

IN THE COURT OF APPEALS OF IOWA

No. 1-072 / 90-978

FILED

AUG 27 1991

CLERK SUPREME COURT

IN RE THE MARRIAGE OF GREGORY K. QUICK AND NANCY L. QUICK

Upon the Petition of

405

GREGORY K. QUICK,

Appellant,

And Concerning

NANCY L. QUICK,

Appellee.

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Appeal from the Iowa District Court for Polk County,  
Jack D. Levin, Judge.

The husband appeals from a dissolution decree,  
challenging only the award of alimony to the wife.  
**REVERSED.**

Roger J. Hudson and Jeffrey L. Goodman of Smith,  
Schneider, Stiles, Mumford, Schrage, Zurek, Wimer & Hudson,  
P.C., Des Moines, for appellant.

Arvid D. Oliver, Des Moines, for appellee.

Considered by Oxberger, C.J., and Donielson and Hayden,  
JJ.

**DONIELSON, J.**

Gregory and Nancy Quick were married in 1969. They have two minor children. Pursuant to a stipulation, the children were placed in joint legal custody, with one in each parent's physical care. These custody provisions are not challenged in the present appeal.

Gregory is an architect. He asserts that his income is uncertain and variable. During the 1980s his business suffered serious financial reverses. As a result, he filed for bankruptcy protection in 1987 and is still obligated to pay an income tax arrearage not discharged in the bankruptcy.

Nancy has a G.E.D. certificate and no further education. She is employed as an office manager for a food brokerage firm, earning approximately \$20,000 per year.

The parties had relatively little property, due to the bankruptcy and other debts. The property was divided pursuant to a stipulation, and the division is not challenged in this appeal.

The dissolution decree directed Gregory to pay Nancy child support of \$25 per week for the one child in her care. This child support award is not challenged on appeal. The decree also directed Gregory to pay Nancy alimony of \$100 per month.

Gregory has appealed from the dissolution decree, challenging only the award of alimony to Nancy. He argues that alimony is unwarranted.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court but are not bound by them. Iowa R. App. P. 14(f)(7). We reverse the district court's award of alimony.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). Unlike a division of property, based on a just and equitable distribution of the property accumulated as the result of the spouses' joint efforts, alimony is a stipend made to one spouse in lieu of the other's legal obligation for support. In re Marriage of Francis, 442 N.W.2d 59, 62 (Iowa 1989)(citing In re Marriage of Wegner, 434 N.W.2d 397, 398 (Iowa 1988); In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981)).

The discretionary award of alimony is to be made only after considering all of the factors listed in Iowa Code section 598.21(3). See In re Marriage of Keifer, 451 N.W.2d 19, 21 (Iowa App. 1989). The considerations enumerated in section 598.21(3) commonly lead courts to award alimony for one or more of three general purposes. See Francis, 442 N.W.2d at 62-63. The three purposes

justifying alimony awards, in turn, lend themselves to three differing forms of analysis. See id.

In [long-term marriages], life patterns have largely been set, the earning potential of both parties can be predicted with some reliability, and the contributions and sacrifices of the one spouse in enabling the other to attain a degree have been compensated by many years of the comfortable lifestyle which the degree permitted. Traditional alimony analysis works nicely to assure equity in such cases.

In another kind of recurring case, . . . where divorce occurs shortly after the degree is obtained, traditional alimony analysis would often work hardship because, while both spouses have modest incomes at the time of divorce, the one is on the threshold of a significant increase in earnings. Moreover, the spouse who sacrificed so the other could attain a degree is precluded from enjoying the anticipated dividends the degree will ordinarily provide. Nonetheless, such a spouse is typically not remote in time from his or her previous education and is otherwise better able to adjust and to acquire comparable skills, given the opportunity and the funding. In such cases, alimony analysis must become more creative to achieve fairness, and an award of "rehabilitative" or "reimbursement" alimony, not terminable upon remarriage, may be appropriate.

Francis, 442 N.W.2d at 63 (quoting Petersen v. Petersen, 737 P.2d 237, 242 n.4 (Utah App. 1987)).

This case does not call for any "creativity." We find that rehabilitative and reimbursement alimony are inappropriate under the circumstances of this case. Likewise, under the traditional alimony analysis, we find the award of alimony to be unwarranted.

A. Reimbursement Alimony Analysis. Reimbursement alimony is predicated on the goal of compensating one spouse for the economic sacrifices made during the marriage which directly enhanced the earning capacity of the other.

See Francis, 442 N.W.2d at 64. Central in this analysis is the issue of Gregory's earning capacity. What is it? Has it been increased by his education? How much has it been increased? Did Nancy contribute to Gregory's education and, thus, to his earning capacity?

