

IN THE COURT OF APPEALS OF IOWA

No. 7-463 / 96-1633

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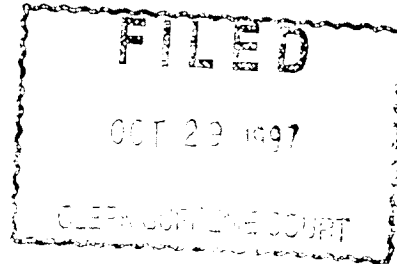
**IN RE THE MARRIAGE OF RICHARD L.
AICHER AND MARGARET L. AICHER**

**Upon the Petition of
RICHARD L. AICHER,**

Petitioner-Appellee,

**And Concerning
MARGARET L. AICHER,**

Respondent-Appellant.



Appeal from the Iowa District Court for Lee County, William L. Dowell,
Judge.

Respondent appeals various economic provisions of the parties' dissolution
decree. **AFFIRMED AS MODIFIED.**

Gary L. Hoyer and Kathleen M. Werner of Gary Hoyer Law Firm, P.L.C., Fort
Madison, for appellant.

Kermit L. Dunahoo and Jon C. Tack of Dunahoo Law Firm, Des Moines, and
Michael M. Phelan of Phelan Law Offices, Montrose, for appellee.

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

MAHAN, J.

Respondent Margaret Aicher appeals the decree dissolving her marriage to petitioner Richard Aicher. Margaret contends (1) the alimony award is too low and too short; (2) the property equalization payment is too low; (3) child support is too low; and (4) the attorney fees awarded to her are too low. On appeal, Margaret also requests appellate attorney fees.

Margaret and Richard married on August 26, 1967. The parties had been married twenty-eight years at the time Richard filed the petition for dissolution. Margaret and Richard have two children, but only one of them, Lindsey, qualifies for child support.

Richard is a part-owner in a few businesses. He is also an employee of one, with a salary of \$104,000 per year. In recent years Richard has also received substantial bonuses, causing his income from employment to be as high as \$254,970. His average income between the years 1991 and 1995 was approximately \$190,000.

Margaret has a Bachelor of Science degree in education. She worked as a physical education teacher until she became pregnant with the couple's second daughter, Lindsey, in 1980. At that time Margaret had fourteen years of teaching experience. Margaret has not been employed outside the home in sixteen years. Margaret is currently enrolled in the nursing program at Southeastern Community College and is scheduled to obtain her degree in three years. Upon completing her degree, Margaret will have the potential to earn approximately \$25,000 to \$30,000.

Following the hearing, the district court ordered Richard to pay Margaret \$255 per week in child support. The court also ordered him to pay Margaret \$2000 per month in alimony for three years, \$1000 per month for the next two years, and \$500 per month for the following four years, after which alimony will be terminated. In order to better equalize the property settlement, the court ordered Richard to pay Margaret a cash settlement of \$20,000, to be paid in equal installments of \$2000 per year. The court also awarded Margaret \$3000 in attorney fees. We affirm as modified.

I. SCOPE OF REVIEW. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. 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).

II. PROPERTY DIVISION. The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997). The courts are not bound to achieve a precisely equal division in awards of marital property. *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa App. 1997). The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1995). *Id.*

Margaret challenges the \$20,000 cash property settlement as too low. The court awarded Margaret undisputed items valued at \$280,925.23. The court awarded Richard undisputed items valued at \$345,842.57. Richard testified at trial he expected to pay a property equalization payment of approximately \$33,000. Margaret is requesting a property equalization payment of \$36,678.48. A careful consideration of this matter leads us to conclude the district court's property equalization award was too low. We modify the decree entered by the district court to raise the property equalization payment to the sum of \$33,000 to be paid in ten equal yearly installments of \$3300, beginning January 1, 1997, as set out in the decree.

Margaret also challenges the five percent interest rate to be applied to the \$20,000 cash property settlement. She alleges that an interest rate of ten percent is mandated by Iowa Code section 535.3. "The court may award interest on property distribution awards less than what is called for in Iowa Code section 535.3 if equity so dictates." *See In re Marriage of Pertzsch*, 451 N.W.2d 22, 24 (Iowa App. 1989). We find that the interest rate awarded by the court is equitable. *Id.*

III. ALIMONY. Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Eastman*, 538 N.W.2d 874, 876 (Iowa App. 1995). When determining the appropriateness of alimony, the court must consider "(1) the earning capacity of each party, and (2) the present standards of living and ability to pay balanced against relative needs of the other." *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994) We consider

property division and alimony together in evaluating their individual sufficiency. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996). The court may consider the amount of child support ordered under the decree when determining if spousal support is to be awarded and, if so, the appropriate amount of the award. *In re Marriage of Will*, 489 N.W.2d 394, 400.

