IN THE COURT OF APPEALS OF IOWA 000405

No. 7-778 / 97-0658
Filed March 27, 1998

FILED
MAR 27 1998
CLERK SUPREME COURT

IN RE THE MARRIAGE OF ROBERT E. WESTBEE AND ROBERTA J. WESTBEE

Upon the Petition of
ROBERT E. WESTBEE,
Appellant,

And Concerning
ROBERTA J. WESTBEE,
Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, John S. Mackey, Judge.

Robert Westbee appeals from the alimony provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Jay M. Shriver of Pappajohn, Shriver, Eide & Nichols, P.C., Mason City, for appellant.

Michael G. Byrne of Winston & Byrne, P.C., Mason City, for appellee.

Considered by Cady, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

Robert and Roberta Westbee, both born in 1936, married in 1959. The district court dissolved their marriage on February 6, 1997. Robert worked in banking from 1959 to his early retirement at age fifty-eight on May 31, 1995. His annual income when he retired exceeded $220,000, but he has had no employment income since retirement. Roberta has worked part-time at department stores and sells Mary Kay cosmetics. Her annual income at the time of the dissolution averaged under $5000.

The court divided the marital assets evenly, with each party receiving nearly $485,000. In addition, the court ordered Robert to pay permanent monthly alimony of $1000 until Roberta's death or remarriage. Robert appeals arguing: (1) the court should not have awarded alimony; (2) the award should not extend to Roberta's death or remarriage; and (3) the amount awarded is excessive. We affirm as modified by memorandum opinion pursuant to Iowa Supreme Court rule 9.

Alimony is not an absolute right, but depends upon the circumstances of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976); *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995); *In re Marriage of Whelchel*, 476 N.W.2d 104, 110 (Iowa App.1991). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3). *See In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983). 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 Benson*, 545 N.W.2d 252, 257 (Iowa 1996). Alimony may be used to remedy the inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993); *In re Marriage of Earsa*, 480 N.W.2d 84, 86 (Iowa App. 1991). 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 Geil*, 509 N.W.2d at 742; *In re Marriage of Hitchcock*, 309 N.W.2d 432, 438 Iowa 1981); *see In re Marriage of Steele*, 502 N.W.2d 18, 22 (Iowa App. 1993) (spouse with annual income of approximately $110,000 ordered to pay $1500 per month in permanent alimony); *In re Marriage of Misol*, 445 N.W.2d 411, 413-14 (Iowa App. 1989) (spouse with annual income of $330,000 ordered to pay alimony of $3500 per month in addition to child support); *In re Marriage of Hayne*, 334 N.W.2d 347, 350-51 (Iowa App. 1983) (spouse with annual income of $240,000 ordered to pay $4000 per month in permanent alimony). However, the general rule is payments of alimony to a divorced wife are presumed to terminate upon the husband's death, especially in the absence of a provision in the decree which requires the payments to continue after such death. *In re Roberts' Estate*, 257 Iowa 1, 4, 131 N.W.2d 458, 460 (1964). The decree must clearly provide for the continuation of alimony beyond the obligor's death before the court may hold the estate liable for those payments. *In re Estate of Jones*, 434 N.W.2d 130, 131 (Iowa App. 1988).

Having considered all the arguments of the parties, under the circumstances of this case, we find an award of alimony appropriate and the amount of the award equitable. However, we find it inequitable for Robert's estate to be liable for alimony. Therefore we modify the duration of the award so that Robert's obligation to pay alimony ceases at his death, or at Roberta's death or remarriage.

AFFIRMED AS MODIFIED.