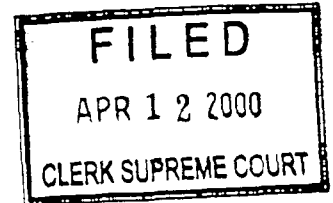


IN THE COURT OF APPEALS OF IOWA

No. 1999-509 (9-766) / 99-597
Filed April 12, 2000



**IN RE THE MARRIAGE OF WILLIAM E. CLARK
and KARON K. CLARK**

Upon the Petition of
WILLIAM E. CLARK,
Petitioner-Appellant,

And Concerning
KARON K. CLARK,
Respondent-Appellee.

Appeal from the Iowa District Court for Mitchell County, Bryan H.
McKinley, Judge.

Petitioner appeals following the grant of his former wife's application to
extend alimony pursuant to the terms of a dissolution stipulation. **AFFIRMED.**

Brian L. McPhail of Gross & McPhail, Osage, for appellant.

~~Russell~~ Schroeder, Jr., of Schroeder Law Office, Charles City, for
appellee.

Considered by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

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PER CURIAM

William and Karon Clark married in 1970. In 1995 their marriage was dissolved. The court incorporated the parties' stipulation, which provided, in relevant part, that William would pay Karon monthly alimony of \$500 for thirty-six months, beginning in October 1995. The stipulation also provided,

At the end of 36 months, the parties will review this alimony provision and the court will retain jurisdiction to review the necessity of further alimony payments and their amounts. Provided, however, that in no event shall any spousal support exceed \$800 per month when and (sic) the alimony provision is reviewed. This spousal support shall terminate in any event upon the death or remarriage of the Respondent.

In December 1998, Karon filed an application for review of the alimony provision. Based on the financial positions of the parties, the approaching end of William's child support obligation, and the greater increase in his net worth than in hers, the court ordered alimony to continue until Karon's death or remarriage.

On appeal, William maintains Karon has not established a material and substantial change in circumstances to warrant continuation of the alimony payments. He also argues, since the original decree did not define the alimony as either reimbursement or periodic, it must be considered rehabilitative, and terminate at the end of the original term of thirty-six months. Finally, he contends Karon made no efforts to increase her earning capacity, and continuing the alimony gives her no incentive to achieve economic independence.

Alimony is a provision for a former spouse in lieu of a legal obligation of support. *In re Marriage of Kurtz*, 561 N.W.2d 618, 622 (Iowa App. 1997). After long-term marriages, alimony has been awarded in addition to substantially equal

~~property division.~~ *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa App. 1997); *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993). Alimony may be used to compensate a spouse who leaves a marriage at a financial disadvantage. *Geil*, 509 N.W.2d at 742. We consider the earning capacity of each party, present standard of living, and ability to pay, balanced against the relative needs of the other party. *Kurtz*, 561 N.W.2d at 387.

The parties' stipulation expressly provided for judicial review after thirty-six months to determine the necessity of continued alimony. As the district court noted, if the parties had intended the alimony payments to cease after three years, they could have stated as much. Instead, the parties envisioned alimony might continue until death or remarriage, at the rate of up to \$800 per month. We conclude, therefore, that the parties expected Karon might require traditional rather than rehabilitative alimony. We also conclude that Karon was not required to establish a material and substantial change in circumstances to receive continued support. See *In re Marriage of Handeland*, 564 N.W.2d 445, 447 (Iowa App. 1997) (court will give effect to agreement which contracts away certain obligations, as long as the agreement is equitable).

Finally, we conclude the district court's decision to continue alimony payments to Karon was equitable. This was a twenty-five year marriage. Although the property division was basically equal, William had a much greater earning capacity than Karon at the time Karon's application was filed. Karon continued with a subsistence income and testified she needed the additional funds to make ends meet. William's financial statement reflects an ability to pay

~~\$500 per month.~~ We agree with the district court that "continuation of \$500 per month in ~~alimony~~ will allow Karon an opportunity to maintain the standard of living which was comparable to her standard prior to the dissolution and for the past 36 months."

Karon seeks an award of appellate attorney fees. Iowa Code section 598.36 vests a court with discretion to award appellate fees. *See In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). We award Karon \$1000, in light of her financial circumstances relative to William's and her obligation to defend the court's ruling on appeal.

The district court's ruling is affirmed.

AFFIRMED.