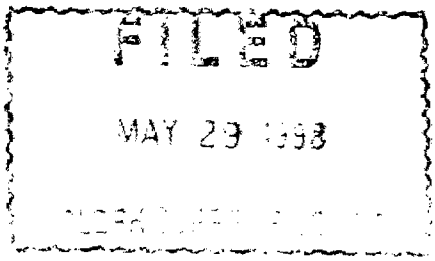
IN THE COURT OF APPEALS OF IOWA

No. 8-162 / 97-0924

IN RE THE MARRIAGE OF GERALDINE B. REESE AND LARRY W. REESE



Upon the Petition of
GERALDINE B. REESE,

Petitioner-Appellee,

And Concerning
LARRY W. REESE,

Respondent-Appellant.

Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge.

Respondent appeals various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Cheryl J. Newport and Stephen W. Newport of Newport & Newport, P.L.C., Davenport, for appellant.

Edward N. Wehr of Wehr, Berger, Lane & Stevens, Davenport, for appellee.

Heard by Sackett, P.J., and Huitink and Streit, JJ.

SACKETT, P.J.

Respondent-appellant Larry W. Reese appeals challenging economic provisions of the decree dissolving his marriage to petitioner-appellee Geraldine B. Reese. Larry contends: (1) Geraldine should not have been awarded permanent alimony; (2) the trial court did not make an equitable property division; and (3) the trial court considered assets Geraldine had at the time of the marriage. Larry and Geraldine each ask we award them fees for their attorney's work on this appeal. We affirm as modified.

Larry and Geraldine were married on January 10, 1976. They have two children, Kayla, born in 1976, and Jason, born in 1978. Geraldine has a daughter, Lisa, from a previous marriage, who lived with the parties and is now an adult. Lisa's father was deceased and she received social security. At the time of trial, Larry had a daughter from a previous marriage who he relinquished parental rights to and who he did not support. At the time of trial, Larry was forty-seven years of age, and Geraldine was forty-five.

Larry holds a bachelor of science degree from Northeast Missouri State. His education was received before his marriage to Geraldine. He has worked for Mid-American Energy for twenty-two years and has an annual salary of $58,000. Geraldine, a high school graduate, has had a series of jobs outside the home during the marriage, including that of bartender, babysitter, and secretary. She currently works nine months a year at McDonald's, earning $8384 annually.

The trial court valued assets and debts, and allocated assets of $137,091 to Larry and $191,201 to Geraldine.[1] Geraldine was awarded permanent alimony in the amount of $1000 per month until she died or remarried and child support of $684 per month for Jason.

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[1] The trial court made the following allocation of assets and debts:

Geraldine		**Larry**	
Assets:		*Assets:*	
household goods	$ 5,475	household goods	$ 7,640
house	110,000	van	10,325
CD	20,000	Celebrity	2,850
Blazer	4,200	New York Life	11,893
Christmas Club	1,006	401(k)	105,458
CD/Blue Grass	12,500	computer	500
401(k)	6,734	trailer	425
Walcott elev. div.	2,555	boat	3,000
Walcott elev. stock	50		
MEC stock	6,508		
Blue Grass C&S	700		
G&E C.U. C&S	1,300		
Mid-America Eng. Co. retirement	26,300		
	$197,328		$142,091
Debts:		*Debts:*	
J.C. Penney	$ 124	Note to father	$ 5,000
Kohl's	125		
Lerner's New York	64		
Sears	130		
Blazer	4,200		
Real estate taxes	1,484		
	$6,127		

Larry contends Geraldine should not have been awarded permanent alimony because she has received substantially more assets than he, and she only works nine months a year. He also contends the alimony award is excessive when one considers the division of assets. Larry contends the property division is not equitable for a number of reasons, including the fact the trial court gave too much consideration to assets Geraldine brought into the marriage. He argues he supported Geraldine's daughter and her daughter's social security was saved. Larry contends the trial court should have deducted alimony and attributed it as income to Geraldine in fixing child support. Geraldine advances she curtailed career advancement during the marriage. She also advances her parents gave her $85,000 in cash gifts which were spent for family purposes.

We first look at Larry's claim Geraldine should not have spousal support or, as it is frequently called, alimony.

In assessing a claim for alimony, we consider the property division and alimony together in determining their sufficiency. *See In re Marriage of Lattig,* 318 N.W.2d 811, 815 (Iowa App. 1982). Spousal support is provided for under Iowa Code section 598.21(3). Whether spousal support is justified is dependent on the facts of each case. *In re Marriage of Fleener,* 247 N.W.2d 219, 220 (Iowa 1976). Entitlement to spousal support is not an absolute right. *See In re Marriage of McFarland,* 239 N.W.2d 175, 179 (Iowa 1976). An alimony award is justified when the distribution of the assets of the marriage does not equalize the inequities and

economic disadvantages suffered in marriage by the party seeking the alimony who also has a need for support. *In re Marriage of Weiss*, 496 N.W.2d 785, 787-88 (Iowa App. 1992).

