

IN THE COURT OF APPEALS OF IOWA

No. 7-047 / 96-1224

IN RE THE MARRIAGE OF STANLEY OLIN VITTETOE
AND NORA ANNETTE VITTETOE

Upon the Petition of
STANLEY OLIN VITTETOE,
Petitioner-Appellee,

And Concerning
NORA ANNETTE VITTETOE,
Respondent-Appellant.

Appeal from the Iowa District Court for Wapello County, James D. Jenkins,
Judge.

Respondent appeals from the support and visitation provisions of the
dissolution decree. **AFFIRMED AS MODIFIED.**

Craig S. Shannon and Mary E. Kiener of Grefe & Sidney, P.L.C, Des Moines,
for appellant.

Michael J. Moreland of McKay, Moreland & Webber, P.C., Ottumwa, for
appellee.

Heard by Cady, P.J., and Huitink and Vogel, JJ., but decided by Habhab, C.J.,
and Huitink and Vogel, JJ.

HUITINK, J.

Respondent Nora Annette Vittetoe (Annette) appeals the trial court's denial of her request for alimony and also the visitation provisions set forth in the decree dissolving her marriage to petitioner Stanley Olin Vittetoe (Stanley). We affirm as modified.

I. Background Facts and Proceedings.

Annette, age thirty-nine, and Stanley, age forty-one, were married in April 1980. They have five children who range in age from two to thirteen years old.

Both parties earned Master's Degrees in English during the marriage and also hold teaching certificates. Stanley has worked full-time during the marriage and has worked at Indian Hills Community College in Ottumwa for the last nine years. He has a background in electronics and is currently employed as the Department Chair of Advanced Technologies. He currently earns \$2700 net income per month.

The parties agreed during the marriage that Annette would devote her time to the care and home schooling of the children. As a result, Annette's work history outside the home has been sporadic. She has supervised other home-schooled families, taught part-time as a Gifted and Talented Program Director in the Centerville Community School System, and worked part-time as an English instructor at Indian Hills. At the time of trial, Annette worked as a substitute mail carrier. She expected to earn between \$1000 and \$2000 per year in that position.

In July 1995, Stanley filed for divorce. A trial was held in June 1996. The parties agreed to joint custody of the children with Annette being the primary physical caretaker. Visitation with Stanley was structured such that he would have visitation with the three older children one weekend and then with the two younger children the following weekend. He was also provided the option to have the children visit with him in “shifts or in a group” during the three-week summer visitation periods. Stanley was ordered to pay child support in the amount of \$1380 per month.

The court awarded Stanley \$31,800 of marital property, including his IPERS account valued at \$30,000. Annette received \$47,020 in marital assets, including the marital home in Moravia valued at \$40,000 and deeded to the parties by Annette’s parents. She was also assigned \$900 of debt incurred by the parties. The court did not include as marital assets stock, valued at \$1000, and a cabin in Colorado, valued at \$14,400, that was given to Annette by her parents.

Annette’s request for \$600 per month in alimony for ten years was denied by the trial court. The court cited Annette’s age and educational background and the obligation of both parents to support the children as reasons supporting its decision.

Finally, the trial court rejected Annette’s request for attorney fees in the amount of \$5300. The court noted Annette had already been awarded \$500 in temporary attorney fees.

Annette appeals the trial court's denial of her request for alimony and her request for attorney fees. She also challenges the trial court's refusal to structure visitation so Stanley has all the children during visits rather than having the children in "shifts." Finally, she appeals the trial court's denial of her request for attorney fees.

II. Standard of Review.

Our review of this equitable action is de novo. Iowa R. App. P. 4. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the district court's findings of fact, but we do give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *Id.*; *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

III. Alimony.

At trial, Annette requested \$600 per month in rehabilitative alimony for ten years. She testified that during the marriage she devoted her time to caring for the family and to home schooling rather than seek employment outside the home. Stanley testified he supported this decision. Annette cites her desire to continue this arrangement in support of her request for alimony. She also emphasizes the substantial disparity in earning capacity between the parties. Annette argues although the parties each hold a Master's Degree in English, Stanley has experience in electronics which permits him to earn more. Furthermore, she contends her sixteen-year absence from the workforce has limited her opportunities to earn a comparable

salary or to achieve the retirement security enjoyed by Stanley. In addition, Annette states she must be allowed the time and funding necessary for her to be recertified to teach and to successfully rejoin the job market.

Annette also cites the responsibilities of being the primary custodial parent and the parties' mutual decision to home-school the children as limitations on her ability to earn sufficient income and advance her career. She argues she does not enjoy the flexibility that permits Stanley to pursue his career.

Finally, Annette contends the trial court erroneously considered the property settlement in denying her alimony. She argues the assets she received are not income-producing property.

Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981). When determining the appropriateness of alimony, the court must consider: “(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against the relative needs of the other.” *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994); *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted).

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Miller*, 532 N.W.2d at 162; *In re Marriage of Whelchel*, 476 N.W.2d 104, 110 (Iowa App. 1991); *In re Marriage of Fleener*, 247

N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3)(1995). *See In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983). Alimony may be used to remedy the inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993); *In re Marriage of Earsa*, 480 N.W.2d 84, 86 (Iowa App. 1991). Following a marriage of long duration, we have affirmed awards of both alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great. *In re Marriage of Geil*, 509 N.W.2d at 742; *In re Marriage of Hitchcock*, 309 N.W.2d 432, 438 (Iowa 1981).

We consider alimony and property division 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); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). An alimony award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the alimony who also has a need for support. *In re Marriage of Weiss*, 496 N.W.2d 785, 787 (Iowa App. 1992). The court should also consider the feasibility of the party seeking alimony becoming self-supporting at a standard of living reasonably

comparable to that enjoyed during the marriage. *In re Marriage of Debbler*, 459 N.W.2d 267, 270 (1990); Iowa Code § 598.21(3)(f).

An alimony award will differ in amount and duration according to the purpose it is designed to serve. *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). Rehabilitative alimony is awarded to support an economically dependent spouse through a limited period of retraining. *Id.* The duration of this type of award depends on the particular needs of the dependent spouse. *Id.* at 63. Traditional or permanent alimony in contrast is usually payable for life or for so long as the dependent spouse is incapable of self-support. *Id.* at 62. The purpose of a traditional or permanent alimony award is to provide the receiving spouse with support comparable to that he or she would receive if the marriage continued.

Our de novo review of the record confirms Annette's contention that a disparity in earning capacity exists between the parties and she is leaving the marriage at a financial disadvantage. However, we are not persuaded Annette is incapable of supporting herself given her educational and professional background. Despite her contention she has been absent from the job market during most of the marriage, we note the record indicates she held various part-time teaching positions during the marriage. We also note since the divorce, Annette has not applied for available teaching positions or researched the local market. Instead, she has chosen to take a low-paying part-time job that is unrelated to her Master's Degree in English. Annette

should be required to pursue employment opportunities commensurate with her education and experience. She is not entitled to alimony simply because Stanley's earnings are greater than hers.

We have also considered Stanley's limited ability to pay spousal support. Stanley's net monthly income is \$2700. He currently pays \$1380 per month in child support leaving him \$1320 per month to support himself. The award requested by Annette would leave Stanley without sufficient income to meet his subsistence expenses. Moreover, we note Annette received the marital home which is mortgage-free, while Stanley is responsible for rent on his residence. These factors militate against an award of alimony in this case.

While we respect the parties' previous commitment to home-schooling, we must recognize that the realities of post-divorce life for a large family with limited resources will not permit the continued pursuit of these objectives. Equity demands that we require both parties to make the difficult adjustments and necessary sacrifices in order to best provide for the support and welfare of the children. Stanley cannot alone be forced to bear the financial burden of sustaining the lifestyle choices made during the marriage. Accordingly, we reject Annette's request for support and affirm the trial court's denial of her request for alimony.

IV. Visitation.

Annette challenges the “split-visitation” schedule imposed by the trial court. She cites her need for an occasional rest from her parenting duties and also the children’s sense of family identity as reasons supporting her request that Stanley have all five children during weekend and summer visitation. Annette also emphasizes the current arrangement impairs her ability to pursue part-time employment or to attend teacher certification classes.

We are not persuaded that Stanley has shown his present circumstances justify the “split-visitation” schedule granted by the trial court. In light of Annette’s obligation to devote more of her energy to re-entering the job market, it is appropriate that she receive occasional relief from her custodial responsibilities. We modify the visitation provision of the decree by awarding Stanley visitation with all five children every other weekend and during the three weeks of summer visitation. All remaining details relevant to visitation are affirmed.

V. Attorney Fees.

Annette appeals the trial court’s denial of her attorney fees and the court’s assessment of costs to her. At trial, Annette requested attorney fees in the amount of \$5300. Iowa courts have considerable discretion in awarding attorney fees. *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1995). Annette was awarded more marital property than Stanley, holds assets given to her by her parents, and

currently has minimal debts. Under the circumstances, we find Annette has the ability to pay her own attorney fees and costs. We affirm the decision of the trial court.

Annette has also requested appellate attorney fees. An award for attorney fees is not a matter of right but rests with the court's discretion and depends on the parties' respective financial circumstances and ability to pay. *In re Marriage of Eastman*, 538 N.W.2d 874, 877 (Iowa App. 1995). Annette has successfully appealed a portion of the district court's decree. We award Annette \$1000 in appellate attorney fees.

AFFIRMED AS MODIFIED.