

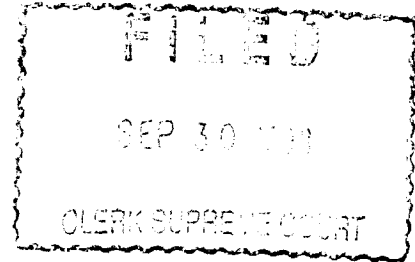
IN THE COURT OF APPEALS OF IOWA

No. 8-344 / 97-1258

IN RE THE MARRIAGE OF RODNEY J. STOAKES AND MARGARET E. STOAKES

Upon the Petition of
RODNEY J. STOAKES,
Appellee,

And Concerning
MARGARET E. STOAKES,
Appellant.



Appeal from the Iowa District Court for Warren County, Gary G. Kimes,
Judge.

The respondent appeals various economic provisions of the parties' dissolution
decree. **AFFIRMED.**

James F. Fowler of Wilson, Fowler & Fusco, Indianola, for appellant.

Lori M. Holm, Pleasant Hill, for appellee.

Considered by Cady, C.J., and Vogel and Mahan, JJ.

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VOGEL, J.

Margaret Stoakes appeals various economic provisions of the parties' dissolution decree. We affirm.

Background facts. Rodney and Margaret Stoakes were married in 1978. They had three children together: Heather, born in 1980, Stephanie, born in 1982, and Trevor, born in 1991. Rodney filed for divorce in December 1996.

During the marriage Rodney held several jobs in the publishing industry. Margaret held a few part-time jobs during the marriage, but primarily stayed at home to care for the children. In early 1996, Rodney was laid off from his job and thereafter had difficulty obtaining new employment. The parties became deeply in debt and eventually went through a joint bankruptcy in January of 1997. Both parties had found full-time employment by the time of trial.

Following trial, the district court granted Margaret primary physical care of the children, and ordered Rodney to pay \$687.25 per month in child support. Margaret was ordered to maintain medical insurance on the children, and the court ordered that if neither party had insurance through their employment, each would contribute one-half toward the premium, with all medical expenses not covered by insurance divided equally. Margaret was also awarded the parties' marital home, and the court ordered that Rodney would be held harmless as to the two mortgages on the property. The court declined to award either party alimony. Margaret appeals.

Scope of review. 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 anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 453 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Child support. Margaret first contends the district court erred in calculating Rodney's child support obligation based on his current earnings rather than his earning capacity.

"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.* The child support award may be based upon the party's earning capacity, as opposed to his or her actual earnings. *In re Marriage of Roberts*, 545 N.W.2d 340, 343 (Iowa App. 1996). However, earning capacity may sometimes be best evidenced by present income. *In re Marriage of Drury*, 475 N.W.2d 668, 672 (Iowa App. 1991). If earning capacity is used, some consideration also must be given to a party's ability to pay. *See In re Marriage of Walters*, 575 N.W.2d 739, 743 (Iowa 1998).

Rodney started out in the publishing industry with no experience and little formal education and eventually worked his way into an art director position. In late 1994, Rodney resigned this position and accepted a lesser position at Meredith Publishing in Des Moines, hoping that he would have more opportunities for career advancement there. However, Rodney was laid off from Meredith in February of 1996, and thereafter had difficulty finding comparable employment, in part because he did not have a college degree. It is important to note that all of this occurred prior to the petition for dissolution.

Margaret claims that since his termination from Meredith, Rodney has not seriously looked for comparable employment, and has accepted a lower paying job in order to keep his child support payments low. Rodney indicated at trial that he is hoping to find higher-paying jobs in his field and should have more opportunities available to him on the east coast. However, Margaret is concerned that Rodney has no motivation to seek such jobs because he has been receiving substantial financial assistance from a female friend.¹ Rodney met this friend via the Internet; she was the

¹ Rodney was very evasive at trial as to the extent of assistance he has received from his friend. However, he admitted that his friend has given him approximately \$2,000 to pay his child support obligations, paid twice for airline tickets, and provided other assistance, some of which he said was given in exchange for work on her rental properties. When asked how much money he had brought with him when he returned to Iowa for trial, he replied that he had \$2,000 in cash that he had "saved up." When pressed further, he admitted his friend had given him the money. Rodney was also ambiguous about his living arrangements, stating that he was on a waiting list for an apartment and didn't expect to get one for several months, if not a year. He claimed that he was moving from motel to motel, and stayed with his friend on some weekends.

