IN THE COURT OF APPEALS OF IOWA

No. 0-174 / 99-0931
Filed June 28, 2000

IN RE THE MARRIAGE OF CARA L. MURPHY AND JAMES M. MURPHY

Upon the Petition of
CARA L. MURPHY,
Petitioner-Appellee,

And Concerning
JAMES M. MURPHY,
Respondent-Appellant.

FILED
JUN 2 8 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

The respondent appeals the alimony provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

David S. Wiggins of Wiggins & Anderson, P.C., West Des Moines, for appellant.

Jeffrey A. Kelso of Stamatelos & Kenyon, P.C., West Des Moines, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MAHAN, J.

The respondent appeals the alimony provisions of the parties' dissolution decree. Respondent contends the district court erred in awarding the petitioner rehabilitative alimony. We affirm as modified.

James and Cara Murphy were married on February 2, 1985. They have three children: Matthew, born August 9, 1985; Joseph, born March 12, 1991; and Sean, born November 3, 1992.

James graduated from high school in 1961, and worked a few odd jobs until he started with John Deere in January 1963. He is currently still employed with John Deere with a net monthly income of $4,687.27.

Cara graduated from Valley High School in West Des Moines in 1981. She then attended Creighton University. She did not complete her course work due to financial difficulties. She then attended the University of Iowa. However, she was forced to withdraw for academic reasons. In the fall of 1984, Cara began cosmetology school. When Cara gave birth to Matthew, she left cosmetology school but returned a year later and finished in November 1986. She began working as a nail technician at a shop in Urbandale and then at Merle Norman Cosmetics. Cara then decided to go back to school. She started classes at Upper Iowa University, where she completed two courses. She then attended Des Moines Area Community College (DMACC) where she quit after a short period of time. In April 1990, Cara took classes to obtain her real estate license. After obtaining her license, she sold real estate for approximately seven

months and then left due to her pregnancy with Joseph. Cara did not return to selling real estate, and she let her realtor's license expire.

Cara did return to DMACC and completed her associate of science degree in 1998. Cara sought employment in her field of study but was unsuccessful. Cara then began employment as a hairstylist at Great Clips. Cara worked approximately eighteen to twenty-eight hours per week at a flat rate of $10 per hour with no benefits or other incentives.

A decree of dissolution of marriage was granted on May 10, 1999. James and Cara were awarded joint legal custody of the parties' three children with primary physical care of the children going to Cara. The district court determined Cara's earning capacity to be $2000 per month. James was ordered to pay $1,640.27 per month in child support and rehabilitative alimony in the amount of $500 per month for a period of eighteen months. James appeals.

I. Rehabilitative Alimony. Our review is de novo. Iowa R. App. P. 4 Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Eastman*, 538 N.W.2d 874, 876 (Iowa App. 1995). When determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party, and (2) the present standards of living and ability to pay balanced against the relative needs of the other. *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994). We consider property division and alimony together in evaluating their individual sufficiency. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996). The court may consider the amount of child support ordered under the decree when determining

if spousal support is to be awarded and, if so, the appropriate amount of the award. *In re Marriage of Will*, 489, N.W.2d 394, 400 (Iowa 1992).

Alimony has traditionally taken the place of support that would have been provided had the marriage continued. *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989). It is awarded to accomplish one or more of three purposes. In this case, Cara was awarded alimony in the form of rehabilitative alimony. This serves to support an economically dependent spouse through a limited period of education and retraining. *O'Rourke*, 547 N.W.2d at 866. Its objective is self-sufficiency. *Id.*

> At the close of the evidence, the district court stated as follows:
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> This is not permanent alimony. This really is something that would fall probably in the rehabilitative or reimbursement category. I haven't quite made that decision. But I think it is more rehabilitative where her working has been not full-time and I think there needs to be a period of time and adjustment for her to have some extra income coming in. And, again, because of the disparity of the income between the husband and wife in this case, I think some short-term rehabilitative alimony is appropriate.

Cara was awarded $500 per month in rehabilitative alimony for a period of eighteen months. However, the court does not give any explanation or reasons in the decree itself as to why it found Cara to be entitled to this alimony. James contends the district court erred when it awarded Cara rehabilitative alimony. We agree. The record does not support an award of rehabilitative alimony. Cara's educational opportunities during the marriage and her employment and earning capacity evidence a self-sufficiency inconsistent with the underlying purpose of rehabilitative alimony.

Cara attended Creighton University, the University of Iowa, cosmetology school, Upper Iowa University, DMACC, and real estate classes. She was able to complete cosmetology school and obtain an associate of science degree from DMACC. She was also able to obtain her real estate license, but let her license expire.

We give consideration to the education a spouse received during the marriage. *In re Marriage of Sychra*, 552 N.W.2d 907, 908 (Iowa App. 1996). We find the record in this case clearly reflects Cara had ample opportunities before and especially during the marriage to pursue an education which would allow her to be gainfully employed and self-sufficient. In fact, she has obtained two different degrees and other licenses which would enable her to obtain employment. Furthermore, Jim was supportive of her and this was evident in his willingness to pay for her schooling. Jim was the one who paid back the student loans Cara used to obtain her cosmetology degree. He also paid for the classes at Upper Iowa University, DMACC, and those necessary for her to obtain a real estate license.

The district court determined Cara's earning capacity to be $2000 per month. This court has held although a person has present earning capacity, she should not be denied rehabilitative alimony where there is a strong potential of increasing that earning capacity. *In re Marriage of Peterson*, 491 N.W.2d 535, 538 (Iowa App. 1992). However, in this case, there is no showing any additional education will result in more lucrative employment. *In re Marriage of Weiss*, 496 N.W.2d 785, 788 (Iowa App. 1992). Based on the record, we find an award of

rehabilitative alimony is not justified in this case. Cara's earning capacity of $2000 per month in addition to the child support award and property division is adequate for her to be self-sufficient and to support the children.

Given the length of the marriage, the ages, the earning capacity, the needs of the parties, the district court's division of marital assets, and most importantly Cara's previous educational opportunities and James's financial support for such education during the marriage, we find the alimony award to be inequitable and modify by eliminating the alimony provision of the dissolution decree.

II. Attorney Fees. Cara requests appellate attorney fees. A successful party does not have a vested right to appellate attorney fees, rather the court exercises its discretion in determining whether an award is appropriate. *In re Marriage of Vieth*, 591 N.W.2d 639, 641 (Iowa App. 1999). In determining whether to award appellate attorney fees, we 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 decision of the trial court on appeal. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa App. 1997).

We deny Cara's request for attorney fees.

AFFIRMED AS MODIFIED.