

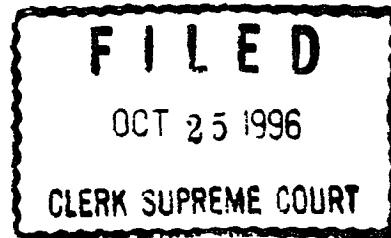
IN THE COURT OF APPEALS OF IOWA

No. 6-317 / 95-1142

**IN RE THE MARRIAGE OF JOHN ROBERT CRAWFORD AND ANDRE
ANN CRAWFORD**

Upon the Petition of
JOHN ROBERT CRAWFORD,
Appellee/Cross-Appellant,

And Concerning
ANDRE ANN CRAWFORD,
Appellant/Cross-Appellee.



Appeal from the Iowa District Court for Marshall County, Carl D. Baker,
Judge.

Andre Crawford appeals and John Crawford cross-appeals on the issue of the
alimony provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy,
Marshalltown, for appellant.

William J. Lorenz of Harrison, Brennecke, Moore, Smaja & McKibben,
Marshalltown, for appellee.

Considered by Huitink, P.J., Vogel, J., and Hayden, S.J.*

*Senior judge from the Iowa Court of Appeals serving by order of the Iowa Supreme
Court.

HAYDEN, S.J.

John and Andre Crawford were married on February 14, 1992. Prior to the marriage, the parties signed a premarital agreement which provided in the event of dissolution, each party would receive the property he or she brought to the marriage. The parties recognized a provision in a premarital agreement which purports to prohibit alimony is void. Nonetheless, they agreed, if the law were to change, no alimony would be awarded to either party.

John was sixty years old at the time of the dissolution hearing. He owns a farm and continued to operate it during the marriage. John owns assets worth \$467,529, but receives little income from the farm. His net monthly income is \$380.

Andre was fifty-six years old at the time of the dissolution hearing. She owns assets worth about \$26,136. She receives net monthly income of \$1,286 from Social Security disability benefits, disability benefits from her former employer, and stock dividends. Andre suffers from several health problems, including chronic fatigue and immune dysfunction syndrome, depression, asthma, and gastritis. Andre's health problems are exacerbated because she smokes up to two packs of cigarettes a day. Her health problems stayed essentially the same throughout the marriage.

John filed a petition for dissolution of marriage on November 4, 1994. Andre sought temporary alimony and attorney fees. The district court awarded her \$7,500 as a lump sum temporary spousal allowance.

A decree of dissolution was entered for the parties on June 2, 1995. Each party was awarded the property he or she brought to the marriage. John was awarded all property purchased during the marriage, except for a refrigerator, which was awarded to Andre. John was ordered to pay Andre a lump sum alimony payment of \$5,000. John was also ordered to pay \$1,000 for Andre's trial attorney fees. Andre has appealed and John has cross-appealed on the issues of alimony and attorney fees.

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

In her appeal, Andre claims the award of alimony was inadequate. She states her health problems directly affect her ability to take care of herself financially. She seeks alimony of \$1,000 per month, or in the alternative, a lump sum payment of \$75,000. In his cross-appeal, John asks us to delete the award of alimony. He disputes whether Andre is as ill as she claims. He states the award of alimony will require him to sell assets, in violation of the premarital agreement.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Whelchel*, 476 N.W.2d 104, 110 (Iowa App. 1991). When determining the appropriateness of alimony, the court should consider the earning capacity of each party. *In re Marriage of Oler*, 451 N.W.2d 9, 13 (Iowa

App. 1989). Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. *Id.*

We determine the \$5,000 lump sum award of alimony should be eliminated. The parties were married for a short period of time, slightly over three years. We note Andre's net monthly income exceeds John's net monthly income. Although John has more assets, by signing the premarital agreement, Andre agreed John should keep these assets. *In re Marriage of Spiegel*, No. 95-422 (Iowa Sept. 18, 1996), p. 6-18. We also take consideration of the fact Andre's health condition remains essentially as it was at the time the parties married. We do not modify the award of temporary spousal support.

John argues the district court abused its discretion in awarding Andre trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Hunt*, 476 N.W.2d 99, 103 (Iowa App. 1991). We find no abuse of discretion in the award of trial attorney fees.

Andre seeks appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *Id.* We determine John should pay \$1,000 for Andre's appellate attorney fees.

We have modified the parties' dissolution decree to eliminate the \$5,000 lump sum award of alimony. We affirm the district court on all other issues. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.