

IN THE COURT OF APPEALS OF IOWA

No. 9-564 / 09-0179
Filed August 6, 2009

**IN RE THE MARRIAGE OF BEVERLY A. RUIZ
AND HENRY V. RUIZ**

**Upon the Petition of
BEVERLY A. RUIZ,**
Petitioner-Appellant,

**And Concerning
HENRY V. RUIZ,**
Respondent-Appellee.

Appeal from the Iowa District Court for Clinton County, Mary E. Howes,
Judge.

Beverly A. Ruiz appeals from the spousal support provision of the district
court's order dissolving her marriage to Henry V. Ruiz. **AFFIRMED.**

Richard W. Farwell and Christopher L. Farwell of Farwell & Bruhn, Clinton,
for appellant.

Edward J. Kross of Van Scoy & Kross, P.C., Clinton, for appellee.

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

DOYLE, J.

Beverly A. Ruiz appeals from the spousal support provision of the district court's order dissolving her marriage to Henry V. Ruiz. She contends the spousal support award should have been in a greater amount and for a longer duration, and she requests appellate attorney fees. We affirm and decline to award appellate attorney fees.

I. Background Facts and Proceedings.

Beverly and Henry were married October 4, 2003. It was Beverly's third marriage and Henry's second. At the time of trial, Beverly was sixty-five years old and Henry was sixty. Both parties had children from previous marriages. The parties lived together for approximately ten years before they married. Beverly filed a petition for dissolution of marriage in May 2008, and the petition came before the district court for trial on October 29, 2008.

Henry is employed by 3M. At the time of trial, Henry had worked for his employer for thirty-six years and planned to retire in two or four years. Henry regularly worked overtime, but the amount of overtime he worked varied over the years. As of October 12, 2008, Henry's year to date gross income pay equaled \$71,216. Henry participated in his employer's 401(k), pension, and employee stock ownership plans during the parties' marriage. Henry generally gave money to Beverly during their marriage to pay the parties' expenses.

Beverly was not employed during the parties' premarital cohabitation and marriage. She has not worked since 1989 except for a couple of months taking care of an invalid. Prior to the parties' marriage, Beverly had received income from her first husband's veteran's pension equaling \$560 per month.

Additionally, she had received SSI benefits equaling \$11 per month after the Social Security Administration found Beverly to be disabled in 2000. Beverly ceased receiving the veteran's pension and SSI benefits after the parties married in 2003. Beverly began drawing Social Security retirement benefits after she turned sixty-five, and Beverly was to receive \$985 per month in Social Security retirement benefits after the parties' dissolution.

The parties resided in the house Beverly purchased in approximately 1978. At the time the parties began cohabiting, the house had an assessed value of \$48,687. After the parties began living together and during their marriage, Beverly and Henry both made substantial improvements to the house. At the time of the parties' marriage, the house was assessed at \$93,930 and was encumbered by a mortgage with a balance of \$1200. At the time of trial, the house had a fair market value of \$115,970 and was encumbered by a mortgage with a balance of \$27,877. Henry paid the monthly mortgage payments during the parties' marriage. Henry also paid a portion of the monthly mortgage payments prior to the parties' marriage.

At trial, Beverly requested that she be awarded half of the increase in Henry's 401(k) plan from the time the parties started living together until the time of the dissolution. Additionally, Beverly requested spousal support of \$1500 a month until Henry's retirement.

The district court entered a decree, amended on January 2, 2009, dissolving the parties' marriage. The court found that Henry contributed to the mortgage payments during the parties' premarital cohabitation and marriage, and that Henry contributed at least \$10,000 towards improvements to the property.

As part of the property distribution, the court ordered that Henry pay off the mortgage encumbrance of \$27,877 and that Henry pay property taxes and insurance on the residence due in 2009 and 2010. The court then awarded Beverly the residence free and clear. As to the division of Henry's 401(k), the court found that Beverly was entitled to half of the increase of Henry's 401(k) plan during the parties' five-year marriage, not the increase during the parties' premarital cohabitation, less the amount of the mortgage balance Henry was to pay, a sum equaling \$39,687. The court awarded Beverly half of Henry's employee stock ownership plan, equaling \$10,022, and half the parties' bank accounts equaling \$1828. The court awarded Beverly her vehicle free and clear, valued at the time of trial at \$7000.

