

FILED

MAY 22 1984

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF PAULA ELAINE STEWART & CHARLES RANDALL STEWART

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Upon the Petition of)

PAULA ELAINE STEWART,)

Petitioner-Appellee,)
Cross-Appellant,)

Filed May 22, 1984

And Concerning)

CHARLES RANDALL STEWART,)

Respondent-Appellant,)
Cross-Appellee.)

4-103
83-848

Appeal from the Iowa District Court for Wapello County - Robert Bates,
Judge.

Respondent appeals and petitioner cross-appeals from the decree dissolving
the parties' marriage. **AFFIRMED AS MODIFIED.**

W. T. Barnes of Barnes & Osborn, Ottumwa, Iowa, for respondent-appellant.

Michael C. Vinyard of Vinyard & Curran, Ottumwa, Iowa, for petitioner-
appellee.

Considered by Oxberger, C.J., and Snell and Hayden, JJ.

Respondent appeals and petitioner cross-appeals from the decree dissolving the parties' marriage.

Petitioner, Paula Stewart, and respondent, Charles Stewart, were married in 1971. At the time of trial Paula was 31 and Charles was 32 years of age. They have no children. The parties stipulated to a division of their property and debts except for a \$759 medical bill. The trial court directed each party to pay half of the bill. The court also ordered Charles to pay \$350 alimony for eighteen months and \$500 toward Paula's attorney fees.

Charles asserts on appeal that the alimony award is excessive. He complains that Paula had obtained temporary alimony of \$75 per week by asserting in an affidavit of financial status that she had no income and then failed to advise the court when she found a job several months later. Paula's cross-appeal asserts that: (1) the trial court should have awarded her alimony for twenty-four months rather than for only eighteen months; (2) the trial court should have directed Charles to pay all of the medical bills; and (3) the trial court should have directed Charles to pay all of her unpaid attorney fees. Paula also requests attorney fees on appeal.

Our review of this action in equity is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

The statutory criteria to be considered by the court when awarding alimony to either party are found in Iowa Code section 598.21(3). In this case the parties were married approximately twelve years and both are relatively young. However, Paula has experienced several health problems. She has diabetes, a liver problem, and a thyroid problem. She also had a tumor removed from her pituitary gland in 1977. She testified that she is supposed to go to the Mayo Clinic every three months but has not done so because she cannot afford it. She also testified

that she cannot afford to buy insulin on a regular basis and that her father has paid for the pills she is required to take for her thyroid problem.

The parties stipulated to the division of their personal property and agreed to sell their house and split the proceeds. After all of the indebtedness, taxes, and realtor commission is paid, each party will realize \$1,150 from the sale of the property. Charles is employed by John Deere and earns between \$9.48 and \$10.38 per hour depending upon the labor grade of the jobs he performs. He earned over \$30,000 in 1982, but testified at trial that he expected a lower income in the future due to anticipated layoffs and the possibility of a union strike. Shortly after the petition for dissolution was filed, Paula filed an affidavit stating that she had virtually no income. The court ordered \$75 per week temporary support for her. Several months later she took the first of a series of jobs. At the time of trial she was employed at a hospital earning \$5.47 per hour for a thirty hour week. Her net salary is \$232 every two weeks. Paula's income tax returns show that she received income of \$8,100 in 1982, but \$3,600 of that amount was temporary alimony. She testified that there was a possibility that a full-time position at the hospital would be available in the near future.

Using the guidelines set forth in the statute, we must determine Paula's needs and Charles's ability to pay. In re Marriage of Jones, 309 N.W.2d 457, 460 (Iowa 1981). Paula's needs are evident. Her income is only a fraction of Charles's and is not sufficient to cover her expenses, particularly in view of her health problems. Charles's ability to pay is also evident. He was the primary breadwinner throughout the marriage and has held a good job for a number of years. We conclude that the trial court's award of \$350 per month alimony was not excessive. See In re Marriage of Campbell, 204 N.W.2d 638, 639 (Iowa 1973) (award of \$350 per month alimony to wife who worked part-time not excessive where husband's annual income exceeded \$20,000). However, we modify the trial court's decree as requested by Paula extending the alimony to twenty-four months

rather than eighteen months. Although Paula has held several jobs during and since the marriage, she has not become established in any one position. We believe the additional time is necessary to allow her to find a full-time job in which she can be relatively secure and self supportive.

Charles contends that Paula should be denied alimony because she failed to notify the court of her changed financial condition when she found a job. Although we certainly encourage voluntary disclosure of relevant facts to the court, Paula's failure in this regard does not affect our decision. We have based our decision, as did the trial court, on the testimony and exhibits produced at trial. Paula's earnings were disclosed in full at that time and were found to be insufficient to meet her needs.

We also modify the trial court decree by providing that Charles shall be solely responsible for the \$759 medical bill from the Mayo Clinic. Charles is also responsible for all of Paula's unpaid attorney fees, through the conclusion of the trial, which amounted to \$943.47. The obvious difference between the economic situations of the parties justifies these modifications.

Paula has requested attorney fees on appeal. We have determined that she is entitled to an award of \$750 to be applied to those fees.

AFFIRMED AS MODIFIED.