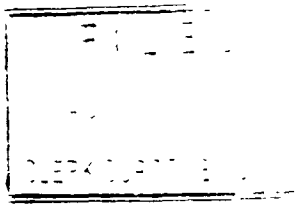
IN THE COURT OF APPEALS OF IOWA

No. 1999-58 (9-213) / 98-1587
Filed August 27, 1999

IN RE THE MARRIAGE OF LORI ELLEN STURDY AND RONALD JAMES SAMPSON

Upon the Petition of
LORI ELLEN STURDY,
Petitioner-Appellee,

And Concerning
RONALD JAMES SAMPSON,
Respondent-Appellant.



Appeal from the Iowa District Court for Cedar County, Max R. Werling, Judge.

Respondent appeals from various provisions of the parties' dissolution decree.

AFFIRMED AS MODIFIED.

Sherry L. Schulte of White & Johnson, P.C., Cedar Rapids, for appellant.

Bradley L. Norton and Brian T. Fairfield of Norton & Norton, P.C., Lowden, for appellee.

Considered by Sackett, C.J., and Huitink and Vogel, JJ.

SACKETT, C.J.

Respondent-appellant Ronald James Sampson appeals challenging the financial provisions of the decree dissolving his ten-year marriage to petitioner-appellee Lori Ellen Sturdy. Lori requests appellate attorney fees. We affirm as modified.

We review de novo. Iowa R. App. P. 4; *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the district court's findings of fact, but we do give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

Ronald, thirty-seven at the time of trial, and Lori, thirty-six, each entered the marriage with some assets which have been depleted. Lori had a daughter, Jenny, from a previous marriage who lived with the parties and was supported by them. Ronald had no children, and none were born to this marriage. The parties for the most part kept their finances separate.

Lori had a high school education and was employed in the banking industry. In 1998, while working for the Lincoln Savings and Loan, Lori injured her back moving office furniture. Lori testified the condition has not healed and is so painful she is unable to be employed outside the home. After the injury, Lori began receiving worker's compensation benefits. In July of 1990, she filed a claim seeking social security disability benefits. On April of 1991, Lori elected to receive a lump sum settlement of $30,000 from the worker's compensation carrier. In August of 1991, she

was awarded disability social security benefits. The $30,000 lump sum settlement she received was to be credited against her benefits. In April of 1990, Lori took a long-term disability benefit payout of $40,000. Consequently, her benefits are reduced until the credit is discharged. Lori has not been employed outside the home since her injury. At the time of the dissolution, she was receiving social security benefits of $11,838 annually, reduced by an offset of $476.40 annually for worker's compensation she received and further reduced by premiums of $525.60 annually for Medicare coverage.

Ronald has been employed during the marriage; however, he experienced layoffs and had periods of unemployment. At the time of the dissolution, he had an annual salary of about $42,000. During the marriage, Ronald misused controlled substances and spent time in a treatment facility.

Unfortunately, both parties were gamblers. The consequence was they lost assets they had when married. They also acquired few assets and substantial debt. Lori filed bankruptcy discharging nearly $50,000 in debt, a large portion of which were debts she occurred gambling. Ronald did not join in the bankruptcy.

The district court awarded Ronald the parties' home subject to the indebtedness thereon. The district court determined equity in the home to be about $3000. Ronald was awarded a Ford Explorer which the court valued at $11,500. The Explorer was subject to a debt of $9522 that Ronald was ordered to pay. Ronald was awarded personal property that the district court valued at $7355. The district court also found

a checking account of about $700 in Ronald's name and awarded it to him. Ronald had a 401K plan that could be cashed out at $7000 to $9000. He was awarded one-half of the plan. Ronald was ordered to assume $30,000 in credit card debt incurred in his name. He was ordered to pay Lori $12,891 to equalize the property division to be paid at $200 a month with interest at six percent until paid. The net result left Ronald over $26,000 in debt.

Lori was awarded a vehicle the district court valued at $1100. The court found a vehicle in Lori's name actually belonged to her daughter and did not consider it an asset of the parties. Lori was awarded personal property that the district court valued at $2460. She was ordered to pay a $2000 debt. She was awarded the other one-half of Ronald's 401K plan. She also has a child support judgment against her daughter's father that was not valued. The net result left Lori with equities of over $18,000.

