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ALEXANDER ZOUBENKO, APPELLANT, V. VALENTINA ZOUBENKO, APPELLEE.

813 N.W.2d 506

Filed March 13, 2012. No. A-11-340.

1. **Divorce: Child Custody: Child Support: Property Division: Alimony: Attorney Fees: Appeal and Error.** In an action for the dissolution of marriage, an appellate court reviews de novo on the record the trial court's determinations of custody, child support, property division, alimony, and attorney fees; those determinations, however, are initially entrusted to the trial court's discretion and will normally be affirmed absent an abuse of that discretion.
2. **Judges: Words and Phrases.** A judicial abuse of discretion requires that the reasons or rulings of a trial judge be clearly untenable, unfairly depriving a litigant of a substantial right and a just result.
3. **Alimony.** In determining whether alimony should be awarded, in what amount, and over what period of time, the ultimate criterion is one of reasonableness.
4. ____. The purpose of alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances make it appropriate.
5. ____. Factors which should be considered by a court in determining alimony include: (1) the circumstances of the parties; (2) the duration of the marriage; (3) the history of contributions to the marriage, including contributions to the care and education of the children, and interruption of personal careers or educational opportunities; and (4) the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of each party.
6. ____. The primary purpose of alimony is to assist an ex-spouse for a period of time necessary for that individual to secure his or her own means of support, and the duration of an alimony award must be reasonable in light of this purpose.
7. ____. In awarding alimony, the income and earning capacity of each party as well as the general equities of each situation must be considered.
8. ____. Alimony should not be used to equalize the incomes of the parties or to punish one of the parties.

Appeal from the District Court for Lancaster County: KAREN B. FLOWERS, Judge. Affirmed as modified.

Terrance A. Poppe and Heidi M. Hayes, of Morrow, Poppe, Watermeier & Lonowski, P.C., L.L.O., for appellant.

F. Matthew Aerni, of Berry Law Firm, for appellee.

INBODY, Chief Judge, and CASSEL and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Alexander Zoubenko appeals from an order of the district court for Lancaster County ordering Alexander to pay alimony to Valentina Zoubenko in the sum of $1,500 per month. This order states that the obligation shall terminate upon Valentina's remarriage or the death of either party.

BACKGROUND

Alexander and Valentina came to the United States from Ukraine in 1992. They were married in New York, New York, on March 23, 1992. This was Alexander's second marriage and Valentina's first, and the parties have no children, separately or jointly. Both parties studied engineering and earned bachelor's degrees in Ukraine prior to moving to the United States. At the time of trial, Alexander was 44 years old and Valentina was 58 years old. Both parties are healthy and stated no health concerns.

When the couple came to the United States, they initially worked as housecleaners. After approximately 11 months, Alexander got a job with Boiler Management in New Jersey, where he was employed until October 1994. Alexander received a job offer from Foster Wheeler Power Corporation in 1994, and he worked for the company in New Jersey and San Diego, California, until 1997. In 1997, Alexander gained employment with Alston Power in Windsor, Connecticut, and the couple moved from San Diego to Holyoke, Massachusetts, for this job opportunity. Alexander held this position until he received a job offer to work for Siemens Power Corporation in Orlando, Florida, in 2004. In 2006, Alexander received an offer for his current position in Lincoln, Nebraska. Alexander currently works for Cleaver-Brooks as a project engineer and earns approximately $79,000 per year.

Valentina secured employment as a "cleaning person" within about 3 months after moving to the United States. She cleaned apartments and offices for about 4 years, earning approximately $10 per hour. After this period, Valentina did not work outside of the home during the marriage. During the marriage,

Valentina was responsible for household duties, including doing the laundry and balancing the checkbook. Alexander helped with part of the cooking, and the two grocery shopped together. Valentina testified that Alexander asked her to stay at home and "live like old style family; he will work and I will stay at home and take care of him." Valentina began working again in September 2010, and she currently works as a sales associate in Connecticut, where she earns $8.45 per hour. Valentina worked for 20 years in Ukraine. Valentina testified that computers were not part of the engineering field when she worked there and that she has no computer skills. She also testified that she does not have a sufficient command of the English language or the technical language used in the engineering field. She requested alimony because she has difficulty finding jobs due to her language limitations as well as her lack of recent work experience and computer skills.

On April 1, 2011, the district court for Lancaster County ordered Alexander to pay alimony to Valentina in the amount of $1,500, continuing in a like amount on the first day of each month until Valentina remarries or either party dies. Alexander timely appealed the decree by filing a notice of appeal and a cash deposit in lieu of a bond and docket fee with the district court on April 25.

