

FILED

NOV 26 1986

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LESLIE J. CASTER AND BETTE A. CASTER

62

Upon the Petition of	)	
LESLIE J. CASTER,	)	Filed November 26, 1986
Petitioner-Appellee,	)	
And Concerning	)	
BETTE A. CASTER,	)	<u>6-356</u>
Respondent-Appellant.	)	<u>85-949</u>

Appeal from the Iowa District Court for Scott County (No. 35319) - Linda K. Neuman, Judge.

Respondent wife appeals the decree dissolving the parties' marriage.
AFFIRMED AS MODIFIED.

Arthur L. Buzzell of Buzzell, Semel & Vesole, Davenport, for appellant.

Leslie J. Caster, appellee pro se.

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

SCHLEGEL, J.

63

Respondent wife appeals the decree dissolving the parties' marriage. She asserts that her alimony award is inadequate in both amount and duration. She also requests attorney fees on appeal. We affirm as modified.

Petitioner Leslie J. Caster and respondent Bette A. Caster were married in 1965. Two children were born of the marriage, one of whom is still a minor. Leslie is an ironworker; he earned between \$15,000 and \$32,000 per year in recent years. Bette has been primarily a homemaker; she has no marketable skills.

In its dissolution decree, the trial court set up a joint custody arrangement with Bette having physical care of the minor child. Leslie was directed to pay child support of \$400 per month and alimony of \$300 per month for two years. Bette was given the right to live in the parties' house until the minor child was no longer entitled to support; the house was then to be sold and the net proceeds equally divided. Leslie was awarded a truck, a car, a boat, some fishing and archery equipment, a welder, and some tanks. Bette was awarded a van subject to a loan, a boat, and a garden tractor. Each party was also awarded some household goods and furnishings, half of Leslie's IRA account and pension fund, and the cash and bank accounts in his or her name.

Our standard of review is de novo. Iowa R. App. P. 4. We review the facts and the law and determine anew the rights of the parties based upon credible evidence where issues have been properly presented and preserved. In re Marriage of Phipps, 379 N.W.2d 26, 27 (Iowa Ct. App. 1985). Although we give weight to the findings of the trial court, especially concerning the credibility of the witnesses, we are not bound by them. In re Marriage of Bornstein, 359 N.W.2d 500, 502 (Iowa Ct. App. 1984); Iowa R. App. P. 14(f)(17).

The payment of alimony is not an absolute right; it must be determined in light of all the circumstances, including the property settlement. In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). Alimony is an allowance to the ex-wife in lieu of the husband's legal obligation to support her. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). The payment of alimony depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). Iowa Code section 598.21(3) (1985) provides that the following factors should be considered in awarding support payments:

- a. The length of the marriage.
- b. The age and physical and emotional health of the parties.
- c. The distribution of property made pursuant to subsection 1.
- d. The educational level of each party at the time of marriage and at the time the action is commenced.
- e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.
- g. The tax consequences to each party.
- h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.
- i. The provisions of an antenuptial agreement.

j. Other factors the court may determine to be relevant in an individual case.

In this case, Leslie and Bette were married for twenty years. Bette is 39 years old; the trial court found that Bette's health suffered as a result of the divorce proceedings. Bette has experienced substantial weight loss and has been seeking counseling at a mental health center. Bette received her share of the mutually-acquired property. She has a high school diploma. She has virtually no employable skills or meaningful work experience. Her major responsibility in the marriage was for the care of the children and work in the home. It is certainly feasible that Bette can become self-supporting, but we disagree with the trial court that this can be accomplished in twenty-four months. We agree with the trial court's determination that the amount of support payment should be \$300 per month. However, after considering all the circumstances of this particular case, we believe that Bette should receive these payments for sixty months. Only by lengthening the duration of these payments can we ensure that Bette will receive adequate support to allow her to achieve a standard of living reasonably comparable to that enjoyed during her marriage.

Bette requests attorney fees on appeal. In evaluating such a request, we consider the needs of the party making the request, the ability of the parties to pay, and whether the party making the request was required to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa 1981). Our application of these equitable principles to this case leads us to believe that Bette should be responsible for her own attorney fees. Costs are assessed to Leslie. †

Leslie proceeded pro se on this appeal. Bette has requested that petitioner's appendix and portion of his brief be struck since they do not conform with Rules 4 and 15 of the Rules of Appellate Procedure. We agree that Leslie has not

scrupulously followed the Rules of Appellate Procedure in compiling his materials on appeal. However, in the interest of equity we have examined these materials, but they have not altered our determination in this matter.

AFFIRMED AS MODIFIED.

Snell, J., concurs; Oxberger, C.J., dissents.

I would affirm the trial court.