

IN THE COURT OF APPEALS OF IOWA

No. 1-511 / 91-161

IN RE THE MARRIAGE OF BARBARA H. NIEMAN AND  
RICHARD F. NIEMAN

704

Upon the Petition of

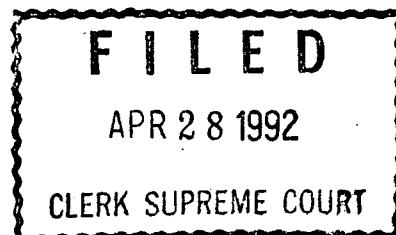
BARBARA H. NIEMAN,

Appellee,

And Concerning

RICHARD F. NIEMAN,

Appellant..



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Appeal from the Iowa District Court for Hancock County,  
Paul W. Riffel, Judge.

Both parties appeal the economic provisions of the  
dissolution decree entered in district court. **AFFIRMED AS  
MODIFIED.**

Steven R. Bakke of Bakke Law Office, Forest City, and  
Emil Trott, Jr. Des Moines, for appellant.

Roger L. Sutton of Sutton Law Office, Charles City, for  
appellee.

Considered by Donielson, P.J., and Hayden and Habhab,  
JJ.

**HABHAB, J.**

Richard and Barbara Nieman were married on June 19, 1982. It was the second marriage for both parties. Each has adult children from a previous marriage. The parties lived on a farm near Kanawha, Iowa, during the marriage.

Just prior to their marriage, Richard and Barbara signed an antenuptial agreement. Pursuant to the agreement, each party would retain separately his or her own real and personal property for estate purposes. As consideration for Barbara quitting her job as a custodian with the Northwood-Kensett school district, Richard promised to obtain a \$50,000 life insurance policy payable to Barbara upon his death.

Barbara was fifty years old at the time of the dissolution. She did not work outside the home during the marriage, except for a few cleaning jobs which earned minimal income. In March 1989, Barbara moved to an apartment in Garner, Iowa, where she pays rent of \$100 per month. Barbara presently has employment income of \$215 per month and rental income of \$165 per month.

Richard was fifty-eight years old at the time of the dissolution. He is engaged in farming. He also earns additional income from constructing steel bins and delivering motor homes for Winnebago Industries. His net income was \$10,380 in 1990. Richard's average net income from 1985 to 1989 was \$17,059 per year.

In July 1989, Barbara filed a petition for separate maintenance, requesting temporary support. Richard filed an answer and counterclaimed for dissolution of the marriage. Following the filing of the parties' financial affidavits, the trial court awarded Barbara \$200 per month temporary alimony and \$350 in attorney fees.

Trial was held on September 19, 1990. Barbara sought a property settlement of \$50,000 and alimony of \$200 per month for thirty-six months. Richard offered to pay alimony of \$200 per month for twenty-four months and no property settlement. The trial court concluded that because of Barbara's age and lack of higher education and work experience, she would not be able to earn a living comparable to that which she enjoyed prior to the marriage. The trial court therefore ordered Richard to pay Barbara \$400 per month in permanent alimony, and ordered him to pay \$1000 towards Barbara's attorney fees. Each party was awarded his or her personal property and debts. This gave Richard a net worth of about \$303,000 and Barbara a net worth of \$19,315. Richard has appealed, and Barbara has cross-appealed.

I. Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Id.

II. In his appeal Richard contends the award of alimony should be reduced to \$200 per month for twenty-four months. He believes Barbara could be self-supporting and that she has an earning capacity of at least \$12,000 per year, which was her salary before the marriage. He also believes permanent alimony is not appropriate here because the parties were married for only seven and one-half years.

In her cross-appeal, Barbara claims that either she should receive permanent alimony of \$400 per month plus Richard should pay for her health insurance or she should receive permanent alimony of \$600 per month. She believes that because of her age and lack of job experience she will probably not be able to become self-supporting.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). When determining the appropriateness of alimony, the court should consider the earning capacity of each party. Id. Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

In balance, we believe the amount of alimony is equitable under the circumstances here. We are convinced the court determined the amount after it considered the finances of the parties and the method of distribution of

the marital assets. We modify, however, to the extent that alimony shall cease on the death of either party, when the appellee remarries or when the appellee is eligible for social security, whichever occurs first.

We note that Barbara requests a lump sum property settlement of \$50,000. She points out that under the antenuptial agreement, she agreed to leave her employment and in consideration Richard was to take out a life insurance policy for \$50,000 naming her as the beneficiary. Barbara states that she did quit her employment, as the parties agreed, and that she should now receive \$50,000 in consideration for doing so.

We believe the court took this argument into consideration when it awarded her \$400 per month permanent alimony for a seven and one-half year marriage. We decline to disturb the trial court's ruling in this respect.

Finally, Barbara seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We determine the parties should pay their own attorney fees. Costs of this action are assessed one-half to each party.

**AFFIRMED AS MODIFIED.**