Additionally, the district court concluded Beverly was entitled to spousal support in the amount of \$300 per month for two years. The court found the parties' premarital cohabitation could not be considered in determining whether alimony should be awarded. After considering the factors listed in Iowa Code section 598.21A (2007), the court concluded:

The parties do have a disparity in their income. Due to Beverly receiving social security disability and her age, employment is remote. However, the court notes that Beverly was not working before she was married, and thus, the fact that she didn't work when they were married was not due to anything that Henry required She does have social security monthly income in the amount of \$985.00 and the court is taking into consideration the distribution of the properties made pursuant to Section 598.21 in arriving at the alimony award. . . . The court finds that based on the short-term marriage, [Beverly's] receiving assets from the 401(k) and pension plan and [employee stock ownership] plan of Henry's, receiving the house free and clear of any interest of Henry, and Henry's being required to make the balance of the mortgage at this time, . . . a spousal support award in the amount of \$300.00 per month for two years is equitable. It is equitable because Henry will

be making her house and car payment until both are free and clear of liens and she will receive income from his 401(k), pension, and [employee stock ownership] plan. She will have no house payment or car payment. The court awards her the marital residence free and clear of any liens, even though Henry made considerable contributions to the value of the house, in order to leave her with a valuable asset. The court is taking into consideration the short length of the marriage also.

Beverly appeals. She contends the spousal support award should have been in a greater amount and for a longer duration.

II. Scope and Standards of Review.

We review dissolution cases de novo. Iowa R. App. P. 6.907 (2009); *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 credibility of witnesses. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

III. Discussion.

A. Spousal Support.

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 1988). Any form of spousal support is discretionary with the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). 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). The discretionary award of spousal support is made after considering the factors listed in Iowa Code section 598.21A(1) (2007). *Id.* 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 alimony 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). Property division and alimony should be considered together in evaluating their individual sufficiency. *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998). In a marriage of long duration, an award of spousal support and a substantially equal property division may be appropriate, especially where there is a great disparity in earning capacity. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993).

An alimony award will differ in amount and duration according to the purpose it is designed to serve. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). Traditional alimony is “payable for life or so long as a spouse is incapable of self-support.” *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989). Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. *Id.* at 63; see also *In re Marriage of O’Rourke*, 547 N.W.2d 864, 866 (Iowa Ct. App. 1996). Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic independence of the ex-spouses. *Francis*, 442 N.W.2d at 64. “Reimbursement” alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other spouse. *Id.* It “allows the

spouse receiving the support to share in the other spouse's future earnings in exchange for the receiving spouse's contributions to the source of that income."

In re Marriage of Becker, 756 N.W.2d 822, 826 (Iowa 2008).

The district court determined an award of spousal support of \$300 per month for two years was equitable in this case based on the short-term marriage, Beverly's award of assets from Henry's 401(k), pension, and employee stock ownership plans, and her receipt of the residence free and clear of any encumbrances. "Although our review of the trial court's award is de novo, we accord the trial court considerable latitude in making this determination and will disturb the ruling only when there has been a failure to do equity." *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996). After a thorough review and consideration of the evidence presented, the contentions of the parties, and the court's resolution of the issues presented, we agree with the district court's ruling.

Here, the parties were only married for five years. Although the parties cohabited for ten years prior to their marriage, Iowa Code section 598.21(A)(1) directs the court to consider the "length of the marriage," not the length of time the parties have resided together in determining support payments. See also *Spiegel*, 553 N.W.2d at 320 (holding premarital relationship between parties was irrelevant to support determinations in dissolution proceeding).

Although there is a disparity in the parties' incomes, Beverly was not working before the marriage, and the fact that she did not work during the marriage was not due to anything Henry required. Henry made considerable contributions to the value of the marital home that was awarded to Beverly free and clear. The spousal support award was balanced with Henry's paying

Beverly's mortgage, car loan, and real estate taxes, as well as Beverly receiving portions of Henry's retirement accounts. Given the particular circumstances of this case, we conclude there was no failure to do equity. Accordingly, we affirm the spousal support provision of the district court's decree.

B. Attorney Fees.

On appeal, Beverly 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). We consider the parties' needs, ability to pay, and the relative merits of the appeal. *Id.* Upon consideration of the foregoing factors, we deny Beverly's request for appellate attorney fees. Court costs on appeal are taxed one-half to each party.

IV. Conclusion.

Because we conclude the district court's spousal support award was equitable given the particular circumstances of this case, we affirm the spousal support provision of the district court's decree and decline to award appellate attorney fees.

AFFIRMED.