IN THE COURT OF APPEALS OF IOWA

No. 1999-20 (9-130) / 98-1126
Filed July 23, 1999

IN RE THE MARRIAGE OF STEVEN DARRELL HATCHER AND CLAUDIA MARIE HATCHER,

Upon the Petition of
STEVEN DARRELL HATCHER,
Appellant,

And Concerning
CLAUDIA MARIE HATCHER,
Appellee.

FILED
JUL 23 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, K. D. Briner, Judge.

Steven Hatcher appeals the spousal support provisions in the parties' dissolution decree. **AFFIRMED.**

Richard A. Knock of Snow, Knock, Sevcik & Betterton, Cedar Falls, for appellant.

Susan Bernau Staudt of Redfern, Mason, Dieter, Larsen & Moore, P.L.C., Cedar Falls, for appellee.

Considered by Sackett, C.J., and Vogel and Zimmer, JJ.

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VOGEL, J.

Steven Hatcher appeals the spousal support provisions in the parties' dissolution decree. As we find the award to be reasonably crafted and equitable under the facts of this case, we affirm.

Background facts. Steven and Claudia Hatcher were married in 1966. Two children were born to the marriage; both are now adults and are not affected by these proceedings.

Steven filed a petition for dissolution of marriage in May of 1997. Following a trial, the district court entered its decree dissolving the parties' marriage and distributing their property. The parties had sold their former residence and settled their debts prior to trial. Of the remaining assets, the court awarded Steven property valued at $46,900, and Claudia property valued at $53,000. Each party received his/her own 401(k) plan. The court also ordered Steven to pay Claudia alimony in the amount of $1,000 per month until she reaches age sixty-five. Steven now appeals.

Scope of review. Our review of this equitable proceeding 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 Courtade*, 560 N.W.2d 36, 37 (Iowa App. 1996). We give weight to the fact findings of the district court, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Spousal support. Steven asserts the district court erred in determining the amount and length of time for payment of spousal support. He requests that spousal support be reduced to $100 per week for three years.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Erickson*, 553 N.W.2d 905, 907 (Iowa App. 1996). Alimony may be used to remedy inequities in a marriage and compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993). We consider alimony and property distribution together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa App. 1994). Before awarding alimony, the district court must consider the factors listed in Iowa Code section 598.21(3).

Steven and Claudia were married for nearly thirty-two years and were forty-nine years old at the time of trial. Both Steven and Claudia left high school before earning their degree, and neither have sought further education or training. Steven has worked as a truck driver for the past twenty-eight years. His average annual income over the past five years has been just over $50,000. His work is seasonal, but his average net monthly income is approximately $2,800.

Claudia primarily stayed at home with the children during the early years of the marriage. In the early 1980s she began working part-time, and later full-time, as a cashier. For the last sixteen years she has worked at B & R Quality Meats as a

secretary and bookkeeper. She currently works thirty-two to thirty-six hours per week at $7.30 per hour, but may have the opportunity to start working full-time in the near future. Her average annual income has been approximately $12,000-$13,000 over the past few years. Her current net monthly income is approximately $800. If Claudia starts working full-time, her annual income will be just over $15,000 and her net monthly income would be approximately $870.

In its decree, the district court reasoned that: "[b]ecause of the substantial disparity in income, and because of the division of roles and responsibilities which the parties agreed to during the marriage, an award of reimbursement alimony[1] and traditional alimony is appropriate." The court's award of $1000 per month was tempered with the proviso that if Steven's annual gross income ever fell below $48,000 because of his age and inability to sustain his present income, then alimony would be reduced to 25% of his gross income from all sources.

Traditional or permanent alimony is usually payable for life or for so long as the dependent is incapable of self-support. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa App. 1997); *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). The purpose of a traditional or permanent alimony award is to provide the receiving spouse with support comparable to what he or she would receive if the marriage continued. *Hettinga*, 574 N.W.2d at 922. When determining the appropriateness of alimony, we consider: (1) the earning capacity of each party; and

[1] Although the court used the term "reimbursement alimony," the findings of fact only supported an award of traditional alimony. Steven does not raise this issue on appeal.

(2) present standards of living and ability to pay balanced against the relative needs of the other. *In re Marriage of Bell*, 576 N.W.2d 618, 622 (Iowa App. 1998) (citations omitted). The imposition and length of an award of traditional alimony is primarily predicated on need and ability. *In re Marriage of Wendell*, 581 N.W.2d 197, 201 (Iowa App. 1998); *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa App. 1997).

On our de novo review, we find that the amount and length of the award was appropriate under the considerations for traditional alimony. Even if Claudia is able to begin working full-time, her salary will be less than half of Steven's. She will also have to report the support as income while Steven will be able to deduct the payments from his gross income. Steven contends that Claudia overestimated her living expenses and that his health will not allow him to work the number of hours he has in the past. However, the court accepted Claudia's calculations as reasonable, and we will defer to the court's acceptance. Finally, should Steven be unable to continue working the long hours which his job has presented in the past, the decree provides him built-in relief. For all of these reasons, we affirm the court's award of spousal support.

II. Appellate attorney fees. Claudia requests that the court award her $1500 in appellate attorney fees. An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). We are to 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 district court's decision on appeal. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa App. 1997). After considering these factors, we deny an award of appellate attorney fees. Costs of this appeal are assessed to Steven.

Having considered all issues properly before us on appeal, we hereby affirm the district court's decree.

AFFIRMED.