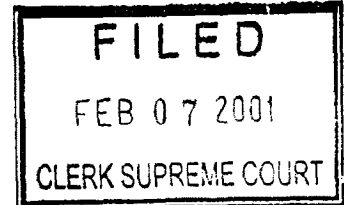


IN THE COURT OF APPEALS OF IOWA

No. 0-715 / 99-1889
Filed February 7, 2001

**IN RE THE MARRIAGE OF ESTER MARIA GREELIS
AND JAMES LELAND GREELIS**

**Upon the Petition of
ESTER MARIA GREELIS,**
Petitioner-Appellee,



**And Concerning
JAMES LELAND GREELIS,**
Respondent-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, J.C. Irvin,
Judge.

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

Michael J. Winter, Council Bluffs, for appellant.

John E. Heisterkamp of the Peters Law Firm, P.C., Council Bluffs, for
appellee.

Considered by Vogel, P.J., Hecht, J., and C. Peterson, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206
(2001).

C. PETERSON, S.J.

James Greelis appeals the alimony and health insurance determinations in the parties' decree of dissolution. He contends the trial court erred when it required him to pay traditional alimony and medical insurance coverage for Ester. James also contends the court erred by considering medical records that should not have been admitted into the record. Ester Greelis requests appellate attorney fees.

James and Ester were married on April 2, 1979. They have one child who has reached her majority and is not affected by the dissolution proceedings. Ester is thirty-eight years of age and has a high school education. She has historically worked part-time at entry-level wages. At the time of trial Ester was working at K-Mart as a sales stocker about twenty-four hours per week at seven dollars per hour.

Ester suffers from anxiety and depression due to the dissolution proceedings. It is being treated with medication. She also testified she has arthritis and asthma. She has a lump in her breast that concerns her. Prior similar conditions have been determined to be nonmalignant.

James is thirty-nine years of age. At the time of the marriage he had a high school education. He has been working at Union Pacific since 1981 and has been an assistant telecommunications manager since 1990. His annual earnings in 1998 were \$54,819. During the marriage he acquired a bachelor's degree and is currently working toward a master's degree. The education has not been a factor in his continued employment. James considers the additional

education to be some assurance of appropriate employment in the event he should be adversely affected by industry cutbacks.

The distribution of assets by the trial court assigns about \$53,000 net assets to Ester and about \$44,000 net assets to James. Ester will also receive a division of the Tier II benefits accumulated by James through his employment with the railroad. Among the debts that James is required to pay are college loans of approximately \$16,500.

I. Medical Records.

James contends the court erred by considering Ester's medical records. The medical records were offered after identification by Ester. The court received the records, subject to hearsay and lack of foundation objections. Ester testified without objection to her own medical condition. Any reference in the findings of fact by the trial court to Ester's medical condition was supported by her oral testimony. Any error in receiving the medical records is harmless error.

II. Alimony.

The trial court awarded Ester alimony in the amount of \$1000 per month to continue until the earlier of her death or her entitlement to social security benefits. *In re Marriage of O'Rourke*, 547 N.W.2d 864 (Iowa Ct. App. 1996), recites the view of this court concerning the award of alimony:

When determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other. Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. The discretionary award of

alimony is made after considering those factors listed in Iowa Code section 598.21(3).

Alimony is awarded to accomplish one or more of three general purposes. *Rehabilitative alimony* serves to support an economically dependent spouse through a limited period of education and retraining. Its object is self-sufficiency. An award of *reimbursement alimony* is predicated upon economic sacrifices made by one spouse during the marriage that directly enhanced the future earning capacity of the other. *Traditional alimony* is payable for life or for so long as a dependent spouse is incapable of self-support. The amount of alimony awarded and its duration will differ according to the purpose it is designed to serve.

In re Marriage of O'Rourke, 547 N.W.2d 864, 866-67 (Iowa Ct. App. 1996) (citations omitted). Alimony is appropriate in this case. The issue is the type of alimony and the amount that is just and equitable to both parties. Precedent is of little value, and each case must be decided on its own peculiar circumstances. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976).

