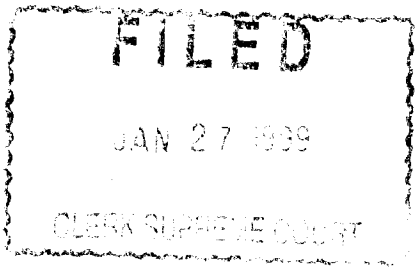
IN THE COURT OF APPEALS OF IOWA

No. 8-727 / 98-464
Filed January 27, 1999

IN RE THE MARRIAGE OF CARL JOSEPH SCOTT AND DIANNE MARIE SCOTT



Upon the Petition of
CARL JOSEPH SCOTT,
Appellant,

And Concerning
DIANNE MARIE SCOTT,
Appellee.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge.

Carl Scott appeals the alimony provisions of the parties' dissolution decree.

AFFIRMED.

Sharon Soorholtz Greer of Cartwright, Druker & Ryden, Marshalltown, for appellant.

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan & Condon, Marshalltown, for appellee.

Heard by Sackett, C.J., and Streit and Vogel, JJ.

VOGEL, J.

Carl Scott appeals the alimony provisions of the parties' dissolution decree. We affirm.

Background facts. Carl and Dianne Scott were married in May of 1969. Two children were born to the marriage, both of whom were adults at the time of trial.

Carl filed a petition for dissolution in June of 1997. After trial, the district court ordered Carl to pay Dianne rehabilitative alimony in the amount of $800 per month for four years, followed by $600 per month for two years.

Scope of review. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Courtade*, 560 N.W.2d 36, 37 (Iowa App. 1996). We give weight to the fact findings of the district court, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Alimony. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Erickson*, 553 N.W.2d 905, 907 (Iowa App. 1996). Alimony may be used to remedy inequities in a marriage and compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993). We consider alimony and property distribution together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. *In re Marriage*

of McLaughlin, 526 N.W.2d 342, 345 (Iowa App. 1994). Before awarding alimony, the district court must consider the factors listed in Iowa Code section 598.21(3).

Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and retraining. *In re Marriage of O'Rourke,* 547 N.W.2d 864, 866 (Iowa App. 1996). Its objective is self-sufficiency. *Id.* Cases in which rehabilitative alimony is awarded are those where the spouse to receive alimony needs to redevelop previous skills, receive new training, or develop potential supportive skills. *In re Marriage of Peterson,* 491 N.W.2d 535, 538 (Iowa App. 1992).

At the time of trial, Carl was forty-nine and Dianne was forty-six. They were married for twenty-eight years. Both were in good health, although Dianne was receiving counseling and medication for depression related to the dissolution. Carl, who has a two-year associate degree, worked steadily throughout the marriage, primarily selling and servicing automotive after-market equipment. Carl started his own part-time automotive equipment business, Greater Midwest Service, in the mid-1980s. In late 1993, Carl was laid off from his primary employer and he pursued his own business full-time. Dianne has a high school diploma. She worked in a store and waitressed during the early years of the marriage, but stayed home permanently with the parties' children when the family moved to Marshalltown in the 1970s. Dianne reentered the workforce in October of 1996, working part-time in a drugstore.

She testified at trial that she was interested in seeking computer training in order to increase her earning capacity.

Following the court's 179(b) order, Dianne received approximately 59% of the net marital property. Carl asserts that the alimony award was excessive in light of this division and requests that it be reduced to $250 per month for three years. Although Carl earned in excess of $60,000 in 1992 at his former employment, Carl believes that he currently has an earning capacity of approximately $25,000 per year from his own company. He complains that the current award will not allow him to enjoy a comparable standard of living as he enjoyed during the marriage.

We note, as did the district court, that Carl candidly testified he had been under-reporting his income for tax purposes from Greater Midwest Service. In addition, Carl's poor business record-keeping made it nearly impossible for the court to accurately value the business. In fact, the CPA hired by Dianne to complete this task was unable to do so for lack of sufficient information. The court was left to determine an equitable property distribution and appropriate alimony award knowing that Carl received "an unknown, undisclosed amount of untaxed discretionary income." Given all these factors, we find the alimony award to be appropriate.

II. Attorney fees. Dianne requests that she be awarded appellate attorney fees. An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). We are to consider the needs of the party making the request, the ability of the other

party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa App. 1997). After considering these factors, we award Dianne $2000 for appellate attorney fees. Costs of this appeal are taxed to Carl.

Having considered all issues properly before us on appeal, we hereby affirm the district court's decree.

AFFIRMED.

A copy of this opinion with the accompanying briefs, appendix, and trial court rulings will be forwarded to the Internal Revenue Service in Kansas City.