Ronald was ordered to pay Lori alimony of $500 a month until she dies or remarries or cohabitates with another in a manner similar to marriage. Additionally, Ronald was ordered to keep his life insurance in force with Lori as the named beneficiary for the period he is required to pay alimony.

Ronald has challenged the alimony award as well as its duration and its amount. He also challenges the allocation of assets and liabilities.

The question is whether the economic provisions taken as a whole are equitable. We consider alimony and property division together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation

from one another. *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). We consider pension benefits. *In re Marriage of Howell*, 434 N.W.2d 629, 631 (Iowa 1989); *In re Marriage of Huffman*, 453 N.W.2d 246, 248 (Iowa App. 1990); *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa App. 1994).

It is not unusual to divide assets and liabilities accumulated during the marriage nearly equally. However, nothing mandates such a division. *See In re Marriage of Cooper*, 225 N.W.2d 915, 919 (Iowa 1975). The property division the district court made weighs heavily in Lori's favor. The district court's decree suggests the court made the property division it did because Lori filed bankruptcy discharging her debt and the parties had spent both Lori's disability insurance and worker's compensation settlement. Under the circumstances of this case, we do not find the property award to be inequitable, but we do consider it in assessing the alimony award.

We next look at Ronald's challenge to the amount and duration of the alimony award. Any form of alimony is discretionary with the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996); *In re Marriage of Wessels*, 542 N.W.2d 486, 490 (Iowa 1995).

Alimony has been defined as an allowance to the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *Miller*, 532 N.W.2d at 162; *In re Marriage of*

Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991); *In re Marriage of Fleener,* 247 N.W.2d 219, 220 (Iowa 1976).

In determining whether it is appropriate to award alimony, we consider (1) the earning capacity of each party; and (2) present standards of living and ability to pay balanced against relative needs of the other. *See In re Marriage of Miller,* 524 N.W.2d 442, 445 (Iowa App. 1994); *In re Marriage of Estlund,* 344 N.W.2d 276, 281 (Iowa App. 1983). In awarding alimony, the district court is required to consider the factors listed in Iowa Code section 598.21(3) (1997). These factors include (1) the length of the marriage; (2) the age, physical, and emotional health of the parties; (3) the property distribution made in the dissolution decree; (4) the educational levels of the parties; (5) the earning capacity of the party seeking maintenance; (6) the ability of the party seeking maintenance to become self-supporting at the standard of living enjoyed during the marriage; (7) the tax consequences to each party; (8) any mutual agreements by the parties concerning financial or service contributions; (9) the provisions of any antenuptial agreement; and (10) any other factors the court determines relevant on a case-by-case basis. *See In re Marriage of Hayne,* 334 N.W.2d 347, 350 (Iowa App. 1983).

Lori has a disability that limits her ability to be employed. An administrative law judge, for social security purpose, found her permanently disabled and unemployable because of her back injury. Ronald contends she can work. He points out she is able to do clerical work and play golf. He contends she has computer skills.

She contends the only computer skills she has are those of word processing. Ronald also advances this was a marriage of less than ten years and alimony awards generally come in long-term marriages. Ronald argues because Lori was only thirty-six at the time of trial and he is only thirty-seven years old, he could, under the decree, be paying alimony for three or four decades.

Ronald also contends while his earning may be greater than Lori's, he has a substantial amount of debt to discharge. Lori advances Ronald earns an annual salary of $42,000. She contends she should receive alimony of $1000 a month.

The alimony obligation, when considered with the property division, should be modified. We reduce it to $400 a month. It is further modified to terminate at such time as Ronald reaches sixty-five years of age or begins to draw retirement social security whichever should occur first.

Lori requests we award appellate attorney fees. An award of attorney fees is not a matter of right, but rests in the court's discretion considering the parties' financial positions. *See In re Marriage of Dahl,* 418 N.W.2d 358, 361 (Iowa App. 1987); *In re Marriage of Bornstein,* 359 N.W.2d 500, 504 (Iowa App. 1984).

We award no appellate attorney fees. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.