

IN THE COURT OF APPEALS OF IOWA

No. 9-341 / 08-1552

Filed May 29, 2009

**IN RE THE MARRIAGE OF KURT E. STEPANIAK
AND JACQUELINE S. STEPANIAK**

**Upon the Petition of
KURT E. STEPANIAK,**
Petitioner-Appellant,

**And Concerning
JACQUELINE S. STEPANIAK,**
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Marlita A. Greve,
Judge.

Kurt Stepaniak appeals from the district court's award of alimony.
Jacqueline Stepaniak cross-appeals seeking an award of appellate attorney fees.

AFFIRMED AS MODIFIED.

Richard A. Davidson of Lane & Waterman, Davenport, for appellant.

Steven H. Jacobs and Jean Z. Dickson of Betty, Neuman & McMahan,
Davenport, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

Jacqueline and Kurt Stepaniak were married on May 21, 1982. Before they were married, Jacqueline earned a bachelor's degree in sociology and a master's degree in social work, and Kurt earned a bachelor's degree in political science and history. Kurt began law school in 1980 and graduated in 1984. He was employed full-time for roughly three out of the four years in which he was enrolled in law school. He worked part-time during the remainder of his law school education.

Jacqueline worked at various jobs during the first six years of the parties' marriage. The parties had children in 1984 and 1987. In 1988, they agreed it would be best if Jacqueline quit her career to care for the children. Kurt worked at several jobs, including a position as general counsel for Bosch Braking Systems Corporation from 1993 to 1997. Kurt then obtained a position at KONE, where he still worked at the time of trial. Kurt's annual income at KONE included three parts: his salary, his bonus, and his stock options. Kurt's income, as reported on his tax returns, was \$351,833 in 2004; \$342,522 in 2005; \$421,645 in 2006; and \$449,501 in 2007.

The parties separated in August 2003 and have lived in separate residences since. Neither of the children lives at home. During the separation, Jacqueline remained in the marital home while Kurt moved to a rented condo. Jacqueline sent Kurt a list of her bills, and Kurt deposited money in Jacqueline's account to cover the expenses. Kurt usually gave Jacqueline between \$5000 and \$6000 per month for her expenses. Kurt also paid college expenses for the

children without contribution from Jacqueline. Jacqueline submitted to Kurt a list of her expenses, which Kurt admitted as an exhibit at trial. The exhibit showed that Jacqueline's monthly expenses at the time were \$5,226.67.¹ Though Kurt argues Jacqueline's monthly expenses will be reduced after Jacqueline pays off the mortgage on the marital home, the record shows that Jacqueline does not intend to pay off the mortgage because it has a low interest rate.

Kurt filed a petition for dissolution of marriage on March 8, 2007. At the time of trial, Jacqueline worked at the Mississippi Valley Welcome Center about twenty hours per week earning \$7.50 per hour. The record is unclear when she acquired that position though the parties' tax returns show that Jacqueline claimed no wages in 2004, wages of \$2420 in 2005; \$5453 in 2006; and \$4729 in 2007. Jacqueline recently obtained a job as a "very part-time secretary" with the LeClaire Chamber of Commerce, earning \$250 per month. Jacqueline also applied to be a substitute aide at Pleasant Valley schools but only worked one time at that position. Jacqueline applied for other similar positions but was not hired. She was also considering taking classes to obtain her master's degree in public administration. She estimated that this program would take five years, at which point she could re-enter the job market at the age of fifty-eight.

Prior to trial, the parties agreed to a property distribution that awarded each party roughly \$950,000 of marital assets. Over \$500,000 of the marital assets Jacqueline received are liquid assets. The parties also agreed to retain their own inherited funds, with Jacqueline keeping roughly \$296,000 and Kurt

¹ This amount did not account for taxes that Jacqueline would have to pay on the receipt of alimony.

keeping roughly \$654,000. In addition, the parties agreed to equally divide Kurt's Bosch and KONE pensions using the formula set forth in *In re Marriage of Benson*, 545 N.W.2d 252, 255-57 (Iowa 1996). According to this formula, Jacqueline will receive \$507.87 per month from Kurt's Bosch pension beginning April 3, 2013. Jacqueline is also projected to receive \$1826.64 per month from Kurt's KONE pension beginning May 1, 2023.² Also, Jacqueline will be eligible to draw roughly \$1160 per month from Kurt's social security once she reaches age sixty-five.

The district court ordered Kurt to pay traditional alimony to Jacqueline of \$8500 per month until October 1, 2014, the month of Jacqueline's fifty-eighth birthday, to allow her to pursue her education. Beginning October 1, 2014, the district court ordered Kurt to pay \$5000 per month until his retirement. After his retirement, the district court ordered Kurt to pay the difference between \$5000 and Jacqueline's income from Kurt's pensions and social security. If income from these three sources is greater than \$5000 per month, Kurt will not be required to pay additional alimony. Kurt appeals, arguing the district court's alimony award was inequitable. Jacqueline cross-appeals, seeking an award of appellate attorney fees.

