

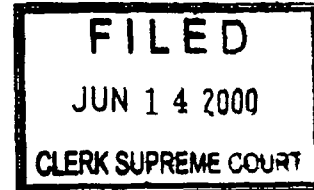
IN THE COURT OF APPEALS OF IOWA

No. 0-165 / 99-777
Filed June 14, 2000

**IN RE THE MARRIAGE OF KAREN S.
PITCHER AND LAVERNE R. PITCHER**

**Upon the Petition of
KAREN S. PITCHER,**
Petitioner-Appellant,

**And Concerning
LAVERNE R. PITCHER,**
Respondent-Appellee.



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

The petitioner appeals various economic provisions of the parties'
dissolution decree. **AFFIRMED AS MODIFIED.**

Mitchell E. Turner of Fisher, Ehrhart, McCright & Turner, Cedar Rapids, for
appellant.

Karen A. Volz of Ackley, Kopecky & Kingery, Cedar Rapids, for appellee.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

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STREIT, P.J.

Karen Pitcher appeals the district court's decree dissolving her marriage to her husband, Laverne Pitcher. She alleges the trial court erred in only awarding \$250 a month in alimony, failing to order Laverne to pay the costs of her dental insurance, and in neglecting to assign value to a boat, trailer, and camcorder. Upon reviewing the evidence de novo, we award Karen \$650 per month in alimony and \$1000 in appellate attorney fees, order Laverne to pay the costs of both medical and dental insurance, and affirm the decree in all other respects.

I. Background Facts & Proceedings.

Karen and Laverne Pitcher married on November 19, 1960, and divorced thirty-eight years later. Both Karen and Laverne were fifty-eight years old at the time of trial and had three grown children. Karen has a ninth grade education and was responsible for all domestic tasks during the course of the marriage. For the last ten or so years, Karen was a daycare provider. She is currently an in-home babysitter for three children grossing \$9934.44. Karen has suffered breast cancer and battles chronic depression. Her present health makes her future ability to work somewhat precarious. Laverne, conversely, graduated from high school and has been employed with the same company as a maintenance mechanic for over forty years. For the last two years, his salary with overtime has been approximately \$60,000 a year. He is in good health, but claims he is slowing down and will not take on any additional overtime. He therefore, estimates his future earnings at \$35,000 a year until retirement.

Karen filed for dissolution of marriage in July of 1998. The court was called upon to equitably divide the marital property and decide whether the award of alimony was proper. In its decree the district court divided the property squarely down the middle with each party receiving \$55,827. The court also ordered Laverne to pay alimony in the amount \$250 a month, Karen's COBRA medical insurance for three years, and \$2000 towards her attorney fees.

Karen appeals claiming the trial court erred in (1) awarding only \$250 a month in alimony, (2) not including dental coverage in the medical insurance payment, and (3) failing to make proper adjustments for a boat, trailer, and camcorder in Laverne's possession. She further requests appellate attorney fees.

II. Alimony.

Karen first claims the trial court erred in granting her only \$250 a month in alimony.

A. Standard of Review. We review de novo Karen's challenge to the alimony awarded. *In re Marriage of Clinton*, 579 N.W.2d 835, 838 (Iowa App. 1998).

B. Increased Alimony Is Appropriate. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *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). *In re Marriage of Sychra*, 552 N.W.2d 907, 908 (Iowa App. 1996). We consider the length of the marriage, the age and health of the parties,

the parties' earning capacities, their 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 at 839.

After the divorce, Karen was left with virtually no job skills, a ninth grade education, poor mental and physical health, and was nearly sixty-years old. Laverne on the other hand, has his health, forty years of seniority, and the opportunity to earn upwards of \$60,000 a year. Given the sacrifices Karen made to her family, her present health problems, the length of the marriage, her age, and her earning capacity; \$250 a month in alimony is inadequate. To that end, Laverne shall pay Karen alimony in the amount of \$650 per month from the date procedendo issues until such time as either party dies or Karen remarries. Upon Laverne reaching the age of sixty-five and one-half years and he retires, the alimony award shall be reduced to \$200 per month to compensate for social security benefits paid to the parties. Additionally, Laverne shall continue to pay Karen's COBRA insurance, including the cost of dental coverage. Given our above modification, we find the district court's remaining property award fair and equitable. Therefore Laverne's retention of the boat, trailer, and camcorder is upheld and we find no need to offset the value of those items against his property award.

III. Appellate Attorney Fees.

An award of appellate attorney fees is not a matter of right but rests within our discretion. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa App.

1994). In determining whether to award appellate attorney fees, we 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. *Id.* Given the relative circumstances of the parties in this action, we find equity warrants the award of appellate attorney fees to Karen in the amount of \$1000. Costs are taxed to Laverne.

AFFIRMED AS MODIFIED.