IN THE COURT OF APPEALS OF IOWA

No. 0-507 / 99-1912
Filed October 25, 2000

IN RE THE MARRIAGE OF KARA SHOWERS AND RAYMOND SHOWERS

Upon the Petition of
KARA SHOWERS,
Petitioner-Appellee,

And Concerning
RAYMOND SHOWERS,
Respondent-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Shelby County, James M. Richardson, Judge.

The respondent appeals the alimony provisions of the parties' dissolution decree. Respondent contends the district court erred in ordering him to pay petitioner rehabilitative and reimbursement alimony in the amount of $400 per month for thirty months. Petitioner's request for appellate attorney fees is to be submitted with the appeal. **AFFIRMED.**

James L. Stanton, Omaha, Nebraska, for appellant.

J.C. Salvo and Richard C. Schenck of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellee.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

MILLER, J.

Respondent Raymond Showers appeals the alimony provisions entered by the trial court in the decree for dissolution of his marriage to Kara Showers. Raymond contends the trial court abused its discretion in the amount and duration of rehabilitative and reimbursement alimony it awarded to Kara. Kara seeks appellate attorney fees. We affirm.

Background Facts

The parties were married on April 24, 1993. It was the first marriage for each. At the time of their dissolution trial on August 11, 1999, Kara was twenty-nine years of age and Raymond was twenty-seven. There were no children born of this marriage.

At the time of their marriage Kara had received her associate's degree and was employed as a dental assistant. Raymond had joined the Air Force in December of 1992 and was stationed in Wichita, Kansas at the time of the marriage. Kara left her job as a dental assistant to join Raymond in Kansas after their marriage. After approximately one year in Wichita, Raymond was reassigned overseas to Ramstein Air Base in Germany. Kara left her job in Wichita to accompany Raymond to Germany. The couple lived in Germany for four years. While in Germany Kara worked for a year and a half as an oral surgery assistant.

In August of 1998 Raymond was again transferred to Offutt Air Force Base in Nebraska. Kara filed for dissolution on January 12, 1999. During the five months between the time the parties moved back to the States and Kara filed for dissolution she did not work. She lived with her mother for the first three of

the five months while Raymond attended an Air Force canine school in San Antonio, Texas. Kara received unemployment from August 1998 until February 1999 at which time she obtained employment through a temporary work placement service.

At the time of the dissolution trial Kara was enrolled at Western Illinois University with the intention of finishing her four-year bachelor's degree in business accounting. She estimates it will take a little over two years to complete this degree and the cost will be approximately $23,521.00. Kara testified she could no longer work in the dental field in which she had been trained and had experience due to the allergic reactions which she experienced from the soaps and gloves required in that field. She stated she has tried several cortisone creams to treat these allergies but none of them helped her hands. However, she also testified that at the time of trial she was in good physical health and there was no reason, physically or otherwise, why she could not be employed.

Raymond completed high school. He took two college courses while the parties were in Germany. He has received promotions and pay increases while in the Air Force which allowed him to move from the rank of airman, at pay grade E1, to staff sergeant, at pay grade E5, at the time of trial. He has received training in security and law enforcement and has worked with the Secret Service and as a canine police officer trained in explosive detection. Raymond has also accumulated over six years toward his military retirement benefits for which he is eligible after twenty years of military service. If he remains in the military a total of twenty years, he will be eligible to retire at thirty-five percent of his base pay.

The parties owned no real property. They owned furniture, household items, antiques, a fifteen-piece entertainment center, two bedroom sets, and two oak tables and chairs, plus numerous other items of personal property. Prior to moving back to the States they had bought a new 1999 Pontiac Grand Am automobile for approximately $17,000 which had a market value of $14,000, with an indebtedness of $7575.00, at the time of trial. The only other marital debt the couple had accumulated was a credit card debt of about $200.00.

Raymond testified that his post-dissolution net monthly income would be $1959. Kara's monthly net income from the temporary job she held at the time of trial was approximately $778. After this temporary job ended the week following trial Kara was to become a full-time college student.

The trial judge awarded Kara personal property, household goods and one motor vehicle with a value of approximately $11,500. Raymond received property with an approximate value of $19,500. In addition, Raymond was awarded all retirement benefits that he had accumulated in the military service. The trial court ordered Raymond to pay $400.00 per month for thirty months as spousal support to Kara for both rehabilitative and reimbursement alimony.

Raymond does not challenge the trial court's distribution of property but contends the court abused its discretion in the amount and duration of alimony it awarded.

Scope of Review

In this equity case our review is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We give weight to the

fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Merits

"Alimony is an allowance to the spouse in lieu of the legal obligation for support." *In re Marriage of Sjulin*, 431 N.W.2d 773, 775 (Iowa 1988). Any form of spousal support is discretionary with the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). Spousal support is not an absolute right: an award depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa App. 1998). The discretionary award of spousal support is made after considering the factors listed in Iowa Code section 598.21(3). *Id.* We consider the division of property in determining spousal support. *In re Marriage of Bell*, 576 N.W.2d 618, 622 (Iowa App. 1998).

