

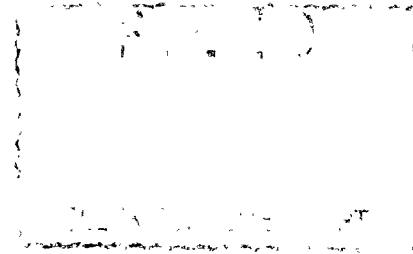
IN THE COURT OF APPEALS OF IOWA

No. 7-015 / 95-2245

**IN RE THE MARRIAGE OF DOROTHY ROSE STOCK
AND CHARLES EDWARD STOCK**

Upon the Petition of
DOROTHY ROSE STOCK,
Petitioner-Appellant,

And Concerning
CHARLES EDWARD STOCK,
Respondent-Appellee.



Appeal from the Iowa District Court for Pottawattamie County, Keith E.
Burgett, Judge.

Petitioner appeals from the entry of the dissolution decree. She contends the
trial court erred determining the amount and duration of alimony. **AFFIRMED.**

G. Elizabeth Otte of Law Office of G. Elizabeth Otte, Council Bluffs, for
appellant.

Robert V. Rodenburg of Rodenburg Law Offices, P.C., Council Bluffs, for
appellee.

Considered by Habhab, C.J., Huitink and Vogel, JJ.

HUITINK, J.

Dorothy Stock appeals from the alimony and attorney fee provisions of the decree dissolving her marriage to Charles Stock.

I. Background Facts and Proceedings.

Dorothy married Charles in 1971. They have six children. Four of their children were minors at the time this case was tried in 1995. Charles was awarded physical care of the four minor children. Dorothy was ordered to pay \$539 per month in child support.

Dorothy was forty-two years old at trial. She has a history of mental illness necessitating hospitalization and continues to take medication. Dorothy has a college degree and works at a hospital earning \$1430 net income each month. At the time she finished college, Dorothy accumulated \$42,000 of school loans.

Charles was forty-five years old when this case was tried. He has an engineering degree and works for the Union Pacific Railroad earning \$3914 net income each month. Charles has also accumulated substantial retirement benefits.

The district court denied Dorothy's request for permanent alimony citing her education and earning capacity. Charles was ordered to pay \$19,000 of Dorothy's remaining school debt as "rehabilitative alimony." Dorothy was also awarded one-half of Richard's Tier II retirement benefits, \$4000 of equity in the family home, an automobile, and specified personal property.

Charles was also ordered to pay Dorothy \$23,000 in seventy-three monthly installments of \$310 and a final installment of \$370. This amount includes the \$19,000 of Dorothy's school debt assigned to Charles plus Dorothy's \$4000 equity in the home. The district court ordered each party to pay their trial attorney fees and one-half of the court costs.

On appeal Dorothy contends she is entitled to permanent alimony. She also demands an award of attorney fees.

II. Standard of Review.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

III. 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 the 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).

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Miller*, 532 N.W.2d at 162; *In re Marriage of Whelchel*, 476 N.W.2d 104, 110 (Iowa App. 1991); *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering factors listed in Iowa Code section 598.12(3)(1995). *See In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983). Alimony may be used to remedy the inequities in a marriage and to compensate a spouse who leaves the marriage at a financial disadvantage. *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993); *In re Marriage of Earsa*, 480 N.W.2d 84, 86 (Iowa App. 1991). Following a marriage of long duration, we have affirmed awards of both alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great. *In re Marriage of Geil*, 509 N.W.2d at 742; *In re Marriage of Hitchcock*, 309 N.W.2d 432, 438 (Iowa 1981).

We consider alimony and property division together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa App. 1994); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). An alimony award is justified when the distribution of the assets of the marriage does not

equalize the inequities and economic disadvantages suffered in marriage by the party seeking the alimony who also has a need for support. *In re Marriage of Weiss*, 496 N.W.2d 785, 787 (Iowa App. 1992). The court should also consider the feasibility of the party seeking alimony becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. *In re Marriage of Debbler*, 459 N.W.2d 267, 270 (1990); Iowa Code § 598.21(3)(f).

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). 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. Traditional or permanent alimony in contrast is usually payable for life or for so long as the dependent spouse is incapable of self-support. *Id.* at 62. The purpose of a traditional or permanent alimony award is to provide the receiving spouse with support comparable to that he or she would receive if the marriage continued.

We, based on our de novo review, conclude that an award of permanent alimony in this case is not justified. The only factors supporting such an award are the parties' income disparity and the duration of the marriage. However, as noted by the district court, Dorothy's employment history and earning capacity indicate she is capable of supporting herself. Moreover, the significance of the parties' income

disparity is diminished by Charles' physical care obligations, rehabilitative alimony, and debts. Under these circumstances, an award of permanent alimony would not achieve its intended purpose and would place an inequitable burden on Charles in view of his other obligations. We affirm on this issue.

IV. Attorney Fees.

An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to 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).

The record indicates that Dorothy has the resources to pay her own attorney fees. We deny her request for appellate attorney fees. Dorothy should pay the costs of this appeal.

AFFIRMED.