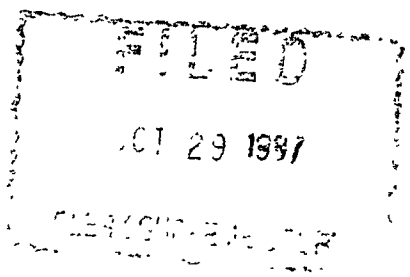
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IN THE COURT OF APPEALS OF IOWA



No. 7-503 / 96-1248
Filed 10/29/97

IN RE THE MARRIAGE OF SHARON S. OLTROGGE AND M. WAYNE OLTROGGE

Upon the Petition of
SHARON S. OLTROGGE,
Appellee,

And Concerning
M. WAYNE OLTROGGE,
Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Ronald H. Schechtman, Judge.

M. Wayne Oltrogge appeals from a decree dissolving his marriage to Sharon Oltrogge. **AFFIRMED AS MODIFIED.**

Rolf V. Aronsen, Mason City, for appellant.

Kevin J. Kennedy of Kennedy & Kennedy, New Hampton, for appellee.

Considered by Cady, C.J., and Huitink and Streit, JJ.

HUITINK, J.

M. Wayne Oltrogge (Wayne) appeals the alimony provision of the dissolution decree dissolving his eight-year marriage to Sharon S. Oltrogge (Sharon). We affirm as modified.

I. Background Facts and Proceedings.

Wayne and Sharon married on November 6, 1987. It was the second marriage for each of them. At time of trial, Wayne was fifty-eight years old and Sharon was fifty-three years old.

Wayne is an attorney. He practices alone; however, he is expanding his law office with the addition of an associate. Since 1994, Wayne has operated his practice as a subchapter "C" corporation. His income was $30,000 in 1994. In 1995, Wayne withdrew $58,240 from the corporation. At the time of the decree, his practice had $38,400 in accounts receivable. Wayne pays $900 per month permanent alimony to his first wife. He is in arrears for $22,000 on that obligation. Wayne also has delinquent income tax obligations of approximately $110,000, which existed prior to his marriage to Sharon.

Sharon has a high school diploma and has attended some college business classes. She has expressed a desire to continue her education at Hamilton Business College in Mason City, and thereafter obtain a clerical position. Sharon has limited work experience and limited job skills. She was unemployed during most of the marriage.

Pursuant to a prenuptial agreement, the parties stipulated to a property settlement wherein each party was awarded properties he or she brought into the marriage. In addition to other terms, the settlement gives Wayne the right to purchase Sharon's interest in the marital home for $32,500, and Wayne assumes nearly all of the debt owed prior to and during the marriage.

The dissolution decree, entered May 30, 1996, incorporated the terms of the parties' stipulated settlement by reference. The court's decree also awarded Sharon rehabilitative alimony in the amount of $750 per month beginning June 1996 through November 2002.

II. Scope 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 trial court's findings of fact, but we do give them deference because the trial 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.

Wayne appeals the dissolution decree's alimony provision and requests the alimony award be reduced to $500 per month for a period not exceeding thirty-six months. We agree.

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).

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 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 (Iowa 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.

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The district court is correct in finding rehabilitative alimony is proper in this situation. Sharon has taken some college business courses and would benefit from finishing her education at Hamilton Business College. With this training, it is likely Sharon will be able to enter the workforce in the clerical/computer field and achieve a standard of living more comparable to that she enjoyed during the marriage.

However, we modify the court's alimony award to $500 per month for thirty-six months. Based on our review of the record, this award more equitably balances Sharon's needs with Wayne's ability to pay. Moreover, this award meets the objective of supporting Sharon through a limited period of education.

IV. Attorney Fees.

Sharon requests the court award her appellate attorney fees. An award of attorney fees is not a matter of right, but rests with the court's discretion. *In re Marriage of Eastman*, 538 N.W.2d 874, 877 (Iowa App. 1995). We consider the needs of the requesting party, the ability of the other party to pay, and whether the requesting party was obligated to defend the trial court's decision on appeal. *In re Marriage of Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996). Sharon unsuccessfully defended this appeal. Accordingly, we decline to award her appellate attorney fees.

AFFIRMED AS MODIFIED.