

IN THE COURT OF APPEALS OF IOWA

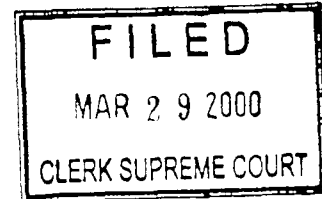
No. 1999-466 (9-723) / 98-2063

Filed March 29, 2000

**IN RE THE MARRIAGE OF DANIEL JOSEPH UTHE
AND CHERYL ROSE UTHE**

**Upon the Petition of
DANIEL JOSEPH UTHE,**
Petitioner-Appellant,

**And Concerning
CHERYL ROSE UTHE,**
Respondent-Appellee.



Appeal from the Iowa District Court for Dubuque County, Thomas N.
Bower, Judge.

Daniel Uthe appeals the alimony provisions of the parties' dissolution
decree. **AFFIRMED AS MODIFIED.**

Susan Larson Christensen of Larson, Children, Hall & Christensen, P.C.,
Harlan, for appellant.

Robert L. Sudmeier of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C.,
Dubuque, for appellee.

Considered by Huitink, P.J., and Streit and Miller, JJ.

PER CURIAM

~~Daniel Uthe~~ appeals the alimony provisions of the parties' dissolution decree. ~~He~~ claims the amount of alimony was excessive both as to duration and amount. Both parties seek attorney fees.

Daniel and Cheryl Uthe were married in 1971. Daniel is a plant manager for Leggett & Platt Company, where he has annual income of about \$51,700. Prior to the marriage Cheryl was a certified operating room technician. She did not work throughout most of the marriage, but stayed home to care for the parties' two children, who are now adults. Cheryl recently began working part-time as an operating room aide. If she worked full-time, she could earn about \$20,000. If Cheryl regained her certification to be a certified operating room technician, she could earn about \$25,000.

In the parties' dissolution decree the district court awarded Daniel property worth about \$111,850 and Cheryl property worth about \$117,552. Certain inherited property was set aside to Daniel. The court ordered Daniel to pay alimony of \$1000 per month until Cheryl reaches the age of sixty-five or remarries, whichever occurs first.

Our review of this equitable matter is de novo. Iowa R. App. P. 4. We give ~~weight~~ to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Daniel contends the amount of alimony is excessive, both in amount and duration. He asks to have the award reduced to \$500 per month for two years,

then ~~\$250 per month~~ for three years. He believes Cheryl could be self-supporting ~~if she~~ retrained to become a certified operating room technician.

~~Alimony~~ is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa App. 1997). We consider the length of the parties' marriage, the ages and health of the parties, the parties' earning capacities, the levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa App. 1998).

Under the facts of the present case, we find permanent alimony is warranted. Cheryl's earning capacity will never approach that of Daniel's. The parties moved several times during the marriage in order to further Daniel's career, but this meant Cheryl did not advance in her career. However, we find the amount of alimony is excessive in view of Cheryl's earning capacity. We determine the award of alimony should be reduced to \$500 per month, to terminate on Daniel's retirement or Cheryl's remarriage, whichever occurs first. The modification will take effect on the first day of the month following procedendo in this case.

~~Both parties~~ seek attorney fees for this appeal. An award of attorney fees on appeal ~~is not~~ a matter of right, but rests within the court's discretion and the parties' financial position. *In re Marriage of Daniels*, 568 N.W.2d 51, 56 (Iowa App. 1997). We determine each party should pay his or her own attorney fees for this appeal.

We affirm the decision of the district court, except as we have modified the alimony provisions of the parties' dissolution decree. Costs of this appeal are assessed to one-half to each party.

AFFIRMED AS MODIFIED.