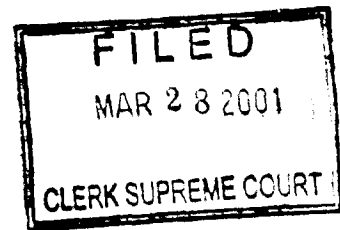


IN THE COURT OF APPEALS OF IOWA

No. 1-086 / 00-0347
Filed March 28, 2001

**IN RE THE MARRIAGE OF LANA LA RUE WIGES
AND ZACHARY ALAN WIGES**

**Upon the Petition of
LANA LA RUE WIGES,**
Petitioner-Appellant/Cross-Appellee,



**And Concerning
ZACHARY ALAN WIGES,**
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Audubon County, Timothy
O'Grady, Judge.

Petitioner appeals, and respondent cross-appeals, the district court's
decree of dissolution of her marriage to respondent. **AFFIRMED AS MODIFIED.**

Richard C. Schenck of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan,
for appellant/cross-appellee.

Martin L. Fisher of Fisher, Fisher & Fisher, P.C., Adair, for appellee/cross-
appellant.

Heard by Huitink, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Petitioner appeals the district court's decree of dissolution of her marriage to respondent. She contends the trial court's award of alimony was inadequate and she requests appellate attorney fees. Respondent cross-appeals, contending the court erred in ordering him to assume the encumbrance on the 1996 Chrysler LHS and he is entitled to an award of appellate attorney fees. We affirm as modified.

Background Facts and Proceedings. Lana La Rue Wiges (Lana) and Zachary Wiges (Zachary) were married April 5, 1975. Three children were born of the marriage: Jesse, age twenty-three; Jamie, age nineteen; and Paige, age twelve. Lana and Zachary were forty-seven years old at the time of trial.

Zachary has a high school education. For the past fourteen years, he has worked as a financial advisor and investment salesman for American Express. The parties' taxable income typically ranged from \$40,000 to \$50,000. In the past few years, however, Zachary has been particularly successful, earning a gross income of \$100,000 to \$200,000. Zachary attributes the dramatic increases in his salary to the record highs of the stock market in recent years. In addition to his employment with American Express, Zachary raises quarter horses on the parties' acreage. The parties began raising horses during the second year of the marriage. The business shows a loss on recent tax returns. Zachary reports the loss is due to money going toward assets, such as horses. Zachary hopes to make the quarter horses his full-time business someday.

Lana is a high school graduate. She worked full-time in various clerical positions for most of the marriage, earning a gross income of approximately \$14,000 per year. Lana did most of the housework and cared for the children. In 1996, she quit full-time work and returned to school to pursue her LPN degree. She expected to graduate with her LPN degree in May 2000, and was considering continuing her education for two more years to obtain an RN degree. While enrolled in classes, Lana worked part-time in a hospital for \$7.10 an hour. She expected to earn approximately \$9.50 per hour, \$19,760 annually, as an LPN. She estimated she could earn as much as \$15 an hour as an RN.

Lana filed her petition for dissolution of marriage on November 10, 1997. The parties physically separated at that time. On December 1, 1997, the district court entered a temporary order. The order permitted Lana and the children to occupy the marital residence during the pendency of the dissolution. In addition, the court ordered Zachary to pay temporary child and spousal support in the amount of \$1750 every other Friday, maintain health insurance for Lana and the children, and make his vehicle payments.

After trial on the issues of permanent alimony and attorney fees, the court entered a decree of dissolution on January 20, 2000. The parties stipulated to child support payments of \$1500 per month for twelve-year-old Paige. The court awarded Lana alimony of \$1000 per month for sixty months, followed by \$500 per month for sixty months. The court awarded Lana the parties' 1996 Chrysler LHS free and clear of any encumbrance and ordered Zachary to pay the encumbrance. Lana appeals and Zachary cross-appeals.

Standard of Review. We review dissolution decrees de novo. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 50 (Iowa 1999). We review the entire record and adjudicate rights anew on issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). While we give weight to the factual findings of the district court, especially with respect to credibility determination, they do not bind us. *Knickerbocker*, 601 N.W.2d 51. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

Alimony. Lana contends the district court's award of alimony was inadequate. To support her contention, she points to the parties' long marriage, the lack of income-producing assets in her property award, Zachary's increased income, and her comparatively lower earning capacity. Lana claims the alimony award will "force a major deterioration" of her lifestyle or force her to spend assets awarded to her in the property division. She seeks an award of \$2500 permanent monthly alimony.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Eastman*, 538 N.W.2d 874, 876 (Iowa Ct. App. 1995). In determining whether an alimony award is appropriate, the court considers the factors listed in Iowa Code section 598.21(3). *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996). In addition to the length of the marriage, it is appropriate for the court to consider the age and health of the parties, their educational level and earning capacity,

the feasibility of the party seeking alimony becoming self-supporting at a comparable standard of living, any property distribution made in the decree, the tax consequences and the provisions of any prenuptial agreement. Iowa Code section 520.21(3); *Spiegel*, 553 N.W.2d at 320.

