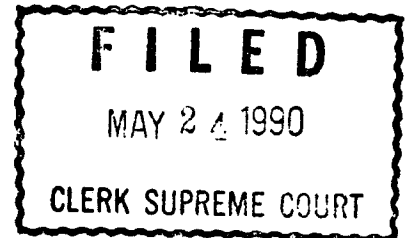


IN THE COURT OF APPEALS OF IOWA

No. 0-151 / 89-885



IN RE THE MARRIAGE OF RICHARD L. SMITH AND MARILYN J. SMITH

Upon the Petition of
RICHARD L. SMITH,

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Appellant-Cross-Appellee,

And Concerning
MARILYN J. SMITH,

Appellee-Cross-Appellant.

Appeal from the Iowa District Court for Marshall
County, Timothy J. Finn, Judge.

Appellant appeals and appellee cross-appeals from the
decree of the district court dissolving the parties'
marriage. **AFFIRMED AS MODIFIED.**

James C. Ellefson of Welp, Harrison, Brennecke & Moore,
Marshalltown, for appellant.

Curtis A. Ward of Brooks, Ward & Trout, Marshalltown,
for appellee.

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

HABHAB, J.

Appellant Richard L. Smith appeals, and appellee Marilyn J. Smith cross-appeals, from the decree of the district court dissolving the parties' marriage. Richard asserts the trial court erred in awarding Marilyn permanent alimony instead of rehabilitative alimony. Marilyn raises a number of issues involving the economic provisions of the dissolution decree. We affirm as modified.

Richard is forty-six years of age, and Marilyn, forty-seven. They were married on November 27, 1965. Richard was then a student at Iowa State University, and Marilyn had recently graduated from the aforementioned institution with a B.S. degree in elementary education. Richard ultimately obtained a B.A. in business from Wartburg College in 1969. While Richard was in school, he worked part-time as a bus driver while Marilyn worked full-time as a sales clerk and teacher.

After graduation, Richard accepted employment as an accountant. Richard is currently employed as manager of financial planning and analysis with Fisher Controls in Marshalltown. On October 22, 1969, the parties' first daughter, Laurel, was born. After Laurel's birth, Marilyn was no longer employed full-time, but she did substitute teach on occasion. Laurel is currently a student at the University of Northern Iowa. The parties' other daughter, Allison, was born on March 28, 1974. At the time of trial, Allison was a ninth-grade student.

In the fall of 1987, Marilyn returned to college at the University of Northern Iowa (UNI) to obtain a master's degree in college student personnel. Her first year of graduate school was financed through Richard's income and the partial proceeds of a loan from the Frank Pierce Trust. The loan from the trust was taken out ostensibly to finance Laurel's education, but the funds were also used for other family expenditures. In the fall of 1988, Marilyn commenced working as a part-time graduate assistant at UNI. Marilyn was due to graduate in the summer of 1989 and could expect to obtain employment in her field of expertise paying between \$16,000 and \$24,000.

On September 21, 1988, Richard filed the present action for dissolution of marriage. The district court ordered the marital home to be sold, with the net proceeds to be used to reimburse Marilyn for the \$12,000 inheritance she had received during the marriage and to repay to Richard a \$5,000 gift from his parents. The remaining proceeds, valued by the trial court at between \$15,759 and \$27,849, were to be used to pay debts totaling \$12,252. The balance of the proceeds was then to be equally divided between the parties. Richard, however, was required to pay \$2,000 of Marilyn's attorney fees from his share of the proceeds.

In dividing the household goods, the goods awarded to Marilyn were worth between \$5,900 and \$10,000 more than those goods distributed to Richard. Additionally, the trial court awarded each party an automobile; Marilyn's

1985 Buick Regal having a net value of \$2,700, while Richard's 1980 Regal was valued at \$1,000. Richard was awarded certain stock worth \$1,353.96. He was also assigned the Franklin Pierce Trust debt of \$5,390.

Richard was required to pay \$375 in child support per child per month. When Richard's obligation to pay child support for Laurel terminated, his child support for Allison is to increase to \$500 per month. Robert was ordered to pay Marilyn alimony of \$400 per month and provide insurance coverage to her until she obtains insurance through employment. When Robert is no longer required to pay for Marilyn's medical insurance, his alimony obligation was to increase to \$500 per month.

I.