When determining the appropriateness of spousal support, a court must consider, among other things, the parties' present standards of living and ability to pay balanced against their relative needs. *In re Marriage of Williams*, 449 N.W.2d 878, 883 (Iowa App. 1989). In marriages of long duration where the earning disparity between the parties is great, both spousal support and nearly equal property division may be appropriate. *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa App. 1993).

Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989); *See also In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa

App. 1996). Since 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-spouses. *Francis,* 442 N.W.2d at 64.

An award of reimbursement alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *Id.*; *See also In re Marriage of Ales*, 592 N.W.2d 698, 704 (Iowa App. 1999).

In granting Kara alimony the trial court took into account all of the factors listed in Iowa Code section 598.21 (3) (1999), however the trial judge stated he gave specific weight to the factors set forth in subsections (c), (e) and (f). The court agrees these are the relevant subsections to focus on to determine whether alimony should be awarded, and in what amount, in this case. Section 598.21(3) provides in relevant part,

> Upon every judgment of annulment, dissolution or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:
>
> . . .
>
> c. The distribution of property made pursuant to subsection 1.
>
> e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, . . . and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
>
> f. The 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.

First, taking into consideration the distribution of property under section 598.21(1), the trial court awarded Raymond approximately $19,500 in personal property and household goods and awarded Kara only approximately $11,500 worth of property. Thus, in dividing the net property, Raymond received approximately $4000 more than one half of the net assets from the marriage, and this is before considering Raymond's military retirement benefits.

One of the factors considered in dividing net property under Iowa Code section 598.21(1)(i) is the "other economic circumstances of each party, including pension benefits, vested or unvested, and future interests." After finding that Raymond had accumulated thirty-two percent of his pension's service requirement of twenty years during the marriage, the trial court awarded Raymond his full pension or retirement benefits due from his service in the military. Thus, although his pension was unvested at the time, the fact Raymond was awarded all of such benefits must be considered in determining the propriety of the alimony award.

Secondly, the provisions of section 598.21(3)(e) need to be considered. Kara's earning capacity at the time of the dissolution was considerably less than Raymond's, and while she had worked for short periods of time during the marriage she had been out of the job market for a large part of the marriage as a result of allowing Raymond's career to dictate where they lived and for how long. Kara had her career interrupted several times in order to move and allow Raymond to advance his career. While it appears from the record that during the couples marriage Kara lived comfortably and had the valuable opportunity to travel abroad, she did sacrifice the opportunity to have stable, long-term

employment which would provide her with such benefits as insurance, retirement and seniority. Therefore, reimbursement alimony is appropriate here to accommodate Kara for this economic sacrifice. *See Ales*, 592 N.W.2d at 704.

In addition, although Kara had education, training, and experience as a dental assistant, she testified that she had developed allergies to the gloves and soaps used in the dental field and thus could no longer work in that field. Kara testified she would need approximately two years and $23,500 in order to acquire sufficient education or training to enable her to find appropriate employment. Raymond disputes this testimony, arguing there was no medical evidence admitted at trial to explain what other actions she could have taken to alleviate her condition or to corroborate the degree of severity of the allergy.

The trial court found that Kara had developed allergies to the dental workplace and thus her career opportunities as a dental assistant were over. While we review this equity case de novo, we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). The trial court obviously found Kara's testimony regarding her allergies, and the effect the allergies have had on her career, to be credible. Therefore, we accept as true that Kara is unable to continue working in the dental field in which she is educated and trained, and find that reeducation or retraining is necessary in order for her to acquire appropriate employment.

Finally, in accordance with the court's findings as set forth above, we find that in order for Kara to become "self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage" she will need to be educated or trained in a new field. Iowa Code section 598.21(3)(f). Based on

the record it will apparently take her approximately two years and $23,500 to achieve this goal. We find rehabilitative alimony is appropriate to assist Kara in this endeavor.

For all of the reasons stated above we find the award to Kara of rehabilitative and reimbursement alimony in the amount of $400 per month for thirty months to be appropriate. The trial court did not abuse its discretion in making such an award.

Kara's Request for Appellate Attorney Fees

Kara asks for attorney fees for this appeal. Appellate attorney fees are discretionary. *Ask*, 551 N.W.2d 643, 646 (Iowa 1996). 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. *Dieger*, 584 N.W.2d at 570. We find Kara was *obligated to* defend the trial court's decision on appeal and has done so successfully. Additionally, Raymond's ability to pay for the expense related to this obligation exceeds Kara's at this point in time. We award Kara $1000 in appellate attorney fees.

AFFIRMED.