

ARKANSAS COURT OF APPEALSDIVISION III
No. CA10-1228

JAMES E. ROBINSON

APPELLANT

V.

ROSE E. ROBINSON

APPELLEE

Opinion Delivered October 26, 2011

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT,
CHICKASAWBA DISTRICT
[NO. DR-2009-234 (PH)]HONORABLE PAMELA
HONEYCUTT, JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

The parties were married in December 1987 and divorced by a decree entered in July 2010. The trial court divided the parties' marital property; awarded appellee, Rose Robinson, \$525 per month in permanent alimony; and ordered appellant, James Robinson, to pay appellee \$500 in attorney's fees. Appellant argues on appeal that the trial court erred in awarding appellee permanent alimony and in ordering appellant to pay an attorney's fee. We affirm.

The decision whether to award alimony is a matter that lies within the trial judge's sound discretion, and on appeal this court will not reverse a decision to award alimony absent an abuse of that discretion. *Cole v. Cole*, 89 Ark. App. 134, 201 S.W.3d 21 (2005). The primary factors that a court should consider in determining whether to award alimony are the financial need of one spouse and the other spouse's ability to pay. *Id.* A court may also

consider other factors including, among other things: (1) the parties' financial circumstances; (2) the amount and nature of the parties' income, both current and anticipated; (3) the extent and nature of the parties' resources and assets; (4) the parties' earning ability and capacity. *Id.*

Here, there was evidence that appellee, who is fifty-eight years of age and has an eighth-grade education, worked during the marriage until she became physically disabled and could no longer do so. She qualified for and began receiving Social Security disability benefits in 2005. Her entire income consists of monthly disability benefits in the amount of \$643. Appellant is employed by Steel Related Technology in a supervisory capacity and has a monthly income of \$2,626.14. Although appellant testified that he has heart disease and has four stents in place, he also stated that he is able to perform his job duties, which include climbing approximately eighty steps several times per week to access equipment. Appellant is fifty-four years of age. The parties have no joint debts, but both have individual debts. The marital home was in foreclosure at the time of the hearing, and the parties have no substantial assets except for a 401(k) retirement fund acquired by appellant during the marriage. The record shows that, although appellant has difficulty paying his debts and current expenses with the income available to him, appellee is manifestly unable to do so with her disability income.

Appellant bases much of his alimony argument on the trial court's comments regarding factors that would support an unequal division of marital property in favor of appellee. We need not address these arguments because the record fails to show that the marital property was divided unequally; the trial judge stated that she believed the property division was approximately equal. Arkansas Code Annotated section 9-12-315 (Repl. 2009) does not

compel mathematical precision in property distribution. The trial court is vested with a measure of flexibility in apportioning the total assets held in the marital estate upon divorce, and the critical inquiry is how the total assets are divided. *Creson v. Creson*, 53 Ark. App. 41, 917 S.W.2d 553 (1996). On this record, we cannot say that the property division was unequal.

In further support of his argument that the alimony award is erroneous, appellant cites two cases in which this court, faced with somewhat similar circumstances, upheld the trial court's denial of alimony. However, the trial court has broad discretion in deciding whether to award alimony, and it therefore does not follow that the affirmance of a decision to deny alimony stands for the proposition that awarding alimony under those circumstances would be improper. Given the circumstances of this case, where the trial court found appellee to be unemployable and appellant not only remained employed but had also recently been granted a substantial raise in salary, the trial court did not abuse its discretion in making its alimony award to appellee.

Next, appellant argues that the trial court erred in ordering him to pay \$500 in attorney's fees. The circuit court has the inherent power to award attorney's fees in domestic-relations proceedings, and whether the circuit court should award fees and the amount thereof are matters within the discretion of the circuit court. *Gilliam v. Gilliam*, 2010 Ark. App. 137. In making this determination, the circuit court must consider the relative financial positions of the parties. *Jablonski v. Jablonski*, 71 Ark. App. 33, 25 S.W.3d 433 (2000). The circuit court may use its own experience as a guide and can consider the types

of factors set forth in *Chrisco v. Sun Industries, Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990),¹ but it need not conduct an exhaustive hearing on the amount of attorney's fees because it has presided over the proceedings and gained familiarity with the case and the services rendered by the attorney. *Stout v. Stout*, 2011 Ark. App. 201. Furthermore, we do not require strict documentation of time and expense in a divorce case where the circuit court has the opportunity to observe the parties, their level of cooperation, and their obedience to court orders. *Id.* Here, unlike the situation presented in *Stout, supra*, the trial court did discuss the differences in the parties' income and earning potential, the type of proceeding, and the amount of work expended, and stated that it appeared that the amount of legal work performed by appellee's attorney had been minimal. On this record, we cannot say that the trial court abused its discretion in awarding appellee a \$500 attorney's fee.

Affirmed.

ABRAMSON and HOOFFMAN, JJ., agree.

¹These factors are (1) the experience and ability of the attorney; (2) the time and labor required to perform the legal services properly; (3) the amount involved in the case and the results obtained; (4) the novelty and difficulty of the issues involved; (5) the fee customarily charged in the locality for similar legal services; (6) whether the fee is fixed or contingent; (7) the time limitations imposed upon the client or by the circumstances; and (8) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.