

IN THE COURT OF APPEALS OF IOWA

No. 9-480 / 08-1417

Filed July 22, 2009

**IN RE THE MARRIAGE OF STACEY MARGARET SCHACHTNER
AND MICHAEL DALE SCHACHTNER**

**Upon the Petition of
STACEY MARGARET SCHACHTNER,**

Petitioner-Appellant,

**And Concerning
MICHAEL DALE SCHACHTNER,**

Respondent-Appellee.

Appeal from the Iowa District Court for Humboldt County, Joel E. Swanson, Judge.

Stacey M. Schachtner appeals from the district court's denial of her request for spousal support. **AFFIRMED AS MODIFIED.**

Andrew B. Howie, West Des Moines, for appellant.

Vicki R. Copeland, Jefferson, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

Stacey M. Schachtner appeals from the district court's denial of her request for spousal support. Upon our de novo review, we affirm as modified.

I. Background Facts and Proceedings.

Michael and Stacey Schachtner were married in August 1990. Three children were born during their marriage. Stacey filed a petition for dissolution of marriage in October 2007. Prior to the trial, the parties reached an agreement as to the custody and physical care of their two minor children. The petition came before the district court for trial in June 2008.

At the time of the trial, Michael was forty-three years old and in good health. Michael ran his own electrical services business and was the family's primary income provider. Michael's business, Electrical Advantage, Inc., employed ten people in addition to Michael. Michael's annual salary from the business in 2006 was \$74,506. Michael testified that at the time of trial his monthly living expenses equaled approximately \$4000.

Stacey was forty-five years old at the time of trial and generally in good health. Stacey was not employed at the time of trial. Stacey had been employed outside of the home during the marriage, but she had not been employed since the birth of the parties' youngest child in 2002. Stacey enrolled in two classes at Iowa Central Community College shortly after she filed her petition for dissolution, but she testified she received incompletes in the courses because she was unable to pay her remaining tuition. Stacey testified that she intended to enroll in the college's dental hygienist program, a two-and-a-half-year program which costs approximately \$17,000, to increase her earning potential. Stacey

testified that at the time of trial, her monthly living expenses equaled \$3380. At trial she requested \$3000 a month spousal support for the two and a half years she would be working towards her dental hygienist degree, and then spousal support of \$2000 per month thereafter.

On July 10, 2008, the district court entered a decree dissolving the parties' marriage. The court found Michael's income to be \$74,506 per year. The court found Stacey's testimony that she was a part-time student was not substantiated by credible evidence and that her intention of completing the college's dental hygienist program must be questioned. The court found that Stacey had been employed in the past and appeared to have marketable skills and was able to support herself, and imputed to her a minimum wage salary of \$15,000 per year. Based upon these figures and split physical care of the parties' minor children, the court ordered Michael to pay Stacey \$727.55 a month in child support.¹ This amount is to be paid until the older child reaches age eighteen, graduates from high school, whichever occurs later, dies or becomes emancipated, whichever occurs earlier. Then Michael's child support obligation increases to \$874 per month for the younger child. The court valued the parties' assets and obligations, as well as Michael's business. The court then equitably divided the property, requiring Michael to pay an equity award to Stacey in the sum of \$60,000. The court made Michael responsible for all of the parties' debts, including the vehicle awarded to Stacey, except for debts incurred by Stacey

¹ Michael was ordered to pay \$930.36 per month for one child. Stacey was ordered to pay \$203.41 per month for one child. The difference is \$726.95. Nevertheless, the decree provides, as an offset, that Michael pay "\$727.55" per month in child support.

after the filing of the petition and Stacey's personal debts. The court denied Stacey's request for spousal support, noting the division of the parties' assets.

Stacey appeals. She contends the district court erred in denying her request for spousal support. She requests an award of appellate attorney fees.

