

IN THE COURT OF APPEALS OF IOWA

No. 8-534 / 97-1441

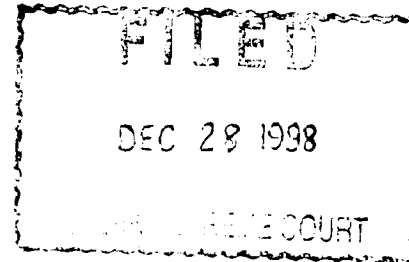
**IN RE THE MARRIAGE OF MONA KAY MCELDERRY
AND THOMAS ROBERT MCELDERRY**

**Upon the Petition of
MONA KAY MCELDERRY,**

Petitioner-Appellant,

**And Concerning
THOMAS ROBERT MCELDERRY,**

Respondent-Appellee.



Appeal from the Iowa District Court for Pottawattamie County, Timothy
O'Grady, Judge.

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

Suellen Overton, Council Bluffs, for appellant.

R. Laubenthal and Thomp J. Pattermann of Smith Peterson Law Firm, Council
Bluffs, for appellee.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Mona McElderry appeals various economic provisions of the parties' dissolution decree. She contends the district court erred in: (1) awarding her only \$1000 per month in alimony; (2) failing to award her health insurance; (3) ordering Thomas to pay child support only until their children reach the age of eighteen; and (4) failing to make an equitable division of the parties' property. Mona also seeks an award of appellate attorney fees and costs. We affirm as modified.

Thomas and Mona McElderry were married on June 30, 1973. Three children were born to the marriage, to wit: Thomas, who is now an adult; Veronica, born on April 1, 1987; and Joshua, born on March 22, 1991. Mona had two children from a previous marriage. One is an adult and the other is deceased. Thomas was forty-four years of age at the time of trial and Mona was forty-eight.

Thomas is a physician who began his residency at Broadlawns Hospital in Des Moines in 1985. The parties moved to Alaska in 1989 and to Minnesota in 1992. Each move was related to Thomas's employment. Thomas has been employed as a physician at Cogley Medical Associates in Council Bluffs since September of 1995. Thomas was guaranteed earnings at Cogley of \$120,000 per year for the first two years. Thereafter, his compensation was set at 85 percent of the revenue he produced in the previous year. He also receives \$10,000 per year for supervising a physician's assistant, and Cogley agreed to pay his educational indebtedness in the sum of \$34,042. Thomas is in excellent health, having recently competed in the Boston Marathon.

Mona has a master's degree in counseling but has not maintained her professional license. She was diagnosed with multiple sclerosis in 1976. Her health has progressively deteriorated and she is now confined to a wheelchair. She has limited hand movement and no reflex. Mona served as a homemaker and mother throughout much of the marriage. She terminated outside employment due to stress within the family. She was last employed outside the home in 1986. Mona is currently self-employed as an independent publisher. Thomas contributed \$17,955 to the business in 1994 and \$44,639 in 1996.¹ The business has failed to generate any income. Although not profitable, the business has served as a tax break.

The decree of dissolution was entered on July 18, 1997. The parties stipulated Veronica and Joshua would be placed in the primary physical care of Mona and Thomas would be granted reasonable and liberal visitation. The other issues were tried to the court. Mona filed a timely appeal of the district court's decree.

I. STANDARD OF REVIEW. 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 deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). However, we have a duty to examine the entire record and may adjudicate anew rights on those issues properly presented. Iowa R. App. P. 14(f)(7).

¹ The record is unclear, but these amounts apparently came from marital assets.

II. ALIMONY AWARD. The district court awarded Mona \$1000 per month in traditional alimony. Mona argues this award is not only inequitable, it is obscene. 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 relative needs of the other." *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983).

Traditional alimony is typically awarded when a spouse is financially dependent on the other, there is little prospect of self-sufficiency, and the marriage was of long duration. *In re Marriage of Debbler*, 459 N.W.2d 267, 270 (Iowa 1990); *In re Marriage of Eastman*, 538 N.W.2d 874, 876 (Iowa App. 1995). There is no dispute between the parties that traditional alimony is appropriate in this case. The only dispute is over the amount of that alimony. We find the alimony award made by the district court should be modified to the sum of \$1500 per month beginning August 1, 1997, and continuing until such time as Thomas is no longer responsible for child support. At that time, the alimony award will increase to the sum of \$2500 per month. All of the other terms and conditions of the alimony award shall remain as set out in the decree.

III. HEALTH INSURANCE. Mona contends the district court erred in failing to award her health insurance. The decree is silent on this issue. A former spouse can be required to maintain health insurance under certain circumstances. *In re Marriage of Weinberger*, 507 N.W.2d 733, 736 (Iowa App. 1993). This court has deemed such an award appropriate where the former spouse is not gainfully

employed, does not have health insurance readily available, and has shown a need for such insurance. *Id.*; *In re Marriage of Luebbert*, 400 N.W.2d 80, 83 (Iowa App. 1986).

Mona argues without the continuation of her health insurance coverage she will be forced to seek State assistance. We agree. The facts of this case require the district court decree be modified to require Thomas to maintain health insurance for Mona until she becomes eligible for Medicare at age sixty-two.

IV. CHILD SUPPORT. Both parties agree the child support award set forth in the decree should be modified. The child support award set out in the decree is modified only to the extent that said support shall continue between the ages of eighteen and nineteen if either child meets the criteria set forth in Iowa Code section 598.1(6).

V. PROPERTY DIVISION. Mona argues the property division made by the district court was inequitable. Mona had requested a lump sum property settlement of \$250,000. The district court denied that request. However, the district court did award Mona the marital home and ordered her to assume the mortgage thereon. In addition, the court ordered the parties' home in Minnesota sold with the proceeds first applied to the mortgage and thereafter to be applied to the purchase of a wheelchair-accessible van. Mona was awarded all inventory in her business and all household furnishings, while Thomas was awarded his profit sharing account. Finally, Thomas was ordered to pay the following debts: MBNA MasterCard in the sum of \$14,480; AFSA student loans of \$16,483 and \$19,253; AKUSA credit union

loan of \$9544; Gold Option credit card of \$21,932; Security Pacific credit line of \$34,968; AT&T credit card of \$2740; GMAC loan of \$800; ELSC student loan of \$6781; and the UNIPAC student loan of \$23,000.

We have reviewed the property division and find it to be within the permissible range of evidence. *In re Marriage of McKamey*, 522 N.W.2d 95, 97 (Iowa App. 1994). We will not disturb it on appeal.

VI. APPELLATE ATTORNEY FEES. Mona has requested an award of appellate attorney fees. In making such a determination, we are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *In re Marriage of Garst*, 573 N.W.2d 604, 608 (Iowa App. 1997). We determine Mona is entitled to \$1000 in appellate attorney fees. Costs on appeal are assessed to Thomas.

AFFIRMED AS MODIFIED.