

IN THE COURT OF APPEALS OF IOWA

No. 8-016 / 07-0559
Filed March 26, 2008

IN RE THE MARRIAGE OF MARI ANNE HALL AND JOHN EDWARD HALL

Upon the Petition of
MARI ANNE HALL,
Petitioner-Appellee,

And Concerning
JOHN EDWARD HALL,
Respondent-Appellant.

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

John E. Hall appeals the alimony provisions of the decree dissolving his
marriage to Mari A. Hall. **AFFIRMED.**

Joseph E. Halbur, Carroll, for appellant.

Mari Hall, Carroll, appellee, pro se.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

MILLER, J.

John E. Hall appeals the alimony provisions of the decree dissolving his marriage to Mari A. Hall. He contends the court's alimony award to Mari of \$400 per month until John's retirement at age sixty-six, either party's death, or Mari's remarriage is inequitable. Mari contends we should affirm the alimony award.¹ Upon our de novo review, we affirm.

I. BACKGROUND FACTS AND PROCEEDING.

John and Mari were married on August 23, 1974, when John was twenty-four years of age and Mari was nineteen. The parties have five adult children ranging in age from nineteen to thirty. Their youngest child is attending community college and the parties agreed to the post-secondary education subsidy the court ordered in the decree.

Mari filed a petition for dissolution of marriage on June 8, 2006. Trial was held on the matter January 11, 2007, and the trial court filed its ruling on January 13, 2007. John timely filed an appeal in March 2007.

At the time of trial John was fifty-seven years of age. He had completed three and one-half years of college before the parties' marriage. John had suffered a heart attack in November 2005. A stent was implanted in an artery and he continues to take medication for his condition, but he is otherwise in good health.

¹ In her brief Mari appears to rely in part on fault-based arguments; notes facts that are irrelevant to the narrow issue presented, concerning alimony; and alleges facts and events beyond the record, including but not necessarily limited to events post-dating trial. We ignore these matters.

Sometime around 2000 John began working as a crop insurance adjuster for Wells Fargo RCIS. According to the social security statements provided at trial, the court found John had income of \$29,970 in 2003, \$29,265 in 2004, \$31,247 in 2005, and \$40,503 in 2006. He stated that his income in 2006 was higher because he had asked for work out of state due to the parties' pending divorce. John testified he plans to retire at age sixty-six when he can draw full social security benefits.

Mari was fifty-two years old at the time of trial and was in good health. She had completed a year of college when the parties married. The parties agreed she would stay home and care for the children, which she did for the first twenty-plus years of the marriage. The majority of the marriage Mari had very limited work outside the home, consisting of teaching a few aerobics classes, selling t-shirts, and working at a radio station for a few months.

In the late 1990's the parties faced severe financial problems. Mari testified that in order to help with their situation she obtained grant money through an FHA program, money that paid for her to go back to college and allowed her to get a loan that was used to help support the family. She testified she went back to college to get the loan money rather than to get a degree that would allow her to become employed or self-sufficient. Mari earned both an undergraduate degree and a Masters Degree in English Literature from Iowa State University. Mari was able to get a job as a lecturer at Iowa State University and has been employed as such since about 2002. Her position is not a tenure

track position, but instead is a contract position that may be renewed each semester depending on the needs of the university.

The court found Mari had social security earnings of \$25,629 in 2003, \$31,326 in 2004, and \$35,542 in 2005. Her 2006 earnings were unclear as of the time of trial. She testified she had earned more in 2003-2005 than in the two preceding years that had followed receipt of her Master's Degree because of editing work she was able to obtain through a friend, but stated she did not anticipate being able to do anything like that again in the future. As of the January 2007 trial Mari's contract was only to teach two classes, which is considered two-thirds time, and her contract was due to end May 15, 2007. She had no guarantee of any employment beyond that date, and she was earning \$1,795.44 per month. She did not know what her chances were of continuing on at Iowa State University after the end of her current contract. Mari testified she was not able to earn more at the university than her base salary would be if she were full-time, which was about \$23,000 per year.

The parties agreed prior to trial to the distribution of most assets and debts and the court approved their agreement. Under the agreement John received \$26,893.99 in property and Mari received \$50,983.76. The court ordered the remaining asset, the parties' marital home, to be sold at auction with the proceeds distributed first to pay for the expenses of the sale, then \$24,090.77 to John to equalize the property division, and the remaining balance one-half to each party.

