IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

No. 1999-457 (9-714) / 98-1935
Filed March 29, 2000

IN RE THE MARRIAGE OF KARLA J.NACHAZEL AND JOHN J. NACHAZEL

Upon the Petition of
KARLA J. NACHAZEL,
Appellee,

And Concerning
JOHN J. NACHAZEL,
Appellant.

Appeal from the Iowa District Court for Tama, Kristin L. Hibbs, Judge.

John Nachazel appeals the district court's dissolution order requiring him to pay alimony. **AFFIRMED.**

Michael L. Mollman of Mollman Law Office, Cedar Rapids, for appellant.

Donald G. Juhl, Nevada, for appellee.

Heard by Sackett, C.J., and Vogel and Hecht, JJ.

VOGEL, J.

John Nachazel appeals the district court's dissolution order requiring him to pay alimony to Karla Nachazel. Because we find the award to be equitable under the circumstances, we affirm.

Background facts. John and Karla Nachazel were married in July 1972. There were four children born to this marriage. One of the children remained a minor and one was in college at the time of the dissolution proceedings. Both of the parties were forty-five years old at the time of the hearing and both have a high school diploma. John and Karla are physically healthy except for some asthma and allergy problems of Karla. John has worked at Tama Paperboard for the past twenty-six years with no periods of unemployment. He currently earns $14.78 per hour with occasional overtime opportunities.

Karla did not work outside the home during the first sixteen years of the marriage. The parties agreed that Karla would stay at home to take care of the house and children during those years. For the past ten years, she has worked as a cashier at Hardee's restaurant, currently earning $6.25 per hour. She works 40 or more hours per week in the summer months but drops down to about 36 hours per week in the winter months due to the pattern of business.

Scope of review. Our review of the economic provisions of a divorce decree is de novo. Iowa R. App. P. 4. 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; an award depends upon the circumstances of each particular case. *In re Marriage of Fleener,* 247 N.W.2d 219, 220 (Iowa 1976). 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 (Iowa App. 1983); *see also In re Marriage of Miller,* 524 N.W.2d 442, 445 (Iowa App. 1994). 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 738, 742 (Iowa 1993); *In re Marriage of Hitchcock,* 309 N.W.2d 432, 438 (Iowa 1981).

There are three types of alimony commonly recognized in Iowa, each serving a different purpose. The purpose of rehabilitative alimony is to support an economically dependent spouse through a limited period of education and retraining. *In re Marriage of Grady-Woods,* 577 N.W.2d 851, 854 (Iowa App.1998). Its main objective is self-sufficiency. *Id.* Reimbursement alimony serves to reimburse the economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *Id.* Traditional alimony is payable indefinitely, for as long as a dependent spouse is incapable of self-support. *Id.* A traditional alimony award takes into

consideration: "[T]he feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage." Iowa Code § 598.21(3)(f)(1997).

In determining the appropriate alimony award, the ability of one spouse to pay must be balanced against the needs of the other spouse. *In re Marriage of Stark,* 542 N.W.2d 260, 262 (Iowa App. 1995); *In re Marriage of Tzortzoudakis,* 507 N.W.2d 183, 186 (Iowa App.1993). The court looks to the standard of living the parties had previously maintained as well as one spouse's relative ability to pay. *In re Marriage of Bethke,* 484 N.W.2d 604, 609 (Iowa App.1992). We have noted "the spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible without destroying the right of the party providing the income to enjoy at least a comparable standard of living as well." *In re Marriage of Hayne,* 334 N.W.2d at 351 .

Alimony. John alleges the record does not support an award of alimony, but if it did, the amount was improperly calculated and would leave him financially disadvantaged. The court ordered John to pay Karla alimony in the amount of $100 per month during the period of his child support obligation and $300 per month thereafter. The court found that although Karla was employed full-time, her earnings were not sufficient to meet her needs or allow her to enjoy the same standard of living as she enjoyed during the marriage.

John complains that Karla has only herself to blame for not being able to support herself. This position, rejected by the trial court, fails to take into account

the joint decision made by the parties, that Karla stay home to manage the household and care for the children during the first sixteen years of the marriage. She obtained no further education and did not advance a career. Her work history is now comprised solely of the job she has held at Hardee's for the past ten years. Karla also suffers from asthma and various allergies that prevent her from seeking some types of available employment in the area. John argues that Karla failed to present medical evidence to substantiate her medical claims. Although Karla did not support her health conditions with expert medical testimony, we find such testimony unnecessary in this case. The parties each testified as to their current situations, including physical conditions. The court made credibility findings to support its ruling and we defer to those findings. *See In re Marriage of Knickerbocker,* 601 N.W.2d 48, 51 (Iowa 1999); *see also In re Marriage of Beecher,* 582 N.W.2d 510, 513 (Iowa 1998).

John next argues that, rather than calculate alimony based on Karla's actual income, the trial court should have based the amount on her earning capacity. *See In re Marriage of Estlund,* 344 N.W.2d at 281. Although the court clearly has the option of using earning capacity rather than actual earnings in deciding support issues, this option does not lend itself to the circumstances of this case. Karla, while earning slightly over minimum wage for her full-time employment, has not made a deliberate choice to take a position of employment well below her training or education level in an effort to cause John to pay more in alimony. She has worked in this position for the last ten years of the marriage. Although it may be true that Karla is qualified to secure a somewhat higher

paying position, she is restricted by her minimal education, the limited job opportunities of a rural setting, and her health concerns. We find the court was correct in using Karla's actual income to determine if an alimony award was appropriate in this situation.

John next contends the alimony award will destroy his right to live at the same standard as Karla. The record reflects John's monthly income to be $1,875.99 or $14.78 per hour during a forty-hour work week. However, his 1997 W-2 statement revealed an annual income of $35,918.29, which included overtime earnings. Although overtime is not guaranteed in John's position, his actual earnings, even without the overtime, are more than twice Karla's earnings and more than adequate to meet his living expenses. Furthermore, the trial court ordered both pieces of real estate owned by the Nachazel's to be sold and the proceeds used to pay off the marital debt. The remaining equity was to be split equally between the parties. John's living expenses will decrease after the sale of the two properties, because of the elimination of several debts. Based on the record before us we find the alimony award of $100 per month for the duration of John's child support obligation and $300 per month thereafter is fair and does not prevent John from enjoying a lifestyle equal to that of Karla.

Property division. John next claims the trial court erred in not dividing the marital property and debt equally between the parties. The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell,* 473 N.W.2d 244, 246 (Iowa App. 1991). However, Iowa courts do not require an equal division or percentage

distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* We find the trial court followed this dictate in determining an equitable property division for the Nachazel marriage.

Based on our de novo review of the record presented to us, we affirm the trial court.

AFFIRMED.