

IN THE COURT OF APPEALS OF IOWA

No. 1-433 / 10-1888

Filed July 27, 2011

**IN RE THE MARRIAGE OF BETH M. OGREN
AND SCOT D. OGREN**

**Upon the Petition of
BETH M. OGREN,**
Petitioner-Appellee,

**And Concerning
SCOT D. OGREN,**
Respondent-Appellant.

Appeal from the Iowa District Court for Cherokee County, John P. Duffy,
Judge.

Scot Ogren appeals from the economic provisions of the district court's
dissolution decree. **AFFIRMED AS MODIFIED.**

George W. Wittgraf of Sayre, Wittgraf & Meloy, Cherokee, for appellant.

John P. Loughlin of Loughlin Law Firm, Cherokee, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

Beth and Scot Ogren were married July 1, 2006. Beth is a high school graduate and has a legal secretary diploma from a technical school in Minnesota. Before meeting Scot, Beth was employed regularly. At the time of the parties' engagement, Beth had been working for the same employer for seven years and made approximately \$42,000 per year.

In September 2006, Beth moved from Minnesota to Cherokee to live with Scot. She was then unemployed until October 2007, when she began working roughly thirty hours per week in an administrative capacity. In June 2008, she obtained new employment where she worked as an administrative assistant for approximately twenty-four hours per week. She voluntarily ended that employment in July 2009, when the parties separated and Beth moved to the Twin Cities. She obtained temporary employment from October 2009 through January 2010. Beth has been unable to find full-time employment since leaving Iowa.

Scot is a high school graduate. At the time of trial, he had been self-employed in the insurance industry for twenty-four years. Scot's net income in 2008 was \$124,000. Scot paid for the majority of the parties' living expenses during the marriage. Before the parties' marriage, Scot bought Beth a vehicle and paid off approximately \$40,000 of Beth's debts.

On June 24, 2009, Beth filed a petition for dissolution of the parties' marriage. Following a hearing on temporary matters in July 2009, Scot was ordered to pay Beth temporary alimony in the amount of \$1000 per month.

In a pretrial stipulation, the parties stipulated to the division of most of their assets and liabilities. Beth requested alimony and a \$10,000 lump sum property settlement.

Following a hearing on the petition for dissolution, the district court dissolved the parties' marriage on October 25, 2010. The district court ordered a property division in accordance with the parties' stipulation and ordered, "As a further division of property, Scott shall pay Beth the sum of \$10,000." The district court also ordered Scott to pay Beth rehabilitative alimony in the amount of \$1500 per month for twenty-four months.

Scott appeals, asserting the district court erred in awarding alimony and in awarding \$10,000 to Beth as a further division of the parties' property.

II. Analysis

Scot argues the district court erred in awarding Beth spousal support and a lump sum payment as part of the property division. He asserts the temporary alimony of \$1000 for fifteen months was sufficient to enable Beth to meet the goal of self-sufficiency.

Partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002). The property should be distributed based on what is equitable under the circumstances and considering criteria listed in Iowa Code section 598.21(5) (2009). *Id.*

Alimony "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). Alimony is not an absolute right; any form of alimony is within the discretion of the court. *In*

re Marriage of Ask, 551 N.W.2d 643, 645 (Iowa 1996). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21A(1). *Id.*

After considering “Scot’s ability to pay spousal support, balanced against Beth’s needs and her inability to obtain full-time employment,” the district court awarded Beth an additional twenty-four months of rehabilitative spousal support. Rehabilitative spousal support is “a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting.” *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989). Beth did not suggest she will seek re-education or retraining; her goal is to obtain full-time employment similar to the work she did before the marriage.

Further, after a *de novo* review of the record and an analysis of the applicable statutory factors in section 598.21A, we conclude an additional award of rehabilitative alimony is not appropriate in this case. See Iowa R. App. P. 6.907.

The parties’ marriage was short-term, lasting roughly four years. See Iowa Code § 598.21A(1)(a). For the last fifteen months of those four years, Beth received temporary alimony.

Beth received her requested property equalization payment of \$10,000. See Iowa Code § 598.21A(1)(c). One factor to consider in dividing property is the amount and duration of spousal support and “whether the property division should be in lieu of such payments.” Iowa Code § 598.21(5)(h).

Beth is capable of working full-time, has not been long out of the job market in the Twin Cities, and has an earning capacity that allowed her to be self-supporting before she moved to Iowa and would allow her to be self-supporting again. See Iowa Code §598.21A(1)(e)

It is feasible that Beth could become self-supporting at a standard of living reasonably comparable to that she enjoyed before her courtship and marriage to Scot, although perhaps not including the travel Scot provided during their marriage. See Iowa Code § 598.21A(1)(f). The length of time necessary for Beth to obtain full-time employment was considered by the district court ruling on temporary orders. In its order on temporary matters, the district court found Beth would be likely to “support herself in the manner she has previously enjoyed in a relatively short period of time.” Beth received temporary alimony for fifteen months. Beth had not yet obtained full-time employment at the time of trial, but she had sufficient education, training, and experience to be immediately employable.

After considering the statutory factors, we conclude the temporary alimony and property distribution awarded in this case accomplish the district court’s goal of supporting Beth during the time it takes her to become self-supporting. Scot paid Beth temporary alimony for a sufficient length of time to allow Beth to re-enter the job market. The property division in this case provides Beth further support, and we conclude the property division should be awarded in lieu of spousal support. See Iowa Code § 598.21(5)(h).

We believe the district court’s award of \$10,000 to Beth as part of the property division is sufficient to do equity between the parties. We therefore

affirm the district court's property distribution and strike the portion of the district court's decree awarding Beth spousal support.

Beth requests appellate attorney fees. An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997). We 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. See *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). We decline to award attorney fees. Costs on appeal are assessed to Scot.

AFFIRMED AS MODIFIED.