IN THE COURT OF APPEALS OF IOWA

No. 6-082 / 95-270

IN RE THE MARRIAGE OF LARRY A. HIGH AND SHARON J. HIGH

Upon the Petition of
LARRY A. HIGH,
Appellant/Cross-Appellee,

And Concerning
SHARON J. HIGH,
Appellee/Cross-Appellant.

FILED
SEP 30 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Hardin County, John S. Mackey, Judge.

Larry High appeals certain economic provisions in the parties' dissolution of marriage decree. **AFFIRMED AS MODIFIED.**

C. Carleton Frederici and Patricia A. Shoff of Davis, Brown, Koehn & Shors, P.C., Des Moines, for appellant.

Mathew J. Brandes and Webb L. Wassmer of Simmons, Perrine, Albright & Elwood, P.L.C., Cedar Rapids, for appellee.

Considered by Habhab, P.J., Huitink, J., and Peterson, S.J.*

*Senior judge from the First District serving on this court by order of the Iowa Supreme Court.

PETERSON, S.J.

The marriage of Larry A. High (Larry) and Sharon J. High (Sharon) was dissolved by decree dated December 2, 1994. Larry appeals the amount of the award of alimony to Sharon, and Sharon requests appellate attorney fees.

*I. **Scope of Review.*** Dissolution actions are equitable in nature and, consequently, the review is de novo. *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984); Iowa R. App. P. 4. Weight is given to the findings of fact by the district court, but we are not bound by these findings. Iowa R. App. P. 14(f)(7).

*II. **Background.*** Larry and Sharon were married on August 31, 1958. Sharon was born on September 3, 1937, and Larry was born on June 1, 1938. Both were fifty-seven years old at the time of trial. Three children were born to the marriage, and they have all reached the age of majority.

Larry and Sharon were married approximately five years prior to Larry's graduation from the University of Iowa Law School. During the time Larry was completing his education, he tended bar at various locations, worked at an oil company, worked as a grill cook, and cleaned floors in the engineering building. During his second year in law school, he began working with an attorney in Iowa City and continued working for him up to the time he graduated.

Larry's parents also purchased a mobile home in Iowa City for Larry and Sharon to live in and provided additional funds for tuition and expenses from time to time. Larry's parents also provided funds for Sharon to complete beauty school. She

then worked as a beautician full-time and continued to do so until they moved to Iowa Falls, Iowa, in 1964. After moving, Sharon did not work outside the home, but stayed at home and cared for the parties' children until after their third child was born. She then worked for Seifert's from 1968 to 1970 as the assistant manager. She also was employed briefly at a women's clothing store in Yuma, Arizona.

After graduating from law school, Larry was employed by the Whitsell Law Firm in Iowa Falls for approximately ten years. He then opened a law office with James Walters and later with Larry Johnson until that firm was dissolved in 1989. He then opened a solo practice. In 1991, he hired Mona Bowden as an associate.

Larry's health is generally good, although he does suffer from high blood pressure. Sharon has a neck problem which she has had since 1970 and Meniere's disease. This is a disease that has a recurrent and usually progressive group of symptoms, including progressive deafness, ringing in the ears, dizziness, and a sensation of fullness or pressure in the ears.

During the years of Larry and Sharon's marriage, they enjoyed a relatively high standard of living. In 1976, they purchased a motor home, which was later traded for another one, and took numerous trips with these vehicles, as well as trips to other places, such as Hawaii and the Bahamas. Their motor homes were also regularly used for entertaining and camping.

They also had a very active social and community life. They belonged to the local country club where they played golf. Larry was a member of the Elks Club and

both spent time at that organization. They entertained regularly in their home. Sharon was involved with the church and the hospital auxiliary and participated in school activities, bridge groups, and study clubs. She was also a 4-H leader and involved with the Girl Scouts and the Brownies and the local swimming team. On Christmas Eve, they hosted an annual open house that grew into an event with more than forty guests. These activities were thought by Larry and Sharon to have a positive impact on Larry's legal practice.

In 1983, they bought a home in Yuma, Arizona. In 1988, they sold both their Iowa Falls residence and the first Arizona home and purchased a larger Arizona property. Additions were made to that home and Sharon generally wintered in Arizona. Larry would drive their motor home to Yuma in November and commute by air back and forth to Iowa through April or May while Sharon remained in Arizona.

The trial court found that Larry's average gross income was $100,216 per year, or $8,351 per month. We have reviewed Larry's income for the years 1984 through 1993 and considered the evidence offered by the expert witnesses called by Larry and Sharon and agree with the finding of the trial court.

