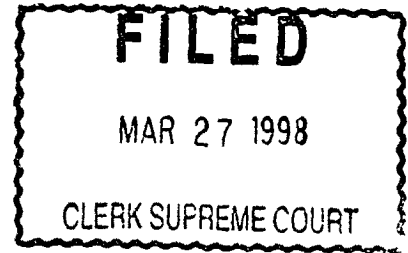


IN THE COURT OF APPEALS OF IOWA

000243

No. 8-035 / 97-0759
Filed March 27, 1998



**IN RE THE MARRIAGE OF JEFFREY SCOTT
MILLER AND VICKI LYNN MILLER**

**Upon the Petition of
JEFFREY SCOTT MILLER,**

Petitioner-Appellee,

**And Concerning
VICKI LYNN MILLER,**

Respondent-Appellant.

Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge.

Respondent appeals various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Francis J. Coyle, Jr., of Coyle, Gilman & Stengel, Rock Island, Illinois, for appellant.

Donna M. Humpal of M.W. Liebbe Law Office, Davenport, for appellee.

Heard by Cady, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

Vicki Lynn Miller appeals from the economic provisions of the decree dissolving her marriage to Jeffrey Scott Miller. We affirm as modified.

I. Background Facts and Proceedings.

Vicki Lynn Miller, born August 1, 1960, and Jeffrey Scott Miller, born April 1, 1956, were married May 9, 1987. Jeff and Vicki have one daughter, Allison Elizabeth, born February 16, 1990. The dissolution decree, entered on March 21, 1997, awarded the parties joint legal custody of Allison with physical care to Vicki.¹ The district court ordered Jeff to pay \$600 per month in child support to Vicki and an additional \$500 per month toward Allison's support and college funds. The decree also distributed approximately \$155,000 of the parties' \$300,000 marital assets to Vicki.

Jeff is a real estate salesperson. His current gross annual income is approximately \$155,000. Vicki is a medical secretary. Her gross annual income is approximately \$15,600.

On appeal, Vicki asserts the district court erred in failing to award her rehabilitative alimony and trial attorney fees. Vicki also requests the court award her attorney fees incurred on appeal.

¹ Jeff has physical custody of Matthew, his child from a previous marriage.

II. Standard of Review.

Our review of this equitable action is de novo. Iowa R. App. P. 4. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the trial court's findings of fact, but we do give them deference because the trial court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *Id.*; *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

III. Rehabilitative Alimony.

Vicki maintains the district court erred in failing to award her rehabilitative alimony. She argues she has reached the maximum salary at her current position, and rehabilitative alimony will facilitate her re-training, education, or an employment change necessary for her to attain a standard of living more comparable to that she enjoyed during the marriage.

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). 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 the relative needs of the other.” *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994); *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983)(citation omitted).

An alimony award will differ in amount and duration according to the purpose it is designed to serve. *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989).

“Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of re-education and re-training following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting.” *In re Marriage of Erickson*, 553 N.W.2d 905, 907 (Iowa App. 1996). The duration of this type of award depends on the particular needs of the dependent spouse. *In re Marriage of Francis*, 442 N.W.2d at 63. The goal of rehabilitative alimony is self-sufficiency for the economically dependent spouse. *In re Marriage of Erickson*, 553 N.W.2d at 907.

We consider alimony and property division together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa App. 1994); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). An alimony award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking alimony who also has a need for support. *In re Marriage of Weiss*, 496 N.W.2d 785, 787 (Iowa App. 1992). Following a marriage of long duration, we have affirmed awards of both alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993). The court should also consider the feasibility of the party seeking alimony becoming self-supporting at a standard of

living reasonably comparable to that enjoyed during the marriage. *In re Marriage of Debblor*, 459 N.W.2d 267, 270 (Iowa 1990); Iowa Code § 598.21(3)(f).

After considering the foregoing factors, we award Vicki rehabilitative alimony in the amount of \$500 per month for sixty months. Our purpose is to assist Vicki in becoming self-sufficient at a standard reasonably comparable to that she enjoyed during the marriage. Moreover, this alimony obligation will not inhibit Jeff's pre-dissolution lifestyle. See *In re Marriage of O'Rourke*, 547 N.W.2d 864, 867 (Iowa App. 1996). The resulting reduction in the parties' standard of living is reasonably proportionate. We also hold Vicki's rehabilitative alimony award is terminable only upon her death. *In re Marriage of Smith*, --- N.W.2d ---, --- (Iowa 1998). If Jeff dies before Vicki, any remaining alimony obligation shall be a claim against his estate.

IV. Trial Attorney Fees.

Vicki contends the district court erred in failing to award her trial attorney fees.

Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Giles*, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award, the complaining party must show the trial court abused its discretion. *Id.* Awards of attorney fees must be for fair and reasonable amounts, *In re Marriage of Willcoxson*, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. *In re Marriage of Lattig*, 318 N.W.2d 811, 817 (Iowa App. 1982).

Because we find no evidence the trial court abused its discretion in denying Vicki an award of attorney fees, we affirm the district court on this issue.

V. Appellate Attorney Fees.

Vicki requests this court award her appellate attorney fees.

An award of attorney fees on appeal is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). Vicki has prevailed, in part, on appeal. We award Vicki \$1500 in appellate attorney fees. Each party is assessed one-half of the costs of this appeal.

AFFIRMED AS MODIFIED.