In assessing Larry's challenge to the alimony award, we look at all the factors of Iowa Code section 598.21(3). *Id.* at 788. We address the issue of awarding alimony under a gender-neutral classification and are careful in our consideration to avoid sexual stereotypes. *See Orr v. Orr*, 440 U.S. 268, 283, 99 S.Ct. 1102, 1113-114, 59 L.Ed.2d 306, 321 (1979).

Larry has made substantial contributions to FICA and will have greater social security benefits. We look to the presence or absence of social security benefits in analyzing the equity of the financial aspects of a dissolution. *See In re Marriage of Schissel*, 292 N.W.2d 421, 427 (Iowa 1980); *Locke v. Locke*, 263 N.W.2d 694, 696 (Iowa 1978); *In re Marriage of Bethke*, 484 N.W.2d 604, 608-09 (Iowa App. 1992).

This was a long-term marriage. Geraldine's career advancements have not been what Larry's have, in part because he had a better education and she assumed a more substantial portion of the care of the home and family. There is considerable authority to award the disadvantaged spouse alimony under such circumstances. *See In re Marriage of Friedman*, 466 N.W.2d 689, 693 (Iowa 1991); *In re Marriage of Hitchcock*, 309 N.W.2d 432, 437-38 (Iowa 1981); *In re Marriage of Misol*, 445 N.W.2d 411, 413-14 (Iowa App. 1989); *In re Marriage of Hayne*, 334 N.W.2d 347, 350-51 (Iowa App. 1983).

Yet in awarding alimony, we look to the particular circumstances of the case. *Bethke*, 484 N.W.2d at 609. The mandate is to achieve an equitable and just result under the circumstances. *In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988). We look at Larry's earning capacity and the standard of living the parties have maintained, as well as his relative ability to pay. *See In re Marriage of Imhoff*, 461 N.W.2d 343, 345 (Iowa App. 1990). We look to the factors of Iowa Code section 598.21(3). There is support for awarding Geraldine alimony.

We next look at Larry's contention the division of property was not equitable. Geraldine received more in assets than Larry. The assets she has available to her are relevant in assessing her need for alimony. They are considered in arriving at the amount necessary for Geraldine's support. *See In re Marriage of Williams*, 199 N.W.2d 339, 346-48 (Iowa 1972); *Schantz v. Schantz*, 163 N.W.2d 398, 405-06 (Iowa 1968); *In re Marriage of Voss*, 396 N.W.2d 801, 804 (Iowa App. 1986).

When Geraldine married Larry, she owned a home valued at $44,000, a car, furniture, and had a $20,000 certificate of deposit. Early in the marriage, the couple sold Geraldine's home and used the proceeds for a down payment on the home they were living in at the time of the dissolution. Between 1992 and 1996, Geraldine received $85,000 in cash gifts from her parents which money was used for family expenses. The trial court gave Geraldine credit for the property she brought into the marriage. Larry contends the house they lived in was held in joint tenancy.

Consequently, he contends Geraldine should not have received a credit for $44,000 for the value of the home she brought into the marriage.

Larry further contends the trial court gave too much weight to the fact Geraldine had assets at the time of marriage and allocated their value to her prior to division. He advances this was a long-term marriage and he came into the marriage with a college degree which allowed him to have greater earnings. The value of assets held by a party at the time of marriage is a factor to consider with others in arriving at an equitable property division. *See In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa App. 1996).

Larry next contends the district court erred in awarding Geraldine the value of his pension. He asserts this asset should have been divided equally.

There was confusion as to the disposition of Larry's pension. The trial court allocated $26,300 in pension benefits to Geraldine and then ordered Larry's pension divided under a Qualified Domestic Relations Order. Larry contends there is only one pension, the trial court allocated it twice, and the division of it under the Qualified Domestic Relations Order should be affirmed. Geraldine contends any confusion on the pension issue can be resolved by affirming the $26,300 award to her and applying the Qualified Domestic Relations Order to any other pension fund that may exist. We agree with Larry there is only one pension with Mid-American Energy and this pension should be divided under a Qualified Domestic Relations Order.

Looking at the financial provisions as a whole, we modify the alimony award to provide Larry shall pay Geraldine alimony of $700 a month for seven years or until either party dies or Geraldine remarries. We modify the property division to strike that provision awarding Geraldine the Mid-American Energy retirement pension of $26,300, and modify the trial court's order to provide all of Larry's pension rights at Mid-American Energy existing at the time of the dissolution shall be divided equally. In all other respects, we affirm the property division made by the trial court.

We find the trial court did not abuse its discretion in not subtracting the alimony from Larry's income in computing child support because the child support was payable for less than six months. *See In re Marriage of Miller*, 475 N.W.2d 675, 679-80 (Iowa App. 1991).

Larry requests an award of costs and appellate attorney fees. He contends Geraldine should be charged with his fees because she received a larger property award. Geraldine also requests an award of appellate attorney fees. She contends she should have fees because Larry earns more and she did not receive fees at the trial court level. We consider each request under dictates of statutory and case law. *See Miller*, 552 N.W.2d at 465. We order the parties to pay their own appellate attorney fees. Costs on appeal shall be taxed one-half to each party.

AFFIRMED AS MODIFIED.