ASSIGNMENT OF ERROR

Alexander assigns that the district court erred in granting Valentina alimony for life because this was unreasonable and an abuse of discretion.

STANDARD OF REVIEW

[1] In an action for the dissolution of marriage, an appellate court reviews de novo on the record the trial court's determinations of custody, child support, property division, alimony, and attorney fees; those determinations, however, are initially entrusted to the trial court's discretion and will normally be affirmed absent an abuse of that discretion. *Thompson v. Thompson*, 18 Neb. App. 363, 782 N.W.2d 607 (2011).

[2] A judicial abuse of discretion requires that the reasons or rulings of a trial judge be clearly untenable, unfairly depriving

a litigant of a substantial right and a just result. *Dormann v. Dormann*, 8 Neb. App. 1049, 606 N.W.2d 837 (2000).

ANALYSIS

[3,4] This court has previously stated that "[i]n determining whether alimony should be awarded, in what amount, and over what period of time, the ultimate criterion is one of reasonableness." *Hill v. Hill*, 10 Neb. App. 570, 573, 634 N.W.2d 811, 814 (2001). The purpose of alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances make it appropriate. *Id.* See *Kalkowski v. Kalkowski*, 258 Neb. 1035, 607 N.W.2d 517 (2000).

In this case, Alexander does not dispute that alimony should be awarded due to the 18-year duration of the parties' marriage and the current employment circumstances of the parties. We will address Alexander's sole assignment of error—that the duration of alimony, until the death of either party, is an unreasonable period of time.

[5] Factors which should be considered by a court in determining alimony include: (1) the circumstances of the parties; (2) the duration of the marriage; (3) the history of contributions to the marriage, including contributions to the care and education of the children, and interruption of personal careers or educational opportunities; and (4) the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of each party. *Kalkowski v. Kalkowski, supra*. See Neb. Rev. Stat. § 42-365 (Reissue 2008).

At the time of trial, Alexander was 44 years old and Valentina was 58 years old, and both stated they were healthy. Alexander is currently employed with Cleaver-Brooks in Lincoln, earning approximately $79,000 per year. Valentina is currently employed part time as a sales associate, earning $8.45 per hour. She lives with a cousin in Connecticut. The parties have no children, so we need not consider any ongoing expenses associated with custody, care, or education of children. Nor do we need to consider any interference with the interests of minor children associated with Valentina's return to work.

Valentina testified the marriage caused an interruption of her career, because she did not work outside of the home for the majority of the couple's marriage at the request of Alexander. Her "contributions to the marriage were almost entirely domestic"—keeping the books, doing most of the cooking, and doing the laundry. Brief for appellee at 4. Valentina argues that her career effectively ended upon her marriage to Alexander and that her ability to advance in her career would have been hindered by the numerous times the parties moved to accommodate Alexander's career.

Further, Valentina argues that although she is employable, she is "no where [sic] near employable in her field of training." *Id*. at 7. Yet, Valentina was not employed in her field of training either prior to or during the parties' marriage. During their first 4 years in the United States, and prior to Alexander's request that Valentina not work outside of the home, Valentina was continuously employed, but she made no effort to learn computer and language skills or advance her career as an engineer. It is true that Valentina's employment was interrupted when Alexander transferred from New Jersey to California. However, it seems the greater interruption in her career was the move to the United States, which occurred prior to the parties' marriage. This is not to suggest that Valentina does not deserve consideration for her contributions to the home or that her employment history was not impacted by Alexander's frequent job transfers. It simply indicates that Valentina's marriage to Alexander was not the only hindrance to her career.

[6] The Nebraska Supreme Court stated in *Gress v. Gress*, 274 Neb. 686, 743 N.W.2d 67 (2007), that the primary purpose of alimony is to assist an ex-spouse for a period of time necessary for that individual to secure his or her own means of support, and the duration of an alimony award must be reasonable in light of this purpose. In *Simon v. Simon*, 17 Neb. App. 834, 770 N.W.2d 683 (2009), the wife was rendered nearly blind by a genetic condition and was no longer able to work in her chosen field of nursing. This court awarded alimony for 120 months on appeal in light of her clear employment limitations and the nearly 30-year duration of the marriage.

