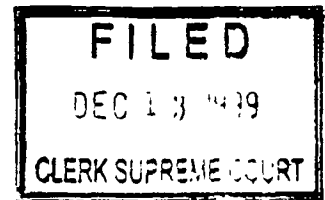


IN THE COURT OF APPEALS OF IOWA

No. 1999-195 (9-419) / 98-1708

Filed December 13, 1999



**IN RE THE MARRIAGE OF ROBERT E. ORWIG AND
DORIS CLARA ORWIG**

ROBERT E. ORWIG,
Petitioner-Appellant,

vs.

DORIS CLARA ORWIG,
Respondent-Appellee.

Appeal from the Iowa District Court for Marshall County, Carl E. Peterson,
Judge.

Petitioner appeals from the provision of the parties' dissolution decree which
awarded traditional alimony to the respondent. **AFFIRMED.**

John J. Haney of **Pattie, Hinshaw, Danielson, & Kloberdanz P.C.,**
Marshalltown, for appellant.

Doris C. Orwig, Casper, Wyoming, pro se.

Considered by Sackett, C.J., Zimmer, J., and Schlegel, S.J.*

* Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

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SCHLEGEL, S.J.

A husband appeals the provision of the parties' dissolution decree which awarded the wife permanent alimony of \$250 per month. He asks to have the alimony award eliminated or reduced. We affirm on appeal.

Robert and Doris Orwig were married in December 1990. During the marriage they adopted Doris's granddaughter, Samantha. Samantha is currently living with her biological father. She receives \$595 per month in social security disability dependency benefits. No issues regarding Samantha's custody or support were determined in the parties' dissolution decree.

Both parties suffer poor health. Robert is disabled with an organic brain disorder (Alzheimer's disease) and arthritis. He receives social security disability benefits of \$1186 per month and a pension of \$414 per month. Doris suffered a work-related injury to her back during the marriage. She is partially deaf. Doris also suffers mental health problems. She has been diagnosed with multiple personality disorder, post-traumatic stress disorder, a bi-polar condition, and an obsessive compulsive disorder. Due to her mental condition, Doris receives supplemental security income (SSI) disability benefits of \$440 per month.

At the time of the dissolution hearing, Robert was sixty years old and Doris was fifty-one. Robert is considered to be totally disabled, and he does not work. Doris works part-time at a restaurant, where she has gross income of about \$432 per month.

The parties had financial problems throughout the marriage. They have declared bankruptcy. They have few assets and accumulated many debts during the marriage. In addition, Doris was convicted of food stamp fraud and forgery. She is on probation and must pay restitution for the overpayment of food stamps. Doris also has student loans which she incurred prior to the marriage.

The district court issued a dissolution decree for the parties on August 14, 1998. The court awarded each party the vehicle in his or her possession. Robert was ordered to pay debts of \$12,442.24. He must also pay for medical expenses incurred during the marriage which are not covered by insurance. Doris was ordered to pay marital debts of \$2674. Additionally, she is responsible for her criminal restitution of \$13,600 and student loans of \$8500. The court ordered Robert to pay alimony of \$250 per month until Doris remarries or either party dies.

Robert filed a motion pursuant to Iowa Rule of Civil Procedure 179(b). The district court denied the motion. Robert appealed.

Appellate review of this equitable proceeding is *de novo*. Iowa R. App. P. 4. The court has a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa App. 1993). The appellate court gives weight to the fact findings of the district court, especially in determining the credibility of witnesses, but is not bound by them. Iowa R. App. P. 14(f)(7).

Robert contends Doris is not entitled to alimony. He asserts the court gave too much consideration to Doris's health problems. He points out Doris did not provide any documentation of her health problems. He notes Doris is working part-time and claims she should be able to work full-time. He states he should not be required to pay alimony from his disability benefits. Robert asks us to eliminate or reduce his alimony obligation.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa App. 1997). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3). *In re Marriage of Sychra*, 552 N.W.2d 907, 908 (Iowa App. 1996). We consider the length of the marriage, the age and health of the parties, the parties' earning capacities, the levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa App. 1998).

Military disability benefits may be considered in alimony and support matters, but are not considered marital property. *In re Marriage of Miller*, 524 N.W.2d 442, 444 (Iowa App. 1994). Military disability benefits are not solely for the benefit of the veteran, but for his family as well. *In re Marriage of Anderson*, 522 N.W.2d 99, 102 (Iowa App. 1994). Similarly, we consider Robert's social security disability benefits in awarding alimony.

The present case is similar to *In re Marriage of Hettinga*, 574 N.W.2d 920 (Iowa App. 1997). There, both parties were disabled and received social security disability benefits. *Id.* at 921. The husband inherited a farm and received rental income. *Id.* The court determined the wife needed alimony because she was incapable of self-support. *Id.* at 922. The court noted that although the husband suffered a similar disadvantage, his receipt of rental income enhanced his ability to pay alimony. *Id.*

In the present case, Robert receives a pension in addition to his social security disability benefits. He has total income, from these two sources, of \$1600 per month. In his affidavit of financial status Robert claims expenses of \$1083 per month. We determine Robert has sufficient income to pay alimony. After the alimony payment Robert will have monthly income of \$1350. Doris receives SSI disability benefits of \$440 per month and she earns \$432 per month. The alimony award of \$250 per month is equitable under the facts of this case.

We affirm the provisions of the parties' dissolution decree, including the provision awarding the wife alimony of \$250 per month. Costs of this appeal should be assessed to Robert.

AFFIRMED.