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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-181 / 91-1275

IN RE THE MARRIAGE OF JOHN ANTHONY THORNTON AND KARLA KAY THORNTON

Upon the Petition of
JOHN ANTHONY THORNTON,

Appellee,

And Concerning
KARLA KAY THORNTON,

Appellant.

Appeal from the Iowa District Court for Kossuth County, James L. McDonald, Judge.

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

Gregg A. Buchanan of Buchanan, Dotson, Buchanan, Bibler & Buchanan, Algona, for appellant.

Eldon J. Winkel, Algona, for appellee.

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

SCHLEGEL, P.J.

The respondent wife appeals the district court's decree dissolving the parties' marriage and asserts the trial court erred in: (1) determining the property division; (2) establishing the amount and duration of alimony; and (3) awarding attorney fees.

John and Karla Thornton were married May 12, 1979, and were separated in November 1990. No children were born to the marriage. The value of the properties brought into the marriage by each party was essentially equal. During the marriage, John worked for a moving and storage company; he currently earns $2,634 gross per month. Karla worked as a retail clerk and then as a bookkeeper. She now earns $875 gross per month as a bookkeeper. Karla currently attends night classes in pursuit of a business degree. Each party has two years of college credit. Both parties are thirty-five years of age.

In its dissolution decree, entered August 5, 1991, the district court awarded John a golf cart and trailer, a pickup truck, household goods and small items of personal property, the bank accounts and insurance policies in his name, and his retirement account. The district court awarded Karla a car, household goods and small items of personal property, and her retirement account. The court ordered the parties' house sold and the net proceeds equally divided after payment of the lien on Karla's car. In addition, the court directed John to transfer a $4,000

lump sum payment to Karla, specifically from John's half of the net proceeds from the sale of the house. The district court also directed John to pay debts of $2,800. Karla was awarded alimony of $200 per month for forty-eight months and attorney fees of $1,000. Karla has appealed. Our scope of review is de novo. Iowa R. App. P. 4.

Initially, Karla contends the district court's alimony award is inadequate in both amount and duration. When 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) (citation omitted). Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made 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).

Having thoughtfully applied these principles to the circumstances of this case, we affirm the district court's alimony award. Karla has completed two years of college credit and is currently pursuing a business degree. The record indicates the completion of her college education

will enable Karla to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. John's contribution of $200 per month for forty-eight months toward this end is an appropriate award under the circumstances.

Next, Karla argues the district court's property division is inequitable. The partners in a marriage are "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). Having reviewed the record in light of these factors, we conclude the district court's property division was equitable and fair.

Karla states in her brief: "The purposes in raising this issue on appeal are to (1) demonstrate that Karla received no benefit from the division of property which would offset the previously-described erroneous award of alimony and (2) to ask this Court to reverse the Trial Court as to two particular items of property." As we have stated previously, we do not find Karla's alimony award to be "erroneous." Each party brought substantially the same amount of property to the marriage, and the trial court's property division is an equitable one.

Finally, Karla asserts her attorney fee award was inadequate. 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). Under the circumstances of the present case, the trial court's award requiring John to pay $1,000 toward Karla's attorney fees is appropriate.

AFFIRMED.