

**FILED**

SEP 6 1984

CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

**IN RE THE MARRIAGE OF JOYCE ANN ZELIADT AND MARK IVAN ZELIADT,**

413

UPON THE PETITION OF  
**JOYCE ANN ZELIADT,**

Petitioner-Appellee,

AND CONCERNING  
**MARK IVAN ZELIADT,**

Respondent-Appellant.

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Filed September 6, 1984

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Appeal from the Iowa District Court for Polk County, Richard Strickler,  
Judge.

Petitioner appeals from alimony, child support, and attorney fees provisions  
of the parties' divorce decree. **AFFIRMED AS MODIFIED.**

Kermit L. Dunahoo, Des Moines, for respondent-appellant.

John P. Roehrick of Roehrick & Hassel, P.C., Des Moines, for petitioner-  
appellee.

Considered by Oxberger, C.J., Donielson, and Schlegel, JJ.

The petitioner-husband in this case appeals from provisions of his divorce decree regarding alimony, child support, and payment of attorney's fees. He says the required payments are too high because he is currently unemployed and that his wife should contribute to her own and their child's income by returning to work. He also challenges his payment of her attorney's fees. We affirm as modified.

Our review is de novo. Iowa Code § 598.3 (1983).

### **L Alimony**

Petitioner, Mark Zeliadt, argues to this court that an alimony award to respondent, Joyce, of \$500 per month was too high considering his current financial situation. The parties do not dispute that Mark's past earnings were \$29,615 in 1980; \$32,337 in 1981; and \$33,446 in 1982. At the time of the divorce trial in September 1983, he was unemployed. His net monthly income was \$1830. He is thirty-two years old, in good health, and has no education beyond high school.

Joyce worked for four or five years after receiving a junior accounting diploma from the American Institute of Business. Her last employment involved office and bookkeeping work at a rate of \$6 per hour. Joyce stopped working in 1980 and has cared for the couple's son, born August 1981. She is thirty-two years old and, except for a gall bladder operation she expected no complications from, is in good health. She desires to remain at home until their son goes to school and asked the court for \$200 in alimony for three years. Joyce testified her expenses would be \$1100, with \$500 necessary in child support. The remaining \$400 in expenses, she indicated, could be made up from money she could earn in part-time work. The court instead gave her \$500 in alimony for three years in addition to \$500 in child support.

The factors used in determining alimony are set out at section 598.21 of the

Iowa Code and in various cases cited by the parties. Several of those factors are in conflict here.

Alimony is properly awarded to allow the mother to stay at home to care for the children of the marriage. In re Marriage of Matson, 215 N.W.2d 358 (Iowa 1974). If possible, the mother of young children should not be forced to work outside the home. In re Marriage of Zoellner, 219 N.W.2d 517 (Iowa 1974). The earning capacity of each party is to be considered based on their education, training, work experience, length of absence from the market and child care responsibilities. Iowa Code § 598.21(3)(e)(1983). The court must also recognize the feasibility of the party seeking alimony becoming self-supporting. Iowa Code § 598.21(3)(f)(1983).

The earning capacity of Mark is high, although his current earnings are low. He indicates he "hopes" to find work shortly. Joyce contends the average of only Mark's past earnings should be considered. We must look at all factors, however, including his depressed current finances. Joyce is also capable of obtaining income, although she has been absent from the job market for three years. While Iowa courts recognize that it is desirable, when possible, for a mother to remain home with a young child, the economic realities of this couple's situation cannot be ignored. Mark is currently left with \$830 to pay \$1725 in expenses. While it is true that a decree creating a burden on parties is not in itself inequitable, as recognized by the court in In re Marriage of Florke, 270 N.W.2d 643 (Iowa 1978), if Mark is forced into insolvency, there will be no income for this family. The cases cited by respondent recognizing the desirability that a young mother stay home involved better financial pictures. In Matson, 215 N.W.2d at 359, the husband earned \$31,000 per year and in Zoellner, 219 N.W.2d at 525, the court stated the mother should not be forced to work outside the home "if it can be

reasonably avoided." (emphasis added). We believe the situation requires a contribution from Joyce.

Joyce will be coming back into the job market after an absence and once she obtains work will face some child care costs. She has indicated \$200 alimony would be adequate if she were to obtain part-time work, and we modify the alimony award to this lower figure for three years. Although this will leave Mark with some unmet expenses, it will equalize the financial burdens.

## **II. Child Support**

Joyce has indicated that expenses for their son are \$500 per month, and the court awarded that amount. Separate factors are considered in awarding child support as set out at section 598.21(4) of the code. It has been stated that welfare of the child is important when modifying child support. Dworak v. Dworak, 195 N.W.2d 740 (Iowa 1972). It is also our paramount consideration when reviewing the original award. Child support is not necessarily borne equally, but is shared by each parent in proportion to their incomes. In re Marriage of Heinemann, 309 N.W.2d 151 (Iowa Ct. App. 1981). We have decided Joyce will be able to contribute, and considering the limits of Mark's income we modify the child support award to \$400 per month.

## **III. Attorney's Fees**

Mark argues that the court's decision he pay \$1895.10 of Joyce's attorney's fees is inequitable. His total contributions would equal 89 percent of the bill. He claims she can pay 50 percent, referring to the cash property award by the court to her of \$2900 and her half interest in \$40,000 of rental property ordered sold. Mark further argues she was given the more desirable homestead with 9 percent interest and \$25,000 equity, while he received rental property with 11 percent interest and \$20,000 equity. However, Mark admits \$9000 in cash given to him was meant to offset these circumstances and that he will receive income from the rental property.

Contribution to another party's attorney's fees is based on each party's ability to pay. In re Marriage of Willcoxson, 250 N.W.2d 425 (Iowa 1977). Joyce presently has zero income, while Mark earns \$1830 per month. Although this seems low considering his expenses, his ability to pay is greater. However, with the split of the sale of the income property, each party will obtain, in addition to the cash awards already made, approximately \$20,000. Considering the property settlements and the ability of each party to pay, we modify the trial court's order regarding attorney's fees and hold Joyce should pay \$630 of the bill and Mark pay the remainder of the \$1895.10 bill. Appellate attorney fees will be taxed two-thirds to petitioner and one-third to respondent.

AFFIRMED AS MODIFIED.