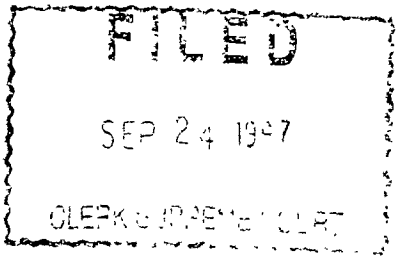
IN THE COURT OF APPEALS OF IOWA

No. 7-269 / 96-0572
Filed September 24, 1997

000191



IN RE THE MARRIAGE OF JUDY K. KVIDERA AND ALLEN P. KVIDERA

Upon the Petition of
JUDY K. KVIDERA,
Appellee,

And Concerning
ALLEN P. KVIDERA,
Appellant.

Appeal from the Iowa District Court for Scott County, Edward B. deSilva, Jr., Judge.

Allen Kvidera appeals from the provisions of the parties' dissolution decree.

AFFIRMED.

Michael C. Walker of Goebel, Koury & Walker, Davenport, for appellant.

M. Leanne Tyler of Soper & Tyler, P.C., Davenport, for appellee.

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

HUITINK, J.

Allen Kvidera (Allen) appeals the distribution of property and permanent alimony award to Judy Kvidera (Judy) in the trial court's decree dissolving their twenty-one year marriage. We affirm.

I. Background Facts and Proceedings.

Allen and Judy married on Decemer 28, 1974. At that time, Judy was a registered nurse, while Allen was a student in dental school. During the marriage, in approximately five and one-half years, Allen completed dental school, a periodontal specialty, and a Ph.D. Judy worked full-time to help support them. She did not enhance her education during the marriage. At the time of trial, Allen was forty-eight years old and Judy was forty-six. The parties have three children, two of whom were minors at the time of the court's decree: Brian, born February 24, 1978, and Michael, born April 8, 1981.

At the time of the decree, Allen was a self-employed periodontist with a net income of $67,000 in 1995. In addition, Allen earned $6400 as an adjunct professor at the University of Iowa and had $8000 income from a real estate partnership. The trial court noted current partnership income was exhausted by partnership debt service, and Allen would not receive income distribution until this debt was retired. Judy's net income was $17,000 per year.

The parties agreed to joint custody of their minor children with physical care awarded to Judy. The court ordered Allen to pay child support of $585 per month per

child while both children were minors. When one minor child remains, support was set at $794 per month for that child. The court awarded Judy the family home. Allen received the real estate partnership interest and his dental business equipment and furnishings. Allen was also ordered to pay Judy a property settlement of $60,000. Judy was awarded alimony of $500 per month until the death of either party or Judy's remarriage and $2000 in attorney fees.

II. Standard of Review.

We review this equitable action 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 trial court's findings of fact, but we do give them deference because the trial court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *Id.*; *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

III. Property Distribution.

Allen challenges the trial court's determination of income and distribution of assets and liabilities. The court awarded the family home, net value $46,692, to Judy. The court gave Allen the real estate partnership interest, net equity of $117,000, and his business interest and equipment, etc., valued at $100,000. The court ordered Allen to pay $1753 in credit card debt, the 1995/1996 tax obligation of $15,028, the $9075 lien on the 1989 Toyota, the $27,395 Norwest dental practice note, and the $2088 Northwest Bank note. In addition, the court awarded Judy $60,000 to make the

property awards equitable and $2000 in attorney fees. Thus, the division of disputed property resulted in $106,692 to Judy and $101,661 to Allen.

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1)(1991). *See In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). We conclude the trial court's division of the marital assets, $106,692 to Judy and $101,661 to Allen, was equitable. This was a twenty-one year marriage. Our review of the record shows that Allen will have enough money to pay his debts, the $60,000 property award, and alimony with enough left for his reasonable subsistence. Resulting reduction in the parties' standard of living is reasonably proportionate.

IV. Alimony.

The trial court awarded Judy $500 per month permanent alimony. Allen argues the alimony award should be vacated or reduced in amount and/or duration.

Alimony is 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). When determining the appropriateness of alimony, the court must consider "(1) the earning capacity of each party, and (2) 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); *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983)(citation omitted).

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of 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). The factors listed in Iowa Code section 598.21(3)(1995) are considered in making the discretionary award of alimony. *See In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983). Alimony may be used to remedy inequities in a marriage and 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).

We consider alimony and property distribution together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa App. 1994); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984).

An alimony award will differ in amount and duration according to the purpose it is designed to serve. *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). Rehabilitative alimony is awarded to support an economically dependent spouse through a limited period of retraining. *Id.* The duration of this type of award depends on the particular needs of the dependent spouse. *Id.* at 63. Traditional or permanent alimony, in contrast, is usually payable for life. *Id.* at 62. The purpose of traditional or permanent alimony is to provide the receiving spouse with support comparable to what he or she would receive if the marriage continued.

We find that an award of traditional or permanent alimony is appropriate in this case. Judy and Allen were married twenty-one years. There is a great disparity in the parties' earning capacities. We agree with the trial court's assessment that Judy's present employment is commensurate with her earning capacity. The record does not indicate additional education or retraining would result in more lucrative employment for Judy. Judy's alimony award accomplishes the objective of providing her with financial support comparable to what she would have received from Allen had the marriage continued. We affirm the permanent alimony award.

V. Attorney Fees and Costs of Appeal.

Judy requests the court award her appellate attorney fees and costs. An award of attorney fees is not a matter of right, but rests with the court's discretion. *In re Marriage of Eastman*, 538 N.W.2d 874, 877 (Iowa App. 1995). We consider the needs of the requesting party, the ability of the other party to pay, and whether the

requesting party was obligated to defend the trial court's decision on appeal. *In re Marriage of Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996). Accordingly, we award Judy $1000 in appellate attorney fees and assess costs of this appeal to Allen.

AFFIRMED.