FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JANE MAY OSBORN AND OLIVER REESE OSBORN

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UPON THE PETITION OF JANE MAY OSBORN,	)	
Petitioner/Appellee/Cross-Appellant,	)	**Filed September 24, 1985**
	)	5-387 84-1741
AND CONCERNING OLIVER REESE OSBORN,	)	
Respondent/Appellant/Cross-Appellee.	)	

Appeal from the Iowa District Court for Crawford County, Michael S. Walsh, Judge.

Respondent-husband appeals and petitioner-wife cross-appeals from the decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Thomas E. Gustafson, Denison, for respondent/appellant/cross-appellee.

Robert L. Brink of Nash, Eller, Brink & Claussen, Denison, for petitioner/appellee/cross-appellant.

Considered by Oxberger, C.J., Snell, and Sackett, JJ.

OXBERGER, C.J.

The husband-respondent appeals from child support and alimony award and the court's order he pay part of the petitioner's attorney fees as set out in the parties' divorce decree. Petitioner-wife cross-appeals. We affirm as modified.

The parties were married for fifteen and one-half years. The petitioner. Jane Osborn, is thirty-nine years old, is a high school graduate with one year of business college. She cared for the parties' children and also worked outside the home. She is currently employed at the Crawford County Care Facility and earns $819.61 per month. The respondent, Oliver, is forty years old, has a tenth-grade education, and is currently employed as a truck driver by L. B. Foster of Houston, Texas. The court found that he earned $458.11 in net pay per week, or $1985 per month.

Pursuant to the parties' stipulation, Jane was given custody of the children who were aged fourteen, twelve, and seven at the time of trial. Jane was given the parties' homestead, and personal property in her possession. Oliver was given a life estate in six lots purchased by the parties and the children were given the remainder interest. Oliver was ordered to pay $150 per child per month in child support, or $450 per month. Jane had also incurred debts to pay for her vehicle, and from two other lending institutions to pay for the family needs since the amount they received under the temporary support award was insufficient. For the loan on Jane's vehicle, $1845 is owed, payments made at $122.58 per month for fifteen months; $1000 is owed to Norwest, paid at $69 per month for fourteen and one-half months; and $1700 is owed to Avco, paid at $62 per month for twenty-seven months. The payments totaled $253.58 per month. The court ordered Oliver to pay Jane what it called alimony of $253.58 per month to pay for the debts. The payment would last through 1985, when

it would decrease to $62 per month to be paid through 1986. In 1987 all the loans would be paid, but the alimony would continue at $50 per month until February 1995 when the youngest child would reach majority. The court further ordered Oliver to pay $400 in Jane's attorney fees, and had already ordered him to pay $300 in attorney fees as a part of the temporary support order.

Oliver first attacks the child support award, saying the court did not properly calculate his expected income. He says the court should not consider his current 96-hour-work week, since with winter weather conditions his ability to work overtime will decrease. In his brief he says that sixty-eight hours of his work is paid at the regular wage of $7.00 per hour, while twenty-eight hours is paid at time and one-half. He says he expects work and weather conditions to decrease the hours he works to sixty-two hours per week. Therefore, he says, his net pay of $558.11 per week will be lower in the future, and will be closer to $441 per month.

Jane agrees that his income will vary throughout the year, but says it is erroneous for Oliver to claim he now works a 96-hour week. The financial statements and court testimony confirm Jane's point that Oliver now works sixty-eight hours per week and twenty-eight hours of that is in overtime. Therefore, when Oliver's work week drops from sixty-eight hours to sixty-two hours, his wages will decrease to approximately $500 per week in net pay. The court's figure of $458.11 is somewhat conservative in Oliver's favor. We hold the court's finding that Oliver's average net pay is $458.11 is supported by the evidence. In light of the salaries of each party, we find the child support award of $450 per month to be equitable.

Oliver claims that even considering his income to be $1985 per month, as the court concluded, his expenses and the child support and alimony obligations leave him with only $82 per month to meet unforeseen needs. He says the alimony award to Jane should be lowered.

Both parties question whether the award is alimony or a property award. The trial court's use of the term "alimony" is not dispositive of what type of award was made. In re Marriage of Woodward, 229 N.W.2d 274,278 (Iowa 1975). An alimony award is an allowance in lieu of the other parties' legal obligation to support their spouse. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). A property award is a division which recognizes the right of each party to an equitable share of the property accumulated as a result of their efforts. Id. "The allocation of marital debts between the parties is as integral a part of the property division as is the apportionment of marital assets. . . . the allocation of marital debts inheres in the property division." In re Marriage of Johnson, 299 N.W.2d 466, 467 (Iowa 1980). We agree with Jane that the award made to her is a property division, but only up until 1987. At that time the debts will be paid. After that, the award of $50 per month is for her support, and is alimony.

We do not agree with Oliver that the award is unjust. Although the vehicle was awarded to Jane, it was acquired during the marriage. The loans she incurred were obtained prior to the decree and were necessary for support of the family.

Nor do we agree with Jane's cross-appeal that in addition to the property award she should receive alimony now as well as in 1987. The court will consider all the awards made in determining whether alimony is warranted. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). We must not destroy all incentive for the supporting party to pay the amounts awarded. Oliver is now left with $82 per month according to the court's figures. The amounts awarded to Jane along with her salary will exceed her expenses.

We find, however, that we should modify the alimony award of $50 per month beginning in 1987. We change it to continue until Jane remarries, cohabitates with an unrelated adult male, either she or Oliver dies, or until the youngest child has reached majority or becomes emancipated.

In reviewing the resources of each spouse, and the ability of each party to pay, as set out at Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978), we find the award of $400 in attorney fees to Jane to be equitable. We do not agree with Jane that Oliver's appeal was frivolous, and in considering her request that he pay part or all of her appellate attorneys fees, we look to the needs of the requesting party, the party's ability to pay, and whether the requesting party was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). We hold Oliver shall pay $500 of Jane's appellate attorneys fees.

AFFIRMED AS MODIFIED.

Snell, J., concurs, and Sackett, J., concurs and dissents.

SACKETT, J. (concurring in part and dissenting in part)

I agree with the majority in all respects except I cannot agree with their modification of the alimony award to terminate the alimony on Jane's remarriage or cohabitation with an unrelated adult male.