

IN THE COURT OF APPEALS OF IOWA

No. 7-915 / 07-0822
Filed December 12, 2007

**IN RE THE MARRIAGE OF BRENDA KAY OLIVER
AND PHILIP LYNN OLIVER**

**Upon the Petition of
BERNDA KAY OLIVER,**
Petitioner-Appellee,

**And Concerning
PHILIP LYNN OLIVER,**
Respondent-Appellant.

Appeal from the Iowa District Court for Jefferson County, Daniel P. Wilson,
Judge.

Philip Lynn Oliver appeals from the district court's refusal to grant him
alimony. **AFFIRMED.**

Michael Carpenter of Webber, Gaumer & Emanuel, P.C., Ottumwa, for
appellant.

Paul Miller of Miller Law Office, Fairfield, for appellee.

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

ZIMMER, J.

Philip Lynn Oliver appeals from the district court's refusal to grant him alimony in the parties' dissolution decree. We affirm.

I. Background Facts and Proceedings.

Philip and Brenda Oliver were married in 1982. The parties have two adult children. Brenda left the family home and filed a petition for dissolution of marriage in September 2006. Philip filed a pro se answer to the petition. Trial on the petition was held during March 2007.¹

At the time of trial, Brenda was forty years old. She had been working on and off as a registered nurse since 2003. In 2006 her gross annual income was \$40,872. Philip was forty-four years old at the time of trial. In 1995 he suffered an injury to his back and became disabled. At the time of trial, his gross annual income was \$13,116, consisting of \$975 per month from social security disability, plus an additional \$118 per month from IPERS.

Following trial, the court entered an order equally dividing the property and debt of the marriage between the two parties. Philip was awarded the parties' family home, which consists of a double wide mobile home on a lot they own in Libertyville. The court did not award either party spousal support. Philip appeals. He contends he should have been awarded alimony.

II. Scope and Standards of Review.

We review dissolution cases de novo. Iowa R. App. P. 6.4; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). Although not bound by the district court's factual findings, we give them weight, especially when assessing the

¹ During trial, Brenda was represented by counsel, and Philip represented himself.

credibility of witnesses. Iowa R. App. P. 6.14(6)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

III. Merits.

A. Spousal Support.

An award of spousal support is used as a means of compensating the party who leaves the marriage at a financial disadvantage, particularly where there is a large disparity in earnings. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). It is a discretionary award, dependent upon factors such as the length of the marriage, the age and health of the parties, their earning capacities, the ability of the spouse seeking support to become self-sufficient, and the relative need for support. Iowa Code § 598.21A (Supp. 2005); *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005). The property division and an award of spousal support should be considered together in evaluating the individual sufficiency of each. *In re Marriage of Earsa*, 480 N.W.2d 84, 85 (Iowa Ct. App. 1991). Although our review of the award is de novo, the trial court is granted “considerable latitude in making this determination,” and we “will disturb the ruling only when there has been a failure to do equity.” *Olson*, 705 N.W.2d at 315.

It is fair to say that Philip paid little attention to the issue of alimony at trial. He did not request a specific amount of alimony, and he took no position regarding the duration of any alimony award. It is also fair to say that Philip’s position regarding the issue of alimony was equivocal. Although Philip represented himself at trial, he informed the court that he spoke with an attorney regarding the dissolution proceedings. Phillip stated that based on Brenda’s

income and what Philip had contributed to the marriage “they would be looking at going after maybe fifteen thousand dollars a year for spousal support payments.” Immediately following this statement, the trial judge asked Philip if he was requesting spousal support, and Philip responded:

I’m asking if that’s a possibility and what it would be. And I thought what I would like to do with part of that, or all of that is give that back to [Brenda] since I don’t have a lot of other money as compensation since she had to go through so much abuse as a child.

The judge then asked, “So if I follow what you’re saying, you’re asking for spousal support, but if you receive it, you’re going to give it back to her?” To which Philip replied, “Well, she always wants money from me. And when she has emergencies any more, I’m not sure where I’m going to come up with it for her.” At the close of trial, the judge again asked Philip if he was requesting spousal support. Philip responded, “Well, I know that I will not have a lot to give her from this point. But she always is desperate for money. And if I get an award for that, then I can give that to her. . . .”

On appeal, Philip now asks us to enter an award of permanent alimony in his favor. “Traditional or permanent alimony is usually payable for life or for so long as the dependent is incapable of self-support.” *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). Although Brenda currently has a greater income than Philip, the record reveals that Philip is capable of self support. The financial information presented to the trial court suggests that Philip is able to meet his monthly expenses from his current income.² Although Philip

² Philip has been making the payments on the real estate he was awarded since November 2006.

is disabled, the record reveals he consistently performed car repairs, as well as plumbing, heating, and other repairs on the parties' home during his marriage to Brenda. At trial, Philip failed to establish that he was in need of alimony to meet his personal needs, and he did not offer evidence that his lifestyle would change substantially after the parties' marriage was dissolved. Moreover, Philip's own testimony indicates that if the district court chose to award him spousal support, he would return some or all of the support to his wife. Under these somewhat unusual circumstances, we find the district court's refusal to award alimony was appropriate.

B. Attorney Fees.

Philip requests an award of appellate attorney fees. Appellate attorney fees are not a matter of right, but rather rest in this court's discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). In arriving at our decision, we consider the parties' needs, ability to pay, and the relative merits of the appeal. *Sullins*, 715 N.W.2d at 255. We award no appellate attorney fees in this case.

IV. Conclusion.

We conclude the district court's refusal to award spousal support in this case was not inequitable and should be affirmed. Additionally, we decline Philip's request to award him appellate attorney fees.

AFFIRMED.