FILED
MAY 04 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-517 / 92-19

IN RE THE MARRIAGE OF PATRICIA K. MILLER AND WILLIAM J. MILLER

Upon the Petition of

PATRICIA K. MILLER,

Appellee,

And Concerning

WILLIAM J. MILLER,

Appellant.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

The husband appeals the economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Henry E. Nathanson of Johnston, Larson, Potterfield, Zimmermann & Nathanson, P.C., Cedar Rapids, for appellant.

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

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

HABHAB, J. 000422

Patricia and William Miller were married on February 11, 1977. The parties have two children: Cheryl, born on December 22, 1978, and Jennifer, born on June 19, 1981.

William was born on December 17, 1952. He is employed by Iowa Electric Light and Power Company as an engineer. He has income of about $66,000 and net monthly income of about $3,600. William obtained a bachelor's degree in engineering before the parties' marriage.

Patricia was born on November 10, 1950. She is presently employed part-time as a registered nurse at St. Luke's Hospital in Cedar Rapids, Iowa, where she has income of about $20,956 and net monthly income of about $1,092. During the marriage Patricia attended Kirkwood Community College and obtained an associate degree in nursing. She became certified as a registered nurse in June 1991.

Patricia testified she could not find full-time employment as a registered nurse at the two hospitals in Cedar Rapids because she did not have a bachelor's degree in nursing. She planned to attend Coe College to obtain a bachelor's degree. Patricia intended to continue working part-time and go to school part-time. Under this plan she estimated it would take her an additional six years to complete her degree.

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Patricia filed a petition for dissolution of marriage on January 22, 1991. The parties entered into a stipulation on all issues except alimony.

On December 4, 1991, the district court entered a dissolution decree adopting the parties' stipulation. The parties agreed to joint legal custody of the children, with Patricia having primary physical care. William agreed to pay child support of $1,120 per month for the two children. The property was divided to give Patricia assets worth about $74,000 and William assets worth about $81,000. Patricia was also awarded one-half of William's pension with Iowa Electric.

The court determined Patricia should receive rehabilitative alimony to enable her to complete her education. The court ordered William to pay alimony of $250 per month for seventy-two months, or until William died, or until she completed her bachelor's degree at Coe College, whichever occurred first.

Patricia filed a motion pursuant to Iowa Rule of Civil Procedure 179(b), asking that the decree not specifically require her to attend Coe College in order to receive alimony. The district court amended the decree on December 31, 1991, to delete the reference to Coe College. William appealed.

Our scope of review in this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference

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because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

William contends Patricia is not entitled to rehabilitative alimony. He points out she is already working as a registered nurse and would be able to support herself if she worked full-time. He believes Patricia could find full-time employment without having her bachelor's degree if she applied at more places.

In the alternative, William claims the duration of the alimony payments should be reduced. Patricia testified she could complete her degree in two years if she went to school full-time. William believes that if Patricia is awarded rehabilitative alimony, the award should cease after two years.

Furthermore, William contends the district court should have ordered that the alimony payments would terminate if Patricia quit college.

Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). When determining the appropriateness of alimony, the court should consider the earning capacity of each party. Id. Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a

limited period of reeducation or retraining following a divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. In re Marriage of Francis, 442 N.W.2d 59, 64 (Iowa 1989). Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic independence of the ex-spouse. Id.

We find Patricia is entitled to rehabilitative alimony. We agree with the district court that obtaining a bachelor's degree should increase Patricia's earning capacity. However, we determine the award should be reduced to twenty-four months. Patricia herself testified she could complete her degree in two years if she went to school full-time. The evidence also showed she had very good grades while attending Kirkwood. We determine Patricia should be able to finish her degree in two years.

This will allow Patricia to become self-supporting sooner. The evidence showed that if Patricia worked full-time at her current rate of pay she has the ability to earn a good income, about $26,000. By awarding Patricia alimony of $250 per month for twenty-four months, she has time to finish her degree and become situated in the job market. In the event Patricia quits college during the twenty-four-month period, the payments shall cease at that time.

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Patricia asks for attorney fees for this appeal. 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 Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We determine Patricia should pay her own appellate attorney fees.

Costs of this appeal are assessed to William Miller.

AFFIRMED AS MODIFIED.