

**IN THE COURT OF APPEALS OF IOWA**

No. 8-471 / 07-1801

Filed July 16, 2008

**IN RE THE MARRIAGE OF GREGORY G. SCHULZ AND DEBRA J. SCHULZ,**

**Upon the Petition of  
GREGORY G. SCHULZ,**  
Petitioner-Appellant,

**And Concerning  
DEBRA J. SCHULZ,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Hancock County, John S. Mackey,  
Judge.

Appellant appeals a district court judgment requiring him to pay alimony.

**AFFIRMED.**

James M. Stanton of Stanton & Sorensen, Clear Lake, for appellant.

Robert W. Brinton of Brinton Bordwell Johnson, Clarion, for appellee.

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

**EISENHAUER, J.**

Greg and Deb Schulz were married in 1983 and are the parents of two adult children. Greg filed for divorce in December 2006. The case was tried and the decree was entered in August 2007. The district court divided the parties' debts and assets equally and the property/debt distribution is not appealed. The sole issue raised by Greg on appeal is whether the district court erred in awarding Deb alimony. Deb seeks appellate attorney fees. We affirm and award attorney fees.

At trial, Greg was forty-eight years old and Deb was forty-six years old. Both parties are healthy and have worked consistently throughout the marriage. Both plan to continue their current, stable employment. In November 2005, Deb moved out of the marital home and she currently lives with her boyfriend. Greg subsequently moved out of the marital home and lives with his girlfriend. The marital home is listed for sale, but its two mortgages exceed the home's value.

Greg has a community college certificate in agricultural mechanics and has worked for the past eleven years as a machine operator for Zinpro, a feed-additives company. Zinpro provides the family with health, dental, eye and drug insurance without cost to Greg. Greg's income from 2004 to 2006 increased each year: \$43,401, \$44,866, and \$46,680. Greg's Zinpro 401(k) account is valued at \$80,844 and is subject to a \$22,247 loan for family expenses. The district court awarded \$9125 of Greg's 401(k)<sup>1</sup> to Deb as a property-distribution equalizing payment, leaving \$49,472 unencumbered.

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<sup>1</sup> The court utilized a qualified domestic relations order (QDRO) to effectuate the property transfer.

Deb has a community college associate's degree and has worked for the past four years as a gas station/convenience store manager. Insurance will cost her \$960 per year and she will not have the dental, eye and drug benefits she utilized under the Zinpro family plan. Debra's income from 2004 to 2006 decreased due to a 2006 surgery: \$25,916, \$25,709 and \$23,798. During the marriage Deb cashed out \$8819 of her 401(k) for family living expenses and her current 401(k) balance is \$8873.

In awarding alimony, the district court stated:

Taking into consideration the parties' relatively long marriage of approximately twenty-four years, the demonstrated disparate earning capacity between the parties, the property and debt division . . . the parties' standard of living and balancing Deb's needs against Greg's ability to pay, the court concludes that Greg shall pay to Deb the sum of \$500 per month commencing on the 1st day of the month immediately following closing upon the sale of the parties' marital residence, and the sum of \$500 per month on the 1st of each and every month thereafter until Deb attains age 66, dies or remarries.

Deb originally sought \$1500 per month in alimony and, after trial, reduced her request to \$1000 per month. Deb testified she wanted to maintain her standard of living and wanted to move into a nicer residence. The district court explained its \$500 award:

The parties' standard of living enjoyed during the marriage would be unattainable as it was largely subsidized by incurring credit card debt in substantial sums highly disproportionate to the parties' ability to repay the same. Greg will remain responsible for a substantial mortgage deficiency even after the house is sold, along with the lion's share of the remaining credit card debts which will require retirement from his income.

Greg argues the court's alimony award is inequitable because the parties' pre-divorce standard of living was maintained by substantial debt and is illusory and

because the decree granted Deb significant debt relief while obligating him to keep paying the two mortgages.

Deb responds alimony was appropriate due to Greg's greater earning capacity. When \$6000 in alimony is added to Deb's income and subtracted from Greg's, she will gross approximately \$32,000 while Greg will retain \$40,680.<sup>2</sup> Deb will have more medical expenses because she must pay \$960 per year for a more-limited insurance plan while Greg receives superior coverage at no cost. Additionally, Deb points out Greg's alimony obligation does not commence until the home is sold, eliminating most of the mortgage debt. Finally, Deb argues she only receives alimony until she is sixty-six, therefore, she will have to use her income to accumulate substantial retirement savings. We note Deb will start with post-decree retirement savings approximating \$18,000 while Greg's post-decree retirement savings are approximately \$49,000.

We review this equity action de novo. Iowa R. App. P. 6.4. We have a duty to examine the entire record and "adjudicate anew the rights on the issues properly presented." *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We accordingly need not separately consider assignments of error in the trial court's findings of fact and conclusions of law, but make such findings and conclusions from our de novo review as we deem appropriate. *Lessenger v. Lessenger*, 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (1968).

Depending on the circumstances of the case, alimony can be appropriate "in long-term marriages where life patterns have largely been set and the earning

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<sup>2</sup> Additionally, the federal and state governments will tax Deb's alimony while Greg will receive a deduction on his tax returns for the alimony he pays. See *In re Marriage of Olson*, 705 N.W.2d 312, 316 (Iowa 2005).

potential of both spouses can be predicted with some reliability.” *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997). We grant the district court considerable latitude in determining alimony and “will disturb the ruling only when there has been a failure to do equity.” *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005).

Based on our de novo review of the record, we find the trial court’s alimony award is equitable in amount and duration. This is a long-term marriage with established earning patterns. In addition to superior earning capacity, Greg has significantly more retirement savings, less medical expense, and does not pay alimony until the marital home is sold. We affirm on this issue.

Deb requests \$3000 for appellate attorney fees. “An award of appellate attorney fees is not a matter of right, but rests within our discretion.” *In re Marriage of Kurtt*, 561 N.W.2d at 389. We consider the needs of the party making the request, the ability of the other party to pay, and whether the party requesting fees was required to defend the district court’s decision on appeal. *Id.* Given the circumstances, we think an award of appellate attorney fees is equitable and order Greg to pay \$1500 to Deb for appellate attorney fees. Costs are taxed to Greg.

**AFFIRMED.**