FILED
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CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

**IN RE THE MARRIAGE OF EUGENE PAUL MORRISON AND CAROLINE JOYCE MORRISON**

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Upon the Petition of )
**EUGENE PAUL MORRISON,** )
Petitioner-Appellant, )
And Concerning )
**CAROLINE JOYCE MORRISON,** ) 8-568 / 88-177
Respondent-Appellee. )

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Appeal from the Iowa District Court for Jasper County (No. 3296), J. W. Jordan, Judge.

Petitioner appeals from certain economic provisions in the decree of dissolution entered for the parties in district court. **AFFIRMED AS MODIFIED.**

Gregory A. Skinner of Skinner Law Firm, Altoona, for petitioner-appellant.

Jacques D. Schira of Nick Critelli Associates, P.C., Des Moines, for respondent-appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

**PER CURIAM** 208

Eugene Morrison appeals the decree of the district court dissolving the parties' marriage. He asserts the trial court erred in awarding the respondent, Caroline, alimony, a percentage of his retirement benefits, and half the cash under his control in a lock box in Colfax, Iowa. We affirm as modified.

We review de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, especially where the credibility of witnesses is concerned, but we are not bound by them. Iowa R. App. P. 14(f)(7).

The parties were married for thirty-one years. They have one daughter who is an adult. Her welfare is not affected by the dissolution. At the time of the dissolution, Caroline was fifty-one and Eugene fifty-seven years of age.

Eugene was ordered to pay Caroline as alimony $400 per month for five years. He challenges this ruling, among others, on appeal.

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 § 598.21(3).

When determining the appropriateness of alimony, the trial court must consider: (1) the earning capacity of

each party, and (2) the present standard of living and ability to pay balanced against relative needs of the other. In re Marriage of Hitchcock, 309 N.W.2d 432 (Iowa 1981). It is here that we run into a problem.

Caroline is the head banquet waitress at Guido's and has a staff that works under her. In 1986, her gross earnings from the Hotel Savery were $22,077.21, and for 1987 (to October 25, 1987), she had gross earnings of $16,148.23, and, after deducting taxes (federal, state, and FICA) of $4,137.79, her net pay to that date was $12,510.44. When we review her pay records for the two-week periods which follow, we find her net pay checks to be: For the two-week period ending 8/2/87, $649.87; 8/16/87, $509.90; 8/30/87, $673.23; 9/13/87, $557.62; 9/27/87, $849.51; 10/11/87, $435.11; 10/25/87, $814.37.

She has an average two-week take-home pay of $641.31 based on the pay periods aforesaid. Her earnings per week increase during the month of December and that increase continues on into the spring. The summer months, insofar as her earnings are concerned, are rather slow. In addition, she has no benefits or insurance coverage through her employer.

She was insured through a family insurance plan at John Deere at the time of the filing of the dissolution decree. Through COBRA rights, she is able to maintain her present insurance coverage for a period of three years at a cost of

$75 per month. Thereafter the John Deere provided insurance will be cancelled. She is eligible for coverage under the Iowa Comprehensive Health Association at a rate of $149.16 per month with a $500 deductible from the ages of fifty-five to fifty-nine, and then at $163.52 per month with a $500 deductible for the ages of sixty to sixty-four.

Eugene is employed at John Deere and earns $655.60 per week for a forty-hour week, and from his financial statement he shows self-employment income of $38.46 per week and after deducting self-employment tax, he has a net self-employment income per week of $26.00. From his income at John Deere, he has weekly tax and FICA deductions of $196.40, leaving a net pay per week of $497.66. There are occasions when he earns overtime pay, thus increasing the amount he receives each week.

The financial difficulties Eugene encounters are the payroll deductions he authorized in the amount of $417.78 per week for three loans at the John Deere Credit Union. One of the loans represents a mortgage on the marital home. The remaining two loans that total approximately $15,500 are categorized as open loans, with the money drawn for the purported purpose of purchasing various assets of the parties. As it relates to the last mentioned assets, a substantial part of them were awarded to Eugene (boat and trailer, Evinrude motor, air compressor, two vehicles, electric generator, rototiller, gas grill).

The monthly mortgage payment on the marital home is $600. That home is to be sold with the proceeds being equally divided. At the time that the home is sold, he will be released from the obligation to pay on the mortgage. He is covered under a company pension program and through his employment has coverage for hospital and medical insurance.

Caroline is not in the best of health, and there is a possibility that she will have to reduce the number of hours she currently works due to her health limitations. However, at this time, the record does not establish how immediate this may be.

When we review the earning capacity of each party and calculate the ability to pay balanced against the relative needs of the other, we find that the alimony award of $400 per month is unreasonable. We modify the court decree by reducing that amount to $50 per month for the five-year period as decreed by the trial court; otherwise, we affirm the provisions relating to alimony.

Eugene disputes the trial court's award concerning his pension benefits and cash on hand. He argues it is not equitable to order him to pay Caroline 40% of his retirement benefits from John Deere until she reaches the age of sixty-two or qualifies for social security. Similarly, he argues it is not equitable to order him to pay one-half of cash on hand because he had planned to use

60% of that money to purchase inventory from his father for his flea market business.

Property division is determined by considering those factors as set out under Iowa Code section 598.21(1). Each decision is based upon the particular circumstances of each case. We find the district court properly considered and weighed those facts before it in this instance. We decline to disturb those findings on appeal.

**AFFIRMED AS MODIFIED.**

Sackett and Habhab, JJ., concur; Hayden, J., dissents.

**HAYDEN, J.** (concurring in part and dissenting in part]

Considering the earning capabilities of both parties, the property division, and the total economic provisions of the majority's opinion, I determine Eugene should not be required or obligated to pay Caroline alimony. Accordingly, I would also modify the trial court's decree by eliminating the alimony. In this respect, I dissent from the majority. I concur with the majority in all other provisions of this decision.