

IN THE COURT OF APPEALS OF IOWA

No. 1999-128 (9-344) / 98-1399

Filed July 23, 1999

**IN RE THE MARRIAGE OF NANCY WALTON
AND SCOTT WALTON**

**Upon the Petition of
NANCY WALTON,**

Appellant,

**And Concerning
SCOTT WALTON,**

Appellee.

JUL 23 1999

Appeal from the Iowa District Court for Jones County, David M. Remley,
Judge.

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

Richard L. Boresi of King, Smith & Boresi, Cedar Rapids, for appellant.

Todd A. Weimer, Anamosa, for appellee.

Considered by Sackett, C.J., Streit, J. and Habhab*, S.J.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

HABHAB, S.J.

Nancy Walton appeals the economic provisions of the parties' dissolution decree. She dispute the alimony, property division, and attorney fee provisions of the decree. We affirm on appeal.

Nancy and Scott Walton were married in 1984. They have two children, Brandon, who was born in July 1985, and Ashley, who was born in December 1991. Nancy also has a son, Jason, from a previous marriage who lived with the parties during the marriage.

Nancy has been employed as a certified medical assistant throughout most of the marriage. Her most recent employment was with Integra Health, where she earned about \$20,000 per year. This employment was terminated in May 1998, when the doctor she was working for left the clinic. Instead of seeking a new job, Nancy decided to go back to school to become a registered nurse. She expected to finish this program in three and one-half years. Nancy is in good physical health, but suffers from situational depression. She was thirty-seven years old at the time of the dissolution hearing.

Scott is a correctional officer at the Anamosa State Penitentiary. He earns \$33,741 per year. Scott is in good health. He was thirty-six years old at the time of the dissolution hearing.

The district court entered a dissolution decree for the parties on July 1, 1998. The court placed the children in the physical care of Nancy. Scott was ordered to pay child support of \$559 per month.

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The court divided the parties' assets and debts nearly equally. The court awarded Nancy total net assets of \$17,617. Scott was awarded total net assets of \$16,764. The property awarded to Nancy included the marital home. As part of the property division, she was ordered to pay Scott \$17,357, which represented his interest in the equity of the home. The judgment against Nancy is payable on June 1, 2002, and bears interest of seven percent per year. The division of property included a division of the parties' retirement plans. The court did not award any alimony or attorney fees to Nancy. She appealed.

I. Appellate review of this equitable proceeding is de novo. Iowa R. App. P. 4. The court has a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa App. 1993). The appellate court gives weight to the fact findings of the district court, especially in determining the credibility of witnesses, but is not bound by them. Iowa R. App. P. 14(f)(7).

II. Nancy contends she should have been awarded rehabilitative alimony to allow her to attend school full-time. She states she could earn between \$25,000 to \$30,000 per year as a registered nurse. She states she is unable to work even part-time while attending school. Nancy points out she has additional expenses for counseling and medication for her depression.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurti*, 561 N.W.2d 385, 387 (Iowa App. 1997). The discretionary award of alimony is made after considering those factors

listed in Iowa Code section 598.21(3). *In re Marriage of Sychra*, 552 N.W.2d 907, 908 (Iowa App. 1996). We consider the length of the parties' marriage, the age and health of the parties, the parties' earning capacities, the levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa App. 1998).

The district court denied Nancy's request for alimony. The court noted Nancy had the ability to earn \$20,000 per year if she worked full-time. The court also noted she would be receiving child support from Scott, in addition to the \$150 in child support she receives from Jason's father. Scott has net monthly income of \$1779, from which he pays \$559 per month in child support. Based on all of these factors, we conclude Nancy is not entitled to alimony.

III. Regarding the equity in the marital home, the district court ruled as follows:

Judgment shall be entered in favor of Scott and against Nancy for the sum of \$17,357.50 for Scott's one-half share of the parties' equity in the marital home. This judgment shall be due and payable in full on June 1, 2002 and shall bear interest at 7 percent per annum from the date this Decree of Dissolution of Marriage is filed payable annually on June 1 of each year with the first interest payment due June 1, 1999. Nancy may, at her option, defer paying her annual interest payment to Scott until June 1, 2002. Any interest payments which Nancy does not make in a timely manner shall accrue interest at the annual rate of 7 percent per annum from the due date of the payment. Provided, however, if Nancy sells this real estate, or discontinues her full-time student status for more than one summer or one semester, the entire balance due including accrued interest shall be due and payable in full six month after Nancy's full-time student status is discontinued or immediately upon sale of the real estate.

Nancy does not dispute the award to Scott of one-half of the equity in the marital home. She does dispute the award of interest. She claims she does not have the financial resources to pay the interest which will accumulate on the judgment against her.

The partners to a marriage are entitled to a just and equitable share of property accumulated through their joint efforts. *In re Marriage of Wendell*, 581 N.W.2d 197, 199 (Iowa App. 1998). The property distribution should be made pursuant to the criteria codified in section 598.21(1). *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa 1997).

We determine the district court decision regarding interest attempted to be equitable to both parties. From the time the dissolution decree was issued, Nancy was given almost four years to pay Scott his portion of the equity in the home. During this time, Nancy would be able to continue to live in the home. Scott receives no corresponding benefit during this four-year period, except for the award of interest.

Nancy also claims the district court should not have awarded Scott a cash property settlement of \$3200. The award was made to more nearly equalize the property division between the parties. We find the award was equitable. Like Scott's interest in the equity in the home, the award is not due until June 1, 2002, or six months after Nancy discontinues her education. We affirm the division of property in this case.

IV. Nancy contends she should have been awarded trial attorney fees. We review an award of attorney fees for an abuse of discretion. *In re Marriage of Colby*,

569 N.W.2d 157, 159 (Iowa App. 1997). The district court did not abuse its discretion in this case. Nancy received sufficient assets so she should be able to pay her own trial attorney fees.

V. Nancy seeks attorney fees for this appeal. An award of attorney fees on appeal is not a matter of right, but rests within the court's discretion and the parties' financial position. *In re Marriage of Daniels*, 568 N.W.2d 51, 56 (Iowa App. 1997). Each party should pay his or her own attorney fees for this appeal.

We affirm the decision of the district court. Costs of this appeal are assessed to Nancy.

AFFIRMED.