

IN THE COURT OF APPEALS OF IOWA

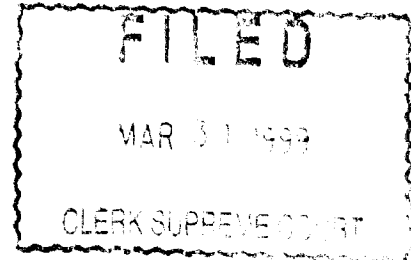
No. 8-536 / 97-1545

Filed March 31, 1999

**IN RE THE MARRIAGE OF PAUL J. HERDEGEN
AND ROSEANN M. HERDEGEN**

Upon the Petition of
PAUL J. HERDEGEN,
Appellant,

And Concerning
ROSEANN M. HERDEGEN,
Appellee.



Appeal from the Iowa District Court for Benton County, Kristin L. Hibbs,
Judge.

Paul Herdegen appeals various economic provisions of the parties' dissolution
decree. **AFFIRMED.**

John K. Fischer of Fischer Law Firm, L.L.P., Vinton, for appellant.

Stephen B. Jackson and Stephen B. Jackson, Jr. of Jackson Law Office, Cedar
Rapids, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.
Zimmer, J., takes no part.

PER CURIAM

The petitioner, Paul Herdegen, appeals various economic provisions of the parties' dissolution decree. He contends the district court erred in awarding the respondent alimony and attorney fees. We affirm.

Paul and Roseann began cohabiting in 1990. The couple lived in Roseann's home until 1991, when Paul purchased a home in Vinton, Iowa. Roseann sold her home. Paul and Roseann lived in Paul's home until they separated in the fall of 1993. Roseann moved out and purchased another home. They reconciled in 1994 and married that September. Both have children from previous marriages. Roseann's three children reside with her. Paul earns an hourly wage of \$23.37. Roseann earns an hourly wage of \$22.30. After their marriage, Paul sold his home and used a significant share of the proceeds to repay a loan to Roseann's sister. The parties separated again in August 1996. Paul purchased a trailer home following their separation.

Both parties entered the relationship financially even and earned roughly the same hourly wage. However, Roseann's health has continuously declined. She suffers from facial palsy, or paralysis on the right side of her face. Although experiencing no physical pain, her right side of her face continued to droop, and in 1996 she underwent exploratory surgery at University of Iowa Hospitals. Complications resulting from this surgery caused Roseann significant problems,

including intense pain. As a result, her continued employment with Iowa Electric is questionable.

Paul filed a petition for dissolution in August 1996. At trial, Roseann introduced evidence her permanent physical condition likely will result in her being placed in a new position that would pay significantly less. The court ordered Paul to pay Roseann nominal alimony of \$1 per month, to be modified upon her showing a substantial change in circumstances. The court also ordered Paul to pay \$5000 toward Roseann's attorney fees.

On appeal, Paul contends the district court erred in awarding Roseann attorney fees. An award of attorney fees rests in the sound discretion of the trial court and we will not disturb in on appeal in the absence of an abuse of discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). Paul maintains their current financial conditions are similar and Roseann is financially capable of paying her own fees. He contends he expended considerable sums of his own money to alleviate Roseann's past financial obligations during their marriage. He asserts the court ordered him to pay attorney fees based not on current ability to pay, but rather based on speculation on Roseann's future health. Awards of attorney fees must be for fair and reasonable amounts, *In re Marriage of Willcoxson*, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa App. 1996). Although the parties had similar hourly wages at the time of trial, Paul worked more overtime and moonlighted. From our

review of the distribution of the marital property and of Paul's income, we find no abuse of discretion in the court's award of attorney fees and affirm.

Paul also argues the district court erred in awarding Roseann nominal alimony of \$1 per month. He notes the parties were only married for two years. He claims if alimony is to be awarded, it should only run for a short period in order to determine the extent of Roseann's medical condition. We disagree. We consider property division and alimony together in evaluating their individual sufficiency. *See In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). One purpose of alimony is to rectify the inequities of a marriage, and to compensate a spouse who leaves the marriage at a disadvantage. *In re Marriage of Earsa*, 480 N.W.2d 84, 86 (Iowa App. 1991). Paul received a larger share of the marital property. His current earnings are greater than Roseann's. We also consider the factors in Iowa Code section 598.21(3)(a-j). Even though our review is de novo, we give the trial court considerable latitude in awarding alimony and will disturb the ruling only when there has been a failure to do equity. *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa App. 1997); *In re Marriage of Wahlert*, 400 N.W.2d 557, 560 (Iowa 1987). Given the uncertainty of Roseann's earning capacity because of her medical condition, we find the nominal alimony award equitable and affirm.

Roseann seeks an award of appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests in our discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa App. 1997). 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. *In re Marriage of Wendell*, 581 N.W.2d 197, 201 (Iowa App. 1998). Based on these factors, we order Paul to pay \$1000 of Roseann's appellate attorney fees.

AFFIRMED.