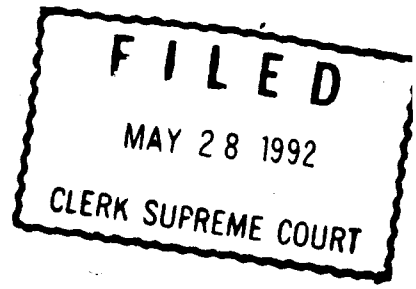
IN THE COURT OF APPEALS OF IOWA

No. 2-138 / 91-1509



IN RE THE MARRIAGE OF BERNADINE WILTFANG AND BERNHARD G. WILTFANG

Upon the Petition of
BERNADINE WILTFANG,

Appellee,

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And Concerning
BERNHARD G. WILTFANG,

Appellant.

Appeal from the Iowa District Court for Jasper County, Robert O. Frederick, Judge.

Respondent husband appeals the decree dissolving the parties' marriage. **AFFIRMED.**

Charles L. Fairall of Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy, Marshalltown, for appellant.

Theodore T. Duffield of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J.

Bernadine and Bernhard Wiltfang were married in 1952 and have one child, an adult daughter. When the couple was first married, Bernhard farmed. During the marriage, Bernhard earned an undergraduate and medical degree, attending the University of Iowa and Creighton Medical School. When he finished school, the parties moved to Marion, Iowa where Bernhard completed a one-year internship at Mercy St. Luke's in Cedar Rapids. In 1967 the parties moved to Grinnell, Iowa and Bernhard began a family medical practice. In 1974 Bernhard entered into a medical practice partnership with another physician. During the 1980s he also began managing the Grinnell Hospital emergency room and a clinic affiliated with Mercy Hospital of Des Moines. In 1988 Bernhard's share of the partnership profits equaled $217,000. In 1989 his share was $233,000. In 1990 his share grew to $248,000.

Bernadine has had one year of nurse's training. She worked for a nursing service and held various other jobs while Bernhard was in medical school, and she worked in Bernhard's office until 1974. For the last eighteen years, however, she has not worked outside the home.

On July 20, 1990, Bernadine commenced this action to dissolve the parties' marriage. The same day, Bernhard discontinued his medical partnership and began practicing once again as a sole-practitioner. In 1991 Bernhard earned $150,000 from his medical practice.

In the dissolution decree, the district court directed Bernhard to pay Bernadine alimony of $3000 per month for ten years beginning August 1, 1991. The court further ordered Bernhard to pay Bernadine $6000 toward her trial attorney fees. The court also approved the parties' stipulation regarding the division of their property. Under the stipulation, each party received property valued at over $300,000. The parties had also had other property they had placed in an irrevocable inter vivos trust in which they are equal income beneficiaries and their daughter is the residual beneficiary. Although the trust has not produced any income in the past, it was projected to have income of $33,000 in 1992.

Bernhard has appealed from the dissolution decree. He asserts the awards of alimony and trial attorney fees are excessive. 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 witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). On our review, we affirm the trial court.

I. **Alimony.** We first discuss the propriety of the amount and duration of the alimony award. Alimony is a stipend made to one ex-spouse in lieu of the other's legal

obligation for support. In re Marriage of Francis, 442 N.W.2d 59, 62 (Iowa 1989) (citing In re Marriage of Wegner, 434 N.W.2d 397, 398 (Iowa 1988); In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981)). The award is not an absolute right but, instead, depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award is made only 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). The Code directs the court to consider the earning capacities of both parties together with their present standards of living and ability to pay balanced against their relative needs. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). If made, the awards are commonly designed to serve one or more of three general purposes. See Francis, 442 N.W.2d at 62-63. The award will differ in its amount and duration according to the purpose it is designed to serve. See id. at 62 (citing H. Clark, The Law of Domestic Relations in the United States 641-44 (2d ed. 1988)).

Rehabilitative alimony is awarded "to establish the capacity for self-support in the receiving spouse, through developing previous skills or providing new training to develop potential supportive skills." Sackett & Munyon, Alimony: A Retreat From Traditional Concepts of Spousal Support, 35 Drake L. Rev. 297, 314 (1985-86)(quoting

Pierson v. Pierson, 462 So. 2d 613, 614 (Fla. Dist. Ct. App. 1985)); see also Francis, 442 N.W.2d at 63; In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). Reimbursement alimony is predicated on the goal of compensating one spouse for the economic sacrifices he or she made during the marriage which directly enhanced the earning capacity of the other. See Francis, 442 N.W.2d at 62. Reimbursement alimony is similar to a property award, but it is based on future earning capacity rather than a division of the existing tangible assets. Id. Permanent maintenance, or traditional alimony, is properly awarded "in the case of an older, dependent spouse in a lengthy 'traditional' marriage where there is little likelihood that the dependent spouse will become self-sufficient." See Sackett & Munyon, supra, at 318-19 (citing Petersen v. Petersen, 367 N.W.2d 90, 94 (Minn. App. 1985)).

Bernadine and Bernhard were married for almost forty years. Bernadine is now sixty years old. It is simply not feasible for her to begin developing the skills necessary to become self-supporting considering her age, level of education and experience. A large award of rehabilitative alimony is, therefore, not warranted.

Generally a large award of reimbursement alimony would not be warranted under similar circumstances. It is not unusual that a spouse who has sacrificed to put the other through school will be reimbursed by a lengthy marriage in which the couple enjoys a higher standard of living due to

the increased earning capacity the advanced degree affords. See Francis, 442 N.W.2d at 62-63 (citing Petersen v. Petersen, 737 P.2d 237, 242 n.4 (Utah App 1987)). However, this case is somewhat unusual. During their marriage, the Wiltfangs led a rather frugal lifestyle. As such, Bernadine cannot be said to have been reimbursed in that manner. She did not experience the higher standard of living one might expect. Therefore, the trial court's award of alimony is properly designed to reimburse Bernadine for her sacrifices during the marriage which directly resulted in Bernhard's increased earning capacity.

An award of traditional alimony is also clearly appropriate in this context. The trial court's order that Bernhard pay Bernadine $3000 per month serves both as reimbursement and as traditional alimony. The $3000 monthly amount is necessary to afford Bernadine a standard of living reasonably comparable to that she enjoyed during the marriage. The ten-year duration of the award certainly cannot be said to be inequitable under the circumstances of this case.

Neither are we persuaded by Bernhard's assertion the award should terminate upon the earliest of the remarriage of Bernadine or the death of either party. None of these events would negate Bernhard's duty to reimburse Bernadine for her sacrifices made during the marriage. We affirm the award.

II. Trial Attorney Fees. Bernhard also challenges the trial court's award to Bernadine of $6000 in trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award, the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982). We affirm the award.

III. Appellate Attorney Fees. Finally, Bernadine requests an award of appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). 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 Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). After considering these factors, we are inclined to grant Bernadine an award of appellate attorney fees, but we are unable to find, in either the record or Bernadine's brief, a certificate of the amount of those fees. We, therefore, decline to grant the request.

The costs of this appeal are taxed to Bernhard.

For all the reasons stated, the judgment of the district court is affirmed.

AFFIRMED.