We find Gregory's present earning capacity to be approximately \$34,800 per year. "We have consistently examined the earning capacity of the payor spouse beyond simply ascertaining present income." Wegner, 434 N.W.2d at 399. Gregory's income has fluctuated between \$10,500 and \$33,500 in the nine-year period from 1981 to 1989. Nevertheless, it has shown a modest upward trend, rising approximately \$6,000 (from \$27,413 in 1981 to \$33,400 in 1989) over the nine-year period.

In In re Marriage of Horstmann, the Iowa Supreme Court held that, in setting an award of alimony, a court may consider the future earning capacities of the parties where proper evidence has been presented on the issue. 263 N.W.2d 885, 891 (Iowa 1978). In determining those capacities, the court may consider the parties' educations, skills, or talents. Id. See also Iowa Code § 598.21(3)(d) (1989).

We find no proper evidence in this record to suggest that Gregory's education has increased his future earning capacity. Gregory earned a bachelor's degree in architecture from Iowa State University, graduating in 1975. He is a licensed professional in the states of Iowa

and Texas. No evidence was introduced at trial demonstrating that Gregory's education has enabled him to earn more than he could have without it.

Indeed, Gregory earned his degree over seventeen years ago. One would think that had his degree afforded him an increased future earning capacity, that capacity would have born its fruit by now. "Although there may be evidence that a person with superior education, talent and training can earn an extremely large income, courts may not, in decrees of dissolution, assume or require that either party will produce such incomes." In re Marriage of Berger, 431 N.W.2d 387, 389 (Iowa App. 1988).

Assuming, arguendo, that Gregory's future earning capacity has been increased, Nancy has not shown that she contributed by way of sacrifice to Gregory's education. Nancy modified neither her actions nor her goals due to Gregory's choice to continue his education. Nancy was working full time when she met Gregory, and she continued to work after she married him. She has not demonstrated that she would have quit working had Gregory chosen to work rather than finish school. Neither did Nancy forego her education in order that Gregory could pursue his. Nancy has not shown that she ever expressed a desire to seek additional education.

Furthermore, Gregory financed his education through part-time jobs, subsidies from the United States Army, and student loans. Nancy claims her income, as well as

Gregory's, was used to repay the loans. There was no evidence introduced to show the amount of the loans or the portion of the debt Nancy repaid. Had Gregory's earning capacity been increased by his education, Nancy surely would have been reimbursed for her contribution by the seventeen postgraduate years of enhanced standard of living. An award of \$100 per month for the purpose of reimbursement is unwarranted under the circumstances of this case.

B. Rehabilitative Alimony Analysis. The goal of rehabilitative alimony is to support "an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating an incentive and opportunity for that spouse to become self-supporting." Francis, 442 N.W.2d at 63 (citing Krauskopf, Rehabilitative Alimony: Uses and Abuses of Limited Duration Alimony, 21 Fam.L.Q. 573, 581 (1988); Sackett & Munyon, Alimony: A Retreat from Traditional Concepts of Spousal Support, 35 Drake L. Rev. 297, 314 (1985-86); In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982)).

First, Nancy is not economically dependent upon Gregory. Nancy has been employed throughout the marriage. For the past five years she has been employed as the office manager for a food brokerage firm. Her annual income has risen from approximately \$13,000 in 1985 to approximately \$20,000 in 1989. She also receives annual bonuses. Nancy

clearly possesses the skills and training necessary to make her capable of self-support.

Second, because the goal of rehabilitative alimony is self-sufficiency, an award of lifetime alimony is suspect. The duration of an award of rehabilitative alimony should be "limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic independence of the ex-spouses." Id. at 64. A lifetime award of alimony in the amount of \$100 per month is not warranted in this case.

C. Traditional Alimony Analysis. In determining whether an award of alimony is appropriate, we must consider Nancy's need for support balanced against Gregory's ability to pay. In re Marriage of Jones, 309 N.W.2d 457, 460 (Iowa 1981).

We are convinced that Nancy is capable of supporting herself at a standard of living reasonably comparable to that enjoyed during the marriage. This is so especially in light of the property settlement which granted the marital home and an equitable portion of the marital property to Nancy. The property settlement also relieved Nancy of a substantial portion of the marital debts.

On the other hand, Gregory has recently suffered severe financial setbacks in his business. He is also making payments of \$200 per month on his substantial income tax arrearage. Thus, in the balancing of the needs and abilities of the parties, the award is unwarranted.

It appears from the record that the amount of child support Gregory was ordered to pay is set at the child support guidelines level, considering that each party was awarded physical placement of one child by stipulation.

After considering all of the factors enumerated in Iowa Code section 598.21(3), in light of the three forms of alimony analysis, we find the award of \$100 per month to Nancy for her life to be inappropriate under the circumstances of this case, and we set the award aside.

The costs of this appeal are taxed equally between the parties.

For all the reasons stated, the district court's award of alimony is reversed.

**REVERSED.**

OXBERGER, C.J. (dissenting)

I respectfully dissent. I would limit the length of time for payment of alimony, but I do not favor the elimination of alimony as provided by the majority.