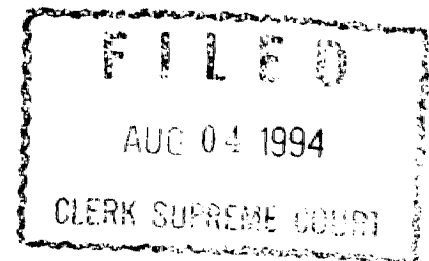


IN THE COURT OF APPEALS OF IOWA

No. 3-417 / 92-1371



IN RE THE MARRIAGE OF C.E.H. AND S.L.H.

Upon the Petition of
C.E.H.,

Petitioner-Appellee,

And Concerning
S.L.H.,

Respondent-Appellant.

Appeal from the Iowa District Court for Polk County,
Gene L. Needles, Judge.

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

Thomas J. Levis and Mark R. Schuling of Brick, Gentry,
Bowers, Swartz, Stoltze, Schuling & Lewis, P.C.,
Des Moines, for appellant.

Kolleen K. Samek, Des Moines, for appellee.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

PER CURIAM

S.L.H. and C.E.H. were married on July 18, 1987. They permanently separated in October 1991. No children were born of the marriage.

S.L.H. was thirty-seven years old at the time of the dissolution hearing. He is employed as the national marketing director of Meredith Corporation's real estate group, Better Homes and Gardens. He also does some part-time work as a sports official. His income in 1991 was about \$65,000. S.L.H. is in good health.

C.E.H. was twenty-nine years old at the time of the hearing. Prior to the parties' marriage she was employed as a sales manager at a hotel in St. Louis, Missouri. She left that employment to move to West Des Moines after the marriage. She is currently employed by Principal Financial Group as a benefits service representative where she earns \$24,360 annually.

C.E.H. has some health problems. Prior to the marriage she had colitis and was subject to panic attacks. The panic attacks have subsequently been diagnosed as agoraphobia. Also, a few months after the marriage C.E.H. contracted a very severe case of genital herpes, which is incurable. This disease has aggravated the colitis and panic attacks. C.E.H. takes Xanax and Prozac for her anxiety and Zovirax for the herpes. She has counseling at least once each week, and attributed one session each month to her concerns about herpes.

C.E.H. filed a petition for dissolution of marriage on October 4, 1991. After trial, the district court issued a dissolution decree on July 29, 1992. The court awarded C.E.H. alimony of \$200 per month for a period of five years. The court divided the parties' property, awarding S.L.H. the marital residence subject to a lien in favor of C.E.H. for \$61,000. The court stated this amount represented her share of the real estate and personal property and to assist her with future medical expenses. Each party was awarded the car, bank accounts, and pension plans in his or her possession. In addition, S.L.H. was ordered to pay \$5,000 towards C.E.H.'s attorney fees. S.L.H. has appealed.

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

II. S.L.H. contends the distribution of property was inequitable to him. Also, he points out that because this was a relatively short-term marriage, he should not be required to pay alimony. He claims he brought several assets to the marriage, including the marital residence, which should be set aside to him. He asks the cash property settlement to C.E.H. be reduced to \$15,138.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

We note the parties here were married a relatively short time. Where a marriage is of short duration, the property settlement may reflect the assets each party brought to the marriage. In re Marriage of Knust, 477 N.W.2d 687, 688 (Iowa App. 1991).

Turning to the dissolution decree, we find the trial court awarded the respondent a substantial percentage of the marital assets. To equalize this percentage difference the trial court awarded the petitioner, along with certain items of personal property, the sum of \$61,000.

The decree is not clear as to what figures were employed in reaching this amount. What is clear is the trial court, in awarding the \$61,000, factored into that amount a sum of money for future medical expenses that petitioner will incur in treatment for her genital herpes.

The appellant and appellee are in disagreement as to what should be included as marital assets and the value that should be attributed to certain of those items. From our de novo review, we conclude the trial court determined the total value of the marital assets, including the marital residence, equaled \$130,942.

C.E.H. was awarded assets worth \$8,682. We determine the cash property settlement to her should be reduced to \$56,789. To a greater extent, each party will share equally in the assets accumulated during the marriage. We affirm the property division with this modification.

III. We agree with the appellant that alimony should not be awarded and modify the decree accordingly. Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). When determining the appropriateness of alimony, the court must consider the earning capacity of each party, and present standards of living and ability to pay balanced against the relative needs of the other. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983).

The parties married on July 18, 1987. The marriage lasted but four years. Respondent is thirty-eight years of age and petitioner is twenty-nine. Both have college degrees. No children were born of this marriage.

Petitioner was employed as a sales manager for a hotel in Missouri. Her salary has increased since the marriage from approximately \$14,000 to approximately \$24,000. She works at Principal, where she receives benefits such as health care insurance and is eligible for participation in the 401K program.

Given the circumstances here, we do not believe it would be appropriate to award alimony.

IV. S.L.H. also contends the district court abused its discretion in awarding C.E.H. \$5,000 for trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). To overturn an award the complaining party must show that the trial court abused its discretion. Id. We find no abuse of discretion here and affirm the district court's award of trial attorney fees.

V. C.E.H. seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. Id. We determine each party should pay his or her own attorney fees for this appeal.

We affirm the district court except as we have modified in this opinion. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.