The district court awarded Margaret rehabilitative alimony. Margaret now seeks traditional alimony as well. Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and retraining. *O'Rourke*, 547 N.W.2d at 866. Its objective is self-sufficiency. *Id.* Traditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support. *Id.*

The record clearly supports an award of rehabilitative alimony. Margaret quit work to become a homemaker in 1980. Margaret was fifty-one years of age at the time of hearing. She had been out of teaching for sixteen years. To return to teaching, she needs to be recertified, then find a school district willing to pay her the salary of a teacher with fourteen years of experience, even though she would be essentially starting over as a new teacher. Margaret has enrolled in the nursing program at Southeastern Community College. She is scheduled to obtain her degree in three years. We believe Margaret will have a better chance of finding employment in nursing than attempting to return to teaching.

“Because self-sufficiency is the goal of rehabilitative alimony, the duration of such an award may be limited or extended depending on the realistic needs of the economically dependent spouse, tempered by the goal of facilitating the economic independence of the ex-spouses.” *In re Marriage of Francis*, 442 N.W.2d 59, 64 (Iowa 1989).

We find that an equitable accommodation of the parties' respective earning capacities, needs, and standards of living requires a modification of the district court's alimony award. We modify the district court's alimony award to a sum of \$2000 per month for a period of five years from September 1, 1996, and \$1000 per month for the four years thereafter. We find this award will provide Margaret with adequate support when combined with child support and the property division.

IV. CHILD SUPPORT. The child support guidelines are strictly followed in determining a parent's child support obligation. *State ex rel. Miles v. Minar*, 540 N.W.2d 462, 464 (Iowa App. 1995). “In applying the child support guidelines, the court must determine the parents' current monthly income from most reliable evidence presented.” *In re Marriage of Hart*, 547 N.W.2d 612, 615 (Iowa App. 1996). “This often requires the court to carefully consider all of the circumstances relating to parents' income.” *Id.* All income that is not anomalous, uncertain, or speculative should be included when determining a party's child support obligation. *In re Marriage of Russell*, 511 N.W.2d 890, 893 (Iowa App. 1993). Deduction of alimony

payments from monthly income for the purposes of computation of child support is within the discretion of the court. *Id* at 892.

We agree with the trial court's determination that Richard has consistently received additional sums of income. We believe the trial court was correct in setting Richard's income at \$190,000. We disagree, however, with the trial court's determination that Richard's monthly net income is "slightly" in excess of \$6000. We find no support for this statement in the record. We will allow Richard to deduct alimony payments from monthly income when computing the amount of child support. We find Richard's net monthly income will be approximately \$8163.86 per month after deducting alimony payments. The amount payable by a noncustodial parent with a net monthly income of \$6001 or more can be no less than the dollar amount as provided for in the guidelines for a noncustodial parent with a monthly net income of \$6000. *See* Child Support Guidelines, adopted effective July 1, 1995. However, in this range of income, "the appropriate figure is deemed to be within the sound discretion of the court or agency fixing support by administrative order." *Id.* We determine Richard's child support obligation should be set at \$1445 per month (\$8163.86 x 17.7%).

The district court determined Richard's support obligation should continue if Lindsey attends college. We note the legislature recently enacted Iowa Code section 589.21(5A). The decision of the district court on this issue must be modified and the parents' responsibility for Lindsey's future college expenses should be determined

pursuant to the provisions of this section. Under section 598.21(5A)(a)(1), the costs of postsecondary education is limited to the cost of attending an in-state public institution. The child's expected contribution from scholarships, loans, and earnings, is to be deducted from this amount. §§ 598.21(5A)(a)(2)-(3). The remaining amount should be apportioned to the parents. § 598.21(5A)(a)(3). The amount paid by each parent should not exceed thirty-three and one-third percent of the total cost of postsecondary education. *Id.* We further modify the child support award to provide Richard's obligation for child support after Lindsey reaches eighteen shall not exceed the liability of section 598.21(5A)(a)(3).

V. ATTORNEY FEES. Margaret contends the trial court's award of \$3000 toward her attorney fees was inadequate. She also requests Richard be ordered to pay her attorney fees on appeal.

Iowa trial courts have considerable discretion in awarding attorney fees. *Gonzalez*, 561 N.W.2d at 99. To overturn an award, the complaining party must show the trial court abused its discretion. *Id.* We find there is no evidence of abuse of discretion and affirm the award of \$3000.

In determining whether to award attorney fees on appeal, our decision is guided by the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *In re Marriage of Geil*, 509 N.W.2d 738, 743 (Iowa 1993). We award Margaret the sum of \$1000 as appellate attorney fees.

AFFIRMED AS MODIFIED.