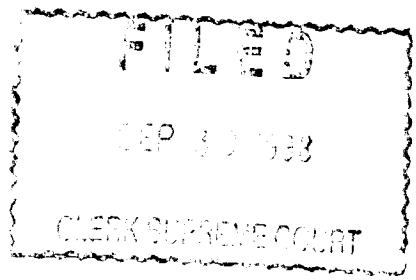
IN THE COURT OF APPEALS OF IOWA

No. 8-176 / 97-1615
Filed September 30, 1998



IN RE THE MARRIAGE OF ROBIN D. WIEBENGA AND RANDY LEE WIEBENGA

Upon the Petition of
ROBIN D. WIEBENGA,
Appellee,

And Concerning
RANDY LEE WIEBENGA,
Appellant.

Appeal from the Iowa District Court for Clinton County, David H. Sivright, Jr., Judge.

Randy Wiebenga appeals provisions of the parties' dissolution decree.

AFFIRMED AS MODIFIED.

Robert J. McGee of Robert J. McGee, P.C., Clinton, for appellant.

Gary J. Rolfes of Mayer, Mayer, Lonergan & Rolfes, Clinton, for appellee.

Considered by Sackett, P.J., and Huitink and Vogel, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

Randy and Robin Wiebenga were married on May 26, 1984. The marriage was the second for both. Randy and Robin had two children during their marriage, Ashley and Shane.

Robin filed a petition for dissolution of the parties' marriage on January 27, 1997. Robin was forty years old at the time of trial, and Randy was forty-one. Robin worked for the local school district as a part-time behavior disorder assistant, earning $154 per week during the school year. Prior to that she worked as an educational interpreter for hearing-impaired students, but for much of the parties' marriage she was not employed outside the home. Both Robin and Randy have high school educations. Randy has worked at Alcoa since 1990.

The trial court found Randy's 1997 projected gross income was $66,730, and if voluntary overtime was excluded, $48,679. The court noted recent tax returns indicated Randy had gross incomes of $77,290 for 1996, $74,913 for 1995, $79,911 for 1994, and $66,774 for 1993. Robin had gross incomes of $5524 for 1996, $4338 for 1995, and $1163 for 1994.

Following trial, the court entered its findings of fact and conclusions of law. The court gave the parties joint custody of Ashley and Shane, with Robin having primary physical care. Randy was ordered to pay $735 monthly child support. Randy

was also required to maintain insurance for the children's health care, and pay any of their uninsured medical, dental, optometric, or orthodontic expenses.

Based on Robin's lengthy absence from the job market and child-care expenses, the court awarded her $750 monthly alimony for ten years, to be reduced to $500 per month thereafter until her remarriage, the death of either party, or Randy's retirement.

In this appeal, Randy challenges the amount and duration of the court's alimony award. He contends the alimony provisions of the decree are inequitable, given the parties ages, good health, duration of their marriage, and Robin's employment history. Randy also argues uninsured medical, dental, optometric, and orthodontic expenses should be divided equally.

Robin requests an award of appellate attorney fees.

II. Standard of Review.

Our review is de novo. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). We are obliged to examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Geil*, 509 N.W.2d 738, 740 (Iowa 1993). No hard and fast rules govern the economic provisions in a dissolution action; each decision turns on its own uniquely relevant facts. *In re Marriage of Ger.*, 476 N.W.2d 324, 326 (Iowa 1991). Thus we accord the trial court considerable latitude in resolving disputed claims and will disturb a ruling only when there has been a failure to do equity. *Benson*, 545 N.W.2d at 257.

III. Alimony.

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 relative needs of the other." *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983). The spouse with the lesser-earning capacity is entitled to be supported for a reasonable time in a manner as closely resembling the standards existing during the marriage as possible without destroying the right of the party providing the income to enjoy at least a comparable standard of living as well. *In re Marriage of Hayne*, 334 N.W.2d 347, 351 (Iowa App. 1983).

There are three types of alimony awarded by the courts. Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and retraining. *In re Marriage of O'Rouke,* 547 N.W.2d 864, 866 (Iowa App. 1996). Its objective is self-sufficiency. *Id.* Cases in which rehabilitative alimony is awarded are those where the spouse to receive alimony needs to redevelop previous skills, receive new training, or develop potential supportive skills. *In re Marriage of Peterson,* 491 N.W.2d 535, 538 (Iowa App. 1992).

