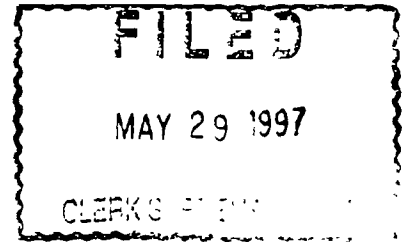


IN THE COURT OF APPEALS OF IOWA

No. 6-700 / 95-1924



IN RE THE MARRIAGE OF PATRICIA SHARON COON AND CHARLES ARTHUR COON

Upon the Petition of
PATRICIA SHARON COON,
Appellee/Cross-Appellant,

000101

And Concerning
CHARLES ARTHUR COON,
Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Linn County, Thomas M. Horan,
Judge.

Charles Coon appeals the dissolution decree. **AFFIRMED AS MODIFIED.**

Sherry L. Schulte of White & Johnson, P.C., Cedar Rapids, for appellant.

Richard C. Wenzel of Wenzel & Harms, P.C., and Carolyn J. Beyer, Cedar
Rapids, for appellee.

Heard by Huitink, P.J., and Streit and Vogel, JJ.

VOGEL, J.

Patricia and Charles Coon were married in July 1967 and they have three adult children. Charles appeals the dissolution decree contending the trial court erred (1) in determining the amount and duration of the alimony award; (2) in awarding Patricia health insurance benefits; and (3) in dividing marital property. Patricia cross-appeals contending the court erred in determining the amount of alimony and the value of Charles's business. She also contends the court should have awarded her trial attorney fees, and she requests appellate attorney fees.

Scope of review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Alimony and health insurance. The trial court awarded alimony to Patricia in the amount of \$1,000 per month until death or remarriage, and COBRA health insurance benefits for thirty-six months.

Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995); *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). Alimony is not an absolute right; an award depends on the circumstances of each particular case. *In re Marriage*

of Welch, 476 N.W.2d 104, 110 (Iowa App. 1991). We consider property division and alimony together in evaluating their individual sufficiency. *Id.* The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3) (1995).

In 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).

Charles and Patricia were married over twenty-eight years, and at the time of trial Charles was fifty-five and Patricia was fifty-three. Both parties were in good health. Patricia obtained an art degree from the University of Iowa in 1965. Patricia stopped working outside the home about six months after their marriage when she became pregnant.

In 1978, Patricia became a half-owner of a small tailoring business, Pinhook Tailoring (Pinhook), for \$150, and a full owner in 1989. In 1994, Patricia's business had gross receipts of \$18,260, with net profits of \$8742. The trial court valued Pinhook at \$1645.

Charles worked for IES for thirty years. His salary from IES for 1994 was \$44,781, with a net monthly income of \$2386.65. In addition, Charles has income from a restaurant/bar, Sutliff Store (Sutliff), he purchased in 1990. Sutliff's profits

in 1994 were \$5278 in addition to other benefits, such as the meals Charles eats there.

The thrust of Charles's argument to reduce the amount of alimony awarded is that Patricia, with her tailoring skills, should be able to earn more money than she does operating her own business. We acknowledge that Patricia could find hourly tailoring work that may provide greater income for herself, however, we must also consider other factors. Patricia was fifty-three years old at the time of trial and has no history of earning more than she currently earns. It would not be reasonable to force Patricia out of the business she has developed since 1978 when she continues to work hard at the skills she has developed. After reviewing the facts and the entire record before us, we conclude that the award of alimony is appropriate. However, we modify the award so that the alimony will decrease when Charles reaches age sixty-five. Thus, Charles will pay Patricia alimony in the amount of \$1,000 per month until he reaches age sixty-five, then \$500 per month thereafter until Patricia's death or remarriage.

The trial court ordered that Charles cover Patricia's health insurance under his COBRA plan at IES Industries. Charles claims this is excessive. We disagree. The trial court specifically ordered "[t]his obligation shall cease at such time as either health and medical coverage is not able to be provided under the IES Industries plan or Pat has obtained her own insurance policy, whichever first occurs." We find this ruling both reasonable and appropriate; we accordingly affirm on this issue.

II. Valuation of Sutliff. Charles purchased Sutliff for \$28,500 in 1990. Charles claims the court overvalued Sutliff at \$74,291.39 and Patricia argues the court undervalued it. Dennis Redmond, a certified public accountant, testified on behalf of Charles regarding the value of Sutliff. He estimated its value at \$55,000 and \$62,000 using two different methodologies. The bank account Charles held for Sutliff contained \$29,148.39 as of May 31, 1995. Charles testified he takes a personal withdrawal of \$500 to \$1000 every three months from Sutliff's account. We note Charles is Sutliff's sole shareholder. The amount of corporate earnings distributed to him is entirely under his control. *See In re Marriage of Beattie*, No. 15/95-1966 (Iowa Apr. 23, 1997).

At trial, Patricia presented the testimony of Richard D. Raymon, a practicing attorney with a specialty in tax law. Mr. Raymon testified he had represented hundreds of bar owners and managers, and through his own family corporation had personally run, built, and managed or supervised more than fifty-three bars. Mr. Raymon, in using three valuation methods, valued the business anywhere from \$96,000 to \$109,000.

In examining property valuations, we have generally upheld values set by the trial courts if they are "within the permissible range of evidence." *See In re Brainard*, 523 N.W.2d 611, 616 (Iowa App. 1994). We find the court duly considered the credibility of the witnesses and further find the \$74,291.39 value was within the permissible range of evidence presented to the trial court. We affirm on this issue.

III. Attorney fees. Patricia counter-claims the trial court should have awarded her attorney fees, and further requests an attorney fee award on this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996). The trial court did not give any reason for denying Patricia attorney fees. Given the disparity in available income, we conclude Patricia should receive a \$2500 award for her trial level attorney fees. We determine, however, that Patricia is not entitled to an award of appellate attorney fees. Costs on appeal are split one-half each.

AFFIRMED AS MODIFIED.