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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

286

IN RE THE MARRIAGE OF HENRY B. WALLACE AND BETTY J. WALLACE

Upon the Petition of)

HENRY B. WALLACE,) Filed November 19, 1979

Petitioner-Appellant,)

And Concerning) 232

BETTY J. WALLACE,) 63462 & 62881

Respondent-Appellee.)

Appeal from Polk District Court - Don L. Tidrick, Judge.

In a combined appeal, husband challenges trial court's order for temporary support granted wife and trial court's ruling on wife's application for further support and related matters. AFFIRMED.

David W. Belin & Philip E. Stoffregen of Belin, Harris, Helmick & Lovrien, Des Moines, for petitioner-appellant.

Ross H. Sidney of Grefe & Sidney, Des Moines, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

JOHNSON, J.

Petitioner-husband, Henry B. Wallace, appeals (1) trial court's order for temporary support granted respondent-wife, Betty J. Wallace, and (2) trial court's ruling on respondent's application for further support and related matters. For purposes of judicial economy, the two appeals have been consolidated, presenting this court with petitioner's allegations trial court erred: (1) in awarding respondent temporary alimony; (2) in requiring petitioner pay respondent $10,000 for use in seeking office in two national patriotic societies; and (3) in ordering petitioner pay respondent suit money and attorney fees during pendency of the dissolution action. We affirm.

Respondent, age 52, and petitioner, age 63, were married on November 6, 1963. No children were born of this marriage.[1] Petitioner is a major stockholder and, prior to his recent retirement, an employee of Pioneer Hi-bred International, Inc. Respondent has not been gainfully employed during the marriage. With the support and approval of her husband, however, respondent has devoted substantial time and energy to various charitable, fraternal and political societies, such as the National Board of Daughters of the American Revolution and Daughters of Founders and Patriots of America. In 1977, petitioner's gross income exceeded $1,500,000, while respondent received interest and annuities from stocks and bonds in excess of $40,000. Petitioner's assets are valued in excess of $10,000,000; respondent's stocks and bonds (received either as gifts from petitioner or acquired as proceeds from such gifts) have a combined value of about $750,000. Respondent presently is recovering from reconstructive surgery; petitioner is in good health.

On October 20, 1978, trial court ordered petitioner pay respondent $10,000 as an interim temporary alimony award. This award was made pending final determination of petitioner's obligation to respondent during separation prior to the dissolution. In a temporary ruling filed November 15, 1978, trial court decreed petitioner must pay respondent: (1) temporary support in a monthly amount of $3,000 from December 1, 1978, through February 1, 1979; (2) temporary attorney fees in the amount of $5,000; and (3) suit money in the amount of $10,000.[2] By Ruling filed April 17, 1979, trial court ordered the $3,000 monthly temporary alimony payments reinstituted beginning May 1, 1979, and to continue thereafter until "these proceedings are finally determined and

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[1] Both parties have adult children from previous marriages.

[2] These rulings constitute the basis of petitioner's first appeal.

decided by the court."[3] In that ruling, trial court further ordered petitioner pay respondent $10,000 for her use in seeking national office for the Daughters of the American Revolution and the Daughters of Founders and Patriots of America.

I. Scope of Review. Appellate review of a dissolution proceeding is **de novo.** Iowa R. App. P. 4; Zinger v. Zinger, 243 N.W.2d 639, 640 (Iowa 1976). Our review is guided by section 598.11, The Code 1979, which authorizes the court to "order either party to pay the clerk a sum of money for the separate support and maintenance of the other party . . . and to enable such party to prosecute or defend the action . . .", and section 598.14, The Code 1979, which directs the court to base its award on "the age and sex of the applicant, the physical and pecuniary conditions of the parties, and such other matters as are pertinent . . . ."

II. Temporary Alimony Award. Petitioner alleges trial court's award of temporary alimony was unjustified in this case because respondent has failed to adequately prove her level of need and, in any event, has independent financial means sufficient to enable her to provide for her own support and maintenance during pendency of the dissolution action.

As in all dissolution matters, precedents are of little value and each case must be decided on an **ad hoc** basis. See In re Novak's Marriage, 220 N.W.2d 592, 597 (Iowa 1974); In re Marriage of Murray, 213 N.W.2d 657, 659 (Iowa 1973).

It is well established the court, any time after filing of the petition for dissolution, may make an order for payment of temporary alimony. Hamilton v. Hamilton, 129 Iowa 628, 630, 106 N.W. 5, 6 (1906). A party may be allowed support pending suit on a showing she is without means and her husband is able to furnish them. Simpson v. Simpson, 91 Iowa 235, 340, 59 N.W. 22, 24 (1894). The amount of temporary alimony will not be interfered with on appeal absent an abuse of discretion. Hanford v. Hanford, 214 Iowa 839, 843, 240 N.W. 732, 735 (1932).[4]

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[3] As trial court apparently miscalculated the rapidity with which the matter could be resolved, respondent, on February 25, 1979, filed an application for Further Temporary Support which resulted in issuance of the order. Petitioner's second appeal is from this order.

[4] While respondent's actual support needs are not well documented, we believe the record sufficiently establishes her expenses for purposes of determining temporary support.

Applying these standards, we find trial court properly ordered petitioner pay respondent $3,000 per month temporary alimony considering her rank and station in life, her relative needs, and his ability to pay. Hanford, 214 Iowa at 843, 240 N.W. at 735. The parties lived in luxury; their home requires vast amounts of money to simply maintain it. Respondent's income is insufficient to cover the expenses. Petitioner's annual income and assets are substantially greater. "Where trial court was not persuaded respondent's income would be significantly diminished, it might rightly decide under this record that during the 'interim' petitioner should not be compelled to lead a more austere life simply because of the marriage dissolution." Hutcheson v. Hutcheson, 197 N.W.2d 594, 597 (Iowa 1972).

III. Society Awards. We further find trial court properly required petitioner be required to pay respondent's expenses for membership and office seeking in the two national political societies. As the record discloses, petitioner supported and encouraged respondent's participation in these organizations. In light of the travel and related expenses respondent will incur in these activities, the award of $10,000 by trial court was both warranted and reasonable. Respondent should not be required to deplete her own more limited resources under these circumstances.

IV. Attorney Fees and Suit Money. Petitioner also contends trial court's award of attorney fees and suit money to respondent was unjustified and excessive. This award, however, is largely within trial court's sound discretion. In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977). We will not interfere where, as in this case, no showing of abuse is made. Hanford, 214 Iowa at 843, 240 N.W. at 735. See also Nelken v. Nelken, 176 N.W.2d 195, 203 (Iowa 1970). "Bearing in mind the disparate financial circumstances of the parties involved and the complexity of the litigation, the trial court's award was appropriate." Winegard, 257 N.W.2d at 618.

Judgment of trial court is affirmed.

AFFIRMED.

All judges concur except Oxberger, C.J., and Carter, J., who dissent.

OXBERGER, C.J. (dissenting)

I dissent.

The majority states the record is minimal on respondent's claim for temporary alimony and suit money. A more accurate description would be the record is devoid of evidence supporting her need for either. The record does indicate petitioner is wealthy and able to afford the allowances awarded by the trial court. The fact remains, however, respondent established no specific needs. She failed to prove specific living expenses; instead she made general allegations as to past spending practices. The magnitude of wealth involved here does not change the basic legal issue — did respondent establish need for temporary alimony and suit money? I would reverse the trial court's temporary alimony and suit money allowances on the ground respondent failed to show requisite need.

Carter, J., joins in this dissent.