

IN THE COURT OF APPEALS OF IOWA

No. 3-358 / 92-1195

**FILED**

APR 26 1994

CLERK SUPREME COURT

IN RE THE MARRIAGE OF WALTER C. RIGHTER AND  
JANE E. RIGHTER

Upon the Petition of  
WALTER C. RIGHTER,

Appellee/Cross-Appellant,

And Concerning  
JANE E. RIGHTER, n/k/a JANE E. MEYER,

Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Polk County,  
Michael J. Streit, Judge.

Jane Righter appeals, and Walter Righter cross-appeals,  
the economic provisions of their dissolution decree.  
**AFFIRMED.**

Victoria L. Herring, Des Moines, for appellant.

Artis Reis of Smith, Reis & Phillips, Des Moines, for  
appellee.

Considered by Habhab, P.J., and Cady and Huitink, JJ.

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HUITINK, J.

Jane appeals and Walter cross-appeals from the economic provisions of the decree dissolving their four-year marriage. The decree awarded Jane \$6000 in cash, \$500 per month alimony for eight months, and assets valued at \$64,153. Walter received assets valued at \$222,361, including real estate he purchased before the marriage. Walter was also ordered to pay \$2000 of Jane's attorney's fees, conciliation expenses, moving expenses, insurance premiums, and the court costs.

Jane contends she should have also received one-half of the proceeds from the sale of Walter's house, one-half of his deferred compensation account, medical insurance for one year, and rehabilitative alimony. Walter contends he should not be required to make any additional payments to Jane.

Our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact but are not bound by them. Iowa R. App. P. 14(f)(7).

Walter is sixty-eight, and Jane is thirty-four. Walter is the former Episcopal Bishop of Iowa. Jane has worked as a C.P.A. and served as the chief financial planner for the Episcopal Diocese of Iowa. Walter retired as Bishop in late 1988. Jane left the diocese in June 1988 to accommodate the couple's travel plans and to avoid the appearance of impropriety. Jane was earning approximately \$24,000 annually when she resigned from her position at the diocese.

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Walter and Jane have relied primarily on Walter's pension and social security for their subsistence. Walter's earnings from his work as an interim pastor since retirement have been deferred. As a result, he has accumulated \$58,000 of deferred earnings during the marriage. Walter's pension was reduced by an unspecified amount to provide survivorship benefits for Jane. She will receive \$943 per month for life on Walter's death.

Walter brought \$191,000 of assets to the marriage. Jane's assets as of the marriage were \$38,000. Walter's current assets are \$222,361, including the net value of his home. Jane's current assets are \$64,153.

Jane has lived in Walter's house since separating from Walter in October 1991. Walter has made the mortgage payments on the house and has paid Jane's telephone bills, insurance premiums, moving expenses, and credit card balances. Walter paid \$17,110 for Jane's benefit during the period this action was pending, including \$9000 of cash advances Jane obtained from Walter's credit card.

An equal or percentage distribution of assets is not required in a marriage dissolution. In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). The determining factor is what is fair and equitable in each case. Id. The court is guided in this determination by those criteria codified in Iowa Code section 598.21(1).

After considering all of these criteria we find the trial court's division of Walter and Jane's property was

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equitable. Jane leaves the marriage with slightly a greater percentage of their increased wealth than Walter does. Awarding her the amounts demanded would result in a greatly disproportionate division of their property. We therefore affirm the trial court on this issue.

Alimony is an award to a former spouse in lieu of a legal obligation to support that person. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). Rehabilitative alimony is a means of supporting an economically-dependent spouse through a limited education or retraining following a dissolution. In re Marriage of Francis, 442 N.W.2d 59, 63 (Iowa 1989). Its purpose is to achieve self-sufficiency. Id.

Alimony is not an absolute right. In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). The court should consider the earning capacity of each party, each party's present standard of living, and the ability to pay balanced against the relative needs of each party. In re Marriage of Estlund, 399 N.W.2d 276, 281 (Iowa App. 1983).

Jane is thirty-four years of age. She is a well-educated professional entirely capable of supporting herself. We therefore agree with the trial court's decision to deny Jane's request for rehabilitative alimony sufficient to pay the cost of her further education at Columbia University. The trial court's award of transitional alimony, insurance, and residential privileges should provide Jane with the financial assistance she needs

to make the transition back to work. We also affirm the trial court on this issue.

Jane also argues that she entered into an enforceable marital agreement with Walter regarding her future education expenses. Although we agree such agreements may be enforceable, the record does not support Jane's claim that Walter agreed to this arrangement. We therefore affirm the trial court's decision to deny Jane's request to require Walter to pay these expenses.

An award of attorney fees is based on the respective ability of the parties to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982). Trial courts have considerable discretion in awarding attorney's fees. Id. The awards of attorney's fees, court costs, and conciliation expenses made by the trial court are well within its discretion and will not be disturbed on appeal.

Both parties request an award of appellate attorney's fees. Each has the ability to pay his or her own appellate attorney's fees. We therefore deny their requests for appellate attorney's fees.

**AFFIRMED.**