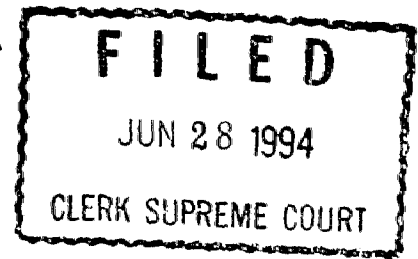


IN THE COURT OF APPEALS OF IOWA

No. 3-376 / 92-1663



IN RE THE MARRIAGE OF R. DOUGLAS
McCOLLUM AND CAROL BETH McCOLLUM

Upon the Petition of
R. DOUGLAS McCOLLUM,

Petitioner-Appellant,

And Concerning
CAROL BETH McCOLLUM,

Respondent-Appellee.

Appeal from the Iowa District Court for Scott County,
Edward B. deSilva, Judge.

The petitioner appeals from various economic provisions
of the district court's decree dissolving the parties'
marriage. **AFFIRMED AS MODIFIED.**

Janice Hanrahan-Roemer, Davenport, for appellant.

James L. Tappa, Rock Island, Illinois, for appellee.

Considered by Sackett, P.J., and Cady and Huitink, JJ.

SACKETT, P.J.

Petitioner-appellant R. Douglas McCollum appeals challenging the economic provisions of a decree dissolving his twenty-three year marriage. Affirmed as modified.

Douglas and respondent-appellee Carol Beth McCollum were married in 1969. Two children were born to the marriage. The older child is an adult and not subject to support. The younger child, Jennifer, born December 4, 1974, was, at the time of the dissolution, a senior in high school with plans to attend the University of Iowa in the fall of 1993.

When the parties married, they had each finished two years of college. Douglas, in 1985, obtained a Ph.D. in psychology. Carol resumed her education in the fall of 1985, and obtained a degree in elementary education in June 1987.

Douglas is forty-two years old. He earns approximately \$80,000 annually. Carol is forty-three years old. She started teaching elementary school children in 1989. Carol earns about \$22,000 annually.

Douglas was ordered to pay Carol child support of \$1000 a month for Jennifer until she becomes twenty-two years old, completes her education, marries, dies, or becomes self-supporting, whichever occurs first. Douglas was also ordered to pay sixty percent of Jennifer's college costs of room, board, and tuition not covered by grants or scholarships. Carol was to pay one-third and Douglas

two-thirds of all medical expenses not covered by insurance.

Douglas was ordered to pay Carol alimony of \$800 a month when the child support obligation for Jennifer ended. The alimony payment was to be reduced to \$500 a month when Carol reaches age sixty-five or begins to receive IPERS or social security benefits, whichever occurs first. The court ordered alimony payments to continue until the death of either party or Carol's remarriage.

The court divided the parties' property, awarding each party property worth approximately \$80,000. Douglas was ordered to pay \$700 toward Carol's trial attorney fees.

Douglas has appealed certain economic provisions of the dissolution decree and Carol has cross-appealed.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

Both parties challenge the alimony award. Douglas argues Carol is self-supporting and should not be awarded alimony. Carol contends she should receive permanent lifetime alimony of \$1000 a month.

Alimony is an allowance to a spouse in lieu of a legal obligation to support that person. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). Alimony is not an

absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.104, 110 (Iowa App. 1991). When considering the appropriateness of alimony, the court should consider the earning capacity of each party. Oler, 451 N.W.2d at 13. Also, the ability of the one spouse to pay should be balanced against the needs of the other spouse. Id.

By the parties' agreement, Carol did not further her education or career during the years Douglas was obtaining a Ph.D. Carol did not begin her career as an elementary school teacher until 1989, and at the time of the dissolution had only \$2890 in her IPERS account. We agree with the trial court, Carol should receive alimony. Carol contends the alimony award is not sufficient. We disagree. We affirm the amount and duration of the district court's award of alimony.

Douglas contends his child support obligation is excessive. He states he should not have to pay \$1000 a month in child support to Carol while Jennifer is in college plus sixty percent of Jennifer's college expenses. He contends the \$1000 a month child support is actually alimony because the district court did not award any alimony to Carol while Douglas has an obligation to pay child support. At trial, Carol asked for alimony after Jennifer had completed her education.

The question is whether it is equitable to order Douglas to pay \$1000 a month plus sixty percent of

Jennifer's college expenses. Douglas agrees he should pay some amount for Jennifer's college expenses. In requiring a parent to pay support for college expenses, a court should consider: (1) ability of the child for college; (2) the age of the child; (3) the financial condition of the parents; and (4) whether the child is self-sustaining. In re Marriage of Linberg, 462 N.W.2d 698, 702 (Iowa App. 1990). It is agreed Jennifer has the ability to do college work, is under twenty-two, but not married, and is not self-sustaining. We agree with the determination Douglas pay sixty percent of Jennifer's college expenses. We modify the decree to provide these expenses should be limited to those attending a state-supported institution in Iowa. At the time of trial, it was Jennifer's intention to attend the University of Iowa. We find no basis to support an award of \$1000 a month child support to Carol in addition to Jennifer's college expenses, and we modify the decree to provide the \$1000 a month child support shall terminate when Jennifer turns eighteen or one month after she graduates from high school, whichever event is later. See In re Marriage of Byall, 353 N.W.2d 103, 108-09 (Iowa App. 1984).

Douglas asks to be awarded the income tax exemption for Jennifer. The trial court did not address this issue. Douglas contends the exemption, therefore, goes to Carol because she has custody. Jennifer is now an adult and is no longer in her mother's custody. The record is not

sufficient for us to assess the implications of Jennifer's tax exemption. We deny relief on this request.

In her cross-appeal, Carol contends the district court should have ordered Douglas to pay all of her trial attorney fees, which were \$2650, instead of only \$700 of the attorney fees. Trial courts have considerable discretion in awarding attorney fees; to overturn an award the complaining party must show the trial court abused its discretion. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We find no abuse of discretion in the district court's decision.

Carol also asks for attorney fees for this appeal. Carol and Douglas should pay their own appellate attorney fees.

Costs of this appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.