II. Standard of Review

We review equity cases de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate rights anew on the issues presented. *In re Marriage*

² Though Kurt argues on appeal that Jacqueline would receive \$2334.51 per month from the KONE pension and the district court found that Jacqueline would receive \$3653.28 per month from the KONE pension, the record establishes that Jacqueline is only projected to receive \$1826.64 from the KONE pension.

of *Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We give weight to the district court's findings of fact, especially when considering the credibility of witnesses, but are not bound by them. *In re Marriage of Anliker*, 694 N.W.2d 535, 539 (Iowa 2005). Because each decision in a dissolution action is dependent on the unique facts of the case, we "accord the trial court considerable latitude in resolving disputed claims and will disturb a ruling 'only when there has been a failure to do equity.'" *Smith*, 573 N.W.2d at 926.

III. Alimony Award

Kurt argues that the amount and duration of the alimony award are inequitable. Alimony is not an absolute right. *Anliker*, 694 N.W.2d at 540. The district court may grant alimony at its discretion after considering the particular facts of the case and the factors listed in Iowa Code section 598.21A (2007). *In re Marriage of Hansen*, 733 N.W.2d 683, 704 (Iowa 2007). These factors include: (1) the length of the marriage; (2) the age and physical and emotional health of the parties; (3) the property distribution; (4) the educational level of each party at the time of the marriage and at the time the action is commenced; (5) the earning capacity of the party seeking alimony; (6) the feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal; and (7) tax consequences to each party. Iowa Code § 598.21A.

There are three different types of alimony: traditional, rehabilitative, and reimbursement. *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004). The district court found that Jacqueline was entitled to traditional alimony.

Traditional alimony is “payable for life or so long as a spouse is incapable of self-support.” *Id.* (internal quotations omitted). Its purpose is to provide Jacqueline with support comparable to what she would have received if the marriage had continued. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). Jacqueline is entitled to be supported “in a manner as closely resembling the standards existing during the marriage as possible, to the extent that that is possible without destroying [Kurt’s right] to enjoy at least a comparable standard of living as well.” *In re Marriage of Hayne*, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). Rehabilitative alimony is “a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting.” *Probasco*, 676 N.W.2d at 184 (internal quotations omitted). Inherited property and marital assets can be considered in making an alimony award. *In re Marriage of Voss*, 396 N.W.2d 801, 804 (Iowa Ct. App. 1986).

Although Jacqueline was awarded a considerable amount of marital and inherited assets, her ability to maintain her predissolution standard of living is limited by her lower earning capacity. However, the district court’s order requires Kurt to pay alimony in excess of Jacqueline’s monthly expenses, allowing her to profit from each month’s alimony payment, even considering the tax consequences assumed by the district court. Once Jacqueline’s standard of living is assured, there is no reason for Kurt to provide further alimony, even if he is financially capable. *Id.* (“[O]nce the dependent spouse’s standard of living is assured, there is no reason, in equity, for the supporting spouse to provide still more.”). Accordingly, we find equity requires that we reduce Kurt’s monthly

alimony payment to \$7500 until October 1, 2014. This will cover Jacqueline's expenses, including taxes, and allow her to maintain her predissolution standard of living. This award will give Jacqueline the time and income necessary to pursue her education and become integrated in the job market.

Beginning October 1, 2014, Kurt shall pay alimony to Jacqueline in the amount of the difference between \$5000 and Jacqueline's income from Kurt's pensions and social security. Jacqueline's income from alimony, pensions, social security, and work should allow her to maintain a standard of living comparable to that enjoyed during the marriage. Considering the length of the parties' marriage, the parties' ages, the parties' levels of education, Jacqueline's lower earning capacity, and Jacqueline's ability to become self-supporting at a standard of living comparable to the one enjoyed during the marriage, we conclude this award of alimony is equitable. Even if this award results in Jacqueline receiving a combination of rehabilitative and traditional alimony, as Kurt argues, we find that the award is equitable. *See In re Marriage of Becker*, 756 N.W.2d 822, 827 (Iowa 2008) (stating the court may award a combination of different types of alimony). All alimony payments will end upon Kurt's death, Jacqueline's remarriage, or Jacqueline's death.

IV. Appellate Attorney Fees

Jacqueline argues Kurt should pay her appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's sound discretion. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). The court considers the needs of the party making the request, the ability of the other party to pay, and whether the party making the request is obligated to

defend the trial court's decision on appeal. *In re Marriage of Gaer*, 476 N.W.2d 324, 330 (Iowa 1991). We find that each party can and should pay his or her own appellate attorney fees. Costs are assessed to Kurt.

AFFIRMED AS MODIFIED.