FILED
MAR 2 9 2000
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1999-412 (9-665) / 99-206
Filed March 29, 2000

IN RE THE MARRIAGE OF JEROME P. O'BRIEN AND CONSTANCE A. O'BRIEN

Upon the Petition of
JEROME P. O'BRIEN,
Petitioner-Appellant,

And Concerning
CONSTANCE A. O'BRIEN,
Respondent-Appellee.

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

Petitioner appeals the alimony provisions of the parties' dissolution decree. **AFFIRMED.**

Daniel H. Swift of Swift & Swift Attorneys, Manchester, for appellant.

Karen A. Volz of Ackley, Kopecky & Kingery, Cedar Rapids, for appellee.

Considered by Huitink, P.J., and Streit and Miller, JJ.

000315

HUITINK, P.J.

I. Background Facts and Proceedings.

Jerome O'Brien and Connie O'Brien were married on December 31, 1993. At the time of their marriage Jerry was fifty-four years old, and Connie was fifty-three years old. Jerry filed for dissolution of marriage on September 18, 1997.

Jerry has a bachelor's degree in business administration. He has worked as an industrial engineer, a real estate salesman, and a mortgage banker. During 1996 and 1997 he was employed by Virtual Mortgage as a loan officer earning $83,000 in 1996 and $73,000 in 1997. At the time of trial Jerry worked as manager of a mortgage lending company earning approximately $48,000 annually.

Connie holds a college degree with a major in biology and a minor in chemistry. She is a certified medical laboratory technologist with several years' experience. She also attended Kirkwood Community College and received certification as an interior designer/decorator. In 1994 Connie was diagnosed with breast cancer. She underwent a mastectomy in December of 1994 and another mastectomy in 1995. In 1997 Connie began working as a teacher's aide at West Delaware Community Schools in the special education department. She earned approximately $4586 working part-time in 1997. Connie continues to work with West Delaware Community Schools.

The disputed issues at trial included property division, alimony, and enforceability of an antenuptial agreement.[1] The court found the antenuptial agreement was enforceable and structured its property division accordingly. The court also awarded Connie traditional alimony of $1000 per month "terminable when she cohabits with another person, marries another person or dies." The court further determined the amount of alimony should be reduced when Connie qualifies for social security benefits. Jerry was ordered to pay $2500 towards Connie's attorney fees.

On appeal, Jerry argues the trial court erred in awarding Connie traditional alimony. Connie demands an award of appellate attorney fees.

II. Standard of Review.

Our review of the economic provisions of a divorce decree is de novo. Iowa R. App. P. 4. *See In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

III. Alimony.

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 relative needs of the other. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996) (citation omitted). Alimony is an allowance to the former spouse in lieu of a legal obligation to support that

[1] The parties' antenuptial agreement valued Jerry's premarital assets at $830,837 and Connie's premarital assets at $93,100.

person. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa App. 1997). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). *See In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa App. 1998).

Traditional alimony analysis may be used in long-term marriages where life patterns have largely been set and the earning potential of both spouses can be predicted with some reliability. *In re Marriage of Kurtt*, 561 N.W.2d at 388. In determining the appropriateness of a traditional alimony award, we are required to consider "[t]he 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." Iowa Code § 598.21(3)(f)(1997). We are also to consider the age and health of the parties, the parties' earning capacities, and the parties' education. *In re Marriage of Mouw*, 561 N.W.2d 100, 102 (Iowa App. 1997).

Jerry argues the trial court erred in awarding traditional alimony to Connie and also in awarding an excessive amount of alimony for an indefinite length of time. We disagree.

Jerry is a person of considerable financial means. His net worth exceeds $500,000. Additionally, his income is sufficient to pay alimony without compromising his accustomed lifestyle. Moreover, Connie's health remains an obstacle to self-sufficiency. Under these circumstances, we find an award of $1000 in traditional alimony is equitable and affirm the district court on this issue.

IV. Appellate Attorney Fees.

Connie received an award of attorney fees for her trial counsel but argues the amount awarded did not cover the entire balance due. She therefore requests attorney fees for defending this matter on appeal. In making such a determination, 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 Garst*, 573 N.W.2d 604, 608 (Iowa App. 1997). Given the financial positions of the parties, we determine Connie is entitled to $1000 in appellate attorney fees. Costs on appeal are assessed to Jerry.

AFFIRMED.