FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-274 / 89-1480

IN RE THE MARRIAGE OF LINDA SUE WEUVE AND DONALD E. WEUVE

Upon the Petition of

LINDA SUE WEUVE,

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Appellee,

And Concerning

DONALD E. WEUVE,

Appellant.

Appeal from the Iowa District Court for Marshall County, Ronald H. Schechtman, Judge.

Appellant appeals the alimony provision of the district court's decree dissolving his marriage to appellee. **AFFIRMED.**

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan & Condon, Marshalltown, for appellant.

W. J. Latham, Jr. of Johnson, Sudenga, Latham & Peglow, Marshalltown, for appellee.

Considered en banc.

HABHAB, J.

Appellant Donald E. Weuve appeals the alimony provision of the district court's decree dissolving his marriage to appellee, Linda Sue Weuve. Donald asserts the trial court erred in not requiring termination of alimony payments to Linda in the event she remarries. We affirm.

Donald and Linda Weuve were married on November 25, 1967. Two children were born of the marriage, Denise, age eighteen, and Donald, Jr., age fourteen. At the time of trial, Linda was forty-three years of age, and Donald was forty-four years old. Donald has worked at Fisher Controls for twenty-five years and earns approximately $1485 per month net. Linda has a high school education and also completed one year of business college. Throughout the marriage, Linda worked at various part-time jobs. In 1988 Linda took a nurses' aid course during the summer and began work at Grandview Heights as a nurses aid at $5 per hour.

Linda filed the present action on February 17, 1989, and trial was held on August 24, 1989. At trial, Linda testified that she wanted to take courses to become an LPN, which would take one to two years to complete. Linda testified that she eventually hoped to become an LPN at the Veteran's Home in Marshalltown, where LPNs are paid $10 per hour. The trial court subsequently entered its decree. The trial court awarded Donald his PAYSOP, RIDA, and SIP accounts at Fisher, which would not be fully vested until age sixty-five, the marital home valued at $55,000 with

$16,000 debt incurred on it, a tax refund of $2128, a bank account of $207, $3200 in life insurance, an automobile valued at $1200, and $5290 in household goods.

Linda received a joint savings account of $1182, bank accounts of $470, life insurance valued at $2500, household goods valued at $1715, an automobile, and a lump sum payment of $19,744 to be paid by Donald by June 1, 1994. Donald was also ordered to pay Linda alimony until September 1, 2009, payable at the rate of $300 per month for the first five years and $200 per month for the remainder, such payment to terminate on the death of either party, but with the added provision that alimony would not terminate on remarriage. Linda was also awarded a percentage of Donald's pension benefits based on the number of years married by the number of years Donald accumulated benefits.

Donald subsequently filed a motion to enlarge and amend the findings. He urged the court to order that alimony be terminated upon remarriage. The trial court overruled the motion, and Donald has appealed.

Alimony, which is an allowance to the ex-spouse in lieu of a legal obligation to support that person, is not an absolute right; rather, its award depends upon the unique circumstances of each case. In re Marriage of Cooper, 451 N.W.2d 507, 508 (Iowa App. 1989); see In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). Donald asserts

the decree should be modified to require his alimony obligation cease upon remarriage by Linda. We disagree.

A just determination of the question of alimony is peculiarly dependent upon the facts of each case. In re Marriage of Matson, 215 N.W.2d 358, 359 (Iowa 1974). Property division and alimony must be considered together in evaluating their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

It is apparent from the trial court's decree that when it provided that "remarriage should not affect its [alimony] payment," it considered this disputed provision with the property division in reaching "sufficiency." When we review the record, we reach the same conclusion.

The trial court in its ruling on respondent's motion to amend and enlarge pointed out that this was a twenty-one-year marriage and that the petitioner had no particular training or skill. It found that petitioner was entitled to some spousal support "not only to get on her feet and trained, but for years beyond that, without any reference to whether she marries or not. It is not a large monthly sum--it is tax deductible by Don." We conclude that it is just and equitable to provide for the continuation of alimony after marriage under the circumstances here even though the award has a resemblance of rehabilitative alimony.

Costs of this appeal are assessed to the respondent.

AFFIRMED.

All judges concur, except Donielson and Hayden, JJ., who dissent.

DONIELSON, J. (dissenting)

I respectfully dissent. The general rule in Iowa is that the remarriage of an ex-spouse does not of itself necessitate termination of an alimony obligation, but it does make out a prima facie case which requires the court to end it in the absence of proof of some extraordinary circumstances justifying its continuance. In re Marriage of Shima, 360 N.W.2d 827, 828 (Iowa 1985).

I can discern no reason why the general rule pertaining to the continuation of alimony beyond remarriage should not apply to this case. See In re Marriage of Cooper, 451 N.W.2d 507, 509 (Iowa App. 1989); In re Marriage of Shima, 360 N.W.2d at 828. Linda is forty-three years of age. She has aspirations of qualifying as an LPN with a substantial salary. It seems wrong to me to make the determination that alimony continues regardless of the circumstances, i.e. financial, marital status, etc.

I would continue the present presumption that alimony terminates on remarriage unless circumstances require a different decision. The burden of proof shifts accordingly. Therefore, I would modify the dissolution decree by eliminating the provision continuing the alimony obligation in the event of Linda's remarriage. In the event of Linda's remarriage, a prima facie case would exist requiring the court to end the alimony payments unless Linda could show some extraordinary circumstances justifying its continuance.

Hayden, J., joins this dissent.