Reimbursement alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other.[1] *Id.* In considering whether reimbursement alimony is appropriate, the courts

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[1] For example, reimbursement alimony is used when one party increases his or her earning capacity through education while being supported by a working spouse. *In re Marriage of Peterson*, 491 N.W.2d 535, 538 (Iowa App. 1992). Another appropriate

consider the employment opportunities that have been embraced by both parties during the marriage. *In re Marriage of Mouw*, 561 N.W.2d 100, 102 (Iowa App. 1997). The fact one party has chosen an occupation which generates more income than the field of the other is not the controlling factor in the alimony award where both have the education and potential to supply for themselves a very adequate living. *Id.*

Traditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support. *Id.* Traditional alimony is awarded when "[t]he feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage." Iowa Code § 598.21(3)(f)(1997); *In re Marriage of Debbler,* 459 N.W.2d 267, 270 (1990).

Traditional alimony is typically awarded when a spouse is financially dependent on the other, there is little prospect of self-sufficiency, and the marriage was of long duration. *See In re Marriage of Eastman*, 538 N.W.2d 874, 876 (Iowa App. 1995).

A court may award alimony after considering the following: (1) length of marriage; (2) age and physical and emotional health of the parties; (3) educational level of each party at the time of marriage and at the time the action is commenced; and (4) earning capacity of the party seeking maintenance, including educational

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circumstance for reimbursement alimony is where one spouse sacrifices an education or career solely for the benefit of the other. *Id.*

background, training, employment skills, work experience, length of absence from the job market, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment. Iowa Code § 528.21(3).

Robin and Randy are both relatively young. They enjoy good health. Robin's work experience includes managerial positions in retail businesses. She has worked as an interpreter for hearing-impaired students. She has the demonstrated ability to gain employment to become self-sufficient. We conclude an award of transitional alimony would more appropriately accommodate both Robin's needs and Randy's ability to pay. The district court's decree is accordingly modified to reduce Randy's alimony obligation to $500 per month for five years.

IV. Apportionment of Uninsured Medical Expenses.

Randy contends the district court erred by apportioning all of Ashley's and Shane's uninsured medical, dental, optometric, and orthodontic expenses to him. He also argues the court failed to reduce his gross income by the amount of these expenses before calculating his child support.

As noted earlier, Randy is obligated to furnish medical insurance for the children. He bears the additional burdens of substantial child support and alimony. Although the district court's downward deviation from the child support guidelines was based, in part, on these circumstances, they provide insufficient justification to impose on Randy an unlimited obligation to pay uninsured medical, dental, optometric, and orthodontic expenses. There is no equity in Robin's receipt of child

support without an attendant obligation to apply it to the children's subsistence expenses.

We believe limiting Randy's obligation for uninsured medical, dental, optometric, and orthodontic expenses to the amount of the annual deductible and coinsurance requirements of the children's medical insurance policy equitably accommodates these circumstances. Any additional expenses shall be divided equally between the parties.

Randy also requests his net monthly income, as calculated pursuant to the child support guidelines, be reduced in an amount equal to the cost of the uninsured medical expenses he is required to pay. He relies upon the definition of net monthly income contained in the child support guidelines.[2]

We decline to adjust Randy's net monthly income. Although the decree imposed on Randy an obligation to pay the children's uninsured medical, dental, optometric, and orthodontic expenses, the amount of these expenses cannot be determined with sufficient specificity to include them as deductions from gross income. The district court properly accommodated these expenses in making a discretionary deviation from the applicable child support guideline amount.

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[2] The guidelines define "net monthly income" as gross monthly income less the following deductions: (7) Actual medical support paid pursuant to court order or administrative order.

V. Appellate Attorney Fees.

Robin requests attorney fees for defending this matter on appeal. In making such a determination, 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. *In re Marriage of Garst*, 573 N.W.2d 604, 608 (Iowa App. 1997). Given the financial positions of and economic consequences on both parties, we determine Robin is entitled to $500 in appellate attorney fees. Costs on appeal are assessed to Randy.

We affirm the provisions of the parties' dissolution decree, except we modify the alimony and uninsured medical expenses provisions as discussed above.

AFFIRMED AS MODIFIED.