II. Scope and Standards of Review.

We review dissolution cases de novo. Iowa R. App. P. 6.4; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). Although not bound by the district court's factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.14(6)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

III. Discussion.

A. Spousal Support.

Spousal support "is an allowance to the spouse in lieu of the legal obligation for support." *In re Marriage of Sjulín*, 431 N.W.2d 773, 775 (Iowa 1988). Any form of spousal support is discretionary with the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). Spousal support is not an absolute right; an award depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). The discretionary award of spousal support is made after considering the factors listed in Iowa Code section 598.21A(1) (2007). *Id.* We consider the length of the marriage, the age and health of the parties, the parties' earning capacities, the levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998).

Property division and alimony should be considered together in evaluating their individual sufficiency. *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998). In a marriage of long duration, an award of spousal support and a substantially equal property division may be appropriate, especially where there is a great disparity in earning capacity. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993).

An alimony award will differ in amount and duration according to the purpose it is designed to serve. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). Traditional alimony is “payable for life or so long as a spouse is incapable of self-support.” *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989). Rehabilitative alimony was conceived as a way of supporting an economically dependent spouse through a limited period of education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting. *Id.* at 63; *see also In re Marriage of O’Rourke*, 547 N.W.2d 864, 866 (Iowa Ct. App. 1996). Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic independence of the ex-spouses. *Francis*, 442 N.W.2d at 64. “Reimbursement” alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other spouse. *Id.* It “allows the spouse receiving the support to share in the other spouse’s future earnings in exchange for the receiving spouse’s contributions to the source of that income.” *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008).

The district court determined an award of spousal support was not justified in this case based upon the division of assets in the case. Even though our review is de novo, we accord the district court considerable discretion in making spousal support determinations and will disturb its ruling only where there has been a failure to do equity. *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997). However, upon our review, we find the court's failure to award Stacey spousal support was inequitable.

Here, the parties were married for seventeen years. Although Stacey had not been employed for at least the last five years of the marriage, the evidence supports the court's finding that Stacey was capable of at least minimum wage employment. The court therefore correctly imputed to her a minimum wage salary of \$15,000 per year. However, even considering this income, it is clear that Stacey's earning capacity is substantially lower than Michael's earning capacity. Although Stacey was awarded an equity award and not required to pay the parties' debts, it is clear that Stacey's ability to maintain her predissolution standard of living is limited by her lower earning capacity. Considering the length of the parties' marriage, the parties' ages, the parties' levels of education, Stacey's lower earning capacity, Stacey's ability to become self-supporting at a standard of living comparable to the one enjoyed during the marriage, the division of assets and liabilities, and Michael's ability to pay, we conclude that equity requires an award of traditional alimony.

Stacey also requested rehabilitative alimony so she could continue her education. Stacey testified she would enroll in the dental hygienist program to increase her earning potential. The district court found, and we agree, that very

little evidence was offered to substantiate that Stacey was truly in a position to enroll in the program due to its entrance requirements. We therefore conclude that equity does not require an award of rehabilitative alimony.

For the reasons stated above, we accordingly modify the dissolution decree to award Stacey traditional alimony in the amount of \$500 per month beginning July 10, 2008, until the first of the following occurs: Stacey dies, remarries, or begins receiving Social Security income.²

B. Attorney Fees.

On appeal, Stacey requests an award of appellate attorney fees. Appellate attorney fees are not a matter of right, but rather rest in this court's discretion. *Sullins*, 715 N.W.2d at 255. In arriving at our decision, we consider the parties' needs, ability to pay, and the relative merits of the appeal. *Id.* Upon consideration of these factors, we award Stacey \$1000 in appellate attorney fees. Court costs are assessed one-half to each party.

IV. Conclusion.

Because we conclude that equity requires an award of traditional alimony, we conclude the district court erred in denying her request for spousal support.

AFFIRMED AS MODIFIED.

² The decision of this appellate court is effective as of the date the district court's entry of the decree. See *Thomas v. Minner*, 340 N.W.2d 285, 286-87 (Iowa 1983).