

IN THE COURT OF APPEALS OF IOWA

No. 0-511 / 90-127

FILED

MAY 29 1991

CLERK SUPREME COURT

IN RE THE MARRIAGE OF JOSEPH APONE AND REBECCA J. APONE

Upon the Petition of

JOSEPH APONE,

26

Appellant,

And Concerning

REBECCA J. APONE,

Appellee.

Appeal from the Iowa District Court for Linn County,
August F. Honsell, Judge.

The husband appeals from a dissolution decree,
challenging the award of alimony and attorney fees.

AFFIRMED AS MODIFIED.

Patricia C. Kamath, Iowa City, for appellant.

T. Todd Becker of the Tom Riley Law Firm, P.C.,
Cedar Rapids, for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab,
JJ.

HABHAB, J.

Joseph and Rebecca Apone were married in 1975. They have one child, Jody Sunshine Apone, a daughter born September 10, 1975. In addition, Rebecca's three children from a previous marriage lived with the parties.

Joseph is a self-employed consulting engineer who works as an independent contractor. During the marriage he obtained a master's degree in engineering. His most recent contract was with Rockwell-Collins in Cedar Rapids, where he earned over \$80,000 per year. His Rockwell contract lasted for three years and expired about a week before the dissolution hearing. At the time of the hearing he had not yet found another position. The longest period of time that he has been unemployed between jobs since becoming a private consultant has been approximately four months.

Rebecca did not work outside the home during most of their marriage. She did spend time going to school, but has not yet received a bachelor's degree. Rebecca plans to obtain her degree within two years. She is currently employed as a secretary at Rockwell-Collins. Her net income is slightly over \$1,000 per month.

Prior to the dissolution hearing the parties entered into a stipulation that settled many issues. The parties agreed to joint legal custody of Jody. Joseph will have primary physical care. Rebecca will have liberal visitation. No child support was ordered at the time of the decree. Joseph received as personal property a 1989

Plymouth Voyager van, computer hardware and software, his personal effects, and the personal effects of Jody. Rebecca received all of the rest of the parties' personal property, including the marital home. Rebecca is also responsible for the debt on the marital home.

The only unresolved matters submitted to the court were the issues of alimony and attorney's fees. The district court directed Joseph to pay Rebecca alimony of \$450 per month from November 1989 to September 1991 and \$250 per month from September 1991 until January 1, 2000. The district court also directed Joseph to contribute \$500 toward Rebecca's attorney's fees.

Joseph has appealed from the dissolution decree, challenging the awards to Rebecca of alimony and trial attorney's fees. We affirm as modified.

I.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II.

When determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party,

and (2) their present standards of living and ability to pay balanced against their relative needs. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432 (Iowa 1981).

In a dissolution case, where proper evidence is presented, a court may consider the future earning capacity of both parties and in determining those capacities it may consider the education, skill, or talent of both parties. In re Marriage of Horstmann, 263 N.W.2d 885, 891 (1978). Generally, both parties, so long as they are in reasonable health, have an obligation to earn up to their capacities. In re Marriage of Craig, 462 N.W.2d 692, 694 (Iowa App. 1990). However, the court should not look at what the parties could have done with their careers but what they have done in determining whether alimony should be awarded. In re Marriage of Griffin, 365 N.W.2d 606, 608 (Iowa App. 1984).

In the present case we believe the award of alimony to Rebecca was equitable. Joseph's master's degree in engineering gives him the ability to earn a good income. His past employment history reveals he has the ability to earn at least \$80,000 per year. Rebecca, on the other hand, will need financial assistance until she finishes her

degree and becomes established in the job market. Her future earning capacity will be less than Joseph's.

We affirm the district court's award of alimony with one slight modification. We believe, in addition to the termination clause set forth in the decree, that the alimony award shall terminate on Rebecca's death; and at such time as the award of alimony calls for payment of \$250, that award shall terminate on January 1, 2000, or on Rebecca's death, remarriage, or cohabitation with a member of the opposite sex, whichever occurs first. See In re Marriage of Mott, 444 N.W.2d 507, 510 (Iowa App. 1989).

III.

Joseph contends the district court erred in awarding Rebecca \$500 in trial attorney fees. District courts have considerable discretion in awarding attorney fees. In re Marriage of Williams, 449 N.W.2d 878, 883 (Iowa App. 1989). The primary consideration in making the determination of an award of attorney's fees is the parties' resources. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982). District courts are familiar with the value of services in dissolution matters. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa 1983). Most of the services for which compensation was allowed were rendered during trial before the judge who made the award. Id. We find no reason to disturb the district court's award.

IV.

Rebecca seeks attorney fees for this appeal. An award of attorney fees in a dissolution action is not a matter of right. In re Marriage of Fish, 350 N.W.2d 226, 231 (Iowa App. 1984). Such an award may be granted depending upon the parties' respective abilities to pay. Giles, 338 N.W.2d at 546. Considering the respective financial conditions of both parties, and considering the services actually rendered by Rebecca's counsel on appeal, we order Joseph to pay Rebecca the sum of \$500 towards her appellate attorney's fees. Costs are assessed to Joseph.

AFFIRMED AS MODIFIED.