

IN THE COURT OF APPEALS OF IOWA

No. 1-78 / 90-1138

FILED

AUG 27 1991

CLERK SUPREME COURT

IN RE THE MARRIAGE OF BETTE A. GOLL AND CHARLES A. GOLL

Upon the Petition of

BETTE A. GOLL,

Appellant,

And Concerning

CHARLES A. GOLL,

Appellee.

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Appeal from the Iowa District Court for Hancock County,
Gilbert K. Bovard, Judge.

Petitioner appeals from the economic provisions of a
dissolution decree. **AFFIRMED.**

Steven R. Bakke, Forest City, for appellant.

R. Michael Sweesy, Mason City, for appellee.

Considered by Oxberger, C.J., and Donielson and Hayden,
JJ.

DONIELSON, J.

Bette A. Goll and Charles A. Goll were married on June 27, 1955. At that time, Charles had graduated from high school and Bette was in grade eleven. By the time Bette petitioned for dissolution, the parties' four children were adults. The parties had not accumulated substantial assets during the marriage. Charles worked in a variety of laborer jobs during the marriage while Bette became a homemaker for the parties' four children. When Charles's father died in 1975, Charles became, and still is, a self-employed farmer growing grain and raising hogs.

Pursuant to their stipulation, each kept his or her inherited property. The stipulation provided Charles his one-third remainder interest in the 200 acre parcel of land inherited from his father, 67 acres of land being purchased, two motor vehicles, certain securities, farm machinery and equipment, and the livestock and grain. Charles also assumed \$122,089.41 of family debts.

Bette received an automobile, a mobile home, one-half of deferred co-op dividends, and a cash property settlement of \$54,750 to be paid by Charles. This cash settlement was to be paid in an initial lump sum of \$22,500, with the remainder to be paid in ten annual installments. Bette assumed a \$3,000 debt incurred after their separation.

The issue of alimony was submitted to the trial court. Bette insisted that her physical condition and lack of experience in the job market were such that she could not

work to help support herself. Charles and the district court disagreed. The district court concluded that under all the circumstances Charles was to pay Bette alimony of \$500 per month for a period of 36 months. Additionally, the court ordered Charles to pay \$1,000 towards Bette's attorney fees.

Bette appeals arguing that both the duration and amount of the alimony should be increased. She requests a permanent monthly amount of \$1,200. She also requests both an increased award of trial attorney fees and an award of appellate attorney fees.

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 are not bound by them. Iowa R. App. P. 14(f)(7).

I. Alimony. Alimony is an allowance to one ex-spouse in lieu of the other's legal obligation for support. See In re Marriage of Hitchcock, 309 N.W.2d 432 (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

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When considering an award of spousal support, it is appropriate to take into account the property settlement that has been achieved, while keeping in mind the differing purposes of each. In re Marriage of Hitchcock, 309 N.W.2d at 437. The court must also consider (1) the earning capacities of the parties, (2) their present standards of living, and (3) the ability of the supporting spouse to pay, balanced against the receiving spouse's relative needs. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983).

The trial court found that a long-term award of alimony would be merely duplicative, adding unduly to the benefits achieved through the adequate property settlement. The property settlement to which the parties stipulated made an equitable distribution of the parties' accumulated property. The settlement provided Bette with a substantial present cash award and an annual income for a period of eleven years.

As affected by the property settlement, Charles' annual income will be approximately \$17,900 less payments made toward miscellaneous debts totaling \$16,000. Were Bette to continue to earn wages at her 1988 level, her annual income for the next three years would be approximately \$19,800 plus investment income.

The trial court believed, and we agree, that the appropriate award of alimony under the circumstances of this case is one of rehabilitative support. The trial court found that Bette can and has held employment. As recently as 1989, Bette worked full-time. The court found that there existed "a serious question as to whether [Bette] has exercised her existing abilities optimally and whether she has made serious effort to enhance her employment potential." The trial court pointed to the testimony of Bette's doctor to the effect that her attitude will have a substantial bearing on what she can do; and in turn, that which she can do will have a substantial effect on her attitude.

The trial court's award of rehabilitative alimony was intended to encourage Bette to seek more stimulating and lucrative employment, thereby improving her health and financial status at the same time. We agree with the trial court and affirm both the amount and duration of the award.

II. 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 are unable to find that the trial court abused its discretion in making its award of attorney fees. We affirm the trial court's award.

III. 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). In light of these considerations, we order that each party shall pay his or her own appellate attorney fees.

The costs of this appeal are taxed to Bette.

For all the reasons stated, the trial court's judgment is affirmed.

AFFIRMED.

OXBERGER, C.J. (dissenting)

I respectfully dissent. Bette is capable of earning \$10,000 per year, but not likely to increase her earning capacity due to age, lack of career development in previous years, and present health. Therefore, I conclude rehabilitative alimony will not correct Bette's limited career opportunities. Bette's income from work, and her share of the property settlement, will not provide her sufficient funds to maintain the life style she had during the marriage. I would modify the decree to increase the length of time Charles would pay alimony to Bette.