FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF J. ANN BERKES AND JAMES S. BERKES

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| **Upon the Petition of** | ) | |
| **J. ANN BERKES,** | ) | Filed February 26, 1986 |
| Petitioner-Appellee, | ) | |
| **And Concerning** | ) | 5-603<br>85-426 |
| **JAMES S. BERKES,** | ) | |
| Respondent-Appellant. | ) | |

Appeal from the Iowa District Court for Jasper County (DM 2614) - Thomas S. Bown, Judge.

Respondent husband appeals from the decree dissolving the parties' marriage asserting that the petitioner wife's alimony is excessive in both amount and duration. **AFFIRMED AS MODIFIED.**

Dennis F. Chalupa of Brierly, McCall, Girdner, Chalupa & McCall, Newton, Iowa, for respondent-appellant.

James W. Carney of Carney, Hudson, Williams & Green, Des Moines, Iowa, for petitioner-appellee.

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

PER CURIAM

Respondent husband appeals from the decree dissolving the parties' marriage. He asserts that the petitioner wife's alimony is excessive in both amount and duration. We affirm as modified.

Petitioner J. Ann Berkes and respondent James S. Berkes were married in 1961; at the time of the decree they were 46 years old and 44 years old respectively. The parties have two children, both of whom are now adults.

During the marriage, James worked for Squibb Corporation. His current income less taxes is $2,770 per month. James has his employer deduct a total of $509 from his paycheck each month: $478 for a stock and savings plan (used to finance the children's education), and $101 for long-term disability and insurance benefits. His claimed monthly expenses total $1,281.

Ann is a college graduate with a degree in journalism. After the parties married, she worked briefly for a radio station. She has since held various jobs including teaching preschoolers, sales work, and operating and interior design business. At the time of trial, she worked as a salesperson for a paint company earning a net monthly income of $760. During the course of the dissolution proceedings, Ann filed two financial affidavits, the first one indicating monthly expenses of $1,505 and the second one indicating a need of $1,745.

In the dissolution decree, the trial court indicated that James and Ann had equally divided their personal property and the net proceeds from the sale of the marital home. Ann was awarded $1,000 per month until she remarried, cohabited with a male, or died. James has appealed from this determination.

Our review of this proceeding is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court although we are not bound by them. Iowa R. App. P. 14(f)(7).

James's sole claim on appeal is that the alimony award is excessive. In considering the fairness of the alimony provision, we look to the factors listed in Iowa Code section 598.21(3). In doing so, we conclude that the alimony award should be decreased.

It is apparent from the record that Ann has acquired various job skills and is presently capable of contributing towards her claimed monthly expenses. Further, it is reasonable to assume Ann's earning capacity will remain stable if not increase over the years. The petitioner is in her mid-forties and is in good health. She has a college education, experience in sales, and has run her own business. In essence, circumstances do not indicate that Ann will need $1,000 per month alimony in order to maintain the standard of living existing during the marriage; nor is it equitable to require James to pay this amount.

Accordingly, we modify the decree to provide as follows: James shall pay to Ann, as alimony, the sum of $800 per month. The alimony obligation shall cease upon Ann's remarriage or the death of either party.

Ann has requested attorney fees on appeal. In evaluating this request, we consider the needs of the petitioner, James's ability to pay, and whether Ann was required to defend the trial court's decision on appeal. See In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa Ct. App. 1984). Upon consideration of these factors, we conclude that an award of appellate attorney fees is unwarranted. Costs on appeal are taxed one-half to each party.

**AFFIRMED AS MODIFIED.**