided the property largely in Jack's favor since the majority of the assets consisted of his premarital property.¹ The property disbursed to Kim in the divorce decree was much less than that disbursed to Jack, but still substantially more than what she had when she

¹ Kim's net property award is approximately \$35,000, while Jack's is over \$300,000.

entered into the marriage. The property disbursement was not challenged on appeal. We find it to be equitable. However, we take the property division into account in determining the appropriateness of an alimony award.

During the marriage Kim enjoyed a higher standard of living than what she is now able to carry on after the parties' separation. She struggles to pay her basic living expenses, even though she is working full-time. Jack, on the other hand, maintains the same standard of living as before the separation. He makes no real argument that he cannot afford to pay spousal support. He only claims that he is retired and on a fixed income. However, his income is the same as that which he had during the marriage, and it will not decrease in the future. We cannot ignore that Kim is currently living at a much lower standard than Jack, who has the ability to help support her. Therefore, we find the district court's grant of permanent alimony in the amount of \$750 to be fair and equitable.

IV. Attorney Fees

Attorney fees are not ordered as a matter of right, but are within the court's discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). In determining whether to award attorney fees, the district court must consider the parties' relative abilities to pay. *In re Marriage of Geil*, 509 N.W.2d 738, 743 (Iowa 1993). We conclude the district court did not abuse its discretion when it ordered Jack to pay \$3000 of Kim's attorney fees.

Kim 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. Kim's request for appellate attorney fees is denied. Costs of appeal are taxed one-half to each party.

AFFIRMED.