At trial Mari requested alimony in the sum of \$1000 per month until she remarried or died. John resisted Mari's request and urged that no alimony should be awarded, arguing her earning capacity equalled or exceeded his. The trial court found that, for alimony purposes, John's income over the last three years averaged \$35,250² and Mari's income "should be considered to be what she expects to earn or \$23,000." Based on these respective incomes, together with "Mari's needs, her efforts in caring for their home and children, John's ability to pay, and the tax consequences of alimony," the trial court ordered John to pay Mari \$400 per month in alimony, continuing until the sooner of November 20, 2015, when John can retire with full social security benefits at age sixty-six; either party's death; or Mari's remarriage. The court's award of alimony is the only issue raised by John on appeal.

II. SCOPE AND STANDARDS OF REVIEW.

In this equity case our review is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g). This is because the trial court has a firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992).

² This figure is not challenged on appeal.

III. MERITS.

“[Spousal support] is an allowance to the spouse in lieu of the legal obligation for support.” *In re Marriage of Sjulín*, 431 N.W.2d 773, 775 (Iowa 1998). Spousal support is not an absolute right; an award depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). Any form of spousal support is discretionary with the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). The discretionary award of spousal support is made after considering the factors listed in Iowa Code section 589.21A(1) (2006). *Dieger*, 584 N.W.2d at 570. Even though our review is de novo, we accord the district court considerable discretion in making spousal support determinations and will disturb its ruling only where there has been a failure to do equity. *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997).

We consider the length of the marriage, the age and health of the parties, the parties’ earning capacities, the levels of education, and the likelihood the party seeking spousal support will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). We also consider the distribution of property. Iowa Code § 598.21A(1)(c); see also *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998) (finding property division and spousal support should be considered together in evaluating their individual sufficiency). In marriages of long duration where the earning disparity between the parties is great, both spousal support and nearly equal property division may be

appropriate. *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa Ct. App. 1993).

The parties were married for nearly thirty-two years. Mari is fifty-two, John is fifty-seven, both are currently in good health, and they received essentially equal amounts of property. John has three and one-half years of post-high-school education, has been employed full-time for the duration of the parties' marriage, has a demonstrated earning capacity of at least \$35,000 per year, and it would appear likely he will continue to earn at or above this level until he retires. By way of contrast, for the first approximately twenty years of the parties' marriage Mari had only one year of post-high-school education and worked outside the home a very limited amount. Then in the late 1990's in order to help the family financial situation she received grants and loans through FHA which allowed her to earn her undergraduate degree and Master's Degree in English Literature during the course of the marriage. Mari has been in the workforce since only about 2002 when she began working at Iowa State University as a lecturer after earning her Master's Degree. Accordingly, based on the parties' past employment histories, it appears reasonable to assume that at normal retirement ages John will receive larger social security benefits than Mari will.

In addition, Mari testified that because she has neither a doctorate nor a teaching certificate her employment opportunities in her field are relatively limited, allowing her only to teach entry level composition courses at a university or community college. Furthermore, her current employment with the university

is not guaranteed, but is renewed each semester depending on the school's needs.

At the time of trial Mari was earning only \$1,795.44 per month and her employment was guaranteed only through May 15, 2007. She testified the most she could earn as a lecturer if employed full-time with the university was about \$23,000 per year. Although she did earn more in 2003, 2004, and 2005, those higher earnings were due to additional temporary work she obtained through a friend in what appears to have been a one-time opportunity. Thus, it appears her future income will be much less than she earned in the years she had the additional work. Based on her contract at the time of trial, her income would be \$16,159 per year if employed two-thirds time, and presumably one and one-half times that amount, or \$24,238 per year, if employed full-time.

The economic provisions of a dissolution decree are "not a computation of dollars and cents, but a balancing of equities." *Clinton*, 579 N.W.2d at 839. Any form of spousal support is discretionary with the court. *Ask*, 551 N.W.2d at 645. After considering the specific facts and circumstances of the case at hand and all factors relevant to possible alimony awards we find no abuse of discretion or inequity in the trial court's award of alimony to Mari of \$400 per month until the sooner of November 20, 2015, either party's death, or Mari's remarriage. We do note that any substantial change in either or both parties' circumstances beyond those contemplated in the trial court's decree may justify modification of alimony.

IV. CONCLUSION.

Based on our de novo review, we find no abuse of discretion or inequity in the trial court's award of alimony to Mari.

AFFIRMED.