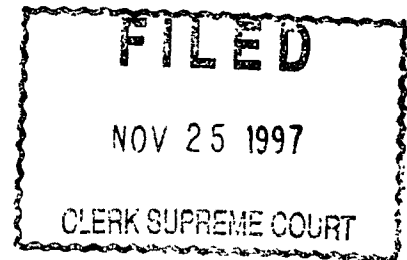


IN THE COURT OF APPEALS OF IOWA

000017

No. 7-372 / 96-1491

**IN RE THE MARRIAGE OF BARBARA ARNESON
AND DONOVAN ARNESON**



Upon the Petition of
BARBARA ARNESON,
Appellee,

And Concerning
DONOVAN ARNESON,
Appellant.

Appeal from the Iowa District Court for Linn County, George L. Stigler,
Judge.

The respondent appeals various economic provisions of the parties' dissolution
decree. **AFFIRMED AS MODIFIED.**

James W. Affeldt of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellant.

Stephen B. Jackson and Stephen B. Jackson, Jr. of Jackson Law Office, Cedar
Rapids, for appellee.

Heard by Cady, C.J., and Huitink and Streit, JJ.

STREIT, J.

Donovan Arneson appeals the child support, alimony, economic provisions of his divorce decree, and the \$1500 award of attorney fees to Barbara. We affirm the alimony award and property division, modify Donovan's child support, and affirm the attorney fee award to Barbara. Each party shall pay their own attorney fees on appeal.

I. Background & Facts.

Donovan and Barbara Arneson were married on April 22, 1989. They have two children, Jordan, born November 16, 1991, and Rachel, born October 1, 1993. Donovan was twenty-six years old at the time of trial, and Barbara was twenty-seven.

Both are high school graduates. Prior to the marriage, Barbara worked full-time at Big Sur Waterbed, but left Big Sur one week prior to the marriage to live with Donovan in Minnesota where he had a new job. At Big Sur Barbara had a net income of approximately \$1200 per month. Donovan's job moved the couple back to Cedar Rapids in 1990. Donovan worked at the Duane Arnold Nuclear Power Plant, earning \$9.85 per hour. Barbara worked at her father's company, Darrah's Towing, earning \$5.35 per hour as a dispatcher. Soon after Jordan was born, the parties decided it would be economically more efficient for Barbara to quit her job and stay home with Jordan. After Rachel was born she remained at home with both children.

In the district court's June 21, 1996 divorce decree, the court ordered Donovan pay \$600.76 per month child support, \$200 per month alimony to Barbara for two years, and \$1500 of Barbara's attorney fees. It also entitled Barbara to the tax

exemptions for both children during the years she earned less than \$12,000 per year. Otherwise, each party would be entitled to an exemption for one child. Donovan appeals.

II. Alimony.

Donovan contends the trial court erred in awarding Barbara alimony of \$200 per month for two years. We affirm the award of alimony.

Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981). 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.” *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994); *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted).

An alimony award will differ in amount and duration according to the purpose it is designed to serve. *In re Marriage of Francis*, 442 N.W.2d 59, 62 (Iowa 1989). The type of alimony that applies here is rehabilitative. Rehabilitative alimony is awarded to support an economically dependent spouse through a limited period of retraining. *Id.* The duration of this type of award depends on the particular needs of the dependent spouse. *Id.* at 63. Rehabilitative alimony is the support necessary to assist a person making a transition to a regular job. *In re Marriage of Christensen*, 543 N.W.2d 915, 919 (Iowa App. 1995); *In re Marriage of Berger*, 431 N.W.2d 387,

388 (Iowa App. 1988); *In re Marriage of Russell*, 473 N.W.2d 244, 247 (Iowa App. 1991).

Barbara needs alimony for this transitional period of her life. She has been a housewife for nearly six years and, although she is young, will be reentering the workforce. She left jobs where she was making more than minimum wage to follow Donovan's jobs. Her staying at home with the children was an economically sound decision. She is not in the same position in the workforce she would be if she had not made family sacrifices. Two years of rehabilitative alimony is appropriate for Barbara to acclimate herself in the workforce, re-train, or refresh her skills.

III. Child Support.

Donovan contends the district court overestimated his income for purposes of calculating child support. He contends the district court underestimated Barbara's income-earning potential. The district court correctly included Donovan's overtime in his income calculation. Six to seven hours is a fair estimate of the overtime hours Donovan will work in a week. However, the court miscalculated his income. Donovan's hourly wage is \$9.85 per hour. His overtime wage is \$16.75 per hour. If Donovan worked an average of six and one-half overtime hours each week, as the court estimated, his gross income would be \$26,149.50, rather than \$28,408.

The court determined Barbara was capable of earning a minimum of \$545 per month. This would equal a forty-hour work week at \$4.65 per hour. Barbara is

capable of making more than that. She has in the past and is now capable of making \$7.00 an hour.

We hold Donovan should pay child support under the guidelines based upon a gross salary for him of \$26,149.50 and a gross salary for Barbara of \$14,560. Donovan is entitled to tax exemptions for the children. Barbara is allowed a \$300 deduction for medical expenses and \$100 a week deduction for child care expenses. Taking these factors into the consideration, Donovan's net monthly income is \$1,624.58 and Barbara's is \$726.90, commencing June 1996. Donovan is ordered to pay \$523 per month as child support rather than \$600.76 per month. From the months of July 1996 through October of 1997, Donovan overpaid child support in the amount of \$1,242.24. To reimburse Donovan for the overpayment, he will pay less than the ordered \$523 per month in child support for a period of time. For the years of November 1997 through November of 1999 he will pay \$473. In the month of December 1999 he will pay \$481. Every month thereafter he is ordered to pay \$523 per month in child support. Because of Donovan's substantial child support payment, he is entitled to the tax exemptions for the two children if he is fully current on all support obligations, including alimony, at the end of the calendar year.

IV. Attorney Fees.

Donovan argues the court erred in ordering him to pay \$1500 toward Barbara's attorney fees. An award of attorney fees is not a matter of right, but rests in the court's discretion and the parties' financial positions. *In re Marriage of Kern*, 408

N.W.2d 387, 390 (Iowa App. 1987). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981). In light of Barbara's lesser earning capacity and family responsibilities, it was not error for the court to order Donovan to pay \$1500 of her attorney fees. Neither party is well off financially and it is a burden for either one of them to pay the other's attorney fees. Each party shall pay their own attorney fees on appeal.

AFFIRMED AS MODIFIED.