

Cite as 2009 Ark. App. 803

**ARKANSAS COURT OF APPEALS**DIVISION II  
No. CA09-237

NELTA HALK

APPELLANT

V.

JIM HALK

APPELLEE

**Opinion Delivered** DECEMBER 2, 2009APPEAL FROM THE CROSS  
COUNTY CIRCUIT COURT  
[NO. DR-2006-103 (4)]HONORABLE KATHLEEN BELL,  
JUDGEAFFIRMED IN PART; REVERSED  
AND REMANDED IN PART**M. MICHAEL KINARD, Judge**

Appellant, Nelta Halk, appeals from the divorce decree entered by the circuit court that ended the marriage between the parties. In her brief, appellant argues that the trial court erred in denying her request for alimony, erred in unequally dividing the marital property, and erred in denying her request for attorney's fees. We affirm in part and reverse and remand in part.

The parties married in 1963 and separated in 2006. The parties met while in school, and appellant testified that she quit school without earning a degree when the parties married. Many years after the parties were married, appellant earned a bachelor of fine arts degree, but she testified that she never used it to find employment. Appellee worked with his father until the 1990s when he began farming operations. Appellee owns fifty percent of the stock in three corporations; two are co-owned by the parties' son, Kent Halk, and one is co-owned

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by an individual who is unrelated to the parties. Appellant testified that she did not believe that her son owned half of two of the corporations; she believed that appellant owned 100 percent of both of them. Appellant testified that she primarily did not work during the marriage at the insistence of appellee, although she did work for short periods of time to make extra money in order to buy things for the home. Appellant testified that she has had diabetes for many years, and that the condition has resulted in at least three hospitalizations. Appellant further testified that from May 2006 through December 2006, she accrued approximately \$21,000 in medical expenses due to her diabetic condition. Appellant's affidavit of financial means, filed prior to the hearing, reflects no income and monthly expenses of approximately \$5600, which includes \$700 per month for health insurance.

Appellee testified that, at the time of the hearing, he was earning a net amount of \$754 per week from one of his companies, which amounts to \$38,208 over a fifty-two-week period. He testified that this was his only source of income. He testified that he was paying \$350 per month to rent a home from his son. The parties' 2004 joint tax return showed a total income of \$76,239. Appellee's 2005 separate tax return showed a total income of \$61,566. Appellant's financial expert testified that he calculated the parties' total income for the period from January 2005 to January 2006 to be \$191,910.76. Appellee's expert disputed the calculations of appellant's expert, and gave an opinion that the income listed on the parties' tax returns was a better indicator of their income. Appellee's net worth in July 2006 was calculated at \$2,175,311. His net worth as of April 2007 was calculated at \$1,589,345.

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On August 28, 2008, the circuit court entered a decree of divorce ending the parties' marriage. In the decree, the circuit court divided certain marital property between the parties and ordered other marital property to be sold, with the proceeds to be applied to the marital debt and any excess to be divided equally between the parties. The circuit court allowed appellee to retain his full fifty-percent ownership in all three corporations. The circuit court also denied appellant's request for alimony and attorney's fees and awarded appellant a life estate in the marital home. Appellant filed a timely notice of appeal from the decree.

Appellant's first point on appeal is that the circuit court erred in denying her request for alimony. The decision to grant alimony lies within the sound discretion of the circuit court, and will not be reversed on appeal absent an abuse of discretion. *Taylor v. Taylor*, 369 Ark. 31, 250 S.W.3d 232 (2007). The award of alimony is not mandatory, but is, instead, discretionary. *Powell v. Powell*, 82 Ark. App. 17, 110 S.W.3d 290 (2003). The purpose of alimony is to rectify an economic imbalance in the earning power and standard of living of the parties to a divorce in light of the particular facts of each case. *Kuchmas v. Kuchmas*, 368 Ark. 43, 243 S.W.3d 270 (2006). The primary factor to be considered in awarding alimony is the need of one spouse and the other spouse's ability to pay. *Id.* Other factors include the parties' financial circumstances, the amount and nature of the parties' income, the extent and nature of the parties' assets and resources, and the parties' earning capacity and ability. *Cole v. Cole*, 89 Ark. App. 134, 204 S.W.3d 21 (2005).

