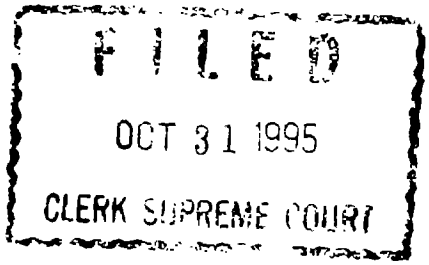
IN THE COURT OF APPEALS OF IOWA

No. 5-344 / 94-1279

IN RE THE MARRIAGE OF DAVID ERVIN KUELPER AND CYNTHIA ANN KUELPER



Upon the Petition of
DAVID ERVIN KUELPER,

Appellant.

And Concerning
CYNTHIA ANN KUELPER,

Appellee.

Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

David Kuelper appeals the alimony provisions of the parties' dissolution decree and the award of attorney fees. **AFFIRMED AS MODIFIED.**

Karen A. Volz of Ackley, Kopecky and Kingery, Cedar Rapids, for appellant.

Michael L. Mollman of Mollman & Wertz, Cedar Rapids, for Appellee.

Heard by Donielson, C.J., and Hayden and Cady, JJ.

CADY, J.

David Kuelper appeals the provisions of the district court decree for dissolution of marriage establishing alimony obligations and awarding attorney fees. On our de novo review, we affirm the trial court with modification.

David and Cynthia Kuelper were married for twelve years. They had no children. Both worked at various jobs throughout their marriage, and no arrangement existed for Cindy to be the homemaker and David to work outside the home.

The marriage ended on February 15, 1994 when the district court entered a dissolution decree following a trial. David and Cynthia were both 36 years old. At the time of trial, David worked full time at Rockwell International earning $11.40 per hour. Cynthia worked approximately twenty hours a week through a temporary agency at MCI. She earned $5.75 per hour. She had previously worked fulltime at the U.S. Postal Service earning $7.00 per hour. Although both spouses worked during the marriage, they accumulated debts of $13,458.

The trial court ordered an even split of the marital assets.[1] David, however, was required to assume $10,288 of the debts and Cynthia only $3170.

The decree further provided for David to pay Cynthia $150 per month for

---

[1] The trial court ordered Cynthia and David to split the proceeds of the sale of their thoroughbred dogs and their income tax refund equally. As well, Cynthia received one-half of the portion of David's pension which accrued during their marriage. David received a motorcycle, some furniture, one-half of the kitchenware, his clothing, a safe and other small items. Cynthia received the automobile, one dog, and the balance of the personal property.

twenty-four months in order to help her pay for health insurance and to support herself as she seeks better paying full-time employment. Upon the expiration of the twenty-four months, the court ordered a nominal obligation of one dollar per year until Cynthia's death or remarriage. This was done to preserve the alimony issue in the event Cynthia's health affects her vocational abilities. The court also ordered David to pay $500 of Cynthia's attorney fees.

David appeals contending the district court's award of alimony was improper and unsupported by the evidence. He also contends attorney fees should not have been awarded in this case. Cynthia, on appeal, seeks appellate attorney fees.

I. Alimony

In this equity action, our review 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 Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). 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).

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 Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted). Alimony is not an absolute right. Instead, an award depends upon the circumstances of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976); *In re Marriage of*

Vanderpol, 529 N.W.2d 603 (Iowa App. 1994). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). *See In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983).

Upon our review of these factors, we find no alimony should be awarded. Cynthia worked at the time of trial and was capable of continuing her employment. She was neither materially disadvantaged by the marriage nor prevented from obtaining meaningful employment due to household or child care responsibilities. Cynthia came into the marriage with some college training in data entry and keypunch operation. Neither party was called upon to sacrifice their education or career during the marriage.

While Cynthia testified she suffered from back and menstrual problems, she presented no medical or other evidence of a potential disabling condition. Her menstrual problem has not affected her work in the past and her workers compensation benefits for a back injury were discontinued approximately two years ago. Moreover, Cynthia worked at full time and temporary positions throughout the marriage.

In awarding alimony, courts must also consider any property settlement made and the distribution of the parties' marital debt. *In re Marriage of Dahl*, 418 N.W.2d 358 (Iowa App. 1987). We consider alimony and property division together to determine their sufficiency. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa App. 1994). Here the distribution of property, in which David must assume

over 75% of the accumulated debts, adequately considers the disparity of incomes between David and Cynthia and the additional costs Cynthia may incur as a single person.

We recognize spouses are often burdened with additional expenses following a divorce which did not exist while married. Medical insurance can be such an expense, especially when both spouses were insured during the marriage under a policy provided by the employer of one of the spouses. In this case, Cynthia is no longer covered under David's policy and faces the cost of continuing the existing policy or obtaining new insurance. These costs may help support an alimony award in some instances, but not this case.

The property award was adjusted to relieve Cynthia of a larger share of the debts. Her expenses will be reduced because of this division. Cynthia will need to obtain a better paying job to enable her to support herself at the standard of living enjoyed during the marriage, but the evidence clearly shows she possesses the ability to work and to seek gainful employment at a higher wage. It would be an unfair burden upon David to require him to help support Cynthia while she is capable of supporting herself. We conclude Cynthia is not entitled to an alimony award. We also find Cynthia is not entitled to the nominal alimony award for her lifetime or until she remarries. The evidence was insufficient to support the claim that her back condition and menstrual problems will affect her ability to work in the future.

II. Attorney Fees

Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Giles*, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. *Id.* 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 Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987).

Here the trial court adequately considered the disparate financial positions of the parties at the time of trial. We find the district court did not abuse its discretion in ordering David to pay $500 of Cynthia's attorney fees.

Cynthia requests an award of appellate attorney fees. An award of appellate fees is "discretionary and we consider various equitable factors in making this determination, including the parties' respective abilities to pay." *In re Marriage of Eilers*, 526 N.W.2d 566, 570 (Iowa App. 1994). Factors to consider include 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 trial court's decision on appeal. *In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981).

David earns significantly more than Cynthia. As well, Cynthia was under an obligation to defend the trial court's decision on appeal. We award Cynthia $750 in appellate attorney fees.

AFFIRMED AS MODIFIED.