

IN THE COURT OF APPEALS OF IOWA

No. 9-283 / 08-1416
Filed May 6, 2009

**IN RE THE MARRIAGE OF DEWEY M. GOINS
AND MARY P. GOINS**

**Upon the Petition of
DEWEY M. GOINS,**
Petitioner-Appellant/Cross-Appellee,

**And Concerning
MARY P. GOINS,**
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Linn County, Denver D. Dillard,
Judge.

Dewey Goins appeals, and Mary Goins cross-appeals, from the district
court's decree dissolving their marriage. **AFFIRMED.**

Henry E. Nathanson of Nazette, Marner, Nathanson & Shea, L.L.P., Cedar
Rapids, for appellant.

Stephen B. Jackson and Stephen B. Jackson, Jr., Cedar Rapids, for
appellee.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

MAHAN, P.J.

Dewey Goins appeals from the spousal support and attorney fee awards of the parties' dissolution decree. Mary "Pat" Goins cross-appeals the amount of the spousal support award. We affirm.

At the time of trial Dewey was fifty-one years old and Pat was fifty-nine years old. The parties had been married ten years and had lived together in a relationship similar to a marriage for several years more.¹ Sometime in 2006 or 2007, Dewey informed Pat that he wished to dissolve the marriage.² Dewey is a high school graduate, and Pat received her GED and attended one year of community college. Currently, Dewey is employed at Pickwick Manufacturing Company earning \$13.50 hourly. Pat is employed at Wal-Mart earning \$15.30 hourly. Annually, the parties earn less than \$30,000 each; however, Dewey also earns more than that amount in income from his investments. Dewey is in good physical and mental health. Pat has no current health issues, but has a history of some medical problems, one of which was serious.

The record shows that the parties (Dewey especially) lived very frugally and within their means. The district court even noted that Dewey's "penurious nature" made the dissolution process "somewhat more complicated." Throughout the marriage, Pat deposited her paychecks into a joint checking account, from which she paid bills and living expenses for the parties. Dewey kept his own checking account, but deposited a specific monthly share of his

¹ This was the first marriage for both parties.

² Pat eventually moved out and purchased a home in her name.

paycheck into the joint account.³ According to Pat, the parties were under agreement that Pat's paychecks were for day-to-day living expenses and Dewey's paychecks were being saved for the parties' retirement.

Pat brought very few assets into the marriage. Dewey, however, brought assets totaling \$361,000 into the marriage, in addition to the parties' home, which was paid for and in his name. Prior to the marriage, the parties signed an antenuptial agreement because Dewey refused to be married without such an agreement. The agreement provided that each party's premarital property and earnings therefrom would remain his or her own separate property and would not be subject to division in the event of dissolution. The district court found the agreement to be valid and enforceable in all respects.⁴

At the time of trial, Dewey's assets had increased and were worth more than \$840,000, which the dissolution decree ordered him to receive. At the same time, Pat was making mortgage payments on her home in the amount of \$675.72 per month and had less than \$20,000 in assets. After considering the factors listed in Iowa Code section 598.21A (2007), the court concluded Pat was entitled to spousal support in the amount of \$700 per month:

While Respondent's hourly wage is greater than Petitioner's, her actual income is substantially less and will continue to be substantially less than Petitioner's because of the number of hours worked, their relative ages and the interest income on Petitioner's investments. Respondent has virtually no opportunity for retraining and greater income potential. Further, her health is more fragile than Petitioner's with a recurrence of her serious health problem being a real potential. Finally, the application of the antenuptial

³ The monthly sum was originally \$400, then grew to \$450, and then \$500. Eventually, the sum became \$700, which included \$150 for a hospital bill and \$50 for a vacation fund.

⁴ Therefore, spousal support was the only substantial issue before the court.

agreement in this case creates a substantially bigger disparity in wealth and income than would otherwise be the case. The parties were married for ten years and had a relationship not unlike a marriage for several years more. In contrast, Petitioner will have available to him an income tax deduction for alimony and his lifestyle is such that a reasonable award of spousal support will not interfere with his enjoyment of life. Finally, an evaluation of Respondent's circumstances shows that her major need for a comfortable existence is coverage of the housing expense she has incurred. But for the dissolution of marriage, that expense would not exist. A reasonable amount of spousal support to cover that housing expense is \$700 per month.

Dewey argues the court erred in awarding spousal support to Pat. Pat argues the court should have awarded spousal support in the amount of \$1000 instead of \$700. After a thorough review and consideration of the evidence presented, the contentions of the parties, and the court's resolution of the issues presented, we find no error in and agree with the district court's ruling. Therefore, we affirm on this issue. We disagree with Dewey's contention that the award of spousal support amounts to a circumvention of the antenuptial agreement. Among other things, the record shows that Dewey, unlike Pat, did not put all of his paychecks into the parties' joint account during the marriage, but used portions of those checks to add to the assets that were in his own name.

Dewey further argues the district court erroneously awarded Pat trial attorney fees in the amount of \$2000. An award of attorney fees is not a matter of right, but rather rests within the court's discretion. *In re Marriage of Hocker*, 752 N.W.2d 447, 451 (Iowa 2008). We review the district court's award of attorney fees for abuse of discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). An award of attorney fees is based upon the respective abilities of the parties to pay the fees and whether the fees are fair and

reasonable. *In re Marriage of Applegate*, 567 N.W.2d 671, 675 (Iowa Ct. App. 1997). Dewey filed the petition for dissolution of the parties' marriage, and thereafter the court-enforced antenuptial agreement created a large disparity of wealth between the parties. We conclude the district court did not abuse its discretion when it awarded Pat attorney fees.

Pat requests appellate attorney fees. This court has broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). An award of appellate attorney fees is based upon the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id.*; *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). Given the working statuses of the parties and the merits of their arguments, we conclude each party should pay his or her own attorney fees for this appeal. Costs on appeals are assessed one-half to each party.

AFFIRMED.