In comparison, the simple fact that Valentina is nearing a traditional retirement age and is unlikely to find work in her chosen field is not enough to justify an award of lifetime alimony. The trial court's award gives no incentive for Valentina to remarry or become self-sufficient. Valentina states in her brief that she is employable but that it is unreasonable to expect her to pick up where she left her career in Ukraine approximately 18 years ago. However, that is not what is suggested in *Gress v. Gress, supra*. Even if Valentina does not return to a job within the engineering field, participation in some training courses would likely increase her ability to find full-time employment and to earn income in excess of her current part-time wage of $8.45 per hour. To supplement this training, Valentina should be given support for a reasonable amount of time to acquire the skills she needs to support herself.

[7,8] The criteria listed in § 42-365 are not an exhaustive list, and the "income and earning capacity of each party as well as the general equities of each situation" must also be considered. *Kelly v. Kelly*, 246 Neb. 55, 64, 516 N.W.2d 612, 617-18 (1994). However, alimony should not be used to equalize the incomes of the parties or to punish one of the parties. *Kalkowski v. Kalkowski*, 258 Neb. 1035, 607 N.W.2d 517 (2000).

In *Kramer v. Kramer*, 1 Neb. App. 641, 510 N.W.2d 351 (1993), this court considered the reasonableness of an award of lifetime alimony where the parties were married 25 years, the wife did not work outside of the home for an extended period of time, and the parties had disparate earning capacities. This court concluded that an award of lifetime alimony would likely exceed the number of years the parties were married, and a reasonable time period under the circumstances should not extend into the husband's retirement. Given the modern life expectancies, the husband would potentially be responsible for the alimony well into his sixties and beyond, should the wife choose not to remarry. Therefore, we concluded that alimony should terminate after 15 years, when both parties would reach 62 years of age. The decision against lifetime alimony on appeal was supported by the fact that the wife was not incapacitated in any way, she went back to school to receive

training for a second career, and the parties had no minor children to care for.

In this situation, the circumstances are obviously different, given the disparate ages of the parties, but the facts are still similar. In this case, the decree took into consideration additional "complications" justifying the award of lifetime alimony, without which the court stated alimony would have been awarded for no more than 10 years. The complications included Valentina's ability or potential lack thereof to collect a livable wage from Social Security due to her limited history of employment in the United States. The court also noted that Valentina received about $132,000 in deferred compensation through the property settlement agreement, which included access to a portion of Alexander's retirement accounts. This amount would not likely provide her with enough to replace the minimum monthly wage she now earns once she stops working.

However, a de novo review of the evidence reveals that a lifetime award of alimony unfairly burdens Alexander and gives Valentina no incentive to remarry or motivation to improve her situation and become self-supporting. The court noted the evidence of Valentina's expenses was lacking, and Valentina is currently living, rent free, with a family member. She is employed part time, and there is nothing to prevent her from participating in courses to strengthen her job skills and language skills in order to secure more lucrative employment. Valentina and Alexander have no children, so there is no continuing obligation for care or education of minor children. Valentina is a healthy, educated woman with the potential to support herself in the near future.

At trial, Valentina requested $1,500 per month "for a period of 20 years, because that is how long it will be until [Alexander] is 65." The trial court's order stated that without consideration of Social Security ramifications, it would have awarded alimony for no longer than 10 years, but that in light of the circumstances, it chose to award lifetime alimony instead. It is unusual that the trial court awarded alimony in excess of what Valentina requested, but this conclusion is especially unusual given that she provided no evidence regarding her expected

Social Security entitlement. The determination that the factors noted above, taken as a whole, justify an award of lifetime alimony simply is not supported by the record and amounts to a judicial abuse of discretion.

An award of $1,500 per month for a fixed duration of 240 months would amount to a maximum payment of $360,000, a generous stipend for Valentina as she works toward becoming self-sufficient and as a supplement to her income if she encounters complications when applying for Social Security. In addition, Alexander is required under the decree to maintain a life insurance policy with Valentina as the beneficiary to cover the balance of his alimony obligation in the event he predeceases Valentina. This arrangement would release Alexander from his alimony obligation at approximately age 65, a time traditionally associated with retirement. Under these conditions, Valentina is guaranteed 20 years of supplementary income, after which point she is responsible for herself.

CONCLUSION

Under the facts of this case, we find an abuse of discretion by the district court in awarding lifetime alimony to Valentina when she herself did not request it. The monthly amount of alimony was not in dispute, and as a result, we conclude that an award of alimony of $1,500 per month, for a period of 240 months, is reasonable under the circumstances. This award commenced on April 1, 2011, and is payable on the first day of each month thereafter, terminable upon the death of either party or the remarriage of Valentina. We modify the district court's award of alimony accordingly, and as so modified, we affirm the decree.

AFFIRMED AS MODIFIED.