We hold that the circuit court's decision to completely deny alimony to appellant was

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an abuse of discretion. In the decree, the circuit court simply denied appellant's request for alimony without any further explanation. Our review of the record indicates several factors that we are left to conclude were overlooked by the circuit court in deciding to deny appellant's request for alimony. At the time the decree was entered, appellant was sixty-four years old. The parties were married for forty-five years. Appellant's uncontradicted testimony was that for the duration of the marriage, she did not work at the insistence of appellee. Appellant indicated in her financial-means affidavit that she has no income. Furthermore, appellant has a medical condition that has resulted in substantial ongoing medical expenses. As noted above, the primary purpose of alimony is to rectify any imbalance in the parties' earning power and standard of living. Under the facts of this case, the denial of alimony to appellant was an abuse of discretion. Therefore, we reverse the circuit court on its refusal to award alimony to appellant and remand the matter back to the circuit court to enter an award of alimony to appellant based upon a consideration of the above-mentioned factors.

Appellant's second point on appeal is that the trial court erred in making an inequitable distribution of marital assets. Division of marital property cases are reviewed de novo, although the circuit court's findings will not be reversed unless they are clearly erroneous or clearly against the preponderance of the evidence. *Hernandez v. Hernandez*, 371 Ark. 323, 265 S.W.3d 746 (2007). Appellant contends that the trial court erroneously granted appellee the majority of the marital assets. Appellant's assertion is incorrect. Based upon the values

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assigned to the various items of marital property in the decree, appellant was awarded approximately \$277,000 in marital assets, while appellee was awarded approximately \$282,000 in marital assets. In addition, appellee was ordered to assume approximately \$305,000 in debt.

Appellant argues that the circuit court erred in granting appellee his full fifty-percent ownership in the three corporations. Appellant argues that this results in an inequitable distribution of marital assets because the corporations are going concerns that will generate income for appellee. However, the only evidence regarding the value of the corporations introduced at the hearing was their current value, which appears to have been taken into account by the trial court in dividing the marital property. There was no evidence presented as to what income, if any, the corporations would generate. Based upon the record before it, the trial court did not err in awarding appellee his full fifty-percent share in the three companies.

Appellant also argues that the trial court's decision to award appellant a life estate in the marital home as opposed to ownership in fee simple results in an inequitable distribution of the marital estate. The parties built the home on land appellee inherited from his family using marital funds. Appellant testified that she had lived in the home since it was built, and that she needed to remain in the home because of her financial situation and the fact that the home is near the parties' daughter, who is her primary caregiver. The award of a life estate allows appellant to live close to her daughter without having to pay rent or a mortgage. The trial court did not err in granting appellant a life estate in the marital home. Because the

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marital property was equitably divided, and appellee was assigned the majority of the marital debt, we hold that the trial court's division of the marital property was neither clearly erroneous nor clearly against the preponderance of the evidence.

Appellant's final point on appeal is that the trial court erred in denying her request for attorney's fees. A trial court's decision regarding whether to award attorney's fees is reviewed under an abuse-of-discretion standard. *Hartsfield v. Lescher*, 104 Ark. App. 1, 289 S.W.3d 123 (2008). In determining whether to award fees, the trial court is to consider the relative financial abilities of the parties. *McKay v. McKay*, 340 Ark. 171, 8 S.W.3d 525 (2000). Appellee testified that he brings in approximately \$38,000 per year, and he was ordered to assume over \$300,000 in debt. In addition, appellant was awarded significant cash assets in the property division. Under these circumstances, we find no abuse of discretion in the trial court's denial of appellant's request for attorney's fees.

Affirmed in part; reversed and remanded in part.

PITTMAN and BAKER, JJ., agree.