one who encouraged him to move to the east coast and helped him to relocate. Although there is not enough support in the record that would allow us to draw the conclusion that this friend is providing Rodney with a continual source of income, proof of the same may be grounds for a later modification. *See* Iowa Code § 598.21(8)(h) (listing possible support of a party by another person as a factor to consider in determining whether there has been a substantial change in circumstances warranting a modification).

Margaret further points out that temporary child support was set at \$1,028, and was based on Rodney's earning capacity rather than current income. However, at the time of the temporary support hearing, the court recognized that Rodney was working at an \$8 per hour job while looking for more substantial employment. The court therefore set temporary support based on his past earnings, but stated that support would be recalculated once Rodney found employment "more commensurate with his abilities and experience."

By the time of trial, Rodney did find more substantial employment on the east coast, though not at the level he formerly enjoyed. Under these circumstances, it would be inequitable to calculate child support based upon his highest past earnings. We find the trial court's calculation was proper in keeping with the intent of the temporary order, applicable case law, and the child support guidelines.

II. Medical expenses. Margaret further asserts that Rodney should be ordered to pay a greater share (two-thirds) of the noncovered medical expenses of the children as opposed to the equal division ordered by the trial court.

We recognize a parent's obligation to support their children should be determined in light of each parent's ability to contribute. *In re Marriage of Fynaardt*, 545 N.W.2d 890, 895 (Iowa App. 1996); *In re Marriage of Erickson*, 491 N.W.2d 799, 803 (Iowa App. 1992). We find the trial court's determination on this issue to be appropriate given the parties' current financial situations and therefore we will not disturb it on appeal.

III. Alimony. Margaret next claims the district court erred in failing to award her permanent alimony.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Erickson*, 553 N.W.2d 905, 907 (Iowa App. 1996). Alimony may be used to remedy inequities in a marriage and compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993). Before awarding alimony, the district court must consider the factors listed in Iowa Code section 598.21(3).

Rodney and Margaret were married for eighteen years. Both parties graduated from high school; Rodney also finished one year of college. Except for a period after his layoff from Meredith, Rodney worked full-time throughout the marriage. Margaret

held a few part-time jobs during the marriage, but mainly stayed at home to care for the children. Rodney was forty years old at the time of trial; Margaret was thirty-seven. At the time of trial, Margaret had found full-time employment and was earning a net monthly income of \$1364; child support increased that amount to \$2051. Rodney was earning a net monthly income of \$1938, or \$1206 after deducting child support.

Margaret has suffered from debilitating migraines over the years which have made it difficult for her to maintain employment and develop any extensive work history. We recognize that Margaret's standard of living has decreased significantly since the decree and she is struggling to make ends meet; however, both parties acknowledged that they were living beyond their means during the last few years of their marriage and chose to resolve their financial problems by filing for bankruptcy. While we have concerns as to the truthfulness of the overall financial picture Rodney presented at trial and his motivation to seek better employment, the record before us supports that he does not have the means to pay Margaret alimony based on his current income. We also note that Margaret has the opportunity to obtain additional education through her current employer, and hope that over time she will be able to increase her earning capacity and be better able to provide for herself and the children with the assistance of regular child support from Rodney.

IV. Mortgage. Margaret argues the district court erred in holding Rodney harmless from the two home mortgages discharged in bankruptcy and any real estate taxes on the home. However, regardless of the parties' bankruptcy, we do not find it unreasonable for the party who received the homestead to be responsible for mortgage payments and real estate taxes.

V. Appellate attorney fees. Finally, Margaret requests the court award her \$2000 toward her appellate attorney fees. An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). 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 Wood*, 567 N.W.2d 680, 684 (Iowa App. 1997). After considering the parties' relative financial situation, we award \$1000 to Margaret. Costs on appeal are taxed to Rodney.

Having considered all arguments properly before us on appeal, we hereby affirm the trial court.

AFFIRMED.