FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JACK L. DALZIEL AND WILDA L. DALZIEL

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Upon the Petition of	)	
JACK L. DALZIEL,	)	
Petitioner-Appellee,	)	Filed November 20, 1984
And Concerning	)	
WILDA L. DALZIEL,	)	4-393 / 84-541
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Linn County - Thomas M. Horan, Judge.

Respondent wife appeals from the alimony provisions of the parties' dissolution decree. She asserts (1) that petitioner has no need for alimony; (2) that she does not have a present or future capacity to pay alimony; and (3) that in any event the alimony should terminate at her death. AFFIRMED IN PART AND REVERSED IN PART.

James W. Affeldt and Cynthia Hanna Camp of Eells, Blackstock, Affeldt & Harms, Cedar Rapids, for respondent-appellant.

Kevin P. Shea of Shea Law Offices, Cedar Rapids, for petitioner-appellee.

Considered by Oxberger, C.J., and Snell and Sackett, JJ.

PER CURIAM

The parties, Jack and Wilda Dalziel, were married in 1952 and have three children, one who is deceased and two who are married. During the early years of the marriage, Wilda stayed home and raised the children and Jack supported the family financially. After the children started school, Wilda began working for Killian's Department Store. She later was employed by Armstrong's Department Store and is currently a division buyer. A few years ago, Jack had surgery and he is now permanently disabled. He receives $422.00 per month disability and $598.00 per month Social Security. His monthly expenses total $985.00. Wilda has a current gross annual salary of $20,400.00 with a net take-home pay of $1271.06 per month. In addition to this salary, she receives annual bonuses based on the percent of sales in her division. These bonuses have ranged from $1500 to $28,000, with an annual average over the past five years of $13,962.48. She reports monthly expenses totalling $1,473.00.

The property awarded Jack from the decree included a $6,000 automobile and a $10,000 certificate of deposit. He was also ordered to pay a $2,150 debt to his mother. The property awarded Wilda included the residence of the parties subject, however, to encumbrances, and a payment of $27,000 plus interest to Jack. Wilda also received a $20,000 certificate of deposit and stock valued at $12,671. She was also ordered to pay debts totalling $4,100.

The dissolution decree also ordered Wilda to pay Jack $400 per month. The payments are to continue until Jack dies or remarries.

On appeal, Wilda argues that (1) considering Jack's needs and her ability to pay, the award of alimony was improper; or in the alternative (2) if the award of alimony is proper, the payments should terminate upon her death, or Jack's death or remarriage.

Our review is de novo. Iowa R. App. P. 4. While weight is given to the findings of the trial court, especially where the credibility of witnesses is

involved, this court is not bound by them. Iowa R. App. P. 14(f)(7).

Iowa Code section 598.21 sets forth the criteria for awarding alimony:

> 3. Upon every judgment of annulment, dissolution or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:
>
> a. The length of the marriage.
>
> b. The age and physical and emotional health of the parties.
>
> c. The distribution of property made pursuant to subsection 1.
>
> d. The educational level of each party at the time of marriage and at the time the action is commenced.
>
> e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
>
> f. The 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.
>
> g. The tax consequences to each party.
>
> h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.
>
> i. The provisions of an antenuptial agreement.
>
> j. Other factors the court may determine to be relevant in an individual case.

Iowa Code § 598.21(3) (1983).

The spouse with a lesser earning capacity is entitled to support payments for a reasonable period to allow them to maintain a standard of living closely resembling that which existed during the marriage. In re Marriage of Hayne, 334 N.W 2d 347, 351 (Iowa Ct. App. 1983).

Considering the factors set forth in 598.21, and particularly the health and the earning capacity of Jack, we find the alimony award appropriate.

We find, however, that the alimony termination should be contingent on the death of Wilda as well as the death or remarriage of Jack. See, Id.

The findings of the trial court are affirmed in part and reversed in part.

AFFIRMED IN PART AND REVERSED IN PART