

IN THE COURT OF APPEALS OF IOWA

No. 8-031 / 07-1151
Filed February 27, 2008

**IN RE THE MARRIAGE OF TIMOTHY A. FITZPATRICK
AND KATHLEEN G. FITZPATRICK**

**Upon the Petition of
TIMOTHY A. FITZPATRICK,**
Petitioner-Appellant/Cross-Appellee,

**And Concerning
KATHLEEN G. FITZPATRICK,**
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Linn County, Patrick R. Grady,
Judge.

The petitioner appeals from the district court's order denying his
application for entry of a complete satisfaction. **AFFIRMED IN PART AND
REVERSED IN PART.**

Karen Volz, Cedar Rapids, for appellant.

Melody Butz, Cedar Rapids, for appellee.

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

VOGEL, J.

Timothy Fitzpatrick appeals from the district court's order denying his application for complete satisfaction of spousal support. Kathleen Fitzpatrick cross-appeals the court's denial of her request for attorney fees. We affirm in part and reverse in part.

Kathleen Fitzpatrick and Timothy Fitzpatrick's marriage was dissolved in February 2002. After negotiations, Kathleen and Timothy entered into a "Stipulation of Settlement," which the dissolution decree adopted in whole. The stipulation provided that Timothy was to pay Kathleen monthly rehabilitative alimony through October 2010. In April of 2007, Timothy calculated the remaining amount of alimony that he was obligated to pay and then attempted to pay Kathleen a lump sum of \$14,700. Kathleen rejected Timothy's attempt to pay the alimony in full. Timothy then made a lump sum payment through the clerk of court and filed an application for complete satisfaction of judgment. Again, Kathleen did not accept the payment as it would subject her to adverse income tax consequences. She also resisted Timothy's application and requested attorney fees. The district court denied Timothy's application and denied Kathleen's request for attorney fees. Both appeal from this order.

Our scope of review in an equitable action is de novo. Iowa R. App. P. 6.4; *In re Marriage of Farr*, 542 N.W.2d 828, 831 (Iowa 1996). Pursuant to the stipulated decree, Timothy was to pay spousal support to Kathleen in the amount of \$750 per month from January 2002 through December 2003, \$500 per month from January 2004 through December 2006, and \$350 per month from January 2007 through October 2010. The parties agreed that the payments were "to be

made upon entry of the decree of dissolution herein and all subsequent payments to be made on the 1st of each month thereafter.” They further agreed Timothy’s obligation would terminate upon his death, Kathleen’s death, or “after the October 2010 payment.” Additionally, the stipulated decree provided that the alimony provision was not modifiable by either party. *See In re Marriage of Von Glan*, 525 N.W.2d 427, 431 (Iowa Ct. App. 1994) (“Parties can contract and dissolution courts can provide alimony is not modifiable . . . ”). Finally, the agreement also required Timothy to maintain a \$100,000 life insurance policy, which named Kathleen as the beneficiary, while he had an obligation to pay spousal support.

Timothy argues that the district court erred in finding the stipulated decree prohibited him from prepaying his support obligation. Kathleen presented evidence that demonstrated she would suffer an adverse tax consequence if Timothy was allowed to prepay the monthly obligations. We agree with the district court that the non-modifiable, “clear language of the Decree prohibits the prepayment tendered without the agreement of the parties.” The terms of the agreement clearly provide that Timothy is to pay each monthly payment on the first of each month and the last payment is the October 2010 payment. *See In re Marriage of Logsdon*, 510 N.W.2d 160, 161 (Iowa Ct. App. 1993) (“[E]ach ordered payment of monthly alimony constitutes a separate judgment as it becomes due.”). Furthermore, the district court noted that the parties reached this agreement after negotiations, during which they may have considered other factors such as the property settlement and tax consequences. Therefore, we affirm the district court.

Kathleen argues that the district court erred in not awarding her trial 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 Wessels*, 542 N.W.2d 486, 491 (Iowa 1995). Kathleen asserts that the district court abused its discretion because the stipulated decree required an award of attorney fees. The stipulation does provide for granting attorney fees and states: “In the event either party must incur legal fees to enforce any provision of this agreement, the other party agrees to pay reasonable attorney fees so incurred for that purpose.” The district court gave no reason for denying Kathleen’s request for trial attorney fees, which is problematic for our review, as it does not demonstrate the court’s exercise of its discretion. Therefore, we reverse the district court’s denial of attorney fees and award Kathleen the requested \$600 for trial attorney fees.

Additionally, Kathleen requests this court award her appellate attorney fees in the amount of \$4162.50. As discussed above, the stipulated decree clearly provides for Kathleen to be awarded reasonable attorney fees. Kathleen was forced to defend the district court’s decision on appeal and prevailed. See also *In re Marriage of Gaer*, 476 N.W.2d 324, 330 (Iowa 1991) (discussing that one factor the court considers in making an award of appellate attorney fees is whether the requesting party was forced to defend the appeal). An award of attorney fees must be reasonable, but this record does not contain a detailed statement of how the fee was calculated for us to review its reasonableness. Furthermore, on appeal, Kathleen does not invoke the provisions of the stipulation as to payment of attorney fees. Nonetheless, we agree with Kathleen

some award is warranted. Therefore, we award Kathleen \$2000 for appellate attorney fees. Costs on appeal are assessed to Timothy.

AFFIRMED IN PART AND REVERSED IN PART.