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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-600 / 90-1691

IN RE THE MARRIAGE OF PATRICIA A. BROWN AND BARRY L. BROWN

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Upon the Petition of

PATRICIA A. BROWN,

Petitioner-Appellee/Cross-Appellant,

And Concerning

BARRY L. BROWN,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Barry appeals and Patricia cross-appeals from the economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Gerald B. Feuerhelm, Des Moines, for appellant.

Harlan M. Hockett, Des Moines, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

This is a dissolution of a long-term traditional marriage. Respondent-appellant Barry L. Brown challenges on appeal the amount and duration of the alimony awarded to petitioner-appellee Patricia A. Brown. He also contends it was not equitable to assess expert witness and attorney fees against him.

Patricia has cross-appealed contending she should have additional property. She contends the alimony award is not adequate, and she should have additional sums for fees and costs. We affirm as modified.

When the parties met and married they each had a year of college; Patricia had a year at the University of Iowa and Barry had a year at Iowa State University. Patricia had been working for the telephone company and owned some telephone company stock. Barry had an old car.

They were married in September 1964 and have two children; a daughter born in November 1967, and a son born in November 1970. Patricia worked outside the home until midway through her pregnancy with their first child. After the child was born, Patricia became a full-time wife and mother.

Barry obtained a degree from Drake University after the marriage. Barry has had a series of jobs in the Des Moines and Chicago areas.

In about 1984, Barry became involved in the business of developing computer software. In May 1986 Patricia began to work full time in the business.

The first issue is whether the property division and alimony awards are equitable. We review de novo. We consider the two together in determining whether they are equitable. See In re Marriage of Stewart, 356 N.W.2d 611, 613 (Iowa App. 1984). The parties had about $100,000 in assets other than stock in Datatron Systems Corporation. The trial court divided these assets in such a way that Patricia received a little more than 50 percent. Barry does not challenge this allocation. Patricia contends she should have been awarded an interest in the corporation.

Barry owns about 56 percent of the stock in Datatron Systems Corporation. The balance is owned by nonfamily members. While at one time the stock had value, both parties recognized the stock currently has little value except as an income generating business for Barry. The company has noted a severe downward trend in sales due to a number of factors affecting the software market.

The trial court found $60,000 in personal assets had been put in the corporation, and the corporation generated an income for Barry of about $60,000 a year. The trial court was of the opinion that the financial condition of the corporation would improve and Barry's income would increase.

The property division is fair and equitable. The corporate stock is practically valueless. Patricia and Barry did not work well together, and Patricia's presence at the business was not beneficial. Considering the animosity that exists between Patricia and Barry, the trial court made a wise decision in awarding Patricia no interest in the corporate stock. The couple is dependent on Barry's continuing salary. His unrestricted ownership of the stock is the best way to accomplish this goal.

The next question is whether the alimony award is equitable. Patricia for a number of years assumed the rule of stay-at-home wife and mother. Her FICA coverage is substantially less than Barry's. She does not have the employment skills he does. She has limited education. Barry earned his college degree during marriage.

Barry recognizes an alimony award is justified. His only contention is that the award is too much and for an excessive duration. The trial court awarded Patricia alimony of $1,200 a month from October 15, 1990 to October 15, 1993, when the alimony was to increase to $1,600 a month until October 15, 2006, when it reduces to $800 a month. The alimony terminates if Patricia dies and is reduced by one-half if Patricia should remarry. The alimony was not made terminable on Barry's death.

The trial court found Patricia could earn $12,000, and Barry's income at time of trial was $60,000. The trial

court also found Barry's income would increase in the next two years.

We address Barry's challenges to the alimony award separately. He contends the current award of $1,200 a month is excessive. We disagree. He contends the award should not be increased in 1993. The trial court ordered the award increased because it found Barry's income would increase. We do not on our de novo review agree with the trial court that Barry's income will increase.

Alimony is modifiable should there be a substantial change. We, therefore, modify the trial court's order and provide alimony should be payable at the rate of $1,200 a month until October 15, 2006, at which time it shall be reduced to $800 a month.

Barry contends the alimony should terminate at his death. We agree and so modify.

Barry's final contention is all of Patricia's alimony should terminate if she remarries. The trial court entered a finding that there were not sufficient assets to compensate Patricia for her contribution to Barry's future earnings. The trial court considered his future earnings were enhanced because of education he received during the marriage, as well as the fact that all the corporate stock was awarded to him. Some $60,000 in family assets had been invested in the corporate stock. We agree with the trial court's decision to allocate one-half of the alimony award

as reimbursement alimony not terminable on remarriage. See In re Marriage of Francis, 442 N.W.2d 59, 66 (Iowa 1989).

Barry contends it was not equitable to require him to pay approximately $10,000 in witness and attorney fees. He contends Patricia's attorney was about twice as expensive as his attorney. He contends Patricia has available cash to pay fees and she should pay her own. Patricia contends Barry should have paid all of her attorney fees which totaled $14,672. She points out her attorney has considerable experience in this area. She also says her fees are more because Barry did not cooperate in discovery.

An award of attorney fees is not a matter of right but rests in the court's discretion considering the parties' financial positions. See In re Marriage of Dahl, 418 N.W.2d 358, 361 (Iowa App. 1987); In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). We affirm the award made by the trial court. We award no further attorney fees to either party. See Dahl, 418 N.W.2d at 361. Cost on appeal are taxed one-half to each party. We affirm as modified.

AFFIRMED AS MODIFIED.