Our scope of review is de novo. Iowa R. App. P. 4. Although not bound by the trial court's determination of factual findings, we will accord considerable weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). Prior cases, though helpful, have little precedential value since we must base our decision here primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). The initial issue we consider is Richard's assertion that the trial court erred in ordering him to pay permanent rather than rehabilitative alimony.

Alimony is an allowance to the ex-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; its award depends upon the unique circumstances of each particular case. In re Marriage of Sjulín, 431 N.W.2d 773, 775 (Iowa 1988); In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). In making an award of alimony, the courts are to consider those factors set out in Iowa Code section 598.21(3). See In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983).

Upon completion of her master's degree, Marilyn should be able to obtain employment in her field paying between \$16,000 and \$24,000. Her educational level should ensure continual employment for the remainder of her working years. Marilyn's age, however, obviously will retard her capacity for advancement to some degree. Nonetheless, Marilyn's employment should provide her with a pension by the time of her retirement. Additionally, she received one-half of Richard's pension. The trial court's distribution of property was quite favorable to Marilyn. She leaves this long-term marriage with virtually no debt and a majority of the parties' assets. Upon review of this record, we conclude that rehabilitative alimony for a term of ten years, rather than permanent alimony, is the correct solution in this case.

Marilyn argues that permanent alimony is necessary, and at greater amounts than ordered by the trial court, in order to enable her to live at the level to which she became accustomed during the marriage. Marilyn reasons the parties are each entitled to fifty percent of their combined net incomes, thereby achieving parity in their lifestyles. Such argument misconstrues the plain language of section 598.21(3)(f), which declares but one factor in the analysis of the alimony equation is "[t]he feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal." Neither this code section nor our precedents require parity in incomes between ex-spouses. See In re Marriage of Misol, 445 N.W.2d 411, 414 (Iowa App. 1989); In re Marriage of Haynes, 334 N.W.2d 347, 351 (Iowa App. 1983). Such a requirement would constitute a disincentive to the professional and economic advancement of both payee and payor spouses.

The amount of alimony awarded by the district court, when combined with her income, should enable Marilyn to become self-supporting at a standard of living comparable to that she enjoyed during the marriage. After ten years, however, Marilyn should have sufficiently advanced in her career that alimony no longer is necessary. Therefore, we modify the trial court's alimony award so alimony shall terminate upon Marilyn's death or remarriage, Richard's

death, or at the end of ten years, whichever event shall first occur.

II.

Marilyn argues the trial court erred in awarding Richard \$5,000 in proceeds from the sale of the marital home in order to repay him for a gift in the same amount given by his parents to enable the purchase of the parties' first home. The trial court concluded that the \$5,000 from Richard's parents was a gift solely to Richard. We concur with that finding. As such, we must apply section 598.21(2). See In re Marriage of Vrbanc, 359 N.W.2d 420, 427 (Iowa 1984). Section 598.21(2) provides:

Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

We find no inequity in setting aside the \$5,000 gift to Richard.

III.

Marilyn next argues the trial court should have ordered Richard to obtain life insurance to secure his child support and alimony obligation. We, as did the trial court, conclude that life insurance is not necessarily justified by the record here. Marilyn's alimony payments terminate upon Richard's death, thereby obviating the necessity to "insure" those payments. Additionally, social security death benefits would be available to Allison.

IV.

Marilyn also asserts it was inequitable for the trial court to require her to pay half the house payment and credit card debts, her car loan and living expenses prior to her completion of her degree. We find no inequity in requiring Marilyn to pay the aforementioned costs while she stayed at the marital home and finished her degree. Richard's net income per month is \$2,829.34. His total direct support obligation to Marilyn and his daughters totals \$1,150. Additionally, his costs for Marilyn's health insurance is \$121 per month, and his half of the house and credit card bills total \$675. After these sums are deducted from Richard's net salary, he is left with approximately \$883 on which to live. No further economic awards are justified.

V.

Marilyn also challenges the amount of attorney fees and court costs awarded by the district court. Iowa trial courts are permitted considerable discretion in allowing attorney's fees and costs in dissolution actions. In re Marriage of Morehead, 224 N.W.2d 242, 245 (Iowa 1974). We find no abuse of discretion in the amount of attorney fees and costs awarded by the trial court.

Marilyn requests attorney fees and costs on 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 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). The parties shall pay their own attorney fees. Costs on appeal are assessed at one-half to each party.

AFFIRMED AS MODIFIED.