

IN THE COURT OF APPEALS OF IOWA

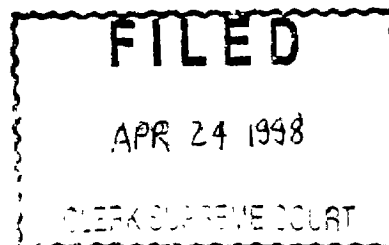
No. 7-662 / 96-1879

**IN RE THE MARRIAGE OF JOAN M. WALLIG
AND WILLIAM C. WALLIG**Upon the Petition of
JOAN M. WALLIG,

Appellee,

And Concerning
WILLIAM C. WALLIG,

Appellant.



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

William C. Wallig appeals from the economic provisions of the dissolution
decree. **AFFIRMED.**

Gary L. Robinson and Jonathan B. Hammond of Klinger, Robinson,
McCuskey & For, L.L.P., Cedar Rapids, for appellant.

David E. Mullin, Cedar Rapids, for appellee.

Considered by Streit, P.J., Vogel, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HAYDEN, S.J.

On August 28, 1996 the trial court dissolved the parties' twenty-one-year marriage. The petitioner was forty-one years old, legally blind, unemployed, and living on social security benefits. The respondent was a thirty-nine year-old auto mechanic. The court placed the parties' seventeen-year-old daughter in the petitioner's physical care and ordered the respondent to pay weekly child support of \$143.83, based on findings the petitioner's net monthly income was \$1,163.15 and the respondent's net monthly income was \$3,129.63. The court also ordered the respondent to pay weekly spousal support of \$150 until his child support obligation ceased, and \$200 weekly thereafter until the petitioner married, died, or reached age sixty-five. The respondent appeals, arguing the court erred in determining his income for child support purposes and in awarding alimony in excess of the petitioner's needs. The petitioner seeks appellate attorney fees.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value because our decision is based on the particular circumstances of each case. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

Alimony. When determining the appropriateness of alimony, the court must consider the earning capacity of each party, present standards of living, and the ability to pay balanced against relative needs of the other. *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted). Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (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). We consider property division and alimony together in evaluating their individual sufficiency. *In re Marriage of Dahl*, 418 N.W.2d 358, 359 (Iowa App. 1987); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). In marriages of long duration where the earning disparity between the parties is great, both alimony and nearly equal property division may be appropriate. *In re Marriage of Friedman*, 466 N.W.2d 689, 693 (Iowa 1991); *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa App. 1993).

Respondent asserts any award of alimony should only be rehabilitative and last no longer than a training course offered through the Iowa Commission for the Blind. He argues the petitioner could earn more than her social security payments after completing the course, so she should not receive alimony after completing the course.

He also argues that, since she could be capable of earning \$1118 monthly, which is \$304 more than her monthly disability payments of \$814, an award of alimony in excess of \$304 monthly is not supported by evidence of financial need.

The trial court's alimony award was not designed as rehabilitative alimony. Even assuming the respondent's calculation of the petitioner's earning potential is correct, he made no showing she could find employment or that she could maintain any reasonable standard of living at that level of income. We find the respondent's arguments concerning alimony without merit and affirm the award of the trial court.

Income determination. In applying the child support guidelines, the court must determine the parents' current monthly income from the most reliable evidence presented. *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991); *In re Marriage of Hart*, 547 N.W.2d 612, 615 (Iowa App. 1996). The respondent asserts this should be the income he projected he would earn at a new job he planned to take, not the income from his current job. By his calculations, his income would decline from his 1995 income of \$59,124 to \$25,480. Income which is speculative and uncertain is not considered in determining a child support award. *See In re Marriage of Pettit*, 493 N.W.2d 865, 868 (Iowa App.1992). Voluntary reductions in income are not considered in determining a party's child support obligation. *In re Marriage of Foley*, 501 N.W.2d 497, 500 (Iowa 1993) (discussing appropriate and inappropriate reasons for income reduction at length). The respondent argues his change in employment is caused by health problems and is not voluntary. From our *de novo*

review of the record, we disagree. Although we acknowledge the respondent has health concerns, they have not affected his ability to maintain his current position and income. The change in employment is not required, even if it might provide better working conditions. We also fault the manner in which the respondent estimated his income at the proposed new job. We find the income figure used by the trial court in setting the respondent's child support obligation to be appropriate and affirm on this issue.

Attorney fees. The petitioner requests appellate attorney fees in the amount of \$1,500. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Hansen*, 514 N.W.2d 109, 112 (Iowa App.1994). 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 trial court's decision on appeal. *In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa App.1981). Under the circumstances of this case, we order the respondent to pay \$1,000 of the petitioner's appellate attorney fees and assess the costs of this action to the respondent.

AFFIRMED.