

FILED

JAN 26 1983

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**MICHAEL DAVID JOHNSON,**)

Petitioner-Appellant,)

Filed January 26, 1983

vs.)

SHARON RAE JOHNSON,)

Respondent-Appellee.)

2-432
68281

Appeal from Polk District Court - Dale S. Missildine, Judge.

Petitioner-husband appeals from the economic provisions of the parties' dissolution decree, asserting that both the child support award and the alimony award were inequitable. **AFFIRMED WITH MODIFICATION.**

Harlan M. Hockett and Joseph G. Bertogli of Flag, Hockett, Benhart and Golden, Des Moines, Iowa, for petitioner-appellant.

Alan Pape and Todd Elverson, Des Moines, Iowa, for respondent-appellee.

Considered en banc.

PER CURIAM

Petitioner-husband, Michael Johnson, appeals from the economic provisions of the parties' dissolution decree, asserting that both the child support award and the alimony award were inequitable. The particular facts of this controversy will be discussed in the relevant provisions of this opinion. We affirm with modification.

I. Scope of Review. Since this is an action in equity, our review is *de novo*. Iowa R. App. P. 4.

II. Alimony. On appeal petitioner contends the trial court erred in requiring him to pay alimony in the amount of \$100.00 per month to respondent-wife. We conclude that the trial court properly ordered the payment of alimony, but we modify the amount and duration.

In considering the propriety of alimony, we examine the factors of Iowa Code § 598.21(3) (1981). Petitioner was 36 at the time the decree was entered. He has a net monthly income of approximately \$1,302 from insurance investigation and claims work. He earns an additional income of approximately \$500 per month from the publication of an insurance guide.

The record reflects that respondent was twenty-one years old at the time of the parties' marriage in 1969. She possesses a bachelor of arts degree in sociology. Since the marriage, respondent has worked as a telephone operator and later a counselor for Good Will Industries. Most recently she was an adjudicator for the Social Security Disability Determination Unit for the State of Iowa for five years. In 1979 respondent netted approximately \$9,500 in wages. She last worked in 1980, prior to the birth of the second of the parties' three children. She has been babysitting in the home since that time. The parties agree that the present condition of the economy is not conducive to respondent's re-entry into the labor market.

This court is of the opinion that respondent possesses sufficient education and skills to become employed in the labor market. However, the record reflects

that it has been approximately three years since she was last employed outside the home. A period of alimony is appropriate to permit respondent to remain in the home until the youngest child has reached pre-school age. Accordingly, we order that petitioner pay respondent \$300 per month alimony for a period of three years unless she dies or remarries prior to that time, at which time petitioner's alimony obligation will cease. We believe a three-year limit on the alimony award is appropriate to give respondent time to re-enter the job market.¹ See In re Marriage of Schlenker, 300 N.W.2d 164, 166 (Iowa 1981).

III. Child Support. Petitioner does not deny his obligation to support his children, however, he asks that an equitable and more reasonable financial obligation be imposed. We agree.

Our review is governed by the criteria contained in Iowa Code § 598.21(4) (1981), which need not be repeated here. Parents are equally obligated to support their children. Gerk v. Gerk, 259 Iowa 293, 296-299, 144 N.W.2d 104, 107-108 (1966). Disparity in the amount each parent is required to contribute toward child support results from differences in the ability of the parents to contribute. (emphasis added). Each case is peculiarly dependent on its facts. In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974).

Respondent was awarded custody of the parties' three minor children and petitioner was ordered to pay \$60 per week per child for a total of \$780 per month in child support. Consistent with the previous portions of this opinion, we find that respondent will be capable of contributing to the financial support of herself and her children in the future. Accordingly, we modify the child support award.

¹ We are mindful of the fact that respondent has not filed a cross-appeal in this action. We believe, however, that modification of alimony is consistent with the standard that a party not taking an appeal not be placed in a more favorable position than that permitted by the trial court. See O.K. Tire & Rubber Co. v. Oswald, 166 N.W.2d 749, 750 (1969). The increase in the alimony is more than offset by the benefits of the tax consequences of alimony to petitioner and the overall reduction of petitioner's obligation.

Based upon our **de novo** review, we order petitioner's child support obligation to be reduced to \$35 per week per child based on a 4.3 week per month or \$151.55 per month per child for a total obligation of \$454.65 per month in child support. As each child reaches age 18, gets married or becomes self-supporting, the amount of child support will decrease by \$35.00 per week. The other provisions of the trial court's decree are affirmed.

AFFIRMED WITH MODIFICATION.