In the decree, the trial court awarded property to Larry worth $156,202, which included his legal office, the equipment, furnishings, and supplies in that office. This included an expected inheritance of $51,734. The trial court awarded Sharon property worth $209,079, which included the Yuma, Arizona home, which was

valued at $175,000. After the allocation of certain debts, the court concluded the net property award to Larry was $92,529 and the net award to Sharon was $96,517.

The court awarded Sharon $4,000 per month as alimony until she dies or remarries, whichever event should first occur. The court also required Larry to maintain his existing life insurance policies with Sharon as a beneficiary until her death or remarriage, whichever event should first occur.

Larry claims monthly expenses of $4,312.56, and Sharon claims monthly expenses of $4,037.13. Neither of the parties have listed an amount for income taxes they may be required to pay in the claimed expenses.

III. Alimony. Alimony is not an absolute right, but must be determined based upon the facts and circumstances of each case. *In re Marriage of Brown*, 487 N.W.2d 331, 334 (Iowa 1992). It is an allowance to a spouse in lieu of the legal obligation to support that person. The award of alimony is to be made after considering the factors listed in Iowa Code section 598.21(3). The property division and the award of alimony are considered together in evaluating their individual sufficiency. *In re Marriage of Grauer*, 478 N.W.2d 83, 85 (Iowa App. 1991). They are neither made or subject to an evaluation in isolation from one another. *Id.* The factors to be considered in reaching the amount of alimony to be awarded include the length of the marriage, the age and physical health of the parties, the distribution of the property, the educational level of each party, the earning capacity of the parties, the feasibility of becoming self-supporting at a standard of living reasonably compatible to that

enjoyed during the marriage, the tax consequences, and the financial service contributions by one party or the other. Iowa Code § 598.21(3) (1993).

This is a marriage of over thirty-six years which is of a reasonably long duration. Both parties were fifty-seven years old at the time of the entry of the decree. Larry enjoys good health with the exception of high blood pressure. Sharon has health concerns regarding a neck problem and suffers from Meniere's disease. These problems limit her ability to work. Both parties received approximately the same value in the property distribution, although Larry's does contain an inheritance expectancy. The assets distributed to Larry and Sharon will not generate a reasonable amount of income.

Larry has a substantially-greater earning capacity because of his law degree. The only employment Sharon has had is as a beautician in the early party of their marriage and later on in a sales capacity. The record does not show what income she was able to earn in these capacities. At this point, it is clear that Sharon cannot become self-supporting to the extent that she could enjoy a standard of living reasonably comparable to that she enjoyed during her married life. Larry contributed almost all funds to the marriage, and Sharon provided the homemaking services as well as substantial contributions in various ways to the community in which they lived which had an impact on Larry's practice of law.

In reviewing these factors, we conclude that the award of alimony in the amount of $4,000 per month is excessive. It is true that it is difficult to determine the

monthly income of a self-employed attorney and that it will fluctuate from month to month and year to year. However, we have concluded that the trial court was correct in its assessment of Larry's gross income. We believe that a monthly alimony in the amount of $3,250 would be appropriate for Sharon.

We have reviewed the expenses claimed by the parties and would only note that when a marriage is dissolved, neither party will have as much money available for support as was true before the dissolution. *In re Marriage of Wegner*, 434 N.W.2d 397, 399 (Iowa 1988).

Larry, in his argument, contends that we should reduce the alimony when he retires from the practice of law. We decline to do so. The record does not indicate what his income would be if he were to retire. We would also note that Larry said he would continue to practice as long as his health permits him to do so and his mind is functioning.

Larry also asks us to require him to maintain life insurance that is available to him. In his brief he notes that the Iowa State Bar Association insurance reduces the coverage as one grows older. We decline to do so. We would only point out that the decree provides that "Larry shall be responsible for maintaining all currently existing life insurance policies with Sharon as the beneficiary." It does not require Larry to be responsible for an amount of insurance. We believe the decree is sufficiently explicit.

IV. Appellate Attorney Fees. Sharon asks for attorney fees for the appeal. An award of attorney fees is not a matter of right, but rests with the court's discretion. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa App. 1994). In determining whether to award appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request is obligated to defend the trial court's decision on appeal. We note that the trial court required Larry to pay attorney fees for Sharon in the sum of $12,000. Considering this and the relative circumstances of the parties to this action and the limited amount of liquid assets Sharon has, we find that equity does warrant the award of appellate attorney fees in the sum of $750.

In conclusion, we find the decision of the trial court should be affirmed except that the amount of alimony Larry should pay to Sharon should be in the sum of $3,250 per month. He should also pay $750 toward Sharon's attorney fees.

AFFIRMED AS MODIFIED.