FILED
SEP 29 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-254 / 91-1773

IN RE THE MARRIAGE OF RICHARD SNYDER AND MYRA SNYDER

Upon the Petition of
RICHARD SNYDER,

Appellee,

And Concerning
MYRA SNYDER,

Appellant.

Appeal from the Iowa District Court for Emmet County, Joseph J. Straub, Judge.

Respondent wife appeals the decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Joseph L. Fitzgibbons of Fitzgibbons Brothers, Estherville, for appellant.

Lynn Fillenwarth of Fillenwarth & Fillenwarth, Estherville, for appellee.

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

SCHLEGEL, J.

Respondent wife appeals the decree dissolving the parties' marriage. She contends the district court erred in: (1) establishing the amount of her alimony award; (2) determining her monthly net earning capacity; and (3) failing to award her attorney fees. She also requests attorney fees, both on appeal and at the trial court level.

Richard and Myra Snyder were married in March 1976. They have three children: Allen, born in March 1980; Laura, born in November 1981; and Sara, born in June 1984. During the marriage Richard worked for various railroad companies. He now earns $3,300 net per month at Burlington Northern Railroad. He is forty-one years old and is in good health. During the marriage Myra took care of the parties' children and maintained the family home; she was also employed outside the home intermittently as a waitress and as a seasonal worker for a seed corn company. She has no formal training and would qualify only for minimum-wage jobs. The district court found she has an earning capacity of $750 net per month. Myra has considered returning to school but has not made arrangements to do so. She is now thirty-six years old and has some health problems, including possible cervical cancer.

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assets he used to pay the inheritance tax on his inherited farm. Myra appeals the dissolution decree.

Initially, Myra claims her alimony award is inadequate. When determining the appropriateness of alimony, the court must consider "(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other." In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted). Alimony is an allowance to the former 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; 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 those factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347 (Iowa App. 1983).

Having carefully applied these principles to the instant case, we believe Myra is entitled to an increased alimony award of $200 per month for twenty-four months. The increased alimony award is not contingent upon any condition. The parties' marriage lasted sixteen years during which Myra's primary responsibility entailed caring for the children and maintaining the family home. As a full-time homemaker and mother, Myra's contribution to the marriage and family was particularly taxing since Richard

was absent from the home the vast majority of the last ten years of the marriage. During this time, Richard resided and worked in South Dakota, while Myra lived with the children in Iowa. Richard returned to Iowa an average of one day per week during this ten-year period.

In addition, Myra's earning capacity was correctly determined by the district court to be $750 net per month. Richard nets $3,300 per month. There is no question Myra has a duty to achieve her earning capacity to become self-supporting. See In re Marriage of Wegner, 434 N.W.2d 397, 399 (Iowa 1988). However, considering Myra's educational background, training, employment skills, work experience, length of absence from the job market, her responsibilities for the children under her physical care, and the time and expense necessary to acquire sufficient education and training to enable her to secure more appropriate employment, an increase in her alimony award is warranted.

Myra also requests both trial and 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). Under the circumstances of the present case, Richard is ordered to pay $750 toward Myra's appellate attorney fees. Myra is responsible for paying her own trial attorney fees. Each party shall pay one-half of the costs of this appeal.

AFFIRMED AS MODIFIED.