IN THE COURT OF APPEALS OF IOWA

No. 0-099 / 99-0645
Filed August 16, 2000

IN RE THE MARRIAGE OF MARLENE JOYCE MacDONALD AND WILLIAM MILTON MacDONALD

Upon the Petition of
MARLENE JOYCE MacDONALD,
Petitioner-Appellee,

And Concerning
WILLIAM MILTON MacDONALD,
Respondent-Appellant.

FILED
AUG 16 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Marion County, J.W. Jordan, Judge.

William MacDonald appeals a district court ruling on his petition for modification of his alimony obligation. **AFFIRMED AS MODIFIED.**

Franklin R. York, Pella, for appellant.

Martha L. Mertz of Mick & Mertz, Knoxville, for appellee.

Considered by Mahan, P.J. and Zimmer and Miller, JJ.

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MAHAN, J.

William MacDonald appeals the district court decision modifying his alimony obligation. He claims the court should have either eliminated or further reduced his obligation. Marlene MacDonald requests attorney fees for this appeal. We affirm as modified.

A dissolution decree for William and Marlene was entered in August 1994. The parties' property and debts were divided equally. William was ordered to pay alimony of $650 per month until February 1995, when his obligation was reduced to $550 per month, payable until Marlene remarried, reached the age of sixty-five years or elected to receive social security benefits, or either party died.

At the time of the dissolution decree, William was employed at 3M Company in Knoxville and earned about $34,000 per year. In November 1995 he had a mental breakdown and was hospitalized. William has been diagnosed with extreme depression. He also has health concerns, including heart problems and diabetes. The Social Security Administration determined he was totally disabled. He is unable to work or drive a car. William receives social security benefits of $14,430 and retirement income of $6624, which gives him total annual income of about $21,000.

Marlene continues to work at Hilltop Manor as a cook. At the time of the dissolution decree she earned about $9336, and presently she earns $13,690. After the dissolution, Marlene received an inheritance of about $200,000. She placed some of the funds in an investment account; the funds may not be withdrawn for the next seven years without paying a penalty. She spent $93,000 purchasing a house for the parties' adult children, and expects them to repay her

in payments of $550 per month. These payments have not been made consistently.

The parties stipulated there had been a substantial change in circumstances. The district court concluded William's alimony obligation should be reduced to $400 per month. The court determined Marlene's inheritance should not be taken into consideration.

An action for modification of a dissolution decree is tried in equity, and thus, our review is de novo. Iowa R. App. P. 4. The district court has considerable discretion in determining whether modification is warranted, and we will not disturb that discretion unless there is a failure to do equity. *In re Marriage of Vettemack,* 334 N.W.2d 761, 762 (Iowa 1983).

William seeks to have his alimony obligation further reduced. He asserts the court should have considered Marlene's inheritance and the fact she should be receiving payments of $550 per month, which would increase her monthly income.

An award of alimony depends on the circumstances of each case. *In re Marriage of Kurtt,* 561 N.W.2d 385, 387 (Iowa App. 1997). A 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 may consider a party's inherited property when addressing the issue of alimony. *In re Marriage of Hardy,* 539 N.W.2d 729, 732 (Iowa App. 1995).

In the present case, we consider the fact William's physical and mental health have caused a significant reduction in his income. At the same time,

Marlene's income has increased. Furthermore, Marlene received an inheritance, which further increases her ability to support herself.

In reducing the alimony award to $400 per month, the district court made the parties' net monthly incomes nearly equal. William will have net monthly income of $1353, and Marlene will have $1218. However, if we consider that Marlene should be receiving an additional $550 per month, the parties' incomes would be nearly equalized if William paid alimony of $200 per month. William would have net monthly income of about $1553, and Marlene would have about $1568. Therefore, we determine William's alimony obligation should be reduced to $200 per month.

Marlene seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Daniels,* 568 N.W.2d 51, 56 (Iowa App. 1997). Under the facts of this case, each party should be responsible for his or her own attorney fees for this appeal.

We modify William's alimony obligation to require him to pay alimony of $200 per month under the same terms set forth in the dissolution decree. Costs of this appeal are assessed to Marlene.

AFFIRMED AS MODIFIED.