

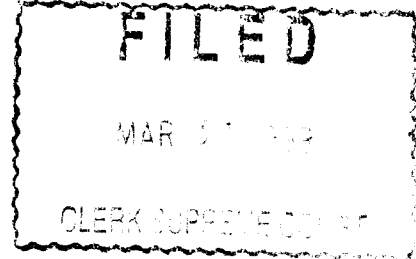
IN THE COURT OF APPEALS OF IOWA

No. 8-570 / 97-2275
Filed March 31, 1999

**IN RE THE MARRIAGE OF JOYCE LOUISE SIMONS
AND KYLE ALAN SIMONS**

Upon the Petition of
JOYCE LOUISE SIMONS,
Appellee,

And Concerning
KYLE ALAN SIMONS,
Appellant.



Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

Kyle Simons appeals various economic provisions of the parties' dissolution
decree. **AFFIRMED.**

Kolleen K. Samek, Des Moines, for appellant.

Carol L. Coppola, Des Moines, for appellee.

Considered by Huitink, P.J., and Vogel and Zimmer, JJ.

HUITINK, P.J.

Kyle Simons challenges various economic provisions of the parties' dissolution decree. He claims the court erred in awarding alimony to his ex-wife and its division of marital debts was inequitable. Joyce (Simons) Keller requests an award of appellate attorney fees. We affirm.

Kyle and Joyce Simons were married in 1980. Joyce filed a petition for dissolution in 1997. They had no children. Joyce was fifty years old at the time of trial and Kyle was forty.

Joyce is a high school graduate and has a degree in cosmetology. She is attending a computer programming course at Des Moines Area Community College. Kyle is a high school graduate and also has a cosmetology degree. Kyle received computer training at a technical school in 1996 and also has a CNA networking certificate. Both worked as cosmetologists throughout most of their marriage. At the time of trial, Joyce worked as a self-employed stylist earning about \$19,000 per year. Kyle was employed by Networks, Inc. earning about \$32,000 per year.

The parties stipulated concerning the division of marital assets, including the marital home, reserving for the district court the question of what amount Kyle would pay Joyce for her equitable interest in the home. The parties agree the gross equity in the home is \$41,705. Joyce claimed there were building supplies in the home in Kyle's possession, and requested that in lieu of receiving \$10,000 credit for premarital

property brought to the marriage, Kyle be ordered to assume liability on their two credit cards.

Kyle argued the credit card charges were for marital purchases and should be divided equally. Kyle requested deductions from the homestead equity for the cost of refinancing, prorated property taxes, and the principal payments he made during the parties' separation. He maintained Joyce's share of equity amounted to \$12,285.03 after taking appropriate deductions and credits.

Joyce testified she had numerous health problems. She was diagnosed with Crohn's Disease in 1995, which causes severe bouts of diarrhea. She had surgery in 1995 which alleviated most of the symptoms associated with the disease. Joyce also testified she suffers from depression and is currently taking medications and attends counseling. Joyce requested rehabilitative alimony of \$300 per month for five years to enable her to complete her computer training while working part-time.

Following trial, the district court entered its decree. The court concluded Kyle should assume liability for payment of the balances on their two credit cards in lieu of Joyce receiving any credit for premarital assets. The court additionally concluded Joyce's health problems would make it difficult for her to continue work as a cosmetologist. The court concluded she would benefit from job retraining, and ordered Kyle to pay Joyce monthly alimony of \$200 for a period of five years.

Concerning the equity in the marital home, the district court ruled it would be inequitable to adjust the equity in the home for the real estate taxes or the principal

paid by Kyle. The court, however, allowed a credit for the costs of refinancing. The court concluded the net equity of the parties in the home was \$39,800 and divided it equally, with Kyle to pay Joyce by refinancing the home.

Kyle claims the court erred in ordering him to pay Joyce \$200 monthly in alimony for five years. He contends Joyce is capable of being self-sufficient. He notes Joyce testified she only missed one day of work associated with her disease since her surgery, yet the district court concluded Joyce suffered from serious health problems. He argues her earning capacity is greater than she admits.

Kyle next claims the district court erred in ordering him to pay all of the parties' credit card debt. He contends the credit cards were used to purchase household items and pay for dinners, presents, and educational expenses.

We consider property division and alimony together in evaluating their individual sufficiency. *In re Marriage of Dahl*, 418 N.W.2d 358, 359 (Iowa App. 1987); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). *In re Marriage of Whelchel*, 476 N.W.2d 104, 110-11 (Iowa App. 1991); see *In re Marriage of Hayne*, 334 N.W.2d 347 (Iowa App. 1983). Following a marriage of long duration, we have affirmed awards of both alimony and substantially equal property distribution, especially where the disparity in earning

capacity has been great. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa App. 1997); *In re Marriage of Hitchcock*, 309 N.W.2d 432, 438 (Iowa 1981).

Although Kyle disputes Joyce's earning capacity, the court found she was earning about \$19,000 over a five-year average, compared with Kyle's current income of \$32,000 plus the opportunity of annual bonuses. The alimony award is rehabilitative in nature and limited in scope. We affirm the alimony award.

The testimony in the transcript concerning the credit card debt is conflicting. The parties maintained separate bank accounts, but shared marital expenses. The financial records are not complete. The trial court apparently gave Joyce's testimony more weight than Kyle's in determining the origin of the credit card debts and in calculating Joyce's premarital assets. We find the trial court's allocation of the marital debts to be equitable and affirm.

Concerning Joyce's request for appellate attorney fees, an award fees is not a matter of right, but such fees are allowable when the relative financial condition of the parties justifies it. *In re Marriage of Erickson*, 228 N.W.2d 57, 59 (Iowa 1975). Another factor we consider is whether the appeal made it necessary for appellee to defend the trial court decree here. In such cases, we do not fix the fee to which appellee's attorney is entitled, but merely limit the amount which appellant is required to pay. See *In re Marriage of Beeh*, 214 N.W.2d 170, 176 (Iowa 1974); *Hutcheson v. Hutcheson*, 197 N.W.2d 594, 598 (Iowa 1972); *Conkling v. Conkling*, 185 N.W.2d

777, 787 (Iowa 1971). We order Kyle to pay \$1000 toward Joyce's appellate attorney fees.

AFFIRMED.