The court must consider (1) the earning capacity of each party, and (2) the present standards of living and ability to pay balanced against the relative needs of the other. *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa Ct. App. 1994). We consider property division and alimony together in evaluating their individual sufficiency. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa Ct. App. 1996). The court also may consider the amount of child support ordered under the decree when determining if spousal support is to be awarded and, if so, the appropriate amount of the award. *In re Marriage of Will*, 489 N.W.2d 394, 400 (Iowa 1992).

Alimony has traditionally taken the place of support that would have been provided had the marriage continued. *In re Marriage of Francis*, 442 N.W.2d 59, 63 (Iowa 1989). There are three types of alimony: rehabilitative, reimbursement, and traditional. *Smith*, 573 N.W.2d at 926. Rehabilitative alimony supports a spouse for a limited period of education and retraining, with a goal of self-sufficiency. *Id.* Reimbursement alimony reimburses a spouse for economic sacrifices made during the marriage. *Id.* Traditional alimony supports a spouse for life, as long as the spouse is incapable of self-support. *Id.* The district court awarded Lana rehabilitative alimony.

The parties were married for twenty-five years. Both parties enjoy good health. Zachary has a high school education, while Lana has returned to school to obtain her LPN degree, and possibly her RN degree. Her additional education will increase her earning capacity. While Zachary's earnings have increased significantly during the past few years, it is highly unlikely his yearly income will remain at the \$200,000 level on a consistent basis, given the current market conditions. These factors weigh in favor of an award of rehabilitative alimony.

Our de novo review of the record, however, reveals an inequitable property distribution. Lana received only a small fraction of the parties' income-producing assets. The homestead, which represents the largest asset Lana received, includes the family home and 13.35 acres and will require considerable expenditures by Lana to maintain. In contrast, Zachary received approximately \$136,200 of income-generating assets. Moreover, the property distribution makes no provision for the division of retirement accounts.¹ Other than social security payments, Lana would have no retirement income.

While we agree with an award of rehabilitative alimony in this case, we conclude the district court's award of alimony was unfair and inadequate under the circumstances. Lana is in good health, has worked outside the home throughout the marriage, and recently obtained additional education to increase her earning capacity. She is capable of self-support. However, the property division did not equitably distribute income-producing assets such that Lana will be adequately provided for upon retirement. Therefore, we modify the district

¹ It appears from the record other than the parties' numerous investment accounts, neither party maintains a retirement account.

court's award of alimony. Lana should receive spousal support of \$1000 per month until she reaches age sixty-five, under the conditions set forth in the decree. Upon attaining age sixty-five, spousal support payments will cease. This increased award of rehabilitative alimony will allow Lana to live the lifestyle she has enjoyed and permit her to plan for her retirement.

Cross-Appeal: Chrysler Encumbrance. Zachary cross-appeals, arguing the district court erred in ordering him to assume the encumbrance on the parties' 1996 Chrysler LHS. He contends at the time of trial he understood the encumbrance on the Chrysler to follow the car. Lana contends Zachary failed to preserve the issue for review.

The district court awarded Lana possession of the parties' 1996 Chrysler LHS, pursuant to the parties' stipulation of property division. The court approved the property division stipulation and incorporated it in the decree of dissolution. The stipulation clearly listed the Chrysler encumbrance as a debt Zachary would assume. He specifically agreed to the terms of the distribution on the record. In addition, when Lana's attorney explained to the court Zachary would assume the Chrysler debt, neither Zachary nor his attorney took exception to the statement or otherwise said anything to indicate the contrary.

Zachary failed to raise the issue of the Chrysler encumbrance at trial. We will not address an argument the district court did not have an opportunity to consider. *Vincent v. Four M Paper Corp.*, 589 N.W.2d 55, 64 (Iowa 1999). We conclude Zachary failed to preserve error on this issue, and therefore affirm the district court's assignment of the Chrysler encumbrance to Zachary.

Appellate Attorney Fees. Lana and Zachary request appellate attorney fees. A successful party does not have a vested right to appellate attorney fees. *In re Marriage of Vieth*, 591 N.W.2d 639, 641 (Iowa Ct. App. 1999). Rather, the court exercises its discretion in determining whether an award is appropriate. *Id.* In determining whether to award appellate attorney fees, 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 decision of the district court on appeal. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa App. Ct. 1997). We deny the parties' request for appellate attorney fees.

AFFIRMED AS MODIFIED.