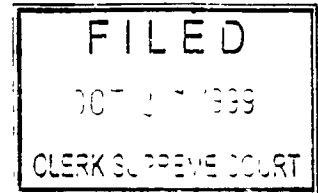


IN THE COURT OF APPEALS OF IOWA

No. 9-323 / 98-793
Filed October 27, 1999.



**IN RE THE MARRIAGE OF CHARLENE ALBIN
AND ROBERT ALBIN, JR.**

Upon the Petition of
CHARLENE ALBIN,

Petitioner-Appellee/Cross-Appellant,

And Concerning
ROBERT ALBIN, JR.,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Poweshiek County, Richard J. Vogel,
Judge.

The respondent appeals, and petitioner cross-appeals, from various economic
provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Michael W. Mahaffey Law Office, Montezuma, for appellant.

Bradley McCall of Brierly Law Office, Newton, for appellee.

Heard by Streit, P.J., and Vogel, and Zimmer, JJ.

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ZIMMER, J.

The respondent, Robert Albin, Jr., appeals from various economic provisions of the parties' dissolution decree. He contends the alimony award was excessive and, if upheld, alimony should terminate upon the death of either party. He urges noncovered medical expenses should have been divided equally. He also finds error with the district court's requirement that he pay certain debts incurred by petitioner during the parties' separation. On cross-appeal, the petitioner, Charlene Albin, requests appellate attorney fees. We affirm as modified.

Robert and Charlene married in June of 1968. They have two adopted children, Marlene Joy Albin, born in December 1976, and Marilee Albin, born in March 1982. Marlene is emancipated. Marilee is seventeen and resides with her mother.

Charlene filed for dissolution in August 1997. Following trial in February 1998, the district court entered a decree which divided the parties' property and debts and awarded Charlene alimony of \$500.00 per month, continuing until Robert's 65th birthday or Charlene's remarriage or cohabitation. The district court ordered Robert to pay child support to Charlene for Marilee in the sum of \$394.93 per month. Charlene was ordered to maintain health insurance for Marilee. Robert was ordered to pay Charlene eight dollars per month for health insurance and two-thirds of all uncovered medical expenses.

I. Scope of Review. Our review of this equitable action is de novo. *See Iowa R. App. P. 4; In re Marriage of Gonzalez*, 561 N.W.2d 94, 96 (Iowa App. 1997). We are not bound by the district court's findings of fact, but we do give them deference. *Id.*

II. Alimony. At trial, Charlene requested an alimony award of \$875.00 per month. The trial court awarded her alimony of \$500 per month. Robert argues that the award of alimony in this case was unwarranted or excessive, given Charlene's property award and the parties' respective earning capacities.

We disagree. We apply well-known standards in our de novo review. When determining the appropriateness of alimony, the court must 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." *Gonzalez*, 561 N.W.2d at 99 (citations omitted). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21(3)(1997). *Id.* Alimony may be used to remedy the inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage. *Id.*

We find Charlene entitled to alimony. The parties had been married for nearly thirty years. At the time of trial, Robert was fifty-one and Charlene was forty-eight years old. Charlene was 19 and employed full time when the parties married. Robert was a full-time student mid-way through his junior year of college at Northwest Missouri State University. Robert worked part time during college. Charlene worked

full time while Robert completed his schooling. Robert accepted a teaching position in Montezuma in 1970 and the parties moved to Iowa. Charlene held a series of full-time jobs after their move. She worked initially in a meat locker, then for a small manufacturing company, then as a seamstress, and finally as a secretary.

After Marlene was born, Charlene stopped working outside the home and began providing childcare for others from the family home. Charlene continued to provide childcare until 1989, when Marilee started kindergarten. At that time, Charlene began working for her current employer, Grinnell Mutual Reinsurance Company. Charlene has had opportunities for advancement at work. She has availed herself of some of these opportunities but declined others when they affected her time with the children. The trial court found Charlene did most of the child rearing during the marriage. We agree with this assessment. In 1997, Charlene earned \$15,577.

Robert has been a teacher since 1970. In addition to his teaching duties, he has routinely been involved in coaching at school. During the marriage, Robert often worked on Saturdays and in the summer to increase the family's earnings. In 1997, he earned \$41,899. Although the parties received a relatively equal property distribution, Robert earns two and a half times what Charlene earns and has a college degree. With only a high school diploma, Charlene does not have the capacity to earn a great deal more. 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. *In re Marriage of Hettinga*, 574 N.W.2d

920, 922 (Iowa App. 1997). Our careful de novo review of the record convinces us the trial court's alimony award was equitable.

Robert makes much of the fact Charlene declined to pursue further formal education during the marriage. While the law does require her to work up to her earning capacity, see *In re Marriage of Wegner*, 434 N.W.2d 397, 399 (Iowa 1988), we cannot require Charlene to get additional education. We affirm the alimony award.

III. Termination of Alimony. Robert asks us to modify the conditions under which alimony will terminate to include the death of either party. We find this request warranted. See *In re Marriage of Bornstein*, 359 N.W.2d 500, 503 (Iowa App. 1984). We modify the trial court decree to include a provision that the alimony obligation will cease upon the death of either party, in addition to the conditions already set forth in the trial court's order.

IV. Uncovered Medical Expenses. The trial court required Robert to pay two-thirds of any noncovered medical expenses incurred by the parties' minor child. He objects and asks that the division be equal. We find the trial court's arrangement equitable in view of the disparity in incomes. See *In re Marriage of Fynaardt*, 545 N.W.2d 890, 895 (Iowa App. 1996) (individual parent's obligations determined by ability to contribute). We affirm on this issue.

V. Debts Incurred during Separation. The trial court credited Charlene with \$4,515 in debt incurred during the parties' separation, including credit card debts and

loans to cover moving expenses. Charlene moved out of the parties' residence in October of 1997. The trial court declined to award temporary alimony and its award of permanent alimony did not go into effect until March 1, 1998. We find the credit offsets the failure to award temporary alimony during the parties' separation. We affirm.

VI. Appellate Attorney Fees. Charlene cross-appeals, seeking appellate attorney fees. An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. *In re Marriage of Vieth*, 591 N.W.2d 639, 641 (Iowa App. 1999) (citations omitted). We are to 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 district court's decision on appeal. *Id.* We decline to award appellate attorney fees.

Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.