IN THE COURT OF APPEALS OF IOWA

No. 1999-40 (9-195) / 98-1056
Filed August 27, 1999

IN RE THE MARRIAGE OF JOHN PHILLIP STROUSS, JR. AND JANIECE ELISABETH STROUSS

Upon the Petition of
JOHN PHILLIP STROUSS, JR.,

Petitioner-Appellant\Cross-Appellee,

And Concerning
JANIECE ELISABETH STROUSS,

Respondent-Appellee\Cross-Appellant.

FILED
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Appeal from the Iowa District Court for Jefferson County, Robert Bates, Judge.

The petitioner appeals and the respondent cross-appeals from the economic provisions of the dissolution decree. **AFFIRMED.**

Myron L. Gookin of Foss, Kuiken & Gookin, P.C., Fairfield, for appellant.

Allan C. Orsborn of Orsborn, Bauerle & Milani, L.L.P., Ottumwa, for appellee.

Considered by Sackett, C.J., and Vogel, and Zimmer, JJ.

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ZIMMER, J.

John Strouss appeals and Janiece Strouss cross-appeals the economic provisions of the parties' decree of dissolution of marriage. We affirm.

I. Background Facts and Proceedings. John and Janiece Strouss married in June 1988. Their nine-year, eleven-month marriage was dissolved in May 1998. John has two children from a prior marriage. Janiece has no children. At the time of trial, John was forty-eight years old and Janiece was fifty-six.

John owns and operates Strouss & Associates, Inc., a computer software consulting company in Fairfield, Iowa. The company was formed two years before the parties married, but was not incorporated until after they married. At the time of trial, John was the only full-time employee. The company also employed one part-time worker. At the time of trial, Janiece was employed as a secretary in Carpentersville, Illinois.

The district court awarded Janiece rehabilitative alimony in the amount of $1500 per month for thirty-six months. John was ordered to pay Janiece a cash property settlement of $68,113 as part of a $117,701 property award.

Both parties appeal. John contends the district court erred in awarding alimony, valuing the business, and factoring improper tax consequences into the division of the property and debts. Janiece cross-appeals, alleging the district court erred in failing to award permanent alimony. She also requests appellate attorney's fees.

II. Scope of Review. Our review of the economic provisions of divorce decree is de novo. *See* Iowa R. App. P. 4; *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992). We examine the entire record and adjudicate anew the issues properly presented on appeal. *See 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 are not bound by them *See* Iowa R. App. P. 14(f)(7); *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852 (Iowa App. 1998). We give deference to the factual findings involving credibility of witnesses because the district had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *See In re Marriage of Brown*, 487 N.W 2d at 332 Prior cases have little precedential value in reviewing economic provisions of a divorce decree, and we must rest our decision primarily on the particular circumstances of the parties presently before us. *See In re Marriage of Gaer*, 476 N.W.2d 324, 326 (Iowa 1991). We disturb the district court's ruling only when there has been a failure to do equity. *See In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

III. Merits. John contends the trial court erred in awarding rehabilitative alimony in the amount of $1500 per month for thirty-six months. He argues Janiece should not receive any alimony, or alternatively that the award should be reduced. Janiece argues on cross-appeal the district court erred in failing to award her permanent (i.e. traditional) alimony.

Alimony is not an absolute right. *See In re Marriage of Applegate*, 567 N.W.2d 671, 675 (Iowa App. 1997). Rather, it is a discretionary award made after considering those factors listed in Iowa Code section 598.21(3). *See id.* We consider property division and alimony together in evaluating their individual sufficiency. *See In re Marriage of Tzortzoudakis*, 507 N.W.2d 183, 186 (Iowa App. 1993) (followed in considering sufficiency of property division); *In re Marriage of Alexander*, 478 N.W.2d 420, 423 (Iowa App. 1991) (followed in considering sufficiency of alimony award). The determining factor is what is fair and equitable in each particular circumstance. *See id.* Thus, the ability of one spouse to pay alimony must be balanced against the needs of the other spouse. *See In re Marriage of Stark*, 542 N.W.2d 260, 262 (Iowa App. 1995).

Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and retraining. *See In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996). Its objective is self-sufficiency. *Id.* Traditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support. *Id.* It usually follows long-term marriages, where life patterns have largely been set and the earning potential of both parties can be predicted with some reliability. *See In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989).

John is a graduate of the University of Michigan with a degree in sociology. Janiece came into the marriage with a bachelor of arts in elementary education. She obtained a master's degree in the science of creative intelligence from Maharishi

International University during the marriage. Janiece currently works as a secretary in a suburb of Chicago. Her monthly income is $1,477.38. At the time of trial, Janiece was being provided a room at her employer's home, who is also a friend John continues to operate his computer business in Fairfield, Iowa.

After carefully reviewing the record, we conclude the circumstances of this case do not warrant permanent alimony Janiece is well-educated and has full-time employment. She is bright, responsible, and capable of maintaining gainful employment. She has also received half of the marital assets, including a substantial cash property settlement.

However, the record does support a period of rehabilitative alimony Prior to the marriage, her employment was sporadic. She was also out of the workforce throughout most of the parties' marriage. However, Janiece did provide significant domestic services for John. She also helped care for the needs of his two sons, both of whom lived with the parties at various time during the marriage.

While the parties were married, all of the salary from the corporation was attributed to John, so no social security contribution was made on behalf of Janiece. Because the parties were married for less than ten years, Janiece has lost any right to claim social security as John's spouse.[1] Although currently employed, Janiece has

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[1] A divorced spouse of an individual entitled to social security retirement or disability benefits qualifies for spousal benefits if the divorced spouse was married to the entitlee for at least ten years and satisfies certain other requirements. *See* 42 U S C §§ 402(b)(1)(A)–(D), 402(c)(1)(A)–(D), 416(d)(1), 416(d)(4) (1994); *In re Marriage of Boyer*, 538 N.W.2d 293, 295 (Iowa 1995).

Our courts have previously recognized the presence or absence of social security

less earning capacity than John because of her limited workplace experience. We determine a period of rehabilitative alimony will afford her opportunity to improve her workplace skills and better her financial position.

John contends the award of $1500 per month in alimony is more than he can afford. The record shows John's income from his business has been variable At the time of trial, John anticipated earnings of approximately $5,000 per month for 1998 and thereafter. John and Janiece reported $107,249 in Subchapter S income from the corporation in 1997, an all time high for the company. Overall, John's business has been successful since its inception.

We believe the district court's award of $1,500 per month in alimony for thirty-six months is appropriate for achieving the self-sufficiency goals of rehabilitative alimony without exceeding John's ability to pay.

We have also considered John's remaining arguments. After de novo review of the record, we conclude the trial court's valuation of the marital assets is within the permissible range of evidence. *See In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa App. 1999). Furthermore, the court's distribution of those assets is equitable and just and is supported by the evidence. We affirm the trial court's distribution of the marital assets.

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benefits may be considered in analyzing the equity of the financial aspects of a dissolution *See Locke v. Locke*, 263 N.W.2d 694, 696 (Iowa 1978); *In re Marriage of Pratt*, 489 N W 2d 56, 58 (Iowa App. 1992).

IV. Appellate Attorney Fees. Janiece requests appellate attorney fees. An award of attorney fees on appeal of the economic provisions of a divorce decree is not a matter of right, but rests within the discretion of the court. *See In re Marriage of Spiegel*, 553 N.W.2d 309, 320 (Iowa 1996) The court considers the financial positions of the parties and whether the party making the request was obligated to defend the district court's decision on appeal *See id.* We decline to award appellate attorney fees. Costs on appeal are to be split equally between the parties

AFFIRMED.