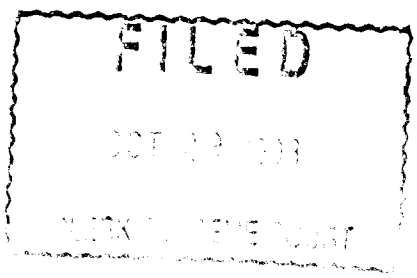
IN THE COURT OF APPEALS OF IOWA

No. 8-462 / 97-1158
Filed October 29, 1998

IN RE THE MARRIAGE OF GERALD WILLIAM LEE AND MARY MARGARET LEE



Upon the Petition of
GERALD WILLIAM LEE,
Appellant,

And Concerning
MARY MARGARET LEE,
Appellee.

Appeal from the Iowa District Court for Woodbury County, James D. Scott, Judge.

On appeal from the district court's entry of a dissolution decree, Gerald Lee claims the amount and duration of the alimony awarded to Mary Lee was excessive.

AFFIRMED AS MODIFIED.

Gene A. Wickey, Sioux City, for appellant.

W. J. Giles, III, Sioux City, for appellee.

Considered by Streit, P.J., and Vogel and Mahan, JJ.

PER CURIAM.

This is an appeal by Gerald Lee challenging as excessive the amount and duration of the alimony awarded to Mary Lee. We affirm as modified.

Gerald and Mary Lee were married on October 4, 1969. They have two adult children whose welfare is not implicated by these proceedings.

Mary, a high school graduate, is forty-seven years old. She was the primary caregiver of the parties' two children. Her work experience is limited to office work and retail sales. The trial court found her net monthly earnings are $893.

Gerald, also a high school graduate, is fifty-one years old. He has worked for Stone Container Company in Sioux City since 1969. The trial court found his net monthly income is $5,700.

I. We review this equitable matter de novo. Iowa R. App. P. 4. At the same time, we recognize the value of listening to and observing the parties and witnesses. Iowa R. App. P. 14(f)(7). Consequently, we give weight to the findings of the trial court, although they are not binding. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa App.1997).

II. Gerald claims the district court erred in awarding Mary rehabilitative alimony in the amount of $500 per month for five years. He further contends the district court erred in awarding permanent traditional alimony in the amount of $1500 per month.

When determining the appropriateness of alimony, the court will 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. *In re Marriage of Kurtt*, 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). *See In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App.1983).

"Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and training." *In re Marriage of Smith*, 573 N.W.2d 924, 926 (1998) (citing *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866-67 (Iowa App.1996)). Its goal is to help a formerly economically dependent spouse become self-supporting. *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989).

While Mary has been employed full-time for over twenty years, her income has been minimal and there is little indication that she has been anything but economically dependent on Gerald throughout their marriage. On the record, we find sufficient evidence to warrant a rehabilitative alimony award of $500 per month for five years.

Unlike the normally limited and predetermined duration of rehabilitative alimony, "[t]raditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support." *In re Marriage of Smith*, 573 N.W.2d 924, 926 (1998) (*citing In re Marriage of O'Rourke*, 547 N.W.2d 864, 866-67 (Iowa App.1996)). Iowa Code section 598.21(3)(f) directs the dissolution court to consider [t]he feasibility of

the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage . . . ."

From our review of the record, it is apparent an award of $1500 per month in spousal support was excessive and not warranted by the circumstances of the case. Considering Mary will receive rehabilitative alimony, payments from Gerald's 401K plan, and payments from his retirement benefits account, and considering Gerald's overall ability to pay, we feel the permanent traditional alimony award should be reduced to $1000 per month.

III. Gerald also contends the district court erred in ruling that upon Mary's remarriage she would continue to receive reduced alimony in the amount of $750 per month. We conclude this was not improper. In Iowa the subsequent remarriage of a spouse does not result in automatic termination of an alimony obligation, but it does shift the burden to the recipient to show extraordinary circumstances exist which require the continuation of alimony payments. *In re Marriage of Bell*, 576 N.W.2d 618, 622 (Iowa App.1998). Nevertheless, this does not prevent a court from providing in the dissolution decree that alimony shall continue upon remarriage. *Id.* (citing *In re Marriage of Aronow*, 480 N.W.2d 87, 89 (Iowa App.1991)). We affirm on this issue.

IV. An award of appellate attorney fees is not a matter of right but rests within the discretion of the court. *In re Marriage of Francis*, 442 N.W.2d at 67. The court will consider the needs of the party making the request, the ability of the other

party to pay, and whether the party making the request was obligated to defend the decision of the trial court on appeal. *In re Marriage of Kurtt*, 561 N.W.2d at 389.

Considering Mary's assets awarded herein, we order no appellate attorney fees.

AFFIRMED AS MODIFIED.