

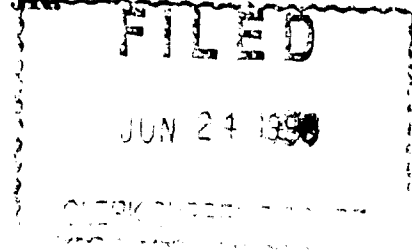
IN THE COURT OF APPEALS OF IOWA

No. 8-208 / 97-1011

**IN RE THE MARRIAGE OF JOHN P. TRAINOR, JR.
AND JEAN TRAINOR**

Upon the Petition of
JOHN P. TRAINOR, JR.,
Appellant,

And Concerning
JEAN TRAINOR,
Appellee.



Appeal from the Iowa District Court for Bremer County, Gilbert K. Bovard,
Judge.

On appeal from the entry of a dissolution decree, the appellant argues the
district court erred in not awarding him alimony and in its child support award.

AFFIRMED AS MODIFIED.

Robert J. Dieter of Redfern, Mason, Dieter, Larsen & Moore, Cedar Falls, for
appellant.

David H. Correll of Correll, Sheerer, Benson, Engels, Galles & Demro, PLC,
Cedar Falls, for appellee.

Heard by Cady, C.J., and Vogel and Mahan, JJ.

CADY, C.J.

John Trainor, Jr. appeals from the district court's dissolution decree. He claims the district court erred by failing to award him alimony.¹ He also requests an award of appellate attorney fees and court costs. We affirm as modified.

Jack and Jean Trainor married in 1977. They had one child, Nathan, born in 1984. Nathan is profoundly physically and mentally disabled. The parties dissolved their marriage of approximately nineteen years in April 1997.

Neither party had significant assets or debt at the time of their marriage. Jack was in college and Jean worked for an accounting firm.

Jack has been a history teacher for seventeen years. He currently earns \$37,500 teaching history, and is able to supplement his income by coaching high school football, basketball, and baseball. He has the potential to earn \$6,000 annually by coaching. Jack earned a master's degree in school administration in 1995. This degree enables him to work in school administration in the capacity as a principal.

Jean is currently the CEO of John Deere Credit Union. She began working for John Deere in 1982 and became CEO in 1990. She currently earns a base salary of \$140,404 plus bonuses.

After Jean became CEO of John Deere, Jack's responsibilities for Nathan's care increased. Jack eventually quit his coaching jobs to spend more time with Nathan.

¹ Initially, John also challenged the district court's child support award. He subsequently dropped this argument at oral argument.

The parties did not live an extravagant lifestyle. Although their joint income increased substantially during the marriage, they remained in the house they purchased in 1982. They established a pattern of saving money, and accumulated assets in excess of \$600,000 at the time of the dissolution. The trial court awarded Jack assets in the amount of \$305,069. Jean received assets valued at \$291,268.

Jack moved from the family home to a modest apartment following the separation, and Jean moved to a luxurious condominium. They shared custody of Nathan. Jack continued to care for Nathan without outside assistance. Jean employed a full-time caretaker for Nathan. Furthermore, her income enabled her to continue her pattern of saving she enjoyed during the marriage while Jack was unable to enjoy the same level of savings.

On appeal Jack claims the district court erred by failing to award him alimony. He claims the district court should have awarded him alimony in the amount of \$1200 per month for ten years so he could maintain the lifestyle he enjoyed during the marriage in light of his contributions to the marriage.

I. Standard of Review

We review this equitable matter de novo. Iowa R. App. P. 4. This requires us to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa App. 1997). At the same time, we recognize the value in listening to and observing the parties and witnesses. Iowa R. App. P. 14(f)(7). Consequently, we give weight to the findings of the trial court, although they are not binding. *Id.*

II. Alimony

Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa App. 1997). When determining the appropriateness of alimony, among other factors, we consider: (1) the earning capacity of each party; and (2) present standards of living and ability to pay balanced against the relative needs of the other. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa App. 1997); *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994).

Alimony is not an absolute right. An award depends upon the circumstances of each particular case. *Gonzalez*, 561 N.W.2d at 99. Many factors are considered in determining the appropriate amount of alimony to be awarded to a spouse. *In re Marriage of Siglin*, 555 N.W.2d 846, 850 (Iowa App. 1996); Iowa Code § 598.21(3) (1997). Alimony may be used to remedy the inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993). Following a marriage of long duration, we have affirmed awards of both alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great. *Gonzalez*, 561 N.W.2d at 99; *Geil*, 509 N.W.2d at 742. We also consider the division of property in determining alimony. *Siglin*, 555 N.W.2d at 850.

Alimony has traditionally taken the place of support that would have been provided had the marriage continued. *In re Marriage of Francis*, 442 N.W.2d 59, 63

(Iowa 1989). It is awarded to accomplish one or more of three purposes. We have observed:

Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and retraining. Its objective is self-sufficiency. An award of *reimbursement alimony* is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *Traditional alimony* is payable for life or for so long as a dependent spouse is incapable of self-support. The amount of alimony awarded and its duration will differ according to the purpose it is designed to serve.

In re Marriage of O'Rourke, 547 N.W.2d 864, 866-67 (Iowa App. 1996) (citations omitted) (holding alimony award of \$2000 to wife where husband earned \$202,000 and wife earned \$35,533 was equitable in a twenty-seven year marriage). In determining whether to award alimony, we consider “[t]he feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage and the length of time necessary to achieve this goal.” Iowa Code § 598.21(3)(f).

Jack maintains the district court erred by failing to award him alimony. Specifically, he claims an alimony award would allow him to achieve a standard of living similar to the standard he enjoyed during the marriage. He emphasizes the lifestyle changes he has experienced since the dissolution and his contributions to the marriage warrant an award of alimony.

Jean asserts an award of alimony is inappropriate because Jack has full-time employment and is able to support himself. She also points out he has the ability to earn more money in school administration or through coaching. She further

emphasizes Jack can maintain the same lifestyle he enjoyed during the marriage because the parties' lifestyle as "savers" was not a luxurious lifestyle. Finally, Jean claims the \$600 per month child support she pays for Nathan lessens Jack's need for alimony.

Reimbursement or rehabilitative alimony are not appropriate in this case. Consequently, any alimony award must serve one or more of the purposes associated with traditional alimony. During the marriage the parties enjoyed a joint income of over \$175,000 as well as substantial savings. Although both were awarded an equitable share of marital property, Jack's ability to support his predissolution lifestyle is limited by his lower earning capacity.

Because the parties were "savers," the lifestyle Jack enjoyed during the marriage involved saving rather than spending on luxuries. A lifestyle of saving warrants the same consideration as a lifestyle of spending. Also, considering the nineteen-year marriage, and earning capacity of both parties, we believe a limited award of alimony is appropriate. Consequently, we award Jack alimony in the amount of \$600 per month for a period of ten years. We recognize traditional alimony is typically awarded on a lifetime basis or until self-sufficiency is reached, however, the unique facts of this case support an award of this amount and duration. This award will help allow Jack maintain the standard of living he experienced during the marriage. At the same time, this reasonable alimony award will not inhibit Jean's predissolution lifestyle.

III. Attorney Fees

An award of appellate attorney fees is not a matter of right, but rests in our discretion. *Kurtz*, 561 N.W.2d at 389. In determining whether to award appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the decision of the trial court on appeal. *Id.*

Considering both parties' need and ability to pay, we find each party should pay their own appellate attorney fees. Costs divided equally.

AFFIRMED AS MODIFIED.