

IN THE COURT OF APPEALS OF IOWA

No. 6-122 / 94-1739

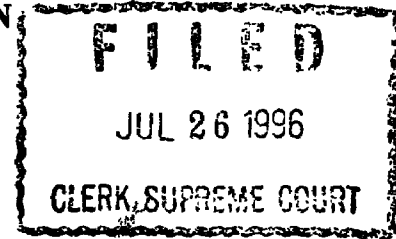
**IN RE THE MARRIAGE OF JAMES T. THOMPSON
AND ELIZABETH A. THOMPSON**

Upon the Petition of
JAMES T. THOMPSON,

Petitioner-Appellant,

And Concerning
ELIZABETH A. THOMPSON,

Respondent-Appellee.



Appeal from the Iowa District Court for Dubuque County, Lawrence H.
Fautsch, Judge.

The petitioner appeals the permanent alimony provisions of the parties'
dissolution decree. **AFFIRMED.**

Joseph J. Bitter, Dubuque, for appellant.

Elizabeth McAvoy f/k/a Elizabeth Thompson, Dubuque, pro se.

Considered by Sackett, C.J., Habhab, and Huitink, JJ.

PER CURIAM

This is an appeal by a husband challenging the alimony provision of the parties' dissolution decree. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

James and Elizabeth Thompson were married on June 22, 1991. James is employed at the Diamond Jo River Boat, where he has annual income of about \$24,000, and net monthly income of \$1,485. Elizabeth was employed part-time during the marriage.

Trial was originally set for February 25, 1994. However, James' attorney requested a continuance due to a death in the family. On February 26, 1994, Elizabeth was in a serious car accident in which she sustained a head injury. After the injury, Elizabeth requested alimony for the first time. Elizabeth is presently unemployed and receives \$225 per month in unemployment benefits. She also receives \$238 per month in child support for a child from a previous relationship.

The district court issued a dissolution decree for the parties on July 13, 1994. The court divided the parties' property to award each party the personal property and bank accounts in his or her possession. James was awarded the parties' vehicles. The court ordered James to pay alimony of \$100 per month for so long as Elizabeth was incapable of self-support or until there was a change in her status. In response to a post-trial motion, the court ruled the receipt of Social Security disability benefits would be considered a change in status.

James appeals the award of alimony. He claims that due to the parties' short marriage, he should not be required to support Elizabeth. He also points out that it was only due to chance that the parties were not divorced prior to Elizabeth's injury.

An award of 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). We find that under the facts of this case Elizabeth is entitled to alimony. The facts are that the parties were married at the time Elizabeth was injured. The district court was able to observe the parties, and the court found Elizabeth's head injury caused her to sometimes laugh or cry inappropriately. Also, her short-term and long-term memory were impaired. Due to these problems, Elizabeth presently is not able to support herself.

James contends the district court should have granted his motion for new trial. He claims he was surprised by Elizabeth's request for alimony. In ruling upon motions for new trial, the trial court has a broad but not unlimited discretion. Iowa R. App. P. 14(f)(3). We find no abuse of discretion in the court's decision to deny the motion for new trial. James admitted he knew Elizabeth had been in a serious accident and had not been working.

We affirm the decision of the district court. Costs of this appeal are assessed to James.

AFFIRMED.