

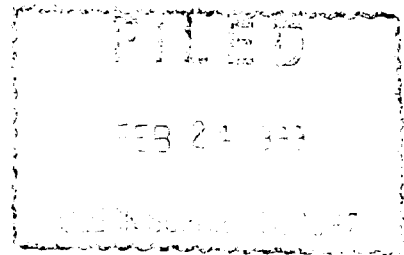
IN THE COURT OF APPEALS OF IOWA

No. 8-582 / 98-0067
Filed February 24, 1999

**IN RE THE MARRIAGE OF JOSEPH CECIL
BARNES AND LENORA J. BARNES**

Upon the Petition of
JOSEPH CECIL BARNES,
Appellee,

And Concerning
LENORA J. BARNES,
Appellant.



Appeal from the Iowa District Court for Black Hawk County, James L.
Beeghly, Judge.

Lenora Barnes appeals the district court's failure to award her alimony in the
parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Paul W. Demro of Correll, Sheerer, Benson, Engels, Galles & Demro, P.L.C.,
Cedar Falls, for appellant.

Karla J. Shea of Yagla, McCoy & Riley, Waterloo, for appellee.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

STREIT, J.

Lenora Barnes appeals from the parties' dissolution decree. She claims the district court should have awarded her alimony. We determine Lenora should have been awarded alimony, and affirm as modified.

Joseph and Lenora Barnes were married in 1983. At the time of the dissolution proceedings, Joseph was sixty-two years old, and Lenora was sixty-seven. Both parties have a minimal education.

This was Lenora's second marriage. She had fifteen children by her first marriage. She moved to Waterloo in 1973 to help one of her daughters. This daughter subsequently died, and Lenora raised the daughter's five children. Due to her child-rearing responsibilities, Lenora has had minimal employment outside the home throughout her life.

Joseph has been employed since 1975 as a janitor at John Deere & Company. Including overtime, his income for 1997 was expected to be about \$55,000. Joseph testified he was going to be transferred to a different department, where he did not expect to receive as much overtime as in the past.

The parties separated in 1994, when Lenora moved to Peoria, Illinois. During the parties' separation, Joseph voluntarily paid Lenora support of \$100 every two weeks. Lenora has several health problems, including high blood pressure, glaucoma, diabetes, and arthritis. She receives social security benefits of \$484 per month. She lives in an elderly housing complex where she pays only \$56 per month in rent.

The district court entered a dissolution decree for the parties on December 10, 1997. The parties had minimal property, and this had been divided at the time of the separation. The district court did award Lenora an additional bedroom set and two tables. Lenora was awarded a portion of Joseph's pension upon his retirement. The court did not award any alimony. Lenora has appealed. Joseph filed a cross-appeal, but did not raise any additional issues.

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). We give weight to the fact findings of the district court, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

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).

The parties were married for fifteen years. Due to her age and health, Lenora does not have the ability to earn any income in addition to her social security benefits. On the other hand, Joseph has the ability to earn a substantial income for several more years. Joseph voluntarily paid Lenora support of more than \$200 per month during the parties' separation.

Although Lenora's monetary needs are small, we determine Joseph should pay alimony of \$250 per month until he begins to receive his John Deere pension benefits. As noted above, Lenora will receive a portion of Joseph's pension benefits after he retires. The award of alimony is designed to assist Lenora with expenses until such time as she receives her share of Joseph's pension benefits.

We affirm the decision of the district court, except as modified to award Lenora alimony of \$250 per month. Costs of this appeal are assessed to Joseph.

AFFIRMED AS MODIFIED.