

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION I

CA07-986

April 16, 2008

ASA JOE MCDONALD
APPELLANT

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[CR-2006-830-4]

V.

HON. LEON N. JAMISON, JUDGE

DELLA JANICE MCDONALD
APPELLEE

AFFIRMED

Joe McDonald appeals the decree of divorce entered by the Circuit Court of Jefferson County, contending that the trial court abused its discretion in awarding Della McDonald permanent alimony of \$600 a month. We affirm.

The parties were married in March 1976, and no children were born of the marriage. In April 2006, the parties separated, and Della filed for divorce in June 2006. At the time of the divorce, Della was sixty-six years old, Joe was seventy-seven years old, and both were retired from long-time employment at the International Paper Company. Prior to the divorce hearing, the parties agreed to the division of many of their assets and liabilities; however, two issues remained unresolved—Della's entitlement to permanent alimony and division of the parties' retirement accounts.

At the hearing, the parties stipulated to the following facts: (1) Della had \$26,238 in her retirement account; (2) she was receiving \$380 retirement income per month from IP and \$1,230 per month from social security, giving her a gross monthly income of \$1,610; (3) Joe had \$384,410 in his retirement account; and (4) he was receiving \$2,178.97 a month from his IP retirement and \$1,181 per month from social security, making his gross monthly income \$3,359.

Della testified that she quit working at IP in 1990 because she was suffering from multiple sclerosis, fibromyalgia, and osteoporosis. She testified that she required a significant amount of assistance due to her poor health. At one time she was confined to a wheelchair, but at the time of the hearing she had learned to use a walker. Regarding her finances, in addition to her retirement account, Della testified that she had approximately \$25,000 in a bank account, which was the remainder of her portion of the proceeds from the sale of the parties' marital home.¹ Della's affidavit of financial means reflected that her monthly expenses exceeded \$4,000.

Della's sister, Patsy Milligan, testified that Della's multiple sclerosis affected her brain and spinal cord, causing paralysis, muscle spasms, and speech disorders. In addition, Della had several mini-strokes that also affected her speech. As a result, Ms. Milligan testified that she was Della's full-time care giver the past year and that Della continued to need full-time care. Ms. Milligan was responsible for securing Della's many prescription medications and assisting

¹The parties sold their marital home for approximately \$300,000, and each party received one-half of the proceeds of that sale.

Della in paying her bills. Ms. Milligan does not trust Della's ability to drive or cook. To relieve some of the stress on Ms. Milligan, she hired outside help to assist in Della's care at the cost of \$10 per hour. Ms. Milligan testified that Della's expenses, due in large part to her medical condition, are greater than her monthly income. She also testified that Della's life expectancy was approximately six years.

Joe testified that in addition to his retirement account, he had approximately \$155,000 in savings from his portion of the proceeds from the sale of the parties' marital home. Joe testified that his monthly expenses were \$1,571.² Joe testified that he was not claiming any interest in Della's \$380.30 monthly retirement income. He also agreed to continue to pay Della's Medicare prescription-drug supplement plan, which amounted to \$104 per month.

The trial court entered an order finding, among other things that: (1) Della's monthly gross income was \$1,610 and Joe's monthly gross income was \$3,359.97; (2) Della was entitled to \$158,143.35 of Joe's retirement account; (3) Joe was entitled to \$13,119 of Della's retirement account; (4) Joe waived his right to Della's monthly retirement income of \$380.30; (5) Della was entitled to a payment of \$451 per month from Joe's retirement income; (6) Della was in need of permanent alimony, and Joe had the ability to pay alimony; (7) Della needed daily assistance, due to her medical condition, and prescription medication; and (8) Della was entitled to alimony in the amount of \$600 a month. Joe timely appealed,

²Joe's affidavit of financial means reflected monthly expenses of \$2,431.34. However, at the hearing, Joe deducted \$860 from those expenses due to the fact that he did not own or rent a home.

contending only that the trial court abused its discretion in awarding Della \$600 a month in permanent alimony.

