

IN THE COURT OF APPEALS OF IOWA

No. 9-240 / 88-1555

FILED

OCT 05 1989

CLERK SUPREME COURT

IN RE THE MARRIAGE OF GALEN G. LOWMAN AND CHRISTIE M. LOWMAN

Upon the Petition of

GALEN G. LOWMAN,

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Appellant,

And Concerning

CHRISTIE M. LOWMAN,

Appellee.

Appeal from the Iowa District Court for Kossuth County,
Frank B. Nelson, Judge.

The husband appeals from a dissolution decree
challenging economic provisions. **AFFIRMED AS MODIFIED.**

David C. Shinkle of Rogers, Reavely & Shinkle, Des
Moines, for petitioner-appellant.

Robert A. Dotson of Buchanan, McClure, Dotson,
Buchanan, Bibler & Thomsen, Algona, for respondent-
appellee.

Considered by Donielson, P.J., and Schlegel and Habhab,
JJ.

HABHAB, J.

Appellant husband appeals certain economic provisions of the district court's decree dissolving his marriage to Christie. He contends: (1) the trial court erred in setting the amount of child support and (2) the trial court erred in granting Christie temporary alimony.

The parties, Galen and Christie Lowman, were married in 1968. They are the parents of two children, girls born in 1969 and 1971. At trial time the older girl was a college sophomore and the younger girl was a high school senior planning to attend college. The younger child was placed in joint legal custody and in Christie's physical care, and this provision is not challenged on appeal.

Galen is employed as the manager of a Cargill elevator, earning over \$43,000 per year. He expects no future advancement within the Cargill company because he lacks a college degree.

Christie attended college for three years as a young woman, but she lacks a degree. Christie held a wide variety of part-time and full-time positions throughout the marriage. She is presently taking college courses, and she hopes to become a teacher. She is also working part-time as a teacher's aide, earning \$5.05 per hour. Her net income is \$373 per month.

In spite of Galen's income, the parties had accumulated relatively few assets. Their house was valued at \$73,000 but was subject to a debt of over \$72,000. The decree

awarded the house to Galen, but the parties and the court all contemplated that the house would be sold. Each party received a vehicle and various personal effects. The decree also awarded Christie half of Galen's eventual Cargill pension fund benefits.

The decree directed Galen to pay \$500 per month in child support for the one minor child, with an extension pursuant to section 598.1(2) if the child attends college. The decree also directed Galen to contribute \$2500 per semester for the college tuition, room and board, and fees of each daughter,¹ in addition to the support noted above.

The decree directed Galen to pay Christie alimony of \$750 per month through August 1990 and \$500 per month through December 1998. After December 1998 the alimony is to cease.

I.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties

1. Galen, either prior to or during the course of the trial, agreed to this provision.

presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

Appellant contends that the amount of child support he has been ordered to pay is excessive when combined with the college costs of \$2,500 per semester. By statute, divorced parents may have an obligation to support their children while attending college. In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa App. 1984). This obligation depends largely on the circumstances of each case. In re Marriage of Vrban, 293 N.W.2d 198, 203 (Iowa 1980). In re Marriage of Hoak, 364 N.W.2d 185 (Iowa 1985). The order for college expenses was appropriate here where the older child, Melissa, was already attending college. In addition, the order was not premature as to the younger child, Michelle, who was seventeen at the time of trial. See In re Marriage of Richards, 439 N.W.2d 876, 879 (Iowa App. 1989). As we noted in In re Marriage of Richards:

A college education is valuable and desirable for children evincing an aptitude therefor. Iowa Code section 598.1(2) authorizes the court, in its discretion, to award support of children through college under the proper circumstances. Among the factors to be considered are the financial condition of the parent, ability of child for college work, age of the child, and whether the child is self-sustaining or not. In re Marriage of Vrban, 293 N.W.2d at 202. Once it is determined that support for college is justified, it is equitable for both parents to furnish financial assistance for higher education in such amount as their financial condition will permit.

Id. (emphasis in original).

Here, appellant does not dispute the appropriateness of the college support, but the amount of financial assistance he should provide. Considering the economic circumstances of the parties, we believe it is inequitable for Galen to have to continue the \$500 per month child support payments for Michelle once she begins college. Galen's net income is \$33,400. When his child support obligation is combined with his alimony obligation, Galen's total support obligations for the 1989-90 school year total \$25,000. This is approximately 75% of Galen's net income and leaves him with only \$8,400 on which to support himself. As this court stated in In re Marriage of Byall, 353 N.W.2d at 109:

We have a duty to carefully balance the needs of the children with the financial assets and earnings of the parents. That a college education is desirable is not questioned by anyone. However, the cost of that education must not exceed an amount that the party liable for it is able to pay. Johnstone v. Johnstone, 226 Iowa 503, 509, 284 N.W. 379 (1939). We must be mindful not only of the needs of the children, but of the divorced parents. They should support their children as best they can. But it will not do to burden them to the extent that all incentive is destroyed. Some balance must be found between the needs of the children and the parents' ability to pay.

Galen's payments of \$2,500 per semester per child should be sufficient for Michelle and Melissa to attend a state-supported university in Iowa. A parent of limited means is not obligated to pay college expenses beyond those of attending a state-supported college or university in the state of the student's residence. Id. at 880; In re

Marriage of Lieberman, 426 N.W.2d 683, 686 (Iowa App. 1988). Therefore, we modify the decree to eliminate Galen's obligation to pay \$500 per month child support for Michelle while she is attending college.

II.

Galen also challenges the awarding of alimony to Christie. When determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party, and (2) their present standards of living and ability to pay balanced against their relative needs. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432 (Iowa 1981). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). See In re Marriage of Hayne, 334 N.W.2d 347, 350 (Iowa App. 1983). While Christie undoubtedly could obtain full-time employment now, this employment would only pay her \$10,000 to \$12,000 per year. Furthermore, such employment would offer few opportunities for advancement. We conclude that the awarding of alimony was appropriate here. However, we modify the alimony award in one respect. We conclude that

the alimony should terminate as of December 1993. By that time Christie should be well established in her new career and no longer in need of Galen's support to maintain her standard of living.

Two-thirds of the costs are assessed to Galen, and one-third to Christie.

AFFIRMED AS MODIFIED.