FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ALAN H. OLSON AND KAREN M. OLSON

136

Upon the Petition of	)	
ALAN H. OLSON,	)	Filed November 30, 1983
Petitioner-Appellant,	)	
And Concerning	)	
KAREN M. OLSON,	)	3-309 83-126
Respondent-Appellee.	)	

Appeal from Washington District Court - James P. Rielly, Judge.

Petitioner appeals from the economic provisions of the parties' dissolution decree. AFFIRMED AS MODIFIED.

Craig Arbuckle, Washington, Iowa, for petitioner-appellant.

Debra J. Tharp of Day & Meeker, Washington, Iowa, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

HAYDEN, J.

Petitioner appeals from the economic provisions of the parties' dissolution decree. We affirm.

Petitioner, Alan Olson, and respondent, Karen Olson, were married in 1967. At the time of trial Alan was thirty-eight and Karen was thirty-nine years of age. Neither party brought many material possessions into the marriage. During the first two years of the marriage both parties taught in public schools. At the end of each year Alan's contract was renewed, but Karen's was not; therefore, the couple moved to a new school district each year. At the end of the second year Karen gave up trying to teach when her contract was dropped. Although she has not been employed outside the home since that time, Karen does volunteer to prepare her church newsletter every month.

Karen's inability to keep a job is due to excessive absences. She has been diagnosed as having Briquet's Syndrome. Persons afflicted with this form of mental hysteria actually feel the pain and symptoms of diseases without being physically ill. A doctor testified at the dissolution hearing that the affliction is usually permanent and disabling because patients do not accept that the problem is mental. Instead they go from one doctor to another seeking a cure for nonexistent physical problems. In addition to this affliction, Karen does suffer from some actual kidney disease and has had numerous operations from which she has fully recovered.

Alan is employed by the Washington Community School System as a librarian earning a net monthly income of $1,114. The parties were unable to accumulate many assets during the marriage primarily because of Karen's medical expenses. Alan suffers from high blood pressure and testified to being under a great deal of stress as a result of Karen's condition.

On October 5, 1982, Alan's counsel propounded interrogatories asking for the identity and conclusions of any medical experts expected to be called at the

hearing. Karen's attorney responded that due to Karen's illnesses she had not been able to confer with her client in time to answer. On November 12 both attorneys discussed the situation with the trial judge who denied respondent's motion for a continuance. No order compelling discovery was sought or issued. On the day of the hearing Karen's attorney informed Alan's attorney that she was going to call Dr. Miller to testify. She stated that she did not have the opportunity to meet with Dr. Miller until 5:00 p.m. the day before trial and only decided at that time to have him testify. The trial court allowed Dr. Miller to testify over petitioner's objection. The court kept the record open to allow petitioner to submit the deposition of the medical expert of his choice. The deposition of Dr. Dennis Shimp was submitted and was considered by the court in arriving at its decision.

In this appeal Alan argues that the trial court abused its discretion by not excluding Dr. Miller's testimony, and that there was insufficient evidence to support an award of $475 per month alimony and $1,000 in attorney fees to Karen.

Our review of this equitable proceeding is **de novo**. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is concerned. Iowa R. App. P. 14(f)(7).

I.

Discovery Sanctions. Alan asserts that Karen's failure to comply with his discovery request should have resulted in the exclusion of the expert medical testimony. The trial court has broad discretion to determine whether discovery sanctions should be imposed. Suckow v. Boone State Bank & Trust Co., 314 N.W.2d 421, 425 (Iowa 1982). If a delay in answering interrogatories is not willful, failure to impose a sanction is not an abuse of discretion. Eickelberg v. Deere & Co., 276 N.W.2d 442, 446 (Iowa 1979). We find no evidence in this case that there was a willful disregard of the discovery request. Furthermore, the trial court attempted to counteract any prejudice to petitioner by allowing him time to prepare and submit his own expert medical testimony.

II.

Alimony. The criteria to be considered in awarding alimony are enumerated in Iowa Code section 598.21(3). We must balance the relative needs and abilities of the parties. In re Marriage of Jones, 309 N.W.2d 457, 460 (Iowa 1981). In the present case there was convincing evidence that Karen is ill and needs some support. Although she is physically well, her mental hysteria causes her to have the symptoms of actual illnesses. She was unable to maintain steady employment early in her marriage and has been out of the job market for approximately twelve years.

Balanced against Karen's need is Alan's modest financial position. He struggled to support both parties during the marriage on his limited income. Karen's medical bills made it impossible to accumulate any assets. Now he is being required to maintain two households on the same income.

We believe that the trial court's award of $475 per month alimony places an undue financial burden on Alan. Therefore, we reduce the alimony to $250 per month. Payments shall cease upon the death of either party, upon Karen's remarriage, or upon Karen becoming gainfully employed.

III.

Attorney Fees. The trial court ordered Alan to pay $1,000 toward Karen's attorney fees. Karen has also requested attorney fees on appeal. Allowance of attorney fees in a dissolution action is not a matter of right, but depends upon the financial condition of the parties and their respective ability to pay. In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). Since Alan's financial position is somewhat better than Karen's, we agree with the trial court that he should contribute to her legal expenses. Therefore, we affirm the award of $1,000 made by the court below. However, Alan's financial situation will be tight due to his obligation to pay alimony. There is evidence in the record that Alan is having difficulty paying his own legal expenses. Since Karen will have income coming

from Alan every month, she should be able to work out some arrangement with her attorney. Therefore, while all costs of this appeal are taxed to Alan, we deny Karen's request for attorney fees on appeal.

AFFIRMED AS MODIFIED.