The award of alimony is a matter within the sound discretion of the trial court, and the award will not be reversed absent an abuse that discretion. *Harvey v. Harvey*, 295 Ark. 102, 747 S.W.2d 89 (1988). The trial court can make an award of alimony that is reasonable under the circumstances. Ark. Code Ann. § 9-12-312 (Repl. 2008). The purpose of alimony is to rectify economic imbalance in earning power and standard of living in light of the particular facts in each case. *Harvey, supra*. The primary factors to be considered are the need of one spouse and the other spouse's ability to pay. *Id.* The trial court should also consider the following secondary factors: (1) the financial circumstances of both parties; (2) the amount and nature of the income, both current and anticipated, of both parties; (3) the extent and nature of the resources and assets of each of the parties; and (4) the earning ability and capacity of both parties. *Taylor v. Taylor*, 369 Ark. 31, ___ S.W.3d ___ (2007). Another factor to be considered is the condition of health and the medical needs of the parties. *Franklin v. Franklin*, 25 Ark. App. 287, 758 S.W.2d 7 (1988).

On appeal, Joe contends that the trial court's award of alimony in the amount of \$600 per month was an abuse of discretion because it increased Della's monthly income to \$2,561³ and unfairly reduced his monthly income to \$1,632,⁴ which results in a disparity of \$929 per

³To reach the figure of \$2,561, Joe added Della's monthly net income of \$1,517, the \$451 monthly payment from Joe's retirement income, and the \$600 alimony award.

⁴To reach the figure of \$1,632, Joe deducted from his \$3,359 monthly gross income his payments to Della for prescription insurance (\$104), her share of his retirement (\$451), alimony (\$600), and his estimated monthly tax liability (\$572).

month. He argues that even though Della's monthly income will increase to \$2,561, that amount still fails to cover her monthly expenses. He finally argues that the trial court failed to take into consideration the income from the parties' retirement accounts.

We note that Joe fails to question the trial court's findings that Della needed alimony and Joe had the ability to pay it, which are the primary factors for determining whether alimony should be awarded. When considering these factors, we hold that the trial court did not abuse its discretion in awarding alimony to Della. First, Della needs it. She is sixty-six years old and is in very poor health. She suffers from several medical conditions, which causes her to need assistance in nearly every aspect of her life. She uses a walker for mobility and does not drive. She had an episode of paralysis at the beauty shop the week of the hearing. She not only needs full-time help from a caregiver, she also requires a significant amount of prescription medications. Joe acknowledged that Della had needs that he did not have because of her medical conditions. And while Joe asserts that Della's increased monthly income—one that includes alimony—still fails to cover her monthly expenses, that argument cuts against him as it further highlights her true need for alimony.

Further, Joe has the ability to pay. At the hearing, the parties stipulated that Joe's monthly income was \$3,359, while Della's was \$1,610. Della has \$26,238 in a retirement account and Joe has \$384,410 in a retirement account. Joe has monthly expenses of approximately \$1,500, while Della's monthly expenses are approximately \$4,100. While the trial court did not appear to take into consideration the parties' income from their retirement accounts, this does not harm Joe. After the distribution of funds as ordered in the divorce

decree, the funds in his retirement account are greater than Della's;⁵ therefore, his retirement income will likely be greater than hers.

Joe asserts that the trial court's order unfairly reduces his monthly income; however, Joe's calculations are flawed because he considers his estimated tax liability in calculating his gross monthly income. While it is important to consider the tax liability of the parties in a divorce proceeding, in the case at bar, the trial court failed to make any findings on this issue. Therefore, we do not include Joe's estimated tax liability in calculating his monthly income. After applying the trial court's award, Joe's monthly gross income is reduced to \$2,204,⁶ and Della's monthly income is increased to \$2,765,⁷ resulting in a disparity of \$561; not \$929 as Joe argues.

Finally, there is no question that the trial court's award of alimony increases Della's monthly income and decreases Joe's. This happens in every case where one party is ordered to pay alimony to another party. This does not automatically translate into an abuse of discretion by the trial court. In this case, where Della is in clear need of alimony and Joe has

⁵The trial court awarded Della \$158,143.35 of Joe's retirement account, and Joe was awarded \$13,119 of Della's retirement account. This leaves Della's with \$171,143.35 in her retirement account and Joe with \$238,856.65 in his.

⁶This figure is reached by deducting from Joe's monthly income of \$3,359, Della's drug-plan benefit of \$104, Della's portion of Joe's retirement income, which is \$451, and alimony to Della in the amount of \$600.

⁷ This figure is reached by adding to Della's monthly income of \$1,610, the \$104 drug benefit, the \$451, which is Della's portion of Joe's retirement, and alimony of \$600.

the ability to pay, the trial court's award of alimony to Della in the amount of \$600 per month was not an abuse of discretion.

Affirmed.

HART and HEFFLEY, JJ., agree.