IN THE COURT OF APPEALS OF IOWA

No. 7-063 / 95-2221

000307

IN RE THE MARRIAGE OF DEAN EARNEST SCHURKE AND KATHLEEN ANNE SCHURKE

Upon the Petition of
DEAN EARNEST SCHURKE,

Appellant/Cross-Appellee,

And Concerning
KATHLEEN ANNE SCHURKE,

Appellee/Cross-Appellant.

FILED
MAY 29 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, C. H. Pelton, Judge.

Petitioner and respondent appeal and cross-appeal from the entry of the dissolution decree. **AFFIRMED AS MODIFIED.**

Arthur L. Buzzell, Davenport, for appellant.

Michael J. McCarthy of McCarthy, Lammers & Hines, Davenport, for appellee.

Considered en banc.

PER CURIAM

Dean Schurke appeals, and Kathleen Schurke cross-appeals, a decree entered by the district court dissolving their marriage. Dean contests the provisions relating to property division, while Kathleen contests provisions relating to spousal support. We affirm.

Dean and Kathleen were married on March 7, 1979. They have two children, seventeen-year-old Amber and fifteen-year-old Darrin. Dean is forty-nine years old and Kathleen is thirty-eight years old.

Kathleen has a high school diploma and is employed part-time as a customer service manager by Wal-Mart. In 1994, she earned $11,012. Because Dean frequently worked away from home for extended periods of time, Kathleen remained responsible for raising the children and maintaining the home.

Dean works as a construction millwright and earned $43,344 in 1994. At the time of trial, he was living with his mother when not on location at a remote job site. Two factors cause his income to vary and diminish. First, when a job site is too far to allow for daily commuting, Dean incurs substantial living expenses, which amounted to $7,144 in 1994. Second, when he is not employed, he receives unemployment compensation in an amount far below his annual wages.

The trial court found Dean had annual income of $43,344, reduced this amount by $4,000 of employee business expenses and other expenses allowed by the child support guidelines, and determined Dean had net weekly income of $567. The court

determined Kathleen had net weekly income of $160 but had the ability to earn $198 per week. The court fixed Dean's child support obligation at $170 per week. The court ordered Dean to pay $15 per week in spousal support, terminating after both children reached age eighteen. The court noted, "This amount is less than might otherwise be the case but for Dean's substantial child support obligation." The court ordered a division of property and debt along lines agreed to by the parties, while resolving several contested issues.

The parties had listed as a disputed issue the division of four life insurance policies, which had a combined cash value of $11,593 at the time of trial. At trial, the parties stipulated, "The Ohio National Life Insurance policies . . . were premarital assets of Mr. Schurke." The trial court included the cash value of the policies in the property division.

Dean filed a Rule 179(b) motion seeking an amended finding the insurance policies were premarital assets not to be included in the property division. In denying the motion, the court noted although Dean brought a portion of the policies into the marriage, no evidence showed their cash value at the time the parties entered into the marriage. Due to the length of this sixteen-year marriage, the court found it unlikely the current cash value was an accurate representation of the premarital net worth; instead, the court found it more likely much of the current cash value accrued during the marriage.

000310

I. Our review of this case is de novo. *In re marriage of Shivers*, 557 N.W.2d 532, 534 (Iowa App. 1996) (citing Iowa R. App. P. 4). We must examine the entire record and adjudicate anew the equity between the parties. *Id.* We must look primarily to the particular circumstances of this case, which makes prior cases of little precedential value. *In re marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996). The trial court's findings of fact are entitled to weight, but they are not binding upon us. *Id.* (citing Iowa R. App. P. 14(f)(7)).

II. Dean argues the trial court should not have included these premarital assets in the property division. He argues no evidence showed that either party made any contributions to this asset during the marriage, and any appreciation is therefore passive and not a result of any tangible contributions by either party. Kathleen counters Dean produced no evidence of the cash value of the policies at the time of the marriage and she made tangible contributions to the marriage.

We believe it was proper for the trial court to include the policies in the property division. Kathleen's contributions of homemaking and child care services are specifically recognized by statute as one of many factors to consider when dividing marital property. Iowa Code section 598.21(1)(c) (1993). Under the circumstances of this case and the lengthy and nonexclusive list of relevant considerations, *see id.* section 598.21(1)(a)-(m), we believe the trial court's property division achieves equity between the parties.

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Kathleen argues the amount and duration of alimony awarded is inadequate and inequitable. The obligation to pay alimony will cease when the youngest child graduates from high school. Kathleen requests alimony in the amount of $100 per week for eight years. Such an award, she argues, will guarantee a minimal standard of living and maintain a home for the children if they attend college.

Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support. *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996). Alimony is not an absolute right, but equity may require it based on the circumstances of a particular case when evaluated in light of the factors listed in Iowa Code section 598.21(3). *Id.* We consider the property division and alimony together in determining their sufficiency. *In re Marriage of Sychra*, 552 N.W.2d 907, 908 (Iowa App. 1996). Alimony is justified "when the distribution of the assets of the marriage does not equalize the equities and economic disadvantages suffered in marriage by the party seeking the alimony who also has a need for support." *Id.*

The amount and duration of alimony will differ according to the purpose it is designed to serve. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866-67 (Iowa 1996). Because Kathleen is already employed and has no plans to continue her education or pursue vocational training, rehabilitative alimony is not appropriate. Neither is reimbursement alimony; Kathleen did not make economic sacrifices that directly enhanced Dean's earning capacity. Rather, we characterize Dean's obligation

as traditional alimony, which is payable for life or for so long as a dependent spouse is incapable of self-support. *See id.* (defining different types of alimony).

We believe equity requires Dean's alimony obligation to continue past the youngest child's high school graduation. Kathleen received property valued at $55,090, but two-thirds are illiquid or deferred pension benefits. She maintained the home and raised the children because Dean was frequently out of town on work assignments. For most of the sixteen years she was married to Dean, Kathleen earned very little income and presently earns $6.80 per hour at a part-time job. Dean's employment is secure and provides him with significantly more income than Kathleen earns. Thus, he can afford to pay an increased alimony obligation.

We modify the alimony award to increase Dean's obligation to $200 per month, beginning when his obligation to pay child support for the youngest child ceases. Until then, Dean's current obligation will continue. When the alimony increases to $200 per month, it shall commence on the first day of the month following the last payment of child support and shall continue for a period of five years thereafter.

AFFIRMED AS MODIFIED.