In this case a number of factors must be taken into consideration. The court recognizes that this has been a relatively long-term marriage. The parties were married for twenty years and raised a child. During this period James advanced in his employment to his present position and has acquired an advanced degree. Ester has worked part-time and has maintained the home. Her employment has remained at entry-level wages, and she has not acquired additional formal education during the marriage.

James now criticizes Ester for a failure to advance her education or job skills during the marriage. Obviously Ester did not have the benefit of hindsight during the marriage. Dissolution was not the anticipated end result of the marriage. James was earning good income, increasing his earning capacity by additional education, and accumulating a nest egg for the parties' retirement.

The premise that Ester should now be penalized for her reliance on the marriage plan is untenable.

Ester is now faced with developing a new life plan, confronted with her medical and psychological problems, and lacking education and job skills to be able to earn an adequate amount to provide for her needs. Because of our conclusions concerning the responsibility for her medical insurance, she will also be required to assume that financial obligation. A period of time will be required for retraining and further education before she can become self-sufficient.

While Ester may be receiving a higher percentage of the net assets of the marriage, it should be noted that about \$16,000 of the debt for which James is responsible are college loans to enhance his own education. The additional education acquired during the marriage will inure primarily to his benefit.

This court concludes this is more appropriately a case for application of rehabilitative alimony. Traditional alimony should only be awarded in the case of an older, dependent spouse in a lengthy "traditional" marriage where there is little likelihood that the dependent spouse will become self-sufficient. *Peterson v. Peterson*, 367 N.W.2d 90, 94 (Minn. Ct. App. 1985).

[W]e are faced with different generations of women each with differing abilities. Some of these women are older with few marketable skills and may require an award of permanent alimony because they may not be self-supporting. Society would be better served, and so would the woman herself, if she were encouraged to enter the job market and given a chance to be retrained and use her potential skills.

Rosemary Shaw Sackett & Cheryl K. Munyon, *Alimony: A Retreat from Traditional Concepts of Spousal Support*, 35 Drake L. Rev. 297, 319 (1985-86).

Rehabilitative alimony in this case will create incentive and opportunity for Ester to become self-supporting. See Joan M. Krauskopf, *Rehabilitative Alimony: Uses and Abuses of Limited Duration Alimony*, 21 Fam. L. Q. 573, 581 (1988).

The decree is modified to provide that James pay alimony to Ester in the amount of \$1000 on the first day of the month following the entry of the decree of dissolution in these proceedings and a like amount on the first day of each succeeding month for a period of five years.

III. Medical Insurance.

The decree requires James to provide and maintain medical health insurance for Ester until her death or eligibility for Medicare benefits. Numerous questions remain unresolved in this provision of the decree. It is not established by the record whether James can include Ester on his group medical insurance with his employer after the entry of the decree of dissolution. The extent of coverage, the nature of coverage, or the amount of the deductible included in any medical insurance coverage to be acquired for Ester is not defined by the trial court decree. Is an HMO appropriate? Does Ester have any input into the type of insurance coverage or the medical providers that will be identified?

One of the factors to be taken into consideration by the court at the time of the fixing of alimony is the health of the parties, which would necessarily include a consideration of the need for medical insurance. See *In re Marriage of Spiegel*, 553 N.W.2d 309, 320 (Iowa 1996). Medical insurance should not be assessed as a separate obligation of James. The decree is modified to eliminate the provision requiring James to provide and pay medical insurance for Ester for life

or until she qualifies for Medicare. The amount of the alimony award incorporates the recognition that an expenditure for medical insurance is a factor to be included in the determination of the amount.

IV. Appellate Attorney Fees. Whether appellate attorney fees should be awarded depends on several factors: (1) the respective abilities of the parties to pay; (2) the fairness and reasonableness of the requested fees; and (3) whether the party requesting the fees was obligated to defend the district court's decision on appeal. *In re Marriage of O'Brien*, 565 N.W.2d 619, 623 (Iowa 1997). We conclude that appellate attorney fees of \$750 should be awarded to Ester and assessed to James.

V. Costs. Costs should be assessed equally to each party.

AFFIRMED AS MODIFIED.